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

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RICHARD J. HUGHES JUSTICE COMPLEX  
P.O. BOX 962  
TRENTON, NEW JERSEY 08625-0962  
(609) 815-2920

ELLEN A. BRODSKY  
CHIEF COUNSEL  
TIMOTHY M. ELLIS  
DEPUTY COUNSEL  
BARRY R. PETERSEN, JR.  
DEPUTY COUNSEL  
JESSICA A. CALELLA  
ROCCO J. CARBONE, III  
ELIZABETH L. LAURENZANO  
COLIN T. TAMS  
KATHRYN ANNE WINTERLE  
ASSISTANT COUNSEL

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 William L. Huneke**  
Docket No. DRB 20-040  
District Docket Nos. XIV-2018-0137E,  
XIV-2019-0489E, and IIIB-2019-0903E

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 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 1.15(b), RPC 8.1(b), and RPC 8.4(c).

Specifically, according to the stipulation, during a 2015 audit, respondent admitted to OAE investigators that he had undercharged some real estate clients for recording fees in their respective transactions. In February 2018, the OAE opened an investigation to determine whether respondent's undercharging practices had impacted unrelated client trust funds. For more than a year, from June 26, 2018 until July 22, 2019, however, respondent failed to cooperate with the OAE's investigation. After the OAE filed a June 28, 2019 formal ethics complaint charging a violation of RPC 8.1(b), respondent filed an answer and finally produced the records documenting his misconduct in the real estate matters.

Moreover, respondent's client records revealed that, between 2011 and 2013, he had overestimated the recording fees in forty-eight real estate matters, and improperly retained \$5,230 in excess client funds. Despite his intentional practice of overcharging recording fees, respondent had attested to the accuracy of the HUD-1 settlement statements for those transactions, and neither informed his clients that he intended to retain any funds in excess of their actual recording fees, nor returned the excess funds to them after the transactions were completed. Rather, he claimed a

belief that it was an acceptable practice to retain the difference between estimated and actual recording fees.

The Board found that respondent's conduct violated RPC 1.15(b), RPC 8.1(b), and RPC 8.4(c). The discipline imposed for misrepresentations on closing documents based on the improper retention of excess recording fees typically has been a reprimand or a censure. See, e.g., In re Rush, 225 N.J. 15 (2016) (reprimand for attorney who, in two real estate matters, improperly retained more than \$700 in excess recording fees, and falsely attested that the HUD-1 forms he had signed were complete and accurate accounts of the funds received and disbursed as part of the transactions; the attorney also was guilty of lack of diligence, commingling, and recordkeeping violations; in mitigation, he stipulated to his misconduct and had no prior discipline); In re Masessa, 239 N.J. 85 (2019) (censure for attorney who engaged in a systematic practice of overcharging real estate clients for recording fees totaling \$76,254 and then retained those excess funds when serving as settlement agent in the transactions; the attorney admitted signing hundreds of HUD-1 settlement statements that were inaccurate accounts of the disbursements for the transactions); In re Li, 239 N.J. 141 (2019) (censure for attorney who, over a seven-year period, systematically collected inflated, "flat" recording fees totaling \$119,660, from 738 real estate clients; without the clients' consent, he retained the difference between the estimated and actual recording fees; the attorney was aware that the HUD-1 settlement statements prepared and executed by the settlement agents in those matters contained inaccurate accounts of the actual disbursements for recording fees; the attorney also charged improper fees described as "title binder review fees" of \$100 and "legal documentation and notary fees" of \$50, admitting that those costs were excessive and had been included in the flat legal fee he charged for the transactions; recordkeeping violations also found; the attorney was required to refund identified excess costs of \$186,050 to the former clients); and In re Fortunato, 225 N.J. 3 (2016) (censure for attorney who violated RPC 8.4(c) in four real estate matters by engaging in the systematic, unauthorized retention of excess recording fees totaling \$1,608, couched as "services fees," in addition to his legal fee; the attorney also prepared and executed inaccurate HUD-1 settlement statements; in mitigation, the attorney asserted that "I have seen many other attorneys do this, and I believe it may be the rule among [transactional real estate] attorneys rather than the exception").

In Li and Masessa, both of which were decided by the Court on July 25, 2019, the Board had concluded that, as a matter of stare decisis, a censure is the appropriate sanction for attorneys who improperly retain excess recording fees, in violation of RPC 1.15(b) and RPC 8.4(c). The Board asked the Court, going forward, to consider harsher discipline for such conduct. The Court agreed, cautioning that, in the future, attorneys who engage in the purposeful, systematic, and unauthorized charging and retention of excess recording fees, or the implementation of other deceptive, income-generating practices, may be subject to a greater level of discipline. In this case, respondent's misconduct predated the Court's Orders in Li and Masessa.

Respondent, however, committed additional misconduct. Ordinarily, an admonition is imposed for an attorney's failure to cooperate with disciplinary authorities. See, e.g., In the Matter of Carl G. Zoeklein, DRB 16-167 (September 22, 2016) (attorney ignored three letters from a district ethics committee investigator seeking information about a grievance; he also lacked

diligence in the representation of his client and failed to communicate with him). If, as here, an attorney has a disciplinary history, the discipline may be enhanced to a reprimand. See, e.g., In re Saluti, 214 N.J. 6 (2013) (attorney failed to reply to three letters from a district ethics committee, requesting a reply to a grievance; two prior admonitions).

In crafting the appropriate discipline in this matter, the Board also considered aggravating and mitigating factors. In aggravation, the parties cited respondent's May 2019 censure in a default matter. Moreover, the default occurred while this very matter was being investigated. Thus, respondent was fully aware of the ramifications of any further failure to cooperate with disciplinary authorities.

In mitigation, respondent has wound down his law practice and no longer serves as a settlement agent in real estate transactions. Also, during the OAE investigation, respondent was in the midst of an office relocation, and was caring for his ailing, elderly mother. Moreover, respondent's misconduct in this matter and the May 2019 censure were so close in time as to obviate the need for enhanced discipline in this matter. Finally, although respondent was very slow to cooperate with the OAE in this matter, he ultimately filed an answer to the complaint, produced the records the OAE required, stipulated to the facts and to the ethics infractions, and consented to the imposition of discipline.

For the totality of respondent's misconduct, and in light of the aggravating and mitigating factors presented, the Board determined that a censure is the appropriate sanction necessary to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated January 9, 2020.
2. Stipulation of discipline by consent, dated January 14, 2020.
3. Affidavit of consent, dated January 8, 2020.
4. Ethics history, dated April 21, 2020.

Very truly yours,

For:   
Ellen A. Brodsky  
Chief Counsel

Enclosures

c: See Attached List

I/M/O William L. Huneke, DRB 20-040

April 21, 2020

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(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, Deputy Ethics Counsel

Office of Attorney Ethics (e-mail)

William L. Huneke, Respondent (e-mail and regular mail)