

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 14-222  
District Docket No. XIV-2013-0069E

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IN THE MATTER OF  
ELAINE T. SAINT-CYR  
AN ATTORNEY AT LAW

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Decision

Decided: February 25, 2015

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

This matter was 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 having violated RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice), based on her failure to file an affidavit of compliance, pursuant to R. 1:20-20(b)(15),

following her two-year suspension, in July 2012, which remains in effect. For the reasons set forth below, we determined to impose a prospective one-year suspension on respondent.

Respondent was admitted to the New Jersey bar in 1993. Prior to her temporary suspension, in April 2010, she maintained an office for the practice of law in Denville.

On March 26, 2010, respondent was temporarily suspended, effective April 29, 2010, and ordered to pay a \$500 sanction to the Disciplinary Oversight Committee, for failure to comply with a fee arbitration determination. In re Saint-Cyr, 202 N.J. 6 (2010). The 2010 temporary suspension order was never vacated.

On June 7, 2012, the Supreme Court imposed a censure on respondent, in a default matter, for her failure to file an affidavit of compliance with R. 1:20-20(b)(15), following her temporary suspension. In re Saint-Cyr, 210 N.J. 254 (2012).

On July 19, 2012, the Court imposed a two-year suspension on respondent for the totality of her conduct in three default matters. In re Saint-Cyr, 210 N.J. 615 (2012). In two matters, she exhibited gross neglect and lack of diligence, failed to communicate with her clients, and failed to cooperate with disciplinary authorities. In the third matter, she practiced law while suspended. She remains suspended to date.

Service of process was proper in this matter. On November 7, 2013, the OAE sent a copy of the formal ethics complaint to respondent at her last known home and mailing addresses, by regular and certified mail, return receipt requested. On November 27, 2013, the certified letters sent to both addresses were returned, marked "UNCLAIMED." The letters sent by regular mail were not returned.

On December 13, 2013, the OAE sent a letter to respondent at both addresses, by regular and certified mail, return receipt requested. The letter directed her to file an answer within five days and informed her that, if she failed to do so, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of sanction, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b).

As before, the certified letters were returned as unclaimed. The letters sent by regular mail were not returned.

As of July 11, 2014, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified the record to us as a default.

The single-count complaint alleged that the Court's July 19, 2012 two-year suspension order required respondent to comply with R. 1:20-20, which mandated, among other things, that she,

"within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the [OAE] 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." Respondent failed to do so.

On April 3, 2013, the OAE sent a letter to respondent, by certified and regular mail, to both her home and mailing addresses, advising her of her responsibility to file the affidavit and requesting a response by April 17, 2013. The certified letters sent to both addresses were returned as unclaimed. The letters sent by regular mail were not returned to the OAE.

Respondent did not reply to the OAE's April 3, 2013 letter or file the required affidavit.

According to the complaint, respondent has "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 pending clients with their files." The complaint charged respondent with having violated RPC 8.1(b) and 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).

As recited in the complaint, R. 1:20-20(b)(15) requires a suspended attorney, within thirty days of the order of suspension, to "file with the Director [of the OAE] 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."

In the absence of an extension by the OAE Director, 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 a R. 1:20-20(b)(15) affidavit is a reprimand. In re Girdler, 179 N.J. 227 (2004); In the Matter of Richard B. 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 comply with 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.

Since Girdler, discipline ranging from a censure to a three-year suspension has been imposed. See, e.g., In re Boyman, 217 N.J. 360 (2014) (default; censure imposed on attorney who failed to file affidavit after he was temporarily suspended for failure to pay the assessed administrative costs in connection with a 2010 censure); In re Terrell, 214 N.J. 44 (2013) (in a default matter, censure for attorney who failed to file the required R. 1:20-20 affidavit, following a temporary suspension; no history of final discipline); In re Saint-Cyr, 210 N.J. 254 (2012) (default; censure imposed on attorney who was temporarily suspended, effective April 29, 2010, for failure to comply with a fee arbitration determination; no disciplinary history); In re Rak, 214 N.J. 5 (2013) (default; three-month suspension where aggravating factors included three default matters against attorney in three years and attorney's visit from the OAE about the affidavit, after which he still did not comply); In re Swidler, 210 N.J. 612 (2012) (three-month suspension; attorney failed to file affidavit after two suspensions and after the OAE had requested him to do so; it was

