

– 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 recommend to the Court that respondent be disbarred.

Respondent earned admission to the New Jersey bar in 2001 and to the Hawaii bar in 2000. He has a significant disciplinary history.

On June 19, 2014, following a motion for discipline by consent, respondent was reprimanded for his violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); and RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information). In re Calpin, 217 N.J. 617 (2014). In that matter, respondent was retained by a client and promptly filed an answer and counterclaim on his behalf. Thereafter, however, respondent failed to respond to discovery requests, which resulted in the court striking his client's answer, dismissing the counterclaim, and entering a final judgment of default against him. Respondent failed to notify his client of the adverse rulings, ultimately resulting in a writ of execution being entered against him.

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 January 24, 2017, respondent received an admonition for his violation of RPC 1.3. In the Matter of Brian LeBon Calpin, DRB 16-287 (January 24, 2017). In that case, respondent agreed to represent a client for a flat fee. Three months later, the client stopped making monthly payments on the fee and ceased communicating with respondent. Respondent's adversary filed a motion to dismiss the client's pleadings and respondent failed to file opposition to the motion. Respondent also failed to appear for the scheduled trial, claiming he had failed to calendar the date.

Due to a miscommunication between respondent's adversary and the judge, the court granted the adversary's motion. Despite learning of the miscommunication, respondent took no action on his client's case. We considered, in aggravation, respondent's prior discipline for an RPC 1.3 violation and emphasized that respondent had a heightened awareness that his lack of diligence would not be tolerated.

Effective January 20, 2020, the Court temporarily suspended respondent for his failure to comply with a fee arbitration determination. In re Calpin, 240 N.J. 216 (2019).²

² The Court has described temporary suspensions imposed pursuant to R. 1:20-3(e) and R. 1:20-15(k) as "seek[ing] to redress . . . blatant disregard of awards entered by the Committee in the exercise of its disciplinary authority as delegated by the Court[.]" In re Saluti, 207 N.J. 509, 516 (2011).

On May 7, 2020, in a default matter, respondent received a one-year disciplinary suspension for his violations of RPC 1.1(a); RPC 1.1(b) (pattern of neglect); RPC 1.3; RPC 1.4(b); RPC 1.9(c) (use of information relating to the representation of a former client to the disadvantage of the client, except when the Rules of Court would permit, or the information is generally known); RPC 1.15(b) (failure to promptly deliver client funds or property); RPC 1.16(d) (failure to protect a client's interests upon termination of representation and to refund the unearned portion of the fee); RPC 8.1(b); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). In re Calpin, 242 N.J. 75 (2020).

In that case, respondent performed little or no work on three matters, and failed to communicate with his clients. Additionally, respondent failed to return the unearned portion of his fees to each client. Respondent also lied to disciplinary authorities regarding his return of the unearned fees. Finally, after a client posted a negative online review of respondent's law practice, respondent retaliated by posting his own negative review of his client's business, thereby disclosing information not generally known to the public.

Effective July 27, 2020, respondent was temporarily suspended, a second time, for his failure to comply with a second fee arbitration determination. In re Calpin, 242 N.J. 528 (2020).

Finally, in September 2021, we transmitted a decision to the Court suspending respondent for eighteen months, to be served consecutive to his one-year suspension, for his violations of RPC 1.3 (two instances); RPC 1.4(b) (two instances); RPC 1.16(d); RPC 8.1(b); and RPC 8.4(d). In the Matter of Brian LeBon Calpin, DRB 21-082 (September 27, 2021).

In that matter, two separate clients retained respondent for representation in family law matters. Both clients paid respondent a retainer fee, in October of 2017 and February of 2018, respectively; thereafter, respondent failed to communicate with both clients and failed perform any work in either matter. Additionally, respondent refused to refund the unearned fees in both matters.

