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February 28, 2017

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: In the Matter of Thomas J. Taylor
Docket No. DRB 16-391
District Docket Nos. VIII-2013-0018E and VIII-2014-0017E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems warranted), filed by the District VIII Ethics Committee (DEC), pursuant to R. 1:20-10(b), and determined to grant the motion. In the Board's view, a reprimand is the appropriate measure of discipline for respondent's stipulated violations of RPC 1.4(b) (failure to communicate with the client), RPC 1.16(d) (upon termination of representation, failure to take steps to the extent reasonably practicable to protect a client's interests), RPC 3.3(a)(5) (failing to disclose to the tribunal a material fact, knowing that the omission is reasonably certain to mislead the tribunal), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 5.5(a)(1) (practicing law while ineligible), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The Board, however, did not accept the stipulated violation of RPC 1.1(a) (gross neglect).

Specifically, from September 26, 2011 to June 9, 2014, respondent was ineligible to practice law, due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). He also was administratively ineligible to practice law, from October 22, 2012 to April 22, 2016, for failure to comply with the IOLTA Fund registration requirements. Notwithstanding respondent's ineligibility, between August 31, 2012 and May 22, 2013, he represented grievant Karen B. Lawrence, the defendant in a Middlesex County contested mortgage foreclosure action, captioned GMAC Mortgage, LLC v. Karen Lawrence (Lawrence matter)).

In respondent's May 22, 2013 written reply to Lawrence's grievance, which was submitted on letterhead identifying respondent as an attorney, he enumerated several actions that he had taken in the Lawrence matter, between August 31, 2012 and April 23, 2013. Specifically, respondent submitted a retainer letter to Lawrence, dated August 31, 2012, on respondent's letterhead; accepted two payments on Lawrence's behalf, in May and September 2012, in the form of checks payable to "Thomas J. Taylor, Esq.;" filed, on October 19, 2012, a motion for leave to file an answer to the complaint out of time, together with a supporting certification and a proposed form of answer, all of which identified respondent as counsel for Lawrence; participated in a telephone conference call, on November 28, 2012, with the judge overseeing the litigation; spoke to Lawrence, on at least three occasions between December 2012 and January 2013, for the purpose of scheduling a meeting to "reach an agreement as to reasonable discovery;" and participated in a "telephone conference [and] the two subsequent status conferences," the last of which took place on April 23, 2013.

Finally, on May 22, 2013, the date of respondent's reply to the grievance, he executed a substitution of attorney in the Lawrence matter, in his capacity as the "withdrawing attorney." He transmitted the substitution to Lawrence's new attorney, Ivan Raevski, under respondent's letterhead.

In the Board's view, respondent violated RPC 5.5(a)(1), by undertaking and carrying out the representation of Lawrence while he was ineligible to practice law. Consequently, respondent also violated RPC 3.4(c), because his conduct was contrary to the terms of the Court's Orders rendering him ineligible to practice law.

Respondent committed other ethics infractions as well. By appearing before the court, respondent misled the tribunal into believing that he was eligible to do so and, thus, violated RPC 3.3(a)(5). He violated RPC 8.4(c) when he undertook the Lawrence representation, in the first place, thus leading his client, his adversary, the court, and even the DEC investigator¹ to believe that he was eligible and authorized to do so.

Respondent also violated RPC 1.4(b), by failing to reply to Lawrence's inquiries about the status of the litigation. Contrary to the terms of the stipulation, respondent did not violate RPC 1.4(b), however, by failing to tell Lawrence that he was not eligible to practice law, because that fact had nothing to do with the status of the Lawrence matter.

RPC 1.16(d) requires an attorney, upon termination of representation, to surrender papers and property to which the client is entitled. The Rule, thus, mandates that an attorney turn over a client's file to the client or to substitute counsel. In delaying the turnover of Lawrence's file to Raevski, respondent violated RPC 1.16(d).

Contrary to the terms of the stipulation, respondent's failure to provide Lawrence with notice of his ineligibility, which would require her to retain new counsel, did not violate RPC 1.16(d). Such an act would have taken place prior to the termination of the representation, rendering RPC 1.16(d) inapplicable as a matter of law.

Further, contrary to the terms of the stipulation, respondent's failure to rectify his ineligibility did not violate RPC 1.1(a). Rather, RPC 1.1(a) applies to the "manner in which a lawyer handles a legal matter, that is, the case itself," not to the lawyer's handling of his ethics obligations. See In re Chatarpaul, 226 N.J. 216 (2016); In the Matter of Jay Jason Chatarpaul, DRB 15-134 (December 14, 2015) (slip op. at 59).

