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July 20, 2021

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

Re: **In the Matter of Saul Gary Gruber**
Docket No. DRB 21-029
District Docket Nos. XIV-2018-0443E and XIV-2018-0459E

Dear Ms. Baker:

The Disciplinary Review Board (the Board) has reviewed the motion for discipline by consent (three- to six-month suspension) filed by the Office of Attorney Ethics (the 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 six-month suspension with conditions for respondent's violations of RPC 1.1(a) (gross neglect – five instances); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence – five instances); RPC 1.4(b) (failure to keep the client reasonably informed about the status of a matter – six instances); RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation – six instances); RPC 3.2 (failure to expedite litigation – five instances); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation – five instances); and RPC 8.4(d) (conduct prejudicial to the administration of justice – four instances).

At all times relevant, respondent was an attorney with the Mount Laurel office of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins (the Firm).

On June 3, 2019, in a default matter, respondent received a censure for violating RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 4.1(a)(1) (false statement of material fact to a third person); RPC 8.1(a) (knowingly making a false statement of fact to, and knowingly failing to reply to a lawful demand of information from, a disciplinary authority); and RPC 8.4(c). In re Gruber, 238 N.J. 149 (2019) (Gruber I). In that case, although the Board determined that a three-month suspension would have been warranted for respondent's misconduct, it found the significant mitigating factors justified the imposition of a censure.

As will be discussed in greater detail below, the Gruber I grievances were largely concurrent with the instant matters, which unfolded between 2010 and 2018, though only later discovered. In Gruber I, although the Board denied respondent's motion to vacate the default, it considered, in mitigation, the compelling facts he offered to explain his misconduct. Specifically, respondent proffered that, beginning in 2010, he experienced "a series of professional and personal hardships that severely compromised [his] ability to practice law," including an ill-fated law partnership that adversely affected his financial state, as well as "marital pressures," which made it impossible to represent his clients effectively. The Board also considered, in mitigation, respondent's unblemished twenty-six years of practice. Additionally, the Board considered respondent's position on the Board of Governors of both the New Jersey Association of Justice and the National Nursing Home Litigation Group, as well as his contribution to the development of the tort of nursing home neglect in New Jersey.

The Board found that the stipulated facts clearly and convincingly support all but one of the admitted violations of the Rules of Professional Conduct in these six matters. Specifically, in the Rosario matter, despite being retained to file a negligence action against the nursing home where Rosario resided, and despite filing a complaint, respondent abandoned work on the matter, which resulted in the defense successfully filing a motion for summary judgment, in violation of RPC 1.1(a), RPC 1.3, and RPC 3.2. Rather than inform the client what had happened, respondent falsely led her to believe, for three years, that the matter was still pending, in violation of RPC 1.4(b) and RPC 8.4(c). By not communicating, and then falsely communicating the status of the matter, respondent violated RPC 1.4(c).

Likewise, in the Manaresi, Kaufman, and Kester matters, after he was retained to pursue negligence claims against the nursing facilities where those clients had resided, respondent eventually abandoned work on the matters, resulting in the defendants successfully moving before the court to dismiss the complaints, in violation of RPC 1.1(a), RPC 1.3, and RPC 3.2. Similarly, respondent's failure to provide discovery in each of the matters, which was the basis upon which the defendants moved to dismiss the complaints, along with his failure to oppose the motions, wasted judicial resources, in violation of RPC 8.4(d). Respondent also concealed the termination of the clients' causes of action in the Manaresi and Kaufman matters, in violation of RPC 1.4(b) and RPC 8.4(c), and worse, affirmatively misrepresented to the client in the Kester matter that the case was ongoing, in violation of RPC 1.4(b) and RPC 8.4(c). By failing to communicate and acting with deception in each of the client matters, respondent deprived each client of the opportunity to make informed decisions about litigation, in violation of RPC 1.4(c).

Whereas respondent filed a complaint and worked on the cases in the Rosario, Manaresi, Kaufman, and Kester matters, he performed no substantive legal work in the Spearman matter. His utter failure to advance his client's interests constituted gross neglect and a lack of diligence, in violation of RPC 1.1(a) and RPC 1.3. He did not file a complaint and, years later, inexplicably met with the client to answer interrogatories on a case that did not exist, thus, misleading the client into believing the case was proceeding apace. His delay and deliberately false representations stripped the client of the capacity to make informed decisions regarding the representation and constituted violations of RPC 1.4(b), RPC 1.4(c) and RPC 8.4(c).

Because respondent grossly neglected five separate client matters, his misconduct evidenced a pattern of neglect, in violation of RPC 1.1(b). See, In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16) (for the Board to find a pattern of neglect, at least three instances of neglect, in three distinct client matters, are required).

Finally, in the Giordano matter, respondent had fully prepared the case for trial. Yet, when the defense moved to bar his expert's opinion as a net opinion, respondent engaged in a series of unethical decisions which violated the Rules of Professional Conduct. Respondent failed in his attempt to provide to his adversary and the court a supplemental expert report, which resulted in the court ordering an in-person hearing to address the issue. Respondent failed to attend the hearing and, consequently, the court ordered respondent to pay defense counsel the nearly \$4,000 in fees it had incurred to obtain the supplemental report. Not only did respondent fail to pay the court-ordered fees, he failed to appear at a hearing the court scheduled on a motion to bar the expert's testimony. The court sanctioned respondent \$1,059.52 and rescheduled the matter a third time. The delay and needless consumption of court resources violated RPC 3.2 and RPC 8.4(d). Although respondent kept his client informed of the progress in the case, he failed to inform the client of the sanctions he incurred, in violation of RPC 1.4(b) and RPC 1.4(c).

