

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-278

THE MATTER OF
RICHARD B. GIRDLER
AN ATTORNEY AT LAW

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

Decided: November 20, 2003

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

This matter was before us based on a certification of default filed by the Office of
Attorney Ethics (“OAE”), pursuant to R.1:20-4(f).

In 1991, respondent received a private reprimand for failure to communicate with
clients and gross neglect in two matters. In the Matter of Richard B. Girdler, DRB 91-079
(April 26, 1991).

In 1994, respondent was publicly reprimanded for misconduct in one matter, namely,
lack of diligence, failure to communicate with the client and failure to obtain a signed
contingent fee agreement.

Effective May 1, 2002, respondent was suspended for three months in a default matter encompassing lack of diligence, gross neglect, failure to communicate with the client, failure to expedite litigation, misrepresentation to the court as to service of the complaint on some of the defendants, and misrepresentation to the client about the status of the matter.

On May 19, 2003, the OAE sent a copy of the complaint to respondent's last known home address, which was also his law office address prior to his suspension. The complaint was forwarded by both regular and certified mail. Neither the certified mail nor the regular mail was returned. Respondent did not file an answer to the complaint within the prescribed time.

On June 11, 2003, the OAE sent a second letter to respondent, advising him that, unless he filed an answer within five days, the allegations of the complaint would be deemed admitted, and the record would be certified directly to us for the imposition of sanction, pursuant to R.1:20-4(f). This letter was sent to the same address, by both regular and certified mail. The certified mail receipt indicated delivery on June 14, 2003. The regular mail was not returned.

On June 10, 2003, the designated attorney-trustee for respondent's law practice requested a short extension for the filing of the answer. On June 16, 2003, the OAE granted the extension until June 25, 2003. On June 26, 2003, respondent "faxed" a letter to the OAE, confirming that the time to file the answer had been extended, and stating that he would be

hand-delivering the answer on Monday, June 30, 2003. Notwithstanding this assurance, respondent never filed an answer.

The facts of this matter are as follows:

By Supreme Court order dated April 3, 2002, respondent was suspended from the practice of law for a period of three months, effective May 1, 2002. The order directed respondent to comply with R.1:20-20, requiring, among other things, that he notify all clients, courts and adversaries that he had been suspended, and take appropriate action to protect his clients' interests. Furthermore, pursuant to the rule, respondent had to file with the OAE, within thirty days from his suspension, an affidavit of compliance with R.1:20-20.

On November 20, 2002, an OAE investigator wrote to respondent by regular and certified mail, requesting that he file the affidavit of compliance. The record is silent about the disposition of the certified mail. The regular mail was not returned.

On January 17, 2003, the OAE investigator once again wrote to respondent by regular and certified mail, requesting that he file the required affidavit. Although the certified mail was returned marked "unclaimed," the regular mail was not returned.

On February 20, 2003, the OAE investigator and the OAE Assistant Chief Investigator interviewed respondent at his home, at which time he agreed to prepare the required affidavit. He did not, however. As a result, on March 27, 2003, Assignment Judge B. Theodore Bozonelis appointed Abraham Akselrad as attorney-trustee, in accordance with R.1:20-19, to perform the functions that respondent should have performed to comply with R.1:20-20.

The complaint charged respondent with contempt, for his violation of the Supreme Court order of April 3, 2002, which required him to comply with R.1:20-20. The complaint alleged a violation of RPC 8.1(b) (failure to cooperate with the disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Service of process was properly made in this matter. Therefore, it may proceed as a default. Pursuant to R.1:20-4(f)(1), the allegations of the complaint are deemed admitted.

By Supreme Court order dated April 3, 2002, respondent was suspended for three months, effective May 1, 2002. The order required him to comply with R.1:20-20, governing future activities of suspended or disbarred attorneys. Pursuant to R.1:20-20(b)(15), within thirty days after the date of the attorney's prohibition from practice, the attorney shall file with the OAE a detailed affidavit specifying how the attorney has complied with each of the provisions of the rule. The rule requires, among other things, that the attorney promptly give notice of the suspension to all clients, adversaries, and either the Assignment Judge, or the Clerk of the appropriate appellate court or administrative agency in which a matter is pending. Failure to file the affidavit within the prescribed time shall constitute contempt of court and preclude consideration of an application for reinstatement for a period of three months from the filing date of the affidavit. R.1:20-20(b)(15) and R.1:20-21(i)(A).

