

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-191
District Docket No. XIV-2023-0283E

In the Matter of Morton Chirnomas
An Attorney at Law

Decided
February 5, 2025

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) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).¹

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

Ethics History

Respondent earned admission to the New Jersey bar in 1990 and to the Massachusetts bar in 2003. During the relevant timeframe, he maintained a practice of law in Mount Freedom, New Jersey.

Effective June 12, 2023, the Court suspended respondent for six months for his violation of RPC 1.3 (lacking diligence); RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter and to comply with

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

reasonable requests for information); RPC 1.15(a) (commingling); RPC 1.16(d) (upon termination of representation, failing to take steps to the extent reasonably practicable to protect a client's interests); RPC 8.1(b) (failing to cooperate with disciplinary authorities); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). In re Chirnomas, 254 N.J. 5 (2021) (Chirnomas I).

In that matter, the OAE filed a motion for reciprocal discipline following respondent's exclusion from practice before the United States Patent and Trademark Office (USPTO). In the Matter of Morton Chirnomas, DRB 22-039 (August 18, 2022) at 1-2. Additionally, Massachusetts disbarred him, effective December 18, 2021, pursuant to a reciprocal disciplinary hearing. Id. at 2.

Specifically, in December 2017, a foreign business entity (FZU), through Karel Bauer, Esq., of the Czech Republic, retained respondent to prepare and file a national stage utility (a form of intellectual property) patent application with the USPTO. Id. at 4. In January 2018, respondent sent an e-mail to Bauer with a \$2,610 invoice for filing the application and a patent legal services fee, along with information so that FZU could pay the amount requested to respondent's personal bank account. Ibid.

On January 15, 2018, after accepting \$2,610 from FZU, respondent filed the patent application for FZU's invention, but he failed to pay the required filing fee. Id. at 4-5. Thereafter, despite notice from the USPTO, respondent failed to cure the deficiency by paying the required filing fee and to reply to the USPTO's notices. Id. at 5. FZU's application was thus "deemed abandoned," and respondent failed to notify FZU or Bauer of the USPTO's abandonment notice. Ibid. When Bauer learned that the application had been abandoned, he called respondent and sent respondent e-mails and messages on LinkedIn; respondent ignored all of Bauer's attempts to contact him. Ibid. FZU retained new counsel, but the application remained abandoned for more than a year. Ibid. Subsequently, respondent failed to cooperate with the USPTO's Office of Enrollment and Discipline (the OED) and allowed that matter to proceed as a default. Id. at 6-11. Consequently, on April 29, 2021, the USPTO excluded respondent from practice. Id. at 9-11.

In determining that a six-month suspension was the appropriate quantum of discipline, we weighed, in aggravation, respondent's failure to report his exclusion from the practice before the USPTO and disbarment in Massachusetts to the OAE, as R. 1:20-14(a)(1) requires. Id. at 26. We also considered the default status of the matter; respondent's failure to cooperate with investigative

authorities in the USPTO, Massachusetts, and New Jersey; his failure to demonstrate any remorse for his misconduct; and the fact that he had yet to return FZU's unearned fees. Ibid. The Court agreed with the recommended discipline, conditioned respondent's reinstatement upon his refund of the USPTO filing fees to FZU, and ordered respondent to comply with Rule 1:20-20 governing suspended attorneys.

To date, respondent remains suspended from the practice of law.

Service of Process

Turning to the instant matter, service was proper. On July 11, 2024, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to the Philadelphia Federal Detention Center (FDC), where respondent currently is incarcerated. The certified mail receipt was returned to the OAE, signed by FDC staff and dated July 18, 2024, indicating that it was delivered to respondent. The regular mail was not returned to the OAE.

On July 30, 2024, the OAE sent a second letter to respondent, by certified and regular mail, to the FDC. The letter informed him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be

certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b) by reason of his failure to answer. The certified mail receipt was returned to the OAE, signed by FDC staff and dated August 2, 2024, indicating that it had been delivered. The regular mail was not returned to the OAE.

As of August 28, 2024, 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 30, 2024, Chief Counsel to the Board sent respondent a letter, by certified and regular mail, to his home address of record, informing him that the matter was scheduled before us on November 21, 2024, and that any motion to vacate the default must be filed by October 21, 2024. Subsequently, on October 8, 2024, Chief Counsel sent respondent a copy of the September 30, 2024 letter, by certified and regular mail, to the FDC. On October 30, 2024, the certified mail receipt was returned to the Office of Board Counsel (the OBC), signed by FDC staff and dated October 24, 2024, indicating that it was delivered to respondent. The regular mail was not returned to the OBC.

Moreover, on October 14, 2024, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on November 21,

2024. The notice informed respondent that, unless he filed a successful motion to vacate the default by October 21, 2024, 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, effective June 12, 2023, the Court suspended respondent for six months in connection with Chirnomas I. He has not applied for reinstatement and, thus, remains suspended.

The Court's May 19, 2023 Order in that matter 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 (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." Consistent with R. 1:20-20(c), the Court explicitly stated, in its suspension Order, that respondent's failure to file the affidavit would constitute

a violation of RPC 8.1(b) and RPC 8.4(d). Respondent failed to file the required affidavit of compliance.

