

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-194
District Docket No. XIV-2017-0233E

In The Matter Of
Paul Speziale
An Attorney At Law

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Decision

Decided: November 28, 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). 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) for 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 1984. On March 8, 2017, the Court temporarily suspended respondent from the practice of law for failure to cooperate with an ethics investigation. In re Speziale, 228 N.J. 124 (2017). On May 2, 2018, the Court suspended him for one year, in a default matter, for gross neglect, failure to abide by the client's decisions regarding the scope of the representation, lack of diligence, failure to communicate with the client, commingling, recordkeeping violations, knowingly disobeying an obligation under the rules of a tribunal, practicing law while ineligible, failure to cooperate with ethics authorities, and conduct prejudicial to the administration of justice. In re Speziale, 233 N.J. 203 (2018).

Respondent has been ineligible to practice law since August 24, 2015 for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. He remains suspended to date.

Service of process was proper in this matter. On January 25, 2018, the OAE sent a copy of the complaint to respondent in accordance with R. 1:20-7(h), at his last known home address, as listed in the attorney registration records, by regular and certified mail. The certified mail and the regular mail were returned to the OAE marked "Not Deliverable as Addressed, Unable to Forward."

On February 20, 2018, the OAE sent a second copy of the complaint to respondent at an address furnished by a national records search of the CLEAR database of Thomson Reuters. The certified mail and the regular mail were returned to the OAE marked "Not Deliverable as Addressed, Unable to Forward."

On March 12, 2018, the OAE served respondent with the complaint by publication, in accordance with R. 1:20-4(d), in the New Jersey Law Journal and, on March 15, 2018, in the Rockland County Times, a newspaper circulated in the geographic area of respondent's last known address.

The time within which respondent may answer the complaint has expired. As of May 31, 2018, he had not filed an answer. Accordingly, the OAE certified the record to us as a default.

Pursuant to R. 1:20-20, the March 8, 2017 temporary suspension Order required respondent, within thirty days of the date of that Order, to file with the OAE Director, the original of a detailed affidavit specifying by correlative paragraphs how he has complied with the Rule. Respondent failed to file the affidavit.

On June 1, 2017, the OAE sent respondent a letter, to his former law office and home addresses, informing him of his duty to comply with R. 1:20-20, and requesting that he contact the OAE.

Both of the letters sent to the office address were returned marked "Not Deliverable as Addressed."

The certified mail return receipt for the home address was returned to the OAE indicating delivery on June 6, 2017, having been signed by respondent. The regular mail was not returned.

According to the complaint, respondent's willful violation of the Court Order and failure to comply with R. 1:20-20, including notifying clients and adversaries of the suspension, and providing clients with their files, violated RPC 8.1(b) and RPC 8.4(d).

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 temporary suspension 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.

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, 179 N.J. 227 (2004). 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 reply 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, 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 or other discipline short of a fixed suspension, or both, has been a censure. See, e.g., In re Zielyk, 229 N.J. 331 (2017) (censure for the attorney's failure to file a R. 1:20-20 affidavit after being temporarily suspended from the practice of law; prior admonition and censure); In re Kinnard, 220 N.J. 488 (2015) (attorney failed to file the required R. 1:20-20 affidavit after the Court had temporarily suspended him for his failure to pay the disciplinary costs associated with a 2008 admonition; he also defaulted and ignored the OAE's request that he file the affidavit); and 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).

Here, in aggravation, respondent failed to heed the OAE's direct pleas that he file the required affidavit, as in Girdler (three-month suspension), and the censure cases — Kinnard and Goodwin. However, because respondent's one-year suspension post-dated his misconduct in this matter, we determine that enhanced discipline beyond a censure is not warranted here. We, therefore, vote for a censure.

Member Gallipoli voted for respondent's disbarment and 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

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Disposition: Censure

<i>Members</i>	Censure	Disbar	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer	X			
Gallipoli		X		
Hoberman				X
Joseph	X			
Rivera	X			
Singer	X			
Zmirich	X			
Total:	7	1	0	1


Ellen A. Brodsky
Chief Counsel