

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 15-277  
District Docket No. XIV-2013-0457E

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IN THE MATTER OF :  
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ANTHONY J. GIAMPAPA :  
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AN ATTORNEY AT LAW :  
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Decision

Decided: May 19, 2016

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

This matter was before us on a certification of default, filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-4(f). The complaint charged respondent with violations of RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority) and RPC 8.4(d) (conduct prejudicial to the administration of justice). For the reasons detailed below, we determine to impose a one-year suspension.

Respondent was admitted to the New Jersey bar in 1973. He has a significant ethics history.

Respondent was twice privately reprimanded in 1988. In a real estate matter, he improperly disbursed to his client trust

funds, which he believed his client was entitled to receive, without obtaining authorization from the seller of the property. In the Matter of Anthony J. Giampapa, DRB 84-382 (June 27, 1988). In another matter, respondent engaged in a social and/or business relationship with his client's spouse and communicated directly with her on the subject of the representation of his client, knowing that she was represented by counsel and without obtaining that counsel's consent. He also concealed from his client the nature of his relationship with the client's spouse. In the Matter of Anthony J. Giampapa, DRB 85-210 (June 30, 1988).

In November 2007, we admonished respondent for his failure to return his client's telephone calls, failure to return the balance of funds from his client's refinancing of a real estate loan, and failure to turn over his client's file, despite repeated requests from his client and the client's new attorney. In the Matter of Anthony J. Giampapa, DRB 07-178 (November 15, 2007).

Respondent received a censure in 2008 for his representation of clients, with whom there existed a language barrier, in a breach of contract action. He failed to keep them apprised of the status of their matter and did little to advance their interests. Respondent filed a complaint in their matter, only after they filed a grievance against him, two and one-half

years after he was retained. In all, respondent was guilty of gross neglect, lack of diligence, and failure to communicate with a client. In re Giampapa, 195 N.J. 10 (2008).

In 2009, respondent received another censure. In connection with the sale of a liquor license, he failed to promptly disburse trust account funds to either his client or to a third person to pay outstanding bills or liens against the license. He also failed to fully cooperate with the ethics investigation. We found, as an aggravating factor, that respondent misrepresented to a court that he was no longer holding funds, even though the funds were still in his trust account. In re Giampapa, 200 N.J. 478 (2009).

Effective April 19, 2013, respondent was suspended for three months, for failing to safeguard funds (his failure to properly monitor his trust account prevented him from detecting a theft from it for approximately six weeks); failing to disburse funds to a third person in an estate matter; failing to comply with the recordkeeping provisions of R. 1:21-6 (some recordkeeping deficiencies were the same as those detected during a random audit thirteen years earlier); failing to adequately communicate with a client or to explain the matter to the extent reasonably necessary to permit the client to make informed decisions about the representation; and practicing law

while ineligible. In re Giampapa, 213 N.J. 392 (2013). He remains suspended to date.

Service of process was proper in this matter. On July 22, 2014, the OAE sent a copy of the complaint by regular and certified mail to respondent's last known home address listed in the attorney registration records. The certified mail receipt, signed by John Spellman, showed that it was delivered on July 25, 2014. The regular mail was not returned. Respondent did not file an answer.

On August 19, 2014, the OAE sent a letter, by regular and certified mail to the same address. The letter notified respondent that, if he did not file an answer to the ethics complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). The certified mail receipt, signed by Spellman, indicated delivery on August 22, 2014. The regular mail was not returned.

On August 26 and September 15, 2014, respondent requested extensions to file an answer to the complaint and informed the OAE of his new address. Both requests were granted. The OAE's August 27, 2014 letter, sent to both of respondent's addresses,

extended to September 15, 2014, the deadline to file either an answer or the affidavit required by R. 1:20-20. Thereafter, by letter dated September 15, 2014, the OAE further extended that deadline to September 26, 2014, and notified respondent that no further extensions would be granted. As of the date of the certification of the record, August 5, 2015, respondent had filed neither an answer nor the R. 1:20-20 affidavit.

