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February 24, 2016

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

Re: In the Matter of Adam S. Pribula
Docket No. DRB 15-402
District Docket Nos. XA-2014-0021E (O'Connor)
and XA-2014-0041E (Ghiselli)

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (censure), filed by the Office of Attorney Ethics pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a censure is the appropriate measure of discipline for respondent's misconduct.

Specifically, in the O'Connor matter, Patrick and Judith O'Connor retained respondent in 2013 to represent them in connection with the June 27, 2013 sale of their home in Chatham and the July 10, 2013 purchase of a house in Florham Park.

Respondent lacked diligence and grossly neglected the case by failing to attend to post-closing requirements. Respondent failed to record the deed for a period of sixteen months following the closing. He persisted in his failure to do so for several months even after his clients finally communicated with him to request a recorded copy of the deed. Similarly, respondent failed to pay Chicago Title for a search and title premium, despite the fact that funds had been set aside at the closing for that purpose.

In fact, Chicago Title was paid only after an attorney-trustee had been appointed to administer respondent's practice – more than two years after the closing. In the meantime, Chicago Title had refused to issue a title policy covering the property. By his inaction, respondent violated RPC 1.3 and RPC 1.1(a), respectively. He also failed to reply to the clients' telephone, e-mail, and letter requests for information about the deed to the Florham Park property, a violation of RPC 1.4(b). In addition, respondent violated RPC 1.15(b) by his failure to promptly pay Chicago Title's invoice. Finally, respondent failed to reply to the DEC investigator's letters requesting information about the case, a violation of RPC 8.1(b).

In the Ghiselli matter, on June 30, 2011, respondent represented James and Laura Masterson in their purchase of a house in Chatham from a decedent's estate. At the closing, respondent held \$2,000 in escrow pending the issuance of an inheritance tax waiver from the New Jersey taxing authorities.

On October 2, 2013, the estate's attorney sent respondent the tax waiver, along with a letter requesting a release of the funds held in escrow for that purpose. Respondent did not reply to that request or to several other follow-up requests. In fact, it was not until May 18, 2015 that the funds were returned by a court-appointed trustee for respondent's law practice. By failing to take action for those nineteen months, respondent lacked diligence and grossly neglected the matter, violations of RPC 1.3 and RPC 1.1(a), respectively. Additionally, by failing to promptly return the escrow funds to the estate, respondent violated RPC 1.15(b). Respondent also failed to reply to the DEC investigator's two written requests for information during the investigation into the grievance, a violation of RPC 8.1(b).

Ordinarily, conduct involving gross neglect, lack of diligence, and failure to communicate results in either an admonition or a reprimand, depending on the number of matters involved, the gravity of the offenses, the harm to the clients, and the extent of the attorney's disciplinary history. See, e.g., In the Matter of Clifford Gregory Stewart, DRB 14-014 (April 22, 2014) (admonition for attorney who, while working with local counsel in Washington, D.C., failed to provide local counsel with a written opposition to defense counsel's motion to dismiss his client's employment discrimination suit until after the deadline for doing so had expired, resulting in the granting of the motion as unopposed, violations of RPC 1.1(a) and RPC 1.3; in addition, the attorney failed to keep his client informed about various

filing deadlines, violations of RPC 1.4(b) and RPC 1.4(c); the Board considered the attorney's exemplary, unblemished career of twenty-eight years at the time of the incident); and In re Coffey, 206 N.J. 324 (2011) (on a motion for discipline by consent, reprimand imposed for attorney's gross neglect, lack of diligence, and failure to communicate with clients in three matters; prior admonition; mitigating factors were the attorney's admission of wrongdoing, his discharge from his employment, and his parents' failing health).

Similarly, in cases involving attorneys who fail to promptly deliver funds to clients or third persons, admonitions or reprimands are usually imposed. See, e.g., In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (admonition imposed on attorney who, for three-and-a-half years, held in his trust account \$4,800 earmarked for the payment of a client's outstanding hospital bill); and In re Dorian, 176 N.J. 124 (2003) (reprimand for attorney who failed to use escrowed funds to satisfy medical liens for nine months after having been reminded of them; the attorney also failed to cooperate with disciplinary authorities; prior admonition and reprimand).

