

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 04-203  
District Docket No. XIV-03-029E

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IN THE MATTER OF                   :  
  :  
RICHARD W. RAINES                :  
  :  
AN ATTORNEY AT LAW              :  
  :

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Decision

Argued:     July 15, 2004

Decided:    August 18, 2004

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent, arising from respondent's failure to file the affidavit of compliance required by R. 1:20-20. Although respondent stipulated the underlying conduct, he denied the OAE's

contention that his conduct violated 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 1977. He has been disciplined on several occasions. He was privately reprimanded in 1993 for failure to communicate with his client and failure to return the balance of her retainer, as promised. In the Matter of Richard W. Raines, Docket No. DRB 93-158 (July 2, 1993). He received a six-month suspension in 1995 for misconduct in five matters, including gross neglect, lack of diligence, failure to maintain a bona fide office, practicing law while on the ineligible list, and criminal conduct. In re Raines, 139 N.J. 446 (1995). Thereafter, he was temporarily suspended by order dated September 9, 2002, for failure to comply with a previous Court order imposing deadlines for him to submit to the OAE outstanding proctor reports, and periodic drug- and alcohol-screening reports.<sup>1</sup> In re Raines, 174 N.J. 333 (2002). Most recently, he received a three-month suspension in a default matter for lack of diligence, failure to communicate with a client, failure to cooperate with disciplinary

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<sup>1</sup> One day before the date scheduled for our review of this matter, respondent submitted evidence that he has remained drug- and alcohol-free since January 2004, presumably to show rehabilitation. Nothing in the record, however, excuses or mitigates respondent's failure to abide by the Court order requiring him to comply with R. 1:20-20.

authorities, and practicing law while ineligible. In re Raines, 176 N.J. 424 (2003).

As noted above, in 1995, respondent received a six-month suspension for, among other things, possession of cocaine. In November 1997, he was reinstated to the practice of law. The reinstatement order directed him to practice under the supervision of a proctor, and to submit to drug and alcohol screening. In re Raines, 151 N.J. 508 (1997). In November 1998, respondent's proctor advised that a random urine sample drawn in October 1998 had resulted in a positive test for the presence of cocaine.

In February 1999, the Court issued an order allowing respondent to resume the practice of law after the appointment of a new proctor and directing him to continue to comply with the terms of the November 1997 order. The order further made clear that respondent's failure to comply with its terms would result in his immediate temporary suspension. Thereafter, respondent did not file the required drug-screening reports. As a result, in November 2000, the OAE filed a petition for his temporary suspension.

By order dated December 5, 2000, the Court denied the petition, but directed "that on the report by the Office of Attorney Ethics that respondent has failed to submit to a

scheduled drug/alcohol screening or has tested positive for drug or alcohol use, respondent may be temporarily suspended from practice without further notice." Thereafter, respondent complied in part with the order. In June 2002, however, the OAE notified the Court that respondent was delinquent in his periodic drug-screening reports, as well as in his proctorship reports. In September 2002, the Court issued an order temporarily suspending respondent. In re Raines, supra, 174 N.J. 333 (2002). The order directed him to comply with the requirements of R. 1:20-20, dealing with suspended attorneys. Respondent failed to file the mandatory affidavit of compliance, which is due within thirty days after the attorney's prohibition from practice, pursuant to R. 1:20-20(b)(15).

By letter dated February 4, 2003, the OAE notified respondent of his failure to comply with R. 1:20-20. The letter was sent by certified and regular mail. The certified mail was returned marked "Unclaimed." The regular mail was not returned.

On June 24, 2003, respondent telephoned the OAE and spoke with Assistant Ethics Counsel Richard J. Engelhardt. During that conversation, Engelhardt reminded respondent of his failure to file the R. 1:20-20 affidavit. Engelhardt advised respondent that it should be filed immediately because the OAE was

preparing a complaint charging him with failure to comply with the rule. Respondent stated that he would file the affidavit.

The affidavit was not forthcoming and the OAE filed a complaint on July 9, 2003, charging respondent with a violation of RPC 8.1(b) and RPC 8.4(d). Respondent filed an answer on August 14, 2003, in which he admitted the factual allegations, but denied that his conduct violated the cited rules.

Upon a de novo review of the record, we find that the stipulated facts sufficiently establish that respondents' conduct was unethical.

The complaint charged that respondent willfully violated the Court's order and failed to take the steps required of all suspended attorneys. Respondent made only a bare assertion that his conduct, as set forth in the stipulation, did not violate RPC 8.1(b) or RPC 8.4(d). He provided no foundation for that assertion, which we reject as baseless. Thus, the sole issue is the quantum of discipline to be imposed.

