

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-408
District Docket No. XIV-2017-0677E

In the Matters of :
Genia C. Philip :
An Attorney at Law :
:

Decision

Decided: July 23, 2019

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 formal ethics 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 her failure to file the required R. 1:20-20 affidavit, following her temporary suspension

from the practice of law. For the reasons set forth below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 2000. On November 21, 2016, she received an admonition for lack of diligence and failure to communicate with the client in a divorce case. In the Matter of Genia C. Philips, DRB 16-307 (November 21, 2016).

On September 8, 2017, the Court temporarily suspended respondent from the practice of law for failure to cooperate with an ethics investigation. In re Philip, N.J. (2017). Respondent remains suspended to date.

Service of process was proper in this matter. On July 27, 2018, the OAE sent a copy of the complaint to respondent at her last known office and home addresses, as listed in the attorney registration records. A copy of the complaint was also sent to respondent's counsel, John McGill, III, Esq.

Both the certified and regular mail sent to respondent's office address were returned marked "NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." The certified mail sent to the home address was returned marked "UNCLAIMED" and "NOT DELIVERABLE AS ADRESSED, UNABLE TO FORWARD." United States Postal Service (USPS) tracking verified that the certified mail was returned to the OAE unclaimed.

The regular mail sent to respondent's home address was not returned to the OAE.

By letter dated August 7, 2018, McGill informed the OAE that he no longer represented respondent, and understood that she intended to seek appointed counsel.

On August 23, 2018, the OAE sent a second letter to respondent at her home address, informing her that, unless she filed an answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted, that the entire record would be certified directly to us for imposition of discipline, and that the complaint would be amended to include a charge of a violation of RPC 8.1(b). The certified mail was returned to the OAE marked "UNCLAIMED." The regular mail was not returned.

By letter dated October 10, 2018, the OAE imposed a deadline of October 24, 2018 for respondent to file an application for assignment of counsel (R. 1:20-20) or a verified answer. Further, the letter informed respondent that if she did neither, the OAE would certify the record directly to us for the imposition of sanction. The OAE sent that letter to respondent's home address by certified and regular mail. According to USPS tracking information, a notice was left for respondent on October 5, 2018, but the certified mail was returned marked "NOT DELIVERABLE AS ADDRESSED

UNABLE TO FORWARD," with an additional notation "10/15/18 LN T.B."

The regular mail was not returned.

The time within which respondent may answer the complaint has expired. As of December 7, 2018, respondent had neither filed an answer nor notified the OAE of an indigency application, and the time within which she was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

The September 8, 2017 temporary suspension Order 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 January 29, 2018, the OAE sent a letter to respondent's then counsel, McGill, reminding respondent of her obligation to file a R. 1:20-20 affidavit, and requesting a reply by February 12, 2018. The OAE received neither a reply nor an affidavit.

On March 14, 2018, the OAE telephoned McGill to inform him that the OAE had not yet received respondent's R. 1:20-20 affidavit, and that it must be

received by May 31, 2018 to avoid the filing of an ethics complaint against respondent. McGill requested a facsimile copy of the January 29, 2018 letter, which the OAE sent to him on May 15, 2018.

As of July 26, 2018, the OAE had not received a reply to its inquiry or a filed affidavit.

Following a review of the record, we find that 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, in accordance with R. 1:20-20, including notifying clients and adversaries of the suspension and providing clients with their files, in violation of RPC 8.1(b), and RPC 8.4(d).

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.

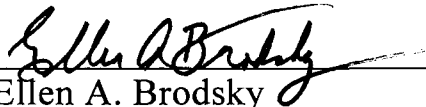
Since Girdler, the discipline imposed on attorneys in default cases who, like respondent, received a temporary suspension and then failed to comply with R. 1:20-20, has been a censure. See, e.g., In re Bashir, 232 N.J. 332 (2018) (attorney failed to file R. 1:20-20 affidavit after temporary suspension for failing to comply with a fee arbitration determination; he also ignored the OAE's specific requests that he file the affidavit; prior reprimand, admonition, and second reprimand); In re Zielyk, 229 N.J. 331 (2017) (attorney failed to file R. 1:20-20 affidavit despite OAE requests that he do so; prior censure in a default, and admonition); In re Kinnard, 220 N.J. 488 (2015) (after temporary suspension for failure to pay costs associated with a 2008 admonition, the attorney failed to file the R. 1:20-20 affidavit; he also ignored the OAE's request that he file the affidavit).

Respondent's misconduct is most closely aligned with that of Kinnard, who, like respondent, failed to file a R. 1:20-20 affidavit after the OAE's specific request that he do so, and then failed to file an answer to the ethics complaint. Like respondent, Kinnard had been temporarily suspended and had a prior admonition. Thus, we determine to impose a censure.

Members Gallipoli and Joseph 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 Genia C. Philip
Docket No. DRB 18-408

Argued: February 21, 2019

Decided: July 23, 2019

Disposition: Censure

<i>Members</i>	Censure	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli			X
Hoberman	X		
Joseph			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	0	2


Ellen A. Brodsky
Chief Counsel