

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 20-085  
District Docket No. XIV-2019-0150E

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In the Matter of  
Robert J. Bernot  
An Attorney at Law

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Decision

Decided: February 11, 2021

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) and RPC 8.4(d) (conduct prejudicial to the administration of justice), based on his failure to file the required R. 1:20-20 affidavit following his suspension from the practice of law.

For the reasons set forth below, we determine to impose a three-year suspension.

Respondent was admitted to the New Jersey bar in 1982. On May 2, 2012, he received a reprimand for violating RPC 1.3 (lack of diligence). In re Bernot, 210 N.J. 117 (2012).

Effective May 3, 2013, the Court temporarily suspended respondent for his failure to pay disciplinary costs assessed in his reprimand matter. In re Bernot, 213 N.J. 541 (2013). On October 4, 2013, the Court reinstated respondent, after he paid the costs in full. In re Bernot, 215 N.J. 634 (2013).

Effective November 2, 2018, respondent received a two-year suspension for engaging in the unauthorized practice of law and failing to cooperate with disciplinary authorities. In violation of two Court Orders, respondent practiced law both while temporarily suspended for failure to pay costs and while ineligible for failure to comply with the Court's mandatory Interest on Lawyers Trust Accounts program. That matter proceeded by way of default. In re Bernot, 235 N.J. 325.

On May 2, 2019, respondent received a six-month suspension, to be served consecutively to his November 2, 2018 two-year suspension, for violating RPC

5.5(a)(1) (engaging in the unauthorized practice of law). That matter also proceeded as a default. In re Bernot, 237 N.J. 493 (2019).

Service of process was proper. On January 30, 2020, the OAE sent a copy of the complaint, by certified and regular mail, to respondent's home address. The certified mail receipt was returned, signed by "S. Revsand." The regular mail was not returned.

On February 27, 2020, the OAE sent a letter to respondent, by certified and regular mail, to his home 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 receipt was returned, signed by "S. Revsand." The regular mail was not returned.

As of March 10, 2020, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the DEC certified this matter to us as a default.

We now turn to the allegations of the complaint.

Pursuant to the Court's October 4, 2018 Order suspending respondent for two years, he was ordered to comply with R. 1:20-20, which requires, among other things, that respondent "shall within 30 days after the date of the order of suspension (regardless of the effective date thereof) 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." The Court's October 4, 2018 Order specifically informed respondent that failure to file the affidavit could preclude us from considering his petition for reinstatement for up to six months from the date he files proof of compliance, could be found to constitute a violation of RPC 8.1(b) and 8.4(d), and could provide a basis for an action for contempt. Respondent failed to file the affidavit.

By letters dated April 2, 2019, sent by certified and regular mail to respondent's home and office addresses, the OAE reminded him of his responsibility to file the affidavit, as R. 1:20-20 requires. The OAE also requested respondent to provide, by April 16, 2019, the names of any clients he was representing at the time of his suspension; when and how he notified them of his suspension; and whether he delivered the clients' case files to the clients or to their new attorney. The certified mail receipts were returned to the OAE,

bearing the signatures of “S. Revsand” and respondent. Respondent neither replied to the letters nor filed the required affidavit. By letter dated September 13, 2019, sent by certified and regular mail to respondent’s home address, the OAE again reminded him of his responsibility to file the affidavit. Respondent failed to reply.

On December 9, 2019, an OAE investigator went to respondent’s law office, where respondent was present.<sup>1</sup> Respondent acknowledged receipt of the OAE’s correspondence. The investigator directed respondent to reply to the letters. When the investigator asked respondent whether he would reply if the OAE gave him another opportunity to do so, respondent answered, “I guess I could.” Respondent did not do so.

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).

Here, respondent willfully violated the Court’s October 4, 2018 Order, and failed to take the steps required of all suspended attorneys, including

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<sup>1</sup> The complaint does not indicate whether respondent was practicing law at that time, a potential violation of RPC 5.5(a)(1) (practicing law while suspended or ineligible).

notifying clients and adversaries of the suspension and providing clients with their files. He continued to fail to comply, despite letters and the visit from the OAE reminding him of his responsibility to do so. His failure to comply with R. 1:20-20 constitutes per se violations of RPC 8.1(b) and RPC 8.4(d).

