

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-219
District Docket No. XIV-2021-0028E

In the Matter of
Thomas Ludwig
An Attorney at Law

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Decision

Decided: February 18, 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 three-month suspension, consecutive to the three-month suspension imposed in connection with DRB 19-413.

Respondent earned admission to the New Jersey bar in 1978 and to the New York bar in 1986. At all relevant times, he maintained a practice of law in Ridgewood, New Jersey.

On April 25, 2018, the Court imposed a reprimand on respondent for his mishandling of an estate matter, during which he violated RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter or to comply with reasonable requests for information), and RPC 8.1(b). In re Ludwig, 233 N.J. 99 (2018) (Ludwig I). The Court's Order required respondent to conclude the estate within ninety days.

Subsequently, respondent was removed as executor of the aforementioned estate, and ordered to refund all executor fees, forego all commissions, and relinquish all of the estate's financial records, but he failed to do so. As a result of the ensuing ethics case, on December 8, 2020, the Court imposed upon

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

respondent a three-month suspension for his violations of RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 8.1(b), and RPC 8.4(d). In re Ludwig, 244 N.J. 412 (2020) (Ludwig II). Respondent's suspension became effective on January 8, 2021, and he remains suspended on that basis.

Service of process was proper. On August 19, 2021, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address. The signature section on the certified mail return receipt noted "Covid-19" and an August 23, 2021 delivery date. The United States Postal Service (the USPS) tracking printout also confirmed that the certified letter was delivered to respondent's home address on August 23, 2021. The letter sent via regular mail was not returned.

On September 20, 2021, the OAE sent a second letter to respondent's home address, by certified and regular mail, informing him that, unless he filed an answer to the complaint within five days of the date of that letter, the allegations of the complaint would be deemed admitted and the record would be certified to us for the imposition of discipline. The signature on the certified mail return receipt contained the signature "Ludwig" and a delivery date of September 23, 2021. The USPS tracking printout also confirmed that the

certified letter was left with an individual at the address on September 23, 2021. The regular mail was not returned.

As of October 4, 2021, respondent had not filed an answer to the formal ethics 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.

Additionally, on November 29, 2021, the Office of Board Counsel (the OBC) published a Notice to the Bar in the New Jersey Law Journal, stating that we would review the matter on January 20, 2022. The notice also informed respondent that, unless he filed a motion to vacate the default by December 13, 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.

As outlined above, the Court's December 10, 2020 disciplinary Order suspended respondent's license to practice law for three months, effective January 8, 2021. He has not applied for reinstatement and remains suspended on that basis.

The Court's December 10, 2020 Order directed respondent to comply with R. 1:20-20, which requires that he "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 [O]rder." Thus, respondent's affidavit was required to be filed by January 10, 2021.

On April 13, 2021, more than three months after the due date, the OAE sent correspondence to respondent at his address of record and home address, reminding him of his responsibility to file the required affidavit, pursuant to R. 1:20-20, and requesting his reply by April 27, 2021. The correspondence sent to respondent's address of record, via certified and regular mail, were returned as "NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." However, the certified mail return receipt for respondent's home address was returned indicating that the letter was delivered on April 20, 2021 and, although the signature is illegible, the printed name clearly reads "T. Ludwig." The regular mail sent to respondent's home address was not returned.

Later, on June 30, 2021, the OAE sent a second letter to respondent's home address, again reminding him of his responsibility to file the required affidavit, pursuant to R. 1:20-20, and extending the time for his reply to July 13, 2021. The certified mail return receipt was returned to the OAE, indicating that the letter was delivered to and signed "Ludwig," on July 6, 2021. The regular mail was not returned.

Respondent failed to file the required affidavit. Consequently, on August 19, 2021, the OAE filed a formal ethics complaint against him for having violated RPC 8.1(b) (two instances) and RPC 8.4(d).

In its October 4, 2021 memorandum to the OBC, the OAE argued that a three-month suspension was the appropriate quantum of discipline for respondent's misconduct, citing applicable disciplinary precedent, which is discussed below.

