



– failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice).<sup>1</sup>

Respondent earned admission to the New Jersey bar in 1999 and to the Pennsylvania bar in 2002. He previously maintained an office for the practice of law in Philadelphia, Pennsylvania.

Effective October 12, 2021, the Court suspended respondent from the practice of law in New Jersey for three months, as a matter of reciprocal discipline. In re Cottee, 248 N.J. 226 (2021) (Cottee I). That suspension was based on discipline imposed in Pennsylvania for respondent’s unethical conduct that, in New Jersey, violated RPC 1.1(a) (gross neglect); RPC 1.4(b) (failure to communicate with a client); RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions); RPC 1.5(b) (failure to set forth in writing the basis or rate of the fee); RPC 1.8(h)(1) and (h)(2) (requirement that a lawyer not make an agreement limiting his liability for malpractice, or settle such a claim or potential claim with an unrepresented client, or former client, unless that person is advised in writing of the desirability of seeking the advice of independent legal counsel, and is given a reasonable opportunity to do so); RPC 5.3(b) (requirement that a lawyer having

---

<sup>1</sup> Due to respondent’s failure to file a verified 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.

direct supervisory authority over a nonlawyer make reasonable efforts to insure that his conduct is compatible with the professional obligations of the lawyer); RPC 5.3(c)(1) and (c)(2) (rendering the attorney responsible for such conduct if he orders or ratifies the conduct of the nonlawyer, or knows of it when its consequences can be avoided or mitigated, and fails to take reasonable remedial action); RPC 8.1(a) (false statement to disciplinary authorities); RPC 8.4(a) (knowing assistance or inducement of another to violate the RPCs, or to do so through the acts of another); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

Cottee I arose from respondent's representation of two clients in their personal injury matters, wherein he sued the wrong defendant; misidentified the location where his clients' injuries occurred; failed to preserve his clients' claims before the statute of limitations expired; and then deceptively induced his clients to settle and release any potential malpractice claims against him. In the Matter of Stuart Thomas Cottee, DRB 20-114 (March 1, 2021) at 3. We recommended the imposition of a three-month suspension and the Court agreed.

Turning to the instant matter, service of process was proper. On June 30, 2022, the OAE sent a copy of the complaint, by certified and regular mail, to

respondent's office and home addresses of record.<sup>2</sup> The certified mail receipt for the letter sent to respondent's office address was returned to the OAE indicating delivery on July 5, 2022. However, the certified mail subsequently was returned to the OAE marked "ATTEMPTED-NOT KNOWN." The regular mail that was sent to the same office address was not returned to the OAE.

The certified mail sent to respondent's home address of record was returned to the OAE marked "NOT DELIVERABLE AS ADDRESSED." The regular mail to respondent's home address was returned to the OAE marked "RETURN TO SENDER UNABLE TO FORWARD." Respondent's address was blacked out and a new address was hand-written on the envelope.

On July 21, 2022, the OAE sent a copy of the complaint, via certified and regular mail, to respondent at the new address provided on the previously returned mail. The certified mail was returned to the OAE marked "INSUFFICIENT ADDRESS," although the United States Postal Service (USPS) tracking shows the letter was returned as "Unclaimed." The regular mail was not returned to the OAE.

---

<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 office and home addresses initially utilized for service in this matter.

On August 22, 2022, the OAE sent a second letter to respondent, by certified and regular mail, at the new address, advising 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 letter was returned to the OAE, marked “UNCLAIMED.” The regular mail was not returned.

As of December 22, 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 December 29, 2022, Acting Chief Counsel to the Board sent a letter to respondent’s Pennsylvania office address, by certified and regular mail, with another copy sent by electronic mail, informing him that the matter was scheduled before us on February 16, 2023 and that any motion to vacate the default must be filed by January 17, 2023. A 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 completed.

Moreover, on January 2, 2023, the OBC published a Notice to the Bar in the New Jersey Law Journal, stating that we would review the matter on February 16, 2023. The notice informed respondent that, unless he filed a motion to vacate the default by January 17, 2023, his failure to answer would remain an admission of the allegations of the complaint.

Respondent did not file a motion to vacate the default.

We now turn to the allegations of the complaint.

As detailed above, effective October 12, 2021, the Court suspended respondent for three months. To date, he remains suspended. The Court's September 13, 2021 Order in Cottee I 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 October 12, 2021, but failed to do so.

