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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-211
District Docket No. XIV-05-399E

IN THE MATTER OF
THEODORE F. KOZLOWSKI
AN ATTORNEY AT LAW

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

Decided: November 16, 2006

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

Pursuant to R. 1:20-4(f), the Office of Attorney Ethics
("OAE") certified the record in this matter directly to us for
the imposition of discipline, following respondent's failure to
file an answer to the ethics complaint.

This case arose from respondent's failure to file an
affidavit of compliance with R. 1:20-20, following his
suspension from the practice of law.

Respondent filed a motion before us to vacate the default.
For the reasons stated below, we determine to deny the motion
and to impose a prospective two-year suspension.

Service of process was proper. In May 2006, the OAE sent a copy of the complaint in this matter to respondent, by certified and regular mail, to his last known address listed in the records of the New Jersey Lawyers' Fund for Client Protection ("CPF"): 508 Reading Circle, Bridgewater, New Jersey 08807. The certified mail was returned unclaimed. The regular mail was not returned.

In June 2006, the OAE sent a second letter to the above address, via certified and regular mail, advising him that, unless he filed an answer to the complaint within five days, the allegations of the complaint would be deemed admitted and the matter would be certified to us for the imposition of sanction. The letter also served to amend the complaint to charge respondent with violating RPC 8.1(b), based on his failure to file an answer to the complaint. The certified mail receipt was returned, indicating delivery on June 28, 2006. The signature of the agent accepting delivery is illegible. The regular mail was not returned. Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1978. In 1992, he was privately reprimanded for lack of diligence and failure to cooperate with disciplinary authorities. In the Matter of Theodore Kozlowski, DRB 92-104 (May 28, 1992). In

1998, he received an admonition for lack of diligence and failure to communicate with the client in two matters. In the Matter of Theodore Kozlowski, DRB 96-460 (February 18, 1998).

In 2003, respondent was reprimanded for practicing law while on the ineligible list, for failure to pay the annual assessment to the CPF. That matter proceeded on a default basis. In re Kozlowski, 178 N.J. 3 (2003).

In January 2004, respondent received another reprimand, for failure to cooperate with disciplinary authorities. In re Kozlowski, 178 N.J. 326 (2004). In September 2004, respondent received a three-month suspension for misconduct in three separate client matters, including gross neglect in one matter, lack of diligence, and failure to communicate with the client in all three matters, and, in one of the matters, improper signing of clients' names to two separate bankruptcy petitions, without their authorization. Those matters were before us as two defaults. In re Kozlowski, 181 N.J. 307 (2004). In the same month, respondent received a reprimand in a default matter for lack of diligence in a bankruptcy case. In re Kozlowski, 181 N.J. 309 (2004).

More recently, respondent received a one-year suspension in a default matter for lack of diligence, failure to communicate with the client, failure to expedite litigation, failure to

cooperate with disciplinary authorities, and misrepresentation in his handling of a bankruptcy matter. In re Kozlowski, 183 N.J. 224 (2005). Respondent remains suspended.

The Court's September 2004 and May 2005 orders imposing a three-month and a one-year suspension, respectively, required respondent to comply with R. 1:20-2. That rule directs suspended attorneys to take certain steps and, in addition, to

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 file the affidavit.

In December 2004, the OAE sent a letter to respondent, reminding him of the requirement that he file the R. 1:20-20 affidavit, and requesting his reply by "January 8, 2004." The letter was sent via certified and regular mail to respondent's home address listed with the OAE, 2 Memory Lane, Randolph, New Jersey 07865, and to his office address, 20 Park Place, Morristown, New Jersey 07960. The certified mail receipt for respondent's home address in Randolph was returned to the OAE, indicating delivery on December 27, 2004. The signature of the agent accepting delivery is illegible. The regular mail was returned to the OAE, providing a 508 Reading Circle,

Bridgewater, New Jersey, address, the home address listed on the attorney registration records. The certified mail receipt for respondent's office address was returned to the OAE, indicating delivery on December 27, 2004. The card was signed by "L. Brown," who is not identified in the record. Respondent neither replied to the letters nor filed the required affidavit.

