

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-189
District Docket No. XIV-2022-0226E

In the Matter of Joseph J. Ashton, III
An Attorney at Law

Decided
February 20, 2024

Certification of the Record

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Introduction

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 – failing to cooperate with disciplinary authorities)¹ and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

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

Respondent earned admission to the New Jersey and Pennsylvania bars in 2010. During the relevant time, he maintained a practice of law in Marlton, New Jersey, and Philadelphia, Pennsylvania.

Effective May 27, 2022, the Court suspended respondent from the practice of law in New Jersey for two years, as a matter of reciprocal discipline, pursuant to R. 1:20-14(a). In re Ashton, __ N.J. __ (2022), 2022 N.J. LEXIS 462 (Ashton I). That suspension was based on discipline imposed in Pennsylvania for respondent’s unethical conduct that, in New Jersey, violated RPC 1.1(a)

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.

(engaging in gross neglect); RPC 1.3 (lacking diligence); RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter and failing to comply with reasonable requests for information); RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions); RPC 1.16(d) (upon termination of representation, failing to take steps to the extent reasonably practicable to protect a client's interests); and RPC 3.2 (failing to expedite litigation). Id. at 23.

In that matter, respondent abandoned three clients and then failed to participate in the resulting disciplinary proceedings in Pennsylvania. In the Matter of Joseph H. Ashton III, DRB 21-031 (October 28, 2021) at 15-21. We recommended the imposition of a two-year suspension, the same quantum of discipline respondent received in Pennsylvania, and the Court agreed.

Respondent remains suspended to date.

Service of Process

Service of process was proper. On April 20, 2023, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to two addresses associated with respondent: (1) an in-state address provided by the United States Postal Service (USPS) on a piece of returned mail (the In-State Address); and (2) an out-of-state address that the OAE located using a national database (the

Out-of-State Address). The piece of returned mail bearing the In-State Address was one of many letters that the OAE previously had sent to respondent's office, billing,² and home addresses of record, all of which were returned to the OAE as undeliverable.³

Both the certified mail and the regular mail sent to the In-State Address were returned to the OAE marked "NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." On April 28, 2023, the certified mail sent to the Out-of-State Address was delivered, and the certified mail receipt was returned to the OAE bearing an illegible signature. The regular mail sent to the Out-of-State Address was not returned to the OAE.

On June 6, 2023, the OAE sent a second letter to respondent's Out-of-State Address, by certified and regular mail, informing him that, unless he filed a verified answer 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

² Respondent has two office addresses in his official Court record: one in Marlton, New Jersey, and the other in Philadelphia, Pennsylvania. The address in Marlton also is listed as his billing address. To distinguish between the two office addresses, the address in Marlton will be referred to as the billing address and the one in Philadelphia will be referred to as the office address.

³ 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 record continues to reflect only his home, office, and billing addresses.

a willful violation of RPC 8.1(b). The certified mail receipt was returned to the OAE bearing an illegible signature and a delivery date of June 10, 2023. The regular mail was not returned to the OAE.

As of August 17, 2023, 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 25, 2023, Acting Chief Counsel to the Board sent respondent a letter, by certified and regular mail, to his Out-of-State Address, informing him that the matter was scheduled before us on November 16, 2023, and that any motion to vacate must be filed by October 16, 2023. The certified mail receipt was returned to the OBC, bearing the signature of an individual named Mara whose last name was illegible, and indicating delivery on September 28, 2023. The regular mail was not returned to the OBC.

Moreover, on October 2, 2023, the OBC published a notice in the New Jersey Law Journal, stating that we would review this matter on November 16, 2023. The notice informed respondent that, unless he filed a successful motion to vacate the default by October 16, 2023, his prior failure to answer the complaint would remain deemed an admission of the allegations of the complaint.

Respondent did not file a motion to vacate the default.

Facts

We now turn to the allegations of the complaint.

