

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
Docket No. DRB 23-231  
District Docket No. XIV-2022-0146E

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In the Matter of Brian J. Smith  
An Attorney at Law

Decided  
April 8, 2024

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

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

Respondent earned admission to the New Jersey bar in 1994 and to the Pennsylvania bar in 1993. During the relevant time, he was suspended from the practice of law in New Jersey.

Effective March 7, 2022, the Court suspended respondent for one year, in a reciprocal discipline matter originating from Pennsylvania, for his combined misconduct underlying two client matters. In re Smith, 250 N.J. 44 (2022) (Smith I).

In the first matter comprising Smith I, in October 2017, respondent filed, in the Superior Court of New Jersey, a lawsuit on behalf of his client and against

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<sup>1</sup> 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.

various parties, including Daymond John. In the Matter of Brian J. Smith, DRB 20-318 (July 28, 2021) at 3. Respondent, however, knew that his client had no viable claims against John and, thus, he violated RPC 3.1 (engaging in frivolous litigation) and RPC 8.4(d). Id. at 14. Although John's attorney provided respondent numerous opportunities to remove John from the lawsuit, respondent ignored those requests, forcing John's attorney to file multiple motions that consumed unnecessary judicial resources. Id. at 4-5, 14. Additionally, respondent failed to comply with the Superior Court's April 13, 2018 order directing him to pay a portion of John's attorneys' fees and expenses incurred as a result of the frivolous litigation. Id. at 4-5. Consequently, the Superior Court issued a July 6, 2018 order finding respondent in contempt for violating the April 13 order and directing him to pay \$4,832.50 within ten days. Id. at 6. Respondent, however, failed to comply, in violation of RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal). Id. at 6, 14-15. Moreover, respondent violated RPC 8.1(b) by failing to reply to the ethics grievance filed with Pennsylvania disciplinary authorities. Id. at 15.

In the second client matter comprising Smith I, respondent violated RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6) by mismanaging entrusted client funds held in his attorney trust account (ATA). Id. at 15. Specifically, in September 2015, respondent issued a \$204,484.58 ATA

check to the executor of his former client's estate; however, his ATA had only a \$6,770.57 balance – an amount woefully insufficient to cover the check. Ibid. Thereafter, between October 2015 and August 2016, respondent repeatedly failed to fully comply with requests by Pennsylvania disciplinary authorities for his financial records. Id. at 8-9. Respondent also failed to reply to the 2018 Pennsylvania ethics grievance concerning his misconduct. Id. at 10.

In determining that a one-year suspension was the appropriate quantum of discipline, we emphasized that respondent refused to remove John from the lawsuit, despite knowing the claims against him were frivolous, and defied multiple Superior Court orders, one of which held him in contempt. Id. at 21. We also stressed that respondent failed to cooperate with the disciplinary investigations underlying both client matters. Ibid. As a condition to his reinstatement, we recommended that the Court require respondent to provide the OAE with any outstanding records and all documents that he had provided to Pennsylvania disciplinary authorities. Id. at 23. The Court agreed with our recommended discipline and condition.

Effective March 7, 2023, the Court suspended respondent for six months, in a default matter, for his gross mishandling of a client matter. In re Smith, 252 N.J. 64 (2022) (Smith II). In that matter, respondent's clients were defendants in a civil lawsuit filed in the Superior Court. In the Matter of Brian J. Smith,

DRB 21-194 (Feb. 18, 2022) at 4. Between May and July 2019, respondent neither opposed the plaintiff's motions to compel discovery nor informed his clients of the plaintiff's applications. Id. at 4-5. In August 2019, following respondent's failure to comply with two Superior Court orders granting the plaintiff's unopposed discovery motions, the plaintiff filed a motion to strike respondent's clients' answer and counterclaim. Id. at 5. Respondent, however, failed to advise his clients of the motion or to file any opposition to the application. Ibid. Consequently, in September 2019, the Superior Court issued an order striking respondent's clients' answer and counterclaim and then entered a \$627,905 default judgment against the clients. Id. at 5-6. In October 2020, respondent's clients independently discovered the existence of the default judgment and, thereafter, retained a new attorney to vacate the default judgment and reinstate their answer and counterclaim. Id. at 6-7.

In addition to his gross neglect of his clients' matter and his failure to apprise his clients of the significant developments of their lawsuit, we determined that respondent violated RPC 5.5(a) (engaging in the unauthorized practice of law) by practicing law while administratively ineligible between November 2019 and at least January 2020. Id. at 2-3, 6, 10. Indeed, respondent failed to advise his clients of his ineligibility and, thus, deprived them of the opportunity to obtain substitute counsel prior to the entry of the default

judgment. Id. at 9. Finally, we found that respondent violated RPC 8.1(b) by failing to reply to the District Ethics Committee's (the DEC) multiple letters, issued between February and March 2021, requiring that he submit a written reply to the ethics grievance. Id. at 7-8, 10-11.

