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November 25, 2020

VIA CERTIFIED MAIL, REGULAR MAIL, & E-MAIL
Brian S. Schiller, Esq.
c/o Raymond S. Londa, Esq.
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> **Re:** **In the Matter of Brian S. Schiller**
> Docket No. DRB 20-193
> District Docket No. XII-2018-0048E
> **LETTER OF ADMONITION**

Dear Mr. Schiller:

The Disciplinary Review Board has reviewed your conduct in the above matter and has concluded that it was improper. Following a review of the record, the Board determined to impose an admonition for your violation of RPC 3.2 (two instances – failure to treat with courtesy and consideration all persons involved in the legal process) and RPC 8.4(d) (two instances – conduct prejudicial to the administration of justice). The Board further determined to dismiss the charged violations of RPC 4.2 (improper communication about the subject of the representation with a person the lawyer knows to be represented by counsel); RPC 4.4(a) (two instances – conduct that has no substantial purpose other than to embarrass, delay, or burden a third person); and RPC 8.4(g) (conduct involving discrimination).

Specifically, you represented a plaintiff in a civil action instituted against the New Jersey State Police, Trooper Steven Hodge, and others. This disciplinary matter arose from comments that you made to Hodge in the course of the litigation.

The first comments occurred just after the conclusion of Hodge's November 3, 2017 deposition and, thus, were on the record. As Hodge and his counsel were exiting the room, Hodge said, "[h]ave a good day," to which you replied, in part, "I don't know if you will . . . [b]ecause

it's not going to be Trooper Hodge for much longer." Although you alleged that Hodge had instigated the exchange by making an inappropriate gesture toward you, the better approach would have been to ignore Hodge and to make a record of any such incident.

The second comment that you made to Hodge took place on October 16, 2018, in the courthouse hallway of the Superior Court of New Jersey, Bergen County, during a break in the trial of the matter. As you walked past Hodge, who was seated on a bench with his father, you said to Hodge, "McDonald's is taking applications."

The Board found that your remark to Hodge that he would not be a Trooper for much longer violated RPC 3.2. By making the comment, you clearly did not treat Hodge with courtesy and consideration. Further, the Board determined that your "McDonald's" comment in the courthouse violated the same RPC for the same reason.

The Board also found that your comments to Hodge violated RPC 8.4(d), which prohibits conduct prejudicial to the administration of justice. The comments made to Hodge at the conclusion of the deposition and in the courthouse hallway conveyed the impression that, even though a party is represented by counsel in a matter, the party is vulnerable and subject to inappropriate comments and remarks made by opposing counsel. Such conduct serves to undermine the integrity of the judicial system.

In the Board's view, the record does not support the conclusion that you violated RPC 4.2, RPC 4.4(a), or RPC 8.4(g). Specifically, because your comments to Hodge did not relate to the subject of the representation, you did not violate RPC 4.2, which does not apply to every statement that an attorney makes to a represented party, but only to communications that bear directly on the merits of the controversy. Moreover, your comments did not violate RPC 4.4(a) because Hodge was not a "third person," as that Rule contemplates but, rather, was a litigant. Finally, the RPC 8.4(g) charge was based on an allegation that you called Hodge a slur. Because the Board determined that the evidence in the record did not establish that you had done so, the Board found that you did not violate RPC 8.4(g).

In imposing only an admonition, the Board considered your unblemished disciplinary record and the character letters attesting to the aberrational nature of your behavior.

Your conduct has adversely reflected not only on you as an attorney but also on all members of the bar. Accordingly, the Board has directed the issuance of this admonition to you. R. 1:20-15(f)(4).
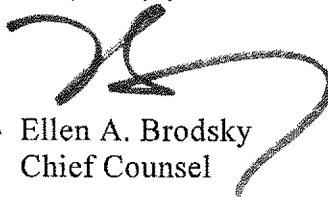
A permanent record of this occurrence has been filed with the Clerk of the Supreme Court and the Board's office. Should you become the subject of any further discipline, this admonition will be taken into consideration.

The Board also has directed that the costs of the disciplinary proceedings be assessed against you. An invoice of costs will be forwarded to you under separate cover.

Very truly yours,

For: Ellen A. Brodsky
Chief Counsel

EAB/jm

c: Chief Justice Stuart Rabner
        Associate Justices
        Heather Joy Baker, Clerk
          Supreme Court of New Jersey
        Bruce W. Clark, Chair
          Disciplinary Review Board (e-mail)
        Gail G. Haney, Deputy Clerk
          Supreme Court of New Jersey (w/ethics history)
        Charles Centinaro, Director
          Office of Attorney Ethics (interoffice mail and e-mail)
        Isabel McGinty, Statewide Ethics Coordinator
          Office of Attorney Ethics (e-mail)
        Richard M. Cohen, Esq., Chair
          District XII Ethics Committee (e-mail)
        Michael F. Brandman, Secretary
          District XII Ethics Committee (regular mail and e-mail)
        Jennifer L. Young, Presenter (e-mail)
        Steven Hodge, Grievant (regular mail)