

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 16-168  
District Docket No. XIV-2015-0089E

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IN THE MATTER OF  
HERBERT R. EZOR  
AN ATTORNEY AT LAW

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Decision

Decided: January 11, 2017

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 formal ethics complaint charged respondent with having violated RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice). The OAE submitted a memorandum recommending a three-month suspension.

For the reasons set forth below, we find that respondent violated the charged RPCs. Given the default nature of this proceeding, and his failure to comply with R. 1:20-20 following

two suspensions, we determined to impose a three-month suspension on respondent for his conduct.

Respondent was admitted to the New Jersey bar in 1971. At the relevant times, he maintained an office for the practice of law in Clifton.

In May 2001, respondent received a reprimand for negligently misappropriating funds belonging to one of "numerous owners of condominium units," whom he had successfully represented in property tax assessment appeals, and for failing to comply with the client's requests for information about his case. In re Ezor, 167 N.J. 594 (2001).

On February 12, 2014, respondent was temporarily suspended from the practice of law, for failure to cooperate with the OAE. In re Ezor, 216 N.J. 582 (2014). He was reinstated on May 7, 2014. In re Ezor, 217 N.J. 366 (2014).

On September 23, 2014, respondent was temporarily suspended from the practice of law, again, for failure to cooperate with an ethics investigation. In re Ezor, 219 N.J. 317 (2014).

On July 2, 2015, respondent received a three-month suspension, in a default matter, for violations of RPC 1.15(d) (commingling, that is, using his trust account as a personal account), RPC 5.5(a) (practicing law while ineligible), RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC

8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). In re Ezor, 222 N.J. 8 (2015). In that case, respondent had deposited personal funds into his trust account to conceal them from his judgment creditors, a fact that he had falsely denied to the OAE. In the Matter of Herbert R. Ezor, DRB 14-284 (March 23, 2015) (slip op. at 7, 11-12).

Both the 2014 temporary suspension and the 2015 three-month suspension remain in effect.

Service of process was proper in this matter. On November 24, 2015, the OAE sent a copy of the formal ethics complaint to respondent's last known mailing and home addresses, by regular and certified mail, return receipt requested. On December 2, 2015, Nancy J. Silver accepted delivery of the certified letter sent to respondent's mailing address. The letter sent by regular mail was not returned.

The receipt for the certified letter sent to respondent's home address was returned to the OAE marked "unclaimed." The letter sent by regular mail was returned to the OAE marked "unable to forward."

On March 3, 2016, the OAE sent a letter to respondent at both addresses, by regular and certified mail, return receipt

requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the allegations of the complaint would be deemed admitted and the record would be certified directly to us for the imposition of sanction.

The certified letters were returned as "UNCLAIMED." The letters sent by regular mail were not returned. According to the certification of the record, the United States Postal Service informed the OAE that respondent had moved from the home address and had not provided a forwarding address.

As of May 3, 2016, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

As stated above, respondent was temporarily suspended on September 23, 2014. On July 2, 2015, he was suspended for three months. The September 2014 Order of temporary suspension required respondent to comply with R. 1:20-20, which provides that respondent "shall within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of

this rule and the Supreme Court's order." Respondent failed to comply with this provision of the Order.

On July 15, 2015, the OAE sent a letter to respondent, by regular and certified mail, return receipt requested, to his home address, former office/billing address, and mailing address listed with the Lawyers' Fund for Client Protection, informing him of his responsibility to file the affidavit. The letter requested a reply by July 29, 2015.

The certified letter sent to respondent's home address was returned to the OAE marked "Unclaimed." The letter sent by regular mail was not returned to the OAE.

The certified letter sent to respondent's former office/billing address was accepted by Peter V. Moore on July 18, 2015. On July 27, 2015, respondent accepted delivery of the certified letter sent to his mailing address. The letters sent by regular mail to these addresses were not returned to the OAE.

Respondent neither replied to the letters nor filed the required affidavit. In the meantime, respondent failed to comply with the Court's July 2, 2015 Order, which also required him to comply with R. 1:20-20.

Based on the above facts, the OAE charged respondent with having violated RPC 8.1(b) and RPC 8.4(d).

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

As previously noted, R. 1:20-20(b)(15) requires a suspended attorney, within thirty days of the Order of suspension, to "file with the Director [of the OAE] the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order." In the absence of an extension by the Director of the OAE, failure to file an affidavit of compliance pursuant to R. 1:20-20(b)(15) within the time prescribed "constitute[s] a violation of RPC 8.1(b) . . . and RPC 8.4(d)." R. 1:20-20(c). Accordingly, respondent violated those RPCs by failing to comply with the Rule.

The threshold measure of discipline to be imposed for an attorney's failure to file a R. 1:20-20 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 be different, however, if the record demonstrates mitigating or aggravating circumstances.

Ibid. Examples of aggravating factors include the attorney's failure to respond to the OAE's specific request that the affidavit be filed, the attorney's failure to answer the complaint, and the extent of the attorney's disciplinary history. Ibid.

In Girdler, the attorney received a three-month suspension, in a default matter, for his failure to comply with R. 1:20-20(e)(15). Specifically, after prodding by the OAE, he failed to produce the affidavit of compliance, even though he had agreed to do so. The attorney's disciplinary history consisted of a public reprimand, a private reprimand, and a three-month suspension in a default matter.

