Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-161
District Docket No. XIV-2019-0229E

| | |
|---|---|
| In the Matter of | : |
| Adam Leitman Bailey | : |
| An Attorney at Law | : |

Decision

Argued: November 19, 2020

Decided: March 29, 2021

Ashley L. Kolata-Guzik appeared on behalf of the Office of Attorney Ethics.

Kim D. Ringler appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a), following respondent's four-month suspension in New York. The OAE asserted that respondent was found guilty of violating the equivalents of New Jersey RPC 3.2 (failing to treat with courtesy and consideration all persons involved in the legal

process); RPC 3.4(g) (presenting, participating in presenting, or threatening to present criminal charges to obtain an improper advantage in a civil matter); RPC 3.5(c) (engaging in conduct intended to disrupt a tribunal); RPC 4.1(a)(1) (making a false statement of material fact or law to a third person); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1995 and to the New York bar in 1996. He has no history of discipline in New Jersey. During the relevant time frame, respondent maintained a law firm in New York, New York.

On April 2, 2019, the Supreme Court of New York, Appellate Division, First Judicial Department, suspended respondent from the practice of law for four months, effective May 3, 2019. The Court also directed respondent to engage in counseling for a period of up to one year, as determined and monitored by the New York City Bar Association's Lawyer Assistance Program. The suspension was based on two instances of respondent's misconduct and his New York disciplinary history, as detailed below.

Respondent has served the four-month suspension imposed in New York and, effective September 24, 2019, was reinstated to the practice of law in that jurisdiction.

**The November 10, 2016 Arbitration Hearing**

Respondent's law firm represented the Van Der Schauws in real estate litigation docketed as Cutter, et al. v. Van Der Schauw. Respondent, the sole equity partner in his firm, was not the attorney of record in the Van Der Schauw matter. Two attorneys with respondent's firm, Massimo D'Angelo, Esq. and Jamie Schare Friedland, Esq. handled the case.

On November 10, 2016, the second day of an arbitration hearing in the Van Der Schauw case took place at respondent's law office. Appearing at the hearing were Eli R. Mattioli, Esq., the arbitrator; Mitchel Ochs, Esq., Steven S. Anderson, Esq., and Michael J. Hasday, Esq., from Anderson & Ochs, LLP, for the claimants; and D'Angelo and Friedland for the Van Der Schauws.

During D'Angelo's cross-examination of claimant Cutter at the arbitration hearing, respondent entered the room and began taking photographs. He then stated "[t]his will be in the newspaper when I put this in there after we kick your asses. You should be ashamed of yourself for kicking people out of a building and you have to live with yourself."

After a heated discussion between the parties, the arbitrator placed those events on the record:

> [a] moment or so ago, an individual walked into the room with an iPhone or a smartphone camera, photographed, it appeared that he was photographing the side of the table where the claimants' counsel is sitting and then made a statement to the effect that he was going to publish that photograph in a newspaper after—I think his words were after we kick your asses.
>
> I think he indicated in substance those words to the claimants' side of the table, and I don't know if his remark was addressed also to the witness who was sitting here, testifying. Certainly, his comment was heard by the witness, because I heard it. He said in effect that the witness should be ashamed of themselves for kicking someone out of their home. The witness was sitting here participating in the cross-examination, the witness being one of the witnesses in this case, Mr. Cutter.
>
> So the claimants' counsel have expressed a desire to adjourn the hearing for the day. If we adjourn the hearing for the day, we will have to reschedule, and I can understand for the claimants not wanting to have the hearing be held in this office again.
>
> This is the office of the respondent's counsel. The individual who came in here with the iPhone or smartphone was identified to us all as the founding partner of this law firm . . . .
>
> [OAEb2;Ex.B at 422-423].[1]

[1] "OAEb" refers to the OAE's June 22, 2020 brief in support of the motion for reciprocal discipline.

