

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-183
District Docket No. XIV-2016-0225E

IN THE MATTER OF
MICHAEL OSBORNE
AN ATTORNEY AT LAW

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Decision

Decided: November 22, 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.

We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1989. He has no prior final discipline.

Effective March 3, 2016, respondent was temporarily suspended for failure to comply with a fee arbitration determination. In re Osborne, 224 N.J. 248 (2016). He remains suspended to date.

Service of process was proper in this matter. On February 1, 2017, 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 was returned to the OAE marked "Unclaimed." The regular mail envelope was returned to the OAE with a hand-written note thereon stating, "Moved."

On April 1, 2017, the complaint was served upon respondent in accordance with Rule 1:20-4(d) by publication in Mercer County's Times of Trenton and, on April 3, 2017, in the New Jersey Law Journal.

The time within which respondent may answer the complaint has not been extended and, as of May 24, 2017, the date of the certification of the record, respondent had not filed an answer.

The facts alleged in the complaint are as follows.

The Court's temporary suspension Order, effective March 3, 2016, required respondent 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 August 3, 2016, the OAE sent respondent a letter, by certified and regular mail, to respondent's office address at 4478 Route 27, Building 2, Kingston, New Jersey 08528, and to the same home address referenced above, as listed in the attorney registration records, advising him of his duty to file the R. 1:20-20 affidavit directing him to do so immediately and to provide a copy to the OAE, and requesting a reply by August 17, 2016.

The signed certified mail receipt for the mailing to respondent's home address was returned to the OAE indicating delivery on August 10, 2016, but the signature is illegible. The regular mail to that address was not returned.

According to the complaint, the certified and regular mail sent to respondent's office address was returned marked "Unclaimed."

Respondent neither replied to the OAE letter nor filed the required affidavit. Therefore, according to the complaint, respondent has willfully violated the Supreme Court's Order and has 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).

The OAE urged us to impose a censure. In its brief, the OAE acknowledged that the threshold sanction for an attorney's failure to file a R. 1:20-20 affidavit is a reprimand, citing In re Girdler, 179 N.J. 227 (2004). Nevertheless, the OAE cited two aggravating factors that subject respondent to greater discipline: respondent's failure to reply to the OAE's specific request to file the affidavit and the default status of the instant matter. In support of a censure, the OAE cited In re Fox, 210 N.J. 255 (2012).

* * *

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 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 the OAE has acknowledged, 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. Girdler had a prior public reprimand, private reprimand, and three-month suspension.


Since Girdler, attorneys who default in matters involving failure to file a R. 1:20-20 affidavit, despite OAE requests to do so, and who have no prior final discipline, have received censures. See, e.g. In re Vreeland, 221 N.J. 206 (2015) (censure imposed in a default matter upon attorney who, following his temporary suspension, failed to file the mandatory R. 1:20-20 affidavit, despite the OAE's specific request that he do so; no prior final discipline); In re Terrell, 214 N.J. 44 (2013) (in a default matter, censure imposed on attorney who failed to file the required R. 1:20-20 affidavit, following a temporary suspension, despite the OAE's specific request that she do so; no history of final discipline); In re Fox, supra, 210 N.J. 255 (in a default matter, censure imposed on attorney who did not file the R. 1:20-20 affidavit, after a temporary suspension, despite the OAE's specific request that he do so; no history of final discipline); and In re Saint-Cyr, 210 N.J. 254 (2012) (in a default matter, censure for attorney who, despite the OAE's specific request that he do so, failed to file the R. 1:20-20 affidavit after a temporary suspension; no prior final discipline).

As in Vreeland, Terrell, Fox, and Saint-Cyr, respondent failed to file the required affidavit in a default matter, despite a specific request by the OAE that he do so. Thus, we determined that a censure is the appropriate sanction here. Member Gallipoli voted to recommend respondent's disbarment and has filed a separate dissent.

Member Hoberman 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

In the Matter of Michael Osborne
Docket No. DRB 17-183

Decided: November 22, 2017

Disposition: Censure

Members	Censure	Disbar	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