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October 21, 2019

Heather Joy Baker, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of John F. Wise**
Docket No. DRB 19-241
District Docket Nos. VC-2016-0001E and VC-2016-0002E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure, three-month suspension, or such lesser sanction as the Board shall deem warranted), filed by the District VC Ethics Committee (DEC) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined to impose a three-month suspension for respondent's violation of RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information), and RPC 1.16(d) (upon termination of representation, failure to take steps to the extent reasonably practicable to protect a client's interests, such as surrendering papers and property to which the client is entitled and refunding any fee that has not been earned or incurred). The Board further determined to dismiss the charged violation of RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), RPC 1.5, presumably (b) (when a lawyer has not regularly represented a client, failure to set forth in writing the basis or rate of the attorney's fee), and RPC 1.16(a)(2) (failure to withdraw from the representation of a client if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client).

Specifically, according to the stipulation, sometime in 2015, grievant Allen Jenkins closed his business and retained respondent to assist him in filing for Chapter 7 bankruptcy. Jenkins paid respondent a \$2,500 retainer fee, in three installments. After Jenkins made the final installment, on July 15, 2015, respondent did not contact him.

In August 2015, Jenkins went to respondent's office, which was empty. On September 8, 9, and 10, 2015, Jenkins sent text messages to respondent. On September 10, 2015, respondent directed Jenkins to contact his secretary regarding any bankruptcy-related issues.

On September 21, 2015, Jenkins retained Katrina Pin Lucid, Esq., "to protect his interests." That day, Lucid informed respondent that Jenkins had retained her and requested a refund of the unused portion of the \$2,500 retainer, as well as all documents relating to Jenkins's bankruptcy matter.

On October 2, 2015, respondent informed Jenkins that his office was no longer located in South Orange and that he was now associated with the Goodson Law Offices in Montclair. Although respondent provided Jenkins with a phone number to call to make an appointment, he did not give Jenkins any information about his case.

Via an October 14, 2015 e-mail, Lucid reminded respondent that she had requested Jenkins's file and a refund of the unused portion of his retainer; informed him that she had called his office several times, to no avail; and advised him to make haste with her requests so that she could act quickly to protect Jenkins's interests, as a levy had been placed on his bank account. On December 2, 2015, Jenkins e-mailed respondent to request the return of the unearned retainer and his file. The next day, respondent replied that he immediately would forward Jenkins's file and a check to Lucid. He did not keep his word.

On December 15, 2015, Jenkins sent another e-mail to respondent, stating that, unless respondent returned his file and issued a refund, Jenkins would file a grievance against him with the Office of Attorney Ethics (OAE). Respondent, however, continued to ignore Jenkins and Lucid until after Jenkins had filed a grievance and the OAE contacted respondent about the matter. Finally, on February 23, 2016, respondent sent a \$2,500 check made payable to Lucid and Jenkins. However, as of August 16, 2016, respondent had not provided Jenkins or Lucid with a copy of Jenkins's file.

Further, in an unrelated matter, in 2014, grievant Sonya Martin retained respondent to assist her in evicting a tenant from property owned by her mother's estate. That property was the subject of a mortgage foreclosure and Martin intended to proceed with a short sale. She paid respondent a \$2,500 retainer, although there was no fee agreement.

Respondent did not perform the required legal work. He missed appointments with the Surrogate's Court and failed to file necessary documents. Respondent also ignored Martin's attempts to communicate with him and failed to notify her that he was no longer associated with his prior firm. Finally, respondent did not comply with Martin's request for the return of her file and the \$2,500 retainer.

The Board found that, in the Jenkins matter, respondent's lack of communication with Jenkins violated RPC 1.4(b). His failure to return the \$2,500 retainer to Jenkins violated RPC 1.16(d). In the Board's view, the stipulated facts did not support a finding that respondent violated RPC 1.4(c), as the record lacks any evidence that respondent undertook any work in his client's

behalf and, thus, there were no informed decisions for Jenkins to make.

