

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 17-066  
District Docket No. XIV-2015-0413E

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IN THE MATTER OF  
MICHAEL D. BOLTON  
AN ATTORNEY AT LAW

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Decision

Decided: August 18, 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).  
A one-count complaint charged respondent with having violated 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) based on his failure to file the  
required R. 1:20-20 affidavit, following his temporary suspension  
from the practice of law.

The OAE submitted a memorandum recommending a three-month suspension. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1989.

On May 27, 2015, respondent was temporarily suspended for failure to cooperate with an OAE investigation into his handling of trust account funds. On September 2, 2016, he was again temporarily suspended, for failure to comply with a fee arbitration determination.

On September 8, 2016, respondent received a censure in a default matter arising out of his earlier failure to cooperate with the OAE's investigation into his trust account practices. In re Bolton, 226 N.J. 471 (2016).

Respondent remains suspended to date.

Service of process was proper in this matter. On March 24, 2016, the OAE sent a copy of the complaint to respondent in accordance with R. 1:20-7(h) at his last known address listed in the attorney registration records, by regular and certified mail.

The certified mail was returned to the OAE marked "Unclaimed." The regular mail was not returned.

On April 26, 2016, the OAE sent a second letter to respondent, at the same address, by both certified and regular mail. The letter notified respondent that, unless he filed an answer to the

complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted; that, pursuant to R. 1:20-4(f) and R. 1:20-6(c)(1), the record in the matter would be certified directly to us for imposition of sanction; and that the complaint would be amended to include a charge for violation of RPC 8.1(b).

The certified mail envelope was returned to the OAE marked "Unclaimed." The regular mail envelope was not returned. The time within which respondent may answer the complaint has expired. As of February 10, 2017, the date of the certification of the record, respondent had not filed an answer to the ethics complaint.

The facts alleged in the complaint are as follows. The Court's May 27, 2015 Order temporarily suspending respondent required him to comply with R. 1:20-20, which, among other things, requires a suspended attorney to file with the Director of the OAE, within thirty days after the date of the order of suspension, "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 do so.

On January 29, 2016, the OAE sent respondent a letter, by certified and regular mail, at the same address used above, and

as listed in the attorney registration records, advising him of his duty to file the R. 1:20-20 affidavit and requesting a reply by February 12, 2016.

The certified mail envelope was returned marked "No Such Street Unable to Forward." However, the USPS tracking information showed conflicting information – specifically that the envelope was returned marked "Unclaimed." The regular mail was not returned. Subsequently, USPS personnel orally confirmed to the OAE that the January 29, 2016 letter had been returned marked "Unclaimed." Moreover, a February 24, 2016 "Address Information Request" from the OAE was returned by the post office indicating that respondent continued to receive his mail at the same address used by the OAE for all of the mailings in this matter.

Respondent neither replied to the OAE letter nor filed the required affidavit. Thus, the complaint alleged that respondent willfully violated the Supreme Court's Order and failed to take the actions required of all suspended attorneys, including notifying clients and adversaries of the suspension, and providing clients with their files, all in violation of RPC 8.1(b) and RPC 8.4(d).

In its memorandum, the OAE acknowledged a reprimand as the "threshold" sanction for an attorney's failure to comply with the

requirements of R. 1:20-20. See 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). However, citing both Girdler and In re Raines, 181 N.J. 537 (2004), the OAE urged us to impose a three-month suspension, based on three aggravating factors: (1) respondent's failure to reply to the OAE's specific request to file the affidavit; (2) respondent's default herein; and (3) respondent's prior censure. Girdler's ethics history included a public reprimand, a private reprimand, and a three-month suspension. Raines' ethics history included a private reprimand, a three-month suspension, a six-month suspension, and a temporary suspension.

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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).

Respondent willfully violated the Court's Order and failed to take the steps required of all suspended attorneys, including notifying clients and adversaries of the suspension and providing

clients with their files, in violation of RPC 8.1(b), RPC 8.4(d), and R. 1:20-20.

As noted, the threshold measure of discipline to be imposed for a suspended attorney's failure to comply with R. 1:20-20 is a reprimand. In re Girdler, supra, 179 N.J. 227. The actual discipline imposed may be different, however, if the record demonstrates mitigating or aggravating circumstances. In the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6). 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, Girdler failed to produce the affidavit of compliance in accordance with that Rule, even though he had agreed to do so. As previously stated, Girdler had a prior public reprimand, private reprimand, and three-month suspension.

Since Girdler, the discipline imposed on attorneys in default cases who have failed to comply with R. 1:20-20, and whose disciplinary history consisted of a temporary suspension and/or

discipline short of a fixed suspension, has been a censure. See, e.g., In re Kinnard, 220 N.J. 488 (2015) (attorney failed to file affidavit after the Court had temporarily suspended him for his failure to pay the disciplinary costs associated with a 2008 admonition; in addition to the attorney's disciplinary history and the default, he also ignored the OAE's request that he file the affidavit); In re Goodwin, 220 N.J. 487 (2015) (attorney failed to file affidavit after the Court temporarily suspended him for his failure to pay the disciplinary costs associated with a 2010 reprimand; he also ignored the OAE's request that he file the affidavit); In re Boyman, 217 N.J. 360 (2014) (attorney did not file the R. 1:20-20 affidavit after his temporary suspension for failure to pay administrative costs associated with his 2010 censure); and In re Gahles, 205 N.J. 471 (2011) (attorney did not file the required affidavit following a temporary suspension for failure to comply with a fee arbitration determination; prior reprimand and admonition).

Most recently, on June 15, 2017, the Court imposed a censure on an attorney for his failure to file a R. 1:20-20 affidavit. In In re Zielyk, 229 N.J. 331 (2017), In the Matter of Andrey V. Zielyk, DRB 16-165 (January 11, 2017). In that case, too, the OAE urged us to impose a three-month suspension, citing Girdler and

and Raines, the same cases it has cited in support of a suspension here. We found Girdler and Raines inapplicable, as the attorney in those cases had ethics histories that included fixed periods of suspension. Zielyk, supra, (slip op. at 8).

In Zielyk, we also noted that two attorneys with prior three-month suspensions had received only a censure for their failure to comply with R. 1:20-20. 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)) 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; in aggravation, the attorney ignored the OAE's reminder that the affidavit was due and its request that he file it immediately). Id. at 8-9.

In our view, respondent's misconduct is most similar to that of the attorney in Zielyk. Both attorneys failed to file a R. 1:20-20 affidavit after the OAE's specific request that they do so, and then failed to file an answer to the ethics complaint; the attorneys were admitted to the bar within three years of each other, respondent in 1989 and Zielyk in 1986; and both attorneys



have a prior censure, in a default, for failure to cooperate with an OAE investigation involving attorney records sought by the OAE.


Thus, we determine that a censure is the appropriate level of discipline for respondent's misconduct.

Chair Frost voted to impose a three-month suspension.

Member Gallipoli 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 Michael D. Bolton  
Docket No. DRB 17-066


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Decided: August 18, 2017

Disposition: Censure

<i>Members</i>	Censure	Three-month Suspension	Did not participate
Frost		X	
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli			X
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	1	1

  
Ellen A. Brodsky  
Chief Counsel