DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

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February 22, 2023

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

Re: **In the Matter of Gregory Joseph Coffey**
Docket No. DRB 22-218
District Docket No. XIV-2021-0069E

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 (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 that a censure is the appropriate quantum of discipline for respondent's violation of RPC 1.3 (lacking diligence); RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information); RPC 1.7(a)(1) and (2) (engaging in a concurrent conflict of interest); RPC 8.1(a) (knowingly making a false statement of material fact to disciplinary authorities); and RPC 8.4(c) (two instances) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The stipulated facts are as follows. Stefan Puzyk is the sole owner of Northern International Remail and Express Company (Northern), a business

which sorts and distributes mail. In 1991, Northern purchased from Lester Robbins and his company commercial property located in Union, New Jersey.

In 1998, Puzyk discovered hazardous substances on the property and, in 1999, Northern executed an agreement with the New Jersey Department of Environmental Protection to remediate the property. In 2003, Northern sold the property for $400,000 to Satec, Inc., which had agreed to undertake the cleanup.

In early 2005, Puzyk retained respondent, on a contingent fee basis, to file suit against Robbins and his company for their alleged failure to disclose the property's environmental contamination. On April 15, 2005, respondent filed in the Superior Court of New Jersey, Union County, a lawsuit on behalf of Northern and Satec and against Robbins, his company, and Honeywell International, whose corporate predecessor allegedly had discharged hazardous substances into the soil of the property.

Although respondent ultimately represented both Northern and Satec in connection with the litigation, respondent's very first communication with Satec regarding its status as a plaintiff occurred during a September 2007 meeting, more than two years after respondent had filed the complaint. During that meeting, respondent reviewed the complaint with a Satec representative and advised the representative that Northern and Satec were seeking recovery, on a contingent fee basis, of thirty percent of the net recovery. The representative told respondent that he understood the need for Satec to have been named in the lawsuit and expressed his agreement to the contingent fee arrangement. However, respondent and the representative did not reach an agreement regarding the apportionment of any recovery between Northern and Satec.

In February 2008, the parties to the lawsuit began mediation before The Honorable Mark B. Epstein, J.S.C. (ret.). Prior to commencing mediation, however, respondent failed to discuss with Puzyk, Northern's sole owner, or with Satec, respondent's conflict of interest resulting from his concurrent representation of the entities. Following an initial mediation session, respondent informed Puzyk that Judge Epstein had required Northern and Satec to obtain separate counsel during future mediation sessions.

Following the initial mediation session, respondent arranged for George H. Parsells, III, Esq., to represent Northern at mediation. Although respondent met with Parsells and provided him with some background on the case, he never

provided Parsells with any documents related to the litigation. Rather, respondent advised Parsells that his participation was necessary due to a potential conflict that could delay the mediation process, and that his role was merely to show up in case the issue of a conflict arose.

During a subsequent mediation session, Judge Epstein met independently with each party to attempt to resolve the litigation. During those meetings, respondent continued to represent both Northern and Satec in connection with the environmental remediation issues. In turn, Parsells represented Northern in connection with the "issues" that arose between it and Satec. Parsells, however, was not present in the mediation room when Judge Epstein consulted with Northern regarding environmental remediation issues. Additionally, Satec was simultaneously represented by its corporate counsel. Judge Epstein and Satec's cooperate counsel informed the OAE that respondent, who was never relieved as counsel for Northern or Satec, "took the lead" on the negotiations.

On January 6, 2009, Northern, Satec, and Honeywell executed a confidential settlement agreement, which resolved all claims between those entities. The agreement, however, did not resolve Northern and Satec's claims against Robbins and his company.

On July 24, 2009, Judge Epstein sent respondent a letter, noting that he would "write-off" respondent's $15,501 in unpaid mediation fees in connection with the Honeywell matter. Judge Epstein determined to "write-off" those unpaid fees because of respondent's "client's financial difficulty" and respondent's "personal payment of $13,000 towards [his] portion of" the mediation bill in the Honeywell matter, among other reasons. During a subsequent OAE interview, respondent falsely claimed that Judge Epstein had not explained why he had determined to write-off his $15,501 in unpaid mediation fees in connection with the Honeywell matter.

Meanwhile, on April 13, 2009, the Superior Court dismissed the remainder of the complaint against Robbins and his company. On August 18, 2010, the Appellate Division affirmed the complaint's dismissal.

Following the conclusion of the Superior Court litigation, respondent advised Puzyk that he would file a lawsuit in federal court on behalf of Northern and against Robbins and his company. Thereafter, although Puzyk repeatedly

attempted to call respondent for an update on his federal complaint, respondent failed to answer several of Puzyk's calls.

On January 20, 2012, respondent arranged for a member of his firm to send Puzyk an e-mail, enclosing respondent's purported signed cover letter to the United States District Court for the District of New Jersey (the DNJ), along with respondent's purported signed federal complaint on behalf of Northern and against Robbins, his company, and three other entities. Respondent, however, failed to file his complaint and cover letter with the DNJ.

On January 27, 2014, more than two years after respondent had sent Puzyk the purportedly filed federal lawsuit, Puzyk retained separate counsel to evaluate the status of the litigation against Robbins and to review the entire client file.

