

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-067
District Docket No. XIV-2015-0463E

IN THE MATTER OF :
MUHAMMAD BASHIR :
AN ATTORNEY AT LAW :
:

Decision

Decided: August 21, 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 1987. On March 5, 1996, he received a reprimand for grossly neglecting a litigated matter, resulting in a \$41,000 judgment against the clients. In re Bashir, 143 N.J. 406 (1996).

On May 25, 2005, respondent was admonished for failing to comply with court-ordered sanctions in four criminal matters, a violation of RPC 3.4(c). In the Matter of Muhammad Bashir, DRB 05-061 (May 25, 2005).

Effective July 27, 2015, respondent was temporarily suspended for failing to comply with a fee arbitration determination. In re Bashir, 222 N.J. 313 (2015).

On May 18, 2016, respondent received a reprimand for failing to set forth in writing the rate or basis of the legal fee and to cooperate with an ethics investigation. In re Bashir, 225 N.J. 8 (2016).

Finally, on June 15, 2017, the Supreme Court entered an Order imposing a reprimand for respondent's failure, in one matter, to keep a client adequately informed about the case (RPC 1.4(b) and (c)). In re Bashir, 229 N.J. 330 (2017).

Respondent remains suspended to date.

Service of process was proper in this matter. On June 17, 2016, the OAE sent a copy of the complaint to respondent in

accordance with R. 1:20-7(h) at his last known home address listed in the attorney registration records, by regular and certified mail.

The certified mail envelope was returned to the OAE with no delivery information. The United States Postal Service (USPS) tracking information revealed that it was returned marked "Unclaimed." The regular mail was not returned.

On August 11, 2016, the OAE sent a second letter to respondent, at the same home address and to another address provided by the postal service, 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), 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 of RPC 8.1(b).

The certified mail envelope sent to the home address was returned with no delivery information. USPS tracking information revealed that it was returned marked "Unclaimed." The regular mail envelope was returned marked "Attempted - Not Known."

The certified mail sent to the additional address provided by the postal service was returned with no delivery information.

USPS tracking information revealed that it was returned marked "Unclaimed." The regular mail envelope was returned marked "Attempted - Not Known."

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.

We turn to the allegations of the complaint. The Court's June 24, 2015 Order temporarily suspending respondent, effective July 27, 2015, required him to comply with R. 1:20-20, which mandates, among other things, that a suspended attorney 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 a letter to respondent's counsel, Bernard K. Freamon, Esq., informing him of respondent's duty to file the R. 1:20-20 affidavit and requesting a reply by February 12, 2016.

On January 29, 2016, Freamon contacted the OAE to request that respondent be notified directly of his failure to file the required affidavit.

On February 1, 2016, the OAE sent respondent a letter to his last known office address and home address, as listed in the attorney registration records, by certified and regular mail, informing him of his obligation to file the R. 1:20-20 affidavit, and requesting a reply by February 12, 2016.

Both the certified and regular mail envelopes sent to respondent's office were returned marked "Not Deliverable As Addressed - Unable To Forward."

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

On March 8, 2016, Freamon telephoned the OAE to request, and the OAE granted, an extension of time to April 15, 2016, for respondent to file the affidavit. By letter to the OAE dated March 8, 2016, Freamon confirmed that he communicated the new deadline to respondent.

Despite the extension of time to do so, respondent did not file the required affidavit. Therefore, according to the complaint, respondent willfully violated the 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, violations of RPC 8.1(b) and RPC 8.4(d).

In a February 10, 2017 memorandum brief, the OAE acknowledged that the threshold sanction for an attorney's failure to file a R. 1:20-20 affidavit is a reprimand. In re Girdler, 179 N.J. 227 (2004). Citing both Girdler and In re Raines, 181 N.J. 537 (2004), however, 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) the default nature of the proceeding; and (3) his prior discipline. 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.

* * *

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.

Although the threshold measure of discipline to be imposed for a suspended attorney's failure to comply with R. 1:20-20 is a reprimand, 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 had urged us to impose a three-month suspension, citing Girdler and Raines, the same cases it has cited in support of a suspension here. We found Girdler and Raines inapplicable, as the attorneys 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 an 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 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 one year apart, respondent in 1987 and Zielyk in 1986; and both attorneys have prior discipline: Zielyk, a prior censure in a default and an admonition; respondent, a prior reprimand, an admonition, and a second reprimand.


Thus, based on Zielyk, because respondent has no prior fixed terms of suspension in his disciplinary history, we determine that a censure is the appropriate sanction for his misconduct here.

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


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Censure

Members	Censure	Did not participate
Frost	X	
Baugh	X	
Boyer	X	
Clark	X	
Gallipoli		X
Hoberman	X	
Rivera	X	
Singer	X	
Zmirich	X	
Total:	8	1


Ellen A. Brodsky
Chief Counsel