

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 04-169  
District Docket No. XIV-03-250E

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IN THE MATTER OF :  
:   
PATRICK J. MOORE :  
:   
AN ATTORNEY AT LAW :  
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Decision  
Default [R. 1:20-4(f)]

Decided: July 19, 2004

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 formal ethics complaint.

On March 22, 2004, the OAE sent a copy of the complaint to respondent by certified and regular mail, at his last known address listed in the records of the New Jersey Lawyers' Fund for Client Protection: Post Office Box 5499, Deptford, New Jersey 08096. The certified mail envelope was returned marked "unclaimed." The regular mail envelope was not returned.

On April 16, 2004, the OAE sent a second letter to respondent. The letter was sent by certified and regular mail to the above address. The letter advised respondent that he had five days to file an answer to the complaint or the allegations therein would be deemed admitted, and the record certified to us for the imposition of sanction. As of the date of the OAE's certification of the record, May 3, 2004, neither the certified nor the regular mail had been returned.

Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1989. He received a one-year suspension in 2003, for the improper release of escrow funds to his client, a party to the escrow agreement. Respondent made numerous false statements about the status of the escrow to the other party, to that party's attorney, and to the OAE. The statements were contained in filed pleadings, correspondence with counsel and a surety, among other documents. In addition, respondent failed to cooperate with disciplinary authorities. In re Moore, 175 N.J. 100 (2003). He remains suspended to date.

The Supreme Court order dated January 15, 2003 required respondent to comply with the provisions of R. 1:20-20, titled "Future Activities of Attorney Who Has Been Disciplined or Transferred to Disability Inactive Status." Respondent failed

to comply with this rule and failed to file the mandatory affidavit of compliance, which is due within thirty days after the date of the attorney's prohibition from practicing law, pursuant to R.1:20-20(b)(15).

By letter dated May 13, 2003, the OAE advised respondent of the requirement that he comply with R.1:20-20, including the filing of the affidavit, and requested his reply by May 30, 2003. The letter was sent by certified and regular mail to the post office box designated as his home address. The certified mail was returned marked "Unclaimed." The regular mail was not returned. Respondent neither replied to the letter, nor filed the required affidavit.

On June 18, 2003, the OAE contacted respondent's former office landlord, John Massanova. Massanova advised the OAE that respondent had vacated his last known office address in May 2002, and had provided no forwarding address.

On July 2, 2003, the OAE received two grievances from respondent's former clients alleging that he had failed to communicate with them, failed to notify them of his suspension, and had not turned over their files after his suspension. By letter dated July 11, 2003, the OAE asked respondent to reply to the allegations raised by his former clients. The letter was sent by certified and regular mail to the post office box noted

above. The letter also served to remind respondent of his responsibility to file the affidavit pursuant to R. 1:20-20. In addition, respondent was asked to supply information about the location of his client files and his trust and business account records, as well as the location of his office at the time of his suspension, and a current home address and telephone number. The certified mail envelope was returned to the OAE marked "Other." The regular mail was not returned.

On July 17, 2003, respondent telephoned the OAE and advised it that he had received its previous correspondence and was preparing a reply. No reply was forthcoming. Thereafter, on October 22, 2003, the OAE telephoned respondent at his former office number and left a message concerning his failure to reply to the OAE's requests.

By order dated February 23, 2004, an attorney/trustee was appointed, in accordance with R. 1:20-19, to perform the functions that respondent should have performed under the requirements of R. 1:20-20.

As of the date of the complaint, March 22, 2004, respondent had neither replied to the OAE nor filed the affidavit.

The complaint charged that respondent willfully violated the Supreme Court's order, committed contemptuous conduct under R. 1:20-20(b)(15), and failed to take the steps required of all

suspended or disbarred attorneys, including notifying clients and adversaries of his suspension and providing pending clients with their files. The complaint charged him with violating RPC 8.1(b) (failure to cooperate with disciplinary authorities), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Service of process was properly made. The regular mail sent to respondent on March 22, 2004 was not returned to the OAE. Pursuant to R.1:20-4(f)(1), the allegations of the complaint are deemed admitted. Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct.

The complaint charged that respondent failed to take the steps required of all suspended or disbarred attorneys, thereby violating RPC 8.1(b) and RPC 8.4(d). The complaint also charged that, pursuant to R.1:20-20(b)(15), respondent was guilty of contemptuous conduct.

The sole issue is the quantum of discipline to be imposed. In similar cases, the OAE has asserted 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.

The OAE filed a letter-memorandum with us recommending a three-month suspension, citing as aggravating factors the default nature of this proceeding, respondent's one-year suspension, and the need to appoint an attorney/trustee to protect respondent's clients.

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, until resolution of the dispute, 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).

Recently, the Court issued an order in a case in which the attorney violated RPC 8.1(b) and RPC 8.4(d) by failing to comply with R. 1:20-20. In In re Girdler, 179 N.J. 227 (2004), a three-month suspension was imposed on an attorney whose prior disciplinary history included a private reprimand, a public reprimand, and a three-month suspension.

Here, respondent's ethics history includes only the one-year suspension that gave rise to his obligations under R. 1:20-20. He does not have the extensive disciplinary record that was present in Girdler. Increasing the threshold discipline in similar cases -- a reprimand -- to a three-month suspension on the basis of respondent's prior suspension is too severe a penalty. As to the other factors cited by the OAE, the need for the appointment of a trustee to protect respondent's clients, without more, is not necessarily a sufficient basis for the

imposition of a suspension, even considering the default nature of this proceeding.

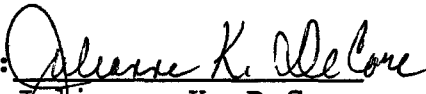
Attorneys who file late affidavits indirectly receive a three-month suspension because the attorneys are precluded from seeking reinstatement for three months from the date that the affidavit is filed. We, therefore, determine that a reprimand is sufficient discipline in this case.

Public member Barbara Schwartz dissented and would impose a three-month suspension. She would require respondent to submit, prior to reinstatement, proof of his fitness to practice law, as attested by a mental health professional approved by the OAE.

Vice-Chair William J. O'Shaughnessy, 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  
Chief Counsel



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

In the Matter of Patrick J. Moore  
Docket No. DRB 04-169

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Decided: July 19, 2004

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Three-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>			X				
<i>O'Shaughnessy</i>							X
<i>Boylan</i>			X				
<i>Holmes</i>			X				
<i>Lolla</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>		X					
<i>Stanton</i>			X				
<i>Wissinger</i>			X				
<b>Total:</b>		1	7				1

  
 Julianne K. DeCore  
 Chief Counsel