The claimants' request for an adjournment of the hearing, which was based on respondent's interruption, was granted. The rescheduled hearing was delayed due to intervening holidays, witness schedules, and the availability of a neutral location to continue the hearing. The claimants' attorneys alleged that respondent's behavior was designed to cause a delay in the proceedings. On the record, Anderson stated:

> Mr. Ochs and I, in seventy years of practice, have never, ever seen anything like this and I will not have us be subjected now to anything like this or the thought of this in these offices. We will live with the delays, as unhappy as we are, as you know. I suspect that Mr. Bailey knew damn well what this was going to lead to, among other delays.
>
> [OAEb2;Ex.B at 434:14-24].

Respondent and the Attorney Grievance Committee for the First Judicial Department filed a Joint Statement of Disputed and Undisputed Facts with the Supreme Court of New York, Appellate Division, First Judicial Department, stipulating to respondent's ethics violations in connection with his misconduct at the arbitration hearing. Specifically, respondent stipulated that, by intruding into the arbitration hearing, taking photographs, and making threatening statements to a witness, he engaged in undignified or discourteous conduct before a tribunal, in violation of New York RPC 3.3(f)(2); conduct intended to disrupt a tribunal, in violation of New York RPC 3.3(f)(4); and conduct

prejudicial to the administration of justice, in violation of New York RPC 8.4(d). On June 27, 2018, the Court accepted the Joint Statement and appointed a referee for a hearing on the appropriate disciplinary sanction.

On September 17, 2018, respondent appeared at a mitigation hearing before the Attorney Grievance Committee, First Judicial Department, presided over by referee Martin R. Gold, Esq. Respondent admitted that he intended to disrupt the meeting and engaged in conduct prejudicial to the administration of justice, but denied that he knew in advance that he was disrupting an arbitration hearing.

Respondent testified that, although his firm's calendar listed all the events in the office, he reviewed it only for his own events, which were identified by his initials. According to respondent, he believed that the meeting in the Van Der Schauw matter had been a settlement conference and claimed that he would not have interrupted if he had known it was an arbitration hearing. When asked why he had interrupted the hearing, even if he thought it was a meeting, respondent replied that the case outraged him and he wanted to take pictures of the board members to one day use in the press.

**The James Dawson Interactions**

By letter dated September 7, 2016, respondent accused James Dawson of creating a website to disseminate false and defamatory statements about the

officers and employees of respondent's client, Lalezarian Properties, LLC (Lalezarian), and its rental properties. Respondent indicated in the letter that, if Dawson failed to remove the website, respondent would take legal action in behalf of Lalezarian, including "pursuing all available remedies, at law or in equity, and seek[ing] a judgment against [Dawson] (a) halting [his] unlawful defamation, and (b) awarding Lalezarian compensatory monetary damages, punitive damages in an amount no less than $10,000,000, and attorney's fees and costs, plus pre-judgment interest at the 9% legal rate of interest."

Six days later, on September 13, 2016, respondent sent Dawson the following text message: "I am the attorney for Lalezarian organization. We are filing a lawsuit suing you for millions of dollars for damages you have caused as a result of your defamatory website. If you have taken down this website, please let me know immediately so we can afford [sic] costly and timely litigation. We are also in contact with the location [sic] police station and we have a copy of the complaint your ex-girlfriend filed against you and we will be using all means necessary to protect our client."

Later that day, on September 13, 2016, respondent called Dawson, who recorded the conversation. Respondent told Dawson that respondent had a copy of a protective order that Dawson's former girlfriend had obtained against him; that the former girlfriend was cooperating with respondent; and that, if Dawson

refused to remove the website, he would be liable for millions of dollars because "it's strict liability in New York law when you defame someone. Each day, each day is another offense." When Dawson inquired about the alleged protective order, respondent replied that he could have a copy of respondent's entire file after he took down the website. In turn, Dawson denied that he owned the website.

After the conversation became heated, respondent told Dawson "I know you're not that bright, right, because you're gonna be bankrupt soon, even though you're unemployed, but you have no idea what you're getting into. You have no idea what you stepped into." Respondent then appeared to be directing another attorney in his office to "start the lawsuit . . . I need him arrested." When Dawson asked for an explanation for the purported arrest, respondent replied, "[o]h, you have no idea what you just got into, buddy, you have no idea. Welcome to my world. Now you're my bitch." Respondent then told Dawson that he would be arrested for violating federal law for creating the website.

