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OF THE

SUPREME COURT OF NEW JERSEY

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April 23, 2025

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

RE: In the Matter of Richard J. Pepsny
Docket No. DRB 25-043
District Docket No. XIV-2024-0493E

Dear Ms. Baker:

The Disciplinary Review Board (the Board) has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board may deem appropriate) filed by the Office of Attorney Ethics (the OAE) in this matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined to impose a censure for respondent's violation of RPC 3.3(a)(1) (two instances – knowingly making a false statement of material fact to a tribunal); RPC 8.1(a) (two instances – knowingly making a false statement of material fact to disciplinary authorities); RPC 8.4(c) (two instances – engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

However, for the reasons set forth below, the Board determined to dismiss the charges that respondent violated RPC 3.3(a)(1), RPC 8.1(a), and RPC 8.4(c) in connection with the filing of his amended petition for reinstatement.

Previously, effective August 15, 2022, the Court suspended respondent for three months for engaging in conflicts of interest and for negligently misappropriating escrow funds. In re Pepsny, __ N.J. __ (2022), 2022 N.J. LEXIS 664 (Pepsny I).

In Pepsny I, the Board unanimously determined that respondent engaged in a concurrent conflict of interest by representing a borrower of a loan transaction, acting as the settlement agent for the transaction, and, at the same time, holding competing financial interests in the transaction. Additionally, he engaged in an improper business transaction with a client by lending the borrower $30,000 in connection with the transaction. However, the Board was unable to reach a consensus regarding whether respondent knowingly misappropriated escrow funds by utilizing $26,000 in returned loan proceeds to reimburse himself for the funds he had advanced to the borrower. Following its review, the Court imposed a three-month suspension.

Respondent's misconduct in the instant matter arises out of his misrepresentations to disciplinary authorities concerning his purported compliance with R. 1:20-20 in connection with his term of suspension underlying Pepsny I. In relevant part, R. 1:20-20(b)(5) requires a suspended attorney to "cease to use any bank accounts or checks on which the attorney's name appears as a lawyer or attorney-at-law or in connection with the words 'law office.'"

On August 9, 2022, six days before the effective date of his three-month suspension, respondent filed with the OAE, the Board, and the Clerk of the Court his R. 1:20-20 affidavit of compliance. In his affidavit, he falsely certified that he had "ceased using any checks on which my name appears as attorney (except as to permitted [ATA] disbursement[s])," in violation of RPC 3.3(a)(1), RPC 8.1(a), and RPC 8.4(c).

In fact, throughout his term of suspension – spanning from August 15, 2022 through January 9, 2023 – respondent routinely utilized his attorney business account (ABA) to not only issue checks to himself and others, but also

make numerous electronic payments for various expenses, in violation of the clear strictures of R. 1:20-20(b)(5), the Court's suspension Order requiring that he fully comply with R. 1:20-20, and RPC 8.4(d) – by virtue of his failure to comply with the Court's Order. Indeed, he improperly held himself out as an attorney to at least two medical providers, a beauty salon, and the New Jersey Lawyers' Fund for Client Protection (the CPF), given that his ABA checks to those entities falsely identified him as a lawyer with an active license. Further, throughout his suspension, he continued to improperly deposit, in his ABA, legal fees for work he had performed prior to his suspension, despite R. 1:20-20(b)(13) prohibiting attorneys, like respondent, from receiving such fees when they have not fully complied with R. 1:20-20.

Rather than truthfully disclose his systematic and improper ABA use throughout his suspension, respondent continued to lie to the OAE, the Board, and the Clerk's Office in connection with his December 8, 2022 petition for reinstatement. Specifically, he admittedly violated RPC 3.3(a)(1), RPC 8.1(a), and RPC 8.4(c) a second time by "enclos[ing] and incorporat[ing]," in his reinstatement petition, his R. 1:20-20 affidavit in which he had certified – falsely – that he had fully complied with the Court Rules governing suspended attorneys by not issuing any checks on which his name appeared as an attorney.

However, the Board determined to dismiss the charges that respondent violated RPC 3.3(a)(1), RPC 8.1(a), and RPC 8.4(c) a third time based on his purported false statements to the OAE, the Board, and the Clerk's Office in connection with his December 27, 2022 amended reinstatement petition. Respondent's amended petition primarily addressed his failure to both file an annual attorney registration statement with the CPF and pay the administrative costs and expenses incurred in connection with Pepsny I. Given that his amended petition did not enclose his false R. 1:20-20 affidavit and was prompted by his prior failure to comply with two unrelated procedural deficiencies, the Board dismissed, for lack of clear and convincing evidence, the charges that respondent violated RPC 3.3(a)(1), RPC 8.1(a), and RPC 8.4(c) in connection with his amended petition.

In the Board's view, respondent's misrepresentations regarding his purported compliance with R. 1:20-20 constituted a clear attempt to gain reinstatement to the practice of law, under false pretenses. Indeed, his failure to fully comply with R. 1:20-20 would have precluded the Board from considering

his petition "until the expiration of six months from the date" in which he demonstrated such full compliance. See R. 1:20-21(i)(A).

Generally, in matters involving misrepresentations to ethics authorities, the discipline ranges from a reprimand to a lengthy suspension, depending on the gravity of the offense, the presence of other unethical conduct, and aggravating or mitigating factors. Respondent, however, committed additional misconduct by failing to comply with R. 1:20-20 throughout his term of suspension by routinely utilizing a bank account and checks on which his name appeared as an attorney.

