

– failure to cooperate with disciplinary authorities)¹ 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 earned admission to the New Jersey bar in 1988. During the relevant period, he maintained a practice of law in Rutherford, New Jersey.

On September 9, 1998, respondent was reprimanded for having violated RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate); RPC 1.5(b) (failure to set forth in writing the basis or rate of the legal fee); RPC 3.2 (failure to expedite litigation); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). In re Brunson, 155 N.J. 591 (1998) (Brunson I).

Effective July 22, 2021, the Court temporarily suspended respondent for his failure to cooperate with the OAE’s investigation underlying DRB 22-015. In re Brunson, 247 N.J. 486 (2021). To date, the Court has not reinstated respondent to the practice of law.

On August 3, 2022, in two default matters consolidated for our review, we determined that a three-month suspension was the appropriate quantum of discipline for respondent’s misconduct. In the Matter of Neal E. Brunson, DRB

¹ Due to respondent’s failure to file an answer to the formal ethics complaint, and on notice to respondent, the OAE amended the complaint to include the second RPC 8.1(b) charge.

22-015 and DRB 22-075 (August 3, 2022) (Brunson II). In the first matter, respondent, who was a litigant in a contract dispute with a court-reporting company, settled the litigation and, in exchange for a dismissal of the lawsuit, agreed to pay his outstanding balance of \$991.50 in two installments. Respondent made the first payment, but failed to make the second one, forcing the company to re-file its complaint. Respondent subsequently agreed, for the second time, to settle the case and, on that same date, tendered a check from his attorney business account (ABA) for the balance owed. Respondent requested that the check not be deposited for ten days, or until September 15, 2019. Id. at 6. On September 30, 2019, when the company attempted to negotiate the check, it was returned for insufficient funds. Id. at 7.

The ensuing OAE audit revealed that, from September 1 to September 30, 2019, respondent maintained a negative balance in his ABA and, on September 19, 2019, the date he directed that his settlement check be deposited, his ABA balance was (\$777.82). Ibid. Respondent knew the settlement check had been returned for insufficient funds, yet, he failed to cure the shortfall. Further, respondent was assessed a myriad of overdraft charges for his negative account balance, which persisted for nearly two months. Respondent, thus, knew that an overdraft was practically certain to result from his issuance of a settlement check to the court-reporting company. By doing so, respondent violated N.J.S.A.

2C:21-5, governing bad checks, and, in turn, violated RPC 8.4(b) (commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects) and RPC 8.4(c). Id. at 20-22. Respondent also committed multiple recordkeeping deficiencies in violation of RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6). Id. at 18-19.

The OAE's investigation also revealed a series of questionable transactions from his ATA. However, respondent's failure to cooperate precluded the OAE from conducting its investigation and, ultimately, resulted in his July 22, 2021 temporary suspension. By failing to cooperate and allowing this matter to proceed as a default, respondent violated RPC 8.1(b) (two instances). Id. at 19-20.

In the second matter comprising Brunson II, respondent violated RPC 8.1(b) in three respects. First, he failed to reply to the ethics investigator's written requests for information concerning a grievance. He again violated the Rule when he failed to respond to an ethics investigator's written requests for information in response to a referral from the Fee Arbitration Committee. He violated RPC 8.1(b) a third time by failing to answer the complaint. Id. at 22-23.

In determining the appropriate quantum of discipline for respondent's misconduct, we concluded that the baseline for the totality of respondent's misconduct was a reprimand. Id. at 27. In aggravation, we considered respondent's pattern of failing to cooperate with the attempts of disciplinary authorities to address his misconduct. Based upon the timing of his misconduct across the three ethics investigations, we weighed respondent's heightened awareness of his obligation to cooperate, thereby justifying an enhancement from a reprimand to a censure. Id. at 28-29 (citing In re Furino, 210 N.J. 124 (2012)). Additionally, we weighed the default status of both matters and, based upon In re Kivler, 193 N.J. 332, 342 (2008), further enhanced the discipline to a three-month term of suspension. Id. at 29-30. Brunson II remains pending before the Court.

Service of process was proper. On June 20, 2022, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home/office address of record. The certified mail receipt was signed by respondent and returned to the OAE, indicating delivery on June 27, 2022. The letter sent by regular mail was not returned.