We considered, in aggravation, that the matter was respondent's second consecutive default and fourth time before the us, for many of the same RPC violations for which he had already been disciplined. We also considered that the Court had twice temporarily suspended respondent from the practice of law for his failure to comply with fee arbitration awards. We also were very troubled by respondent's disturbing pattern of disregarding the Court and the disciplinary process, along with his failure to learn from his past mistakes. Thus, in addition to imposing an eighteen-month suspension to be served consecutive to his prior one-year suspension, we determined that, upon reinstatement, respondent be

required to practice law under the supervision of a practicing attorney approved by the OAE for a period of two years. That decision is pending with the Court.

To date, respondent remains suspended pursuant to both of his temporary suspensions and his May 7, 2020 disciplinary suspension.

Service of process was proper. On June 29, 2021, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record. The regular mail was not returned, and the certified mail return receipt was not returned to the OAE. United States Postal Service (USPS) tracking indicated that the certified letter has been "In Transit to Next Facility" since July 7, 2021.

On August 3, 2021, the OAE sent a second letter to respondent, at 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 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 regular mail was not returned to the OAE. As of August 9, 2021, the certified mail was "Available for Pick Up."³

³ According to USPS tracking, on September 10, 2021, the certified mail was returned to the OAE as "Unclaimed."

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.

On September 27, 2021, Chief Counsel to the Board sent a letter, by certified, regular, and e-mail, to respondent's addresses of record, informing him that the matter was scheduled before us on November 18, 2021, and that any motion to vacate must be filed by October 12, 2021. Delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server. The certified mail was returned to the Office of Board Counsel (OBC) as unclaimed. The regular mail was not returned.

Moreover, on October 4, 2021, the OBC published a Notice to the Bar in the New Jersey Law Journal, stating that we would consider this matter on November 18, 2021. The notice informed respondent that, unless he 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. Respondent did not file a motion to vacate the default.

We now turn to the allegations of the complaint.

The complaint alleged that the Court's December 20, 2019, May 7, 2020, and June 25, 2020 Orders 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 required affidavits.

On December 8, 2020, the OAE sent a letter to respondent, by certified and regular mail, to his home and office addresses, informing him of his responsibility to file the affidavit. The certified letter the OAE sent to respondent’s home address was returned to the OAE marked “Unclaimed;” however, the regular mail was not returned. Both letters the OAE sent by certified and regular mail to respondent’s office address were returned to the OAE marked “NOT DELIVERABLE AS ADDRESSED.”

On April 13, 2021, the OAE sent a second letter to respondent, at his home address, advising him that his failure to file a conforming affidavit on or before April 27, 2021 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, as well as its past letters. The certified letter was returned to the OAE marked “UNCLAIMED.” The regular mail was not returned.

To date, respondent has not filed the required affidavits. Based on the

above facts, the complaint alleged that respondent willfully violated the Court's Orders 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). Moreover, the OAE amended the complaint to include a second RPC 8.1(b) violation for respondent's failure to file an answer.

In its submission to us, the OAE cited respondent's 2014 reprimand and 2017 admonition as aggravating factors for us to consider when determining the appropriate quantum of discipline. The OAE was silent as to the one-year suspension respondent received on May 7, 2020, following his first default matter. Additionally, although noting the three separate affidavits respondent failed to file, the OAE's argument focused on his failure to file only one affidavit. Consequently, the OAE argued that, for his unethical conduct, respondent should receive a censure.

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 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 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 courts, tribunals, and adversaries. Moreover, the attorney is required 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 within 30 days of his first suspension, on December 20, 2019, constituted a per se violation of RPC 8.1(b) and RPC 8.4(d). In aggravation, respondent committed two more per se violations by failing to file affidavits within 30 days of his May 7 and June 25, 2020 suspension Orders. 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 remaining for determination 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. 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) (censure for an attorney who failed to file an affidavit after the Court had temporarily suspended and 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 towards the ethics system was found to be beyond forbearance); In re Wright, 240 N.J. 218 (2019) (two-year suspension; extensive disciplinary history consisted of a reprimand; a censure; a six-month suspension; and a one-year suspension; three matters were defaults); 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 re Bernot, 246 N.J. 183 (2021) (three-year suspension; egregious disciplinary history, which consisted of a reprimand, two-year suspension, six-month suspension; three matters were defaults; the attorney spoke with the OAE about his R. 1:20-20 obligation, and signed for at least one certified letter, but still failed to file the required affidavit, which we found to be a significant aggravating factor); and In re Smith, 244 N.J. 191 (2020) (attorney failed to file a R. 1:20-20 affidavit following two Orders suspending him from the practice of law; over an eleven-year period, the attorney received an admonition, two censures, a three-month suspension, and a six-month suspension; we determined

