

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 18-075
District Docket No. XIV-2017-0080E

IN THE MATTER OF
PETER JONATHAN CRESCI
AN ATTORNEY AT LAW

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Decision

Decided: August 10, 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 the record, 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(a) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice), as the result of his failure to file an affidavit of compliance with R. 1:20-20 following his November 2016 temporary suspension. Respondent filed a motion to vacate the default. For the reasons set forth below, we deny respondent's motion and determine to impose a censure.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1992, to the Texas bar in 1998, and to the New York bar in 2011. At the relevant times, he maintained an office for the practice of law in Bayonne.

Respondent has no history of final discipline. On November 17, 2016, the Court temporarily suspended respondent, based on allegations of knowing misappropriation in three matters. In re Cresci, 227 N.J. 139 (2016).

Service of process was proper. On December 1, 2017, the OAE sent a copy of the formal ethics complaint to respondent's two last known office addresses, his office post office box address, and his home address, by regular and certified mail, return receipt requested. The certified letters were "unclaimed," and, thus, returned to the OAE. The letters sent by regular mail were not returned.

On January 10, 2018, the OAE sent another letter to respondent, at the same addresses, by regular and certified mail, return receipt requested. The letter informed respondent that, if he failed to file an answer within five days, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of a sanction, and the complaint would be deemed amended to include a charge of a violation of RPC 8.1(b). The certified letters were

"unclaimed," and, thus, returned to the OAE. The letters sent by regular mail were not returned.

As of February 21, 2018, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

On April 20, 2018, respondent filed a motion to vacate the default. Prior to our discussion of respondent's motion, we first set forth the allegations of the complaint.

According to the single-count ethics complaint, the Court's November 17, 2016 Order temporarily suspending respondent from the practice of law required him to comply with R. 1:20-20, which obligated respondent, within thirty days, to, among other things, file with the OAE Director "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 did not file the affidavit within the required time.

On March 9, 2017, the OAE sent a letter to respondent at one of his office addresses, the office post office box address, and his home address, by regular and certified mail, return receipt requested. The letter informed respondent of his responsibility to file the affidavit of compliance with R. 1:20-

20, and requested its submission by March 23, 2017. The certified letters were "unclaimed," and, thus, returned to the OAE. The letters sent by regular mail were not returned.

Respondent neither replied to the OAE's letter nor filed the affidavit.

On March 16, 2017, the OAE sent a letter to respondent at his other office address, by regular and certified mail, return receipt requested. Like the others, this letter informed respondent of his responsibility to file the affidavit of compliance with R. 1:20-20, and requested its submission by March 23, 2017. The certified letter was "unclaimed," and thus returned to the OAE.¹ The letter sent by regular mail was not returned to the OAE.

According to the complaint, respondent "willfully violated the Supreme Court's order" and "has failed to take the steps required of all suspended or disbarred attorneys, including notifying clients and adversaries of the suspension and providing pending clients with their files."

¹ The information regarding delivery of the certified mail was incomplete when the complaint was signed. Office of Board Counsel tracked the letter on the United States Post Office website and learned that the letter was unclaimed and, thus, the Post Office returned it to the OAE on December 9, 2017.

Based on these facts, the complaint charged respondent with failure to cooperate with disciplinary authorities (RPC 8.1(b)) and conduct prejudicial to the administration of justice (RPC 8.4(d)).

We now address respondent's motion to vacate the default. To vacate a default, a respondent must (1) offer a reasonable explanation for the failure to answer the ethics complaint and (2) assert a meritorious defense to the underlying charges. In this matter, respondent has not satisfied either requirement and, therefore, we determine to deny the motion.

Respondent offers several explanations for his failure to answer the ethics complaint, all of which he relied on in a previous motion to vacate the default in the knowing misappropriation matter docketed under DRB 17-117.² Those explanations are: (1) he had not received the "[m]aterials" on which the allegations of the complaint are based;³ (2) we lack jurisdiction, as a federal court action filed by respondent against OAE Director Charles Centinaro and OAE Assistant Ethics Counsel Timothy J. McNamara "preempted" the filing of the

² On June 21, 2017, we granted respondent's motion to vacate the default in DRB 17-117.

