

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-186
District Docket No. XIV-2007-
0241E

IN THE MATTER OF
KATHLEEN D. WARGO
AN ATTORNEY AT LAW

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Decision

Decided: October 2, 2008

To the Honorable Chief Justice and Associate Justices of
the Supreme Court of New Jersey.

This matter came before us on a certification of default
filed by the Office of Attorney Ethics ("OAE"), pursuant to R.
1:20-4(f).

The complaint charged respondent with violating RPC 8.1(b)
(failure to cooperate with disciplinary authorities) and RPC
8.4(d) (conduct prejudicial to the administration of justice)
for her failure to comply with a Court order requiring, among
other things, that she file an affidavit of compliance with R.
1:20-20, following her suspension from the practice of law.

The OAE urges the imposition of a two-year suspension. We

determine to impose a one-year suspension, to be served at the expiration of respondent's March 11, 2008 one-year suspension.

Respondent was admitted to the New Jersey bar in 1987. On January 17, 2007, she was temporarily suspended for failure to cooperate with the OAE. In re Wargo, 189 N.J. 25 (2007). Later that year, respondent was censured for gross neglect, lack of diligence, failure to return the client's file, and several instances of misrepresentation. In re Wargo, 192 N.J. 41 (2007). That matter proceeded on a default basis.

On March 11, 2008, respondent was suspended for one year for misconduct in two matters. In re Wargo, 194 N.J. 166 (2008). In the first matter, she was found guilty of gross neglect, failure to communicate with the client, misrepresentations to the client for a period of nine months, and failure to cooperate with the investigation of the grievance. In the second matter, she failed to release funds that she was holding in escrow in connection with a real estate transaction, ignored the buyer's attorney's repeated requests for the disbursement of the escrow funds, ignored the OAE's numerous attempts to obtain her reply to the grievance, ignored the OAE's demand for an audit of her attorney records, and ignored the OAE's motion for her temporary suspension. After respondent was temporarily suspended, the escrow funds were transferred to the Superior Court Trust Fund,

as provided in the suspension order. Those two matters also proceeded as defaults. We found that respondent had exhibited "an egregious pattern of indifference toward the ethics system." In the Matter of Kathleen D. Wargo, DRB 07-210 and DRB 07-217 (October 30, 2007) (slip op. at 16).

Service of process was proper in this matter. On January 29, 2008, the OAE sent a copy of the complaint, by regular and certified mail, to 15 Timothy Court, Morristown, New Jersey, 07960, respondent's last known address, as listed in the records of the New Jersey Lawyers' Fund for Client Protection.

The certified mail was returned as "unclaimed." The regular mail was not returned.

On February 25, 2008, the OAE sent a letter to the same address, by regular and certified mail, informing respondent that, if she did not file an answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted and the record would be certified directly to us for the imposition of sanction.

The certified mail was returned as unclaimed. The regular mail was not returned.

Respondent has not filed an answer to the complaint.

As indicated above, respondent was temporarily suspended on January 17, 2007. The Court order directed, among other things,

that respondent file with the OAE, within thirty days, "a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of [R. 1:20-20] and the Supreme Court order." Respondent failed to do so.

By letter dated August 14, 2007, sent to respondent's home/office address by regular and certified mail, the OAE reminded respondent of her obligation to file the affidavit of compliance with R. 1:20-20.¹ The OAE directed her to "prepare and file the Affidavit immediately," with a "copy with all the enclosures." The letter went on to say that it was "particularly important to the Office of Attorney Ethics to know what clients, if any, you were representing at the time of your suspension, when and how you notified them of your suspension, and whether you delivered their files to them or to their new attorney." The OAE requested a reply by August 28, 2007.

Respondent has not replied to the OAE's letter and has not filed the required affidavit.

In a letter-memorandum to us, the OAE noted that, although the "presumptive" discipline in cases addressing failure to file the R. 1:20-20 affidavit is a reprimand, the extent of an attorney's disciplinary history causes it to be appropriately

¹ Respondent signed the certified mail receipt card. The regular mail was not returned to the OAE.

enhanced. The OAE further noted that recent cases addressing similar conduct have resulted in suspensions. The OAE cited In re Wysowski, 186 N.J. 471 (2006) (three-month suspension in a default matter; prior temporary suspension); In re Raines, 181 N.J. 537 (2004) (three-month suspension; prior private reprimand, three-month suspension, six-month suspension, and a temporary suspension); In re Girdler, 179 N.J. 227 (2004) (three-month suspension in a default matter; prior private reprimand, public reprimand, and three-month suspension); In re McClure, 182 N.J. 312 (2005) (one-year suspension in a default matter; prior admonition and two concurrent six-month suspensions); In re King, 181 N.J. 349 (2004) (one-year suspension in a default matter; prior reprimand, temporary suspension, three-month suspension, and one-year suspension); and In re Mandle, 180 N.J. 158 (2004) (one-year suspension in a default matter; disciplinary history included three reprimands, a temporary suspension, and two three-month suspensions).

