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SUPREME COURT OF NEW JERSEY

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October 22, 2021

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

Re: **In the Matter of Ronald L. Lueddeke**
Docket No. DRB 21-167
District Docket No. IX-2020-0004E

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 District IX Ethics Committee 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 reprimand for respondent's violation of RPC 1.3 (lack of diligence) and RPC 1.4(b) (failure to communicate).

By way of background, in March 2015, respondent received an admonition for lack of diligence and failure to communicate with a client, in violation of RPC 1.3 and RPC 1.4(b). In the Matter of Ronald L. Lueddeke, DRB 15-018 (March 25, 2015) (Lueddeke I). There, respondent failed to file a consumer fraud action until four years after his client had retained him, and then only after his client had filed a grievance against him. Although respondent's delay in filing the complaint did not bar his client's claim, the Board noted that respondent's inaction constituted a lack of diligence. Moreover, respondent failed to keep his client reasonably informed about the status of the matter and to promptly comply with his reasonable requests for information. In imposing only an admonition, the Board considered, among other things, the remedial steps respondent represented that he had taken to improve his calendar system and to timely return his clients' calls.

On September 22, 2021, the Board imposed a censure for respondent's stipulated violation of RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6). In the Matter of Ronald L. Lueddeke, DRB 21-056 (September 22, 2021). In imposing a censure, the Board emphasized the more than \$400,000 in inactive client balances that had languished in respondent's trust account for almost a decade, despite his heightened awareness of his recordkeeping obligations following two random audits. That decision is pending with the Court.

In the instant matter, on June 15, 2016, the grievant, Frank Vasta, retained respondent to represent him in a breach of contract and consumer fraud claim whereby Mr. Vasta alleged that the defendant contractor improperly installed vinyl siding, a deck, and a garage floor. Following respondent's retention as counsel, he explained to Mr. Vasta the need to obtain an independent estimate for the proper installation of the deck in order to proceed with the litigation.

On February 7, 2017, respondent sent the court a letter requesting a proof hearing. The court rejected the letter and advised respondent to file a formal motion for a proof hearing. Respondent, however, never filed the motion.

On June 30, 2017, the court issued a notice dismissing Mr. Vasta's matter, without prejudice, for lack of prosecution. Although respondent received the court's dismissal notice on July 7, 2017, he failed to inform Mr. Vasta of the dismissal. Consequently, from September 1, 2016 through October 1, 2018, Mr. Vasta attempted to contact respondent's law office every six months to inquire as to the status of his case. During that time, respondent's paralegal repeatedly advised Mr. Vasta that his case was awaiting a court date.

On October 29, 2018, Mr. Vasta finally contacted the court to determine the status of his case, at which time the court informed him that his case had been "closed for inactivity" since April 2017. Thereafter, on November 9, 2018, Mr. Vasta spoke with respondent, who told him that he would again request that the court grant a proof hearing. Subsequently, respondent and Mr. Vasta met in person to prepare the necessary pleadings, after which respondent filed motions to vacate the dismissal, enter default in favor of Mr. Vasta, and for a proof hearing. Respondent, thereafter, appeared in court for the proof hearing and ultimately secured a judgment in Mr. Vasta's favor.

Based on the above facts, the parties stipulated that respondent violated RPC 1.3 by failing to act with reasonable diligence in his handling of Mr. Vasta's matter. Specifically, respondent admitted that he had failed to timely file a motion for a proof hearing, which failure resulted in the June 2017 dismissal of Mr. Vasta's matter for lack of prosecution. Moreover, respondent conceded that he had failed to take any meaningful action to vacate the dismissal until nearly seventeen months later, when, in November 2018, he filed the appropriate motions.

Respondent further admitted that he violated RPC 1.4(b) by failing to keep Mr. Vasta reasonably informed about the status of the matter, including the June 2017 dismissal, and to promptly comply with Mr. Vasta's reasonable requests for information.

In aggravation, the parties cited to respondent's 2015 admonition in Lueddeke I, where respondent committed nearly identical misconduct and where the Board credited, as mitigation,

his purported efforts to improve his calendar system and to timely return his clients' calls. However, in this case, respondent conceded that he did not have his calendar system effectively in place and did not timely communicate with Mr. Vasta, despite his prior representations, in Lueddeke I, that he had taken such remedial measures.

In mitigation, the parties noted that respondent expressed remorse and contrition for his misconduct.

The Board found that the stipulated facts clearly and convincingly support the admitted violations of the Rules of Professional Conduct. Specifically, respondent violated RPC 1.3 by failing to file a timely, formal motion for a proof hearing, as required by the court in February 2017. Thereafter, respondent allowed the matter to languish for months until the court, in June 2017, finally dismissed the matter for lack of prosecution. Instead of immediately filing a motion to vacate the dismissal, respondent continued to neglect Mr. Vasta's matter until November 2018, when, only after Mr. Vasta had learned of the dismissal from the court itself, respondent filed the appropriate motions and secured a judgment on Mr. Vasta's behalf.

Respondent further violated RPC 1.4(b) by failing to advise Mr. Vasta of the court's June 2017 dismissal notice for lack of prosecution, despite Mr. Vasta's repeated attempts to inquire as to the status of his matter with respondent's law office, over a two-year period. Respondent's failure to reply to Mr. Vasta's reasonable requests for information concerning the status of his matter forced Mr. Vasta, by October 2018, to seek such information from the court itself.

