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May 24, 2016

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

Re: In the Matter of Joseph Albano
Docket No. DRB 16-078
District Docket Nos. XIV-2015-0149E;
XIV-2015-0150E; and XIV-2015-0151E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (OAE), 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 discipline for respondent's violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), and RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter).

This matter was previously before the Board twice on motions for discipline by consent. On February 25, 2014, the Board denied the first motion, concluding that the stipulated facts were not sufficiently detailed to determine what had occurred in each of ten matters presented. On March 23, 2015, the Board considered a somewhat more detailed stipulation but, again, denied the motion for discipline by consent, determining that a reprimand was not

sufficient discipline for respondent's misconduct in the ten client matters. Moreover, the Board was concerned that there were no conditions on respondent's practice to prevent him from encountering similar problems in the future.

Specifically, respondent admitted that he failed to communicate with clients in ten personal injury matters, engaged in gross neglect and lack of diligence in five of the matters, and engaged in a pattern of neglect in the same five matters. In all but one of the matters, respondent's misconduct occurred while employed at the Seigel Capozzi, L.L.C. law firm. Respondent left that firm in December 2010, when he began working for Fusco and Macaluso, L.L.C.

In each of the ten matters, respondent failed to inform the clients that their cases had been dismissed. None of the clients was injured by respondent's inaction. In one of the matters, there was no causal relationship between an explosion and the clients' symptoms; in some of the matters that were dismissed, either respondent or the law firm succeeded in restoring the cases and the matters were settled; in one case, the law firm made the client whole; and, in two of the cases, the verbal threshold limited the amount of the recovery.

Typically, the discipline imposed in cases involving multiple clients and similar ethics violations, ranges from a reprimand to a brief suspension. See, e.g., In re Duffy, 208 N.J. 431 (2011) (reprimand for misconduct in five matters: gross neglect in four matters, lack of diligence in one matter, failure to communicate with a client in three matters, failure to return unearned fees in three matters, and pattern of neglect; the attorney had lost control of his practice as the result of alcoholism following bariatric bypass surgery, but finally sought treatment for his addiction; prior admonition); In re Tyler, 204 N.J. 629 (2011) (reprimand for misconduct in six bankruptcy cases; the attorney was found guilty of gross neglect, lack of diligence, failure to communicate with clients, and directly communicating with a represented client about a disgorgement order; mitigation included the attorney's lack of a disciplinary history and struggles with medical and mental health issues at the time of the misconduct); In re McBride, 188 N.J. 389 (2006) (reprimand for misconduct in five matters, which included gross neglect, pattern of neglect, failure to keep clients reasonably informed about the status of their cases, failure to safeguard client and third-party funds,

and failure to cooperate with disciplinary authorities; mitigation included the attorney's dependency on powerful prescription pain medication after a motorcycle injury that required spinal surgery; the attorney's practice slowly deteriorated as a result of his condition and addiction to the medication; prior reprimand and transfer to disability-inactive status in 2005); In re Sacks-Wilner, 195 N.J. 184 (2008) (censure for attorney who engaged in misconduct in six matters: in three matters he was guilty of pattern of neglect and failure to communicate with clients; in three collection matters, he sent letters to debtors threatening criminal action; attorney was previously privately reprimanded); In re Tarter, 213 N.J. 423 (2013) (three-month suspension for attorney who mishandled four matters, in which he exhibited a pattern of neglect and a lack of diligence, failed to protect clients' interests, and failed to withdraw from the representations when a material impairment affected his ability to represent his clients; mitigating factors, which reduced the suspension from six to three months, included the fact that most of the attorney's behavior occurred over the course of only several months and at the height of his alcoholism); and In re Brady, 212 N.J. 101 (2011) (three-month suspension in a default matter for misconduct in five matters which included gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, and failure to protect a client's interests on termination of the representation; the discipline was increased because of the default nature of the proceedings and the attorney's defiance of a court order).

Here, although respondent was guilty of misconduct in ten client matters, the Board considered, in mitigation, that: (1) prior to leaving the Seigel Capozzi law firm, respondent updated the firm on the status of his files; (2) respondent cooperated with the OAE; (3) at the time of his violations, respondent suffered from an undiagnosed severe depression until 2013, when he was diagnosed, and then received intensive inpatient and outpatient treatment; (4) respondent's treating physician provided a report in which he opined that respondent's improved condition rendered him capable of practicing law; (5) there was no proof that any of the clients suffered monetary damages; (6) respondent was contrite; and (7) respondent has no history of discipline. The Board, thus, determined that a censure was warranted and required respondent to provide proof to the OAE of his continued treatment for depression through 2016.

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Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated February 29, 2016.
2. Stipulation of discipline by consent, dated February 29, 2016.
3. Affidavit of consent, dated February 26, 2016.
4. Ethics history, dated May 24, 2016.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

c: Bonnie C. Frost, Chair, Disciplinary Review Board
Charles Centinaro, Director, Office of Attorney Ethics
Christina Blunda Kennedy, Deputy Ethics Counsel
Office of Attorney Ethics
Joseph Albano, Respondent
Ryan Cooper, Grievant
David Fields, Grievant