The Board most often has addressed violations of R. 1:20-20 in disciplinary matters that, unlike the instant matter, included charges of failing to file the R. 1:20-20(b)(15) affidavit of compliance. Nevertheless, attorneys who have violated other provisions of R. 1:20-20 have received reprimands or censures, depending on the presence of any aggravating factors, such as dishonest conduct.

Specifically, in In re Stolz, 229 N.J. 223 (2017), the Court censured an attorney who filed the R. 1:20-20 affidavit but continued to use his firm's pre-suspension name (The Law Offices of Jared E. Stolz, LLC) on his financial records, including ATA and ABA records, and issued ABA checks using the firm's pre-suspension name. In the Matter of Jared Elliot Stolz, DRB 16-392 (March 2, 2017). Additionally, Stolz failed to notify the courts and opposing counsel of his suspension, as R. 1:20-20(b)(11) requires.

Although Stolz continued to use his firm's pre-suspension name on his financial records, he otherwise changed his law firm's name to "Stolz & Associates, LLC," on his firm's letterhead and websites. However, there was no other lawyer with that surname who practiced law in his firm. Rather, he retained the name "Stolz" for financial reasons. Specifically, prior to his suspension, Stolz was on an approved list of lawyers who received case referrals to defend the insureds of four insurance companies. When Stolz removed himself from his law practice, he turned over the management of his firm to Alexander Carmichael, Esq. Stolz did not change his firm's name to reflect Carmichael's name, however, because it would have taken too much time to add Carmichael to the insurance companies' approved list. Consequently, Stolz retained his name in his firm's letterhead to prevent his firm from losing clients.

Stolz fully disclosed the retention of his law firm name in his R. 1:20-20 affidavit. However, the Board found that Stolz violated RPC 8.4(c) by retaining his surname in his law firm's name to remain on the insurance companies' approved list of attorneys that could receive case referrals. By doing so, the Board observed that Stolz sought to circumvent the terms of his suspension, which required his complete removal from the practice of law until reinstated by the Court.

Although a reprimand would have been the baseline quantum of discipline for Stolz's failure to comply with R. 1:20-20, the Board recommended the imposition of a censure based on his deceitful conduct. The Court agreed with the Board's recommended discipline.

More recently, in In re Jones, 256 N.J. 31 (2023), the Court reprimanded an attorney who, while suspended, worked for a Florida law firm as a "call center" employee who gathered information regarding potential clients. In the Matter of Stephen Robert Jones, DRB 23-052 (August 14, 2023). Jones maintained that he had informed the Florida law firm of his suspended status in New Jersey.

In Jones's untimely filed R. 1:20-20 affidavit, he did not include any information regarding his employment with the Florida law firm. However, in his petition for reinstatement, he informed the Board of his employment and certified that he had "not, during the period of suspension, engaged in the practice of law in any jurisdiction." Thereafter, on the same date that the OAE informed Jones that it had opened an investigation of his employment activities while suspended, he resigned from the Florida law firm.

The Board found that Jones violated R. 1:20-20(b)(2) by occupying, sharing, or using office space maintained by the Florida law firm during his suspension. Moreover, the Board found that Jones violated RPC 8.4(d) by failing to timely file his R. 1:20-20 affidavit, certifying that he was compliant with R. 1:20-20 when he admittedly had not endeavored to understand that Rule, and failing to adhere to the Rule.

In determining that a reprimand was the appropriate quantum of discipline, the Board weighed, in aggravation, the fact that Jones should have had a heightened appreciation of the importance of complying with the Court

Rules and the Rules of Professional Conduct, considering the timing of his prior disciplinary matter resulting in his suspension. However, in mitigation, the Board considered that Jones resigned from the Florida law firm upon discovering the impropriety of his employment. The Board also weighed, in mitigation, the fact that Jones was contrite and readily admitted his wrongdoing. The Court agreed with the Board's recommended discipline.

Here, the Board observed that, like Jones, respondent should have had a heightened awareness of his obligations to comply with the Court Rules and the Rules of Professional Conduct, considering that his misconduct in this matter occurred on the heels of having faced potential disbarment for misappropriation underlying Pepsny I. However, less than a week after his certified statement to the OAE, the Board, and the Court that he would not use his attorney accounts while suspended, as R. 1:20-20(b)(5) requires, he began to systematically and improperly use his ABA to make online payments, deposit previously earned legal fees, and issue checks identifying him as a lawyer to not only himself, but also medical providers and a beauty salon. In contrast to Jones, who appeared to have notified the Florida law firm of his suspended status in New Jersey, respondent openly and falsely held himself out as an attorney with an active law license. Additionally, unlike Jones, who did not engage in any overt acts of dishonesty towards disciplinary authorities, respondent repeatedly concealed his failure to comply with R. 1:20-20 from the OAE, the Board, and the Court.

As the Board observed in Jones and in Stolz, a reprimand could have been the appropriate quantum of discipline in this matter had respondent's conduct been limited to his failure to comply with R. 1:20-20 while suspended. However, considering that his failure to comply with that Rule was compounded by his multiple acts of dishonesty towards disciplinary authorities and the Court, the Board determined that a censure is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated February 25, 2025.

2. Stipulation of discipline by consent, dated February 25, 2025.

3. Affidavit of consent, dated February 24, 2025.

4. Ethics history, dated April 23, 2025.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

TME/akg

c: Hon. Mary Catherine Cuff, P.J.A.D. (Ret.), Chair
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