

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-188
District Docket No. XIV-07-0237E

IN THE MATTER OF
JOHN SCOTT ANGELUCCI
AN ATTORNEY AT LAW

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Decision

Decided: October 21, 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 reply to a lawful demand for information from a disciplinary authority) and RPC 8.4(d) (conduct prejudicial to the administration of justice) for his failure to file an affidavit of compliance in accordance with R. 1:20-20. The OAE urged us to impose a one-year suspension. We agree that a one-

year suspension is appropriate discipline and determine that it should be consecutive to the six-month suspension imposed on October 2, 2008 (effective November 8, 2008).

Respondent was admitted to the New Jersey bar in 1992. He has been suspended from the practice of law since January 4, 2007, when he was temporarily suspended, and has been ineligible to practice for failure to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF) since September 25, 2006.

In 2005, respondent was reprimanded following his conviction for obstructing the administration of law or other governmental function, a disorderly person's offense. Respondent had been arrested and charged with resisting arrest, a third-degree crime, following an altercation with Deptford Township police officers. In re Angelucci, 183 N.J. 472 (2005).

On January 4, 2007, respondent was temporarily suspended for failure to cooperate with an OAE ethics investigation. In re Angelucci, 189 N.J. 98 (2007). The suspension was continued on March 5, 2007, for his failure to comply with a fee arbitration determination. In re Angelucci, 189 N.J. 523 (2007).

In May 2008, respondent was suspended for six months, in a default matter, for gross neglect, lack of diligence, failure to communicate with a client, failure to provide the client with a writing setting forth the basis or rate of his fee, failure to protect the client's interests by unilaterally terminating the representation, and conduct prejudicial to the administration of justice (failure to appear on a bankruptcy court order to show cause and to refund the client's fee, as ordered by the court). We determined that a three-month suspension was appropriate. However, because respondent did not appear on the Court's Order to Show Cause issued in that disciplinary matter, the Court enhanced the discipline to a six-month suspension. In re Angelucci, 194 N.J. 512 (2008).

On October 2, 2008, in another default, respondent received an additional six-month suspension (effective November 8, 2008) for his abandonment of clients who were seeking to turn over their parental rights to the child's mother and future husband. After accepting a fee, respondent disappeared without performing any services for his clients, thereby engaging in gross neglect, lack of diligence, failure to advise the clients how and when to communicate with him, failure to keep the clients informed about

the status of their matter, failure to comply with the recordkeeping rules by failing to comply with the IOLTA requirements, failure to reply to the grievance, and conduct prejudicial to the administration of justice for failure to appear at a hearing and failure to pay child support resulting in two separate bench warrants for his arrest, all in violation of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.15(d), RPC 8.1(b), and RPC 8.4(d). The Court vacated the temporary suspension order of 2007, but ordered that respondent not be reinstated to practice until the satisfaction of the fee arbitration award and the payment of the sanction ordered in March 2007. In re Angelucci, ___ N.J. ___ (2008).

The CPF report shows that respondent was ineligible for periods of up to two months for failure to pay his annual attorney assessment in 1997, 2001, 2003, 2004, and 2005. He was also ineligible for longer periods: September 20, 1993 to November 13, 1995, September 21, 1998 to October 4, 2000 and, as noted above, since September 25, 2006.

Service of process was proper. On January 29, 2008, the OAE mailed copies of the complaint, by regular and certified mail, to respondent's last known addresses listed in the CPF records:

149 Hampshire Drive, Deptford, New Jersey 08096, his home address, and 867 Cooper Street, Deptford, New Jersey 08096, his office address. The regular and certified mail sent to the Cooper Street address were returned as undeliverable. The certified mail sent to the Hampshire Drive address was returned marked "unclaimed." The regular mail sent to that address was not returned.

Respondent did not reply within the allotted time. Therefore, on February 25, 2008, the OAE mailed a second letter to respondent at his Hampshire Drive address by regular and certified mail. The letter notified respondent that, if he did not file an answer to the complaint, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of sanction, and the complaint amended to include a willful violation of RPC 8.1(b). The certified mail was returned marked "unclaimed." The regular mail was not returned.

As of the date of the certification of the record, May 8, 2008, respondent had not filed an answer to the ethics complaint.

We now turn to the facts of this matter.

As mentioned above, the Court temporarily suspended respondent by orders dated January 4, 2007 and March 5, 2007. The Court's January 4, 2007 order directed respondent to comply with R. 1:20-20, which requires, among other things, that a suspended attorney, "within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order."