that a two-year suspension was appropriate for the attorney's blatant disregard of the Rules but the Court disagreed and disbarred the attorney, after he failed to appear for the Court's Order to Show Cause).

In our view, respondent's repeated and flagrant disregard for the regulations governing New Jersey attorneys can no longer be countenanced. The Court has ordered respondent, three separate times, to file the R. 1:20-20 affidavit required of suspended attorneys in New Jersey. Yet, respondent has chosen to wholly ignore his obligation to comply with the Rule. He also has failed to comply with the Court's two Orders enforcing fee arbitration determinations. Moreover, in the matter for which he received a one-year suspension, respondent lied to disciplinary authorities. Therefore, respondent's misconduct is worse than the misconduct addressed in Smith, and that attorney ultimately was disbarred.

As in Kozlowski, respondent has shown a "repeated indifference toward the ethics system," not just in this default matter, but in his two prior defaults and by his repeated refusal to obey the Court's Orders.

Furthermore, in crafting the appropriate quantum of discipline, we must 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 fifth time before us since 2014 and third consecutive default.

As the Court is aware, in matters where an attorney fails to submit the required R. 1:20-20(b)(15) affidavit, Chair Gallipoli routinely issues dissenting decisions in which he votes to recommend that attorney's disbarment. He customarily does so not because of a particular attorney's disciplinary record, but, rather, because an attorney who fails to comply with an Order of the Court manifests a disdain for the disciplinary process and the responsibilities attendant to the privilege of being permitted to practice the profession of the law.

In his dissents in these types of cases, Chair Gallipoli contends that, if the Board were to recommend disbarment in R. 1:20-20 matters, an attorney 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. Chair Gallipoli reasons that, by this procedure, the public and an attorney's clients would be protected from the consequences of an attorney'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, in respondent's third consecutive default before us, we recommend disbarment. We are called upon to address respondent's significant disciplinary record and his demonstrated disdain for the Rules governing attorney conduct. As the Court previously has held, "[n]othing in the record inspires confidence that if respondent were to return to practice [from his current suspension] that his conduct would improve. Given his lengthy disciplinary history and the absence of any hope for improvement, we [should] expect that his assault on the Rules of Professional Conduct [will] continue." In re Vincenti, 152 N.J. 253, 254 (1998).


We conclude that respondent has demonstrated himself to be unsalvageable with no prospect for rehabilitation. Therefore, in accordance with Kivler and Kantor and the principles of progressive discipline, we determine to recommend to the Court that respondent be disbarred in order to protect the public and preserve confidence in the bar.

Members Campelo and Joseph voted to impose a two-year suspension, to be served consecutive to respondent's prior one-year suspension and the eighteen-month suspension presently pending before the Court.

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

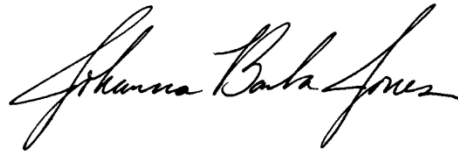
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Brian LeBon Calpin
Docket No. DRB 21-185

Decided: January 25, 2022

Disposition: Disbar

<i>Members</i>	Disbar	Two-Year Consecutive Suspension	Absent
Gallipoli	X		
Singer	X		
Boyer			X
Campelo		X	
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Total:	6	2	1



Johanna Barba Jones
Chief Counsel