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October 22, 2019

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

Re: **In the Matter of James Valvano, II**
Docket No. DRB 19-231
District Docket No. VC-2017-0009E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems appropriate) 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 censure for respondent's violation of RPC 5.5(a)(1) (unauthorized practice of law; practicing while ineligible), RPC 8.4(b) (criminal conduct), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Specifically, Magdy Mahmoud, the chief executive officer of Everest UCC Wayne, LLC, and Garfield Urgent Care Center (GUCC), filed two ethics grievances against respondent for his conduct during his representation of Daniel J. Edwards, DO, in contentious civil and criminal litigation between Mahmoud and Edwards, which have since concluded.

Between November 22, 2016 and April 4, 2017, respondent was ineligible to practice law for failure to comply with Continuing Legal Education requirements. During the ineligibility period, respondent continued to practice law, including in litigation between Mahmoud and Edwards, an admitted violation of RPC 5.5(a). The record contains no evidence that respondent was aware of his ineligibility at the time.

The remaining charges involve respondent's role in an apparent dispute between Mahmoud and Edwards. Mahmoud maintained a locked, private office within the GUCC facility for which he held the only key. On October 17, 2016, on advice from respondent, Edwards hired a locksmith

to change the locks at GUCC's main entrance and Mahmoud's private office. According to the stipulation, respondent knew "or should have known" that his client was not authorized to change the locks.

The following day, respondent retained an individual identified as John Doe to block Mahmoud's entry to GUCC, and to intimidate him or threaten him with harm, while respondent and Edwards entered and exited Mahmoud's private office space, several times, without Mahmoud's permission to do so. The stipulation characterized respondent's actions as trespassing.

Although the stipulation alleged violations of RPC 8.4(b), (c), and (d), based on the above conduct, the stipulation refers only to trespass as the specific criminal conduct applicable. However, respondent's conduct, in addition to trespass, implicates potential charges of assault¹ and harassment. Thus, respondent clearly violated RPC 8.4(b). In addition, respondent's involvement in the changing of the locks at GUCC, knowing that Mahmoud had the "unfettered right" to access that facility, constituted dishonesty and/or deceit, a violation of RPC 8.4(c).

Because the record contains no evidence that respondent engaged in conduct prejudicial to the administration of justice, the Board dismissed the stipulated violation of RPC 8.4(d).

The parties stipulated to the absence of aggravating factors. Respondent offered the following mitigation. As a partner in the New York law firm of Greenspoon Marder, LLP, respondent carries a busy caseload in a high-pressure legal environment, where he handles commercial litigation, and corporate and real estate matters. He is on the firm's management committee, which makes demands on his time. Respondent and his wife are active in their church, where respondent has been a parishioner since 2009. He performs pro bono work for needy parishioners and members of his community. For some years, respondent has devoted his time to coaching youth sports teams, has raised funds for various charitable organizations, and helped organize a father's leadership group at a local elementary school.

As a result of a 2013 stroke, respondent has suffered health issues and has been prescribed various drugs. Additionally, at the time of the events herein, respondent was experiencing personal and family struggles. Moreover, he was depressed due to these issues and believes that the interplay of his medications may have contributed to his conduct.

Finally, respondent has no prior discipline in any of the several jurisdictions in which he is licensed to practice law.

For conduct involving low-level criminal acts, sanctions in the range of an admonition to a censure have been imposed. See, e.g., In the Matter of Michael E. Wilbert, DRB 08-308 (November 11, 2009) (admonition for possession of eight rounds of hollow-point bullet ammunition, a violation of N.J.S.A. 2C:39-3(f), and possession of an over-capacity ammunition magazine, in violation of N.J.S.A. 2C:39-3(j), fourth-degree crimes for which the attorney was admitted into a pretrial intervention program); In re Thakker, 177 N.J. 228 (2003) (reprimand for

¹ N.J.S.A. 2C:12-1a.(3) includes, as a form of assault, attempting "by physical menace to put another in fear of imminent serious bodily injury."

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an attorney who pleaded guilty to harassment, in violation of N.J.S.A. 2C:33-4(a), a petty disorderly persons offense; the attorney harassed a former client, telephoning her repeatedly, after she told him to stop; additionally, the attorney was abusive to the police officer who responded in the matter; despite that police officer's warning, the attorney continued to call the former client and the police officer); In re Milita, 217 N.J. 19 (2014) (censure for attorney who pleaded guilty to one count of hindering apprehension by providing false information to a law enforcement official, a disorderly persons offense (N.J.S.A. 2C:29-3b(4)), and two counts of harassment, petty disorderly persons offenses (N.J.S.A. 2C:33-4(c)); the attorney became angry when two teenagers in a car tailgated him; he made an obscene hand gesture, pulled over, brandished a knife, and then followed the teens for several miles, still brandishing the knife, before being apprehended by police; the attorney first denied that he had a knife, but later admitted to its possession, claiming that it had been given to him by a mechanic to fix his car); and In re Osei, 185 N.J. 249 (2005) (censure for attorney convicted of third-degree criminal mischief; a month after the attorney's home was deeded to a new owner after a foreclosure sale, the attorney caused \$72,000 in damage by putting large holes in the drywall in several rooms, covering hardwood floors and stairway bannisters with a black tar-like substance, pouring bleach on carpeting, destroying marble countertops in the kitchen, removing interior doors, and demolishing a bathroom tub and sink).

The Board found that respondent's misconduct does not appear to have been any more serious than that of the attorneys in the censure cases, Milita and Osei, above. Further, respondent's misconduct appears to have been aberrational and he presented substantial mitigating factors.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated June 13, 2019.
2. Stipulation of discipline by consent, dated February 5, 2019.
3. Affidavit of consent, dated January 4, 2019.
4. Ethics history, dated October 22, 2019.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/paa
Enclosures
See Attached List

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c: (w/o enclosures)
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