Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-023
District Docket No. XIV-2018-0238E

In the Matter of	:
George N. Pappas	:
An Attorney at Law	:

Decision

Argued: April 21, 2022

Decided: August 5, 2022

Hillary Horton appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a recommendation for a censure filed by the District VI Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the

administration of justice).

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

Respondent was admitted to the New Jersey bar in 1967. Until September 30, 2017, he maintained a practice of law in Hoboken, New Jersey. Thereafter, he continued his practice of law from his home address, also in Hoboken.

Effective February 20, 2018, the Court temporarily suspended respondent for his failure to comply with a District VI Fee Arbitration Committee (the FAC) determination, which, as detailed below, ordered him to disgorge $3,000 in fees for services rendered in connection with his alleged unauthorized practice of law, in Nassau County, New York. In re Pappas, 231 N.J. 470 (2018). He remains temporarily suspended.

In June, we issued a decision determining that a reprimand was the appropriate quantum of discipline for respondent's failure to cooperate with an OAE investigation of his recordkeeping and trust account practices. In the Matter of George N. Pappas, DRB 21-259 (June 3, 2002) (Pappas I).[1] In that matter, respondent failed to produce the records as directed by the Office of

[1] In that matter, then Vice-Chair Singer and Members Boyer; Campelo; Joseph; Menaker; Petrou; and Rivera voted for a reprimand, with conditions requiring respondent to (1) cooperate with the OAE's outstanding audit; (2) place any unclaimed trust account funds in the Superior Court Trust Fund, as R. 1:21-6(j) requires; and (3) return the jewelry that he maintained in a safe deposit box to its rightful owner. Chair Gallipoli voted for a censure, with the same conditions. Member Hoberman was absent.

Attorney Ethics (the OAE) in a March 6, 2018 letter. The OAE sought not only basic information regarding his recordkeeping and estate work, but also specific documentation regarding his role as trustee of a trust for two children, jewelry that he maintained as part of the dissolution of an estate, and unclaimed trust account funds, which had languished for more than twenty years. Although respondent initially provided the OAE some information, he intentionally refused further cooperation in a grossly improper attempt to force the OAE to end its unrelated investigation of his alleged unauthorized practice of law in New York. Specifically, respondent expressed his belief that, by refusing to cooperate with the OAE's investigation of his recordkeeping and trust account practices, he could, somehow, compel the OAE to provide him written notice that he did not engage in the unauthorized practice of law, as alleged in the FAC's determination described above. Compounding matters, respondent intended to utilize any such OAE notice to launch a collateral attack on the FAC's determination and, ultimately, overturn his temporary suspension, without having to comply with the Court's Order. Our decision in Pappas I is pending with the Court.

Similar to his improper strategy in Pappas I, in the instant matter, respondent attempted to collaterally attack the FAC's determination and, by extension, the Court's temporary suspension Order, in an attempt to justify his

failure to comply with R. 1:20-20 and take the steps required of all suspended attorneys.

Specifically, on June 17, 2014, Chrysostomos Arachovitis retained respondent in connection with his desire to lease a gas station in Irvington, New Jersey. In April 2015, however, Arachovitis decided not to lease the Irvington gas station and, instead, requested respondent's assistance to lease a different gas station, in Nassau County, New York. Although respondent was not admitted to the New York bar, he agreed to represent Arachovitis in connection with the transaction.

On April 30, 2015, Arachovitis and the gas station landlord executed a two-year lease agreement and respondent sent the landlord Arachovitis's $5,500 closing deposit.

On May 11, 2015, however, the parties decided to cancel the lease, and the landlord agreed to refund Arachovitis's $5,500 deposit. However, despite respondent's multiple attempts to compel the landlord to return Arachovitis's $5,500 deposit, the landlord failed to do so. Consequently, Arachovitis urged respondent to file a small claims action, in Nassau County, New York, to recover his $5,500 deposit from the landlord. However, because respondent was not admitted to the New York bar, he advised Arachovitis that he could only appear in court, on his behalf, as a "witness," rather than as his attorney.

On October 17, 2015, Arachovitis filed a pro se lawsuit against the landlord, for $5,000, in the Nassau County Small Claims Court.[2] Thereafter, on December 15, 2015, respondent and Arachovitis appeared in small claims court, and respondent claimed to have advised the court that he was there only as a witness and that he was not admitted to the New York bar. Because of Arachovitis's limitations with the English language, the court questioned respondent regarding the circumstances of the failed lease. Following the landlord's failure to appear, the court issued a $5,000 judgment in favor of Arachovitis, plus court fees and costs. In February 2016, respondent forwarded the judgment to the landlord, but the landlord failed to satisfy the judgment.

