Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-169
District Docket Nos. XIV-2017-0601E
and XIV-2018-0400E

In the Matter of	
Joshua F. McMahon	
An Attorney at Law	

Dissent

Argued: January 19, 2023

Decided: March 27, 2023

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

We concur with the majority's determination that respondent committed unethical conduct, in violation RPC 3.2 (two instances), RPC 4.4(a) (two instances), RPC 8.2(a) (two instances), and RPC 8.4(d). We write separately, however, to express our disagreement with the quantum of discipline our colleagues concluded was appropriate for the totality of respondent's misconduct. Unlike the majority, we believe that respondent's behavior was so

contemptable that disbarment is necessary for the protection of the public and the preservation of the integrity of the bar. We, thus, dissent from our colleagues and vote to recommend respondent's disbarment.

"Lawyering is a profession of 'great traditions and high standards.'" In re Jackman, 165 N.J. 580, 584 (2000) (quoting Speech by Chief Justice Robert N. Wilentz, Commencement Address-Rutgers University School of Law, Newark, New Jersey (June 2, 1991), 49 Rutgers L. Rev. 1061, 1062 (1997)). Attorneys are expected to hold themselves in the highest regard and must "possess a certain set of traits -- honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the judicial process and the administration of justice." In re Application of Matthews, 94 N.J. 59, 77 (1983).

The Court has explained, when considering the character of a Bar applicant, that:

> [t]hese personal characteristics are required to ensure that lawyers will serve both their clients and the administration of justice honorably and responsibly. We also believe that applicants must demonstrate through the possession of such qualities of character the ability to adhere to the Disciplinary Rules governing the conduct of attorneys. These Rules embody basic ethical and professional precepts; they are fundamental norms that control the professional and personal behavior of those who as attorneys undertake to be officers of the court. These Rules reflect decades of tradition, experience and continuous careful consideration of the essential and indispensable ingredients that constitute the professional

> responsibility of attorneys. Adherence to these Rules is absolutely demanded of all members of the Bar. [In re Application of Matthews, 94 N.J. at 77-78.]

Adherence to these basic ethical, moral, and professional precepts are demanded of all attorneys, from the newly admitted to the most seasoned practitioners. Given the facts of this case, respondent abandoned his professional and ethical responsibilities to which he took an oath to adhere and, through his misconduct, demonstrated a deficit in these character traits, including his professional commitment to the administration of justice.

The record in this matter clearly evidences respondent's rancorous disposition and his utter contempt for the basic sensitivities of other people. He has maligned judges; county prosecutors; the police; his adversaries; witnesses; the special ethics master; and the attorney disciplinary system – both in respect of individual public servants, and the Court-constructed regime as a whole. His unrelenting behavior has been unprofessional; disturbing; intemperate; and, frankly, inexcusable. Nothing in the record inspires confidence that respondent's conduct will improve; indeed, his most recent interactions with New Jersey disciplinary authorities following the conclusion of his ethics hearing suggest that his assault on the Rules of Professional Conduct will continue.

In addition to maintaining a high standard of character, disciplinary precedent consistently has held that attorneys who are privileged to practice law

in this jurisdiction also must demonstrate respect for the authority of the courts and the attorney disciplinary system. On the record before us, respondent has shown little or no respect for the authority of courts and the attorney disciplinary system, through his unabashed allegations of conspiracies and cover-ups. Attorneys who abandon the oath they took to uphold the rule of law in our court and disciplinary system will not be afforded the privilege of practicing law in New Jersey.

In determining that disbarment is appropriate for the totality of respondent's misconduct, we referenced our decision in In the Matter of Rhashea Lynn Harmon, DRB 21-228 (March 29, 2022), where we recommend disbarment of an attorney who had once shown adherence to the rule of law but, later, determined that she was no longer subject to the jurisdiction of the courts or the attorney disciplinary authorities, and that the rule of law no longer applied to her. After a close examination of the unique and egregious facts of the attorney's misconduct, we concluded that disbarment was the only appropriate sanction, stating:

> To begin, we acknowledge that attorneys, like all citizens, may argue against specific or general application of a rule to themselves or others. No matter what views or vision for change an individual may espouse within a locality, state, or nation, all citizens are entitled to advocate for change within the rule of law. However, respondent, as an attorney, had the further obligation to advocate for herself and her clients

> within the bounds of the Rules of Professional Conduct. See State v. Sugar, 84 N.J. 1, 12 (1980) ("If the rule of law is this nation's secular faith, then the members of the Bar are its ministers"); In re McAlevy, 69 N.J. 349, 351-352 (1976) ("[t]he whole concept of the rule of law is bottomed on respect for the law and the courts and judges who administer it. Attorneys who practice law and appear in the courts are officers of the court").
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> Correspondingly, within the structure of the rule of law, and the Rules of Professional Conduct, New Jersey disciplinary precedent makes it clear that, when an attorney behaves in a manner such "as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession," that attorney should be disbarred. In re Templeton, 99 N.J. 365, 376 (1985).
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> [In the Matter of Rhashea Lynn Harmon, DRB 21-228 (March 29, 2022) at 33-34, so ordered, 2022 N.J. LEXIS 658 (2022).][1]

In reaching our determination, we analogized Harmon's behavior to that of the attorney in In the Matter of Marc D'Arienzo, DRB 16-345 (May 25, 2017) at 26-27, where we found disbarment was the appropriate sanction for the attorney's misconduct, stating:

> Given the contemptible set of facts present in these combined matters, we must consider the ultimate question of whether the protection of the public requires respondent's disbarment. When the totality of respondent's behavior in all matters, past and present, is examined, we find ample proof that . . . no amount of redemption, counseling, or education will overcome his penchant for disregarding ethics rules. As the Court held in another matter, "[n]othing in the record inspires

[1] The Court disbarred Harmon, who failed to appear at an Order to Show Cause.

> confidence that if respondent were to return to practice [from his current suspension] that his conduct would improve. Given his lengthy disciplinary history and the absence of any hope for improvement, we expect that his assault on the Rules of Professional Conduct would continue." In re Vincenti, 152 N.J. 253, 254 (1998). Similarly, we determine that, based on his extensive record of misconduct and demonstrable refusal to learn from his mistakes, there is no evidence that respondent can return to practice and improve his conduct. Accordingly, we recommend respondent's disbarment.

The Court agreed with our recommendation and disbarred D'Arienzo. In re D'Arienzo, 232 N.J. 275 (2018).

Moreover, we do not view respondent's prior unblemished record as a factor precluding disbarment. "[E]ven if it is unlikely that the attorney will repeat the misconduct, certain acts by attorneys so impugn the integrity of the legal system that disbarment is the only appropriate means to restore public confidence in it." In re Hughes, 90 N.J. 32, 36-37 (1982).

Respondent's misconduct was unrelenting, across multiple forums, and spanned years, beginning in 2016 and continuing through his disciplinary proceeding. His reprehensible behavior, which has been assiduously detailed by the majority in its decision, included insults; profanity; threats of litigation; and veiled threats of physical harm. To date, he has failed to demonstrate any contrition or remorse and, indeed, denies having violated the Rules of Professional Conduct.

In light of the above, the majority's determination to impose a term of suspension is, in our view, too lenient. Under all of the circumstances presented, we believe that disbarment is not only supportable, but necessary to protect the public and preserve confidence in the bar.

Disciplinary Review Board
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair
Thomas J. Hoberman
Eileen Rivera

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