In April 2005, a representative of the OAE visited respondent's office in Morristown, New Jersey. Although respondent's name remained on a sign at the premises, he no longer maintained an office there. The sign has subsequently been removed from the site. On the same day, OAE personnel went to respondent's Randolph address.¹ No one was at home at the time of the OAE's visit. An envelope addressed to respondent, which contained copies of the Court's order of suspension, of R. 1:20-20, and of OAE contact information, was left at his door. The envelope was later returned to the OAE marked "Return to Sender."

In September 2005, the OAE wrote to respondent, again advising him of his obligation to file the affidavit pursuant

¹ The record does not state why OAE personnel went to the Randolph address, after that office had been provided with the Bridgewater address.

to R. 1:20-20, and requesting his reply by October 6, 2005. The letter was sent, via certified and regular mail, to the Bridgewater, New Jersey, address. The certified mail receipt was returned to the OAE, indicating delivery on October 3, 2005. The signature of the agent accepting delivery is illegible. The regular mail was not returned.

In September 2005, OAE personnel visited respondent's home in Bridgewater, New Jersey. Respondent was not at home at the time of the OAE's visit. A copy of the Court's order of suspension, of R. 1:20-20, and of OAE contact information was left with an adult female at the residence.

As of the date of the complaint in this matter, May 30, 2006, respondent had not contacted the OAE or filed the R. 1:20-20 affidavit.

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).

The OAE urged us to impose a one-year suspension.

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. It is unquestionable that respondent failed to file the R. 1:20-20 affidavit. Indeed, in respondent's motion to vacate the default, he asserted that he did not file an answer

to the complaint because the allegation that he did not timely file the R. 1:20-20 certification was true. Respondent, not a newcomer to the disciplinary system, knows that the filing of an answer is mandatory. His explanation for his dereliction in this regard was without merit. We, therefore, denied the motion to vacate the default and determined to proceed with our review of this matter.

Presumptively, a reprimand has been sufficient discipline for an attorney's willful failure to file a R. 1:20-20 affidavit of compliance. Where there have been aggravating factors, the measure of discipline has been adjusted accordingly.

In March 2004, the Court decided In re Girdler, 179 N.J. 227 (2004), a default matter, and imposed a three-month suspension for the attorney's violation of R. 1:20-20, where his ethics history included a private reprimand, a public reprimand, and a three-month suspension in another default matter. In June 2004, the Court considered In re Mandle, 180 N.J. 158 (2004), a default matter that led to a one-year suspension, where the attorney had received 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 had failed to cooperate with disciplinary authorities.

In October 2004, the Court decided three R. 1:20-20 cases. In In re King, 181 N.J. 349 (2004), a default, the Court imposed a one-year suspension upon an attorney with an extensive disciplinary history, including a reprimand, a temporary suspension for failure to return an unearned retainer, a three-month suspension, and a one-year suspension. The attorney had remained suspended since 1998, the date of her temporary suspension. The case represented the attorney's second default. In In re Raines, 181 N.J. 537 (2004), a non-default matter, the Court imposed a three-month suspension where the 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 the third October 2004 case, In re Moore, 181 N.J. 335 (2004), also a default, the Court imposed a reprimand where the attorney's disciplinary history included a one-year suspension.

In January 2005, in In re McClure, 182 N.J. 312 (2005), the Court imposed a one-year suspension, in a default matter, for failure to comply with R. 1:20-20 and failure to cooperate with disciplinary authorities. The attorney's disciplinary

history included a 1999 admonition and two separate six-month suspensions.

In June of this year, we determined to impose a six-month suspension in In the Matter of Barry Horowitz, DRB 06-049 (June 21, 2006). There, we increased the measure of discipline because of the attorney's disciplinary history, which included a three-month suspension and a one-year suspension, and because it was the attorney's third default. In addition, we had recommended the attorney's disbarment for his conduct in a reciprocal matter from New York. On September 29, 2006, the Court entered a disbarment order covering both matters. In re Horowitz, 188 N.J. 283 (2006).