In determining that a six-month suspension, consecutive to the one-year suspension imposed in Smith I, was the appropriate quantum of discipline, we weighed, in aggravation that respondent failed to cooperate with the DEC and allowed the matter to proceed as a default, despite having a heightened awareness of his professional obligations as an attorney. Id. at 15. However, we observed that respondent's misconduct was confined to a single client matter in which the clients, fortunately, were able to retain a new attorney to vacate the \$627,905 default judgment. Id. at 15-16. The Court agreed with our recommended discipline.

Respondent remains suspended in connection with his misconduct underlying Smith I and Smith II and has not applied for reinstatement to the practice of law in New Jersey.

### **Service of Process**

Turning to the instant matter, service of process was proper. On February 13, 2023, the OAE sent a copy of the formal ethics complaint, by certified and

regular mail, to respondent's home and Pennsylvania office addresses of record. However, the mail addressed to respondent's office address contained a misnumbered street address. Neither the certified nor the regular mail containing the incorrect office address were returned to the OAE. On March 17, 2023, the certified mail sent to respondent's home address was delivered. According to the United States Postal Service tracking, respondent picked up the certified mail at the post office, and the certified mail receipt was returned to the OAE bearing respondent's signature. The regular mail sent to respondent's home address was not returned to the OAE.

On April 13, 2023, the OAE sent a second letter to respondent's home and Pennsylvania office addresses of record, by certified and regular mail, informing 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). The mail addressed to respondent's office address again contained a misnumbered street address. The certified mail containing the incorrect office address was not returned the OAE, and the regular mail was returned marked "insufficient address/unable to forward." However, on April 17, 2023, the



certified mail sent to respondent's home address was delivered successfully and the regular mail was not returned.

On June 6, 2023, the OAE sent another copy of the formal ethics complaint, by certified and regular mail, to respondent's correct office address of record. On June 9, 2023, the certified mail was delivered and the regular mail was not returned to the OAE.

On August 10, 2023, the OAE sent respondent an additional letter, to his correct office address of record, and to his home address, informing 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). On August 16, 2023, the certified mail was delivered to respondent's home and office addresses. The record before us does not indicate whether the regular mail was returned to the OAE.

As of October 19, 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 January 14, 2024, Chief Counsel to the Board sent respondent a letter, by certified and regular mail, to his home address of record, informing him that

this matter was scheduled before us on March 21, 2024, and that any motion to vacate must be filed by February 19, 2024. On or before January 29, 2024, the certified mail was delivered successfully, and the regular mail has not been returned to the Office of Board Counsel (the OBC).

Finally, on February 5, 2024, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on March 21, 2024. The notice informed respondent that, unless he filed a successful motion to vacate the default by February 19, 2024, his failure to answer 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 February 11, 2022, the Court suspended respondent for one year in connection with his misconduct underlying Smith I (effective March 7, 2022) and, on September 23, 2022, suspended respondent for six months in connection with his misconduct underlying Smith II (effective March 7, 2023). Respondent remains suspended pursuant to both Court Orders.

The Court's disciplinary Orders underlying Smith I and Smith II each 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 order.” Consistent with R. 1:20-20(c), the Court explicitly stated that failing to file the affidavit of compliance would constitute a violation of RPC 8.1(b) and RPC 8.4(d). Respondent, however, failed to file the required affidavit of compliance.

On June 9, 2022, the OAE sent respondent a letter, by certified and regular mail, to his home and office addresses 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 by June 23, 2022. On June 15 and 16, 2022, the certified mail sent to respondent’s home and office addresses were both delivered successfully. The regular mail was not returned to the OAE. Respondent, however, failed to reply.

On July 20, 2022, the OAE sent respondent an additional letter, by certified and regular mail, to his home and office addresses of record, and by electronic mail, to his e-mail address of record, advising him that his failure to file a conforming affidavit by August 3, 2022 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. On July 25, 2022, the certified mail sent to respondent’s home and office addresses were both delivered

successfully. The regular mail was not returned to the OAE. However, the electronic mail was returned as undeliverable.

As of February 13, 2023, the date of the formal ethics complaint, respondent had failed to reply to the OAE's letters or to file the required affidavit, a step required of all suspended or disbarred attorneys. 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 Orders. Additionally, the formal ethics 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 October 18, 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 requests 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 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 Rule 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 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 Orders underlying Smith I and Smith II 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 fact, the attorney in Girdler was suspended for three months, in a default matter, based, in part, on his disciplinary history which 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, attorneys with less serious disciplinary histories have received reprimands, in default matters, for their failure to file the required R. 1:20-20 affidavit. See e.g., 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. 325 (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.

