

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-253
District Docket No. XIV-06-620E

IN THE MATTER OF
ANTHONY CLYDE JONES
AN ATTORNEY AT LAW

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Decision

Decided: December 9, 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). It arises out of respondent's failure to file an
affidavit of compliance with R. 1:20-20, following a temporary
suspension imposed on him, in June 2006 (effective July 27,
2006), for his failure to comply with the determination of a fee

arbitration committee. Respondent has never applied for reinstatement.

Respondent, who has filed a motion to vacate the default, asserts that he did not have any clients or open files on the date that the suspension was imposed. Therefore, he suggests, the filing of the affidavit of compliance was not required, and his failure to do so was not a violation of R. 1:20-20. The OAE opposes respondent's motion to vacate the default, and seeks a censure for respondent's failure to file the affidavit of compliance. We determine to deny respondent's motion and to impose a three-month suspension.

We first address respondent's motion to vacate the default, which was received by Office of Board Counsel on September 9, 2008. To vacate a default, a respondent must (1) offer a reasonable explanation for the failure to answer the ethics complaint and (2) assert a meritorious defense to the underlying charges. Respondent has not satisfied either requirement.

Respondent has not offered a reasonable explanation for his failure to file a timely answer to the ethics complaint. In September 2007, the complaint was mailed to his 36-38 West 123rd Street, New York City office address. "R. Bowman" signed for the certified letter; the letter sent regular mail was not

returned. This is the address where respondent was served with the formal ethics complaint, in July 2007, in another default matter, which resulted in the imposition of a censure in June of this year. Although that matter was brought before us as a default, respondent had written a letter to the OAE, in August 2007, acknowledging receipt of the complaint and stating that he was willing to "accept the penalty imposed."

This New York City address also is nearly identical to the address identified on respondent's motion to vacate the default in this matter. Thus, respondent is presumed to have received the complaint mailed to him at this address in September 2007, which was only two months after he was served there with the complaint in the matter resulting in the June 2008 censure. Moreover, in this motion to vacate, respondent did not deny that he received the complaint mailed to this address or explained why the complaint would not have reached him there.

Finally, although respondent acknowledged, in the motion to vacate the default, that he received the complaint when it was mailed to 36 West 123rd Street, in March 2008, he failed to explain why he never filed a verified answer within the OAE's extended deadline. Instead, he relied on an amended answer that he verified on the date that the OAE certified this matter to

us, June 25, 2008, many months after he had received the complaint.

For these reasons, we conclude that respondent has not offered a reasonable explanation for his failure to answer the ethics complaint within the prescribed time. Moreover, he has not asserted a meritorious defense to the underlying charges.

Respondent's defense suggests that he believes R. 1:20-20 did not require the filing of an affidavit because he had no clients and no client files on the date that the suspension was imposed. Respondent's belief is mistaken. As will be shown below, an attorney's client base, or lack thereof, does not determine whether an affidavit must be filed.

For these reasons, we denied the motion.

Respondent was admitted to the New Jersey bar in 1998 and to the New York bar in 2000. At the relevant times, respondent maintained an office for the practice of law in Teaneck and New York City. In June 2008, respondent was censured, in a default matter, for commingling personal and trust funds (RPC 1.15(a)), violating the recordkeeping rules (RPC 1.15(d)), and practicing law while ineligible (RPC 5.5(a)). In re Jones, 195 N.J. 429 (2008).

As indicated previously, on June 27, 2006, he was temporarily suspended for failure to satisfy the award of a district fee arbitration committee. In re Jones, 188 N.J. 1 (2006). To date, he has not paid the award.

Service of process was proper. On September 5, 2007, the OAE mailed a copy of the formal ethics complaint to respondent's last known addresses, 177 Van Buskirk Road, Teaneck, New Jersey 07666 and 36-38 West 123rd Street, New York, New York 10027, via regular and certified mail, return receipt requested. Both the regular and certified mail sent to the Teaneck address were marked "no such number" and returned to the OAE. On September 10, 2007, "R. Bowman" signed for the certified letter sent to the New York City address. The letter sent by regular mail was not returned.