On November 3, 2021, the OAE wrote to respondent at his home and office addresses of record, by certified and regular mail, reminding him of his responsibility to file the affidavit and requesting his reply by November 18, 2021.

Neither the certified nor the regular mail sent to respondent's home address were returned to the OAE. Moreover, USPS tracking for the certified letter shows that it was delivered on November 8, 2021 to an individual at the address. The return receipt for the certified letter sent to respondent's office address was returned to the OAE indicating delivery on November 10, 2021, but the signature of the person accepting delivery was illegible. The regular mail sent to the same address was not returned to the OAE. Respondent failed to reply.

On December 13, 2021, the OAE sent a second letter to respondent at the same home and office addresses, by certified and regular mail, once again advising respondent that his failure to file a conforming affidavit on or before December 27, 2021 may result in a disciplinary complaint being filed and may also preclude consideration of any petition for reinstatement for up to six months.

The letter sent by certified mail to respondent's home address was returned to the OAE as "UNCLAIMED." The letter sent by regular mail was not returned. The certified mail receipt for the letter sent to respondent's office address was returned to the OAE indicating delivery on December 16, 2021, however, the signature of the receiving person was illegible. The letter sent by regular mail to this address was not returned to the OAE.

The OAE also sent a copy of its December 13, 2021 letter to respondent via electronic mail, and Microsoft Outlook confirmed the delivery was complete, but no delivery notification was sent by the destination server.

On December 28, 2021, the OAE received a letter from respondent, in which he stated that he was “resigning and turning in” his law license for both Pennsylvania and New Jersey.<sup>3</sup>

On January 6, 2022, the OAE replied to respondent’s letter, advising him that his resignation could not be processed due to his pending ethics matter. Respondent also was provided with the proper form to use for resignation and with OAE contact information, should he have any questions. Respondent neither contacted the OAE nor filed the required affidavit.

On June 30, 2022, the OAE filed the formal ethics complaint against respondent, charging him with willfully violating the Court’s disciplinary Order in Cottee I by failing to file the required affidavit. Specifically, the complaint charged him with violating RPC 8.1(b) (two instances) and RPC 8.4(d).

Following a review of the record, we determine that the facts set forth in the complaint support all the charges of unethical conduct by clear and convincing evidence. Respondent’s failure to file an answer to the complaint is

---

<sup>3</sup> Although the OAE received the letter from respondent on December 28, 2021, the letter was dated December 1, 2021.



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 an Order of suspension, to “file with the [OAE] 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.”

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 the Court Rule, in the absence of an extension from the Director, failure to file an affidavit of compliance pursuant to R. 1:20-20(b)(15) within the time prescribed “constitute[s] a violation of RPC 8.1(b) . . . and RPC 8.4(d).” R. 1:20-20(c).

Here, respondent willfully violated the Court’s September 13, 2021 suspension Order in Cottee I and failed to file the required affidavit, which is required of all suspended attorneys. Following respondent’s October 2021 suspension, the OAE has twice reminded respondent of his obligation to comply with R. 1:20-20; yet, he failed to comply. 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 complaint. We are assured that respondent received the OAE’s letter and a copy of the complaint, given his communication to the OAE that he was resigning from the practice of law in both New Jersey and Pennsylvania. That communication constituted neither respondent’s required, verified answer to the complaint nor his required compliance with the Court’s suspension Order.

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 the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003) 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. 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. In further aggravation, we also noted that it was Girdler's third default.

For nearly twenty years 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 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, \_\_\_ N.J. \_\_\_ (2022), 2022 N.J. LEXIS 662 (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. 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.<sup>4</sup> Among the most egregious, the

---

<sup>4</sup> Notably, the attorney failed to file his affidavit with the OAE.

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. 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 Vapnar, who was censured, failed to file the required affidavit following a disciplinary suspension, despite a specific reminder by the OAE that he do so. Also like the attorney in Vapnar, respondent had minimal prior discipline, consisting of the disciplinary suspension for which he failed to file the required affidavit.

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 Menaker voted to impose a three-month suspension.

Member Joseph voted to impose a reprimand.

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 Stuart Thomas Cottee  
Docket No. DRB 22-232

---

---

Decided: June 14, 2023

Disposition: Censure

<i>Members</i>	Censure	Disbar	Three-Month Suspension	Reprimand
Gallipoli		X		
Boyer	X			
Campelo	X			
Hoberman	X			
Joseph				X
Menaker			X	
Petrou	X			
Rivera	X			
Rodriguez	X			
Total:	6	1	1	1

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