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RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 962
TRENTON, NEW JERSEY 08625-0962
(609) 815-2920

ELLEN A. BRODSKY
CHIEF COUNSEL
PAULA T. GRANUZZO
DEPUTY CHIEF COUNSEL
MELISSA URBAN
FIRST ASSISTANT COUNSEL
TIMOTHY M. ELLIS
LILLIAN LEWIN
BARRY R. PETERSEN, JR.
COLIN T. TAMS
KATHRYN ANNE WINTERLE
ASSISTANT COUNSEL

September 22, 2017

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

Re: **In the Matter of Nancy Kennedy Brent**
Docket No. DRB 17-202
District Docket Nos. IV-2015-0019E and
IV-2016-0024E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board may deem appropriate) filed by the District IV Ethics Committee (DEC), 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 reprimand is the appropriate measure of discipline for respondent's violations of RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) and RPC 5.5(a)(1) (unauthorized practice of law). The Board declined to find the stipulated violation of RPC 8.4(d) (conduct prejudicial to the administration of justice).

The facts underlying respondent's misconduct are contained in a May 5, 2017 stipulation of discipline. Essentially, respondent was ineligible to practice law in the State of New Jersey from November 5, 2008 to May 29, 2009, and, again, from October 21, 2011 to January 30, 2014, based on her noncompliance with her IOLTA requirements. During those periods, respondent

served as Municipal Prosecutor for the Cumberland Salem Regional Municipal Court and as Magistrate for Franklin Township.

In addition, respondent was ineligible to practice law in the State of New Jersey from August 25, 2014 to August 29, 2014, based on her failure to comply with the annual registration requirements and fee payment to the CPF. Respondent also was ineligible to practice law from November 17, 2014 to November 18, 2014 for noncompliance with her CLE requirements. During those periods, and from 2012 to 2014, respondent was of counsel and/or *per diem* to The Brent Law Firm.

The stipulation contained no facts in respect of the RPC 8.4(d) violation.

The stipulation noted that "respondent stated that she did not knowingly practice law while ineligible." Nevertheless, the parties agreed that, "concerning the [CPF], it appears that Respondent was fully aware of her obligations but frequently waited past the deadline and submitted payment at a point she estimated would be immediately before the Court would issue an ineligibility order," and, further, that she had "delegated the management of IOLTA and attorney registration to others." On that basis, and specifically citing In re Clausen, 213 N.J. 461 (2013), the parties agreed to the sanction of a reprimand.

In Clausen, the attorney consented to the imposition of a reprimand, despite a claimed unawareness of his ineligibility to practice law for a CPF violation. Like respondent, Clausen had made late payments in the past. However, he acknowledged that his ineligibility was the result of carelessness, that his carelessness did not excuse his failure to comply with his CPF obligations or his continued practice while ineligible, and that he had made late payments in the past. Under these circumstances, the Board determined that Clausen was, at a minimum, constructively aware of his ineligible status, noting that he, like respondent here, was a solo practitioner, who knew that payments to the CPF were required annually and who had to know that he had not made those payments. On that basis, the Board determined that a reprimand was warranted. In the Matter of Paul Franklin Clausen, DRB 13-010 (April 22, 2013). The Court agreed.

The stipulation establishes that respondent continued to practice law during several periods of ineligibility, and that she

did so knowingly, in violation of both RPC 5.5(a)(1) and RPC 3.4(c). However, because the stipulation contains no facts to indicate how or if respondent's conduct affected or prejudiced the administration of justice, the Board declined to find a violation of RPC 8.4(d)

If an attorney practices law while ineligible, and is aware of the ineligibility, a reprimand generally ensues. See, e.g., In re Fell, 219 N.J. 425 (2014) (reprimand for attorney who, during a five-month period of ineligibility, 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 serviced his community); In re Jay, 210 N.J. 214 (2012) (reprimand for attorney who was aware of ineligibility and practiced law nevertheless; prior three-month suspension for possession of cocaine and marijuana); In re (Queen) Payton, 207 N.J. 31 (2011) (reprimand for attorney who practiced law while ineligible and was aware of her ineligibility; prior admonition for the same violation); and In re Clausen, supra, 213 N.J. 461.

In mitigation, the Board considered that respondent took measures to cure her ineligibilities and has had no ineligibility periods since 2014; that she lacked sufficient funds to pay the fees necessary to stay current with the obligations; that she had no prior discipline; that she has taken full responsibility for her actions and fully cooperated with ethics authorities, entering into a consent to discipline, thereby saving judicial resources; and that she had medical issues during the periods in question.

That notwithstanding, based on respondent's continued practice during intermittent periods of ineligibility over a substantial period of time, and on her knowledge of her ineligibility, the Board determined that a reprimand is the appropriate measure of discipline.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated May 18, 2017.
2. Stipulation of discipline by consent, dated May 5, 2017.
3. Affidavit of consent, dated May 12, 2017.

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4. Ethics history, dated September 22, 2017.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/paa

c: w/o enclosures (via e-mail)
Bonnie C. Frost, Chair
Disciplinary Review Board
Charles Centinaro, Director
Office of Attorney Ethics
(via interoffice mail and e-mail)
Christopher L. Soriano, Chair
District IV Ethics Committee
Daniel Q. Harrington, Vice-Chair
District IV Ethics Committee
John M. Palm, Secretary
District IV Ethics Committee
(via regular mail and e-mail)
Anne E. Walters, Presenter
District IV Ethics Committee
Nancy Kennedy Brent, Respondent
(via UPS, regular mail and e-mail)
Isabel McGinty, Statewide Ethics Coordinator
Office of Attorney Ethics
John Paff, Grievant (via regular mail and e-mail)