Thereafter, Arachovitis sought respondent's assistance regarding the purchase of a third gas station, in South River, New Jersey. Nevertheless, Arachovitis, again, decided to cancel the contract, at closing, because he no longer believed it to be a profitable venture.

Sometime in 2017, Arachovitis questioned respondent's legal fee in connection with the failed gas station transactions and filed for fee arbitration. On June 20, 2017, following respondent's failure to appear at the fee arbitration

[2] In New York, the jurisdictional limit in a small claims action is $5,000. N.Y. C.L.S. U.D.C.A. § 1801.

hearing,[3] the FAC determined that respondent owed $3,000 to Arachovitis, which sum represented respondent's entire legal fee arising out of the failed New York gas station lease. In its decision, the FAC explained that, because respondent was not authorized to practice law in New York, he should not have charged legal fees in connection with that failed transaction. In that vein, the FAC referred respondent to the OAE for an investigation into his potential misconduct. Although respondent intended to file an appeal of the FAC's determination, based on his disagreement with its legal conclusions regarding the New York representation, he declined to appeal the determination because, in his view, R. 1:20A-3(c) did not allow him to file an appeal "on the merits."[4]

On September 26, 2017, the OAE sent respondent a letter, via certified and regular mail to his home address of record,[5] advising him that he had failed to disgorge his $3,000 legal fee to Arachovitis, as the FAC's determination

[3] Although the FAC provided respondent adequate notice of the hearing, respondent admitted that he had failed to properly calendar the hearing date.

[4] Although the grounds for appeal are limited, R. 1:20A-3(c) expressly provides that a party may appeal an FAC determination that results in "a palpable mistake of law [. . . that] has led to an unjust result." Indeed, the FAC's June 26, 2017 transmittal letter to the parties noted that a party could file an appeal based upon "a palpable mistake of law by the [FAC]." Nevertheless, during the ethics hearing, when the OAE asked respondent whether the Court Rules allowed for an appeal based on an FAC's palpable mistake of law, he replied, "[n]o, they don't."

[5] The certified mail was delivered to respondent's home address and the regular mail was not returned.

required. The letter warned respondent that, unless he complied with the FAC's determination by October 10, 2017, the OAE would move for respondent's temporary suspension, pursuant to R. 1:20-15(k).[6]

On October 20, 2017, following respondent's failure to comply with the FAC's determination, the OAE filed a motion with us for respondent's temporary suspension. Respondent neither filed a reply to the OAE's motion nor appeared at oral argument before us, despite having received proper notice. See In the Matter of George N. Pappas, DRB 17-401 (November 28, 2017). On November 28, 2017, following a review of the record, we determined to recommend to the Court that respondent be immediately temporarily suspended for his failure to comply with the FAC's determination.

On January 19, 2018, the Court issued an Order temporarily suspending respondent from the practice of law, effective February 20, 2018, for failing to comply with the FAC's determination. In re Pappas, 231 N.J. 470 (2018). In its Order, the Court noted that the Order would "be vacated automatically" if we reported "to the Court that[,] prior to the effective date of the [temporary] suspension, respondent [had] satisfied" his obligations under the Order by complying with the FAC's determination plus paying a $500 sanction. The

[6] R. 1:20-15(k) allows the OAE to file a motion for temporary suspension for an attorney's failure to comply with an FAC determination within thirty days of receipt of the determination.

Court's Order further provided that, if respondent sought to be heard "on this matter[,]" he could file, within ten days of the issuance of the Order, a written request for an "Order to Show Cause." Finally, the Court's Order directed that respondent comply with R. 1:20-20, which requires, among other things, that respondent "shall within 30 days after the date of the [O]rder 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, however, never filed a written request with the Court for an "Order to Show Cause[,]" refused to comply with the FAC's determination or to pay the $500 sanction before the effective date of his suspension, and failed to file an affidavit with the OAE specifying his compliance with R. 1:20-20.

Consequently, on May 11, 2018, the OAE sent respondent a letter, by certified and regular mail, to his home address of record, reminding him of his responsibility to file the affidavit and requesting a reply by May 25, 2018. The certified mail was delivered to respondent's home address on May 14, 2018 and the regular mail was not returned. Respondent, however, failed to reply to the OAE.

