

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-457
District Docket No. XIV-2019-0156E

In the Matter of
Bryan Blaney
An Attorney at Law

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Decision

Decided: November 18, 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 violations of RPC 8.1(b) (failure to

cooperate with disciplinary authorities)¹ and RPC 8.4(d) (conduct prejudicial to the administration of justice).

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

Respondent was admitted to the New Jersey bar in 1987, the New York bar in 1988, and the District of Columbia bar in 1990.

On May 17, 2018, the Court imposed a reprimand on respondent, in another default matter, for practicing law while ineligible. In re Blaney, 233 N.J. 290 (2018).

Effective October 22, 2018, the Court temporarily suspended respondent for failure to pay disciplinary costs assessed in connection with his reprimand. In re Blaney, 235 N.J. 164 (2018).

To date, respondent remains suspended.

Service of process was proper. On September 10, 2019, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to a New Jersey address that respondent had confirmed to the OAE, in June 2019, as his mailing address. The certified mail was delivered on September 13, 2019, but

¹ Due to respondent's failure to file an answer to the formal ethics complaint, the OAE amended the complaint to include a second RPC 8.1(b) charge.

the signature on the return receipt card is illegible. The regular mail was not returned.

On October 8, 2019, the OAE sent a letter to respondent, by certified and regular mail, to the same address, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, 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). The certified mail was delivered on October 11, 2019, but, again, the signature on the return receipt card is illegible. The regular mail was not returned.

As of December 5, 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.

The complaint alleged that the Court's September 20, 2018 Order temporarily suspending respondent required him to comply with R. 1:20-20, which specifies, among other things, that, "within 30 days after the date of the order of suspension (regardless of the effective date thereof)," the attorney must "file with the Director 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." Respondent failed to do so.

On March 29, 2019, the OAE sent a letter to respondent, by certified and regular mail, to his home and office addresses of record, informing him of his responsibility to file the affidavit. Due to the expiration of a forwarding order, the United States Postal Service (USPS) returned to the OAE the certified and regular mail sent to respondent's home address, but provided the OAE with respondent's proper forwarding address. The certified mail to respondent's office address was unclaimed and, thus, returned to the OAE. The regular mail was not returned.

On May 6, 2019, the OAE sent a letter to respondent, at the forwarding address that the USPS had provided, enclosed a copy of R. 1:20-20, and directed respondent to file the mandatory affidavit by May 20, 2019. The certified mail was unclaimed and, thus, returned to the OAE. The regular mail was not returned.

On June 19, 2019, the OAE contacted respondent and reminded him of his responsibility to file the affidavit. Respondent claimed that he was not aware of his suspension. Consequently, on that date, the OAE sent to respondent, via

facsimile, a copy of the Court's September 20, 2018 order; copies of notices of non-compliance, dated March 29 and May 6, 2019; and another copy of R. 1:20-20. The OAE directed respondent to file the mandatory affidavit by July 3, 2019.

On August 9, 2019, the OAE again spoke to respondent about his responsibility for filing the affidavit. Still, respondent failed to file the affidavit.

On August 12, 2019, the OAE sent a letter to respondent, by certified and regular mail, at a "temporary address" that he had provided, extending the deadline to August 26, 2019. On August 15, 2019, respondent accepted delivery of the certified mailing. The regular mail was not returned. Respondent failed to file the affidavit.

Based on the above facts, the complaint alleged that respondent willfully violated the Court's Order and failed to take the steps required of all suspended or disbarred attorneys, under R. 1:20-20, including notifying clients and adversaries of the suspension and providing pending clients with their files. Accordingly, the complaint charged violations of RPC 8.1(b) and RPC 8.4(d). Moreover, the complaint was amended to charge a second violation of RPC 8.1(b) for respondent's failure to file an answer to the complaint.

We find that the facts recited in the complaint 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).

R. 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 litigation 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).

In sum, we find that respondent’s failure to file the affidavit constituted per se violations of RPC 8.1(b) and RPC 8.4(d). Moreover, respondent’s failure to file an answer to the complaint constitutes a second violation of RPC 8.1(b). The sole issue left for us to determine is the appropriate quantum of discipline

for respondent's misconduct.

The threshold measure of discipline 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(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. The attorney's disciplinary history consisted of a prior private reprimand, a reprimand, and a three-month suspension in a default matter.

Since Girdler, the discipline imposed on attorneys in default cases who, like respondent, have failed to comply with R. 1:20-20 and whose disciplinary histories consisted of a temporary suspension and other discipline short of a fixed suspension has been a censure. See, e.g., In re Stasiuk, 235 N.J. 327 (2018)

(attorney failed to file the affidavit after he had been temporarily suspended for failure to comply with the Court's Order requiring him to return a client's fee; he also ignored the OAE's request that he do so; prior censure in a default matter); In re Zielyk, 229 N.J.331 (2017) (attorney failed to file the required affidavit after he had been temporarily suspended from the practice of law for failing to comply with the Court's Order requiring him to cooperate in an ethics investigation; prior admonition and censure); and In re Kinnard, 220 N.J. 488 (2015) (attorney failed to file the required affidavit after the Court had temporarily suspended him for failure to pay the disciplinary costs associated with a 2008 admonition; he ignored the OAE's request that he file the affidavit).

In this case, respondent, like the attorneys in Stasiuk, Zielyk, and Kinnard, had been temporarily suspended for his failure to comply with disciplinary Rules; yet, he still chose to ignore the Court's Order and the OAE's subsequent directives that he file the required R. 1:20-20(b)(15) affidavit.

Considering respondent's limited disciplinary history, we determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Vice-Chair Gallipoli voted to recommend respondent's disbarment to the Court and filed a separate dissent.

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: /s/ Ellen A. Brodsky
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
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman	X			
Joseph	X			
Petrou	X			
Rivera	X			
Singer	X			
Zmirich	X			
Total:	8	1	0	0

/s/ Ellen A. Brodsky

Ellen A. Brodsky
Chief Counsel