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May 22, 2025

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

RE: In the Matter of David M. Schlachter
Docket No. DRB 25-057
District Docket No. XIV-2023-0291E

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 reprimand for respondent's violation of RPC 8.1(b) (failing to cooperate with disciplinary authorities) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

Previously, on June 27, 2023, the Court reprimanded respondent for his failure to comply with the OAE's repeated efforts, spanning between March 2019 and February 2020, to audit his firm's non-compliant financial records. In re Schlachter, 254 N.J. 375 (2023) (Schlachter I).

Additionally, on June 27, 2023, the Court issued an Order suspending respondent for three months, effective July 27, 2023, for repeatedly lying to his client regarding his gross mishandling of the client's wrongful termination

lawsuit. In re Schlachter, 254 N.J. 379 (2023) (Schlachter II). In determining that a three-month suspension was the appropriate quantum of discipline in that matter, the Board weighed, in aggravation, the fact that respondent's inexcusable neglect permanently extinguished his client's potential claim. In the Matter of David M. Schlachter, DRB 22-192 (March 28, 2023) at 4. Similarly respondent continued, for years, to engage in obfuscation toward his client, who erroneously believed that his purportedly high value matter remained pending. Id. at 29. Further, he attempted to mislead the Board, during oral argument, regarding the information contained in his disciplinary stipulation. Id. at 29-30. In the Board's view, respondent's "gamesmanship with the stipulated facts" demonstrated his "disdain for the attorney disciplinary system designed to protect the public." Id. at 30. The Court agreed with the Board's recommended discipline.

To date, respondent remains suspended from the practice of law in New Jersey and has not petitioned for reinstatement.

Respondent's misconduct in the instant matter arises out of his failure to comply with the Court's June 2023 suspension Order underlying Schlachter II and, by extension, R. 1:20-20 governing suspended attorneys.

The Court's suspension Order 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 [OAE] 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 would constitute a violation of RPC 8.1(b) and RPC 8.4(d).

On August 21, 2023, following his failure to file the R. 1:20-20 affidavit, the OAE sent respondent a letter reminding him of that obligation and directing him to submit a written reply by September 5, 2023.

On September 13, 2023, respondent sent the OAE a one-sentence letter stating only that he had "affirm[ed] under penalty of perjury and under the relevant Court Rules that I have complied with and continue to comply with all provisions of Court Rules 1:20-20."

On September 14, 2023, the OAE notified respondent that his correspondence did not comply with R. 1:20-20 because he had failed to submit an affidavit specifying, by correlatively numbered paragraphs, how he had complied with each provision of that Rule and the Court's suspension Order. The OAE warned respondent that his failure to file a conforming affidavit by September 28 could result in the filing of a formal ethics complaint and, further, may preclude consideration of any reinstatement petition for up to six months.

On October 1, 2023, three days after the September 28 deadline, respondent sent the OAE an e-mail claiming that he would submit the required affidavit as soon as possible. Respondent, however, failed to comply.

Nearly five months later, on February 22, 2024, the OAE reminded respondent of his ongoing failure to file the affidavit and warned him that his failure to comply with R. 1:20-20 by February 29 could expose him to discipline.

On February 29, 2024, respondent sent the OAE his purported affidavit of compliance. However, on April 1, 2024, the OAE notified respondent that his affidavit was deficient because he had failed to (1) submit copies of all correspondence sent pursuant R. 1:20-20, (2) indicate whether he maintained professional liability insurance for the past five years, and (3) provide an alphabetical list of the contact information for each client he had represented on the effective date his suspension, as R. 1:20-20(b)(15) collectively requires.

On April 10, 2024, respondent submitted an amended affidavit, claiming that he had maintained professional liability insurance for the past five years. Additionally, he provided an alphabetical list of the contact information for the four clients he had represented on the effective date of his suspension. Respondent also submitted a July 15, 2023 letter in which he had notified one client of his suspension, as R. 1:20-20(b)(10) and (11) require. Respondent represented to the OAE that the remaining three client notification letters were substantially identical to the one he had provided.

In the disciplinary stipulation, respondent conceded that his amended affidavit and accompanying submissions failed to comply with R. 1:20-20(b)(15). Specifically, he failed to provide the OAE with (1) copies of all correspondence sent pursuant to R. 1-20-20, including all client notification letters, (2) his current residential address and telephone number, and (3) his

professional liability insurance policy number, dates of coverage, and the name and address of his insurer. Additionally, respondent's sole client notification letter improperly offered to recommend another attorney to complete that client's matter, as R. 1:20-20(b)(10) and (11) expressly prohibit.

On July 15, 2024, the OAE filed a formal ethics complaint against respondent, alleging that his ongoing failure to fully comply with R. 1:20-20 constituted violations of RPC 8.1(b) and RPC 8.4(d). Thereafter, respondent failed to amend his affidavit and client notification letters to comply with R. 1:20-20. Indeed, as of March 12, 2025, the date of the disciplinary stipulation, respondent's failure to fully comply with R. 1:20-20 remained ongoing.

