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May 22, 2018

VIA CERTIFIED MAIL, R.R.R., REGULAR MAIL, AND E-MAIL

Emery Z. Toth, Esq.
333 Maple Street
Perth Amboy, NJ 08861
eztlaw@comcast.net

Re: In the Matter of Emery Z. Toth
Docket No. DRB 18-059
District Docket No. VIII-2016-0002E
LETTER OF ADMONITION

Dear Mr. Toth:

The Disciplinary Review Board has reviewed your conduct in the above matter and has concluded that it was improper. Following a review of the record, the Board has determined to impose an admonition for your violation of RPC 1.7(a)(2). The Board determined to dismiss the remaining alleged violations of RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.4(c) (failure to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 1.4(d) (failure to advise a client of the limitations of the lawyer's conduct, when a client expects assistance not permitted by the Rules); RPC 1.5(a) (unreasonable fee); RPC 1.5(b) (failure to set forth in writing the basis or rate of a fee); RPC 2.1 (failure to exercise independent professional judgment and render candid advice to client); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), as not supported by clear and convincing evidence.

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Specifically, in 1992, Marybeth DeHanes retained you to administer her husband's estate, a legal service that the evidence shows you diligently completed. In connection with that representation, you referred DeHanes to another attorney to pursue a medical malpractice claim, which resulted in a \$1.4 million award to her and her children. DeHanes also received \$290,000 in life insurance proceeds, plus \$265,161.64 from an accidental death insurance claim that you settled. According to your testimony, written retainer agreements governed your representation of DeHanes in respect of both the estate and the accidental death claim.

You provided DeHanes with a narrative invoice in the estate matter, which she paid, and a written disbursement sheet in the accidental death claim, referencing your retainer agreement. DeHanes promptly cashed the check representing her proceeds from the claim. More than twenty years passed from your provision of those legal services to the time that DeHanes filed an ethics grievance, claiming, among other allegations of impropriety, that no retainer agreements existed, and that your fee in the accidental death claim was excessive. You testified that, given the passage of time, the retainer agreements had been destroyed in due course, a measure clearly allowed pursuant to New Jersey's recordkeeping requirements.

In 1993, given your ongoing representation in the estate matter, which concluded in January 1994, DeHanes asked you for investment advice. In turn, you introduced DeHanes to Carol Gronczewski, a seasoned real estate developer, whom you previously had represented in respect of real estate transactions, and with whom you previously had an intimate relationship. During oral argument before the Board, you admitted that, given your ongoing representation of DeHanes at the time of that introduction, you should have made full disclosure to her regarding your prior personal and professional relationships with Gronczewski, but failed to do so. You, thus, admitted that you engaged in a conflict of interest, in violation of RPC 1.7(a)(2). The Board noted that you completed a diversion, in 2007, for identical misconduct, wherein you improperly represented parties who had engaged in business relationships with Gronczewski.

The Board determined, however, that the conflict of interest was limited, and did not cause significant harm to

DeHanes, given the unique facts and circumstances presented in this case. Specifically, it is undisputed that Gronczewski prepared the investment documents, and that you signed those documents as a "witness" only. Moreover, during the ethics hearing, there was testimony by both you and Gronczewski that DeHanes stated that she would be relying on another attorney for legal advice regarding the investments. Further, although Gronczewski, arguably, had a moral obligation to ensure that the mortgage and guarantee promised by the original and subsequent investment agreements were completed, the evidence was insufficient for the Board to conclude that you had a professional obligation to do so for either party. It did not escape the Board's notice that the same promise of mortgages was made in subsequent investment transactions between DeHanes and Gronczewski, and that both DeHanes and Gronczewski testified that you had no connection to those deals, in which the parties also failed to record the contemplated mortgages.

The intensely personal facts of this case, spanning from 1993 to 2009, sharply bring into focus the entanglements of the parties, and the potential for biased testimony from all of them. According to Gronczewski, she had confessed her prior intimate relationship with you to DeHanes in 1998, given the close friendship that had developed between the women at that point. Despite that disclosure and a subsequent negative newspaper article, DeHanes and her family continued to invest more than \$600,000 in Gronczewski's business enterprises.

Moreover, in April 2000, Gronczewski and DeHanes negotiated and formed a partnership to develop a swim club, each investing \$500,000 in the endeavor, with DeHanes' capital contribution characterized as a "reinvestment" of principal previously invested with Gronczewski. DeHanes also admitted that, from 1993 through 2009, she was receiving an eight- to ten-percent return on her investments with Gronczewski, totaling approximately \$1.3 million. It was not until 2009, when Gronczewski began to fail to make required interest payments, and an intimate relationship between you and DeHanes had ended, that the personal entanglements in this case began to unravel. Even then, DeHanes sought your assistance in obtaining answers from Gronczewski.

Ultimately, DeHanes commenced litigation against Gronczewski, her companies, her son, you, and other parties.

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Gronczewski and her son settled with DeHanes. You were found not liable in that litigation.

For the above reasons, the facts in this case support a finding that you engaged in a limited conflict of interest, as you admitted to the Board. There is, however, insufficient evidence to conclude that you violated the remainder of the charged RPCs in respect of your interactions with DeHanes and Gronczewski.

In imposing only an admonition, the Board determined that the excessive passage of time since your misconduct in this matter greatly reduces the quantum of discipline required to protect the public. The Court has discussed the effect of the passage of time between the ethics infractions and the imposition of discipline:

[I]n this case we are impelled to consider the efficacy of any sanction in light of the amount of time that has passed since the ethics violations occurred. If the ethics transgressions are remote in time, intervening developments and current circumstances may require an assessment of whether usual sanctions, otherwise appropriate, will effectively serve the purposes of discipline. Recognizing such concerns, we have on occasion imposed discipline retroactively, indirectly crediting a respondent to a period of suspension already served. E.g., Matter of Noonan, 102 N.J. 157 (1986); Matter of Verdiramo, 96 N.J. 183 (1984); Matter of Strickland, 87 N.J. 575 (1981). We have sometimes imposed less discipline than would otherwise be required in view of a previously imposed, continuing suspension. E.g., Matter of Templeton, 99 N.J. 365 (1985). In special circumstances, we have permitted our written opinion determining wrongdoing to suffice as a form of discipline. E.g., Matter of Hinds, 90 N.J. 604 (1982). In such cases, the Court was satisfied that the particular disposition was adequate to protect the public, discourage

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future misconduct, and encourage the rehabilitation of the errant lawyer.

[In re Kotok, 108 N.J. 314, 330 (1987).]

Thus, under the limited and unique circumstances presented by this case, especially the remoteness of the conduct under scrutiny, the Board has directed the issuance of this admonition to you. Rule 1:20-15(f)(4).

A permanent record of this occurrence has been filed with the Clerk of the Supreme Court and the Board's office. Should you become the subject of any further discipline, it will be taken into consideration.

The Board has also directed that the costs of the disciplinary proceedings be assessed against you. An invoice of costs will be forwarded under separate cover.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

c: see attached list

Chief Justice Stuart Rabner
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Mark Neary, Clerk
 Supreme Court of New Jersey
Gail G. Haney, Deputy Clerk
 Supreme Court of New Jersey (w/ethics history)
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Richard Gale, Presenter (e-mail)
Marybeth DeHanes, Grievant (regular mail)