

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 21-248  
District Docket No. XIV-2021-0101E

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In the Matter of  
Michele S. Austin  
An Attorney at Law

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Decision

Decided: February 25, 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).<sup>1</sup>

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

Respondent earned admission to the New Jersey bar in 2009. She has no prior discipline. During the relevant times, she maintained a law firm, Austin & Stein, located in Hackensack, New Jersey.

Effective November 21, 2016, the Court declared respondent administratively ineligible to practice law in New Jersey for failure to comply with continuing legal education requirements.

Effective August 28, 2017, the Court declared respondent administratively ineligible to practice law in New Jersey for failure to pay her annual assessment to the Lawyers' Fund for Client Protection (the Fund).

Effective March 11, 2021, the Court temporarily suspended respondent for her failure to cooperate in the OAE's investigation underlying DRB 21-191 and restrained all disbursements from her attorney bank accounts. In re Austin, 245 N.J. 383 (2021).

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<sup>1</sup> 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.

Effective May 24, 2021, the Court again temporarily suspended respondent for her failure to comply with a District IIIB Fee Arbitration Committee determination that she refund \$2,500 to a client. In re Austin, \_\_\_ N.J. \_\_\_ (2021); In the Matter of Michele S. Austin, DRB 21-023 (March 24, 2021).

To date, respondent remains administratively ineligible, in both respects, and temporarily suspended, in both respects.

Service of process was proper. On September 16, 2021, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record. The certified mail receipt was returned to the OAE, signed by respondent, and indicating delivery on September 21, 2021.

On October 21, 2021, the OAE sent a second letter to respondent, by certified and regular mail, to her same 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). The certified mail receipt was returned to the OAE, with an illegible signature, and indicated delivery on November 5, 2021. The United States

Postal Service (the USPS) tracking indicated that the certified mail was delivered to an individual at the address on November 5, 2021.

As of November 16, 2021, 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.

Moreover, on December 20, 2021, the Office of Board Counsel published a Notice to the Bar in the New Jersey Law Journal, stating that we would review this matter on February 17, 2022. The notice informed respondent that, unless she filed a motion to vacate the default by January 11, 2022, her 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 detailed above, by Orders effective March 11 and May 24, 2021, the Court temporarily suspended respondent. To date, she remains temporarily suspended.

The Court's Orders directed respondent to comply with R. 1:20-20, governing suspended attorneys, which requires, among other things, that the attorney "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 May 4, 2021, the OAE sent respondent a letter, by certified and regular mail, to her home, office, and service addresses listed with the Fund, reminding her of her responsibility to file the affidavit, and requesting a reply by May 18, 2021. The USPS returned both the certified and regular mail sent to respondent's home address to the OAE marked "not deliverable as addressed – unable to forward." The USPS also returned the certified and regular mail sent to respondent's office address. The certified mail was marked "unclaimed," and the regular mail was marked "not deliverable as addressed – unable to forward."

On May 12, 2021, the OAE attempted to call respondent at her office telephone number, however, the number was not in service. The OAE then left a message on respondent's home voicemail, which announced "you have reached Michele Austin," concerning her obligation to file the required R. 1:20-20 affidavit. Respondent failed to reply.

On June 24, 2021, the OAE forwarded the May 4, 2021 letter to respondent via her e-mail address of record.

As of July 13, 2021, neither the certified mail receipt nor regular mail sent to respondent's service address of record with the Court had been returned

by the USPS. The OAE investigated the tracking status and found that as of May 24, 2021, the letter was “in transit to the next facility.” The OAE spoke to USPS personnel, who advised that respondent had an active change of address on file, and that the USPS scanning system would have automatically routed the mail to the new address, instead of returning the mail to the OAE.

After a nationwide records search, the OAE obtained respondent’s new home address and, on July 14, 2021, sent another letter to respondent, by certified and regular mail, informing her of the obligation to file the affidavit and requesting that she reply to the letter by July 28, 2021. On July 29, 2021, the OAE received the certified mail receipt signed “COD 19;” the regular mail was not returned to the OAE. Respondent failed to reply.

On August 3, 2021, the OAE left a message on respondent’s home voicemail concerning her obligation to file the affidavit. On August 11, 2021, in a final attempt to contact respondent, the OAE left another message on her home voicemail, providing the OAE’s facsimile number and e-mail address, and notifying respondent that a complaint would be filed for failure to cooperate with the OAE’s demands. As of the date of the complaint, September 14, 2021, respondent had failed to file the affidavit.

Based on the foregoing, the OAE charged respondent with having willfully violated the Court’s Orders by failing to file the required affidavits

and failing to take the steps required of all suspended or disbarred attorneys. Specifically, the OAE charged respondent with having violated RPC 8.1(b) (two instances) and RPC 8.4(d).