When respondent failed to comply with that directive, on August 14, 2007, the OAE sent him a letter, by regular and certified mail, to his home address (149 Hampshire Drive) and two office addresses (867 Cooper Street and 45 Delaware Street, Woodbury, New Jersey), advising him of his duty to file the affidavit and requesting a response by August 28, 2007. The certified mail sent to respondent's home address was accepted by Laura Foulks on August 16, 2007. The regular mail was not returned to the OAE. The certified and regular mail sent to the Cooper Street address was returned as "not deliverable" and "unable to forward." The certified mail sent to the Woodbury

address was returned as unclaimed. Jerry Lonabaugh, Esq. returned the regular mail that had been sent to the Woodbury address and notified the OAE that the mail had been received by his office in error because respondent did not maintain an office at that address.

Respondent did not reply to the OAE's letters or file the required affidavit. Therefore, on January 3, 2008, an OAE employee went to respondent's home address. Because respondent was not there at the time, the OAE left "contact information" with respondent's brother and requested that he have respondent contact the OAE .

On January 7, 2008, respondent contacted the OAE "and was advised of his obligation to file the affidavit." As of the date of the complaint, January 28, 2008, respondent had not made further contact with OAE or filed the required affidavit. According to the complaint, respondent "willfully violated the Supreme Court's order and has failed to take the steps required of all suspended or disbarred attorneys, including notifying clients and adversaries of the suspension and providing clients with their files."

In its memorandum to us, the OAE asserted that a reprimand should be considered the "presumptive" sanction for an attorney's willful failure to comply with the Court's order of suspension for failing to file the affidavit required by R. 1:20-20. The OAE added, however, that respondent failed to comply with the rule even after the OAE notified him of his obligation to do so and provided him with a reasonable amount of time to cure the deficiency.

The OAE contends that a one-year suspension is appropriate discipline for respondent because of the default nature of these proceedings, his continuing failure to cooperate with disciplinary authorities, and his continuing failure to notify his clients, the courts and his adversaries of his suspension. According to the OAE, this conduct paints "a very clear picture of an attorney who continues to 'thumb his nose' at the disciplinary system."

Following a review of the record, we find that 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 sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

R. 1:20-20 requires suspended attorneys to file affidavits of compliance with the OAE. Respondent failed to do so. He therefore, violated RPC 8.1(b) and RPC 8.4(d).

As noted by the OAE, presumptively, a reprimand is sufficient discipline for such an omission. In the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6). R. 1:20-20(c). Where there have been aggravating factors, the measure of discipline has been increased accordingly. Ibid.

Here, respondent defaulted by not filing an answer to the complaint. In default cases, the discipline is enhanced to reflect the attorney's lack of cooperation with the disciplinary system. In re Nemshick, 180 N.J. 304 (2004). Also, he has a significant ethics history (two temporary suspensions, a reprimand, and two six-month suspensions). Often, the discipline imposed in cases where attorneys have failed to comply with R. 1:20-20 is a suspension because, as in the following cases, the attorney has a disciplinary history and the matter proceeded as a default. See, e.g., In re Wyskowski, 186 N.J. 471 (2006) (three-month suspension for attorney whose ethics history

included a temporary suspension for failure to comply with a fee arbitration determination); In re Girdler, 179 N.J. 227 (2004) (three-month suspension for attorney whose ethics history included a private reprimand, a public reprimand, and a three-month suspension); In re Wood, 193 N.J. 487 (2008) (one-year suspension for attorney with a disciplinary record consisting of an admonition, a reprimand, a censure, and a three-month suspension; default case); In re McClure, 182 N.J. 312 (2005) (one-year suspension for attorney who had received an admonition and two concurrent six-month suspensions); In re King, 181 N.J. 349 (2004) (one-year suspension for attorney with an extensive ethics history, including 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; the attorney remained suspended since 1998, the date of the temporary suspension); and In re Mandle, 180 N.J. 158 (2004) (one-year suspension for attorney whose ethics history included three reprimands, a temporary suspension for failure to comply with an order requiring that he practice under a proctor's supervision, and two three-month suspensions; in three of the matters, the attorney failed to cooperate with disciplinary authorities).

Respondent was previously before us on three occasions, for which he received a reprimand, a six-month suspension in a default, and another six-month suspension, also a default. This is his third default. In addition, he was temporarily suspended by the Court on two separate occasions. Based on the above precedent and respondent's disciplinary record, we determine that a one-year suspension is required for respondent's failure to comply with the provisions of R. 1:20-20. The suspension is to be consecutive to the six-month suspension imposed on October 2, 2008, which is effective on November 8, 2008.

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
Julianne K. DeCore
Chief Counsel

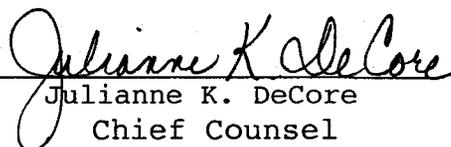
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John Scott Angelucci
Docket No. DRB 08-188

Decided: October 21, 2008

Disposition: One-year consecutive suspension

Members	Disbar	One-year consecutive 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