The OAE urged us to impose a two-year suspension, based on respondent's failure to answer the complaint in this matter and on her disciplinary record:

[R]espondent's default in this matter, coupled with her continuing failure to cooperate with disciplinary authorities, her continuing failure to notify the courts and her adversaries of her suspension, and her failure to file the affidavit required by R.

1:20-20, paint a very clear picture of an attorney who continued to "thumb her nose" at the disciplinary system.

[LM at 3.]²

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

In January 2007, respondent was temporarily suspended for failure to cooperate with the OAE. The Court order required her to comply with R. 1:20-20 and to file an affidavit of compliance with that rule. R. 1:20-20 provides, among other things, that an attorney who has been suspended, disbarred, or transferred to disability inactive status must give notice of such action to clients, adversaries, and courts. The rule further provides that, within thirty days of the Court order, the attorney must file with the OAE an affidavit demonstrating compliance with the rule requirements.

Respondent did not file the affidavit within the required deadline (February 17, 2007). Six months later, on August 14, 2007, the OAE reminded her of her duty to comply with the Court

² LM denotes the OAE's letter-memorandum to us.

order and with R. 1:20-20. The OAE instructed her to file the affidavit immediately, adding that it was "particularly important" to know whether she had notified her clients, if any, of her suspension and whether she had surrendered their files. Respondent paid no heed to the OAE's instruction.

The OAE requests that respondent be given a two-year suspension, noting that, by defaulting in this matter and by failing to file the R. 1:20-20 affidavit, respondent continues to "thumb her nose" at the disciplinary system. In that, the OAE is correct. Nevertheless, attorneys who have displayed similar conduct and who had comparable disciplinary records were suspended for one year. See, e.g., In re McClure, supra, 182 N.J. 312 (one-year suspension in a default matter; disciplinary history included an admonition and two concurrent six-month suspensions, one of which was a default; the attorney failed to cooperate with disciplinary authorities and to abide by his promise to the OAE to complete the affidavit; we noted the need for progressive discipline in that instance) and In re King, supra, 181 N.J. 349 (2004) (one-year suspension in a default matter; extensive ethics history consisting of a reprimand, a temporary suspension for failure to return an unearned retainer, a three-month suspension in a default matter, and a one-year suspension; in two of the matters, the attorney

failed to cooperate with disciplinary authorities; the attorney also ignored the OAE's attempts to have her file an affidavit of compliance). Cf. In re Kozlowski, 192 N.J. 438 (2007) (default matter; two-year suspension for attorney who failed to comply with R. 1:20-20, as directed by a Court order of suspension; the attorney's significant disciplinary history included a private reprimand, an admonition, three reprimands, a three-month suspension, and a one-year suspension; the attorney defaulted in six disciplinary matters; the "attorney's repeated indifference toward the ethics system" was found to be "beyond forbearance;" In the Matter of Theodore F. Kozlowski, DRB 06-211 (November 16, 2006) (slip op. at 11-12)).

Guided by the above precedent, we determine that a one-year suspension, rather than the two-year suspension urged by the OAE, is more in keeping with respondent's infraction and ethics record.

One further circumstance persuades us that a one-year suspension is the appropriate degree of discipline in this instance. Respondent's initial failure to comply with the temporary suspension order that directed her to abide by the requirements of R. 1:20-20 occurred on February 17, 2007 (thirty days from the date of the Court order). Several months later, in April and May 2007, respectively, she was served with the two complaints in the matters that led to her one-year suspension in

March 2008. The violation of the temporary suspension order's directive to comply with R. 1:20-20 could have been included with the charges in those two complaints. Had that been done, it would have been unlikely that the discipline for the three matters would have been a three-year suspension, which is the net effect of the OAE's recommendation for a two-year suspension on top of the one-year suspension that respondent is currently serving. More appropriately, the discipline for the totality of respondent's conduct would have been a two-year suspension.

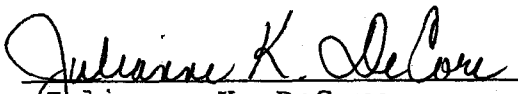
For the above reasons, we determine that a one-year suspension is adequate discipline in this matter and also determine that it should run consecutively to the March 11, 2008 one-year suspension currently in effect.

Member Boylan did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

BY:


Julianne K. DeCore
Chief Counsel

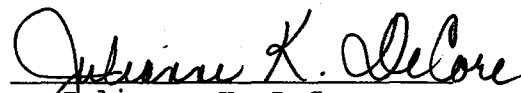
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kathleen D. Wargo
Docket No. DRB 08-186

Decided: October 2, 2008

Disposition: One-year suspension

Members	Disbar	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Boylan						X
Clark		X				
Doremus		X				
Lolla		X				
Stanton		X				
Wissinger		X				
Total:		8				1


Julianne K. DeCore
Chief Counsel