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July 24, 2018

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

Re: **In the Matter of Neil George Duffy, III**
Docket No. DRB 18-174
District Docket No. XII-2016-0010E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (censure or such lesser discipline as the Board may determine) filed by the District XII 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 censure is the appropriate quantum of discipline for respondent's violations of RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with a client); RPC 1.5(b) (failure to set forth in writing the basis or rate of the legal fee); R. 1:21-6(a)(2) (all legal fees must be deposited in an attorney business account) and RPC 1.15(d) (recordkeeping); and RPC 1.16(d) (failure to refund an unearned fee).

Specifically, grievant, FH, retained respondent to represent FH's brother, TH, in the expungement of TH's guilty plea to a federal charge of conspiracy to transfer stolen goods in interstate commerce. Although he had not represented FH or TH previously, respondent did not communicate his fee in writing prior to

commencing the representation, or within a reasonable time thereafter, in violation of RPC 1.5(b).

At the initial meeting, respondent accepted a check for \$500, for the expungement. Soon thereafter, he cashed the check at a check-cashing business, contrary to R. 1:21-6(a)(2), which provides that legal fees must be deposited into the lawyer's business account.¹ By cashing the check for legal fees, rather than depositing it in his business account, respondent violated R. 1:21-6(a)(2) and RPC 1.15(d).

Eventually, respondent learned that expungement of a federal crime was legally impossible. He discussed alternatives with TH, such as petitioning for a presidential pardon. Respondent admitted that he did not contact FH or TH to keep them apprised of the status of the preparation of the presidential pardon petition, or to ask whether they still wanted him to proceed with that petition. Respondent also admitted that, aside from two meetings with FH and TH, he had not communicated with them. Respondent's conduct in this regard violated RPC 1.3 and RPC 1.4(b).

Finally, respondent admitted that he has returned neither the documents that TH had provided nor the unearned portion of the fee to FH, in violation of RPC 1.16(d).

In sum, respondent violated RPC 1.3, RPC 1.4(b), RPC 1.5(b), RPC 1.15(d) and RPC 1.16(d).

Ordinarily, most of respondent's infractions, standing alone, or in various combinations, would warrant the imposition of an admonition. See, e.g., In the Matter of Gary A. Kraemer, DRB 14-085 (June 24, 2014) (attorney failed to file his appearance for several months in two litigation matters and, in one of the matters, failed to take prompt action to compel an independent medical examination of the plaintiff; violations of RPC 1.3; in addition, throughout the representation, the attorney repeatedly failed to reply to his client's -- and his prior counsel's -- numerous requests for information about the two matters, violations of RPC 1.4(b); finally, several months after final judgment was entered against his client, the attorney failed to turn over the file to appellate counsel, a

¹ Pursuant to In re Stern, 92 N.J. 611, 619 (1983), clients may require that legal fees be maintained in attorney trust accounts, a circumstance not presented here.

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violation of RPC 1.16(d); the Board considered the attorney's unblemished record of thirty-five years at the bar); In the Matter of Stephen Schnitzer, DRB 13-386 (March 26, 2014) (an audit conducted by the Office of Attorney Ethics revealed several recordkeeping deficiencies; the attorney also commingled personal and trust funds for many years; prior admonition for unrelated conduct); In the Matter of Myron D. Milch, DRB 11-110 (July 27, 2011) (attorney did not memorialize the basis or rate of his fee in writing, lacked diligence in the case, and failed to communicate with the client); and In the Matter of Alan D. Krauss, DRB 02-041 (May 23, 2002) (attorney failed to prepare a written retainer agreement, grossly neglected a matter, lacked diligence in the representation of the client's interests, and failed to communicate with the client).

Based on the aforementioned cases involving similar conduct and RPC violations, the starting point in assessing the appropriate quantum of discipline is an admonition.

Unfortunately, this is not the first time respondent has committed this time of misconduct. In 2010, he received an admonition for violating RPC 1.4(c) (failure to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation) in one client matter. In the Matter of Neil George Duffy, III, DRB 09-311 (March 10, 2010). In 2011, however, he received a reprimand for lack of diligence, failure to communicate with clients, and failure to return unearned fees to those clients, in five client matters. In re Duffy, 208 N.J. 431 (2011). Therefore, based on the principles of progressive discipline and the fact that respondent, after all these years, seems not to have learned from his prior missteps, the Board determined that a censure is the appropriate level of discipline for respondent's misconduct.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated April 3, 2018.
2. Stipulation of discipline by consent, dated May 8, 2018.
3. Affidavit of consent, dated May 4, 2018.
4. Ethics history, dated July 24, 2018.

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Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/trj

Encls.

c: (w/o enclosures)
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