As detailed above, on May 27, 2022, the Court suspended respondent for two years in connection with his misconduct underlying Ashton I. He remains suspended to date. The Court's suspension 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 order of suspension . . . 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." Consistent with R. 1:20-20(c), the Court explicitly stated that a failure to file an affidavit of compliance would constitute a violation of RPC 8.1(b) and RPC 8.4(d). Ashton I. Respondent, however, failed to file the required affidavit of compliance.

On July 28, 2022, the OAE sent respondent a letter, by certified and regular mail, to his office, billing, and home addresses of record, reminding him of his obligation to file the required affidavit, pursuant to R. 1:20-20, and requesting a reply by August 11, 2022. All the mailings were returned to the OAE.

Specifically, the certified mail sent to respondent's office address of record was returned marked "VACANT," and the associated USPS tracking

indicated that the letter was returned as “Addressee Unknown.” The letter sent by regular mail to this address was returned marked “NOT DELIVERABLE AS ADDRESSED.”

The certified mail sent to respondent’s billing address of record was returned marked “FORWARD TIME EXP” with a law firm name with which respondent was not affiliated. The USPS tracking indicated that the letter could not be delivered because the addressee had “Moved, Left No Address.” The letter sent via regular mail to respondent’s billing address was returned to the OAE marked “NOT DELIVERABLE AS ADDRESSED,” with a hand-written notation of “MOVED.”

Both the certified and regular mail sent to respondent’s home address were returned to the OAE marked “FORWARD TIME EXP RTN TO SEND,” along with a forwarding address. The forwarding address was the In-State Address that the OAE used for service of the complaint.

On August 23, 2022, the OAE sent a copy of its July 28, 2022 letter to respondent’s e-mail address of record. Respondent did not reply to the e-mail.

As previously stated, the OAE conducted a search in a national database and obtained respondent’s Out-of-State Address. On February 2, 2023, the OAE sent a letter to respondent, by certified and regular mail, to the newly obtained In-State Address and Out-of-State Address, reiterating respondent’s obligation

to file an affidavit of compliance and directing that he submit a written reply by February 21, 2023. The certified mail sent to the In-State Address was returned to the OAE marked “VACANT,” and the associated USPS tracking indicated that the letter was “Unclaimed.” The regular mail sent to the In-State Address was returned to the OAE marked “NO SUCH STREET.”

The certified mail sent to the Out-of-State Address was delivered successfully. The certified mail receipt was returned to the OAE bearing an illegible signature and a delivery date of February 10, 2023. The letter sent via regular mail to the Out-of-State Address was not returned to the OAE.

As of April 19, 2023, the date of the formal ethics complaint, respondent had failed to reply to the OAE’s letters or to file the required affidavit. Consequently, the formal ethics complaint charged respondent with having violated RPC 8.1(b) and RPC 8.4(d) for his willful violation of the Court’s suspension Order by failing to file the required affidavit, a step required of all suspended or disbarred attorneys. Additionally, the complaint charged respondent with having violated RPC 8.1(b) a second time by failing to file an answer to the complaint and allowing this matter to proceed as a default.

In its August 17, 2023 brief, the OAE urged us to impose a censure based on respondent’s failure to (1) file the required affidavit, despite the OAE’s specific request that he do so, and (2) file an answer to the complaint.

Analysis and Discipline

Violations of the Rules of Professional Conduct

We find that the facts set forth in the formal ethics complaint support all the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Specifically, R. 1:20-20(b)(15) requires a suspended attorney, within thirty days of an 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 suspension Order underlying Ashton I by failing to file the required affidavit, a step required of all suspended attorneys. Respondent, 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 and allowing this matter to proceed as a default.

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.

Quantum of Discipline

Previously, the threshold measure of discipline typically imposed for an attorney's failure to file a R. 1:20-20 affidavit was 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 routinely was enhanced if the record demonstrated aggravating circumstances, including the attorney's default, the attorney's disciplinary history, and the attorney's failure to follow through on his or her representation to the OAE that the affidavit would be forthcoming.

In Girdler, the Court suspended the attorney for three months, in a default matter, for his failure to comply with R. 1:20-20. Specifically, despite communication with 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.