On October 10, 2018, the OAE called respondent's home and office

telephone numbers; however, the OAE could not leave any messages for respondent because the voicemail boxes were both full.

On October 29, 2018, the OAE called respondent's office telephone number and spoke with respondent, who maintained that, although he received the OAE's May 11, 2018 correspondence regarding his failure to file the R. 1:20-20 affidavit, he should have been "exempt" from the requirement because, in his view, the Court's temporary suspension Order was invalid and constituted "a mistake of law." Respondent also asserted that he did not wish to notify his clients[7] of his suspension because, upon his reinstatement, he would "have no clients."[8] In reply, the OAE informed respondent that his disagreement with the Court's temporary suspension Order did not exempt him from his obligations pursuant to R. 1:20-20. The OAE, thus, reiterated to respondent his obligation to file the affidavit and that his failure to do so would result in the issuance of a formal ethics complaint and a possible delay in our consideration of his reinstatement petition.[9] Despite the OAE's dogged efforts, respondent failed to

[7] When queried by the OAE, respondent claimed that he was not practicing law due to his temporary suspension.

[8] Despite respondent's hesitation, R. 1:20-20(b)(10) requires all suspended attorneys to "promptly notify all clients in pending matters [. . .] of the attorney's suspension[.]"

[9] R. 1:20-22(i)(A) provides that "if the required affidavit of compliance has not been timely filed, the Board shall not consider the [reinstatement] petition until the expiration of six months from the date of filing of that proof of compliance."

file the required affidavit of compliance.

In his verified answer to the formal ethics complaint, testimony at the ethics hearing, and submissions to the DEC, respondent admitted the facts underlying his failure to comply with R. 1:20-20 following his temporary suspension; however, he denied that his conduct violated RPC 8.1(b) and RPC 8.4(d). Similar to his tactic in Pappas I, respondent did not attempt to assert a meritorious defense to his misconduct. Rather, he attacked the FAC's determination that he had engaged in the unauthorized practice of law; criticized the OAE for seeking his temporary suspension based on his failure to comply with the FAC's determination, from which, in his view, he had no avenue to appeal;[10] complained that the OAE did not provide him with "a formal answer" that he did not engage in the unauthorized practice of law; alleged that the OAE did not provide him the opportunity to contest the FAC's determination; and claimed that the OAE did not complete its investigation within the aspirational time goals prescribed by R. 1:20-8(a).[11]

[10] In his summation brief to the DEC, although respondent acknowledged that R. 1:20A-3(c) allows a party to appeal an FAC determination based upon a "palpable mistake of law[,]" respondent alleged, without support, that the Rule did not allow a party to appeal "where there is a complex mistake of law leading to an unjust result" (emphasis added). Contrary to respondent's argument, R. 1:20A-3(c) contains no such nuance.

[11] R. 1:20-8 provides that the "disciplinary system shall endeavor to complete all investigations [. . .] of complex matters within nine months" of the docketing of the ethics grievance.

Additionally, prior to the commencement of the ethics hearing, respondent requested that the DEC dismiss the complaint, pursuant to the "entire controversy doctrine,"[12] "laches,"[13] and for the OAE's alleged failure to complete its investigation within R. 1:20-8(a)'s aspirational time goals. Specifically, respondent expressed his unsupported belief that the OAE should have consolidated the misconduct underlying his failure to comply with R. 1:20-20 with the OAE's complaint in Pappas I. Additionally, without addressing his own delays caused by his refusal to comply with R. 1:20-20 and the Court's temporary suspension Order, respondent alleged that the OAE engaged in an improper delay tactic "to coerce [him] to comply with the unappealable, erroneous [FAC determination]."

Finally, as part of his collateral attack of the FAC's decision, respondent repeatedly requested that the DEC compel the testimony of certain OAE personnel involved in the investigation of his alleged unauthorized practice of

[12] "The entire controversy doctrine 'seeks to impel litigants to consolidate their claims arising from a single controversy whenever possible.'" Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman and Stahl, P.C., 237 N.J. 91, 98 (2019).

[13] "'Laches in a general sense is the neglect, for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done. More specifically, it is inexcusable delay in asserting a right [. . .].'" Lavin v. Board of Education, 90 N.J. 145, 151 (1982) (quoting Atlantic City v. Civil Service Commission, 3 N.J. Super. 57, 60 (App. Div. 1949)).

law in New York. Specifically, although respondent acknowledged that their testimony was irrelevant to whether he had complied with R. 1:20-20 following his temporary suspension, he asserted that the OAE personnel "had knowledge that [. . . the FAC] determination was erroneous."