Based on his admitted failure to file a conforming R. 1:20-20 affidavit of compliance, despite the OAE's repeated efforts, the Board determined that respondent violated RPC 8.1(b) and RPC 8.4(d). See R. 1:20-20(c) (failure to file an affidavit certifying full and timely compliance with R. 1:20-20 "constitute[s] a violation of RPC 8.1(b) . . . and RPC 8.4(d)).

Typically, attorneys with less serious disciplinary histories have received reprimands, in default matters, for their failure to file the required R. 1:20-20 affidavit.¹ See, e.g., In re Hildebrand, 260 N.J. 20 (2025) (the attorney failed to file the required affidavit following a six-month suspension for mishandling three client matters); In re Ashton, 257 N.J. 225 (2024) (the attorney failed to file the affidavit following a two-year suspension for client abandonment); In re Cottee, 255 N.J. 439 (2023) (the attorney failed to file the affidavit, despite the OAE's specific requests that he do so, following a three-month suspension for concealing his gross mishandling of a matter from his clients); In re Witherspoon, 253 N.J. 459 (2023) (the attorney failed to file the 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 OAE's specific requests to file the R. 1:20-20 affidavit; prior 1998 reprimand and a 2022 three-month suspension for misconduct underlying two default matters); In re Saunders, 255 N.J. 471 (2022) (despite his express commitment to the OAE, the attorney failed

¹ Generally, attorneys who fail to file the R. 1:20-20 affidavit allow their disciplinary matters to proceed as defaults.

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).

However, the quantum of discipline is enhanced to a censure if the attorney has a more serious disciplinary history or if additional aggravating factors are present. See, e.g., In re Coleman, 260 N.J. 99 (2025) (in a default matter, the attorney failed to file the R. 1:20-20 affidavit following a three-month suspension for failing to maintain professional liability insurance; the attorney had two prior censures and a prior three-month suspension; the matter marked his fifth encounter with the disciplinary system and his fourth default); In re Smith, 258 N.J. 27 (2024) (in a default matter, the attorney failed to file the affidavits following two suspensions – a one-year suspension based on misconduct underlying 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 suspension Orders directing that he file the affidavits, and he failed to reply to the OAE’s communications attempting to ensure his compliance); In re Pappas, ___ N.J. ___ (2023) (in a non-default matter, the attorney steadfastly refused to file the affidavit following his temporary suspension for failing to comply with an FAC determination; during his disciplinary matter, the attorney launched grossly improper collateral attacks on the FAC’s determination and the Court’s temporary suspension Order; as part of his meritless tactics, he blamed the OAE for his suspension because, in his view, the OAE should have provided him a formal, written notice criticizing the legal basis of the FAC’s determination, which he chose not to appeal; he also unilaterally “exempted” himself from the requirements of R. 1:20-20 based on his frivolous view that the Court’s temporary suspension Order was “invalid;” in aggravation, the attorney’s failure to cooperate and collateral attacks on his temporary suspension had continued, unabated, since his prior 2023 reprimand for failing to cooperate with the OAE).

Based upon the foregoing disciplinary precedent, the Board determined that respondent’s misconduct could be met with either a reprimand or a censure. To craft the appropriate discipline in this case, however, the Board also considered aggravating and mitigating factors.

In aggravation, unlike the disciplinary matters recited above resulting in reprimands, this matter represents respondent’s third consecutive disciplinary

matter in less than three years. Moreover, because the timeframe underlying his misconduct in Schlachter I and Schlachter II closely preceded the timeframe underlying his misconduct in the instant matter, respondent clearly had a heightened awareness of the importance of complying with the Court Rules and the Rules of Professional Conduct. Nevertheless, for nearly two years, respondent persistently failed to attempt any meaningful compliance with the Court's June 2023 suspension Order, despite the OAE's repeated efforts to secure his compliance and the filing of a formal ethics complaint.

However, in mitigation, unlike the attorneys who allowed their matters to proceed as defaults, respondent stipulated to his misconduct underlying this matter and, thus, conserved disciplinary resources. Additionally, respondent's misconduct, arguably, is not as egregious as that of the censured attorney in Pappas, who, in a non-default matter, openly "exempted" himself from the requirements of R. 1:20-20 and collaterally attacked the circumstances underlying his suspension, which he unilaterally deemed "invalid." Rather, respondent's misconduct is more closely analogous to that of attorneys who have received reprimands or censures for failing to file their required affidavits of compliance, despite the OAE's specific requests that they do so.

In the Board's view, although respondent did not allow this matter to proceed as a default, his failure to file a conforming R. 1:20-20 affidavit – a basic and crucial step required of all suspended attorneys – has persisted, despite the passage of nearly two years since the Court's June 2023 suspension Order. Consistent with disciplinary precedent for failing to file a conforming R. 1:20-20 affidavit, the Board determined that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Finally, the Board cautions respondent that his ongoing failure to fully comply with R. 1:20-20 may preclude the Board from considering any petition for his reinstatement to the practice of law for up to six months from the date he demonstrates such full compliance with that Rule. See R. 1:20-21(i)(A).

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated March 12, 2025.
2. Stipulation of discipline by consent, dated March 12, 2025.

3. Affidavit of consent, dated March 10, 2025.
4. Ethics history, dated May 22, 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
Disciplinary Review Board (e-mail)
Johanna Barba Jones, Director
Office of Attorney Ethics (e-mail and interoffice mail)
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