Following our review of the record, we determine that the facts recited in the formal ethics complaint support all the charged RPC violations by clear and convincing evidence. 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).

Specifically, R. 1:20-20(b)(15) requires a suspended attorney, within thirty days of the 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).

First, respondent violated the Court's December 10, 2020 suspension Order when he failed to file the required affidavit, thus violating RPC 8.1(b) and RPC 8.4(d). Second, after being served with the formal ethics complaint on April 20, 2021, as well as a follow-up letter on July 6, 2021, respondent neither replied to the OAE nor filed an answer to the complaint, again violating RPC 8.1(b).

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 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 attorney's disciplinary history, and the attorney's failure to follow through on his or her commitment to the OAE that the affidavit would be forthcoming.

In Girdler, the attorney received a three-month suspension, in a default matter, for his failure to comply with R. 1:20-20. 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. His disciplinary history

consisted of a prior 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 who have defaulted has ranged from a censure to a lengthy suspension, if they do not have an egregious ethics history. See, e.g., In re Vapnar, ___ N.J. ___ (2022), 2022 N.J. LEXIS 98 (January 31, 2022) (censure; attorney failed to file the required R. 1:20-20 affidavit after he had been suspended for his misconduct in four client matters; he also ignored the OAE's request that he do so; prior one-year suspension for which attorney also failed to file the required affidavit); In re Rak, 214 N.J. 5 (2013) (three-month suspension; attorney failed to file the required R. 1:20-20 affidavit after he had been suspended; 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 personally left additional copies of its previous letters about the affidavit, as well as its contact information, with the attorney's office assistant, after which the attorney still failed to comply); and In re Rosanelli, 208 N.J. 359 (2011) (six-month suspension; attorney failed to file the required R. 1:20-20 affidavit after a temporary suspension in 2009 and after a three-month suspension in 2010, which proceeded as a default; prior six-month suspension).

Here, just like the attorneys in Girdler and Vapnar, respondent failed to comply with R. 1:20-20 and, thereafter, defaulted in the subsequent ethics proceedings. Pursuant to Girdler, which incorporates the considerations of In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted) (“[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”), at least a censure is warranted.

However, in our view, this matter presents additional aggravating evidence, requiring more severe discipline than the censure that the Court imposed in Vapnar. Specifically, this matter represents respondent’s third disciplinary proceeding in five years. As outlined above, respondent was the subject of disciplinary proceedings which resulted in the Court’s 2018 Order imposing a reprimand (DRB 16-152) (Ludwig I). He participated in those proceedings.² Yet, when he was the subject of subsequent, related disciplinary proceedings, which resulted in the Court’s 2021 Order imposing a three-month suspension, he failed to participate in those proceedings (DRB 19-413) (Ludwig II).

We carefully considered the timeline of those matters and, specifically,

² Respondent appeared at the disciplinary hearing on September 15, 2016, but the Court’s decision issued in 2018.

the proximity in time between Ludwig II his misconduct in the instant matter. Under this chronology, we find that respondent had a heightened awareness of his obligations under the RPCs and, yet, he failed to file an answer in this matter, despite being served with the formal ethics complaint mere months after the Court's disciplinary Order suspending him from the practice of law. Thus, consistent with Girdler and its progeny, enhanced discipline is warranted – from a censure to a three-month suspension. In further aggravation, like the attorneys in Rak and Rosanelli, respondent's disciplinary history includes a suspension.


There is no mitigation to consider.

Accordingly, we determine that New Jersey disciplinary jurisprudence warrants a three-month suspension, and that a censure would not adequately protect the public and preserve confidence in the bar. We further determine that respondent's three-month suspension be imposed consecutive to the three-month suspension we imposed in DRB 19-413.

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

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Docket No. DRB 21-219

Decided: February 18, 2022

Disposition: Three-Month Suspension

<i>Members</i>	Three-Month Suspension	Disbar
Gallipoli		X
Singer	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Total:	8	1



Johanna Barba Jones
Chief Counsel