On July 21, 2022, the OAE sent a second letter to respondent's home/office address, 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) in connection with his failure to answer.

According to the United States Postal Service (the USPS) tracking, the certified mail was being returned to the OAE as “unclaimed.” The letter sent by regular mail was not returned.

As of August 25, 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 September 26, 2022, Chief Counsel to the Board sent a letter to respondent’s home/office address, by certified and regular mail, with an additional copy by electronic mail, informing him that the matter was scheduled before us on November 17, and that any motion to vacate the default must be filed by October 11, 2022. According to the USPS tracking, the certified mail was successfully delivered on September 30, 2022, although no signed certified mail receipt was returned to the Office of Board Counsel (the OBC). The letter sent via regular mail was not returned to the OBC, and delivery to respondent’s e-mail address was complete, although no delivery notification was sent by the destination server.

Moreover, on October 3, 2022, the OBC published a Notice to the Bar in the New Jersey Law Journal, stating that we would review the matter on November 17, 2022. The notice informed respondent that, unless he filed a motion to vacate the default by October 11, 2022, his failure to answer would remain an admission of the allegations of the complaint.

On October 11, 2022, respondent requested an extension of time to file his motion to vacate the default, which the OBC granted to October 12, 2022. Instead of filing a motion to vacate the default, however, on October 12, 2022, respondent submitted a letter requesting an extension to file his motion to vacate the default. In support, respondent stated he has suffered from various medical conditions over the past two years that hampered his ability to participate in the disciplinary proceedings. Respondent stated that he intended to obtain and produce to the OAE the documents it had previously requested in the course of its investigation (presumably referring to the investigation underlying Brunson II, which resulted in his temporary suspension).

On October 27, 2022, the OBC replied and informed respondent that it had, again, extended the deadline for filing his motion to vacate the default to November 1, 2022. Respondent did not, however, 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 July 22, 2021, for his failure to comply with the OAE's ethics investigation underlying Brunson II. To date, he remains suspended on that basis.

The Court's July 22, 2021 Order directed respondent to comply with R. 1:20-20, which requires, among other obligations, that he, "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 [O]rder." Thus, respondent was required to file his affidavit by August 23, 2021, but failed to do so.

On November 3, 2021, the OAE wrote to respondent at his home/office and post office box addresses of record, reminding him of his responsibility to file the required affidavit, pursuant to R. 1:20-20, and requesting his reply by November 18, 2021.²

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 records continue to reflect only the home/office and post office box addresses utilized for service in this matter.

The certified mail receipt for the letter sent to respondent's home/office address was signed by respondent and returned to the OAE. Although the certified mail receipt was undated, USPS tracking indicated that the letter was delivered on November 8, 2021. The letter sent by regular mail to this address was not returned to the OAE. The letters sent by certified and regular mail to respondent's post office box address were returned to the OAE as "unclaimed."

On December 13, 2021, the OAE again wrote to respondent, this time advising him that his failure to file a conforming affidavit by December 27, 2021 may result in the OAE's filing of a formal ethics complaint against him and, further, may preclude consideration of any reinstatement petition for up to six months. The OAE sent this letter to respondent's home/office and post office box addresses of record by certified and regular mail, and also by electronic mail. The certified mail receipt for the letter sent to respondent's home/office address was signed by respondent and returned to the OAE. Although the certified mail receipt was undated, USPS tracking indicated that the letter was delivered on December 20, 2021. The letter sent by regular mail to this address was not returned to the OAE. The letters sent by certified and regular mail to respondent's post office box address were returned to the OAE as "not deliverable as addressed." The letter sent by electronic mail was delivered, but no delivery notification was sent by the destination server.

As of the date of the complaint, June 15, 2022, 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 August 25, 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 as subjecting respondent to greater discipline: (1) his failure to reply to the OAE's specific requests that he file the affidavit; (2) his failure to file an answer to the complaint; and (3) his prior reprimand.

Following a 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 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 July 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 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 affidavit is a reprimand. In the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003), at 6, so ordered, 179 N.J. 227. However, the actual discipline imposed may be different if the record demonstrates mitigating or aggravating circumstances. Examples of aggravating factors warranting enhanced discipline 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.

For nearly twenty years 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, 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 Saponaro, 2022 N.J. LEXIS 662 (2022) (censure for attorney who failed to file the required affidavit following his temporary suspension for failing to comply with a fee arbitration determination, despite the OAE's specific requests that he do so; no prior final discipline at the time of our decision); 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).