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As noted previously, respondent was suspended from the practice of law for three months, effective April 19, 2013, and has not applied for reinstatement. Pursuant to the order of suspension, respondent was required, within thirty days of the date of the order, to file with the OAE Director the "original of a detailed affidavit specifying by correlatively numbered paragraphs" how he complied with each of the provisions of R. 1:20-20 and with the Court's order.

Respondent failed to comply with the Court's order. Therefore, by letter dated November 25, 2013, sent by regular and certified mail to respondent's office and home addresses, the OAE directed respondent to file the required affidavit by December 9, 2013. The certified mail receipt, delivered on December 2, 2013, was signed by Josephine Spellman. The regular mail was not returned. The certified mail sent to respondent's

office address was returned marked "Not Deliverable as Addressed - Unable to Forward". The regular mail was returned marked "Vacant Unable to Forward." Respondent neither replied to the letter nor filed the required affidavit.

The complaint alleged that respondent willfully violated the Court's order and failed to take the steps required of all suspended or disbarred attorneys, including notifying clients and adversaries of the suspension and providing clients with their files. The complaint, thus, charged respondent with having violated RPC 8.1(b) and RPC 8.4(d).

The OAE submitted a memorandum in lieu of a formal brief, recommending the imposition of a three-month suspension. The OAE underscored that (1) it had notified respondent of his obligation to file the affidavit; (2) it had given respondent two extensions to file the required affidavit; and (3) he has an extensive ethics history: two private reprimands, both in 1988; a 2007 admonition; two censures (2008 and 2009); and a 2013 three-month suspension.

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

The complaint established that a suspended attorney is required to file with the OAE Director, within thirty days of the Court's order, an affidavit specifying how the attorney complied with R. 1:20-20 and the Court's order. That Rule provides that the failure to fully and timely comply with the obligations thereunder constitutes violations of RPC 8.1(b) and RPC 8.4(d). Thus, respondent's failure to file the required affidavit is a violation of these rules.

The threshold measure of discipline for an attorney's failure to file an R. 1:20-20(b)(15) affidavit is a reprimand. In re Girdler, 179 N.J. 227 (2004); In the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6). The actual discipline imposed may differ, based on the presence of aggravating or mitigating circumstances.

Girdler received a three-month suspension after we considered, in aggravation, (1) the fact that the attorney had been "prodded" by the OAE to file the affidavit, had obtained an extension to file it, had given his assurances to the OAE that he would hand-deliver it, but never did; and (2) his ethics history, consisting of a private reprimand, a reprimand and a three-month suspension. Ibid.

Since Girdler, the discipline for failing to file an R. 1:20-20 affidavit, in default matters, has ranged from a censure

to a lengthy or an indefinite suspension, based on the extent of the attorney's ethics history. See, e.g., In re Boyman, 217 N.J. 360 (2014) (censure for attorney who failed to file the affidavit after his temporary suspension for failure to pay assessed administrative costs in connection with a 2010 censure); In re Terrell, 214 N.J. 44 (2013) (censure for attorney who failed to file the affidavit following a temporary suspension; no history of final discipline); In re Saint-Cyr, 210 N.J. 254 (2012) (censure for attorney who was temporarily suspended for failure to comply with a fee arbitration determination; no history of discipline); In re Palfy, 221 N.J. 208 (2015) (three-month suspension for attorney who exhibited a pattern of failure to cooperate with disciplinary and fee arbitration officials; he was twice temporarily suspended for non-compliance with five separate fee arbitration matters and was temporarily suspended for failure to cooperate with an OAE investigation; we determined that the baseline for attorneys who failed to file R. 1:20-20 affidavits, defaulted, and had only temporary suspensions on their record was a censure; we enhanced the discipline because of the attorney's "pattern of obstinacy toward ethics and fee authorities"); In re Rak, 214 N.J. 5 (2013) (three-month suspension; aggravating factors included the attorney's failure to file the affidavit even after the OAE



