

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-384
District Docket No. XIV-2018-0526E

In the Matter of
Glen M. Diehl
An Attorney at Law

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Decision

Decided: August 6, 2020

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(b) (failure to cooperate with disciplinary authorities).

For the reasons set forth below, we determine to impose a reprimand.

Respondent earned admission to the New Jersey bar in 1986. During the relevant time frame, he maintained a law practice in Watchung, New Jersey.

Effective November 6, 2019, the Court temporarily suspended respondent for his failure to comply with OAE requests for information underlying this case. In re Diehl, 240 N.J. 123 (2019). In addition, effective July 22, 2019, respondent was declared ineligible to practice law due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection.

Service of process was proper. On August 8, 2019, the OAE sent copies of the formal ethics complaint, by certified and regular mail, to respondent's home and billing addresses of record. The regular mail sent to respondent's billing address was returned marked "return to sender, unable to forward," but a receipt was returned for the certified mail sent to that address, bearing an illegible signature. The certified mail sent to respondent's home address was returned marked "return to sender, other." The certification of the record does not reveal the outcome of the regular mail sent to respondent's home address.

On September 13, 2019, the OAE sent letters to respondent, by regular mail, to his billing and home addresses, informing him that, unless he filed a verified answer to the complaint within five days, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). Those letters were not returned to the OAE.

As of October 10, 2019, 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.

We now turn to the allegations of the complaint.

During the relevant time frame, respondent maintained an attorney business account (ABA1) and attorney trust account (ATA1) at TD Bank, and an attorney business account (ABA2) and attorney trust account (ATA2) at Peapack-Gladstone Bank. On August 20, 2018, TD Bank alerted respondent and the OAE that, on August 7, 2018, respondent had caused a \$1,000 overdraft of his ATA1. On multiple dates in August, September, and October 2018, the OAE directed respondent to explain the overdraft and to produce financial records, but he failed to reply.

On October 10, 2018, the OAE subpoenaed from TD Bank and Peapack-Gladstone Bank respondent's financial records, which the institutions provided on October 24 and November 5, 2018, respectively. The Peapack-Gladstone records revealed that ABA2 had been closed on July 16, 2018, due to continuous overdrafts and a \$546 bank charge-off.

On December 21, 2018, when the OAE contacted respondent, via telephone, he claimed that he had not received the OAE's correspondence, because he was in the process of moving. Respondent confirmed that he received

mail at his billing address. On January 4, 2019, respondent acknowledged receipt of OAE correspondence sent to the billing address and, although he promised to provide, by January 9, 2019, an explanation of the overdraft of his ATA1, he failed to do so. From January 22 through June 4, 2019, respondent again failed to reply to OAE letters, telephone calls, and e-mails, and failed to appear as directed for multiple scheduled demand audits.

On June 11, 2019, during a visit to his home by the OAE, respondent acknowledged that he had been receiving the OAE's correspondence, explained that he was unable to respond due to personal and emotional issues, and claimed that he had ceased the practice of law and closed his Watchung office. Respondent neither provided the OAE with an explanation for the overdraft of his ATA1, nor produced any financial records, asserting that he may no longer possess them.

On June 26, 2019, in light of respondent's continuing failure to cooperate, the OAE filed with the Court a motion seeking his immediate temporary suspension. On October 4, 2019, the Court issued an Order directing respondent to comply, within thirty days, with the OAE's outstanding requests for information. Respondent failed to do so. Consequently, effective November 6, 2019, the Court temporarily suspended respondent for his failure to comply with the OAE's requests for information.

Based on the above facts, the formal ethics complaint charged respondent with having violated RPC 8.1(b).

We find that the facts recited in the complaint clearly and convincingly support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

On August 7, 2018, respondent caused a \$1,000 overdraft of his ATA1. From August 2018 through June 2019, the OAE made exhaustive efforts to seek respondent's explanation of the overdraft; to obtain relevant financial records; and to conduct a demand audit. Although he acknowledged the OAE's investigation and intermittently communicated with OAE staff, respondent ultimately failed to cooperate, stating that he was unable to respond due to personal and emotional issues, and claiming he had ceased the practice of law and closed his law office.

Moreover, despite the Court's October 4, 2019 Order directing respondent to comply with the OAE's investigation, he failed to do so. Consequently, effective November 6, 2019, the Court temporarily suspended respondent. To date, he remains suspended for his non-cooperation.

In sum, we find that respondent violated RPC 8.1(b). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)); In re Gleason, 220 N.J. 350 (2015) (attorney did not file an answer to the formal ethics complaint and ignored the district ethics committee investigator's multiple attempts to obtain a copy of his client's file, a violation of RPC 8.1(b)); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b)); and In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b)).

To craft the appropriate discipline, however, we must also consider aggravating and mitigating factors. In aggravation, respondent defaulted in this matter, despite the OAE's exhaustive efforts and the Court's Order that he


cooperate or suffer the temporary suspension from the practice of law. “A respondent’s default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced.” In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted).

The only mitigation for us to consider is respondent’s unblemished disciplinary record since his 1986 admission to the bar. Although his thirty-plus years of reputable practice deserve due consideration, the default status of this matter, exacerbated by respondent’s refusal to cooperate with the OAE, despite the Court’s Order that he do so, warrants the enhancement of the sanction in this case to a reprimand.

Vice-Chair Gallipoli and Members Joseph and Petrou 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, Chair

By: 
Ellen A. Brodsky
Chief Counsel

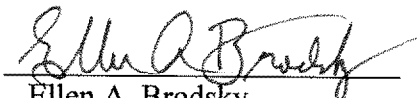
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Docket No. DRB 19-384

Decided: August 6, 2020

Disposition: Reprimand

<i>Members</i>	Reprimand	Recused	Did Not Participate
Clark	X		
Gallipoli			X
Boyer	X		
Hoberman	X		
Joseph			X
Petrou			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	6	0	3


Ellen A. Brodsky
Chief Counsel