

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-173
District Docket No. XIV-2021-0030E

In the Matter of
Robert James Stack
An Attorney at Law

:
:
:
:
:
:
:
:
:
:

Corrected Decision

Decided: January 20, 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 violations of 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 1996. At the relevant times, he maintained a practice of law in Kinnelon, New Jersey.

On February 25, 2019, respondent received an admonition for his violation of RPC 1.7(a)(2) (concurrent conflict of interest) and RPC 1.9(a) (representing a client whose interests are materially adverse to the interests of a former client, without obtaining the informed, written consent of the former client). In the Matter of Robert James Stack, DRB 18-393 (February 25, 2019).

On November 19, 2020, the Court temporarily suspended respondent for his failure to comply with an OAE investigation. In re Stack, 244 N.J. 326 (2020). He remains temporarily suspended.

Service of process was proper. On May 11, 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. On May 20, 2021, the United States Postal Service (USPS) delivered the certified mail to respondent's home address, however, the return receipt card was not returned to the OAE. The regular mail

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.

was not returned. On May 21, 2021, the USPS delivered the certified mail to respondent's office address. The return receipt card was returned to the OAE undated and unsigned.

On June 16, 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).

The copy of that letter sent to respondent's home address was delivered on June 23, 2021, although the signature on the certified mail return receipt card was illegible. The letter sent to respondent's home address by regular mail was not returned. Neither the certified mail nor the return receipt card for the letter sent to respondent's office address were returned to the OAE, and USPS tracking indicated that, as of June 24, 2021, the certified letter was "awaiting delivery scan." The regular mail sent to respondent's office address was not returned.

As of August 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 September 27, 2021, Chief Counsel sent a letter to respondent at his business address and the two e-mail addresses on record with the Court.² That same day, the Office of Board Counsel (the OBC) received an e-mail from “Olga Garcia,” which read in relevant part:

I was cc on this e-mail. Mr. Stack is deathly ill and has not been able to reply or to any motions or complaints that has been served against him. Please provide me with a contact person to send a medical report. All motions brought against him should be stopped due to his medical condition.

On September 28, 2021, Chief Counsel replied to respondent, by letter, copying Garcia, providing a copy of R. 1:20-12 (“Incapacity and Disability”), and further observing that the disciplinary action would proceed unless and until respondent petitioned the Court to be transferred to disability inactive status.

Finally, on October 4, 2021, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on November 18, 2021. The notice informed respondent that, unless he filed a successful motion to

² New Jersey attorneys have a general obligation to maintain current e-mail addresses with the Court. Notice and Order, “Attorneys Required to Maintain a Current Email Address with the Courts for Billing and Registration Purposes – Relaxation of Court Rules 1:20 and 1:21” (March 28, 2017); Order, “Attorneys to Provide and Maintain a Valid E-Mail Address” (July 18, 2017) (requiring attorneys to “maintain a valid email address at all times, informing the Court of any changes to that email address throughout the course of the year using a form or process determined by the Administrative Director of the Courts, with those attorney email addresses to be used by the Court for the limited purpose of court business, such as annual registration and billing”).

vacate the default by October 12, 2021, his failure to answer would remain deemed an admission of the allegations of the complaint.

Respondent has filed neither a motion to vacate the default nor a motion seeking his transfer to disability inactive status.

We now turn to the allegations of the complaint.

As detailed above, on November 19, 2020, the Court temporarily suspended respondent for his failure to comply with a pending OAE investigation. Pursuant to the Court's November 19, 2020 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 February 16, 2021, 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 requiring a reply by March 2, 2021. The certified mail return receipt card for the letter sent to respondent's home was returned to the OAE with an illegible signature, indicating delivery. The regular mail sent to respondent's home address was not returned. The certified mail

return receipt card for the letter sent to respondent's office was returned to the OAE with an illegible signature.³ The regular mail sent to respondent's office address was not returned.

On March 2, 2021, the OAE contacted respondent's office by telephone and left a voicemail message concerning respondent's obligation to file the R. 1:20-20 affidavit. Respondent's home voicemail was full and, thus, was not accepting new messages.

On March 24, 2021, the OAE again attempted to contact respondent by telephone, at both numbers. The OAE again left a voicemail message at respondent's office telephone number. The OAE stated that the voicemail greeting identified the number as "the law office of Robert J. Stack." The OAE was unable to leave a voicemail message at respondent's home telephone number because the voicemail inbox remained full.

On April 13, 2021, the OAE forwarded to respondent, via his e-mail address of record, a copy of the February 16, 2021 letter. This was the same e-mail address that respondent had used to correspond with the OAE during its investigation of the disciplinary matter.

³ An independent review of the USPS tracking system for the associated certified mail number describes the status of both certified mailings (to respondent's home and office) as "Delivered, Left with Individual," on February 22, 2021.

Respondent neither answered the OAE's communications nor filed the required affidavit. The OAE therefore charged respondent with violations of RPC 8.1(b) and RPC 8.4(d) in a formal disciplinary complaint dated May 11, 2021. Respondent thereafter failed to file an answer to the formal ethics complaint and, thus, the complaint was amended to charge him with a second violation of RPC 8.1(b).

In an August 4, 2021 memorandum brief in support of its certification of default, 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 argument that respondent merited 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.

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 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 November 19, 2020 suspension Order 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 May 11, 2021 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 our determination 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 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 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 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 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).

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, like the attorneys 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.

More recently, in September 2021, we 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.⁴ 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).

Here, like the attorneys who received censures in the cases cited above, respondent, who has a prior admonition, 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, an aggravating factor. In re Kivler, 193 N.J. 332, 342 (2008) ("a respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is

⁴ In an earlier case this year concerning that same respondent, we 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.

sufficient to permit a penalty that would otherwise be appropriate to be further enhanced”).

Based on these 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.


Member Joseph voted to impose a reprimand.

Member Boyer was absent.

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 Robert James Stack
Docket No. DRB 21-173

Decided: January 20, 2022

Disposition: Censure

<i>Members</i>	Censure	Disbar	Three-Month Suspension	Reprimand	Absent
Gallipoli		X			
Singer	X				
Boyer					X
Campelo	X				
Hoberman	X				
Joseph				X	
Menaker			X		
Petrou	X				
Rivera	X				
Total:	5	1	1	1	1



Johanna Barba Jones
Chief Counsel