The OAE urged the DEC to reject respondent's request to compel the testimony of the OAE personnel involved in the unrelated unauthorized practice of law investigation. The OAE argued that, aside from the OAE investigator assigned to investigate respondent's failure to comply with R. 1:20-20, no other OAE personnel could offer any relevant evidence regarding respondent's misconduct in the instant matter. Additionally, the OAE explained that respondent's arguments regarding the entire controversy doctrine, laches, and the time goals set forth in R. 1:20-8(a) were not valid bases for dismissal under R. 1:20-5(d).[14] The OAE further emphasized that, although respondent had multiple opportunities to avoid the imposition of a temporary suspension, he had failed to (1) appear at the FAC hearing; (2) appeal the FAC's determination; (3) appear for oral argument before us on the OAE's motion for temporary suspension; (4) file an Order to Show Cause with the Court to contest his

[14] R. 1:20-5(d)(1) provides that, prior to the commencement of the ethics hearing, an attorney's "motion to dismiss a complaint shall [not] be entertained except" when the motion pertains "either to the legal sufficiency of a complaint to state a cause of action as a matter of law or to jurisdiction."

temporary suspension; (5) and disgorge his $3,000 legal fee to Arachovitis, within thirty days of the Court's temporary suspension Order. Consequently, the OAE maintained that respondent could not utilize the instant matter as a forum to launch a collateral attack on an otherwise valid Court Order.

As a preliminary matter, the DEC rejected respondent's requests to compel the testimony of the OAE personnel involved in the unrelated unauthorized practice of law investigation. In rejecting respondent's request, the DEC explained that respondent had failed to assert how such personnel had any relevant knowledge of respondent's non-compliance with R. 1:20-20 following his temporary suspension.

Additionally, the DEC denied respondent's pre-hearing request to dismiss the formal ethics complaint based on the entire controversy doctrine, laches, and the aspirational time goals prescribed by R. 1:20-8(a). Relying on our decision in In the Matter of Jesse Jenkins, III, DRB 97-456 (April 5, 1999), the DEC explained that attorney disciplinary matters are not subject to the entire controversy doctrine. The DEC also rejected respondent's time-based arguments, correctly noting that R. 1:20-8(a) merely sets forth an "aspirational" time goal for the disciplinary system to complete complex investigations. The DEC further noted that the OAE did not improperly delay its prosecution of the instant matter because it repeatedly sought respondent's compliance with R.

1:20-20 before it resorted to filing the formal ethics complaint.

The DEC found that respondent violated RPC 8.1(b) and RPC 8.4(d) by willfully failing to comply with the Court's January 19, 2018 temporary suspension Order, which required that he comply with R. 1:20-20. The DEC observed that, rather than attempt to explain his non-compliance with R. 1:20-20, respondent instead attempted to argue why his non-compliance should have been excused based on his disagreement with the FAC's determination and the OAE's procedures for seeking his temporary suspension. The DEC emphasized that, prior to his temporary suspension, respondent repeatedly failed to pursue the Rule-based avenues available to contest the FAC's determination. To the contrary, respondent decided not to appeal the FAC's determination, not to oppose the OAE's motion for temporary suspension, and not to request an Order to Show Cause with the Court to contest his temporary suspension. Instead, the DEC found that respondent inappropriately used the instant matter as a forum to launch a misguided, collateral attack on the FAC's determination and the Court's temporary suspension Order.

In recommending the imposition of a censure, the DEC weighed, in aggravation, respondent's steadfast refusal to comply with the Court's temporary suspension Order and his prior failure to pursue the appropriate remedies to appeal the FAC's determination and to contest his temporary

suspension. In mitigation, however, the DEC weighed respondent's then lack of prior discipline, his admission that he violated R. 1:20-20, and, in the DEC's view, his "sincere[,]" though incorrect, procedural arguments regarding the circumstances underlying his temporary suspension.

At oral argument before us, the OAE urged the imposition of a censure for respondent's failure to file the mandatory R. 1:20-20 affidavit. The OAE noted that, although respondent did not allow this matter to proceed as a default, like many attorneys found guilty of such misconduct, he failed to file the required affidavit despite the OAE's repeated requests that he comply with his obligation to do so. The OAE also emphasized that respondent refused to pursue the available Rule-based avenues to contest his temporary suspension and, instead, utilized the instant matter to collaterally attack the FAC's determination and the Court's Order.