The quantum of discipline is enhanced, however, if the attorney has a more serious disciplinary history or a demonstrated pattern of failing to comply with court orders.

For instance, in In re Ludwig, 252 N.J. 67 (2022), the Court imposed a censure on 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, and then allowed the matter to proceed as a default. In that matter, we accorded significant aggravating weight to the fact that Ludwig’s failure to file the affidavit constituted his third disciplinary proceeding in five years. In the Matter of Thomas Ludwig, DRB 21-219 (Feb. 18, 2022) at 9. Specifically, in 2018, Ludwig received a reprimand, in a non-default matter, for his mishandling of an estate matter and for his failure to cooperate with the DEC. Id. at 2. Thereafter, in 2021, Ludwig received a three-month suspension, in a default matter, for his failure to comply with at least two Superior Court orders directing that he refund his executor’s fees and commissions and relinquish all

financial records in connection with the same estate matter underlying his 2018 disciplinary matter. Id. at 2-3.

We observed that, although Ludwig had a heightened awareness of his obligation to cooperate with disciplinary authorities given his two recent disciplinary matters, he failed to file an answer to the complaint and allowed the matter to proceed as a default, just as he had done in his 2021 disciplinary matter. Id. at 9-10. Indeed, the Court had imposed Ludwig's 2021 three-month suspension mere months before the OAE filed its formal ethics complaint underlying his failure to file the required affidavit of compliance. Id. at 10. Consequently, we determined that a three-month suspension was the appropriate quantum of discipline for Ludwig's failure to file the affidavit. Ibid. The Court, however, imposed a censure.

Attorneys with more egregious disciplinary histories have received significant terms of suspension or been disbarred for their failure to file the affidavit in default matters. See e.g., In re Wargo, 196 N.J. 542 (2008) (one-year suspension; the attorney's ethics history included a temporary suspension for failure to cooperate with the OAE, a censure, and a one-year suspension for misconduct in two consolidated matters; all disciplinary matters proceeded as defaults); In re Wright, 240 N.J. 218 (2019) (two-year suspension; the attorney's extensive disciplinary history consisted of a reprimand, a censure, and a six-

month suspension, all of which proceeded as defaults, and a one-year suspension, in a non-default matter); In re Bernot, 246 N.J. 183 (2021) (three-year suspension; the attorney's egregious disciplinary history consisted of a reprimand, a two-year suspension, and a six-month suspension; both suspension matters proceeded as defaults; the attorney spoke with the OAE about his R. 1:20-20 obligation, and he signed for at least one certified letter; nevertheless, the attorney failed to file the required affidavit); In re Smith, 244 N.J. 191 (2020) (the attorney failed to file the affidavit following two Court Orders suspending him from the practice of law; during an eleven-year period, the attorney received an admonition, two censures, a three-month suspension, and a six-month suspension; we determined that a two-year suspension was appropriate for the attorney's blatant disregard of the Court Rules; however, the Court disbarred the attorney after he failed to appear for the Court's Order to Show Cause).

More recently, in In re Calpin, 252 N.J. 43 (2022), the Court disbarred an attorney in connection with his failure to file the mandatory affidavit following his (1) May 2020 one-year suspension, in a default matter in which he had lied to disciplinary authorities, and (2) his January and July 2020 temporary suspensions for failing to comply with two separate FAC determinations. In the Matter of Brian LeBon Calpin, DRB 21-185 (Jan. 25, 2022) at 10. In determining to recommend Calpin's disbarment, we accorded significant aggravating weight

to Calpin’s decision to wholly ignore his obligations to comply with R. 1:20-20 following three separate Court Orders. Id. at 14. Additionally, we found that Calpin had failed to learn from his past mistakes in light of his extensive disciplinary history consisting of (1) a 2014 reprimand; (2) a 2017 admonition; (3) a 2020 one-year suspension, in a default matter; and (4) our 2021 recommendation, in a default matter, for an eighteen-month suspension. Id. at 5, 14-15. We stressed that Calpin’s failure to file the affidavit constituted his fifth disciplinary matter since 2014 and his third consecutive default since 2020, conduct which demonstrated a flagrant disregard for the regulations governing New Jersey attorneys and a disdain for the disciplinary process designed to protect the public. Id. at 14-16. We concluded that Calpin demonstrated no prospect for rehabilitation and, “[g]iven his lengthy disciplinary history and the absence of any hope for improvement,” we fully “expect[ed] that his assault on the Rules of Professional Conduct would continue.” Id. at 16 (quoting In re Vincenti, 152 N.J. 253, 254 (1998)). The Court agreed and disbarred Calpin following his failure to appear for the Court’s Order to Show Cause.