physically left correspondence at his office about his duty to do so and it was his third default matter incurred in three years; he had a prior reprimand and a three-month suspension); In re Swidler, 210 N.J. 612 (2012) (three-month suspension for attorney who failed to file the affidavit after receiving two suspensions and after the OAE had requested that he do so; it was the attorney's fourth default; ethics history included a reprimand, a three-month suspension, and a six-month suspension); In re Rosanelli, 208 N.J. 359 (2011) (six-month suspension for attorney who failed to file the affidavit after receiving a temporary suspension and a three-month suspension; prior six-month suspension); In re Sharma, 203 N.J. 428 (2010) (six-month suspension; we considered the attorney's failure to comply with the OAE's specific request to file the affidavit and his ethics history: a reprimand, a censure for misconduct in two default matters, and a three-month suspension); In re Wargo, 196 N.J. 542 (2009) (one-year suspension for attorney whose ethics history included a temporary suspension for failure to cooperate with the OAE, a censure, and a one-year suspension for misconduct in two combined matters; all of the matters proceeded as defaults); In re Saint-Cyr, 222 N.J. 6 (2015) (two-year suspension; ethics history included a temporary suspension for failure to pay a sanction to the Disciplinary Oversight

Committee for failure to comply with a fee arbitration determination, a censure in a default, and a two-year suspension for conduct in three combined default matters); In re Brekus, 208 N.J. 341 (2011) (two-year suspension; ethics history included an admonition, a reprimand, a censure, and two one-year suspensions, the second suspension was by default); In re Brekus, 220 N.J. 1 (2014) (three-year suspension, same ethics history as above together with the two-year suspension for failure to file the R. 1:20-20 affidavit); and In re Swidler, 221 N.J. 62 (2015) (indefinite suspension; ethics history included a reprimand, a temporary suspension for failure to comply with a fee arbitration determination, two three-month suspensions (one for failure to file the R. 1:20-20 affidavit in 2012), and one six-month suspension; the indefinite suspension was imposed to avoid taxing disciplinary authorities with the repetitious filings of complaints for an attorney's continuing failure to file an R. 1:20-20 affidavit).

In determining the proper discipline in this matter, we have considered respondent's extensive ethics history and the impact that his failure to comply with R. 1:20-20 may have had on his unsuspecting clients. One of the requirements of R. 1:20-20(a)(10) is that a suspended attorney promptly notify all clients in pending matters of the attorney's suspension and to

advise the clients to "seek legal advice elsewhere and to obtain another attorney to complete their pending matters." In the absence of such notice by the suspended attorney, clients in litigation matters, who are unaware of their attorney's suspension, run the risk of losing a cause of action or of having a default judgment entered against them. Moreover, the potential for disruption in those matters is even more pervasive, extending not only to the unsuspecting client, but also to the other parties to the litigation, to the court, and to court personnel. Transactional clients may face other dire consequences, lulled into the belief that their attorney continues to represent their interests.

In all, respondent's failure to cooperate with the OAE, and to file the affidavit with the OAE Director, as ordered by the Court, demonstrate his contempt for the ethics process. The dire consequences that may result from respondent's failure to comply with the R. 1:20-20 requirements, the default nature of these proceedings, and respondent's clear propensity to violate the Rules of Professional Conduct (this is his seventh matter before us), compel us to impose a one-year suspension.

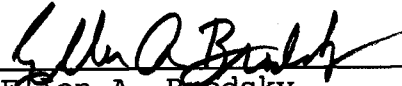
Members Gallipoli and Zmirich voted to recommend respondent's disbarment and to require him to appear before the

Court to explain why his privilege to practice law should not be terminated.

Member Boyer abstained.

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  
Bonnie C. Frost, Chair

By:   
Ellen A. Brodsky  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Anthony J. Giampapa  
Docket No. DRB 15-277

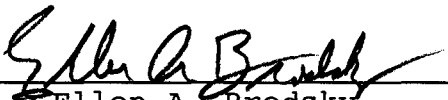
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Decided: May 19, 2016

Disposition: One-year suspension

MEMBERS	Disbar	One-year Suspension	Reprimand	Dismiss	Abstained	Did not participate
Frost		X				
Baugh		X				
Boyer					X	
Clark		X				
Gallipoli	X					
Hoberman		X				
Rivera		X				
Singer		X				
Zmirich	X					
Total:	2	6			1	

  
Ellen A. Brodsky  
Chief Counsel