Respondent also requested that the Firm pay the sanctions he incurred as a result of his misconduct, "mistakenly believing" that the sanctions could be deducted from the Firm's legal fee in the matter. A violation of RPC 8.4(c) requires intent. See, e.g., In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011). Here, respondent's request is described as a mistake, rather than an intentional misrepresentation. The Board, thus, determined to dismiss this RPC 8.4(c) charge.

On December 27, 2018, respondent's counsel provided the OAE with a letter from respondent's treating psychologist, Dr. Abbey Shepard-Smith, Ph.D. In her letter, Dr. Shepard-Smith explained that respondent began treatment on June 28, 2018 and had been compliant ever since. Respondent also has been compliant with his psychotropic medication management. Dr. Shepard-Smith opined that, with continued medication compliance and participation in therapy, respondent's prognosis was good, because he had already shown significant improvement while in treatment.

Additionally, as previously detailed in connection with Gruber I, respondent explained that, in 2010, he began experiencing a series of professional and personal hardships that “severely compromised his ability to practice law.” Respondent explained that, in 2008, he formed a law partnership, which was ill-fated from the beginning. Respondent made poor financial decisions in forming the partnership which negatively affected his personal finances, and contributed to the breakdown of his marriage. Respondent estimated that he lost \$1 million because of the partnership.

Attorneys who mishandle multiple client matters generally receive suspensions ranging from three months to one year. See, e.g., In re Tarter, 216 N.J. 425 (2014) (three-month suspension for attorney who was found guilty of misconduct in eighteen matters: lack of diligence and a pattern of neglect in fifteen of those matters; gross neglect in one matter; and failure to withdraw from the representation and to properly terminate the representation in all eighteen matters; in mitigation, the attorney had no prior discipline and was battling alcoholism at the time of the misconduct); In re Tunney, 185 N.J. 398 (2005) (six-month suspension for misconduct in three client matters; the violations included gross neglect, lack of diligence, failure to communicate with clients, and failure to withdraw from the representation when the attorney’s physical or mental condition materially impaired his ability to represent clients; in mitigation, the attorney suffered from serious depression; prior reprimand and six-month suspension); and In re Lawnick, 162 N.J. 113 (1999) (in a default matter, one-year suspension for attorney who agreed to represent clients in six matters and took no action, despite having accepted retainers in five of them; the attorney also failed to communicate with the clients and to cooperate with the investigation of the ethics grievances).

An admonition has been imposed for failure to expedite litigation, even when accompanied by other, non-serious violations. See In the Matter of Leonard B. Zucker, DRB 12-039 (April 23, 2012).

Here, respondent committed the same misconduct as addressed in Gruber I, except the instant misconduct permeated six client matters, instead of only two. Another distinguishing fact between this matter and the previous matter is that respondent lied to the DEC investigator regarding one of the matters and outright failed to cooperate with the DEC’s investigation of the second matter. Here, respondent has been forthcoming with information and has readily admitted and expressed remorse for his misconduct.

Nevertheless, respondent misled the clients in all six matters; displayed a pattern of neglect; grossly neglected and lacked diligence in five matters; failed to file a complaint in one matter while allowing four other matters to be dismissed after filing complaints; and failed to provide discovery. Fortunately for the clients in the Manaresi; Kaufman; Giordano; and Kester matters, the Firm was able to reinstate and/or settle the matters despite respondent’s egregious mishandling of the cases. Thus, the harm to those clients was less severe than the harm in the Spearman matter, where the statute of limitations had expired, and the Firm was unable to seek relief for that client.

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In mitigation, respondent admitted his wrongdoing, was remorseful, and cooperated with the OAE. Furthermore, the representations and misconduct here occurred between 2010 and 2018, and were largely concurrent with the misconduct addressed in Gruber I. As the Board previously found, during that timeframe, respondent was suffering from personal and professional hardships which negatively impacted his mental health, which, in turn, severely compromised his ability to provide adequate representation to his clients. However, respondent has been engaged in treatment and his prognosis is good.

For the totality of respondent's misconduct, and considering the aggravating and mitigating factors presented, the Board determined that a six-month, prospective suspension is the appropriate sanction necessary to protect the public and preserve confidence in the bar. In addition to the term of suspension, the Board requires that, prior to reinstatement, respondent must provide to the OAE both proof of continued psychological treatment and proof of fitness to practice law, as attested to by a mental health professional approved by the OAE.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated February 10, 2021.
2. Stipulation of discipline by consent, dated February 10, 2021.
3. Affidavit of consent, dated February 2, 2021
4. Ethics history, dated July 20, 2021.

Very truly yours,

A handwritten signature in black ink, appearing to read "Johanna Barba Jones". The signature is fluid and cursive, written in a professional style.

Johanna Barba Jones
Chief Counsel

JBj/akg
Enclosures

c: See attached list
(w/o enclosures)

Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair

Disciplinary Review Board (e-mail)

Charles Centinaro, Director

Office of Attorney Ethics (e-mail and interoffice mail)

HoeChin Kim, Presenter

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Frank L. Corrado, Respondent's Counsel (e-mail and regular mail)