

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-181
District Docket No. XIV-2020-0443E

In the Matter of :
 :
Marc A. Spielberg :
 :
An Attorney at Law :
 :
 :
 :

Decision

Decided: January 21, 2022

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) and RPC 8.4(d) (conduct

prejudicial to the administration of justice).¹

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

Respondent was admitted to the New Jersey bar in 1976. Until May 2017, when he relocated to Nevada, he maintained a practice of law in Barnegat Light, New Jersey. According to Court records, respondent is not admitted in Nevada or any other state.

Effective November 5, 2018, the Court declared respondent ineligible to practice law for his failure to comply with New Jersey continuing legal education requirements.

Effective September 10, 2020, the Court temporarily suspended respondent for his failure to cooperate with the OAE's investigation of his recordkeeping and trust account practices. In re Spielberg, 243 N.J. 545 (2020).

The OAE ultimately completed that investigation and filed a complaint in that matter, notwithstanding respondent's noncooperation. On October 4, 2021, we transmitted to the Court a decision in that matter, which proceeded as a default, imposing a reprimand for respondent's violations of RPC 1.4(b) (failure to communicate with a client); RPC 1.15(b) (failure to promptly deliver to the client or third person any funds the client or third person is entitled to receive);

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.

RPC 1.15(d) (failure to comply with the recordkeeping provisions of R. 1:21-6); and RPC 8.1(b) (two instances) – the misconduct underlying his temporary suspension.

In that matter, respondent committed serious recordkeeping errors before he, essentially, “retired,” in May 2017, without filing a certification of retirement with the New Jersey Lawyers’ Fund for Client Protection (the CPF).² At the time he closed his practice, however, respondent still held \$42,213.90 in client funds in his attorney trust account. Compounding matters, respondent not only failed to communicate with his clients, fellow attorneys, and disciplinary authorities regarding the outstanding client funds, but he also failed to disburse client funds in a real estate transaction until more than sixteen months after closing. In the Matter of Marc A. Spielberg, DRB 21-089 (October 4, 2021). Our decision remains pending with the Court.

Service of process was proper. On June 15, 2021, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent’s Nevada address of record with the Court, as well as another Nevada address

² Pursuant to R. 1:28-2(b), an attorney may request an exemption from payment to the CPF by submitting a certification of retirement indicating that he or she is “retired completely from the practice of law.”

respondent had provided to the OAE.³ The certified mail was delivered to both addresses on June 24, 2021, with an illegible signature on the return receipts. The regular mail was not returned.

On August 3, 2021, the OAE sent a second letter to respondent's Nevada addresses, by certified and regular mail, 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). According to the United States Postal Service tracking page, the certified mail was delivered to both addresses on August 9, 2021; however, the return receipts were not returned to the OAE. The regular mail was not returned.

As of August 18, 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.

³ Respondent was obligated to update his address in Court records. R. 1:20-1 (c) (“any change in the home address and the address of the primary law office as required by Rule 1:21-1(a), as well as the main law office telephone number previously submitted and the financial institution or the account numbers for the primary trust and business accounts, either prior to such change or within thirty days thereafter”).

On September 27, 2021, Chief Counsel to the Board sent respondent a letter, at the Nevada address he had provided to the OAE, by certified, regular, and electronic mail, informing him that we were scheduled to consider his matter on November 18, 2021, and that he must file any motion to vacate the default by October 12, 2021. Delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server.

On October 5, 2021, the undated certified mail receipt returned to the Office of Board Counsel (OBC) with an illegible signature. The regular mail was not returned.

Meanwhile, on October 4, 2021, the OBC published a Notice to the Bar in the New Jersey Law Journal, stating that a hearing was scheduled before us on November 18, 2021 and that, unless respondent filed a motion to vacate the default by October 12, 2021, his failure to answer would be deemed an admission of the allegations of the complaint.

We now turn to the allegations of the complaint.

As detailed above, on September 10, 2020, the Court temporarily suspended respondent for his failure to cooperate with the OAE's investigation of his recordkeeping and trust account practices. To date, respondent remains temporarily suspended.

Pursuant to the Court's September 10, 2020 Order, 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 January 26, 2021, the OAE sent respondent a letter, by certified and regular mail, to his Nevada address listed in Court records and to his former office address in Barnegat Light, New Jersey, reminding him of his responsibility to file the affidavit and requesting a reply by February 9, 2021. Both the certified and regular mail sent to respondent's Nevada and New Jersey addresses were returned to the OAE marked "RETURN TO SENDER UNABLE TO FORWARD." On February 5, 2021, the OAE attempted to call respondent's home telephone number of record; however, the OAE could not leave a message because the number was no longer in service.

On March 5, 2021, the OAE sent respondent, via e-mail, the January 26 letter reminding him of his obligation to file the affidavit. Although the record does not specify whether he replied to the e-mail, it does not appear that he did so.

