

prejudicial to the administration of justice).¹

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

Respondent earned admission to the New Jersey bar in 1966. At all relevant times, he maintained a practice of law in Maplewood, New Jersey.

On June 2, 2009, respondent was reprimanded for violating RPC 3.2 (failure to treat with courtesy and consideration all persons involved in a legal process) and RPC 8.4(d). In re Ziegler, 199 N.J. 123 (2009). In that matter, respondent wrote a letter to his adversary in a domestic relations matter and accused the adversary's client of being "an unmitigated liar." In the Matter of Joel S. Ziegler, Docket No. DRB 08-344 (April 16, 2009) (slip op. at 6). Then, following a court hearing, he approached the client and exclaimed that, because of her lies, he would "cut [her] up into bits and pieces, put [her in] a box and send [her] back to India and [her] parents won't recognize [her]." Id. at 8. Respondent also threatened to file ethics charges against the adversary solely to intimidate the adversary and the client. Id. at 12-13.

Effective July 6, 2020, the Court suspended respondent for three months for his misconduct in two matters which were consolidated for the purpose 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.

issuing a single form of discipline. In re Ziegler, 242 N.J. 146 (2020); In the Matter of Joel S. Ziegler, Docket Nos. DRB 19-223 and DRB 19-273 (January 29, 2020). In the first matter, DRB 19-223, respondent admitted to violating RPC 1.5(b) (failure to set forth in writing the basis or rate of the fee) and RPC 5.5(a)(1) (unauthorized practice of law).

In the second matter, DRB 19-273, we determined that respondent violated RPC 1.15(a) (commingling funds), RPC 1.15(d) (recordkeeping), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). Specifically, respondent conceded that he failed to conduct three-way reconciliations or maintain receipts and disbursements journals for his attorney trust and business accounts. Further, an OAE demand audit revealed that respondent purposely left earned legal fees in his trust account, in part to avoid the enforcement of a judgment for a debt he owed.

Respondent remains suspended to date.

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/office address of record, as well as an alternative office address² respondent had provided to the OAE during the course of the investigation underlying this matter. The certified and regular mail sent to respondent's home/office address was returned to the OAE marked "not deliverable as addressed." The certified and regular mail sent to respondent's alternative address was not returned to the OAE, and the United States Postal Service (USPS) tracking notation for the certified letter indicated "in transit" on February 4, 2021.

On March 9, 2021, the OAE sent a second letter to respondent, by certified and regular mail, to the same home/office and alternative office addresses, 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). The certified letter sent to respondent's home/office address was

² New Jersey attorneys have an affirmative obligation to inform both the New Jersey Lawyers' Fund for Client Protection and the OAE of changes to their home and primary law office addresses, "either prior to such change or within thirty days thereafter." R. 1:20-1(c). Respondent's official Court record continues to reflect only his home/office address and does not reflect his alternative (or any other) address.

returned to the OAE marked undeliverable, and the letter sent by regular mail was returned marked “refused.” The certified letter sent to respondent’s alternative office address was returned to the OAE as “not deliverable as addressed,” however USPS tracking indicated the March 13, 2021 status as “delivery attempted – no access to delivery location.” The regular mail sent to this address was not returned to the OAE.

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, the Office of Board Counsel (the OBC) sent a letter to respondent’s alternative address, by certified, regular, and electronic mail, informing him that the matter was scheduled before us on September 23, 2021, and that any motion to vacate the default 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. Both letters were returned to the OBC as undeliverable.

Moreover, on August 2, 2021, the OBC published a Notice to the Bar in the New Jersey Law Journal, stating that this 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. Respondent did not file a motion to vacate the default.

We now turn to the allegations of the complaint.

As detailed above, effective July 6, 2020, the Court suspended respondent for three months for his misconduct in two matters. To date, respondent has not applied to the Court for reinstatement and, thus, he remains suspended.

The Court's June 5, 2020 Order obligated respondent 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 home/office and alternative addresses, reminding him of his responsibility to file the affidavit and requesting a reply by October 30, 2020. The regular and certified mail sent to respondent's home/office address as well the alternative office address was returned to the OAE.

On November 16, 2020, the OAE attempted to call respondent at the telephone numbers listed on his letterhead. The numbers were not in service. Following a public records search, the OAE reached respondent at a different telephone number and, satisfied that the phone was, in fact, respondent's personal cell phone, left two voice messages regarding respondent's obligation to file a R. 1:20-20 affidavit.

On November 30, 2020, the OAE forwarded the October 16, 2021 letter, via certified and regular mail, to respondent at another address discovered during the public records search. Neither letter was returned to the OAE.

On December 14, 2020, respondent left a voice message with the OAE, acknowledging his receipt of the OAE's prior voice message regarding his obligation to file the affidavit, but claiming that the volume of the OAE's message was too low. The OAE called respondent back the next day and left another voice message, using louder volume. Respondent neither returned the call nor filed the required affidavit.

In its June 4, 2021 memorandum brief, the OAE urged us to impose a three-month suspension, 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 asserted that three aggravating factors subject

respondent to greater discipline: (1) his failure to reply to the OAE's specific request to file the affidavit; (2) his failure to answer the complaint; and (3) his prior disciplinary history.

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 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 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 June 5, 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 our determination 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 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 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).

We recently transmitted to the Court a default matter 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 J. 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. That decision remains pending with the Court.

A censure, thus, is the baseline level of discipline to be imposed. Guided by the above precedent as applied to the facts of this case, however, we conclude that discipline more severe than a censure would be excessive. Although respondent's disciplinary history includes a three-month suspension for which he failed to file the requisite affidavit, this fact does not necessitate imposition of another term of suspension. In fact, attorneys who received suspensions for similar misconduct had more serious disciplinary histories than respondent. Girdler, for instance, had defaulted on three separate instances, in addition to having a prior three-month suspension and a reprimand; Rak, likewise, had three

prior defaults, one of which had resulted in a three-month suspension; Rosanelli's prior disciplinary history included three and a six-month suspensions; and, most recently, Vapnar had a prior one-year suspension.³

The OAE cited to Girdler and In re Raines, 181 N.J. 537 (2004) to support its position that we impose a three-month suspension. In both of those cases, however, the attorneys had more significant disciplinary histories than respondent, thereby warranting imposition of the enhanced three-month suspension.

To craft the appropriate discipline in this case, we also consider the aggravating and mitigating circumstances. In aggravation, respondent failed to respond to the OAE's numerous requests that the affidavit be filed, despite acknowledging the OAE's voice message regarding his obligation to do so. Making matters worse, he then allowed this matter to proceed by way of default. "[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." In re Kivler, 193 N.J. 332, 243 (2008) (citations omitted).

³ Although Vapnar is pending disposition before the Court, it is mentioned here because four Members determined a three-month suspension was warranted in view of aggravating factors.

There are no mitigating factors to consider.

On balance, although respondent's disciplinary history consists of the three-month suspension for which he has not filed the required affidavit, and a reprimand, 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

In the Matter of Joel S. Ziegler
Docket No. DRB 21-128

Decided: December 6, 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
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