Respondent then addressed another person, stating "Collin, I gotta get this guy. He's gotta be arrested. Collin – Collin is a – he used to run the district attorney's office. He's gonna be running the investigation. John, let's get the lawsuit going. I want for the next 20 years 10 bankrupts. If he's got a bankrupt, I don't wanna see. Anything else, Mr. Dawson, you want to curse at me,

anything else –." When Dawson stated that respondent "should've probably pursued a career in theater," respondent replied, "I think you should commit suicide, so we both have things we want. But that's your option." Respondent continued, "[y]ou're one of those people in the world that really should just kill themselves because you're worthless. Either the website comes down or we come after you."

In the Joint Statement, respondent admitted that, by threatening Dawson's arrest, respondent threatened to pursue criminal charges solely to obtain an advantage in a civil matter, in violation of New York RPC 3.4(e). Respondent also admitted that, by making highly offensive and inappropriate statements to Dawson, he engaged in conduct that adversely reflected on his fitness to practice law, in violation of New York RPC 8.4(h).

At the mitigation hearing, respondent testified that he became angry and "riled up" when Dawson told him to "shut the fuck up for a minute" at the beginning of the call. Respondent admitted that it was the "perfect storm of everything wrong," and that it was "the worst conversation I've ever had in my life." He further admitted that he had "completely lost control" and that, following his conversation with Dawson, he consulted his ethics attorney.

Respondent testified that, at the time of the incident with Dawson, he had a four-month-old baby for whom he was caring at night, was working six days

per week, and was suffering from exhaustion. Respondent conceded that the call was "horrible" and "disgusting," and asserted that he regretted his conduct. He stated "[n]ot only was it wrong, but I am apologetic, and remorseful, and embarrassed. And I have trouble living with myself, having done so knowing that one day—because when you google my name you'd see this up there. That one day my kids may even see that I acted in such a way which is beyond horrible. No human should treat another human with those words ever."

Thereafter, respondent claimed that Dawson had blackmailed him, and had threatened to file a disciplinary grievance, to inform the press, and to contact respondent's clients and judges whom respondent appeared before. Dawson also sued respondent for $25 million for malpractice and defamation, but the action ultimately was dismissed. The New York Post published an article detailing the phone conversation, which resulted in respondent's loss of approximately thirty clients, including the New York Metropolitan Transportation Authority.

**Prior Discipline in New York**

At the ethics hearing, respondent acknowledged that he had received two prior admonitions in New York: the first, on April 18, 2011 for having violated New York RPC 4.2 by speaking to represented parties in an attempt to negotiate a settlement; and the second, directed to his law firm on June 25, 2014, when

respondent reneged on a stipulation, and the associates in his firm then engaged in misconduct.

On November 7, 2018, referee Gold issued his report and recommendation regarding respondent's misconduct. Observing that respondent admitted all the facts alleged in the petition, and that "[h]e could hardly do otherwise since the charges are based entirely on writings and a recorded telephone conversation," the referee remarked that respondent testified at length, and introduced the testimony of three character witnesses, as well as documentary evidence.

In respect of the arbitration incident, the referee rejected respondent's testimony that he had not been aware that an arbitration hearing was occurring in his firm's conference room. The referee found that respondent deliberately disrupted the proceeding and made threatening statements to a witness. In respect of the conversation with Dawson, the referee found that respondent's text message to Dawson contained false information, because respondent did not have a copy of the former girlfriend's protective order, never filed a defamation suit against Dawson, and had not actually complained to the police about the matter. The referee remarked that the recorded telephone call was "replete with inappropriate, offensive, frightening, and false threats from [r]espondent."

The referee found that respondent's conduct in his prior admonition matters and the case before the referee established that respondent had "engaged

in excessively aggressive behavior while representing a client in connection with a civil dispute, and his tactics exceeded proper bounds of conduct and violated professional rules."

