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

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April 21, 2020

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

Re: **In the Matter of Joseph Vaccaro**  
Docket No. DRB 19-426  
District Docket No. XIV-2018-0223E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (reprimand or censure, 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 granted the motion and determined to impose a censure for respondent's violation of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with the client); RPC 3.2 (failure to expedite litigation); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 3.4(d) (failure to make reasonably diligent efforts to comply with legally proper discovery requests by an opposing party); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Specifically, according to the stipulation, respondent represented Eismenia and Eddie Maddox, a married couple, in three matters. Initially, the Maddoxes retained respondent for both a motor vehicle summons and a personal injury claim related to a May 1, 2015 motor vehicle accident. Respondent successfully resolved the motor vehicle summons matter. Although the Maddoxes retained respondent on May 11, 2015, he filed the personal injury complaint on April 26, 2017, almost two years later. Because respondent failed to keep Eismenia informed about the status of the case, she believed that the complaint had been filed in 2015.

On June 27, 2017, the defendants' attorney filed an answer and cross-claim, and served respondent with interrogatories. Although defense counsel cautioned respondent that,

if he failed to comply with discovery, she would file a motion to dismiss the Maddoxes' complaint, respondent failed to answer the interrogatories. On October 27, 2017, the court granted the defendants' motion and dismissed the complaint, without prejudice, because respondent failed to answer the interrogatories or file any opposition to the motion to dismiss.

On January 22, 2018, defendants' counsel filed a motion, returnable February 16, 2018, to dismiss the Maddoxes' complaint, with prejudice. By letter dated February 6, 2018, the court reminded respondent that he was required to appear at the hearing, and that the mandatory discovery affidavit must be submitted no later than seven days prior to the return date. Respondent failed to file the affidavit or appear for the hearing, which had been rescheduled to March 2, 2018. Instead, on the morning of the hearing, he e-filed a letter requesting an adjournment because he was tending to his terminally ill father. Consequently, the court issued an order requiring respondent to appear on March 16, 2018 to show cause why he should not be sanctioned for neither providing the required affidavit nor appearing at the March 2, 2018 motion hearing.

On March 15, 2018, respondent informed the court that he could not appear on March 16, 2018, because his father had passed away and he was attending to the funeral arrangements. The court adjourned the return date of the Order to Show Cause until March 29, 2018, with no further adjournments, and ordered respondent to file the mandatory affidavit by March 23, 2018. Respondent neither filed the affidavit nor appeared at the Order to Show Cause hearing. By order dated March 29, 2018, the court dismissed the Maddoxes' complaint, with prejudice, and sanctioned respondent \$250 for his repeated failures to attend hearings and to comply with the court's orders. Respondent explained that he had not attended the March 29, 2018 motion hearing because he had not entered it on his calendar and, thus, was not "up to date on the orders of the Court and 'when I was supposed to be where.'" He also stated that he was unaware of the \$250 sanction until he received the OAE's referral letter.

Respondent failed to provide Eismenia with any status updates regarding the personal injury matter until 2017, when he notified her that the judge had dismissed the case. According to Eismenia, respondent told her that the complaint had been dismissed because they did not have "enough evidence."

The Maddoxes also retained respondent to represent them in a bankruptcy matter. In December 2018, respondent accompanied them to a bankruptcy hearing. By letter dated December 27, 2018, the bankruptcy trustee assigned to the Maddoxes' case served Eismenia with a subpoena, which required her appearance at a January 17, 2019 debtor examination. Eismenia unsuccessfully attempted to contact respondent regarding the subpoena. She, thus, appeared for the examination without counsel. Ultimately, the Maddoxes received a standard bankruptcy discharge.

The Board found that, in respect of the Maddoxes' personal injury matter, respondent violated RPC 1.1(a); RPC 1.3; RPC 3.2; RPC 3.4(c); and RPC 3.4(d) by failing to provide answers to interrogatories, despite defense counsel's repeated requests and his obligation to

do so, pursuant to the Court Rules; failing to appear at mandatory court hearings, despite reminders and warnings from the trial court; and failing to submit the required affidavit, despite the court having ordered him to do so and despite the mandate of the Court Rule.

Further, the Board determined that respondent repeatedly violated RPC 3.4(c) and RPC 8.4(d) by failing to appear at motion hearings and the Order to Show Cause hearing, despite the trial court's reminders and eventual warning that no further adjournments would be granted. Respondent's violations of RPC 3.4(c) and RPC 8.4(d) in the Maddoxes' case were so egregious that the trial court imposed a \$250 sanction on him.

The Board also found that respondent committed multiple violations of RPC 1.4(b) by failing to communicate with the Maddoxes regarding the status of their personal injury action, failing to truthfully advise them about the circumstances of the dismissal of their lawsuit,<sup>1</sup> and failing to return Eismenia's call regarding the bankruptcy examination.