Respondent has failed to comply with R.1:20-20 and to file the required affidavit. He is, therefore, guilty of violations of RPC 8.1(b) (failure to cooperate with the disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Conduct involving contempt of court generally leads to an admonition or a reprimand. See, e.g., In the Matter of Dennis McAlevy, DRB 02-256 (October 25, 2002) (admonition for attorney found guilty of contempt in the face of the court; the attorney “sarcastically interfered with the judge’s ability to conclude the hearing in an orderly fashion”); In the Matter of Charles Mysak, Docket Number DRB 95-125 (May 23, 1995) (admonition for attorney held in contempt for failing to abide by the court’s rulings, raising his voice in an unseemly manner, and making a disparaging facial gesture at the court, following its rulings); In re Kersey, 170 N.J. 409 (2002) (reprimand imposed on attorney who, on three occasions, failed to comply with court orders in his divorce matter); In re Solow, 167 N.J. 55 (2001) (reprimand for attorney who exhibited intimidating and contemptuous conduct toward an administrative law judge; the attorney filed approximately 100 motions for the judge’s recusal, on the basis that the judge was visually impaired; the motions inappropriately referred to the judge as “the blind judge;” prior admonition for possession of 50 grams of marijuana for personal use); and In re Skripek, 156 N.J. 399 (1998) (reprimand for attorney found guilty of civil contempt for failure to obey a court order in his own matrimonial matter).

Discipline higher than a reprimand is reserved for more serious conduct. See, e.g., In re Hall, 169 N.J. 347 (2001) (three-month suspension in a default matter; the attorney failed to comply with R.1:20-20; she was found guilty of contempt for accusing her adversaries of being liars, maligning the court, refusing to abide by its decisions, and suggesting a

conspiracy between the court and defense counsel; the attorney also failed to cooperate with the OAE during the investigation of the charges); and In re Frankfurt, 159 N.J. 521 (1999) (three-month suspension imposed on attorney who failed to appear at a hearing; the attorney also pleaded guilty to stalking a Superior Court judge).

According to the OAE, presumptively, a reprimand is the appropriate sanction for attorneys who fail to file an affidavit in compliance with R.1:20-20. The OAE, however, urged us to impose a six-month suspension in this case because of its default posture and of respondent's disciplinary record.

We agree with the OAE that a reprimand is the appropriate discipline "threshold" for failure to file the affidavit required by R.1:20-20. We also agree that this "threshold" must be adjusted to reflect the presence of mitigating or aggravating circumstances.

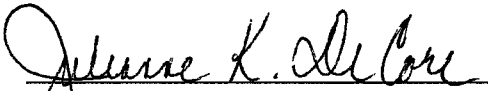
Here, some aggravating factors are present. On two different occasions (one included a personal visit), the OAE prodded respondent to file the required affidavit. Despite his assurance to the OAE, respondent never submitted the affidavit. Furthermore, although respondent obtained an extension to file the answer in this matter and, thereafter, assured the OAE that the answer would be hand-delivered to its office on June 30, 2003, he never filed the answer. As a result, this matter had to proceed on a default basis. Also, we are mindful that respondent has a disciplinary history. Taking into account, however, that an attorney who files a late affidavit essentially receives a "three-month suspension" (the attorney is precluded from seeking reinstatement for three months from the date that the affidavit is

filed), a majority determined that a three-month suspension is the appropriate quantum of discipline in this matter. The suspension is to run from the time that respondent either becomes eligible for reinstatement or applies for reinstatement, whichever occurs later.

Two members would have imposed a six-month suspension.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Acting Chief Counsel


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

In the Matter of Richard B. Girdler
Docket No. DRB 03-278

Decided: November 20, 2003

Disposition: Three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-month Suspension</i>	<i>Reprimand</i>	<i>Six-month Suspension</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					
Total:		7		2			


Julianne K. DeCore
Chief Counsel