In mitigation, the referee found that respondent had expressed general remorse, but had not acknowledged that his aggressive attitude toward adversaries had been a recurring problem, and had never apologized to those he had wronged, including the arbitrator whose proceeding he disrupted and the witness whose testimony he interrupted.

The referee acknowledged respondent's argument that Dawson had inflicted adequate punishment on him through his retaliation and posting material on social media about respondent's misconduct. The referee found, however, that "the price already paid by [r]espondent for his violations is, at best, a minor factor to be considered in mitigation." The referee further acknowledged respondent's charitable and pro bono work described in letters that respondent submitted, but found discrepancies in those letters and, in any event, concluded that "[e]ven if all of the assertions of charitable work contained in the file of letters submitted to me were entirely accurate, which they are not, [r]espondent's charitable activity would not be a significant factor in mitigation."

Respondent sought discipline in the form of a censure, but the referee determined that the misconduct warranted a three-month suspension.

On April 2, 2019, the Appellate Division, Supreme Court of New York, First Judicial Department, issued an opinion and order affirming the findings of fact and conclusions of law of the referee. The court, however, determined to suspend respondent from the practice of law for four months, and directed him to engage in counseling for a period of up to one year, as determined by the New York City Bar Association's Lawyer Assistance Program.

A week later, on April 9, 2019, respondent reported his New York discipline to the OAE.

The OAE asserted that respondent's New York violations are equivalent to New Jersey RPC 3.2; RPC 3.4(g); RPC 3.5(c); RPC 4.1(a)(1); RPC 8.4(c); and RPC 8.4(d). Relying on R. 1:20-14(a)(5), the OAE argued that the facts as stipulated in the Joint Statement, as well as the referee and court's finding that respondent intentionally disrupted the arbitration hearing as a litigation tactic, should be taken as undisputed facts for purposes of this motion.

Despite the four-month suspension, with conditions, imposed on respondent in New York, the OAE recommended a censure, contending that New Jersey attorneys who display disrespectful or insulting conduct toward persons involved in the legal process; threaten to present, or present, criminal

charges to obtain an unfair advantage in a civil matter; or engage in conduct intended to disrupt a tribunal are subject to a broad spectrum of discipline, ranging from an admonition to a term of suspension. Finally, the OAE argued that a reprimand is the usual discipline for violations of RPC 4.1(a)(1) and RPC 8.4(c), absent other serious ethics infractions and history.

Citing, as instructive, In re Van Syoc, 216 N.J. 427 (2014), discussed below, the OAE emphasized that respondent in this matter, like Van Syoc, failed to apologize to those he had wronged and had a disciplinary history. The OAE recognized, however, that, unlike Van Syoc, respondent did not dispute the accuracy of the recordings of his conduct and admitted that his behavior was unethical.

The OAE also cited In re Solow, 167 N.J. 55 (2001); In the Matter of Joel M. Solow, DRB 99-415 (October 18, 2000) (reprimand for attorney who displayed obnoxious behavior during a hearing before an Administrative Law Judge (ALJ); the ALJ repeatedly cautioned the attorney to stop raising his voice, which was upsetting and disruptive to the proceedings; a different ALJ told the attorney to stop screaming and closed a hearing due to the attorney's conduct; we found that the repetitive nature of the attorney's misconduct indicated it was a conscious, disruptive course of action, which delayed hearings and wasted

valuable judicial resources; our concern was not the content of respondent's speech, but, rather, the discourteous and obnoxious manner in which he spoke).

The OAE argued that respondent clearly was discourteous and obnoxious in the way that he communicated to Dawson and in interrupting the arbitration hearing, but the content of his statements also was disturbing and problematic. Thus, the OAE concluded that, although respondent's violations were not sufficiently egregious to justify a suspension, his repeated misconduct in stepping outside the bounds of zealous advocacy warranted more than the typical reprimand for these types of violations.

As to respondent's mitigation, the OAE noted his lack of disciplinary history in New Jersey. The OAE cited no aggravating factors.