The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

The threshold measure of discipline to be imposed for an attorney's failure to file a R. 1:20-20 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 extent of the attorney's 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, 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 who have failed to comply with R. 1:20-20 and who have defaulted, has ranged from a censure to a six-month suspension, if they do not have an egregious ethics history. See, e.g., In re Stasiuk, 235 N.J. 327 (2018) (censure; 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 Kinnard, 220 N.J. 488 (2015) (censure; ethics history included admonition and temporary suspension; no prior defaults); In re Rak, 214 N.J. 5 (2013) (three-month suspension; aggravating factors included three default matters against the attorney in three years (two of the defaults were consolidated and resulted in a three-month suspension, the third resulted in a reprimand) and the OAE left additional copies of its previous letters about the affidavit, as well as the OAE's contact information, with the attorney's office assistant, after which the attorney still did not comply); and In re Rosanelli, 208 N.J. 359 (2011) (six-month suspension for attorney who failed to file the affidavit after a temporary

suspension in 2009 and after a three-month suspension in 2010, which proceeded as a default; prior six-month suspension).

A one-year suspension has been imposed in default matters where the attorneys' ethics histories were more egregious. See, e.g., In re Rifai, 213 N.J. 594 (2013) (following two three-month suspensions in early 2011, one of which proceeded as a default, attorney failed to file the affidavit; his ethics history also included two reprimands) and In re Wargo, 196 N.J. 542 (2008) (attorney's ethics history included a temporary suspension for failure to cooperate with the OAE, a censure, and a combined one-year suspension for misconduct in two separate matters; all disciplinary matters proceeded on a default basis).

More serious discipline was imposed in the following default cases: In re Brekus, 208 N.J. 341 (2011) (two-year suspension; attorney's ethics history included a 2000 admonition, a 2006 reprimand, a 2009 one-year suspension, a 2009 censure, and a 2010 one-year suspension; the 2010 discipline was based on a default); In re Kozlowski, 192 N.J. 438 (2007) (two-year suspension; attorney's significant ethics history included a private reprimand, an admonition, three reprimands, a three-month suspension, and a one-year suspension; the attorney defaulted in six disciplinary matters, and his repeated indifference towards the ethics system was found to be beyond forbearance; and



In re Brekus, 220 N.J. 1 (2014) (three-year suspension; egregious disciplinary history consisted of an admonition; a reprimand; a censure; two one-year suspensions, one of which proceeded as a default; and a two-year suspension, which also resulted from a default).

In this case, respondent's flagrant disregard for the disciplinary system operates as a significant aggravating factor. He signed for at least one certified letter and spoke to the OAE about his R. 1:20-20 obligation. Yet, he chose to ignore his obligation to respond to those demands for information. As in Kozłowski, respondent has shown a "repeated indifference toward the ethics system."

In further aggravation, respondent has allowed this matter to proceed by way of default. "[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).

Further, in crafting the appropriate quantum of discipline, we also weigh, in aggravation, respondent's failure to learn from his past mistakes. The Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such situations, enhanced discipline is appropriate. See In

re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system). This is respondent's third default out of five disciplinary matters that have been before us.

Therefore, in accordance with Kozlowski, Kivler, and Kantor, and the principles of progressive discipline, we determine that a three-year suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Vice-Chair Gallipoli and Members Petrou, Singer, and Zmirich voted to recommend to the Court respondent's disbarment. Vice-Chair Gallipoli 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: 

Johanna Barba Jones  
Chief Counsel

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

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Decided: February 11, 2021

Disposition: Three-Year Suspension

<i>Members</i>	Three-Year Suspension	Disbar	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman	X			
Joseph	X			
Petrou		X		
Rivera	X			
Singer		X		
Zmirich		X		
Total:	5	4	0	0



Johanna Barba Jones  
Chief Counsel