

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-357
District Docket No. XIV-2016-0433E

IN THE MATTER OF
MATTHEW M. GORMAN
AN ATTORNEY AT LAW

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Decision

Decided: April 5, 2018

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). The OAE filed a
memorandum recommending the imposition of a censure. For the
reasons expressed below, we agree with the recommendation and
determine to impose a censure.

Respondent was admitted to the New Jersey bar in 2012. He was temporarily suspended for failure to comply with fee arbitration determinations in three matters. In the Matter of Matthew M. Gorman, 224 N.J. 449 (2016) (suspension effective May 11, 2016); In the Matter of Matthew M. Gorman, 224 N.J. 450 (2016) (suspension also effective May 11, 2016); and In the Matter of Matthew M. Gorman, 227 N.J. 3 (2016) (suspension effective October 28, 2016). He remains suspended to date.

Service of process was proper in this matter. On May 23, 2017, the OAE sent a copy of the complaint by regular and certified mail to respondent's last known post office box address listed in the attorney registration records. On June 26, 2017, the Valley Cottage, New York, United States Postal Service branch informed the OAE that respondent had not picked up his mail in some time and that both the regular and certified mail remained in respondent's post office box.

Thereafter, the certified mail was returned marked "Unclaimed," and, as of the date of the certification of the record, September 28, 2017, the regular mail had not been returned.

On June 29, 2017, the OAE effected notice of the complaint by publication in Bergen County, in The Record and, on July 3, 2017, in the New Jersey Law Journal.

As of the date of the certification of the record, September 28, 2017, respondent had not filed an answer to the ethics complaint.

We now turn to the allegations of the complaint. Following respondent's temporary suspensions, the OAE's investigation revealed that he was no longer at his last known office address in Hackensack, New Jersey.

Pursuant to the Court's Orders of temporary suspension, filed on April 1, 2016 and September 28, 2016, respondent was ordered to comply with R. 1:20-20. The Rule requires, among other things, that, within thirty days of an Order of suspension, an attorney file with the Director of the OAE, a detailed affidavit, specifying how the attorney complied with each of the provisions of R. 1:20-20 and the Court's Orders.

Respondent failed to file the affidavit. Therefore, by letter dated August 5, 2016, sent by certified and regular mail to respondent's last known office address, his New Jersey home address, and an out-of-state address, the OAE informed respondent that he was required to file the affidavit, and instructed him to reply by August 19, 2016.

The regular and certified mail sent to respondent's office address was returned marked "Not Deliverable as Addressed." The regular and certified mail sent to respondent's New Jersey home

address was returned marked "Moved Left No Address." The certified mail sent to the out-of-state address was returned marked "Attempted Not Known"; the regular mail was not returned.

A national records search of the CLEAR database,¹ through Thomson Reuters, did not uncover any other addresses for respondent.

As of the date of the complaint, May 10, 2017, respondent had not filed the required affidavit. The complaint thus charged respondent with willfully violating the Court's Orders and failing to take the steps required of all suspended or disbarred attorneys, including notifying clients and adversaries of the suspension and providing current clients with their files.

As noted previously, the OAE submitted a memorandum, dated September 28, 2017, in lieu of a formal brief, recommending a censure.

* * *

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).

¹ CLEAR refers to the Citizens Law Enforcement Analysis and Reporting system.

Respondent failed to file an affidavit of compliance, pursuant to the requirements of R. 1:20-20. Such a failure constitutes a violation of RPC 8.1(b) and RPC 8.4(d). R. 1:20-20(c).

The threshold measure of discipline for an attorney's failure to file the required 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 be different, however, if the record demonstrates mitigating or aggravating circumstances. Ibid. Examples of aggravating factors include an attorney's failure to answer the complaint, the extent of a disciplinary history, and the attorney's failure to follow through on his or her promise to the OAE that the affidavit would be forthcoming. Ibid.

Censures were imposed in the following cases: In re Boyman, 217 N.J. 360 (2014) (default; 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); In re Terrell, 214 N.J. 44 (2013) (default; attorney failed to file the required R. 1:20-20 affidavit, following a temporary suspension for failure to satisfy a fee arbitration award); In re Fox, 210 N.J. 255 (2012) (default; attorney did not file the R. 1:20-20 affidavit, after a temporary suspension); and In re Saint-Cyr, 210

N.J. 254 (2012) (default; attorney did not file the R. 1:20-20 affidavit after a temporary suspension for failure to satisfy a fee arbitration award; no history of final discipline).

Three-month suspensions have been imposed where aggravating factors were present, such as a pattern of non-compliance or a significant ethics history. See, e.g., In re Palfy, 221 N.J. 208 (2015) (default; attorney 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; enhanced discipline was required in the instant matter because of the attorney's "pattern of obstinacy toward ethics and fee authorities"); In re Garcia, 205 N.J. 314 (2011) (default; attorney failed to comply with R. 1:20-20; her disciplinary history consisted of a fifteen-month suspension); and In re Berkman, 205 N.J. 313 (2011) (default; attorney had a prior nine-month suspension).

Longer suspensions have been imposed where the underlying circumstances were more egregious, which is a factor not present here.

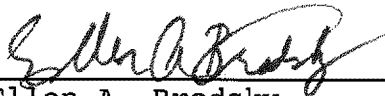
We determine that a suspension is not warranted here because respondent has no disciplinary history. Rather, like the attorneys in Boyman, Terrell, Fox, and Saint-Cyr, respondent was temporarily suspended because he failed to comply with three fee arbitration determinations. Moreover, like those attorneys, respondent also permitted this matter to proceed as a default, which requires enhanced discipline under In re Kivler, 193 N.J. 332, 338 (2008). He also ignored the OAE's request that he comply with the Court's Orders to submit the affidavit. We, therefore, determine to impose a censure on respondent.

Member Gallipoli voted to recommend respondent's disbarment and has authored a separate dissenting opinion.

Chair Frost and Member Zmirich 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
Bruce W. Clark, Vice-Chair

By: 
Ellen A. Brodsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Matthew M. Gorman
Docket No. DRB 17-357

Decided: April 5, 2018

Disposition: Censure

<i>Members</i>	Censure	Disbar	Did not participate
Frost			X
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich			X
Total:	6	1	2


Ellen A. Brodsky
Chief Counsel