

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-076
District Docket No. XIV-2020-0162E

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

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Decision

Decided: August 30, 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) (two instances

– 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 six-month suspension, consecutive to the three-month suspension we imposed in DRB 21-014.

Respondent earned admission to the New Jersey bar in 1986.

Effective July 22, 2019, the Court declared respondent ineligible to practice law for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

Effective November 6, 2019, the Court temporarily suspended respondent for his failure to cooperate with the OAE's investigation into an overdraft from his attorney trust account, as detailed below. In re Diehl, 240 N.J. 123 (2019). Respondent remains suspended to date.

On August 6, 2020, in another default matter, we imposed a reprimand on respondent for his violation of RPC 8.1(b) – the misconduct underlying his temporary suspension. In that matter, the OAE received notice that respondent was responsible for a \$1,000 overdraft of his attorney trust

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.

account, opened an investigation, and directed respondent to explain the overdraft and to produce financial records. Respondent confirmed receiving the OAE's correspondence at his billing address but claimed that he was unable to respond due to personal and emotional issues. Respondent further asserted that he had ceased the practice of law and closed his Watchung office.

In light of respondent's continuing failure to cooperate, the OAE filed a motion seeking his immediate temporary suspension, which the Court granted. In re Diehl, 240 N.J. 123. Although we accorded respondent's unblemished disciplinary record mitigating weight, we found that the aggravating factors outweighed the mitigation. In the Matter of Glen M. Diehl, DRB 19-384 (August 6, 2020).

Finally, at our April 15, 2021 session, we reviewed respondent's second default matter (DRB 21-014) and determined to impose a three-month suspension for his violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with a client); RPC 1.16(d) (failure to protect the client's interests upon termination of the representation); and RPC 8.1(b) (two instances). In the Matter of Glen M. Diehl, DRB 21-014 (August 19, 2021).

In that matter, respondent was retained to defend his clients against a foreclosure action by a developer and to pursue a counterclaim against the developer. Respondent sent to counsel for the developer a settlement offer and cautioned that, if the parties were unable to settle, he would commence litigation against the developer on behalf of his clients.

The parties did not settle, and respondent filed a motion to set aside a default judgment that had been entered in favor of the developer in the foreclosure action. Later, the parties informed the court that the foreclosure action had been “amicably adjusted” and the court dismissed the matter, without prejudice. However, the clients still intended to pursue their counterclaim against the developer. Thus, respondent wrote to counsel for the developer, enclosing a draft complaint and stating that his clients would settle their claims against the developer for \$195,000. Thereafter, respondent ceased communication with his clients; did not file the draft complaint; took no action to advance his clients’ interests; and did not provide the clients’ file to their new counsel.

Following the filing of an ethics grievance against respondent, the district ethics committee (the DEC) was unable to serve respondent at his two known law office addresses. Respondent ultimately was served at his

home address but failed to reply to the grievance. Despite the DEC's subsequent letters to respondent reminding him of his obligation to cooperate with its pending investigation, respondent failed to reply to the grievance.

We found no mitigating factors to consider and, in aggravation, emphasized that the matter represented respondent's second consecutive default.

In the instant matter, service of process was proper. On December 22, 2020, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address of record, in Watchung, New Jersey, his billing address of record in Warren, New Jersey, and his home address of record. On January 16, 2021, the certified mail was delivered to respondent; the regular mail was not returned.

The certified letter the OAE sent to respondent's billing address was returned to the OAE marked "UNCLAIMED;" the regular mail was not returned. Neither the certified nor the regular mail the OAE sent to respondent's office address were returned to the OAE. United States Postal Service (USPS) tracking indicated that the certified letter was left at the office address on December 29, 2020.

On February 9, 2021, the OAE sent a letter to respondent, by certified mail and regular mail, to the same three addresses detailed above, 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 directly to us for the imposition of discipline, and the complaint would be amended to include a willful violation of RPC 8.1(b). The certified mail sent to respondent's home address was delivered on February 26, 2021 but the signature on the return receipt card is illegible; the regular mail was not returned to the OAE.

The regular mail that the OAE sent to respondent's billing address was not returned. The OAE received a certified mail return receipt indicating delivery on February 29, 2021; the signature line stated "COVID 19." Neither the certified nor the regular mail the OAE sent to respondent's office address were returned to the OAE. USPS tracking indicated that the certified letter was left at the office address on February 20, 2021.