In its November 16, 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 required R. 1:20-20 affidavit is a reprimand. In re Girdler, 179 N.J. 227 (2004). The OAE emphasized two aggravating factors subjecting respondent to greater discipline: (1) her failure to reply to the OAE's specific requests that she file the affidavit, and (2) her failure to answer the complaint.

Following our review of the record, we determine that the facts recited in the formal ethics complaint support all the charges of unethical conduct. Respondent's failure to file an answer 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 Court's 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." 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 March 11 and May 24, 2011 temporary suspension Orders, and failed to take the steps required of all suspended attorneys, in violation of R. 1:20-20 and, consequently, RPC 8.1(b) and RPC 8.4(d). Moreover, respondent violated RPC 8.1(b) a second time by failing to file an answer to the formal ethics 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 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 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. 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. In further aggravation, we also noted that it was Girdler's third default.

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 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 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 Osborne, 234 N.J. 22 (2018) (censure imposed 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) (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; prior discipline included three reprimands and an admonition); In re Bolton, 232 N.J. 109 (2018) (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; prior discipline included a censure, in a default matter); In re Rak, 214 N.J. 5 (2013) (three-month suspension; aggravating factors included three default matters against the attorney in three years and that 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; 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 proceeded as a default; prior six-month suspension).

We recently decided another matter addressing an attorney's failure to file a R. 1:20-20(b)(15) affidavit. The attorney, who had no prior final

discipline, also allowed the matter to proceed as a default. Seven Members voted to impose a censure, Member Menaker voted to impose a three-month suspension, and Chair Gallipoli voted for disbarment. In the Matter of George R. Saponaro, DRB 21-132 (November 30, 2021). That matter remains pending with the Court.

Similar to this matter, in an earlier case this year concerning that attorney, the Board decided to suspend him for one year, for various misconduct. In the Matter of George R. Saponaro, DRB 20-207 (April 1, 2021). However, because that decision remained pending with the Court at the time the second Saponaro matter, cited here, was before us, that discipline was not yet final, and, thus, was not considered in aggravation. We applied the same analysis to this matter. On January 4, 2022, the Court endorsed our one-year suspension determination. In re Saponaro, \_\_ N.J. \_\_ (2022).

In the instant matter, the OAE cited to Girdler and three additional cases: In re Vreeland, 221 N.J. 206 (2015), In re Saint-Cyr, 210 N.J. 254 (2012), and In re Fox, 210 N.J. 255 (2012), to support its position that we impose a censure. In all three of the matters cited by the OAE, censures were imposed, despite the attorneys' lack of any disciplinary history, based on the determination that the attorneys failed to file their required affidavits

following temporary suspensions, and subsequently defaulted in the disciplinary matters that ensued.

Here, like the attorneys in Saponaro, Philip, and Osborne, respondent has no prior final discipline. However, respondent does have a pending one-year suspension determination we simultaneously have transmitted to the Court in DRB 21-191 this same date. Like those other respondents, respondent has failed to file the required affidavit following her temporary suspensions, despite the OAE's specific requests that she do so. She then allowed this matter to proceed as a default. Considering the timing of her pending discipline and this matter, the principles of progressive discipline are not yet applicable to our analysis.

Thus, we determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Additionally, this case presents us the opportunity to clearly address, for the benefit of the bar and the public, specific concepts which we believe apply to R. 1:20-20 affidavit cases such as these. As the Court and the bar are aware, in scenarios where an attorney's misconduct warrants no additional discipline, we will impose such an outcome and provide a relevant timeline and rationale supporting the same. However, it is our position that such an outcome should rarely, if ever, be imposed in connection with an attorney's failure to file the


required R. 1:20-20, affidavit, which is a fundamental obligation of a suspended attorney, and is a specific Order of the Court in every such case. The Rule as drafted, along with the Court's ensuing Order, are specifically tuned to the protective purpose of the disciplinary system. Accordingly, we express that position – that we will almost invariably apply additional discipline for a R. 1:20-20 violation proven by clear and convincing evidence – and we apply that position here rather than consolidating this matter with the one-year suspension imposed in DRB 21-191.

Chair Gallipoli conceptually agreed that additional discipline should almost invariably result from an attorney's failure to adhere to the protective requirements of R. 1:20-20 but voted for disbarment and wrote a separate dissent.

Member Hoberman 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 Michele S. Austin  
Docket No. DRB 21-248

Decided: February 25, 2022

Disposition: Censure

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



Johanna Barba Jones  
Chief Counsel