

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
Docket No. DRB 24-150  
District Docket No. XIV-2023-0284E

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In the Matter of Kendal Coleman  
An Attorney at Law

Decided  
December 4, 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 comply with R. 1:20-20 governing suspended attorneys and failing to cooperate with disciplinary authorities) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).<sup>1</sup>

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

## **Ethics History**

Respondent earned admission to the New Jersey bar in 2000. He previously maintained a practice of law in Clifton, New Jersey.

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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.

Coleman I

On July 25, 2019, the Court censured respondent in two consolidated matters, one of which proceeded as a default. In re Coleman, 245 N.J. 264 (2019) (Coleman I). In the default matter, respondent failed to maintain professional liability insurance, as required by R. 1:21-1A(a)(3), and continued to practice law as a professional corporation despite the revocation of his law firm's corporate status, in violation of RPC 5.5(a)(1). Further, following the revocation of his firm's corporate status, he continued to advertise and promote his law practice as a professional corporation on his website, social media, and via his attorney trust and business accounts, in violation of RPC 7.1(a) (false or misleading communications about a lawyer or the lawyer's services) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In the second matter comprising Coleman I, respondent created a shortage in his attorney trust account (ATA) when, following a bank error, he disbursed to a real estate seller a check exceeding the amount of funds he held on the seller's behalf, in violation of RPC 1.15(a) (negligent misappropriation and failure to safeguard client funds). Respondent was unaware of the error, which persisted for two years, until the OAE conducted a demand audit revealing his recordkeeping violations (RPC 1.15(d)). We acknowledged that the baseline discipline for respondent's misconduct across both matters was a reprimand.

However, we determined that the default status of the matter required an enhancement of the quantum of discipline to a censure. In the Matter of Kendal Coleman, DRB 18-211 and 18-218 (December 14, 2018). As conditions to the discipline, we also recommended, and the Court ordered, that respondent (1) attend the New Jersey State Bar Association Diversionary Continuing Legal Education (CLE) Program and submit proof of attendance with the OAE, and (2) attend the New Jersey Institute for CLE New Jersey Trust and Business Accounting Program, or its equivalent, with proof of attendance to the OAE within ninety days. Further, respondent was required to provide the OAE with quarterly reconciliations of his ATA, for a period of two years.

### Temporary Suspension

Effective August 27, 2021, the Court temporarily suspended respondent for failing to provide records and documents to the OAE, as required by the Court's Order in Coleman I. In re Coleman, 248 N.J. 207 (2021). Less than two months later, on October 19, 2021, the Court reinstated respondent to the practice of law. In re Coleman, 248 N.J. 511 (2021).

### Coleman II

On March 14, 2022, the Court again censured respondent, in a second default matter, for violating RPC 1.5(a) (charging an unreasonable fee), RPC 1.15(d), and RPC 8.1(b). In re Coleman, 250 N.J. 120 (2022) (Coleman II). In that matter, the OAE's demand audit, which followed respondent's overdraft of his ATA, uncovered multiple recordkeeping deficiencies. The OAE's audit also revealed that, in five personal injury matters, respondent improperly had calculated his legal fee based upon the gross, rather than the net, settlement amount. We again enhanced the baseline discipline of a reprimand to a censure based upon respondent's default. We determined, however, that greater discipline was not warranted, because respondent's recordkeeping violations in Coleman II had occurred prior to his recordkeeping violations in Coleman I. Thus, in our view, principles of progressive discipline were not applicable. In the Matter of Kendal Coleman, DRB 20-317 (July 28, 2021).

### Coleman III

On June 19, 2023, the Court suspended respondent for three months, in a third default matter, for once again failing to maintain required professional liability insurance, in violation of RPC 5.5(a)(1), and, thereafter, for his failure to file a verified answer to the formal ethics complaint, in violation of RPC

8.1(b). In re Coleman, 2023 N.J. 591 (2023)) (Coleman III). In determining that a three-month suspension was the appropriate quantum of discipline, we accorded significant weight to respondent’s disciplinary history, emphasizing that the matter represented his fourth encounter with the disciplinary system in five years. In the Matter of Kendal Coleman, DRB 22-116 (December 16, 2022). We also determined that progressive discipline was warranted due to respondent’s failure to learn from his past mistakes, considering that he was censured in Coleman I for the same misconduct – failing to maintain required professional liability insurance. Id. at 18.

### **Service of Process**

Turning to the instant matter, service was proper. On April 23, 2024, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent’s home address of record. On May 20, 2024, the certified mail was returned to the OAE marked “unclaimed.” The regular mail was not returned.

On May 30, 2024, the OAE sent a second letter, by certified and regular mail, to respondent’s home address of record. The letter informed 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) by reason of his failure to answer. The certified mail receipt was returned to the OAE, signed (although the signature is illegible), indicating delivery. The regular mail was not returned to the OAE.

As of July 8, 2024, 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 July 29, 2024, Chief Counsel to the Board sent a letter to respondent, by certified and regular mail, to his home address of record, with an additional copy sent by electronic mail, to his e-mail address of record, informing him that the matter was scheduled before us on September 19, 2024, and that any motion to vacate the default must be filed by August 19, 2024. The certified mail was returned to the Office of Board Counsel (the OBC) marked “unclaimed.” The regular mail was not returned.

Moreover, on August 1, 2024, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on September 19, 2024. The notice informed respondent that, unless he filed a successful motion to vacate the default by August 19, 2024, his prior failure to answer the

complaint 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, effective June 19, 2023, the Court suspended respondent for three months in connection with his misconduct underlying Coleman III. The Court's May 30, 2023 Order in that matter 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 (regardless of the effective date thereof) 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, in its suspension Order, that respondent's failure to file the affidavit would constitute a violation of RPC 8.1(b) and RPC 8.4(d). Respondent failed to file the required affidavit of compliance.