Generally, an admonition is the appropriate form of discipline for lack of diligence and failure to communicate with the client. See In the Matter of Kyle G. Schwartz, DRB 19-222 (September 20, 2019) (after the attorney agreed to represent the executrix of an estate to file tax returns and to assist in the sale of real estate, he neither communicated with the client nor completed the estate work; after the client threatened to file a grievance against the attorney, he apologized, promised to provide draft documents within days, but, once again, failed to communicate with her and failed to advance the representation; violations of RPC 1.3 and RPC 1.4(b); in mitigation, the attorney had no prior discipline in his twenty-five years at the bar) and In the Matter of Charles M. Damian, DRB 15-107 (May 27, 2015) (the attorney filed a defective foreclosure complaint and failed to correct the deficiencies, despite notice from the court that the complaint would be dismissed if they were not cured; after the complaint was dismissed, he took no action to vacate the dismissal, a violation of RPC 1.3; the attorney also failed to inform the clients that he had never amended the original complaint or filed a new one, that their complaint had been dismissed, and that it had not been reinstated, a violation of RPC 1.4(b); in mitigation, the attorney had no other discipline in thirty-five years at the bar; staffing problems in his office negatively affected the handling of the foreclosure case; he was battling a serious illness during the relevant timeframe; and other family-related issues consumed his time and contributed to his inattention to the matter).

However, the presence of a disciplinary record or other aggravating factors may serve to enhance the admonition to a reprimand. See In re Shapiro, 220 N.J. 216 (2015) (reprimand for attorney who, after filing a motion in a matrimonial matter, failed to oppose a cross-motion, a

violation of RPC 1.3; the attorney also violated RPC 1.4(b) when he failed to inform the client about important aspects of the representation, including the former spouse's cross-motion, despite the client's attempts to obtain information about his matter; in aggravation, the attorney had received a prior reprimand for gross neglect; lack of diligence; failure to communicate with the client; and failure to set forth, in writing, the rate or basis of his legal fee, and a prior admonition for failure to return a client file or to recommend to his superiors that the file be turned over to the client) and In re Marcus, 208 N.J. 178 (2011) (reprimand for attorney who allowed a matter to linger, inactive, for three years and who failed to adequately advise the client of the status of the case; in aggravation, the attorney had two prior reprimands, however, sixteen years had passed since the last infraction, and one of those reprimands was for unrelated conduct, that is, recordkeeping violations).

Finally, a censure may be appropriate in cases where an attorney's lack of diligence and failure to communicate is accompanied by serious aggravating factors, such as the presence of additional, serious ethics infractions, an egregious disciplinary history, or a lack of contrition. See In re Jaffe, 230 N.J. 456 (2017) (global censure for an attorney in two consolidated client matters; in the first client matter, the attorney failed to file an expungement petition for his client, despite his client's numerous attempts to obtain information regarding his case; following the client's termination of the representation, the attorney immediately filed with the court a deficient expungement petition, without his client's knowledge, that misrepresented to the court that he still represented his client; in the second client matter, the attorney failed to diligently defend his client in a criminal matter, ignored numerous requests for information regarding the case, and failed to provide his client or replacement counsel with the client file; in aggravation, the attorney failed to cooperate with disciplinary authorities in the first client matter, repeatedly engaged in dismissive treatment towards his clients, and was previously reprimanded twice – the first time for gross neglect; lack of diligence; failure to communicate; and failure to cooperate with disciplinary authorities; and the second time for lack of candor to the tribunal) and In re Thompson 219 N.J. 127 (2014) (censure for attorney who, following his failure to obtain his client's answers to interrogatories, despite his client's efforts to complete same, neither opposed motions to dismiss the complaint for failure to answer interrogatories nor attempted to reinstate the complaint, which failure resulted in the dismissal of the case, with prejudice; the attorney also failed to respond to his client's constant calls for information about the court's orders of dismissal; in aggravation, the attorney failed to take responsibility for his inaction, blamed his client for her failure to answer interrogatories, and had previously been censured in two consolidated client matters involving his gross neglect of two appeals, both of which were dismissed, despite his misrepresentation to his clients that the appeals were proceeding apace).

The Board found respondent's misconduct similar to that of the reprimanded attorney in Shapiro, who failed to act with reasonable diligence and to keep his client reasonably informed, and who had received prior discipline for similar misconduct. Respondent's misconduct, however, was not as egregious as the censured attorneys in Jaffe and Thompson, whose lack of diligence and failure to communicate were accompanied by other more serious ethics infractions or aggravating factors, such as a more egregious ethics history or a lack of contrition. Although respondent had a heightened awareness of his obligations to communicate with Mr. Vasta and diligently advance his matter, based on his 2015 admonition in Lueddeke I for nearly identical

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misconduct, respondent, ultimately, secured a favorable judgment on Mr. Vasta's behalf; cooperated with disciplinary authorities; expressed remorse and contrition; and stipulated to his misconduct. Accordingly, the Board determined to impose a reprimand.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated May 11, 2021.
2. Stipulation of discipline by consent, dated May 12, 2021.
3. Affidavit of consent, dated May 4, 2021.
4. Ethics history, dated October 22, 2021.

Very truly yours,



Johanna Barba Jones
Chief Counsel

JBj/trj

Enclosures

- c: (w/o enclosures)
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