In similar cases, the OAE has argued that, presumptively, a reprimand is the appropriate sanction for attorneys who fail to file an affidavit in compliance with R. 1:20-20, subject to individual assessments of aggravating and mitigating factors.

It is the OAE's position that respondent's misconduct calls for the imposition of a three-month suspension. In support of

that position, the OAE relied on In re Girdler, 179 N.J. 227 (2004) (three-month suspension for attorney who failed to file an affidavit in compliance with R. 1:20-20, failed to file an answer to the formal ethics complaint, and had a disciplinary history consisting of a private reprimand, a public reprimand, and a three-month suspension).

Respondent, on the other hand, requested that, if it is found that he violated RPC 8.1(b) and RPC 8.4(d), the discipline imposed be an admonition or a reprimand. Respondent requested that, should a suspension be imposed, it be made retroactive to September 9, 2002, the date of his temporary suspension.

In cases in which attorneys have not cooperated with disciplinary authorities, ordinarily admonitions or reprimands have been imposed. See, e.g., In the Matter of Andrew T. Brasno, Docket No. DRB 97-091 (June 25, 1997) (admonition for failure to reply to the ethics grievance and failure to turn over a client's file); In the Matter of Mark D. Cubberley, Docket No. DRB 96-090 (April 19, 1996) (admonition for failure to reply to the ethics investigator's request for information); In re Williamson, 152 N.J. 489 (1998) (reprimand for failure to cooperate with disciplinary authorities); In re Vedatsky, 138 N.J. 173 (1994) (reprimand for failure to cooperate with the

district ethics committee); In re Macias, 121 N.J. 243 (1990) (reprimand for failure to cooperate with the OAE).

In addition, attorneys who have failed to obey court orders have been reprimanded. See, e.g., In re Holland, 164 N.J. 246 (2000) (reprimand where the attorney, who was required to hold in trust a fee in which she and another attorney had an interest, took the fee, in violation of a court order); In re Milstead, 162 N.J. 96 (1999) (reprimand where the attorney disbursed escrow funds to his client, in violation of a court order); In re Hartmann, 142 N.J. 587 (1995) (reprimand for intentionally and repeatedly ignoring court orders to pay opposing counsel a fee, resulting in a warrant for the attorney's arrest, and for discourteous and abusive conduct toward a judge with intent to intimidate her).

To date, the Court has issued an order in two cases where the disciplinary proceeding arose from the attorney's violation of RPC 8.1(b) and RPC 8.4(d), by failing to comply with R. 1:20-20. As noted earlier, in In re Girdler, supra, 179 N.J. 227 (2004), the Court imposed a three-month suspension on an attorney whose prior disciplinary history included a private reprimand, a public reprimand, and a three-month suspension. In In re Mandle, \_\_\_ N.J. \_\_\_ (2004), the Court imposed a one-year suspension where the attorney, in a six-year span, 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 those matters, he failed to cooperate with disciplinary authorities.

Here, respondent's ethics history includes a private reprimand, a three-month suspension, a six-month suspension, and a temporary suspension for failure to comply with a previous Court order. He failed to comply with the requirements imposed on him following his six-month suspension, forcing the Court to order his temporary suspension. Thereafter, he failed to comply with the requirements of R. 1:20-20, even after the OAE's warning that he had to do so or face a disciplinary proceeding. This is a respondent who truly either does not "get it" or does not want to "get it."

Suspended attorneys who file late affidavits indirectly receive a three-month suspension because the attorneys are precluded from seeking reinstatement for three months from the date that the affidavit is filed. In addition to this "indirect suspension," we determine that a three-month prospective suspension is appropriate here, given respondent's long history of failing to take to heart the conditions imposed on him by the Court.

Robert C. Holmes, Esq. did not participate.



We further determine to require respondent to reimburse the  
Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board  
Mary J. Maudsley, Chair

By: Julianne K. DeCore  
Julianne K. DeCore  
Chief Counsel

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

In the Matter of Richard W. Raines  
Docket No. DRB 04-203

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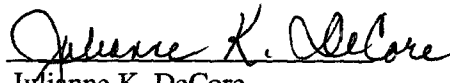
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Argued: July 15, 2004

Decided: August 18, 2004

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Admonition	Disqualified	Did not participate
Maudsley		X				
O'Shaughnessy		X				
Boylan		X				
Holmes						X
Lolla		X				
Pashman		X				
Schwartz		X				
Stanton		X				
Wissinger		X				
<b>Total:</b>		8				1

  
Julianne K. DeCore  
Chief Counsel