On August 21, 2023, the OAE sent respondent a letter, by certified and regular mail, to his home and office address 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 to the OAE by September 5, 2023. The certified mail sent to respondent's office was returned marked "unclaimed unable to forward."<sup>2</sup> The regular mail sent to respondent's home and office address were not returned to the OAE. Respondent, however, failed to reply and did not file the required affidavit.

On February 22, 2024, the OAE sent respondent an additional letter, by certified and regular mail, to his home and office addresses of record, and by electronic mail for the second time,<sup>3</sup> to his e-mail address of record, advising him that his failure to file a conforming affidavit by February 29, 2024 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 February 29, 2024, respondent replied to the OAE's e-mail and requested an extension of time, to March 10, 2024, to submit the required affidavit, claiming that he was "out of the country taking care of a health matter." The OAE granted that extension. However, respondent failed to file the required affidavit by March 10, 2024.

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<sup>2</sup> The record does not indicate whether the certified mail sent to respondent's home address of record was returned.

<sup>3</sup> On February 22, 2024, the OAE sent the first e-mail to an incorrect email address for respondent. Upon receiving an e-mail reporting a delivery error, the OAE sent a second e-mail to respondent, that same date, at the correct e-mail address.

As of April 19, 2024, the date of the formal ethics complaint, respondent had failed to file the required affidavit. 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 temporary suspension Order by failing to file the required affidavit, a step required of all suspended attorneys. Additionally, the formal ethics complaint charged him with having violated RPC 8.1(b) a second time by failing to file a verified answer to the complaint and allowing this matter to proceed as a default.

### **Analysis and Discipline**

#### *Violations of the Rules of Professional Conduct*

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 R. 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.” See 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)). Non-compliance with R. 1:20-20 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 Order, issued on May 30, 2023, 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, he 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

Since September 2022, attorneys with less serious disciplinary histories have received reprimands, in default matters, for their failure to file the R. 1:20-20 affidavit. See, e.g., In re Ashton, 257 N.J. 225 (2024) (the attorney failed to file the required affidavit following his two-year suspension in connection with his misconduct in a prior disciplinary matter); In re Cottee, 255 N.J. 439 (2023) (the attorney failed to file the required R. 1:20-20 affidavit of compliance, despite the OAE's specific requests that he do so; his disciplinary history consisted only of a prior three-month suspension, in a 2021 reciprocal discipline matter); 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. 327 (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 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).

However, the quantum of discipline is enhanced if the attorney has a more serious disciplinary history or in the presence of other aggravating factors. See

In re Smith, 258 N.J. 27 (2024) (in a default matter, censure for an attorney who failed to file R. 1:20-20 affidavits of compliance following two suspensions – a one-year suspension based on misconduct in two client matters, and a consecutive six-month suspension, in a default matter, based on his gross mishandling of one client matter; in each disciplinary matter, the attorney ignored the Court’s Order of suspension, directing that he file the affidavit, and also failed to reply to the OAE’s communications attempting to ensure his compliance), and In re Ludwig, 252 N.J. 67 (2022) (in a default matter, censure for 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; in aggravation, the attorney’s failure to file the affidavit constituted his third disciplinary matter in five years; prior reprimand, in addition to the 2021 disciplinary suspension, in a default matter, that gave rise to his obligation to file the affidavit).

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 2023, the Court issued an Order 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 Order, refused to reply to the OAE's communications attempting to ensure his compliance with the Rule and, subsequently, allowed this matter to proceed as a default. He also has a disciplinary history consisting of two censures and a three-month suspension, Thus, based on the above disciplinary precedent, Smith and Ludwig in particular, respondent's misconduct could be met with a censure. However, to craft the appropriate discipline in this matter, we also considered mitigating and aggravating factors.

There is no mitigation to consider.

We accord significant weight to several compelling aggravating factors. 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 ignoring his professional obligations and failing to cooperate with disciplinary authorities that he has exhibited since his misconduct underlying Coleman I.

Indeed, this matter represents respondent's fifth<sup>4</sup> encounter with the disciplinary system, albeit our fourth decision as the result of the consolidation of two matters in Coleman I. The Court has signaled an inclination toward progressive discipline and the stern treatment of repeat offenders. In such

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<sup>4</sup> In Coleman I, we consolidated two matters (DRB 18-211 and DRB 18-218) for the purpose of imposing discipline, Coleman II involved one matter (DRB 20-217), and Coleman III involved one matter (DRB 22-116).

scenarios, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system).

Despite his heightened awareness of his professional obligation to comply with the Court Rules and to participate in the disciplinary process, respondent ignored the Court's 2023 suspension Order and failed to file the required affidavit of compliance. Further, 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").

In further aggravation, this matter not only represents respondent's fourth default, but is his third consecutive default. In our view, he 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.").

## **Conclusion**

On balance, given respondent's refusal to conform his conduct to that required by the Rules, in conjunction with his repeated defaults, we determine that a six-month suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Vice-Chair Boyer voted to impose a three-month 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. Mary Catherine Cuff, P.J.A.D. (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 Kendal Coleman  
Docket No. DRB 24-150

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Decided: December 4, 2024

Disposition: Six-Month Suspension

<i>Members</i>	Six-Month Suspension	Three-Month Suspension	Absent
Cuff	X		
Boyer		X	
Campelo			X
Hoberman	X		
Menaker	X		
Petrou	X		
Rivera	X		
Rodriguez	X		
Spencer	X		
Total:	7	1	1

/s/ Timothy M. Ellis

Timothy M. Ellis  
Chief Counsel