

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 22-022  
District Docket No. XIV-2021-0215E

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In the Matter of  
William M. Witherspoon  
An Attorney at Law

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Decision

Decided: July 25, 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 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).<sup>1</sup>

For the reasons set forth below, we determine that a censure is the appropriate quantum of discipline for respondent’s misconduct.

Respondent earned admission to the New Jersey and Pennsylvania bars in 1988. During the relevant times, he maintained a practice of law in Lakehurst, New Jersey.

Effective May 24, 2021, the Court temporarily suspended respondent for his failure to comply with a fee arbitration determination. In re Witherspoon, \_\_\_ N.J. \_\_\_ (2021). To date, respondent remains temporarily suspended.

On January 31, 2022, respondent was censured, in another default matter, for his violation of RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with a client); and RPC 8.1(b) (two instances). In re Witherspoon, 249 N.J. 537 (2022) (Witherspoon I). In that matter, in 2017, respondent performed little to no legal work on an estate matter for which he had been retained. Respondent repeatedly failed to reply to his client’s requests for status updates. Ultimately, the client was compelled to retain new counsel to protect her interests. Respondent also failed to cooperate with the OAE’s underlying

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<sup>1</sup> 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.

investigation and failed to file an answer to the ethics complaint. Despite noting respondent's unblemished disciplinary history in thirty years at the bar, we determined that a censure was required, considering the harm respondent's misconduct caused the client, as further aggravated by the default status of the matter. In the Matter of William M. Witherspoon, DRB 20-266 (June 15, 2021) at 8.

Service of process was proper. On December 10, 2021, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home/office and post office box addresses of record,<sup>2</sup> as well as an additional address that the OAE had identified by performing a national records search. The certified mail receipt for the letter sent to respondent's home/office address was returned to the OAE with a handwritten notation stating "Witherspoon Cov 19 MT." Although the certified mail receipt was undated, the United States Postal Service (the USPS) tracking printout confirmed that the certified letter was delivered to respondent's home/office address on December 21, 2021. The letter sent via regular mail was not returned.

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<sup>2</sup> 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 records continue to reflect only the home/office and mailing addresses utilized for service in this matter.

The certified letter sent to respondent's post office box was returned to the OAE marked "unclaimed," although the letter sent regular mail was not returned.

The certified mail receipt for the letter sent to respondent's additional address was returned to the OAE, indicating delivery on December 15, 2021, signed by "Mrs. Witherspoon." The regular mail sent to this address was not returned to the OAE.

On January 19, 2022, the OAE sent a second letter to respondent's home/office, post office box, and additional addresses, by certified and regular mail, informing him that, unless he filed an 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) by reason of his failure to answer.

The certified mail receipt for the letter sent to respondent's home/office address was returned to the OAE with a handwritten notation, stating "Witherspoon Cov 19." Although the certified mail receipt was undated, the USPS tracking printout confirmed that the certified letter was delivered to an individual at this address on January 24, 2022. The letter sent via regular mail was not returned.

Neither the certified letter nor the letter sent via regular mail to respondent's post office box were returned to the OAE. USPS tracking, however, indicated that the certified letter was returned as "unclaimed."

The certified mail receipt for the letter sent to respondent's additional address was returned to the OAE, indicating delivery on January 24, 2022, signed by "D. Witherspoon." The regular mail sent to this address was not returned to the OAE.

As of February 11, 2022, 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 March 7, 2022, the Office of Board Counsel published a Notice to the Bar in the New Jersey Law Journal, stating that we would review the matter on April 21, 2022. The notice informed respondent that, unless he filed a motion to vacate the default by March 17, 2022, 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, the Court temporarily suspended respondent, effective May 24, 2021, for failing to comply with a fee arbitration determination. To date, he remains suspended on that basis.

The Court's April 22, 2021 Order directed respondent to comply with R. 1:20-20, which required, among other obligations, that he, "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 [O]rder." Thus, respondent was required to file his affidavit by May 24, 2021 and failed to do so.

On August 3, 2021, the OAE wrote to respondent at his home/office and mailing addresses of record, reminding him of his responsibility to file the required affidavit, pursuant to R. 1:20-20, and requesting his reply by August 17, 2021. The certified mail receipt for the letter sent to respondent's home/office address was returned to the OAE, undated and signed, although the signature was illegible. The certified mail sent to respondent's mailing address was returned to the OAE, marked "unclaimed."

On September 1, 2021, the OAE left a voice message at respondent's office, reminding him of his obligation to file the R. 1:20-20 affidavit. According to the complaint, respondent's recorded voicemail message stated "this is the law office of William Witherspoon."

The OAE then conducted a nationwide records search to obtain updated contact information for respondent. The search revealed several telephone

numbers and a residential address. On September 14, 2021, the OAE unsuccessfully attempted to contact respondent at the telephone numbers it had discovered via its search. The telephone numbers were either not in service or, in one instance, the resident advised the number did not belong to respondent.

On September 21, 2021, the OAE again wrote to respondent via regular, certified, and electronic mail. The OAE sent this letter to respondent's additional address that was uncovered through its nationwide search. The certified mail was returned to the OAE marked "unclaimed." The regular mail sent to this address was not returned.

As of the date of the complaint, December 9, 2021, respondent had failed to respond to the OAE's letters or to file the required affidavit.