On February 20, 2008, the OAE mailed another copy of the formal ethics complaint, via regular and certified mail, return receipt requested, to an address on file with the OAE, 38 Grant Street, Englewood, New Jersey 07601, and an address provided to the OAE by the United States Postal Service, 30 Grant Street, Englewood, New Jersey 07601. The certified mail addressed to 38 Grant Street was returned marked "not deliverable as addressed - unable to forward." The letter sent regular mail presumably was

not returned, although the certification of the record is silent on this point. Both the regular and certified mail sent to the address provided by the post office (30 Grant Street) were returned marked "not deliverable as addressed - unable to forward."

On March 12, 2008, upon inquiry, the Englewood post office informed the OAE that respondent had filed a change of address form, identifying his address as 30 Grant Street. Nevertheless, the letter carrier for that route stated that no such number existed on Grant Street. Moreover, the letter carrier stated that respondent was not listed as a resident at 38 Grant Street and, therefore, mail addressed to him there would not be delivered.

Also on March 12, 2008, the OAE contacted respondent, who continued to maintain that the 38 Grant Street address was valid. When he was informed of the delivery problem there, he provided his work address to the OAE: 36 West 123rd Street, in New York City. During this conversation, respondent was advised that a complaint had been filed against him for his noncompliance with the affidavit requirement of R. 1:20-20. Respondent acknowledged his obligation to file the affidavit.

On March 13, 2008, the OAE mailed a copy of the complaint to the New York City address that respondent had provided to the OAE the day before, 36 West 123rd Street, New York, New York 10027, via regular and certified mail, return receipt requested. On March 17, 2008, someone signed for the certified letter, but the signature is illegible. The letter sent by regular mail was not returned.

On May 1, 2008, the OAE sent a letter to respondent at the same address, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction. On May 5, 2008, an individual named Calif Lewis signed for the certified letter. The letter sent by regular mail was not returned.

On May 6, 2008, respondent wrote a letter to the OAE (received on May 20, 2008), stating that he was "not in violation of your rules" because, on the date of his suspension, he had "no active cases, clients, or files." On June 6, 2008, the OAE wrote to respondent and informed him that his letter was "insufficient in that it is not an Answer and it has not been verified by you and/or it does not satisfy the requirements of

R. 1:20-4(e)." The letter requested that respondent submit a conforming answer by June 16, 2008.

As of June 25, 2008, respondent had not filed an answer to the complaint. Consequently, on that date, the OAE certified this matter to us as a default.

According to the single-count complaint, prior to respondent's temporary suspension, he practiced law from his Teaneck home. After his suspension, he failed to file an affidavit of compliance with R. 1:20-20, which required him, among other things, to file with the OAE Director "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."

On April 17, 2007, the OAE sent a letter to respondent, via regular and certified mail, to the Teaneck address and his former office address in Hackensack. The letter advised respondent of his responsibility to file the R. 1:20-20 affidavit and requested a response by April 30, 2007.

Neither letter sent to the Teaneck address was returned. Both letters sent to the Hackensack address were returned to the OAE, marked "not deliverable as addressed - unable to forward."

On July 12, 2007, an OAE representative went to respondent's home office in Teaneck. No one was there. Accordingly, the representative left, at respondent's front door, an envelope containing a copy of the temporary suspension order and R. 1:20-20, as well as contact information for the OAE.

On the same day, the OAE representative went to respondent's former office address, in Hackensack. Respondent, however, no longer maintained an office at that location.

As of September 4, 2007, respondent had neither contacted the OAE nor filed the required affidavit.

Based on these facts, respondent was charged with failing to cooperate with disciplinary authorities (RPC 8.1(b)) and engaging in conduct prejudicial to the administration of justice (RPC 8.4(d)).

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).

R. 1:20-20(b)(15) requires the filing of an 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." The rule contains fourteen paragraphs, specifying a multitude of tasks that a suspended attorney must perform. R. 1:20-20(b)(1)-(14). The notification of clients is only one of those tasks. Therefore, the absence of clients or client files does not relieve an attorney of his obligation to comply with the other thirteen provisions of the rule.

Moreover, existing clients or not, compliance with R. 1:20-20(b)(15) is not an option. The rule expressly states that a suspended attorney "shall" file the affidavit. Notably, respondent still has not filed the affidavit. His motion and amended answer give no indication that he has any intention of doing so.

