Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-271
District Docket No. XIV-2019-0446E

In the Matter of	:
Susan A. Lowden	:
An Attorney at Law	:

Decision

Decided: July 13, 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 (the 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) and RPC 8.4(d) (conduct prejudicial to the administration of justice).[1]

For the reasons set forth below, we determine to recommend to the Court that respondent be disbarred.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1991.

In 2014, respondent received a reprimand for gross neglect (RPC 1.1(a)); lack of diligence (RPC 1.3); failure to communicate with a client (RPC 1.4(b)); failure to set forth in writing the basis or rate of the fee (RPC 1.5(b)); failure to cooperate with disciplinary authorities; and misrepresentation to her client (RPC 8.4(c)). Respondent also was directed to complete a course in law office management within ninety days of the date of the Court's disciplinary Order, and to provide the OAE with proof that she did so. In re Lowden, 219 N.J. 129 (2014).

On September 21, 2016, respondent received a censure for gross neglect; lack of diligence; failure to communicate with a client; and misrepresentation. In re Lowden, 226 N.J. 586 (2016).

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

On April 12, 2019, the Court temporarily suspended respondent from the practice of law for failure to comply with a Fee Arbitration Committee (FAC) determination that required her to pay $3,000 to a former client. In re Lowden, 237 N.J. 211 (2019). On November 25, 2019, the Court again temporarily suspended respondent for failure to comply with a second FAC determination requiring her to pay $14,413 to a different former client. In re Lowden, 240 N.J. 101 (2019).

On March 26, 2020, in a single-client default matter, the Court suspended respondent for six months for gross neglect; lack of diligence; failure to communicate with a client; failure to set forth in writing the basis or rate of the fee; failure to cooperate with disciplinary authorities; and multiple misrepresentations to the client. In re Lowden, 241 N.J. 495 (2020).

Most recently, on November 19, 2020, we recommended a two-year suspension for respondent in two default matters. In each of those consolidated matters, we determined that respondent committed gross neglect; lack of diligence; failure to communicate with a client; failure to cooperate with disciplinary authorities; and conduct involving dishonesty, fraud, deceit or misrepresentation. In the Matter of Susan A. Lowden, DRB 19-450 and DRB 19-473 (November 19, 2020) (slip op. at 10). Additionally, in DRB 19-473, we

determined that respondent failed to set forth in writing the basis or rate of the fee. Ibid.

In recommending a two-year suspension, we remarked that, by defaulting again, respondent reaffirmed her sheer disdain for her own clients, whom she has harmed since 2001. We characterized respondent as a clear danger to the public. Id. at 15. In re Lowden, 244 N.J. 510 (2020).

On December 17, 2020, the Office of Board Counsel docketed yet another default matter in which the District IV Ethics Committee alleged that, in one client matter, respondent committed gross neglect; lack of diligence; failure to communicate with a client; failure to cooperate with disciplinary authorities; and conduct involving dishonesty, fraud, deceit or misrepresentation.

Respondent remains suspended to date.

Service of process was proper. On May 28, 2020, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office and home addresses of record. The certified receipts for the letters were returned to the OAE confirming delivery dates of June 4 and 11, 2020, respectively. "SL" signed for both certified letters. The letter sent to respondent's office address by regular mail was returned marked as "FORWARD TIME EXP" and provided

a forwarding address to respondent's home. The letter sent by regular mail to respondent's home was not returned.

On July 7, 2020, the OAE sent a second letter, by certified and regular mail, to respondent's home address, informing her that, unless she 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). Neither letter was returned to the OAE and tracking for the certified letter shows that it was left with an individual at the address.

As of September 15, 2020, respondent had not filed an answer to the complaint, and the time within which she 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.

As detailed above, effective April 12, 2019, the Court temporarily suspended respondent from the practice of law in New Jersey for her failure to comply with a FAC determination. Subsequently, effective November 25, 2019, the Court temporarily suspended respondent from the practice of law for her failure to comply with another FAC determination. Effective March 26, 2020,

the Court suspended respondent from the practice of law in New Jersey for six months for her misconduct in a single-client matter that proceeded before us and the Court by way of default. Respondent has not applied for reinstatement to the practice of law and remains suspended.

Pursuant to the Court's Orders of March 13 and October 25, 2019, and of March 26, 2020, respondent 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." Respondent failed to do so.

On September 23, 2019, the OAE sent respondent a letter, by certified and regular mail, to her office and home addresses, reminding her of her responsibility to file the affidavit pursuant to R. 1:20-20, and requesting a reply by October 7, 2019. The return receipt for the certified mail sent to respondent's home address was returned to the OAE with a delivery date of September 25, 2019 and bearing an illegible signature. The regular mail to respondent's home address was not returned. The certified letter to respondent's office address was

returned to the OAE marked "Not Deliverable as Addressed Unable to Forward." The envelope was stamped "Return to Sender, Unclaimed, refused." The regular mail sent to her office address was not returned. Respondent neither answered the letter nor filed the required affidavit.