On August 21, 2023, the OAE sent respondent a letter, by certified and regular mail, to his office addresses of record and his home address of record, reminding him of his obligation to file the affidavit, pursuant to R. 1:20-20, and directing that he submit a written reply to the OAE by September 5, 2023. The certified mail receipt for the letter sent to respondent's home address was returned to the OAE, signed by respondent and indicating delivery on September 13, 2023. The certified and regular mail sent to respondent's office addresses of record were all returned to the OAE as undeliverable. Respondent, however, failed to reply and did not file the required affidavit.

On February 22, 2024,² the OAE sent respondent a second letter, by certified and regular mail, to his home and office address of record, and by electronic mail to his e-mail addresses of record, advising him that his failure to file a conforming affidavit by February 29, 2024 may result in the OAE's filing

² Based on the record before us, we cannot determine when respondent commenced his term of incarceration. However, based on publicly available information, he entered his guilty plea on November 2, 2023. 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 utilized for service in this matter.

of a formal ethics complaint and, further, may preclude consideration of any reinstatement petition for up to six months. The OAE attached its August 21, 2023 letter to this mailing. That same date, the OAE received delivery failure e-mails for the letter sent to respondent's e-mail addresses.

On March 22, 2024, the OAE sent a third letter to respondent, by certified and regular mail, to his office address of record, as well as two additional addresses it had identified, advising respondent that his failure to file a conforming affidavit within ten days may result in the OAE's filing of a formal ethics complaint and, further, may preclude consideration of any reinstatement petition for up to six months. Respondent failed to reply to this letter.

As of April 23, 2024, the date of the formal ethics complaint, respondent had failed 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 attorneys. Additionally, on notice to respondent, the formal ethics complaint was amended to charge him with having violated RPC 8.1(b) a second time by failing to file a verified answer to the complaint.

Analysis and Discipline

Violations of the Rules of Professional Conduct

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 the Court's Order of suspension, to "file with the Director [of the OAE] the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order."

As the Appellate Division has observed, "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." See 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)). Non-compliance with R. 1:20-20 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 granted 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, filed on May 19, 2023, by failing to file the required affidavit, a step required of all suspended attorneys.³ Respondent, thus, violated R. 1:20-20 and, consequently, RPC 8.1(b) and RPC 8.4(d). Moreover, he 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 determine 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.

³ Notably, the Court’s May 19, 2023 suspension Order, and respondent’s corresponding R. 1:20-20 obligations, occurred months before respondent’s guilty plea and subsequent incarceration.

Quantum of Discipline

Since September 2022, attorneys with less serious disciplinary histories have received reprimands, in default matters, for their failure to file the R. 1:20-20 affidavit. See, e.g., In re Ashton, 257 N.J. 225 (2024) (the attorney failed to file the required affidavit following his two-year suspension in connection with his misconduct in a prior disciplinary matter); In re Cottee, 255 N.J. 439 (2023) (the attorney failed to file the required R. 1:20-20 affidavit of compliance, despite the OAE's specific requests that he do so; his disciplinary history consisted only of a prior three-month suspension, in a 2021 reciprocal discipline matter); In re Witherspoon, 253 N.J. 459 (2023) (the attorney failed to file the required 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 2020 three-month suspension in two consolidated, non-default matters); In re Spielberg, 255 N.J. 469 (2022), 2022 N.J. LEXIS 739, 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).

However, the quantum of discipline is enhanced if the attorney has a more serious disciplinary history or in the presence of other aggravating factors. See In re Smith, 258 N.J. 27 (2024) (in a default matter, censure for an attorney who failed to file R. 1:20-20 affidavits of compliance following two suspensions – a one-year suspension based on misconduct in two client matters, and a consecutive six-month suspension, in a default matter, based on his gross mishandling of one client matter; in each disciplinary matter, the attorney

ignored the Court's Order of suspension, directing that he file the affidavit, and also failed to reply to the OAE's communications attempting to ensure his compliance), and In re Ludwig, 252 N.J. 67 (2022) (in a default matter, censure for an attorney who, following his 2021 three-month suspension, failed to file the R. 1:20-20 affidavit of compliance, despite the OAE's specific requests that he do so; in aggravation, the attorney's failure to file the affidavit constituted his third disciplinary matter in five years; prior reprimand, in addition to the 2021 disciplinary suspension, in a default matter, that gave rise to his obligation to file the affidavit).

Here, respondent's misconduct and disciplinary history is most analogous to that of the attorneys in Ashton and Cottee, who were reprimanded for failing to file their R. 1:20-20 affidavits following disciplinary suspensions. Like Ashton and Cottee, respondent failed to file his respective affidavit following a six-month suspension, which marked his first New Jersey disciplinary matter. There are no other aggravating factors warranting an enhancement of discipline. Moreover, this matter presents no mitigating factors for our consideration.

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.

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. Mary Catherine Cuff, P.J.A.D. (Ret.),
Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Docket No. DRB 24-191

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Disposition: Reprimand

<i>Members</i>	Reprimand
Cuff	X
Boyer	X
Campelo	X
Hoberman	X
Menaker	X
Petrou	X
Rodriguez	X
Spencer	X
Total:	8

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel