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November 26, 2024

Heather Joy Baker, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of Marc S. Mace**
Docket No. DRB 24-229
District Docket No. XIV-2023-0238E

Dear Ms. Baker:

The Disciplinary Review Board (the Board) has reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (the OAE) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined to impose a reprimand, with a condition, for respondent's violation of RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

As set forth in the stipulation, respondent earned conditional admission to the New Jersey bar in 2019. Pursuant to the Court's September 26, 2019 conditional admission Order, respondent was required to, among other conditions, "remain abstinent from the use of all intoxicating substances, unless prescribed by a treating physician."

On May 9, 2023, just before midnight, a Clark Police Department police officer observed respondent asleep in his vehicle, with the car engine running, at a complete stop in a merging lane. According to the police report, respondent's speech was slurred and he appeared confused. After he stumbled out of the car, officers detected the odor of alcohol on his breath. Respondent admitted to the officers that he had consumed alcoholic beverages prior to operating his vehicle. Given these observations, and respondent's poor performance on standardized sobriety tests, the police officers arrested him for suspicion of driving while intoxicated.

Although respondent initially cooperated with the police, he became combative after transport to the police station. He refused to sign forms indicating that he was advised of his constitutional rights and which personal belongings were inventoried. He also refused to provide breath samples for the Alcotest instrument because officers could not tell him "when the machine was last calibrated." Moreover, referring to the mayor of Clark, respondent asked the officers, "Do you know who Sal Bonaccorso is? . . . Have you ever met Sal? . . . [and] How many times have you met him?" Respondent even demanded that the officers call the mayor to pick him up.

Respondent informed the officers he was "being held against his constitutional rights," and demanded to be released. When the officers explained to him that he would have to remain at headquarters for at least twelve hours if no one came to retrieve him, he became "irate" and demanded to speak with a judge. Once he was placed in a holding cell, after using his cellular telephone despite the officer's directive that he not do so, he began banging, kicking, and running into the door. He also yelled profanities and threatened to take legal action against the police department.

Respondent was charged with driving while intoxicated, in violation of N.J.S.A. 39:4-50, and refusing to submit a breath sample, in violation of N.J.S.A. 39:4-50.2 and N.J.S.A. 39:4-50.4a.

On May 18, 2023, respondent reported his misconduct, through counsel, to the Committee on Character, and, on June 15, 2023, to the OAE. In a letter to the OAE, respondent acknowledged that he should have called his Alcoholics Anonymous (AA) sponsor and that he "did not make use of the tools that were available to [him]." Regarding his interaction with the police, he expressed

remorse on “how childishly [he had] behaved.” He stated that he immediately disclosed his relapse to AA and remained dedicated to working with AA to sustain his sobriety. He emphasized that it was his “unequivocal desire to continue to live a life of service not only as an individual, but also as a member of AA, and as a member of the Bar of this State.”

On November 8, 2023, with counsel present, respondent pleaded guilty to DWI, contrary to N.J.S.A. 39:4-50, and refusal to submit to the taking of a breath sample, contrary to N.J.S.A. 39:4-50.2. The court sentenced respondent to attend a twelve-hour Intoxicated Driver Resource Center program, to use an ignition interlock device on his vehicle for nine months, and to pay the remaining \$600 of his \$1,020 assessment.

Based on the foregoing, the parties stipulated that respondent violated RPC 3.4(c) and RPC 8.4(d).

Following a review of the record, the Board determined to grant the motion for discipline by consent and concluded that the stipulated facts clearly and convincingly support the finding that the respondent committed the charged misconduct. Specifically, respondent violated RPC 3.4(c) and RPC 8.4(d) by violating the Court’s September 26, 2019 Order requiring him to abstain from alcohol, and by further causing the expenditure and waste of municipal resources during court proceedings to address his traffic violations.

