

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-132
District Docket No. XIV-2020-0370E

In the Matter of
George R. Saponaro
An Attorney at Law

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Corrected Decision

Decided: November 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) 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 and Maryland bars in 1995. At the relevant times, he maintained an office for the practice of law in Mount Holly, New Jersey.

On January 6, 2020, the Court temporarily suspended respondent for his failure to comply with a District IIIB Fee Arbitration Committee (FAC) determination, which ordered him to refund his entire \$2,000 retainer to his client, P.D. In re Saponaro, 240 N.J. 214 (2019). He remains temporarily suspended.

We recently transmitted to the Court a decision suspending respondent for one year for two instances each of gross neglect, lack of diligence, and failure to communicate with the client (RPC 1.1(a), RPC 1.3, and RPC 1.4(b), respectively); one instance of failure to set forth, in writing, the basis or rate of the fee (RPC 1.5(b)); three instances of failure to protect a client's interests upon termination of representation (RPC 1.16(d)); and four instances of failure to cooperate with disciplinary authorities (RPC 8.1(b)).

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.

Our decision stemmed from respondent's abandonment of three clients, beginning in 2018. We also ordered respondent to disgorge his entire \$2,000 retainer to his client, Ana Block, and, due to the nature of respondent's sudden abandonment of his clients, to provide proof to the OAE of his fitness to practice law, as attested by a qualified mental health professional approved by the OAE. In the Matter of George R. Saponaro, DRB 20-207 (April 1, 2021). That matter is pending with the Court.

Service of process was proper. On January 27, 2021, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home and office addresses of record. The certified mail to respondent's home address was delivered on February 4, 2021, with the notation "C-19" written on the signature accepting delivery line.² The regular mail was not returned. The certified and regular mail sent to respondent's office address was returned to the OAE as undeliverable.

On March 9, 2021, the OAE sent a second letter to respondent's home and office 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,

² Although the return receipt mistakenly lists February 4, 2020 as the delivery date, the United States Postal Service tracking page correctly lists the delivery date as February 4, 2021.

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).

On March 31, 2021, both the certified and regular mail sent to respondent's office address was returned to the OAE marked "VACANT UNABLE TO FORWARD." The regular mail sent to respondent's home address was not returned to the OAE but, on April 13, 2021, the certified letter sent to respondent's home address was returned to the OAE marked "UNCLAIMED."

As of June 3, 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 July 26, 2021, Chief Counsel to the Board sent a letter to respondent's home address of record, by certified, regular, and electronic mail, informing him that the matter was scheduled before the Board on September 23, 2021, and that any motion to vacate the default must be filed by August 25, 2021. The letter sent to respondent's e-mail address was undeliverable and the certified letter sent to respondent's home address was returned to the Office of Board Counsel (the OBC) as "UNCLAIMED." The regular mail was not returned.

Moreover, on August 2, 2021, the OBC published a Notice to the Bar in the New Jersey Law Journal, stating that the matter would be reviewed by the

Board on September 23, 2021. The notice informed respondent that, unless he filed a motion to vacate the default by August 25, 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 January 6, 2020, the Court temporarily suspended respondent for failing to comply with the FAC's determination ordering him to refund a \$2,000 fee to his client. To date, respondent remains temporarily suspended.

Pursuant to the Court's December 6, 2019 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 October 16, 2020, the OAE sent respondent a letter, by certified and regular mail, to his office and home addresses, reminding him of his responsibility to file the affidavit and requesting a reply by October 30, 2020. The certified mail return receipt for the letter sent to respondent's home was returned to the OAE marked "UNCLAIMED." The regular mail was not

returned. The certified and regular mail letters to respondent's office were returned to the OAE marked "NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD."

On November 25, 2020, the OAE called respondent's office and home telephone numbers of record. Although respondent's office telephone number was no longer in service, respondent answered his home telephone number; the connection was garbled, however, and he could not hear the caller. On December 15, 2020, the OAE again called respondent's home telephone number, but respondent did not answer and the OAE could not leave a message because the voicemail inbox was full. Respondent neither answered the OAE's communications nor filed the required affidavit.

In a June 3, 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 in support of its position that respondent should receive 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.

We find 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 [OAE] 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 December 6, 2019 suspension Order and failed to take the steps required of all suspended attorneys, in violation of RPC 8.1(b), RPC 8.4(d), and R. 1:20-20. 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 the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6), so ordered, 179 N.J. 227 (2004). 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 repeated reminders 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 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 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 Rak, 214 N.J. 5 (2013) (three-month suspension; aggravating

factors included three default matters against the attorney in three years and 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 a three-month disciplinary suspension in 2010, which also proceeded as a default; prior six-month suspension).

In June 2021, we transmitted to the Court a case addressing an attorney's failure to file a R. 1:20-20(b)(15) affidavit where the attorney also defaulted. Four members voted to impose a censure, four members voted to impose a three-month suspension, and one member voted for disbarment. In the Matter of Richard Joseph Vapnar, DRB 20-269 (June 14, 2021). There, the four members who voted for censure observed that, as in Osborne, the attorney failed to file the required affidavit following a suspension, despite a specific request by the OAE that he do so. He then allowed that matter to proceed as a default. The four members who voted for a three-month suspension weighed, in aggravation, the attorney's prior one-year suspension for which he had not filed the required affidavit, and his temporary suspension. Then-Vice-Chair Gallipoli voted to

recommend to the Court that the attorney be disbarred and issued his usual dissent for such cases. That decision remains pending with the Court.


Here, like the attorneys in Philip and Osborne, respondent, who has no prior final discipline, failed to file the required affidavit following his temporary suspension, despite the OAE's specific request that he do so. He then allowed this matter to proceed as a default. Thus, we determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

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.

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 21-132

Decided: November 30, 2021

Disposition: Censure

<i>Members</i>	Censure	Three-Month Suspension	Disbar
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