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January 24, 2022

VIA CERTIFIED, REGULAR, AND ELECTRONIC MAIL

Giovanni DePierro, Esq.
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Re: In the Matter of Giovanni DePierro

Docket No. DRB 21-190

District Docket Nos. VC-2012-0042E; VC-2013-0025E;
VC-2014-0006E; VC-2014-0019E; and VC-2014-0033E

LETTER OF ADMONITION

Dear Mr. DePierro:

The Disciplinary Review Board has reviewed your conduct in the above matter and has concluded that it was improper.¹ Following a review of the record, the Board determined to impose an admonition for your violation of RPC 1.4(b) (failure to communicate) in the Campbell matter; RPC 1.5(c) (failure to

¹ The five formal ethics complaints in this matter were consolidated for a hearing before the District Ethics Committee (the DEC). The first hearing was completed on June 15, 2016 and the DEC issued its report on November 14, 2016. As a result of lack of notice to the grievants, as mandated by the Rules, a second hearing was held on March 23, 2021 and a report issued. Prior to the commencement of the second hearing, the hearing panel chair considered both of your motions to dismiss. The Board has determined that the panel chair appropriately denied your motions and convened the second hearing.

provide a written fee agreement in a contingent fee case) in the Hunter/Knudsen matter; RPC 1.5(c) (failure to provide a written statement showing the remittance of recovery to the client and the method of its determination) in the Minervini matter; RPC 1.16(d) (failure to protect the client's interests upon termination of the representation) in the Mason matter; and RPC 8.1(b) (failure to cooperate with disciplinary authorities) in the Campbell matter. As more specifically detailed below, the Board determined to dismiss the remaining allegations in the complaints.

In the Hunter/Knudsen matter, you admitted that when accepting representation of the client in the legal malpractice action, you did not set forth the basis or rate of your contingent fee, in writing. Consequently, the Board found that you violated RPC 1.5(c).

In the Board's view, the record did not, however, support the DEC's determination that you violated RPC 1.5(a) and RPC 1.5(b) by entering into an alternative fee agreement with Hunter and Knudsen concerning your representation of them in the Sterling Bank litigation. As an initial matter, the complaint did not charge you with having violated RPC 1.5(b), thus depriving you of the ability to mount any meaningful defense to that particular charge. See R. 1:20-4(b) and In re Roberson, 210 N.J. 220. Further, according to your unrefuted testimony, the agreement was intended to be a contingency agreement and any references otherwise were typographical errors. Moreover, you collected legal fees based upon a percentage of the recovery, consistent with the terms of a contingent fee agreement. Even if the agreement was intended to be an alternative fee agreement, the Rules do not prohibit such fee agreements if the client consents. Here, there is no evidence that the clients failed to understand the nature of the fee agreement and, as such, a violation pursuant to RPC 1.5(a) or RPC 1.5(b) could not be sustained. Thus, the Board determined to dismiss the RPC 1.5(a) and RPC 1.5(b) charges.

With respect to the RPC 1.16(d) charge, the record did not clearly and convincingly support the DEC's determination that you violated this Rule by not returning a portion of the \$5,000 legal fee that you were paid for representation in the foreclosure matter. You testified that the clients expressly authorized you to apply any unearned portion of this fee towards outstanding expenses in the legal malpractice matter. Given the absence of any contrary evidence, the Board determined to dismiss this charge.

In the Mason matter, you admittedly failed to provide the client with a written termination of representation regarding the potential accounting malpractice litigation contemplated by the written fee agreement. Nor did you provide the client with any writing informing her how to protect her interests or preserve her claims. Accordingly, the Board found that you violated RPC 1.16(d).

In the Campbell matter, the clear and convincing evidence established that you failed to keep your client reasonably informed regarding the status of his case and did not promptly comply with requests for information, in violation of RPC 1.4(b). Further, you admitted having violated RPC 8.1(b) by failing to respond to letters from the investigator in the underlying ethics investigation.

