

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-131
District Docket No. XIV-2020-0371E

In the Matter of
Darryl M. Saunders
An Attorney at Law

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Corrected Decision

Decided: December 13, 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 bar in 1990. At the relevant times, he was a solo practitioner with an office in Elizabeth, New Jersey.

On April 2, 2020, the Court temporarily suspended respondent for his failure to comply with a fee arbitration determination. In re Saunders, 241 N.J. 222 (2020).

On May 24, 2021, the Court again temporarily suspended respondent for his failure to comply with another fee arbitration determination. In re Saunders, ___ N.J. ___ (2021). He remains temporarily suspended in both matters.

On September 15, 2021, the Court suspended respondent for three months, in a default matter, for his violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with a client); RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions); and 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.

Respondent also failed to appear for the Order to Show Cause issued by the Court. In re Saunders, 248 N.J. 272 (2021), 2021 N.J. LEXIS 809.

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 sent to respondent's home address was returned to the OAE marked "UNCLAIMED" and the regular mail was not returned. The certified mail sent to respondent's office address was delivered on February 8, 2021 and the regular mail was not returned.

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, 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).

As of March 12, 2021, the United States Postal Service tracking information indicated that the certified mail sent to respondent's home address was "out for delivery." The regular mail was not returned. The certified mail

sent to respondent's office address was delivered on March 21, 2021 and the regular mail was not returned.²

As of June 4, 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 must be filed by August 25, 2021. Delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server. The certified mail sent to respondent's office address was delivered on August 10, 2021 and the regular mail was not returned.

Moreover, on August 2, 2021, the Office of Board Counsel 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,

² Although the certified mail return receipt was mistakenly addressed to respondent's home address, the receipt notes that the certified mail was correctly delivered to respondent's office address.

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 detailed above, effective April 2, 2020, the Court temporarily suspended respondent for his failure to comply with a fee arbitration determination.

Pursuant to the Court's 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" and the regular mail was not returned. The certified mail sent to respondent's office was delivered on October 23, 2020 and the regular mail was not returned.

On November 25, 2020, the OAE called respondent's home telephone number of record and left a message about the status of the affidavit. On December 10, 2020, the OAE called his office telephone number of record and spoke with respondent, who acknowledged his responsibility to file the affidavit and stated that he would send it, via e-mail, to the OAE. Respondent, however, never filed the required affidavit.

In a June 4, 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 that subject respondent to greater discipline: (1) his failure to comply with the OAE's specific request to file the affidavit, and (2) the default status of this matter.

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 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 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 March 3, 2020 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 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.

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 granting an extension to file the affidavit and 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; 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 the fact that 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 disciplinary suspension in 2010, which 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. 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, Bashir, and Bolton, 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 a dissent. That decision remains pending with the Court.

Here, like the attorneys in Osborne, Bashir, and Bolton, respondent failed to file the required affidavit following a suspension. Additionally, like the attorney in Bashir, respondent failed to follow through on his express commitment to the OAE that he would file the affidavit. Making matters worse, he then allowed this matter to proceed as a default. Based on these aggravating circumstances, we determine that a censure is the appropriate 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: /s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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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

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel