DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

RICHARD J. HUGHES JUSTICE COMPLEX
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March 23, 2020

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

Re: **In the Matter of Jonathan D. Clemente**
Docket No. DRB 19-391
District Docket No. XIV-2018-0676E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (OAE) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion and impose a reprimand for respondent's violation of RPC 1.8(a) (improper business transaction with a client) and RPC 8.1(a) (false statement of material fact in connection with a disciplinary matter).

Specifically, according to the stipulation, in 1996, 2004, and 2014, respondent participated in random audits of his law firm, Clemente Mueller PA, or its predecessors (the law firm), conducted by the OAE. From December 2017 through April 2018, the law firm was audited for the period from December 1, 2015 through October 31, 2018. That OAE audit revealed inactive attorney trust account (ATA) balances and old, outstanding checks that remained unresolved. The OAE directed respondent to provide proof that the deficiencies had been corrected.

In an April 26, 2018 letter to the OAE, respondent claimed that all recordkeeping issues cited in the prior audits had been resolved. His claim, however, was a misrepresentation. In fact, despite respondent's statement, the recordkeeping deficiencies cited in the 1996, 2004, and 2014 audits remained, including $25,460.31 in dormant trust funds, which had been identified during the 2014 random audit. The OAE subsequently confirmed that, on January 9, 2019, those funds were deposited with the Superior Court Trust Fund (SCTF).

On February 20, 2019, the OAE conducted a demand audit of respondent's law firm, for the period from October 31, 2018 through that date. During the audit, respondent was unable to explain why he had stated that the deficiencies found in prior audits had been resolved, when they were not. Respondent admitted that he was aware that some of the checks referenced in the April 2018 audit had been drafted in 2004 and remained outstanding as of April 26, 2018, the date of his untruthful letter to the OAE.

Respondent informed the OAE that the ATA funds for the outstanding checks were included in the funds turned over to the SCTF. He apologized for having maintained inactive balances in the past and stressed that his ATA is now "under control," with ten or twelve total active balances that will be properly monitored. Respondent stipulated that, in his April 26, 2018 letter to the OAE, he knowingly made a false statement of material fact by representing that he had addressed all issues raised during the prior random audits, a violation of RPC 8.1(a).

The February 20, 2019 demand audit also revealed that respondent was involved in an ongoing business venture with a long-time client, Nazario Paragano. Approximately three years prior to the demand audit, Paragano had approached respondent to invest in Commerce Center LLC (the LLC), in which Paragano held a 60.1% controlling interest. In a February 22, 2016 memo to Paragano, respondent had disclosed the conflict of interest and advised Paragano to seek independent counsel for the transaction. That memo, however, neither addressed whether respondent would represent Paragano in the transaction nor included an acknowledgment to be signed by Paragano, waiving his right to seek independent counsel. In light of his failure to obtain a writing indicating Paragano's informed consent to the essential terms of the transaction and respondent's role in it, including whether respondent was representing Paragano in the transaction, respondent stipulated to having violated RPC 1.8(a). The stipulation did not address aggravating or mitigating factors.

When an attorney enters into a loan transaction with a client without observing the safeguards of RPC 1.8(a), the ordinary measure of discipline is an admonition. See, e.g., In the Matter of David M. Beckerman, DRB 14-118 (July 22, 2014) (during the course of the attorney's representation of a financially-strapped client in a matrimonial matter, he loaned the client $16,000, in monthly increments of $1,000, to enable him to comply with the terms of a pendente lite order for spousal support; further, to secure repayment for the loan, the attorney obtained a note and mortgage from the client on his share of the marital home, but the mortgage turned out to be invalid; the attorney also paid for the replacement of a broken furnace in the client's marital home; by failing to advise the client to consult with independent counsel, failing to provide the client with written disclosure of the terms of the transactions, and failing to obtain his informed written consent to the transactions and to the attorney's role in them, the attorney violated RPC 1.8(a); by providing financial assistance to the client, he violated RPC 1.8(e)); In the Matter of John W. Hargrave, DRB 12-227 (October 25, 2012) (attorney obtained from his clients a promissory note in his favor secured by a mortgage on the clients' house, in the amount of $137,000, representing the amount of legal fees owed to him; the attorney did not advise his clients to consult with independent counsel before they signed the promissory note and mortgage in his favor); and In the Matter of April L. Katz, DRB 06-190 (October 5, 2006) (attorney solicited and received a loan from a matrimonial client; the attorney did not comply with the mandates of RPC

1.8(a)).

A reprimand or censure is typically imposed for a false statement or misrepresentation to disciplinary authorities, so long as the lie is not compounded by the fabrication of documents to conceal the misconduct. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (reprimand for attorney who misrepresented to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who lied to the OAE during an ethics investigation of the attorney's fabrication of an arbitration award to mislead his partner, and of the attorney's failure to consult with a client before permitting two matters to be dismissed); In re Otlowski, 220 N.J. 217 (2015) (censure for attorney who misrepresented to an individual lender of his client and to the OAE that funds belonging to the lender and his co-lenders, which had been deposited into the attorney's trust account, were frozen by a court order when, to the contrary, they had been disbursed to various parties, and who also made misrepresentations on an application for professional liability insurance; violations of RPC 8.1(a) and RPC 8.4(c); mitigating factors included the passage of time, the absence of a disciplinary history in the attorney's lengthy career, and his public service and charitable activities); and In re Schroll, 213 N.J. 391 (2013) (censure for attorney who misrepresented to a district ethics committee secretary that the personal injury matter in which he was representing the plaintiff was pending, when he knew that the complaint had been dismissed over a year earlier; for the next three years, the attorney continued to mislead the committee secretary that the case was still active; in addition, the attorney misrepresented to the client's former lawyer that he had obtained a judgment of default against the defendants; the attorney also was guilty of gross neglect, lack of diligence, and failure to reply to the client's numerous attempts to obtain information about her case; no prior discipline).

Standing alone, respondent's misrepresentation to the OAE warrants a reprimand. In crafting the appropriate discipline in this matter, the Board also considered aggravating and mitigating factors. In aggravation, respondent also entered into an improper business transaction with a client. In mitigation, respondent took responsibility for his misconduct via the stipulation and consent to the imposition of discipline. Additionally, he has a lengthy, thirty-eight-year career at the bar, without prior discipline.

In consideration of the significant mitigation, which clearly outweighs the sole aggravating factor, the Board determined that a reprimand is the appropriate sanction to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated October 17, 2019.

2. Stipulation of discipline by consent, dated October 17, 2019.

3. Affidavit of consent, dated October 6, 2019.

4. Ethics history, dated March 23, 2019.

Very truly yours,

Duty M.S for Ellen A. Brodsky

Ellen A. Brodsky
Chief Counsel

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)
Steven J. Zweig, Deputy Ethics Counsel
Office of Attorney Ethics (e-mail)
Jonathan D. Clemente, Respondent (e-mail and regular mail)