The discipline imposed on attorneys who violate terms of their conditional admission to the practice of law varies based on the facts and circumstances of each case. See In re McLaughlin, 179 N.J. 314 (2004) (reprimand for an attorney who violated a term of his conditional admission to the practice of law that required his abstinence from alcohol or intoxicating substances; the attorney had a one-evening relapse and was charged with DWI; after his DWI arrest, he falsely certified in his quarterly reporting that he had refrained from alcohol use; the attorney entered a conditional guilty plea and, while his appeal was pending, reported his misconduct to the OAE; violation of RPC 8.4(c)); in mitigation, the Board considered his eventual admission to the misconduct), and In re Allen, 197 N.J. 34 (2008) (indefinite suspension for an attorney who violated a term of his conditional admission to the practice of law that required him to remain abstinent from drugs and alcohol; the attorney twice falsely represented to the Court that he was in compliance with the terms of his conditional admission, despite relapsing on four occasions; in aggravation, the attorney allowed the

matter to proceed as a default and failed to appear for the Court's Order to Show Cause; in addition to violating RPC 3.4(c) and RPC 8.4(c), the attorney also engaged in the unauthorized practice of law, in violation of RPC 5.5(a); as a condition to his reinstatement, the Court required the attorney to submit proof of his sobriety and fitness to practice law).

In the Board's view, respondent's misconduct is similar to the reprimanded attorney in McLaughlin. However, in contrast to McLaughlin, who submitted a false certification to the Committee, respondent promptly reported his misconduct to the OAE, just nine days after it occurred. Additionally, unlike the suspended attorney in Allen who repeatedly relapsed and submitted two false statements to the Court, respondent, after one relapse, promptly accepted responsibility for his misconduct and recommitted himself to his sobriety. Accordingly, based upon disciplinary precedent, and McLaughlin in particular, respondent's misconduct could be met with a reprimand. To craft the appropriate discipline, however, the Board also considered mitigating and aggravating factors.

In mitigation, respondent admitted his wrongdoing and accepted responsibility for his actions. Moreover, he promptly reported his misconduct, and he entered into this disciplinary stipulation. Additionally, he expressed sincere remorse and emphasized his commitment to reforming his conduct and remaining an upstanding member of the New Jersey bar.

In aggravation, respondent's conduct toward the police officers following his arrest reflected a lack of the personal and professional characteristics demanded of an attorney. He failed to cooperate, became irate, made threats of legal action, and shouted at the officers.

Moreover, respondent repeatedly asked the police officers if they knew the town's mayor, even demanding that they call him, thereby implying his ability to influence the outcome of the arrest by virtue of his relationship with the mayor. See In re Aram Ingilian, DRB 20-021 (December 14, 2020) at 11 (the attorney, who was charged with aggravated assault and terroristic threats, also violated RPC 8.4(e) by implying he had influence over the municipal court, the police force, and the mayor in Cliffside Park, in an attempt to bully, intimidate, and otherwise discourage a teenager he had assaulted from raising allegations against him; the Board determined to sustain the RPC 8.4(e) charge because, although this was not the "usual type of conduct" which led to such a violation,

it undermined the integrity of, and served to diminish public confidence in, the criminal justice system). Although the OAE declined to charge respondent with a violation of RPC 8.4(e) (stating or implying an ability to improperly influence a government agency or official), the Board considered this uncharged conduct in aggravation. In re Steiert, 201 N.J. 119 (2014) (evidence of unethical conduct contained in the record can be considered in aggravation, even though such unethical conduct was not charged in the formal ethics complaint).

On balance, the Board determined that a reprimand is the appropriate quantum of discipline to protect the public and preserve confidence in the bar. The Board further recommended that, as a condition, respondent's conditional admission should be extended for an additional two years before he can petition for the termination of those conditions.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated September 23, 2024.
2. Stipulation of discipline by consent, dated September 23, 2024
3. Affidavit of consent, dated September 23, 2024.
4. Ethics history, dated November 26, 2024.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

TME/akg

- c: (w/out enclosures)
Hon. Mary Catherine Cuff, P.J.A.D. (Ret.), Chair
Disciplinary Review Board (e-mail)
Johanna Barba Jones, Director
Office of Attorney Ethics (e-mail and interoffice mail)
John J. Hays II, Deputy Ethics Counsel
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