In support of its recommendation for a three-month suspension, the OAE cited In re Girdler, supra, and In re Raines, 181 N.J. 537 (2004). As previously noted, in addition to the prior three-month suspension, the defaulting attorney in Girdler had received a public reprimand and a private reprimand. In addition to the temporary suspension at issue in Raines, the non-defaulting attorney's disciplinary history consisted of a private reprimand, a three-month suspension, a six-month suspension, and another temporary suspension.

Notwithstanding Girdler and Raines, two attorneys received only a censure for their failure to comply with R. 1:20-20

following a three-month suspension. See In re Powell, 219 N.J. 128 (2014) (censure imposed on attorney in a non-default case who, following a three-month suspension, filed the affidavit, but did not fully comply with the requirements of R. 1:20-20, violations of RPC 8.1(b) and RPC 8.4(d); disciplinary history included three reprimands and a censure), and In re Sirkin, 208 N.J. 432 (2011) (in a default, censure imposed on attorney who failed to file affidavit of compliance with R. 1:20-20 after he received a three-month suspension; an aggravating circumstance was the fact that the attorney ignored the OAE's reminder that the affidavit was due and its request that he file it immediately; no prior discipline).

Although the attorney in Powell had a disciplinary history consisting of three reprimands and a censure, in addition to a three-month suspension, he had not defaulted. Conversely, the attorney in Sirkin defaulted, but his disciplinary record consisted only of the three-month suspension. In this case, respondent's disciplinary history comprises a reprimand, a temporary suspension, and a three-month suspension, and he has defaulted. Moreover, respondent did not simply fail to file the R. 1:20-20 affidavit following a three-month suspension. He also failed to file an affidavit after the Court had imposed a temporary suspension. Thus, a censure is not in order.



In In re Rosanelli, 208 N.J. 359 (2011), a six-month suspension was imposed on a defaulting attorney who had failed to file an affidavit of compliance with R. 1:20-20 after both a November 2009 temporary suspension and a September 2010 three-month suspension imposed in a default matter. Rosanelli's disciplinary history consisted of a 2003 six-month suspension resulting from a conviction of fourth degree endangering the welfare of a child, which was based on his downloading twenty-three images of child pornography.

In determining that a six-month suspension was warranted, we compared Rosanelli's conduct to that of the attorneys in cases involving six-month and one-year suspensions. In our view, Rosanelli's conduct did not warrant a one-year suspension because those attorneys had ethics histories that were "more serious, either in number or degree, than those of the attorneys who had received suspensions of six months." In the Matter of Donald S. Rosanelli, DRB 11-154 (September 27, 2011) (slip op. at 10-11).

In the cases involving six-month suspensions, the attorneys had been previously disciplined two or three times, and at least one of those matters had proceeded as a default. In re Sharma, 203 N.J. 428 (2010) (censure for misconduct in

two default matters and a three-month suspension); In re LeBlanc, 202 N.J. 129 (2010) (censure, reprimand, and a three-month suspension; two of the matters were defaults); and In re Horowitz, 188 N.J. 283 (2006) (three-month suspension and a pending one-year suspension in two defaults). The attorneys who received one-year suspensions had disciplinary histories ranging from two to seven matters, at least one of which involved a long-term suspension, and at least one of which involved a default. In re Wood, 193 N.J. 487 (2008) (four matters, ranging from an admonition to a three-month suspension; two of the previous matters were defaults); In re McClure, 182 N.J. 312 (2005) (three matters, an admonition and two concurrent six-month suspensions; one suspension was a default); In re Warqo, 196 N.J. 542 (2009) (censure and one-year suspension for misconduct in two matters; all matters proceeded as defaults); and In re Kozlowski, 192 N.J. 438 (2007) (seven previous matters, ranging from a private reprimand to a one-year suspension; six of the matters proceeded as defaults).

Despite the presence of two R. 1:20-20 violations in this case and Rosanelli, we do not view a six-month suspension to be appropriate here. As previously noted, the attorney in Rosanelli failed to file an affidavit of

compliance following two suspensions, one of which was imposed in a default matter. Although those same circumstances, including the default, exist here, Rosanelli's disciplinary record included a six-month suspension, stemming from a criminal conviction, whereas respondent has only a prior temporary suspension and a reprimand. The other cases in which six-month suspensions were imposed also involve disciplinary histories that were "more serious, either in number or degree," than respondent's. Accordingly, we determined to impose a three-month suspension on respondent for his misconduct.

Chair Frost and member Zmirich voted to impose a six-month suspension on respondent. Member Gallipoli voted to recommend respondent's disbarment and filed a separate dissent. Vice-Chair Baugh did not participate.

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 Herbert R. Ezor  
Docket No. DRB 16-168


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Decided: January 11, 2017

Disposition: Three-month suspension

<i>Members</i>	Three-month Suspension	Six-month Suspension	Disbar	Did not participate
Frost		X		
Baugh				X
Boyer	X			
Clark	X			
Gallipoli			X	
Hoberman	X			
Rivera	X			
Singer	X			
Zmirich		X		
Total:	5	2	1	1

  
Ellen A. Brodsky  
Chief Counsel