On October 23, 2020, respondent, through counsel, filed with us a letter brief and exhibits. Counsel advanced mitigating factors, including the four-year passage of time since respondent's misconduct took place, and respondent's completion of his anger management counseling, with no further incidents of misconduct. Counsel claimed that respondent is subject to ongoing harassment by Dawson, even up to the date of her letter brief, when, via e-mail, Dawson said to respondent, respondent's wife, and a lawyer at respondent's firm, "take a look at the scoreboard… it shows you're my bitch," and "[w]e're not done yet."

Additionally, counsel attached a comprehensive list of respondent's good deeds, including charitable acts; scholarship sponsorships; speaking engagements; and community participation, as well as character references, with documentation, to support respondent's good character. Although in agreement with the OAE that respondent's conduct deserves a less harsh result in New Jersey than the discipline imposed in New York, counsel argued, without citing disciplinary precedent, that, based on respondent's "adherence to professionalism," as evidenced by the materials submitted in mitigation, an admonition, rather than a censure, is warranted.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In New York, "[i]t has consistently been held by the Appellate Divisions that the standard of proof in attorney disciplinary proceedings is a fair preponderance of the evidence." In re Capoccia, 453 N.E.2d 497, 498 (N.Y.

1983). Notably, in this case, respondent stipulated to the facts and admitted his misconduct.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
>
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline.

Respondent's stipulated misconduct violated the New Jersey Rules of Professional Conduct. Specifically, respondent violated RPC 3.2, RPC 3.5(c), and RPC 8.4(d) by taking photographs and making threatening statements to a

witness during an arbitration hearing, causing a delay in the proceedings. Notwithstanding respondent's denial of knowledge that the meeting taking place in his law office was an arbitration hearing, he admitted that he intended to disrupt the meeting.

In addition, respondent's inappropriate comments to Dawson during the recorded telephone conversation violated RPC 3.2. Further, respondent violated RPC 3.4(g) by threatening to arrange for Dawson's arrest for federal crimes for the purpose of obtaining an improper advantage in a civil matter.

Moreover, respondent violated RPC 4.1(a)(1) and RPC 8.4(c) by making false statements to Dawson about New York defamation law, by informing him that he would be arrested on federal charges, and by misrepresenting that he had obtained a copy of the protective order entered against Dawson in favor of his former girlfriend.

In sum, we find that respondent violated RPC 3.2; RPC 3.4(g); RPC 3.5(c); RPC 4.1(a)(1); RPC 8.4(c); and RPC 8.4(d). The only remaining issue for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Although respondent received a four-month suspension in New York, the OAE recommended a censure for his violations of the New Jersey Rules of Professional Conduct.

Disrespectful or insulting conduct to persons involved in the legal process leads to a broad spectrum of discipline, ranging from an admonition to disbarment, depending on the presence of other ethics violations. See, e.g., In re Gahles, 182 N.J. 311 (2005) (admonition for attorney who, during oral argument on a custody motion, called the other party "crazy," "a con artist," "a fraud," "a person who cries out for assault," and a person who belongs in a "loony bin;" in mitigation, the attorney's statements were not made to intimidate the party but, rather, to acquaint the new judge on the case with what the attorney perceived to be the party's outrageous behavior in the course of the litigation); In re Murray, 221 N.J. 299 (2015) (reciprocal discipline matter; reprimand for attorney who, in three separate court-appointed pro bono matters in Delaware over a two-year period, behaved discourteously toward the judge and repeatedly attempted to avoid pro bono court appointments there); In re Ziegler, 199 N.J. 123 (2009) (reprimand imposed on attorney who told the wife of a client in a domestic relations matter that she should be "cut up into little pieces . . . put in a box and sent back to India;" and in a letter to his adversary, accused the wife of being an "unmitigated liar" and threatened that he would prove it and have her punished for perjury; the attorney also threatened his adversary with a "Battle Royale" and ethics charges; mitigating factors included the attorney's unblemished forty-year ethics history, his recognition that his conduct had been