On April 13, 2021, the OAE twice called a different telephone number associated with respondent. Although an apparent male answered each call, he hung up after the OAE had announced the purpose of the call.

Also on April 13, 2021, following a nationwide records search, the OAE attempted to call respondent at several phone numbers. Although the OAE was unable to speak to respondent, the OAE spoke with his wife concerning his obligation to file the affidavit. Respondent's wife advised the OAE that she would give him the message and confirmed his mailing address. Thereafter, the OAE contacted the property manager for respondent's residential development, who confirmed that mail is delivered daily.

On April 23, 2021, the OAE sent respondent additional copies of its January 26 letter, by certified and regular mail, to the Nevada address he provided to the OAE. The certified mail was delivered on May 1, 2021, with an illegible signature on the return receipt, and the regular mail was not returned.

On April 27, 2021, the OAE sent respondent a second letter, by certified, regular, and electronic mail, to the Nevada address he provided to the OAE, informing him that, unless he filed the required affidavit by May 10, 2021, the OAE could file an ethics complaint against him based on his failure to cooperate. The certified mail was delivered on May 1, 2021, with an illegible signature on

the return receipt. The regular mail was not returned. Respondent neither answered the OAE's numerous communications nor filed the required affidavit.

In an August 18, 2021 memorandum brief, the OAE urged us to impose a censure, correctly 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 two aggravating factors supporting its recommendation that respondent be subjected to greater discipline: (1) his failure to reply to the OAE's specific request to file the affidavit, and (2) the default status of this matter.

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 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 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 from the Director, 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 September 10, 2020 suspension Order and failed to take the steps required of all suspended attorneys, in violation of R. 1:20-20, RPC 8.1(b), and RPC 8.4(d). 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) and RPC 8.4(d). The sole issue left for us to determine 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(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). However, the actual discipline imposed may be different 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 disciplinary history, and the attorney's failure to follow through on his or her commitment 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. Girdler's

disciplinary history consisted of a private reprimand, a reprimand, and a three-month suspension.

Since Girdler, the discipline imposed on attorneys who have failed to comply with R. 1:20-20 and 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 Blaney, 244 N.J. 509 (2021) (censure imposed on attorney who, following his temporary suspension, failed to file the mandatory R. 1:20-20 affidavit, despite the OAE granting an extension to file the affidavit and the OAE's specific request that he do so; prior reprimand in a default matter); In re Philip, 240 N.J. 434 (2020) (censure imposed on attorney who, following her temporary suspension, failed to file the mandatory R. 1:20-20 affidavit, despite the OAE's specific requests to the attorney and her counsel that she do so; prior admonition); In re Rak, 214 N.J. 5 (2013) (three-month suspension; aggravating factors included three default matters against the attorney in three years and the fact that the OAE personally 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; two of the prior defaults were consolidated and resulted in a three-month suspension, the third resulted in a reprimand); 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 disciplinary suspension in 2010, which also proceeded as a default; prior discipline included a six-month suspension).

On August 30, 2021, we transmitted to the Court a decision imposing a six-month suspension, consecutive to the attorney's prior three-month suspension, for the attorney's failure to file a R. 1:20-20(b)(15) affidavit. In the Matter of Glen M. Diehl, DRB 21-076 (August 30, 2021). In that matter, we weighed, in aggravation, the fact that the attorney signed for at least one certified letter regarding his need to file the affidavit, the default status of the matter, and the attorney's two prior default matters, the first of which resulted in a reprimand and the second of which resulted in a three-month suspension. The attorney's prior defaults involved, among other misconduct, his failure to cooperate with disciplinary authorities. Chair Gallipoli voted to recommend to the Court that Diehl be disbarred and issued a dissent. That decision remains pending with the Court.

Here, like the attorneys in Philip and Osborne, respondent, who has a limited disciplinary history, failed to file the required affidavit following a temporary suspension, despite the OAE's specific request that he do so. Compounding matters, he then allowed this matter to proceed as a default. Based on these aggravating circumstances, a censure is the appropriate quantum of discipline to protect the public and preserve confidence in the bar.

Member Joseph voted to impose a reprimand.

Member Menaker voted to impose a three-month suspension.

Chair Gallipoli voted to recommend to the Court that respondent be
disbarred and wrote a dissent.

Member Boyer was absent.

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 Marc A. Spielberg
Docket No. DRB 21-181

Decided: January 21, 2022

Disposition: Censure

<i>Members</i>	Censure	Reprimand	Three-Month Suspension	Disbar	Absent
Gallipoli				X	
Singer	X				
Boyer					X
Campelo	X				
Hoberman	X				
Joseph		X			
Menaker			X		
Petrou	X				
Rivera	X				
Total:	5	1	1	1	1



Johanna Barba Jones
Chief Counsel