By contrast, respondent urged us to impose "no discipline[,]" given that, in his view, the FAC's determination was "erroneous[,]" and the Court's temporary suspension Order was "unconstitutional[.]"[15] In that vein, respondent continued his collateral attacks on the FAC's determination and the Court's temporary suspension Order, and he criticized the OAE for seeking his

[15] Respondent, however, failed to offer any rationale for his constitutional arguments. Pursuant to R. 1:20-4(e) "[a]ll constitutional questions shall be held for consideration by the [. . .] Court[.]"

temporary suspension based on his failure to comply with the FAC's determination.

Following a de novo review of the record, we determine that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

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, by his own admission, respondent willfully violated the Court's January 19, 2018 temporary suspension Order and failed to take the steps required of all suspended attorneys. Although respondent advanced several misguided procedural arguments in an attempt to excuse his failure to comply with R. 1:20-20 and the Court's temporary suspension Order, none of his arguments establish any valid defense.

First, despite respondent's claim that the OAE violated the principles of the entire controversy doctrine by failing to consolidate the instant matter with

Pappas I, as the DEC correctly explained, that doctrine is inapplicable to attorney discipline matters. See In the Matter of Jesse Jenkins, III DRB 97-456 (April 5, 1999) (we rejected the attorney's argument that the entire controversy doctrine compelled the dismissal of the complaint because that matter "stemmed from the same set of facts [of a] prior ethics matter;" we noted, however, that the imposition of no further discipline may be appropriate where "the conduct in a subsequent disciplinary matter is so intertwined with the ethics offenses in a prior matter" such that, "if both matters had been heard together," no greater discipline would have resulted).

On February 25, 2022, we issued two simultaneous decisions – the first imposing a one-year suspension on an attorney who, among other misconduct, grossly mishandled a client matter, In the Matter of Michele S. Austin, DRB-21-191 (February 25, 2022) (Austin I), and the second imposing a censure on the same attorney who failed to file the R. 1:20-20 affidavit following her temporary suspensions. In the Matter of Michele S. Austin, DRB 21-248 (February 25, 2022) (Austin II). In Austin II, we stated that the imposition of no further discipline "should rarely, if ever, be imposed in connection with an attorney's failure to file the required R. 1:20-20 affidavit, which is a fundamental obligation of a suspended attorney, and is a specific Order of the Court in every such case." Austin II, DRB 21-248 at 12-13. Accordingly, in

imposing a censure in Austin II, we noted that we "will almost invariably apply additional discipline for a R. 1:20-20 violation proven by clear and convincing evidence." Id. at 13.

Here, in accordance with Jenkins and Austin II, the OAE properly prosecuted respondent's failure to comply with R. 1:20-20 separate from respondent's Pappas I misconduct, which involved his failure to cooperate with the OAE's investigation of his recordkeeping and trust account practices. Accordingly, the DEC properly rejected respondent's request to dismiss the instant matter based on the entire controversy doctrine.

Second, respondent argued, without support, that the doctrine of "laches" and the OAE's alleged failure to meet the investigative time goals set forth in R. 1:20-8(a) compelled the DEC the dismiss the complaint. Respondent's arguments, however, fail to recognize that there is no statute of limitations in attorney discipline matters. See In the Matter of Irving Tobin, DRB 05-291 (December 20, 2005) (despite a twelve-and-one-half year delay between the misconduct in question and the commencement of the ethics hearing, we upheld the DEC's decision declining to dismiss the matter, noting "the absence of a statute of limitations in ethics matters"). Indeed, our Court Rules contain no such time bar. Moreover, R. 1:20-5(d) permits an attorney to file a pre-hearing motion to dismiss the complaint based only on the legal sufficiency of the

allegations or a lack of jurisdiction, not for considerations of timeliness.

Here, whether or not the OAE's investigation exceeded any time goal is irrelevant to our review of this matter. Moreover, respondent's arguments regarding the timing of the complaint fail to incorporate the fact that, for several months following the Court's temporary suspension Order, the OAE repeatedly sought his compliance with R. 1:20-20. The OAE's good faith efforts to ensure respondent's compliance with R. 1:20-20 were not intended to prejudice respondent but, rather, to assist him in taking the steps required of a suspended attorney, without the necessity of filing a formal ethics complaint and the imposition of further discipline. Despite having multiple opportunities to comply with R. 1:20-20, respondent repeatedly rebuked the OAE's efforts. Thus, any delay in this matter is wholly attributable to respondent.