In the absence of an extension by the Director of the OAE, failure to file an affidavit of compliance pursuant to R. 1:20-20(b)(15) within the time prescribed "constitute[s] a violation of RPC 8.1(b) . . . and RPC 8.4(d)." R. 1:20-20(c). Thus, respondent's failure to file the affidavit is a per se violation of RPC 8.1(b) and RPC 8.4(d).

The threshold measure of discipline to be imposed for an attorney's failure to file an R. 1:20-20(b)(15) affidavit is a

reprimand. See In the Matter of Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6). The actual discipline imposed may be different, however, if the record demonstrates mitigating or aggravating circumstances. Ibid. Examples of aggravating factors include the attorney's failure to respond to the OAE's specific request that the affidavit be filed, the attorney's failure to answer the complaint, and the existence of a disciplinary history. Ibid. In re Girdler, 179 N.J. 227 (2004) (three-month suspension imposed on attorney in a default matter for his failure to comply with R. 1:20-20(e)(15); the attorney failed to file the affidavit after prodding by the OAE and his agreeing to do so; the attorney also failed to file an answer to the ethics complaint; his disciplinary history consisted of a public reprimand, a private reprimand, and a three-month suspension in a default matter). See, e.g., In re Raines, 181 N.J. 537 (2004) (three-month suspension where attorney's ethics history included a private reprimand, a three-month suspension, a six-month suspension, and a temporary suspension for failure to comply with a previous Court order); In re Horowitz, 188 N.J. 283 (2006) (on a certified record, a six-month suspension was appropriate for an attorney who failed to comply with R. 1:20-20, where the attorney's ethics history

consisted of a three-month suspension and a pending one-year suspension in two default matters; ultimately, the attorney was disbarred on a motion for reciprocal discipline from New York); In re King, 181 N.J. 349 (2004) (in a default, the Court imposed a one-year suspension on an attorney with an extensive ethics history comprised 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); In re Mandle, 180 N.J. 158 (2004) (in default matter, one-year suspension for attorney who already had amassed 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; the attorney did not appear before the Supreme Court on its order show cause); and In re McClure, 182 N.J. 312 (2005) (in a default matter, attorney received a one-year suspension because his disciplinary history consisted of a prior admonition and two concurrent six-month suspensions, one of which was a default, and because he had failed to cooperate with disciplinary

authorities in the matter before the us; the attorney also failed to abide by his promise to the OAE to complete the affidavit; we also noted the need for progressive discipline in that instance). But see In re Moore, 181 N.J. 335 (2004) (in a default matter, attorney received a reprimand for his failure to comply with R. 1:20-20; his "extensive disciplinary record" was considered with the fact that attorneys who fail to comply with the rule "indirectly receive a three-month suspension because the[y] are precluded from seeking reinstatement for three months from the date that the affidavit is filed").

In this case, a reprimand is not sufficient discipline for respondent's misconduct. Earlier this year, he received a censure in a default matter. He has defaulted in this matter. These circumstances require the imposition of at least a censure. However, there are troubling aspects of this matter that, in our view, justify a three-month suspension.

First, respondent was temporarily suspended, more than two years ago, for his failure to comply with an award issued by a district fee arbitration committee. To date, he has not paid the award and, therefore, remains suspended.

Second, respondent has given the OAE the "run-around" in this case with respect to his address. After six months of

attempted service on respondent at various addresses that he had provided to the OAE, the OAE finally served him at the address to which they sent the complaint in the first place and from which respondent prepared the motion to vacate the default in this matter.

Third, in March of this year, respondent acknowledged his obligation to file a R. 1:20-20 affidavit. Yet, he has failed to do so. At the same time, he continues to maintain that he has no obligation to file the affidavit. His refusal to acknowledge his wrongdoing is obvious.

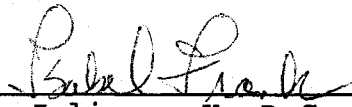

When the default nature of this matter is considered with these additional factors, we believe that a three-month suspension is warranted for respondent's violations of RPC 8.1(b) and RPC 8.4(d).

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

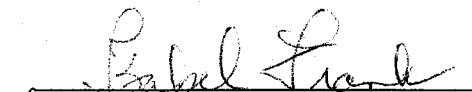
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Anthony Clyde Jones
Docket No. DRB 08-253

Decided: December 9, 2008

Disposition: Three-month suspension

Members	Disbar	Three-month 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


for Julianne K. DeCore
Chief Counsel