The Board concluded, however, that respondent's misconduct was akin to that of an attorney who recently received a censure in a consent to discipline case involving similar violations. In In re Bassetti, 223 N.J. 239 (2015), the attorney received a censure for lack of diligence, failure to communicate with the client, and failure to promptly deliver funds to a third party, as the result of recordkeeping deficiencies. Like respondent, Bassetti had prior discipline – albeit a reprimand. As part of a mortgage refinancing for client Santos, Bassetti sent an \$11,263.06 trust account check to pay off Santos' Discover card debt. Several years later, he realized that the check had not cleared his trust account, but conducted no investigation into the matter. In the meantime, Santos was compelled to pay the Discover debt himself, resulting in almost \$7,000 in additional interest and fees. In the Matter of Edward R. Bassetti, DRB 15-179 (September 21, 2015) (slip op. at 1-2).

In July 2012, some five years after Bassetti sent the check to Discover, he finally sent Santos a replacement check, payable to Santos. He had failed, however, to sign the check, which was returned by the bank. Thereafter, Santos telephoned Bassetti on several occasions about the check, but received no reply. A year later, in December 2013, after Santos filed an ethics grievance, Bassetti finally issued another check to Santos, in return of the

February 24, 2016

Page 4 of 5

funds. Id. at 2. The Board enhanced Bassetti's sanction from a reprimand to a censure, based on his prior reprimand for similar misconduct and the financial harm that he caused to the client in the matter. Id. at 5.

Here, in mitigation, the Board took into account that respondent entered into a stipulation admitting to his misconduct; that he expressed contrition and remorse; that he did not cause permanent harm to the clients; and that, in January 2015, after the grievances were filed in these matters, he sought support from the New Jersey Lawyer Assistance Program. In addition, since then, he has sought treatment and continues to treat with a physician for depression and anxiety. In aggravation, however, although respondent's admitted misconduct took place in two matters in which neither of the clients suffered a permanent loss of funds, they were but two of thirty-one clients affected by respondent's malaise. The attorney-trustee assigned to respondent's law practice was compelled to disburse a total of approximately \$110,000 on account of clients whose funds had lain dormant, but intact, in respondent's trust account for an undisclosed period of time. Moreover, respondent received a prior censure in a default matter on May 20, 2015, based on conduct that included gross neglect, lack of diligence, failure to memorialize the rate or basis of the fee (RPC 1.5(a)), failure to withdraw from the representation (RPC 1.16(a)), failure to expedite litigation (RPC 3.2), failure to cooperate with disciplinary authorities, and conduct prejudicial to the administration of justice (RPC 8.4(d)). In re Pribula, 221 N.J. 440 (2015).

Respondent's discipline in the prior matter had been enhanced from a reprimand because he defaulted. In that case, respondent grossly neglected a matter between about October 2010 and July 2013. Respondent's misconduct in these matters occurred from June 2011 through 2014. Thus, there is only some overlap in timeframe between respondent's prior misconduct, for which he was censured, and his conduct in these matters. In fact, respondent's conduct in these matters continued for almost a year-and-a-half beyond his misconduct in the prior matter.

Therefore, based on the totality of the circumstances and on the presence of the aforementioned aggravating factors, the Board determined to impose a censure for respondent's misconduct.

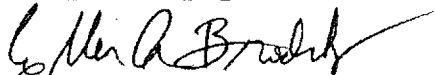
February 24, 2016

Page 5 of 5

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated November 16, 2015.
2. Stipulation of discipline by consent, dated November 16, 2015.
3. Affidavit of consent, dated November 13, 2015.
4. Ethics history, dated February 24, 2016.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/paa

c: Bonnie C. Frost, Chair (via e-mail)
Disciplinary Review Board
Charles Centinaro, Director (via e-mail)
Office of Attorney Ethics
Isabel McGinty, Statewide Ethics Coordinator
Office of Attorney Ethics
Caroline Record, Secretary
District XA Ethics Committee
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Carl Joseph DiPiazza, Presenter
District XA Ethics Committee
Patrick O'Connor, Grievant
Frank Anthony Ghiselli, Grievant