intemperate, and the passage of seven years from the time of the misconduct until the imposition of discipline); In re Supino, 182 N.J. 530 (2005) (attorney suspended for three months after he exhibited rude and intimidating behavior in the course of litigation and threatened the other party (his former wife), court personnel, police officers, and judges; other violations included RPC 3.4(g), RPC 3.5(c), and RPC 8.4(d)); In re Rifai, 204 N.J. 592 (2011) (three-month suspension imposed on an attorney who called a municipal prosecutor an "idiot," among other things; intentionally bumped into an investigating officer during a break in a trial; repeatedly obtained postponements of the trial, once based on a false claim of a motor vehicle accident; and was "extremely uncooperative and belligerent" with the ethics committee investigator; the attorney had been reprimanded on two prior occasions); In re Van Syoc, 216 N.J. 427 (2014) (six-month suspension imposed on attorney who, during a deposition, called opposing counsel "stupid" and a "bush league lawyer;" the attorney also impugned the integrity of the trial judge, by stating that he was in the defense's pocket, a violation of RPC 8.2(a); we found several aggravating factors, including the attorney's disciplinary history, which included an admonition and a reprimand; the absence of remorse; and the fact that his misconduct occurred in the presence of his two clients, who, as plaintiffs in the very matter in which their lawyer had accused the judge of being in the pocket of the defense, were

at risk of losing confidence in the legal system); In re Vincenti, 92 N.J. 591 (1983) (Vincenti I) (one-year suspension for attorney who displayed a pattern of abuse, intimidation, and contempt toward judges, witnesses, opposing counsel, and other attorneys; the attorney engaged in intentional behavior that included insults, vulgar profanities, and physical intimidation consisting of, among other things, poking his finger in another attorney's chest and bumping the attorney with his stomach and then his shoulder); and In re Vincenti, 152 N.J. 253 (1998) (Vincenti II) (disbarment for attorney described by the Court as an "arrogant bully," "ethically bankrupt," and a "renegade attorney;" this was the attorney's fifth encounter with the disciplinary system).

Similarly, the discipline imposed for a violation of RPC 3.4(g) ranges from an admonition to a suspension, depending on the severity of the conduct, the attorney's disciplinary history, and any aggravating or mitigating factors. See, e.g., In the Matter of Alan Ozarow, DRB 13-096 (September 26, 2013) (admonition for attorney who, within three weeks, sent four letters to his adversary, threatening to present to the county prosecutor criminal charges of fraud against the adversary's client; in mitigation, the attorney was not motivated by self-interest; was frustrated by what he perceived to be outrageous circumstances that his client was forced to endure; expressed remorse; discontinued his behavior upon learning from his adversary that his conduct

violated the Rule; readily acknowledged his wrongdoing, showing a sense of professional accountability; and had an unblemished disciplinary history in his twenty-six years at the bar); In re Mason, 213 N.J. 571 (2013) (reprimand for attorney who, in a letter to the lawyer for the buyer in an assets purchase transaction, threatened criminal charges against the buyer if he were to disturb any of the subject collateral; the attorney also had an ethics history evidencing a pattern of mistreating clients and attorneys); In re Brown, 231 N.J. 166 (2017) (censure for attorney who required her client to sign a payment arrangement form, in which the client acknowledged that she could face criminal charges if she did not pay the fee in accordance with the payment schedule; default, no mitigation, prior three-month suspension, but no history of mistreating clients or attorneys); In re Ledingham, 189 N.J. 298 (2007) (three-month suspension for attorney who threatened his client with criminal action for theft of services in order to collect his excessive fee); In re Supino, 182 N.J. 530 (2005) (three-month suspension imposed on attorney who threatened criminal charges against his former wife, the court administrator, and police officers in order to obtain an improper advantage in his own child custody and visitation case; the attorney also exhibited a pattern of rude and intimidating behavior toward judges, the court administrator, and law enforcement authorities); and In re Dworkin, 16 N.J. 455 (1954) (one-year suspension for attorney who wrote a letter threatening

criminal prosecution against an individual who forged an endorsement on a government check, unless the individual paid the amount of the claim against him and the legal fee that the attorney ordinarily charged in a criminal matter "of this type;" the Court found that the attorney had resorted to "coercive tactics of threatening a criminal action to effect a civil settlement").