In its September 8, 2020 brief, the OAE urged us to impose a three-month suspension, asserting that the minimum sanction for an attorney's failure to file a R. 1:20-20 affidavit is a reprimand. In re Girdler, 179 N.J. 227 (2004). The OAE cited three aggravating factors that subject respondent to greater discipline: her failure to reply to the OAE's specific request to file the affidavit; her disciplinary history; and the default status of the instant matter.

We find that the facts recited in the formal ethics complaint support all the charges of unethical conduct. Respondent's failure to file a verified answer to the complaint 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).

R. 1:20-20(b)(15) requires a suspended attorney, within thirty days of an 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 [O]rder." 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). Here, respondent willfully violated the Court's Orders and failed to take the steps required of all suspended attorneys, in violation of RPC 8.1(b), RPC 8.4(d), and R. 1:20-20. Moreover, respondent again violated RPC 8.1(b) by failing to file an answer to the complaint.

In sum, we find that respondent violated RPC 8.1(b) (two instances), RPC 8.4(d), and R. 1:20-20. The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

As the OAE asserted, the threshold measure of discipline to be 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 extent of the attorney's disciplinary history; the attorney's failure to follow through on his or her promise to the OAE that

the affidavit would be forthcoming; and the attorney's failure to respond to the OAE's specific request that the affidavit be filed. 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 private reprimand, and a three-month suspension in a default matter.

Since Girdler, attorneys who failed to comply with R. 1:20-20 and who have defaulted have received at least a censure. See, e.g. In re Osborne, 234 N.J. 22 (2018) (censure imposed in a default matter on attorney who, following his temporary suspension, failed to file the mandatory R. 1:20-20 affidavit, despite the OAE's specific request that he do so; no prior final discipline); In re Bashir, 232 N.J. 332 (2018) (in a default matter, censure imposed on attorney who failed to file the required R. 1:20-20 affidavit, following a temporary suspension, despite the OAE's specific request that he do so; disciplinary history included three reprimands and an admonition); In re Bolton, 232 N.J. 109 (2018) (in a default matter, censure imposed on attorney who failed to file the R. 1:20-20

affidavit, after a temporary suspension, and despite the OAE's specific request that he do so; no prior final discipline).

Greater discipline, ranging from a short-term to an indefinite suspension, has been imposed in default matters based on the extent of the attorney's ethics history. See, e.g., In re Palfy, 221 N.J. 208 (2015) (three-month suspension for attorney who exhibited a pattern of failure to cooperate with disciplinary and fee arbitration officials; he was twice temporarily suspended for non-compliance with five separate fee arbitration matters and was temporarily suspended for failure to cooperate with an OAE investigation; we determined that the baseline for attorneys who failed to file R. 1:20-20 affidavits, defaulted, and had only temporary suspensions on their record was a censure; discipline was then enhanced because of the attorney's "pattern of obstinacy toward ethics and fee authorities"); In re Rak, 214 N.J. 5 (2013) (three-month suspension; aggravating factors included the attorney's failure to file the affidavit even after the OAE hand-delivered correspondence to his office about his duty to do so, and the fact that it was the attorney's third default matter in three years; he had a prior reprimand and a three-month suspension); In re Swidler, 210 N.J. 612 (2012) (three-month suspension for attorney who failed to file the affidavit after receiving two suspensions and after the OAE had requested that he do so; it was

the attorney's fourth default; ethics history included a reprimand, a three-month suspension, and a six-month suspension); In re Rosanelli, 208 N.J. 359 (2011) (six-month suspension for attorney who failed to file the affidavit after receiving a temporary suspension and a three-month suspension; prior six-month suspension); In re Sharma, 203 N.J. 428 (2010) (six-month suspension; we considered the attorney's failure to comply with the OAE's specific request to file the affidavit, and his ethics history: a reprimand, a censure for misconduct in two default matters, and a three-month suspension); In re Giampapa, 226 N.J. 594 (2016) (one-year suspension imposed on attorney who failed to file the R. 1:20-20 affidavit, despite the OAE's request that he do so and his receipt of two extensions to file the required affidavit; the attorney had an extensive ethics history: two private reprimands, both in 1988; a 2007 admonition; two censures (2008 and 2009); and a 2013 three-month suspension); In re Wargo, 196 N.J. 542 (2008) (one-year suspension for attorney whose ethics history included a temporary suspension for failure to cooperate with the OAE, a censure, and a one-year suspension for misconduct in two combined matters; all of the matters proceeded as defaults); In re Saint-Cyr, 222 N.J. 6 (2015) (two-year suspension; ethics history included a temporary suspension for failure to pay a sanction to the Disciplinary Oversight Committee for failure to comply with a fee

