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**OF THE**  
**SUPREME COURT OF NEW JERSEY**

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March 20, 2020

**VIA CERTIFIED MAIL, R.R.R., REGULAR MAIL & E-MAIL**

Donald L. Gardner, Esq.  
c/o Milagros De La Car Camacho, Esq.  
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**Re: In the Matter of Donald L. Gardner**  
Docket No. DRB 19-408  
District Docket No. VIII-2016-0039E  
**LETTER OF ADMONITION**

Dear Mr. Gardner:

The Disciplinary Review Board has reviewed your conduct in the above matter and has concluded that it was improper. Following a review of the record, the Board determined to impose an admonition for your violations of RPC 1.4(b) (failure to communicate with the client) and RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions). The Board further determined to dismiss the charged violations of RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to fully inform a prospective client of how, when, and where the client may communicate with the lawyer).

Specifically, in August 2010, Peter Tardibuono retained you to represent him in a civil action against various corrections officers and administrators of South Woods State Prison and the Department of Corrections, for events that allegedly occurred while Tardibuono was an inmate in the New Jersey prison system. On December 20, 2011, you filed a complaint in behalf of Tardibuono. You contended that your associate, who is no longer employed at your firm, had been responsible for Tardibuono's file and for all communications with Tardibuono. Following Tardibuono's deposition in the civil case, your associate met with him and explained that, because Tardibuono's testimony materially differed from the information that he had originally presented to the firm, the case did not merit going forward, as Tardibuono likely could not meet his burden

of proof. As a result, the associate strongly counseled Tardibuono to consider accepting an offer of settlement, if the defendants extended such an offer.

You testified to a belief that, after the deposition, Tardibuono also was advised of his option to seek the opinion of a different attorney, or to hope a settlement offer would be made, because the case could not be won, in light of the deposition testimony. You asserted that Tardibuono was fully informed of the status of his case, understood it, and agreed with the legal advice provided to him. You acknowledged, however, that your position was not corroborated via a writing with Tardibuono. You did not personally meet with Tardibuono following the deposition and the defendants never made a settlement offer to Tardibuono.

To the contrary, defendants' counsel, the New Jersey Office of the Attorney General, filed a motion for summary judgment. You failed to oppose the motion, denying any knowledge of the motion until after it had been granted. Your associate maintained that he also was unaware of the summary judgment motion until he received the order granting it, and did not know whether the firm had received the defendants' motion papers.

Consequently, on May 24, 2013, the trial court entered an order granting the defendants' motion and dismissing Tardibuono's complaint, with prejudice. You neither contacted defendants' counsel nor the court to address the claim that the plaintiff never received the motion papers. Moreover, you filed no motion to attempt to vacate the unopposed dismissal of Tardibuono's case.

You explained that, in your view, any attempt to set aside the order would have been without merit, and possibly even frivolous, because you did not have any new information to proffer to refute the complaint's dismissal. Your associate recalled that he discussed the issue with you, and together, you decided that any attempt to defend would have been "difficult" and "fruitless," given the lack of proofs to support Tardibuono's claims.

By letter dated June 12, 2013, you informed Tardibuono of the dismissal of his case, and provided him with a copy of the order granting the defendants' motion. Your two-sentence letter informed Tardibuono that "[w]e have reviewed potential options and do not believe there are any." You did not take any further action in respect of Tardibuono's claims, and neither you nor your firm had further communication with Tardibuono.

After a hearing, the District VIII Ethics Committee hearing panel (DEC) found that you violated RPC 1.3 and RPC 1.4(a), (b), and (c), because you failed to communicate with Tardibuono; failed to inform him about the status of the case; and failed to communicate with defendants' counsel or the trial court regarding the claim that the plaintiffs had not received the defendants' summary judgment motion. The DEC determined that, despite your position that Tardibuono had no meritorious opposition to the summary judgment motion, you and your firm should have communicated the available options to Tardibuono and confirmed the same in writing. The DEC noted that you also could have filed a motion to set aside the trial court's dismissal order, or taken other action to protect your client's interests, and counseled Tardibuono regarding the same.

The Board agreed with the DEC's determination that you violated RPC 1.4(b) and (c), because you failed to keep Tardibuono informed about the status of the matter and failed to explain the matter sufficiently to permit him to make informed decisions regarding the representation. Your two-sentence letter to Tardibuono accompanying the copy of the order granting summary judgment with prejudice provided no explanation or clarification and invited no further discussion. Simply stated, the letter was insufficient to satisfy your obligations, given the circumstances of the dismissal. The DEC properly determined that, despite your position that Tardibuono had no meritorious opposition to the summary judgment motion, you and your firm should have communicated the facts and the available options to Tardibuono, and, optimally, confirmed that advice in writing.

Although the DEC concluded that you violated RPC 1.3, the Board determined to dismiss that charge, because based on the evidence in Tardibuono's case, specifically his deposition testimony, you testified that you would have been unable to successfully oppose the defendants' summary judgment motion. For the same reasons, you asserted that there was no good faith basis to overcome the order granting summary judgment with prejudice. In light of those facts, which were not challenged by the DEC, there can be no determination, by clear and convincing evidence, that you lacked diligence in your representation of Tardibuono.

Finally, the Board disagreed with the DEC and determined to dismiss the RPC 1.4(a) charge, because that Rule applies to prospective clients. Tardibuono was an existing client, and there is no evidence that you failed to inform Tardibuono of how, when, and where he could communicate with you.

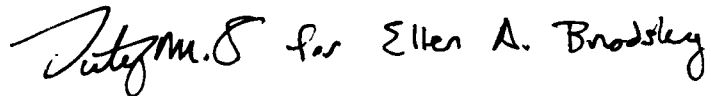
In imposing only an admonition, the Board considered, in mitigation, that you took remedial action to ensure that your firm's mail is properly delivered and reviewed; fully cooperated with the DEC; admitted all of the relevant facts; have no disciplinary history in over forty years at the bar; submitted two persuasive letters attesting to your character; and have performed extensive community service.

Your conduct has adversely reflected not only on you as an attorney but also on all members of the bar. Accordingly, the Board has directed the issuance of this admonition to you. R. 1:20-15(f)(4).

A permanent record of this occurrence has been filed with the Clerk of the Supreme Court and the Board's office. Should you become the subject of any further discipline, this admonition will be taken into consideration.

The Board also has directed that the costs of the disciplinary proceedings be assessed against you. An invoice of costs will be forwarded to you under separate cover.

Very truly yours,

A handwritten signature in black ink that reads "EAB for Ellen A. Brodsky". The signature is written in a cursive style.

Ellen A. Brodsky  
Chief Counsel

EAB/trj

- c: Chief Justice Stuart Rabner
- Associate Justices
- Heather Joy Baker, Clerk
- Supreme Court of New Jersey
- Bruce W. Clark, Chair
- Disciplinary Review Board (e-mail)
- Gail G. Haney, Deputy Clerk
- Supreme Court of New Jersey (w/ethics history)
- Charles Centinaro, Director
- Office of Attorney Ethics (interoffice mail and e-mail)
- Isabel McGinty, Statewide Ethics Coordinator
- Office of Attorney Ethics (e-mail)
- Phillip Nettel, Chair
- District VIII Ethics Committee (e-mail)
- Barry J. Muller, Secretary
- District VIII Ethics Committee (regular mail and e-mail)
- Bryan D. Plocker, Presenter
- District VIII Ethics Committee (e-mail)
- Peter Tardibuono, Grievant (regular mail)