Conduct prejudicial to the administration of justice comes in a variety of forms, and the discipline imposed for the misconduct also results in a wide range of discipline, depending on such factors as the existence of other violations, the attorney's ethics history, whether the matter proceeded as a default, the harm to others, and mitigating or aggravating factors. See, e.g., In re Ali, 231 N.J. 165 (2017) (reprimand for attorney who disobeyed court orders by failing to appear when ordered to do so and by failing to file a substitution of attorney, violations of RPC 3.4(c) and RPC 8.4(d); he also lacked diligence and failed to expedite litigation in one client matter and engaged in ex parte communications with a judge; in mitigation, we considered his inexperience, unblemished disciplinary history, and the fact that his conduct was limited to a single client matter); In re D'Arienzo, 207 N.J. 31 (2011) (censure for an attorney who failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced

the court, the prosecutor, the complaining witness, and two defendants; in addition, the attorney's failure to provide the court with advance notice of his conflicting calendar prevented the judge from scheduling other cases for that date; prior three-month suspension and two admonitions plus failure to learn from similar mistakes justified a censure); In re DeClemente, 201 N.J. 4 (2010) (three-month suspension for an attorney who arranged three loans to a judge in connection with his own business, failed either to disclose to opposing counsel his financial relationship with the judge or to ask the judge to recuse himself, made multiple misrepresentations to the client, engaged in an improper business transaction with the client, and engaged in a conflict of interest); In re Block, 201 N.J. 159 (2010) (six-month suspension where the attorney violated a court order that he had drafted by failing to transport his client from prison to a drug treatment facility, instead he left the client at a church while he made a court appearance in an unrelated case; the client fled and encountered more problems while on the run; the attorney also failed to file an affidavit in compliance with R. 1:20-20, failed to cooperate with disciplinary authorities, failed to provide clients with writings setting forth the basis or rate of the fees, lacked diligence, engaged in gross neglect, and failed to turn over a client's file; prior reprimand and one-year suspension); and In re Bentivegna, 185 N.J. 244 (2005) (motion for reciprocal discipline; two-year suspension for an attorney who was guilty of

making misrepresentations to an adversary, negotiating a settlement without authority, filing bankruptcy petitions without authority to do so and without notifying her clients, signing clients' names to documents, making misrepresentations in pleadings filed with the court, violating a bankruptcy rule prohibiting the payment of fees before paying filing fees; the attorney was guilty of conduct prejudicial to the administration of justice, gross neglect, failure to abide by the client's decision concerning the objectives of the representation, failure to communicate with clients, excessive fee, false statement of material fact to a tribunal, and misrepresentations).

Based on New Jersey disciplinary precedent, we determine to impose a censure for the totality of respondent's misconduct. Respondent repeatedly engaged in serious misconduct that was unbecoming of a member of the New Jersey bar.

Although we considered the imposition of a suspension, we found that the overwhelming mitigation presented by respondent, including his letters of reference, good deeds, and charitable ventures, to be admirable. On balance, based on respondent's conduct, and considering his lack of disciplinary history and the substantial mitigation presented, we determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Vice-Chair Gallipoli and Members Joseph and Zmirich voted for a three-month suspension.

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
Bruce W. Clark, 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 Adam Leitman Bailey
Docket No. DRB 20-161

Argued: November 19, 2020

Decided: March 29, 2021

Disposition: Censure

| ***Members*** | Censure | Three-Month Suspension | Recused | Did Not Participate |
|---|---|---|---|---|
| Clark | X | | | |
| Gallipoli | | X | | |
| Boyer | X | | | |
| Hoberman | X | | | |
| Joseph | | X | | |
| Petrou | X | | | |
| Rivera | X | | | |
| Singer | X | | | |
| Zmirich | | X | | |
| Total: | 6 | 3 | 0 | 0 |

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