As stipulated, the Board found respondent's "long pattern" of failing to comply with the annual CPF and IOLTA registration

¹ Lawrence's grievance originally was based on respondent's conduct in representing her, rather than on his ineligibility to do so. A year later, the DEC docketed an additional grievance, in its own right, based on respondent's continued practice during his period of ineligibility.

requirements to be an aggravating factor. The Board also found that respondent's conduct was mitigated by his "acute depression;" his homelessness during an unidentified portion of the time covered by the stipulation; his cessation of the practice of law; his intention to retire from the practice of law upon resolution of this matter; and his unblemished disciplinary history, which spanned thirty-five years.

A reprimand is usually imposed when the attorney has an ethics history, is aware of the ineligibility, has committed other ethics improprieties, or has been disciplined for conduct of the same sort. See, e.g., In re Fell, 219 N.J. 425 (2014) (attorney, who was ineligible for a five-month period, represented a matrimonial client, knowing of his ineligibility; in aggravation, the attorney had received a prior reprimand; in mitigation, the attorney readily admitted his conduct and provided services to his community); In re Moskowitz, 215 N.J. 636 (2013) (attorney practiced law knowing that he was ineligible to do so); In re Jay, 210 N.J. 214 (2012) (attorney was aware of ineligibility and practiced law anyway; prior three-month suspension for possession of cocaine and marijuana).

Even when an attorney's violation of RPC 5.5(a)(1) forms the basis for the violation of the RPCs governing the obligation to be truthful, such as RPC 3.3(a)(5) and RPC 8.4(c), a reprimand may still be imposed. See, e.g., In re Davis, 194 N.J. 555 (2007) (motion for reciprocal discipline from Pennsylvania, where the attorney was suspended for a year and a day for violations of RPC 1.16(a) (failing to withdraw from the representation of a client when doing so violates the RPCs), RPC 3.3(a)(i) (making a false statement of material fact or law to a tribunal), RPC 4.1(a) (knowingly making a false statement of material fact to a third person), RPC 5.5(a) and (b) (unauthorized practice of law), RPC 7.1(a) (making a false or misleading communication about the lawyer or lawyer's designation), RPC 8.4(b) (committing a criminal act that reflects adversely on the attorney's honesty, trustworthiness, or fitness to practice law), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice)); In re Coleman, 185 N.J. 336 (2005) (motion for reciprocal discipline following attorney's two-year suspension in Pennsylvania; while on inactive status in Pennsylvania, the attorney practiced law for nine years, signing hundreds of pleadings, and receiving in excess of \$7,000 for those services; violations of RPC 1.16(a)(1), RPC 5.5(b) (New Jersey RPC

5.5(a)(1)); RPC 7.1(a), RPC 7.5(a) and (b); and RPC 8.4(c) and (d)); and In re Forman, 178 N.J. 5 (2003) (motion for reciprocal discipline from Pennsylvania, where the attorney was suspended for a period of one year and one day for practicing while ineligible; for a period of twelve years, the attorney practiced law in Pennsylvania while on the inactive list; compelling mitigating factors considered).

In the Board's view, the above cases support the imposition of a reprimand on respondent. Like the attorney in Davis, respondent represented a single client, albeit for a matter of months rather than years. Contrast this with the Coleman attorney's submission of hundreds of pleadings on behalf of an untold number of clients during a nine-year period.

Similarly, the mitigating factors in respondent's favor are as compelling as those noted in both Coleman and Davis. In Davis, the attorney had no prior discipline; he had a single client; he was remorseful; and he cooperated fully with ethics authorities in both Pennsylvania and New Jersey. In the Matter of Nathaniel Martin Davis, DRB 07-026 (April 26, 2007) (slip op. at 12). In Coleman, the attorney had an unblemished legal career of eighteen years; he had curtailed his practice after suffering a heart attack; and, as the Pennsylvania disciplinary authorities found, he had been "a busy and hardworking litigator," who "was respected by his colleagues." In the Matter of Thomas Joseph Coleman, DRB 05-198 (September 14, 2005) (slip op. at 20).

Here, prior to respondent's representation of Lawrence, in August 2012, he had practiced law, without incident, for about thirty-five years. During the eight-and-a-half-month period that respondent represented Lawrence, he suffered from "acute depression," and, for part of that time, he was homeless. He no longer practices law, and he intends to retire once this disciplinary matter is resolved. Under the totality of the circumstances, and in light of the compelling mitigating factors, the Board determined that a reprimand, rather than a censure, is the appropriate measure of discipline for respondent's violations.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated June 23, 2016.
2. Stipulation of discipline by consent, dated June 20, 2016.

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3. Affidavit of consent, dated November 8, 2016.
4. Ethics history, dated February 28, 2017.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/sl

encls.

c: (w/o encls.)

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