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SUPREME COURT OF NEW JERSEY

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July 20, 2018

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

Re: In the Matter of William Thomas DiCiurcio, II
Docket No. DRB 18-150
District Docket No. IV-2017-0008E

Dear Mr. Neary:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board shall deem appropriate), filed by the District IV Ethics Committee (DEC), pursuant to R. 1:20-10(b)(1). Following its review of the record, the Board determined to grant the motion and to impose a censure on respondent for his violation of RPC 5.5(a)(1) (practicing law while ineligible to do so) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

Specifically, according to the parties, between October 19, 2016 and February 13, 2017, respondent was on the IOLTA list of ineligible attorneys. During this period of ineligibility, respondent entered his appearance on behalf of clients and/or practiced law in thirteen New Jersey municipal courts involving seventy-three summonses. In those matters, he sought discovery from local police departments, wrote letters to municipal courts entering his appearance and requesting adjournments, and attended proceedings in several matters before the Audubon municipal court. Based on these facts, the parties stipulated to respondent's violation of RPC 5.5(a)(1).

July 20, 2018

Page 2 of 5

An unidentified former municipal court judge alerted the DEC to respondent's possible violation of RPC 5.5(a)(1). On April 3, 2017, the DEC investigator wrote to respondent and requested that he produce certain documents, and contact her so that she could complete her investigation. On an unidentified date, respondent's secretary called the investigator's office and requested a copy of the grievance.

On April 20, 2017, the investigator sent another letter to respondent, containing the same requests. The investigator heard nothing from respondent until May 8, 2017, when she received a letter from him seeking an extension to the following Monday (May 15, 2017) to comply with her request. Although the investigator granted respondent's request, he did not comply with the new deadline. Further, although respondent requested another extension to June 19, 2017, he, once again, failed to meet his own deadline.

Finally, on June 22, 2017, nearly three months after the investigator's initial letter to respondent, he submitted a reply to the April 3, 2017 letter. Yet, respondent did not provide, and as of the date of the parties' stipulation (March 15, 2018), still had not provided, any of the requested documents, which would have shed light on his activities during the period of ineligibility.

As a result of respondent's failure to comply with the investigator's requests, she "reach[ed] out to eighty-one (81) municipal courts and ten (10) county courts to inquire as to whether Respondent had practiced in that jurisdiction during the period of ineligibility." Further, she "expend[ed] substantial efforts discussing this issue [practicing while ineligible] with appropriate personnel, reviewing dockets, researching whether Respondent appeared in the jurisdiction during the timeframe and supplying the information" to the DEC. Based on these facts, the parties stipulated to respondent's violation of RPC 8.1(b) and R. 1:20-3(g)(3) (requiring every attorney to cooperate in a disciplinary investigation and reply in writing within ten days of receipt of a request for information; and, when the attorney is unable to provide the requested information within ten days, to inform the investigator, in writing, of the reason(s) and to provide a date certain when the information will be provided).

In aggravation, the stipulation cites respondent's 2012 reprimand. In mitigation, the parties note that, during respondent's period of ineligibility and the investigation, he

July 20, 2018

Page 3 of 5

"was under the care of medical personnel for various health related issues" and that no client was harmed as the result of respondent's misconduct.

The Board found that, by practicing law while on the IOLTA list of ineligible attorneys, respondent violated RPC 5.5(a)(1).

The Board also found that, by failing to submit a written reply to the investigator's April 3, 2017 letter, within ten days, respondent violated R. 1:20-3(g)(3) and, thus, RPC 8.1(b). Although the Board recognized that respondent ultimately submitted a written reply to the investigator's letter, he violated R. 1:20-3(g)(3) because the reply was not submitted within ten days of his receipt of the grievance or by the extended deadlines. Moreover, as of the date of the stipulation, respondent still had not turned over the requested documents.

The Board adopted the parties' proposed measure of discipline, that is, a censure, for several reasons. First, although the stipulation does not state that respondent practiced law while aware of his ineligibility, thus, warranting a reprimand, In re Moskowitz, 215 N.J. 636 (2013), the parties agreed that a reprimand is in order for that violation, citing In re Clausen, 213 N.J. 461 (2013). In Clausen, the attorney was reprimanded for practicing while ineligible, despite being unaware of his ineligibility, because he acknowledged that the ineligibility was the result of carelessness on his part, which did not excuse either his failure to comply with his payment obligations to the New Jersey Lawyers' Fund for Client Protection or his continued practice of law while ineligible. In the Matter of Paul Franklin Clausen, DRB 13-010 (April 22, 2013).

Second, failure to cooperate with a DEC's investigation ordinarily results in an admonition, even in the face of other non-serious ethics infractions. See, e.g., In the Matter of Carl G. Zoeklein, DRB 16-167 (September 22, 2016) (attorney lacked diligence in the representation of his client, by failing to file a complaint on the client's behalf; failed to communicate with his client; and failed to cooperate with the ethics investigation; violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b); the attorney had an unblemished disciplinary record since his 1990 admission to the bar). However, an attorney's disciplinary history serves to enhance the admonition to a reprimand. See, e.g., In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct), and In re

July 20, 2018

Page 4 of 5

DeBosh, 174 N.J. 336 (2002) (failure to cooperate with disciplinary authorities; prior three-month suspension). Here, respondent received a reprimand in 2012 for violating RPC 7.1(a) and advertising requirements. In re DiCiurcio, 212 N.J. 110 (2012).

Third, the Board considered, in aggravation, that, as of March 15, 2018, respondent still had not complied with the DEC's request for information; that his failure to reply to the investigator's April 2017 letter for nearly three months caused her to spend an inordinate amount of time and resources gathering the evidence to support the charges against him; and that respondent's feet-dragging in this matter is the same conduct that he exhibited in the 2012 matter resulting in a reprimand, thus demonstrating a failure to learn from prior mistakes.

Although the Board acknowledged that respondent was under the care of medical personnel for an undisclosed health issue during the period of ineligibility and the DEC investigation, that single factor was insufficient to overcome the aggravating factors. Thus, based on the totality of the circumstances, the Board voted to impose a censure on respondent for his violation of RPC 5.5(a)(1) and RPC 8.1(b).

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated March 15, 2018.
2. Stipulation of discipline by consent, dated March 15, 2018.
3. Affidavit of consent, dated March 15, 2018.
4. Ethics history, dated July 20, 2018.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/sl

c: See attached list

July 20, 2018

Page 5 of 5

c: (w/o enclosures)
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