the attorney's fourth default; his prior three defaults resulted in a reprimand, a three-month suspension, and a six-month suspension); In re Rosanelli, 208 N.J. 359 (2011) (default; six-month suspension imposed on attorney who failed to file the R. 1:20-20 affidavit after a temporary suspension in 2009 and after a three-month suspension in 2010; prior six-month suspension); In re Sharma, 203 N.J. 428 (2010) (default; six-month suspension where aggravating factors included the default nature of the proceedings, the attorney's ethics history [censure for misconduct in two default matters and a three-month suspension], and his repeated failure to cooperate with disciplinary authorities); In re LeBlanc, 202 N.J. 129 (2010) (default; six-month suspension where ethics history included a censure, a reprimand, and a three-month suspension; two of the prior disciplinary matters proceeded on a default basis); In re Rifai, 213 N.J. 594 (2013) (default; one-year suspension imposed on attorney who, following two three-month suspensions in early 2011, failed to file the R. 1:20-20 affidavit; ethics history also included two reprimands); In re Warqo, 196 N.J. 542 (2009) (one-year suspension where attorney's ethics history included a temporary suspension for failure to cooperate with the OAE, a censure, and a combined one-year suspension for misconduct in two separate matters; all disciplinary proceedings proceeded on

a default basis); In re Wood, 193 N.J. 487 (2008) (default; one-year suspension imposed on attorney who failed to file the R. 1:20-20 affidavit following a three-month suspension; attorney had an extensive disciplinary history: an admonition, a reprimand, a censure, and a three-month suspension; two of those matters proceeded on a default basis); In re King, 181 N.J. 349 (2004) (default; one-year suspension for failure to file the R. 1:20-20 affidavit; extensive ethics history consisting of a reprimand, a temporary suspension, 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 and ignored the OAE's attempts to have her file an affidavit of compliance); In re Mandle, 180 N.J. 158 (2004) (attorney suspended for one year for not filing the R. 1:20-20 affidavit; extensive ethics record: three reprimands, temporary suspension for failure to comply with a Court order requiring him to practice under a proctorship, and two three-month suspensions; in all but one of the matters, the attorney failed to cooperate with disciplinary authorities); In re Brekus, 208 N.J. 341 (2011) (two-year suspension in a default matter for failure to file the R. 1:20-20 affidavit; significant ethics history: a 2000 admonition, a 2006 reprimand, a 2009 one-year suspension, a 2009 censure, and a 2010 one-year suspension, also



by default); and In the Matter of Andrew John Brekus, DRB 13-397 (May 19, 2014) (default; three-year suspension imposed on attorney who failed to file the R. 1:20-20 affidavit, following his October 2011 suspension from the practice of law; egregious disciplinary history consisted of an admonition; a reprimand; a censure; two one-year suspensions, one of which proceeded as a default; and a two-year suspension, also a default).

In assessing the suitable form of discipline for this respondent, we took into account her pattern of failure to cooperate with disciplinary authorities. In 2012, she received a censure for failure to file the required R. 1:20-20 affidavit, following a temporary suspension for failure to refund a fee to a client, as directed by a fee arbitration committee. In that 2012 matter, respondent violated RPC 8.1(b) twice: when she did not obey the Court order instructing her to comply with R. 1:20-20 and when she did not file an answer to the formal complaint, as a result of which the case proceeded on a default basis.

Also in 2012, respondent received a two-year suspension for her conduct in three disciplinary matters that were consolidated for our review. In two of those matters, she did not cooperate with the ethics investigator; in the third one, she violated the Court's order of suspension by practicing law while still temporarily suspended. There, too, respondent defaulted by not


filing answers to the three formal complaints.

Here, respondent again violated the Court's order by not complying with R. 1:20-20, after her two-year suspension, and, for the fifth time, defaulted in a disciplinary matter.

Guided by the above precedent, particularly In re Wargo, supra, 196 N.J. 542, and In re Mandle, supra, 180 N.J. 158, we determine that respondent must be suspended for one year, prospectively, for her failure to comply with R. 1:20-20 for a second time, coupled with her disciplinary history and her pattern of failure to cooperate with disciplinary authorities.

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  
Bonnie C. Frost, Chair

By:   
Ellen A. Brodsky  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Elaine T. Saint-Cyr  
Docket No. DRB 14-222


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Decided: February 25, 2015

Disposition: One-year suspension

<b>Members</b>	Disbar	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Gallipoli		X				
Hoberman		X				
Rivera		X				
Singer		X				
Yamner		X				
Zmirich		X				
Total:		9				

  
Ellen A. Brodsky  
Chief Counsel