As of March 30, 2021, 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 noted that the Court’s November 6, 2019 Order temporarily suspending respondent required him to comply with R. 1:20-20, which requires, 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 file the affidavit.

On June 11, 2020, the OAE sent a letter to respondent, by certified and regular mail, to his home, office, and billing addresses, informing him of his responsibility to file the affidavit. Neither the regular nor the certified letters sent to respondent’s home address were returned to the OAE. USPS tracking for the certified letter indicated delivery to an individual on June 19, 2020. The certified letter that the OAE sent to respondent’s office address was returned marked “Unclaimed.” The regular mail sent to the office address was not returned to the OAE. USPS tracking for the certified mail the OAE sent to respondent’s billing address indicates that it was “Delivered to Agent for Final Delivery” on June 17, 2020. The certified mail was not returned to the OAE.

The letter the OAE sent by regular mail to respondent's billing address was returned to the OAE as "Not Deliverable As Addressed Unable to Forward."

On September 29, 2020, the OAE sent a second letter to respondent, at his home, office, and billing addresses, advising him that his failure to file a conforming affidavit on or before October 13, 2020 may result in a disciplinary complaint being filed against him and may also preclude consideration of any application for reinstatement for up to six months. The OAE also enclosed a copy of R. 1:20-20 and copies of its past letters.

The OAE did not receive any returned mail or certified mail receipts for the letters sent to respondent's three addresses of record. USPS tracking for the letters indicates that the certified letter to respondent's home address was "Delivered, Left with Individual," the letter to respondent's office address was marked "Notice Left (No Authorized Recipient Available)," and the letter to respondent's billing address was "Unclaimed – Being Returned to Sender."

To date, respondent has not filed the required affidavit. Based on the above facts, the complaint alleged that respondent had willfully violated the Court's Order and failed to take the steps required of all suspended or disbarred attorneys, including notifying clients and adversaries of his suspension and providing his clients with their files. Accordingly, the complaint charged

violations of RPC 8.1(b) and RPC 8.4(d). The OAE argued that respondent should receive a censure for his unethical conduct.

We find that the facts recited in the complaint support all the charges of unethical conduct. Respondent's failure to file an 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. See R. 1:20-4(f)(1).

Specifically, R. 1:20-20(b)(15) requires a suspended attorney, within thirty days of the Order of suspension, to "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." 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. Moreover, the attorney is 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).

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. 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.

Since Girdler, the discipline imposed in default cases on attorneys who have failed to comply with R. 1:20-20 and who have defaulted has ranged from a censure to a lengthy or an indefinite suspension, based on the extent of the attorney's ethics history. See, e.g., In re Stasiuk, 235 N.J. 327 (2018) (attorney failed to file the affidavit after the Court had temporarily suspended him for failure to comply with the Court's order imposing a censure, which also required him to return a client's fee; he also ignored the OAE's request that he do so); 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 toward 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 regarding his need to file the required R. 1:20-20 affidavit, yet he chose to ignore his obligation to comply with the Rule. As in Kozlowski, 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 time before us, and he has defaulted in each matter. Respondent remains suspended due to his failure to comply with the Court's November 6, 2019 Order and has yet to comply with the requirement to file a R. 1:20-20 affidavit.

Therefore, in accordance with Kivler, Kantor, and the principles of progressive discipline, we determine that a six-month suspension, consecutive to the three-month suspension imposed in DRB 21-014, is the quantum of discipline necessary to protect the public and preserve confidence in the bar. We further require respondent to submit the R. 1:20-20(b)(15) affidavit prior to filing a petition for reinstatement.

Chair Gallipoli voted to recommend to the Court that respondent be disbarred and wrote a 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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: 

Johanna Barba Jones
Chief Counsel

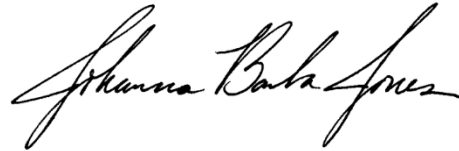
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Glen M. Diehl
Docket No. DRB 21-076

Decided: August 30, 2021

Disposition: Six-Month Suspension

<i>Members</i>	Six-Month Suspension	Disbar	Absent
Gallipoli		X	
Singer	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph	X		
Petrou	X		
Menaker	X		
Rivera			X
Total:	7	1	1



Johanna Barba Jones
Chief Counsel