Attorneys who fail to obey court orders, sometimes found as violations of RPC 3.4(c), RPC 8.4(d), or both, generally have been reprimanded, even if those infractions are accompanied by other, non-serious violations. See, e.g., In re Ali, 231 N.J. 165 (2017) (attorney disobeyed court orders by failing to appear when ordered to do so and by failing to file a substitution of attorney, violations of RPC 3.4(c) and RPC 8.4(d); he also lacked diligence and failed to expedite litigation in one client matter and engaged in ex parte communications with a judge, a violation of RPC 3.5(b); in mitigation, the Board considered his inexperience, his unblemished disciplinary history, and the fact that his conduct was limited to a single client matter); In re Cerza, 220 N.J. 215 (2015) (attorney failed to obey a bankruptcy court's order compelling him to comply with a subpoena, which resulted in the entry of a default judgment against him; violations of RPC 3.4(c) and RPC 8.4(d); the attorney also violated RPC 1.15(b) in a related real estate transaction; prior admonition for recordkeeping violations and failure to promptly satisfy tax liens in connection with two client matters, even though he had escrowed funds for that purpose); and In re Cooper, 218 N.J. 162 (2014) (six years after the attorney represented the former husband in a divorce, the former husband again retained him for the sale of a liquor license; the attorney, having forgotten in the intervening years that the divorce agreement provided that the former wife was entitled to a one-half share of the liquor license proceeds, released most of the net proceeds to his client; a year after the former wife reminded the attorney of his obligation to release to her one-half of the sale proceeds, the attorney released the remaining funds to his client, a violation of RPC 3.4(c)).

Respondent is also guilty of violating RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 3.2. Admonitions typically are imposed for gross neglect, lack of diligence, and failure to communicate with the client, even if, as here, those violations are accompanied by a failure

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<sup>1</sup> Respondent was not charged with having violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) in respect of this potential misrepresentation to his client.

to expedite litigation. See, e.g., In the Matter of Michael J. Pocchio, DRB 18-192 (October 1, 2018) (attorney filed a complaint for divorce in behalf of his client, but failed to perfect service, resulting in the dismissal of the complaint for lack of prosecution; the attorney failed to inform the court of the reason for the lack of service, made no effort to reinstate the complaint, and failed to inform the client of the dismissal, violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b)); a violation of RPC 3.2 also found; the Board considered that the attorney had no prior discipline and admitted his misconduct by entering into a disciplinary stipulation); In the Matter of Joel I. Rachmiel, DRB 18-064 (April 24, 2018) (attorney settled a client's personal injury matter, distributed to the client her settlement proceeds, but delayed paying medical liens for almost six years; the attorney then failed to reply to the client's inquiries about the liens, and his delay caused the medical obligations to be placed in collections, affecting the client's credit rating; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) and (c); the attorney had no prior discipline); and In the Matter of Clifford Gregory Stewart, DRB 14-014 (April 22, 2014) (attorney, who was not licensed to practice law in Washington, D.C., filed an employment discrimination case in the United States District Court for the District of Columbia, on behalf of his client, and obtained local counsel to assist him in handling the matter; after the defendant had filed a motion to dismiss the complaint, the attorney failed to provide local counsel with written opposition to the motion until after the deadline for doing so had expired, resulting in the granting of the motion as unopposed; violations of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep his client informed about various filing deadlines and about the difficulty he was having with meeting them, particularly with the deadlines for filing an objection to the motion to dismiss the complaint, a violation of RPC 1.4(b) and RPC 1.4(c); the Board considered the attorney's exemplary, unblemished career of twenty-eight years at the time of the incident).

In mitigation, the Board considered that respondent's misconduct occurred while his father was terminally ill; respondent readily admitted his misconduct; he entered into the stipulation, thereby saving disciplinary resources; he expressed remorse and contrition; he has no disciplinary history in more than twenty years at the bar; and, despite his failure to appear at the bankruptcy examination, his clients obtained a bankruptcy discharge. In the Board's view, however, these factors were insufficient to diminish the extreme harm to the clients because their personal injury claim was extinguished, and respondent took no actions to reinstate the complaint.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated September 27, 2019.
2. Stipulation of discipline by consent, dated November 8, 2019.
3. Affidavit of consent, dated November 4, 2019.

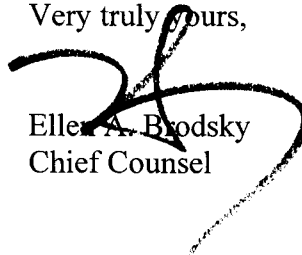
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4. Ethics history, dated April 21, 2020.

Very truly yours,



Ellen A. Brodsky  
Chief Counsel

For: Ellen A. Brodsky

EAB/trj

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)  
Ryan J. Moriarty, Presenter  
Office of Attorney Ethics (e-mail)  
Joseph Vaccaro, Esq. (e-mail and regular mail)