

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 04-083

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IN THE MATTER OF  
RICHARD A. GIRDLER  
AN ATTORNEY AT LAW

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

Decided: May 7, 2004

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

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

Respondent was admitted to the New Jersey bar in 1972. His  
last known office address is also his home address, 209 Comley  
Road, Lincoln Park, New Jersey.

Respondent's ethics history is considerable. In 1991, he  
received a private reprimand for failure to communicate with

clients, gross neglect, and lack of diligence in two matters. In the Matter of Richard B. Girdler, Docket No. DRB 91-079 (April 26, 1991). He received a public reprimand in 1994, for lack of diligence, failure to communicate with a client, and failure to obtain a signed contingent fee agreement. In re Girdler, 135 N.J. 465 (1994).

Effective May 1, 2002, respondent was suspended for three months, in a default matter, for lack of diligence, gross neglect, failure to communicate with a client, failure to expedite litigation, misrepresentation to the court as to service of the complaint on some of the defendants, and misrepresentation to a client about the status of the matter. In re Girdler, 171 N.J. 146 (2002). Finally, in November 2003, in another default matter, we determined that an additional three-month suspension was appropriate discipline for respondent's failure to cooperate with disciplinary authorities and conduct prejudicial to the administration of justice, for failing to comply with the requirements of R.1:20-20 relating to the activities of suspended attorneys. The matter is pending with the Court. In the Matter of Richard A. Girdler, Docket No. DRB 03-278 (November 20, 2003).

On January 20, 2004, the DEC sent a copy of the complaint to respondent at his last known office address listed in the New

Jersey Lawyers' Diary and Manual, 209 Comley Road, Lincoln Park, New Jersey, 07035, by regular and certified mail, return receipt requested. The certified mail receipt was returned indicating delivery on January 26, 2004. The signature of the agent accepting delivery was "J. Demeo." The certification of the record is silent about the regular mail. Respondent did not file an answer.

On February 16, 2004, the DEC sent a second letter to respondent to the same address by regular and certified mail, return receipt requested. The letter stated that, if respondent failed to file an answer within five days, the allegations of the complaint would be deemed admitted and the record would be certified to us for the imposition of discipline. The certified mail receipt was returned indicating receipt by "J. Demeo" on February 19, 2004. The certification is silent about the regular mail. Respondent did not file an answer to the complaint.

The two-count complaint charged respondent with violations of RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), RPC 1.16 [presumably (a)(2)] (failure to withdraw from the representation of a client if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client), RPC 8.4(a) (violating the Rules of Professional Conduct), RPC 8.4(d) (conduct prejudicial

to the administration of justice), and RPC 8.1(b) [cited in the complaint as R.1:20-3(g)] (failure to reply to a lawful demand for information from a disciplinary authority).

According to the complaint, the grievant, Julius Gaida, retained respondent in 1998 in connection with the purchase of property. At the April 6, 1998 closing, the seller's attorney escrowed \$1,500 for Gaida's benefit, to cover the costs of certain repairs. According to Gaida, he never received copies of the closing documents, and the escrow funds were never released to him once the repairs were made.

On February 4, 1999, Gaida filed a complaint against respondent in Small Claims Court, Essex County, to compel the turnover of the closing papers, and for \$2,000, representing the escrowed funds and court costs. In his complaint, Gaida alleged that he needed the closing documents to correct a misunderstanding with the Internal Revenue Service about his 1998 income tax returns. According to Gaida's grievance, he had earlier tried to contact respondent to obtain the information from him, to no avail.

On April 4, 2003, a judgment was entered against respondent for \$2,248.40, representing the amount held in escrow together with Gaida's additional expenses and court costs. An exhibit to the investigator's report shows that, on April 22, 1999, Gaida

and respondent entered into a stipulation of settlement, wherein Gaida agreed to voluntarily dismiss his claim against respondent, without prejudice, in return for respondent's continuing to represent him to pursue the return of monies due to him, including the monies held in escrow by the seller's attorney. Apparently, respondent failed to comply with the terms of the stipulation. Afterwards, Gaida levied on respondent's checking account, but was able to recover only \$1,000. It appears that, as of the date of the DEC complaint (January 14, 2004), Gaida was still seeking the balance of the monies due to him, and had still not received the closing documents.

According to the investigative report, on March 27, 2003, the DEC secretary filed a motion in the Law Division, Morris County, to have Abraham Akselrad appointed as the trustee for respondent's law practice. The motion was granted.