The Board determined, however, that the evidence did not support the DEC's finding that you violated RPC 1.4(a) and RPC 1.4(c) in the Campbell matter. First, the complaint did not charge you with a violation of these Rules and, as such, you were not afforded an opportunity to mount a meaningful defense as to them. Further, although your failure to reply to the client's repeated attempts to communicate with you constituted a violation of RPC 1.4(b), those same facts do not support a violation of RPC 1.4(a) or RPC 1.4(c). Accordingly, the Board determined to dismiss those charges.

In the Minervini matter, the Board concluded that the record clearly and convincingly supports the determination, as the DEC found, that you violated RPC 1.5(c) by failing to timely provide your client with an accounting of the settlement distribution, including an itemization of how her \$20,000 fee was applied. Although you ultimately prepared a settlement statement, nine months had passed between the date you received the settlement funds and your preparation of the statement.

The Board dismissed, however, the charges that you further violated RPC 1.1(b) and RPC 8.1(b). The DEC erroneously determined that the totality of your misconduct, across all five client matters, demonstrated a pattern of neglect, violative of RPC 1.1(b). It is well-settled that, to find a pattern of neglect, there must be at least three instances of neglect in three distinct client matters. Here, although there were allegations of neglect in the Mason, Parise and Campbell matters, those charges were properly dismissed by the DEC. Allegations of neglect are insufficient to support a finding that you engaged in a pattern of

neglect.

The Board also determined to dismiss the RPC 8.1(b) charge because the exhibits upon which the DEC relied in support of this violation were not transmitted to the Board and, according to the Office of Attorney Ethics, could not be located. You did not testify regarding this issue, and the presenter offered no additional evidence or testimony. Thus, on review, the Board could not find that you violated RPC 8.1(b) in this client matter.

The Board agreed with the DEC's remaining determinations concerning the dismissal of charges and findings that charges were not supported by clear and convincing evidence. Particularly, regarding the Hunter/Knudsen matter, the DEC determined that there was insufficient evidence to find that you had violated RPC 1.5(a) by failing to provide the clients with contemporaneous billing records. Likewise, the DEC properly determined to dismiss the charges pursuant to RPC 1.1(a), RPC 1.1(b), and RPC 1.3, in the Mason matter. Those charges were based solely upon your alleged failure to prosecute the accounting malpractice matter – a lawsuit you testified was without merit. Thus, there was no evidence establishing negligent conduct or a lack of diligence in your handling of this matter. Likewise, in Campbell, the DEC properly dismissed RPC 1.1(a) and RPC 1.1(b). Further, it correctly found that that RPC 1.5(a) was not supported by the evidence. Although the DEC did not render any determination with respect to the charges pursuant to RPC 1.3 and RPC 8.4(a), the record does not contain clear and convincing evidence that you violated these Rules in the Campbell matter. Finally, with regard to the Minervini matter, the charges pursuant to RPC 1.4(b) and RPC 1.16(d) were properly dismissed. Although the DEC did not address the RPC 8.4(a) charge, the record does not contain evidence to support a violation pursuant to this Rule and, accordingly, it is dismissed.

Finally, the DEC properly dismissed all charges in the Parise matter. With the exception of the complaint and verified answer, there was no evidence presented before either hearing panel that supported the allegations of the complaint.

In imposing only an admonition, the Board considered your unblemished twenty-year career at the bar and the passage of time since the misconduct occurred. The Board also recognized that the second ethics hearing was required

January 24, 2022

Page 5 of 6

through no fault of your own.

Your conduct has adversely reflected not only on you as an attorney but also on all members of the bar. Accordingly, the Board has directed the issuance of this admonition to you. R. 1:20-15(f)(4).

A permanent record of this occurrence has been filed with the Clerk of the Supreme Court and the Board's office. Should you become the subject of any further discipline, this admonition will be taken into consideration.

The Board also has directed that the costs of the disciplinary proceedings be assessed against you. An invoice of costs will be forwarded to you under separate cover.

Very truly yours,

A handwritten signature in black ink, appearing to read "Johanna Barba Jones". The signature is fluid and cursive, with the first name being the most prominent.

Johanna Barba Jones
Chief Counsel

JBj/jm

c: see attached list

Chief Justice Stuart Rabner
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Elizabeth Hunter, Grievant (regular mail)
Constance Mason, Grievant (regular mail)
Robert Parise, Grievant (regular mail)