In our view, compliance with R. 1:20-20 is “a fundamental obligation of a suspended attorney.” In the Matter of Michele S. Austin, DRB 21-248 (February 25, 2022) at 13. Clearly, the Rule was designed by the Court as a measure to protect the public from harm following an attorney's suspension from the practice of law, through its mandatory notice obligations, banking restrictions, and document retention requirements. See R. 1:20-20(b)(1) to (14). The suspended attorney's obligation to file with the OAE a detailed affidavit, within thirty days of the date of the suspension Order, attesting to their compliance with the provisions of the Rule, permits the OAE to evaluate the attorney's compliance and, if necessary, to promptly intervene and address any shortcomings. Thus, the affidavit of compliance is vital to the primary purpose of the attorney disciplinary system – the protection of the public.

Recently, in a letter to the Court recommending the denial of an attorney's petition for reinstatement, we emphasized the serious consequences that can

result from an attorney's failure to comply with R. 1:20-20. In the Matter of Mark H. Jaffe, DRB 22-120 (August 9, 2022). In that matter, the attorney sought reinstatement following his three-month suspension. However, our review of the attorney's affidavit and R. 1:20-20(b)(11) client letters, informing his clients as to his suspension, revealed myriad deficiencies.³ Among the most egregious, the attorney intentionally failed to advise his clients to obtain another attorney, to promptly substitute that attorney as counsel of record, or to move pro se for leave to withdraw from his clients' litigation matters, as the Rule expressly requires. Instead, the attorney took steps to retain his clients during his term of suspension by improperly advising them to adjourn their matters and to contact him after his anticipated reinstatement date.

In recommending the denial of his reinstatement, we expressed great concern that such improper tactics created the potential for confusion and havoc with clients and the courts. "Indeed, because respondent gave his clients the false impression that he would automatically be restored to practice at the conclusion of a 90-day window, his clients may very well experience the same 'shock' as Kramer's client to learn that they have no legal representation." In the Matter of Mark H. Jaffe, DRB 22-120, at 10 (citing In re Kramer, 172 N.J.

³ Notably, the attorney failed to file his affidavit with the OAE.

at 637, where the attorney failed to file motions for leave to withdraw as counsel and, instead, waited several months to file motions to stay the cases until he was reinstated; not surprisingly, the attorney's motions were denied; the courts were required to adjourn matters and to inform the attorney's clients of the need to obtain substitute counsel, an obligation that the attorney had failed to perform).

As a final point of emphasis, we note that the Court's suspension Orders expressly order the suspended attorney to comply with the provisions of R. 1:20-20. An attorney's failure to comply with this mandatory requirement, as ordered by the Court, is contemptuous and reflects the attorney's utter disregard of their responsibilities as a member of the bar. Thus, as we determined in Girdler, such misconduct must be met with discipline of at least a reprimand.

Here, respondent failed to comply with R. 1:20-20 and, in our view, pursuant to stare decisis, at least a reprimand is required. Girdler, DRB 03-278, at 6. Respondent also failed to file an answer and allowed this matter to proceed as a default. Accordingly, we enhance the baseline discipline of a reprimand to a censure. See In re Kivler, 193 N.J. at 342 (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").

Disciplinary precedent is in accord. Respondent, like the attorney in Philip, who was censured, had minimal final discipline at the time of the instant misconduct. Although we determined to suspend respondent on August 3, 2022, in Brunson II, the Court has not yet entered its Order. Accordingly, principles of progressive discipline are not applicable to this matter, as we similarly reasoned in two recent default matters. In the Matter of William M. Witherspoon, DRB 22-022 (July 25, 2022) (censure for attorney who failed to file the required affidavit following his temporary suspension, despite the OAE's specific requests that he do so; we did not weigh, in aggravation, our decision to suspend respondent for three months, because that decision remained pending before the Court at the time we considered the subsequent matter); 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 that decision remained pending before the Court at the time we considered the subsequent matter), so ordered, 2022 N.J. LEXIS 662.

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 voted to impose a reprimand.

Member Hoberman 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 Neal E. Brunson
Docket No. DRB 22-149

Decided: January 17, 2023

Disposition: Censure

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

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