Here, in 2022, the Court issued two Orders 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, wholly ignored the Court’s Orders and refused to reply to the OAE’s communications

attempting to ensure his compliance with the Rule. Respondent's total disregard of his obligations as a suspended attorney and his refusal to participate in the disciplinary process represents a continuation of his disturbing trend of violating court orders and failing to cooperate with disciplinary authorities that he has exhibited since his misconduct underlying Smith I and Smith II.

Specifically, in Smith I, between April and July 2018, respondent defied two Superior Court orders, one of which found him in contempt, requiring that he pay a portion of his adversary's attorney's fees and expenses as a direct result of his refusal to remove a frivolous claim from his client's lawsuit. Moreover, respondent failed to cooperate with Pennsylvania disciplinary authorities underlying two client matters. Respondent, however, participated in the New Jersey disciplinary proceedings, which resulted in a one-year suspension.

In Smith II, respondent grossly mishandled a civil matter on behalf of two clients. By August 2019, respondent had failed to comply with at least two Superior Court discovery orders, conduct which resulted in the striking of his clients' answer and counterclaim and, thereafter, the issuance of a \$627,905 default judgment against his clients. Moreover, between November 2019 and at least January 2020, he continued to practice law while administratively ineligible and failed to advise his clients of his ineligible status. Finally, between February and March 2021, respondent failed to reply to the DEC's letters

directing that he submit a written reply to the ethics grievance, following which he refused to answer the formal ethics complaint and allowed the matter to proceed as a default. Respondent's misconduct in that matter resulted in a six-month suspension, consecutive to the one-year suspension imposed in Smith I.

Because the timeframe underlying respondent's misconduct in Smith I and Smith II closely preceded the timeframe underlying his misconduct in the instant matter, respondent clearly had a heightened awareness of his professional obligation to comply with court orders and to participate in the disciplinary process. Nevertheless, respondent ignored the Court's 2022 suspension Orders and failed to file the required affidavit of compliance, despite the OAE's specific requests that he do so. Similarly, he refused to reply to the OAE's communications and allowed this matter to proceed as a default. See In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted) (an attorney's "default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced"). Consequently, respondent has failed to utilize his experiences with the disciplinary system as a foundation to reform his conduct. See In re Zeitler, 182 N.J. 389, 398 (2005) ("Despite having received numerous opportunities to reform himself, [the attorney had] continued to display his disregard, indeed contempt, for our disciplinary rules and our ethics system.").

Like the censured attorney in Ludwig, this matter represents respondent's third disciplinary matter and second consecutive default matter within the past two years. However, respondent's disciplinary history, consisting of a one-year suspension, in a non-default matter, and a six-month suspension, in a default matter, is far more egregious than Ludwig's disciplinary history consisting of a reprimand, in a non-default matter, and a three-month suspension, in a default matter. Nevertheless, respondent's disciplinary history, arguably, is not quite as serious as the attorney in Wargo, who received a one-year suspension, in a default matter, for failing to file the R. 1:20-20 affidavit. Although Wargo also had a prior one-year suspension, that matter consisted of two disciplinary matters, both of which proceeded as defaults. Additionally, Wargo had a prior censure, also in a default matter, and a temporary suspension for failing to cooperate with the OAE. Unlike respondent, whose failure to file the affidavit of compliance represents his second consecutive default matter within a two-year period, Wargo's failure to file the affidavit represented his fourth consecutive default matter within a similar timeframe.

### **Conclusion**

In conclusion, given that respondent's refusal to cooperate with disciplinary authorities or to comply with court orders has continued, unabated,

since his misconduct underlying Smith I and Smith II, and consistent with applicable disciplinary precedent, we determine that a six-month suspension is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Chair Gallipoli voted to recommend to the Court that respondent be disbarred.

Member Joseph voted to impose a censure.

Member Menaker voted to impose a one-year suspension.

Member Campelo was 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  
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),  
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 Brian J. Smith  
Docket No. DRB 23-231

Decided: April 8, 2024

Disposition: Six-month suspension

<i>Members</i>	Six-Month Suspension	Censure	One-Year Suspension	Disbar	Absent
Gallipoli				X	
Boyer	X				
Campelo					X
Hoberman	X				
Joseph		X			
Menaker			X		
Petrou	X				
Rivera	X				
Rodriguez	X				
Total:	5	1	1	1	1

/s/ Timothy M. Ellis

Timothy M. Ellis  
Chief Counsel