On October 9, 2003, Akselrad filed an application with the court for the release of \$1,248.40, the sum Gaida claimed would satisfy all amounts respondent owed him. In an attached certification, Akselrad stated that respondent claimed that he suffered from "a diagnosed depression for which he could not afford treatment."

The complaint charged that respondent's failure to provide Gaida with copies of the closing documents and his failure to

secure the release of the escrow funds violated RPC 1.3; that his failure to keep Gaida apprised about the status of the escrow funds, or the matter in general, violated RPC 1.4(a); that his failure to withdraw from the representation once he was diagnosed with depression violated RPC 1.16 [presumably (a)(2)]; and that his conduct considered in the "aggregate" violated RPC 8.4(a) and (d).

The complaint also charged that respondent failed to reply to the DEC's April 14, and August 27, 2003 letters requesting a reply to the grievance, in violation of RPC 8.1(b) [cited in the complaint as R.1:20-3(g)(3)].

Service of process was properly made in this matter. Following a review of the record, we find that the facts recited in the complaint support a finding of some of the charged violations. Because of respondent's failure to file an answer to the complaint, the allegations are deemed admitted. R.1:20-4(f).

Respondent's failure to secure the release of the escrow funds, particularly after entering into a stipulation of settlement to do so, and his failure to provide Gaida with the closing documents demonstrate respondent's lack of diligence in his handling of the matter. Respondent's failure to communicate the status of the matter to Gaida violated RPC 1.4(a). His failure to cooperate with the DEC investigation violated RPC

8.1(b). This misconduct, in the aggregate, constituted a violation of the Rules of Professional Conduct, sustaining the allegation that respondent violated RPC 8.4(a).

Respondent was charged with a violation of RPC 1.16 for failing to withdraw from the representation once he was diagnosed with depression. The basis for this charge is a certification attached to Akselrad's application to the court for the release of funds to Gaida. Neither Akselrad's application nor his certification is a part of this record. Moreover, the complaint failed to establish a connection between respondent's depression and his inability to competently conclude the matter in Gaida's behalf. We, therefore, dismiss this charge.

We also dismiss the charge of a violation of RPC 8.4(d) (conduct prejudicial to the administration of justice) for lack of clear and convincing evidence.

Typically, the discipline imposed in default matters involving similar violations has been either a reprimand or a short-term suspension. See In re Gavin, 167 N.J. 606 (2001) (reprimand where attorney grossly neglected his client's post-divorce proceeding to enforce an alimony order previously entered, failed to comply with requests for information, and failed to cooperate with the ethics investigation; attorney had

a prior reprimand at the time); In re Goodman, 165 N.J. 567 (2000) (reprimand where attorney grossly neglected a matter for seven years by failing to file a complaint, thus causing the claim to become time barred, failed to communicate with the client, and failed to cooperate with disciplinary authorities; attorney had a prior private reprimand); In re Fleisher, 165 N.J. 501 (2000) (reprimand where, in a product liability case, the attorney failed to keep his client informed about the status of the matter for more than a two-year period, failed to act with reasonable diligence, and failed to turn over the client's file to a new attorney despite repeated requests to do so); In re Clemmons, <sup>169</sup> 165 N.J. 477 (2001) (three-month suspension where attorney grossly neglected a matter, failed to act with reasonable diligence, failed to communicate with the client, and failed to cooperate with disciplinary authorities; attorney had a prior six-month suspension); In re Davis, 163 N.J. 563 (2000) (three-month suspension where attorney neglected a client matter by failing to oppose a motion for summary judgment against his client, failed to keep the client reasonably informed about the status of the matter, and failed to cooperate with disciplinary authorities; attorney had a prior admonition and a prior three-month suspension).




We note that respondent's misconduct in this matter occurred about the same time period as his misconduct in the matter that led to his first three-month suspension. Therefore, it cannot be said that he did not learn from prior mistakes. Respondent, however, has again failed to cooperate with disciplinary authorities (this is his third default), which in and of itself requires the imposition of additional discipline.

In light of respondent's failure to cooperate with ethics authorities and to comply with the requirements of R.1:20-20 in DRB 03-278, for which we imposed an additional three-month suspension, it appears that he has abandoned his practice. We, therefore, unanimously determine that an additional three-month suspension adequately addresses respondent's ethics infractions. Three members did not participate.

We also require respondent, prior to reinstatement, to submit proof of fitness to practice law, as attested by a mental health professional approved by the Office of Attorney Ethics.

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