

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-215
District Docket No. XIV-2005-561E

IN THE MATTER OF
SCOTT J. WOOD
AN ATTORNEY AT LAW

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Corrected Decision
Default [R. 1:20-4(f)]

Decided: December 12, 2007

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 three-month
suspension imposed on him in July 2005 (effective August 15,
2005).

In light of respondent's disciplinary history and the default nature of this matter, we determine to impose a one-year suspension for his violations of RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Respondent was admitted to the New Jersey bar in 1988. At the relevant times, he maintained an office for the practice of law in Mount Holly.

In 1999, respondent was admonished for failure to communicate with his client in a divorce action. In re Wood, DRB 98-462 (February 24, 1999). In 2000, in a default matter, respondent was reprimanded for lack of diligence and failure to provide the client with copies of the complaints and to keep her reasonably informed about the status of two litigation matters, both of which were dismissed for lack of prosecution. In re Wood, 165 N.J. 564 (2000). In 2003, the Supreme Court censured respondent for gross neglect and failure to communicate with the client, after he allowed an appeal to be dismissed and failed to take any steps to have it reinstated. In re Wood, 177 N.J. 514 (2003). In 2005, in another default matter, respondent received a three-month suspension (effective August 15, 2005) for lack of diligence and failure to communicate with his clients in two

separate matters, as well as failure to cooperate with disciplinary authorities. In re Wood, 184 N.J. 387 (2005). In the same matter, respondent was ordered to refund the clients' retainers within ninety days after the filing date of the order of suspension. Ibid. OAE records do not reflect that these payments have been made.

Service of process was proper. On March 8, 2007, the OAE transmitted a copy of the complaint to respondent's office address, 29 Grant Street, Mount Holly, New Jersey 08060, via regular and certified mail, return receipt requested. In addition, a copy of the complaint was transmitted to respondent's home address, 41 Kensington Drive, Easthampton, New Jersey 08060, in the same manner.

On March 14, 2007, Nancy Yocum signed for the certified letter delivered to respondent's office address. According to the OAE's certification of the record, Yocum was the office assistant to respondent's wife and former law partner, Nancy R. Wood. The certified letter sent to respondent's home address was marked "unclaimed" and returned. The letters sent via regular mail to both addresses were not returned.

On April 9, 2007, the OAE sent a letter to respondent at his home 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. The certified letter was marked "unclaimed" and returned. The letter sent via regular mail was not returned.

As of June 5, 2007, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

On October 9, 2007, the Office of Board Counsel received respondent's motion to vacate the default, which, for the reasons expressed below, we denied.

According to the single-count complaint, prior to respondent's suspension, he practiced law with his wife, Nancy R. Wood, at the firm of Wood & Wood, LLC, in Mount Holly. Respondent has not sought reinstatement since the expiration of his 2005 suspension.

After respondent's 2005 suspension, he failed to file an affidavit of compliance, pursuant to R. 1:20-20(b)(15), 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." In this regard, on December 16, 2005, an OAE representative contacted respondent's counsel in the underlying disciplinary matter, Robin Echevarria, who stated that she would contact respondent and advise him to file the affidavit.

On July 18, 2006, an OAE representative talked to Echevarria again. Despite her representation that respondent was "working on the affidavit," the OAE never received one.

On August 30, 2006, an OAE representative visited respondent's office at 29 Grant Street, Mount Holly. According to the complaint: "There was a sign on the premises that read 'Wood & Wood Law Offices.' That sign was subsequently replaced with a sign that reads, 'The Wood Law Firm, LLC.'"

At the time of the visit, neither respondent nor his partner were in the office. "Law firm personnel" advised the OAE representative that respondent no longer practiced at the firm, although he came to the office "from time to time for other purposes." "OAE contact information was left for respondent at the office." As of March 8, 2007, however, 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 and engaging in conduct prejudicial to the administration of justice.

Before we consider the merits of the disciplinary charges against respondent, we examine his motion to vacate the default. To vacate a default, a respondent must meet a two-pronged test: offer a reasonable explanation for the failure to answer the ethics complaint and assert a meritorious defense to the underlying charges. Respondent has not satisfied the requirements for vacating the default in this matter.

In the certification in support of his motion to vacate the default, respondent admitted that he received the OAE's complaint. According to respondent, he failed to file an answer because he is "now involved in another career" that requires many hours of his time; therefore, he "simply [did not] take the time to properly respond and file an Answer as [he has] not been practicing law for over two (2) years."

Respondent's failure to answer the complaint was not a matter of neglect. Rather, his certification clearly demonstrates that he made a conscious decision not to answer the complaint. We, therefore, denied his motion to vacate the

default. We now turn to the merits of the allegations in the complaint.

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f).

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 Director of the OAE, failure to file an affidavit of compliance within the time prescribed "constitute[s] a violation of RPC 8.1(b) . . . and RPC 8.4(d)." R. 1:20-20(c). Here, the Director did not extend respondent's time to file the affidavit. Thus, respondent's failure to do so was a violation of RPC 8.1(b) and RPC 8.4(d).

There remains the determination of the quantum of discipline to be imposed for respondent's misconduct. 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, 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.; See also, e.g., 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; the attorney failed to produce the affidavit after prodding by the OAE and after 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); 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").

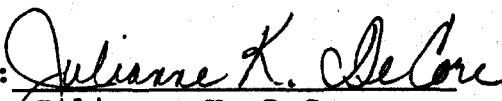
Respondent's conduct warrants more than a reprimand, inasmuch as three aggravating factors are present in this case. First, he failed to respond to the OAE's specific request to file the affidavit. Second, he has an extensive disciplinary history, consisting of an admonition, a reprimand, a censure, and a three-month suspension. Third, not only has respondent defaulted in this matter, but two of his previous disciplinary matters were defaults. See, e.g., In re King, supra, 181 N.J. at 349, where, in a default matter, a one-year suspension was imposed on an attorney who had already been reprimanded, suspended temporarily for failure to return an unearned retainer, suspended for three months in a default matter, and

had been suspended for one year; 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). We, therefore, determine that the appropriate quantum of discipline in this matter is a one-year prospective suspension.

Member Lolla 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
William J. O'Shaughnessy
Chair

By: 
Julianne K. DeCore
Chief Counsel