Ultimately, as the DEC and the OAE correctly observed, respondent had numerous opportunities to contest the FAC's determination and his temporary suspension, including filing an appeal of the FAC's determination; submitting opposition to the OAE's motion for temporary suspension; appearing for oral argument before us on the OAE's motion for temporary suspension; and filing an Order to Show Cause with the Court, within ten days of the temporary suspension Order. Rather than utilize these Rule-based avenues for potential relief, respondent used the instant matter as a forum to launch a grossly improper

collateral attack on the FAC's determination and the Court's temporary suspension Order. As part of his meritless tactics, respondent blamed the OAE for his temporary suspension because, in his view, the OAE should have provided him a formal, written notice that it had concluded that he did not engage in the unauthorized practice of law. Making matters worse, respondent took it upon himself to "exempt" himself from the Court's temporary suspension Order and the requirements of R. 1:20-20, rationalizing that, if he had notified his clients of his temporary suspension, as R. 1:20-20(b)(10) requires, he would "have no clients to return to" upon his reinstatement.

As we observed in Austin II, compliance with R. 1:20-20 "is a fundamental obligation of a suspended attorney." Austin II, DRB 21-248 at 13. In this matter, respondent has demonstrated an attitude of defiance towards that obligation and willfully failed to comply with the Court's temporary suspension Order and R. 1:20-20, in violation of RPC 8.1(b) and RPC 8.4(d).

In sum, we find that respondent violated RPC 8.1(b) 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 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 Vapnar, 249 N.J. 536 (2022) (censure imposed on an attorney who failed to file the required R. 1:20-20 affidavit after he had been suspended for his misconduct in four client matters; he also ignored the OAE's requests that he do so; prior discipline included a one-year suspension for which the attorney also failed to file the required affidavit); In re Blaney, 244 N.J. 509 (2021) (censure imposed on an attorney who, following his temporary suspension, failed to file

the mandatory R. 1:20-20 affidavit, despite the OAE granting an extension to file the affidavit and the OAE's specific request that he do so; prior discipline included a reprimand in a default matter); In re Philip, 240 N.J. 434 (2020) (censure imposed on an attorney who, following her temporary suspension, failed to file the R. 1:20-20 affidavit, despite the OAE's specific requests to the attorney and her counsel that she do so; prior discipline included an admonition); In re Rak, 214 N.J. 5 (2013) (three-month suspension imposed on attorney who failed to file the affidavit following a 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); In re Rosanelli, 208 N.J. 359 (2011) (six-month suspension imposed on 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 discipline included a six-month suspension).

As noted above, on February 25, 2022, we transmitted to the Court our decision in Austin II, which imposed a censure on an attorney who failed to file the required R. 1:20-20 affidavit after she had been temporarily suspended twice

– the first time for failing to cooperate in an OAE investigation of her financial records, and the second time for failing to comply with an FAC determination that she disgorge $2,500 to a client. Austin II, DRB 21-248 at 2-3, 8, 12. In that matter, we noted that, although we had simultaneously imposed a one-year suspension on the attorney, in Austin I, the principles of progressive discipline were "not yet applicable" to our analysis. Id. at 12. However, we weighed, in aggravation, the default status of the matter and the attorney's failure to file the required affidavit, despite the OAE's specific requests that she do so. Ibid.

Here, respondent's misconduct is similar to the censured attorneys in Vapner, Blaney, and Philip, who each failed to file the required R. 1:20-20 affidavit, despite specific OAE directives that they do so. Although respondent did not allow this matter to proceed as a default, he steadfastly refused to comply with R. 1:20-20, despite the OAE's specific and repeated requests, based on his personal and unfounded disagreement with the FAC's determination, the Court's temporary suspension Order, and the OAE's procedures for seeking his temporary suspension. Compounding matters, respondent's refusal to cooperate with the disciplinary system, along with his collateral attacks on the FAC's determination and the Court's temporary suspension Order, have continued, unabated, since his misconduct in Pappas I. Based on these aggravating circumstances, we determine that a censure is the appropriate quantum of

discipline 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 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: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of George N. Pappas
Docket No. DRB 22-023

Argued: April 21, 2022

Decided: August 5, 2022

Disposition: Censure

Members	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

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