In the Martin matter, the Board found that respondent's failure to perform any work, including the filing of necessary documents and keeping appointments with the Surrogate's Office violated RPC 1.3. His utter failure to communicate with his client violated RPC 1.4(b). Finally, respondent's failure to return Martin's file and \$2,500 retainer violated RPC 1.16(d). In the Board's view, the stipulated facts did not support a finding that respondent violated RPC 1.5(b) or RPC 1.16(a)(2). Nothing in the stipulation suggests that respondent had not represented Martin previously. Moreover, there was, as the DEC noted, "little evidence" to suggest that respondent had a physical or mental condition that materially impaired his ability to represent Martin.

For respondent's above unethical conduct in the Jenkins and Martin matters, the Board determined to impose a three-month suspension. Typically, an admonition is imposed on an attorney who violates the above RPCs. 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, he also 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 violation of RPC 1.16(d); the Board considered his unblemished record of thirty-five years at the bar); In the Matter of Larissa A. Pelc, DRB 05-165 (July 28, 2005) (one-year delay in returning unearned portion of a retainer); and In the Matter of Stephen D. Landfield, DRB 03-137 (July 3, 2003) (four-month delay in returning retainer).

If the attorney has a disciplinary history, a reprimand may be imposed. See, e.g., In re Tyler, 217 N.J. 525 (2014) (attorney violated RPC 1.4(b) when, after a client had retained her to re-open a Chapter 7 bankruptcy on his behalf in order to add a previously omitted creditor and to discharge that particular debt, she ceased communicating with him and never informed him that the creditor had indeed been added to the bankruptcy schedules, that the debt had been discharged, and the bankruptcy closed; prior reprimand for, among other things, failure to communicate in six bankruptcy cases), and In re Tan, 217 N.J. 149 (2014) (attorney violated RPC 1.4(b) when he failed to return approximately twenty calls from his client; due to his disciplinary history, which included, among other things, a censure for failure to communicate with a client, a reprimand was imposed for his failure to learn from his prior ethics mistakes).

This case involves aggravating factors that require discipline well beyond a reprimand, however. This is respondent's fifth disciplinary case. He previously received an admonition and three reprimands. In two of the prior matters, he was disciplined for gross neglect and lack of diligence, yet he continues to be inattentive to his client's cases. Thus, he has failed to learn from prior mistakes, which justifies a censure. See, e.g., In re D'Arienzo, 207 N.J. 31 (2011) (censure imposed on attorney who failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, complaining witness, and two defendants; in addition, failure to provide the court

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with advance notice of his conflicting calendar prevented the judge from scheduling other cases for that date; prior three-month suspension and two admonitions, plus failure to learn from similar mistakes, justified a censure).

Finally, respondent has benefited financially from his misconduct, given his refusal to return the \$2,500 to Martin, whom he essentially abandoned. He ignored Jenkins's and Lucid's requests for the return of Jenkins's file and retainer, and returned the retainer only after Jenkins had filed a grievance and the OAE contacted him. In light of these serious aggravating factors, the Board determined to impose a three-month suspension. Further, the Board has directed that respondent return Jenkins's file to Lucid, and Martin's file and \$2,500 retainer within thirty days of the date of this letter.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated June 10, 2019.
2. Stipulation of discipline by consent, dated May 29, 2019.
3. Affidavit of consent, dated May 23, 2019.
4. Ethics history, dated October 21, 2019.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/kw/jm
Enclosures

- c: (w/o enclosures)
- Bruce W. Clark, Chair
Disciplinary Review Board (e-mail)
 - Charles Centinaro, Director
Office of Attorney Ethics (e-mail and interoffice mail)
 - Isabel K. McGinty, Statewide Ethics Coordinator
Office of Attorney Ethics (e-mail)
 - Anthony M. Rainone, Chair
District VC Ethics Committee (e-mail)
 - John J. Zefutie, Jr., Secretary
District VC Ethics Committee (e-mail and regular mail)
 - Peter A. Gaudio, Investigator
District VC Ethics Committee (e-mail)

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Marc D. Garfinkle, Respondent's Counsel (e-mail and regular mail)

Allen Jenkins, Grievant (regular mail)

Sonya Martin, Grievant (regular mail)