

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-269
District Docket No. XIV-2019-0303E

In the Matter of
Richard Joseph Vapnar
An Attorney at Law

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Corrected Decision

Decided: June 14, 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

We are unable to reach a consensus on the proper quantum of discipline. Four members vote for a censure; four members vote for a three-month suspension; and one member voted to disbar.

Respondent earned admission to the New Jersey bar in 1999.

On November 17, 2017, respondent received a one-year suspension for his misconduct in four client matters, consisting of four violations of RPC 1.1(a) (gross neglect); one violation of RPC 1.1(b) (pattern of neglect); four violations of RPC 1.3 (lack of diligence); four violations of RPC 1.4(b) (failure to communicate with the client); four violations of RPC 1.4(c) (failure to explain the matter to the extent reasonably necessary to permit the client to make an informed decision regarding the representation); one violation of RPC 3.3(a)(1) (lack of candor toward a tribunal); three violations of RPC 4.1(a)(1) (false statement of material fact or law to a third person); one violation of RPC 8.1(a) (false statement of material fact in a disciplinary matter); and three violations of

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 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).
In re Vapnar, 231 N.J. 161 (2017).

Subsequently, by Order dated February 5, 2019, the Court temporarily suspended respondent, effective March 6, 2019, for his failure to comply with a fee arbitration determination. In re Vapnar, 236 N.J. 552 (2019). He remains suspended in connection with both the temporary and the disciplinary suspensions.

Service of process was proper. On April 30, 2020, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's last known office and home addresses of record. The certified letter sent to respondent's office address was returned to the OAE marked "ATTEMPTED NOT KNOWN" and the regular mail was not returned. As of May 9, 2020, the United States Postal Service (USPS) tracking information for the certified mail sent to respondent's home address indicated a status of "in transit to the next facility" and the regular mail was not returned.

On June 18, 2020, the OAE sent a second letter to respondent's home address, 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 amended to charge a willful violation of RPC 8.1(b). According to USPS tracking for the certified mail, on June 24, 2020, the letter was left with an individual at respondent's home address. Neither the certified nor regular mail were returned.

As of September 15, 2020, 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.

We now turn to the allegations of the complaint.

As detailed above, on November 17, 2017, the Court suspended respondent for one year for his misconduct in four client matters. Subsequently, on March 6, 2019, the Court temporarily suspended respondent for his failure to comply with a fee arbitration determination. To date, respondent has not applied for reinstatement to the practice of law and remains suspended.

Pursuant to the Court's Orders of November 17, 2017 and February 5, 2019, 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 September 23, 2019, 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, pursuant to R. 1:20-20, and requesting a reply by October 7, 2019. The certified mail return receipt for the letter sent to respondent's home was returned to the OAE, indicating delivery on September 29, 2019, and bearing respondent's signature. The regular mail to respondent's home was not returned. On September 26, 2019, according to USPS tracking, the certified letter sent to the office address was received by an individual at the address. The regular mail to respondent's office address was not returned. Respondent neither answered the letter nor filed the required affidavit.

On February 21, 2020, the OAE sent a second letter to respondent, by certified and regular mail, at his office and home addresses, again reminding him of his responsibility to file the affidavit pursuant to R. 1:20-20 and requesting a response on or before March 2, 2020. The certified mail return receipt for the letter sent to respondent's home was returned to the OAE containing an illegible signature and indicating delivery on February 25, 2020. The regular mail was not returned. The certified letter sent to the office address

was returned to the OAE marked “Attempted - Not Known” and the letter sent by regular mail was not returned. Respondent neither answered the letter nor filed the required affidavit.

In a September 8, 2020 brief, the OAE urged us to impose a censure, 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 that subject respondent to greater discipline: his failure to reply to the OAE’s specific request to file the affidavit and the default status of the instant matter.

We find that the facts recited in the complaint support all the charges of unethical conduct. Respondent’s failure to file a verified 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. 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 [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 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 two suspension Orders 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), RPC 8.4(d), and R. 1:20-20. 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; 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. Ibid. 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 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. The attorney'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 Osborne, 234 N.J. 22 (2018) (censure imposed in a default matter 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) (in a default matter, 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) (in a default matter, 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; 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 after a three-month suspension in 2010, which proceeded as a default; prior six-month suspension).


Like the attorneys in Osborne, Bashir, and Bolton, respondent failed to file the required affidavit following a suspension, despite a specific request by the OAE that he do so. He then allowed this matter to proceed as a default. Therefore, Chair Clark and Members Boyer, Joseph, and Singer voted for censure.

Members Hoberman, Petrou, Rivera, and Zmirich voted for a three-month suspension. They weighed, in aggravation, respondent's prior one-year suspension for which he has not filed the required affidavit and his temporary suspension, and, therefore, voted to enhance the quantum of discipline.

Vice-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
Bruce W. Clark, Chair

By: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Censure
Three-Month Suspension

<i>Members</i>	Censure	Three-Month Suspension	Disbar
Clark	X		
Gallipoli			X
Boyer	X		
Hoberman		X	
Joseph	X		
Petrou		X	
Rivera		X	
Singer	X		
Zmirich		X	
Total:	4	4	1



Johanna Barba Jones
Chief Counsel