³ Respondent suggests that he was never served with the complaint.

"underlying complaints apparently filed in March, 2017;"⁴ (3) he is entitled to representation by counsel, but is without same because his bank accounts have been frozen by the OAE, thus causing former counsel to terminate the representation in the "underlying ethics matters" due to his inability to pay legal fees; (4) he acted on advice of counsel; and (5) he was precluded from changing his current address when he submitted his annual registration to the New Jersey Lawyers' Fund for Client Protection.

In respect of the meritorious defense prong, respondent also has copied and pasted, from the previous motion, the same bases underlying each proffered defense. They are: (1) an appeal is pending in the Appellate Division in respondent's criminal matter, which stems from his representation of one of the grievants in the DRB 17-117 matters; (2) the age of two of the DRB 17-117 ethics matters; (3) the conflict of interest on the part of Centinaro and McNamara, defendants in the federal civil action; and (4) his temporary suspension, which prevents harm to the courts and the public while this matter is on hold.

In assessing respondent's motion, we noted that the ethics complaint in this matter did not charge respondent with any RPC

⁴ We note that the complaint in this matter was dated November 30, 2017.

violations based on his handling of any client matter. Rather, he was charged with having violated RPC 8.1(b) and RPC 8.4(d), based on his failure to file an affidavit of compliance with R. 1:20-20, following his November 17, 2016 temporary suspension. As of the date of respondent's April 20, 2018 motion to vacate the default, he still had not filed the affidavit and, thus, remained suspended.

We determine to deny respondent's motion to vacate the default in this matter for several reasons. First, he has merely copied and pasted the same claims he made in the motion to vacate the default in DRB 17-117, which involved actual grievances filed by several clients. The complaint in this matter did not arise from client grievances but rather from respondent's failure to file an affidavit of compliance with R. 1:20-20.

Second, because respondent has copied and pasted from the previous motion to vacate, filed in a matter based on vastly different allegations, his proffered "reasonable" excuses for his failure to file an answer in this matter are inapplicable, as are his "meritorious" defenses.

Third, and most importantly, respondent still has not filed the affidavit of compliance with R. 1:20-20, and he has not

presented us with a proposed answer to the ethics complaint in this matter.

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).

Rule 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." Among the correlatively numbered paragraphs are paragraphs (10) and (11), which require the attorney to notify all clients of the suspension and, in pending litigated or administrative matters, all adversaries, and to return client files, if requested.

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). Thus, respondent's failure to file the affidavit is a per se violation of RPC 8.1(b) and RPC 8.4(d).

The threshold measure of discipline to be imposed for an attorney's failure to file a 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 the attorney's failure to answer the complaint, the existence 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.

In Girdler, the attorney received a three-month suspension, in a default matter, for his failure to comply with R. 1:20-20(b)(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.

Since Girdler, discipline greater than a reprimand was imposed in default cases such as this, in which an attorney with an unblemished disciplinary history has failed to file the R. 1:20-20 affidavit after a temporary suspension. See, e.g., In the Matter of Sharon S. Terrell, DRB 12-367 (April 18, 2013)

(attorney failed to satisfy a fee arbitration award and to pay a \$500 sanction to the Disciplinary Oversight Committee (DOC)), and In re Saint-Cyr, 210 N.J. 254 (2012) (failure to comply with a determination of the District X Fee Arbitration Committee). In this case, respondent not only failed to file the required affidavit, but also failed to comply with the OAE's specific request that he do so. Thus, we determined to impose a censure on respondent for his violations of RPC 8.1(b) and RPC 8.4(d).

Member Gallipoli was recused.

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
Ellen A. Brodsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Peter Jonathan Cresci
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Disposition: Censure

Members	Censure	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli		X	
Hoberman	X		
Joseph	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	1	0


Ellen A. Brodsky
Chief Counsel