This is respondent's sixth default. His disciplinary history consists of a private reprimand, an admonition, three reprimands, a three-month suspension, and a one-year suspension. He continues to thumb his nose at the disciplinary system, showing nothing but contempt through his refusal to comply with the Court Rules.

As noted above, a one-year suspension was imposed in In re King, supra, 181 N.J. 349 (2004), a default matter, where the attorney's disciplinary history consisted of a reprimand, a temporary suspension for failing to return an unearned

retainer, a three-month suspension, and a one-year suspension. Of those matters, two were defaults.

Measured against King, a one-year suspension, respondent's more serious disciplinary history warrants at least the same measure of discipline. For the most part, respondent's disciplinary record has been caused by minor infractions. However, his repeated defaults demonstrate his lack of regard for his professional responsibilities and for the Court.

Respondent claimed, in his motion to vacate the default, that he had notified his clients that he would not be able to continue to represent them. With his motion, respondent enclosed a copy of the R. 1:20-20 certification, which, he stated, he had filed that day with the OAE, as well as copies of letters he had previously sent to his clients.² Respondent claimed that he had not timely filed the certification because he had been "overwhelmed with earning an income to support [his] family of six."

R. 1:20-20 requires suspended attorneys to fulfill a number of obligations, such as ceasing use of their attorney bank

² We asked the OAE to confirm that respondent's clients received these letters. An OAE investigative aide confirmed that, in each case but one, respondent filed a substitution of attorney. In the remaining case, the matter was dismissed. Of the three clients who were contacted by the OAE, each had been advised that respondent could no longer represent them.

accounts, and removing their name from telephone directories or any other publication or list where they appear as an attorney in good standing. One of the more important requirements under the rule is that they give prompt notice to clients, adversaries, and courts of their suspension and take appropriate steps to protect their clients. Respondent complied, in part, with the requirements of the rule. The rule, however, also requires that, within thirty days of the date of the order of suspension, the attorney file with the OAE a certification attesting compliance with the provisions of R. 1:20-20, which respondent did not do. He, therefore, violated RPC 8.1(b) and RPC 8.4(d).

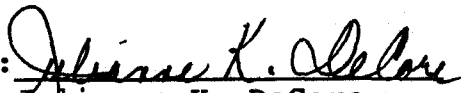
Respondent practiced law for fourteen years without incident before the first of his disciplinary sanctions was imposed. He has since then, however, amassed an impressive disciplinary record. He has received a private reprimand, an admonition, three reprimands, a three-month suspension and a one-year suspension. While his individual derelictions have not been particularly serious, they have been repetitive. The most troubling aspect has been his disregard for the disciplinary system and refusal to cooperate with ethics authorities. Although respondent complied with the requirements of R. 1:20-20 in some measure, his repeated indifference toward the ethics

system and the Court is beyond forbearance. We, therefore, determine to impose a prospective two-year suspension on respondent.

Member Frost recused herself. Members Boylan, Stanton, and Wissinger 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 O'Shaughnessy, Chair

By: 
Julianne K. DeCore
Chief Counsel

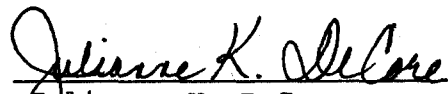
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Theodore F. Kozlowski
Docket No. DRB 06-211

Decided: November 16, 2006

Disposition: Two-year suspension

| Members | Two-year Suspension | Reprimand | Admonition | Disqualified | Did not participate |
|---------------|------------------------|-----------|------------|--------------|------------------------|
| O'Shaughnessy | X | | | | |
| Pashman | X | | | | |
| Baugh | X | | | | |
| Boylan | | | | | X |
| Frost | | | | X | |
| Lolla | X | | | | |
| Neuwirth | X | | | | |
| Stanton | | | | | X |
| Wissinger | | | | | X |
| Total: | 5 | | | 1 | 3 |


Julianne K. DeCore
Chief Counsel