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January 21, 2022

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

Re: **In the Matter of Eric J. Clayman**
Docket No. DRB 21-234
District Docket No. IV-2019-0010E

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 IV 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 1.4(b) (failure to keep the client reasonably informed) and RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions). The Board further determined to dismiss the charged violation of RPC 7.1(a).

Specifically, on March 10, 2017, respondent was retained by Celeste Brown in connection with her bankruptcy matter, wherein Brown primarily sought to obtain a loan modification for her residence. Respondent prepared and filed a proposed Chapter 13 bankruptcy plan, which sought the loan modification. However, respondent failed to advise Brown that his services did not include providing her

with assistance in obtaining that loan modification. Respondent was unable to produce any documentation showing that he had specifically informed Brown that she would be independently responsible for obtaining the loan modification.

Throughout the representation, respondent failed to keep Brown informed about the status of her bankruptcy matter. Specifically, respondent failed to advise Brown that (1) her bankruptcy petition faced dismissal when no debt payments were made in advance of the first confirmation hearing; (2) immediate action was required after a meeting with the bankruptcy trustee was rescheduled; and (3) most egregiously, her bankruptcy petition was contingent on her obtaining the loan modification for her residence, for which he was not providing legal assistance. Consequently, Brown was unable to make an informed decision about the loan modification, for which she was independently responsible. Thus, respondent stipulated to having violated RPC 1.4(b) and (c).

The Board determined that the above facts clearly and convincingly supported the finding that respondent had violated RPC 1.4(b) and (c). Specifically, the Board determined that respondent violated RPC 1.4(b) by failing to inform Brown of the postponement of the meeting with the bankruptcy trustee and, thereafter, that immediate action by her was necessary to reschedule the meeting.

The Board also determined that respondent violated RPC 1.4(c) by failing to explain to Brown the possible ramifications of inaction related to her failure to make the required debt payment in advance of the first confirmation hearing. More significantly, respondent further violated that Rule by failing to explain to Brown that he was not assisting her in obtaining the loan modification and that the bankruptcy petition was contingent upon her independently obtaining that loan modification. The Board determined that respondent's failures to explain these facts and case developments deprived Brown of the ability to make informed decisions in the bankruptcy proceedings. The Board further determined that Brown reasonably believed that respondent was assisting her with the loan modification based upon his filing of pleadings on her behalf, which specifically sought the loan modification, coupled with his failure to explain that he was not providing that assistance.

However, the Board determined that there was insufficient evidence to prove, by clear and convincing evidence, that respondent violated RPC 7.1(a), despite his stipulation to that violation, because a violation of that Rule typically involves a lawyer affirmatively making misleading communications about the lawyer or the lawyer's services in advertisements, in solicitation letters, and on letterhead. See, e.g., In re Rakofsky, 223 N.J. 349 (2015); In the Matter of Raymond A. Oliver, DRB

09-368 (May 24, 2010); In the Matter of Jean D. Larosiliere, DRB 02-128 (March 20, 2003); In re Mennie, 174 N.J. 335 (2002); In the Matter of Ernest H. Thompson, Jr., DRB 97-054 (June 5, 1997); and In re Caola, 117 N.J. 108 (1989).

The Board determined that, although respondent did not explicitly inform Brown that his legal services excluded assisting her in obtaining a loan modification, there was no evidence in the record that he had affirmatively misrepresented that he would provide such assistance. Thus, the Board determined to dismiss the charged violation of RPC 7.1(a). Moreover, the Board determined that respondent's failure to adequately discuss with Brown the limitations of his representation was fully addressed by the charged RPC 1.4(b) and (c) violations.

Typically, attorneys who fail to adequately communicate with their clients are admonished. See, e.g., In the Matter of Cynthia A. Matheke, DRB 13-353 (July 17, 2014) and In the Matter of Sean Lawrence Branigan, DRB 14-088 (June 23, 2014). However, if the attorney has a disciplinary record, a reprimand may result. See In re Tyler, 217 N.J. 525 (2014) (the attorney violated RPC 1.4(b) when, after a client had retained her to re-open a Chapter 7 bankruptcy to add a previously omitted creditor and to discharge that particular debt, she ceased communicating with him and never informed him that the creditor had been added to the bankruptcy schedules, the debt had been discharged, and the bankruptcy closed; prior reprimand for, among other things, failure to communicate in six bankruptcy cases), and In re Tan, 217 N.J. 149 (2014) (the attorney violated RPC 1.4(b) when he failed to return approximately twenty calls from his client; due to his disciplinary history, which included, among other things, a censure for failure to communicate with a client, a reprimand was imposed for his failure to learn from his prior ethics mistakes).

Similarly, an admonition is the proper discipline for a violation of RPC 1.4(c), when accompanied by other minor misconduct. See In the Matter of Joel I. Rachmiel, DRB 18-064 (April 24, 2018) (the attorney failed to reply to requests for information about the status of a matter or to explain a matter to the extent necessary for the client to make informed decisions about the representation, in violation of RPC 1.4(b) and (c); the attorney also engaged in gross neglect and lack of diligence, in violation of RPC 1.1(a) and RPC 1.3, respectfully), and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 15-161 (July 22, 2015) (the attorney, representing a personal injury client, failed to keep her apprised about critical events in the case, which prevented her from making informed decisions about the representation; he also failed to provide the client with a writing setting forth the basis or rate of the fee, in violation of RPC 1.5(b)).

After considering the above precedent and respondent's disciplinary history, the Board determined that the totality of respondent's misconduct warranted a reprimand. The Board also considered that Brown's relief in Bankruptcy Court was likely delayed by respondent's misconduct, although PACER records demonstrate that she ultimately retained new counsel and successfully obtained the desired loan modification. In mitigation, the Board noted that respondent's misconduct involved only one client matter and that he stipulated to his misconduct.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated October 17, 2021.
2. Stipulation of discipline by consent, dated October 22, 2021.
3. Affidavit of consent, dated October 19, 2021.
4. Ethics history, dated January 21, 2022.

Very truly yours,



Johanna Barba Jones
Chief Counsel

JBj/jm
Enclosures

c: see attached list

(w/o enclosures)

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

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