Accordingly, for a period following Girdler, the discipline imposed on attorneys who failed to comply with R. 1:20-20 and defaulted had ranged from a censure to a term of suspension.

Since September 2022, however, the Court has imposed reprimands on attorneys, in certain default matters, for their failure to file the R. 1:20-20

affidavit. See e.g., In re Witherspoon, 253 N.J. 459 (2023) (the attorney failed to file the required R. 1:20-20 affidavit following his temporary suspension for failing to comply with a fee arbitration committee (FAC) determination; the attorney also ignored the OAE's specific requests to file the affidavit; prior 2022 censure, in a default matter); In re Brunson, 253 N.J. 327 (2023) (the attorney ignored the specific requests by the OAE to file the R. 1:20-20 affidavit; prior 1998 reprimand and a 2022 three-month suspension for his misconduct underlying two default matters); In re Austin, 255 N.J. 472 (2022) (the attorney failed to file the affidavit following her 2021 temporary suspensions for failing to comply with an FAC determination and for failing to cooperate with an OAE investigation; no prior final discipline); In re Saunders, 255 N.J. 471 (2022) (despite his express commitment to the OAE, the attorney failed to file the affidavit following his 2020 temporary suspension for failing to comply with an FAC determination; prior 2021 three-month suspension, in a default matter); In re Ziegler, 255 N.J. 470 (2022) (despite acknowledging the OAE's voicemail messages regarding his obligation to file the affidavit, the attorney failed to do so; prior 2009 reprimand and a 2020 three-month suspension in two consolidated non-default matters); In re Spielberg, 255 N.J. 469 (2022), and In re Stack, 255 N.J. 468 (2022) (the attorneys failed to file their respective affidavits of compliance following their 2020 temporary suspensions for failing to cooperate

with separate OAE investigations; Spielberg had no prior final discipline and Stack had a prior 2019 admonition, in a non-default matter).

Moreover, on October 19, 2023, the Court issued an Order in In re Cottee, 255 N.J. 439 (2023). In that matter, the Court determined that a reprimand was the appropriate quantum of discipline for an attorney, in a default matter, who failed to file the required R. 1:20-20 affidavit of compliance, despite the OAE's specific requests that he do so. Cottee's disciplinary history consisted only of a prior three-month suspension, in a 2021 reciprocal discipline matter, concerning his gross mishandling of a single client matter and his brazen acts of dishonesty towards his clients and Pennsylvania disciplinary authorities. The Court determined that, "under these circumstances," a reprimand was the appropriate quantum of discipline based on similar "recent prior matters" where attorneys have received reprimands, in default matters, for their failure to file the required affidavit. Cottee, 255 N.J. at 439.

Here, in 2022, the Court issued its Order suspending respondent from the practice of law and directing that he file the R. 1:20-20 affidavit required of all suspended attorneys in New Jersey. Respondent, however, ignored the Court's Order and then refused to reply to or acknowledge the OAE's communications attempting to obtain his compliance with the Rule. Additionally, respondent failed to file an answer to the formal ethics complaint and allowed this matter to

proceed as a default. Further, like the attorneys in Cottee, Austin, and Spielberg, respondent's disciplinary history is limited to the suspension for which he was required to file the affidavit.

Thus, pursuant to the Court's most recent disciplinary precedent – Cottee, Austin, and Spielberg in particular – we conclude that the appropriate quantum of discipline for respondent's misconduct, considering his default in this matter, is a reprimand.

There are no mitigating factors or additional aggravating factors to consider.

Conclusion

On balance, we determine that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar for respondent's misconduct.

Chair Gallipoli and Members Hoberman and Rodriguez were 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
Peter J. Boyer, Esq.,
Vice-Chair

By: /s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joseph J. Ashton, III
Docket No. DRB 23-189

Decided: February 20, 2024

Disposition: Reprimand

<i>Members</i>	Reprimand	Absent
Gallipoli		X
Boyer	X	
Campelo	X	
Hoberman		X
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez		X
Total:	6	3

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