arbitration determination, a censure in a default, and a two-year suspension for conduct in three combined default matters); In re Brekus, 208 N.J. 341 (2011) (two-year suspension; ethics history included an admonition, a reprimand, a censure, and two one-year suspensions, the second suspension was by default) (Brekus I); In re Brekus, 220 N.J. 1 (2014) (three-year suspension, same ethics history as above together with the two-year suspension for failure to file the R. 1:20-20 affidavit) (Brekus II); and In re Swidler, 221 N.J. 62 (2015) (indefinite suspension; ethics history included a reprimand, a temporary suspension for failure to comply with a fee arbitration determination, two three-month suspensions (one for failure to file the R. 1:20-20 affidavit in 2012), and one six-month suspension; the indefinite suspension was imposed to avoid taxing disciplinary authorities with the repetitious filings of complaints for an attorney's continuing failure to file the R. 1:20-20 affidavit).

Like the attorney in Saint-Cyr, respondent failed to file the required affidavit in a default matter, despite a specific request by the OAE that she do so. Moreover, she has an extensive history that includes a demonstrable disregard for the disciplinary system.

It should be noted that, in Saint-Cyr, following our imposition of a one-year suspension, the attorney failed to appear before the Court on the Order

directing her to show cause why she should not be disbarred or otherwise disciplined. Relying on its holding in In re Kivler, 193 N.J. 332 (2008), "that a respondent's unexcused failure to comply with an Order to Show Cause may be a basis for enhanced discipline," the Court enhanced the otherwise recommended discipline to a two-year suspension.

Recently, the Court imposed more severe discipline, based on an attorney's failure to appear. On December 1, 2020, the Court disbarred an attorney who failed to appear on the Order directing him to show cause why he should not be disbarred. In re Whitney, ___ N.J. ___ (2020) (2020 N.J. LEXIS 1384); In the Matter of Thomas J. Whitney DRB 19-296 (May 12, 2020) (slip op. at 35). We had voted to suspend Whitney for two years for his multiple instances of gross neglect; lack of diligence; failure to communicate with clients; failure to safeguard client property; failure to protect a client's interests upon termination of the representation; failure to expedite litigation; failure to cooperate with disciplinary authorities; and conduct involving dishonesty, fraud, deceit, or misrepresentation. Ibid. The Court again cited its holding in Kivler and disbarred Whitney, who failed to appear before the Court, but had no history of discipline. Id. at 2.

Consistent with Saint-Cyr and Whitney, we consider a two-year suspension to be the baseline discipline for respondent's violations. However, in light of respondent's disregard for her clients and the attorney disciplinary system, we determine that more severe discipline is warranted.

As the Court is aware, in matters where a respondent fails to submit the required R. 1:20-20(b)(15) affidavit, Vice-Chair Gallipoli issues a dissenting decision in which he votes to recommend a respondent's disbarment. He does so not because of a particular respondent's disciplinary record, but because an attorney who fails to comply with an Order of the Court entered in an attorney discipline or fee arbitration matter manifests a disdain for the disciplinary process and the responsibilities attendant to the privilege of being permitted to practice the profession of the law. Here, we have instances of both. Respondent has failed to file an affidavit in accord with three Court Orders and a significant ethics history, including a reprimand; a censure; two temporary suspensions for her failure to comply with FAC determinations; a six-month suspension in a default matter, for misconduct in connection with a client matter, and an additional two-year suspension based on the consolidation of two additional default matters.

In his dissents in these types of cases, Vice-Chair Gallipoli contends that, if the Board were to recommend disbarment in R. 1:20-20 matters, a respondent would be compelled to appear before the Court to explain why he or she has not complied with the Court's Order requiring the filing of the affidavit. Vice-Chair Gallipoli reasons that, by this procedure, the public and a respondent's clients would be protected from the consequences of a respondent's suspension and all attorneys would quickly come to understand and appreciate the importance of compliance with the Court's Orders and the grave potential consequences of non-compliance.

Here, we recommend disbarment, not only for the reasons typically stated by Vice-Chair Gallipoli, but also because of this respondent's egregious ethics history, which demonstrates a repeated and deep disdain for not only the disciplinary system but also for her clients. This respondent has reached a tipping point.

Therefore, to protect the public and to require respondent to appear before the Court or face enhanced discipline, we determine to recommend to the Court that respondent be disbarred.

Member Joseph voted for a two-year suspension.

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

In the Matter of Susan A. Lowden
Docket No. DRB 20-271

Decided: July 13, 2021

Disposition: Disbar

Members	Disbar	Two-Year Suspension
Clark	X	
Gallipoli	X	
Boyer	X	
Hoberman	X	
Joseph		X
Petrou	X	
Rivera	X	
Singer	X	
Zmirich	X	
Total:	8	1

Johanna Barba Jones
Chief Counsel