Consequently, the OAE charged respondent with having willfully violated the Court's Order by failing to file the required affidavit, a step required of all suspended or disbarred attorneys. Specifically, the OAE charged respondent with having violated RPC 8.1(b) (two instances) and RPC 8.4(d).

In its February 11, 2022 brief, the OAE urged us to impose a censure, correctly asserting that the minimum sanction for an attorney's failure to file the required R. 1:20-20 affidavit is a reprimand. In re Girdler, 179 N.J. 227 (2004). The OAE emphasized the following aggravating factors subjecting respondent to greater discipline: (1) his failure to file the affidavit; (2) his failure to reply

to the OAE's specific requests that he file the affidavit; (3) his failure to file an answer to the complaint; and (4) his prior censure.

Following our review of the record, we determine that the facts recited in the formal ethics complaint support all the charged RPC violations by clear and convincing evidence. 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).

Specifically, R. 1:20-20(b)(15) requires a suspended attorney, within thirty days of the Court's 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."

As the Appellate Division has noted, "the provisions of R. 1:20-20(b)(1) to (14) are designed to protect clients of the [suspended or] disbarred attorney, as well as any other individuals who might unknowingly seek to retain that attorney during the period of his suspension." Eichen, Levinson & Crutchlow, LLP v. Weiner, 397 N.J. Super. 588, 596 (App. Div. 2008). Non-compliance with R. 1:20-20 therefore obstructs one of the primary purposes of the disciplinary system, "to protect the public from an untrustworthy lawyer." In re Rigolosi, 107 N.J. 192, 206 (1987) ("The purpose of a disciplinary proceeding,



as distinguished from a criminal prosecution, is not so much to punish a wrongdoer as it is to protect the public from an untrustworthy lawyer.” (citing In re Pennica, 36 N.J. 401, 418-19 (1962)). It may also cause “confusion among . . . clients and an administrative burden for the courts.” In re Kramer, 172 N.J. 609, 626 (2002).

For those reasons, and by operation of Rule, in the absence of an extension by the Director of the OAE, 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 April 22, 2021 temporary suspension Order and failed to file the required affidavit, which is required of all suspended attorneys. He, thus, violated 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 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 us to determine 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 the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003) (three-month suspension), 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. 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.

In Girdler, the attorney received a three-month suspension, in a default matter, for his failure to comply with R. 1:20-20. 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. His disciplinary history consisted of a private reprimand (now an admonition), 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 who have defaulted has ranged from a censure to a term of suspension suspension, if they do not have an egregious ethics history. See, e.g., In re Vapnar, 249 N.J. 536 (2022) (censure for attorney who failed to file the required R. 1:20-20 affidavit after he had been suspended for his misconduct in four client matters and, subsequently, temporarily suspended for failing to comply with a fee arbitration determination; he also ignored the OAE's

request that he do so); In re Philip, 240 N.J. 434 (2020) (censure for 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 Rak, 214 N.J. 5 (2013) (three-month suspension; aggravating factors included three default matters against the attorney in three years (two of the defaults were consolidated and resulted in a three-month suspension, the third resulted in a reprimand) and the OAE personally left additional copies of its previous letters about the affidavit, as well as its contact information, with the attorney's office assistant, after which the attorney still did not comply); In re Rosanelli, 208 N.J. 359 (2011) (six-month suspension; attorney 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).

Here, respondent failed to comply with R. 1:20-20 and, thereafter, defaulted in the subsequent ethics proceedings. Pursuant to Girdler, at least a censure is warranted. Girdler, DRB 03-278 at 6; see also In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted) (“a respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced”).

Respondent, like the attorney in Osborne, had no prior final discipline at the time of the instant misconduct. Although we determined to censure respondent on June 15, 2021, in Witherspoon I, the Court did not enter its Order until January 31, 2022, one month after the OAE had filed its complaint in this matter. Accordingly, we determine that the principles of progressive discipline are not applicable to this matter, as we similarly reasoned in two recent default matters. In the Matter of Michele S. Austin, DRB 21-248 (February 25, 2022) (censure for attorney who failed to file the required affidavit following her temporary suspension, despite the OAE's specific requests that she do so; we did not weigh, in aggravation, our pending one-year suspension decision we had simultaneously had transmitted to the Court); In the Matter of George R. Saponaro, DRB 21-132 (November 30, 2021) (censure for attorney who failed to file the required affidavit following his temporary suspension for failing to comply with a fee arbitration determination; we did not weigh, in aggravation, our April 1, 2021 decision to suspend respondent for one year, also in a default matter, for various misconduct, because our decision remained pending before the Court at the time we considered the second matter).

Moreover, disciplinary precedent supports imposition of a censure, even absent our consideration of respondent's prior censure. Specifically, the attorneys in Stasiuk and Bolton were both censured for failing to file their R.

1:20-20 affidavit, notwithstanding prior censures in default matters.

There is no mitigation to consider.


Thus, we determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Chair Gallipoli voted to recommend to the Court that respondent be disbarred and wrote a separate dissent.

Member Joseph was absent.

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 William M. Witherspoon  
Docket No. DRB 22-022

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Decided: July 25, 2022

Disposition: Censure

<i>Members</i>	Censure	Disbar	Absent
Gallipoli		X	
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph			X
Menaker	X		
Petrou	X		
Rivera	X		
Singer	X		
Total:	7	1	1



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Johanna Barba Jones  
Chief Counsel