On February 19, 2014, respondent allowed Puzyk's attorney to inspect the entire client file at respondent's office. Additionally, on that same day, respondent filed with the DNJ a complaint, on behalf of Northern, that was nearly identical to the unfiled January 2012 complaint. On February 20, 2014, respondent sent Puzyk an e-mail, enclosing the filed federal complaint and falsely representing that "summonses are out for service now."

Based on the foregoing facts, respondent stipulated that he violated RPC 1.7(a)(1) and (2) by concurrently representing both Satec and Northern, whose interests in the apportionment of damages in the Superior Court litigation were directly adverse to one another, causing a significant risk that the representation of each would be materially limited by respondent's responsibilities to the other. Making matters worse, prior to mediation before Judge Epstein, respondent failed to inform Northern or Satec of the conflict of interest, as RPC 1.7(b)(1) required. Rather, Northern and Satec only learned of the conflict at the outset of mediation, when Judge Epstein required the entities to obtain separate counsel. Following Judge Epstein's directive, although respondent arranged for Parsells to represent Northern at mediation, respondent limited Parsells's role at mediation by permitting him to step in only if the issue of a conflict arose.

Additionally, respondent violated RPC 8.1(a) and RPC 8.4(c) by falsely informing the OAE that he was unaware of why Judge Epstein had waived respondent's remaining $15,501 in unpaid mediation fees in the Honeywell matter. However, as respondent ultimately stipulated, he knew that Judge

Epstein had memorialized the basis for waiving those unpaid mediation fees in his July 24, 2009 letter to respondent.

Moreover, respondent violated RPC 1.3 by failing, for almost three-and-a-half years following the August 2010 conclusion of the Superior Court litigation, to file Northern's federal lawsuit against Robbins and his company. Similarly, respondent violated RPC 1.4(b) by failing to keep Puzyk reasonably informed about the status of Northern's federal lawsuit and by failing to return several of Puzyk's phone calls seeking an update on the lawsuit.

Finally, respondent violated RPC 8.4(c) by misleading Puzyk into believing that he had filed Northern's federal lawsuit, in January 2012, when, in fact, respondent had not filed any such lawsuit. Two years later, on February 19, 2014, the same day that respondent had permitted Puzyk's new attorney to inspect the entire client file at respondent's office, respondent finally filed Northern's federal lawsuit. However, on February 20, 2014, respondent continued to deceive Puzyk by falsely advising him that the "summonses" for Northern's federal complaint were "out for service now[,]" when, in fact, respondent had not served any such summonses.

It is well-settled that, absent egregious circumstances or serious economic injury, a reprimand is the appropriate discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). See, also, In re Lewinson, __ N.J. __ (2022), 2022 N.J. LEXIS 1164 (2022) (the attorney represented a wife in a divorce proceeding, which resulted in a final judgment that required the parties to equally split the proceeds of their marital home; sixteen years later, the attorney represented the wife's former husband, who sought to enforce the terms of the final judgment; the attorney immediately withdrew from the conflicted representation upon the filing of an ethics grievance; the Board accorded minimal weight to the attorney's remote disciplinary history); In re Drachman, 239 N.J. 3 (2019) (the attorney engaged in a conflict of interest by recommending that his clients use a title insurance company in eight, distinct real estate transactions, without disclosing that he was a salaried employee of that company; there was no evidence of serious economic injury to the clients; no prior discipline).

Respondent, however, also engaged in misrepresentations to his client, misconduct which generally results in a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand or a censure may be imposed even if the

misrepresentation is accompanied by other, non-serious ethics infractions, such as engaging in a lack of diligence or failing to communicate with a client. See, e.g., In re Ruffolo, 220 N.J. 353 (2015) (reprimand for attorney who, knowing that his client's complaint had been dismissed due to his gross neglect, falsely assured the client that his matter was proceeding apace and that he should expect a monetary award in the near future; the attorney failed to take any steps to reinstate the complaint and failed to promptly reply to the client's requests for status updates; although the attorney had no prior discipline, his misconduct caused significant harm to his client, who was left without a viable remedy for the injuries he sustained); In re Kalma, 249 N.J. 538 (2022) (censure for attorney who failed to file his client's civil complaint prior to the expiration of the applicable statute of limitations; thereafter, the attorney repeatedly and falsely advised the client that he had timely filed the complaint; the client eventually learned, from court staff, that the complaint had never been filed; when the client confronted the attorney with that discovery, the attorney claimed that "it was all part of a cover up[;]" the Board weighed, in aggravation, the default status of the matter, the significant harm to the client, and the lengths to which the attorney went to conceal his misconduct; no prior discipline).

Finally, less egregious misrepresentations to ethics authorities will result in a reprimand. See, e.g., In re Purvin, 248 N.J. 223 (2021) (attorney misrepresented to the OAE that he had taken the necessary corrective measures to cure his recordkeeping and trust account deficiencies discovered during a random audit; one month later, when the OAE requested for proof of his corrective measures, the attorney admitted his misrepresentation, but noted that he since had taken the necessary corrective action; no prior discipline).

Here, like the reprimanded attorney in Drachman, respondent's conflicted representation of Northern and Satec, fortunately, resulted in no economic injury to either of his clients. Nevertheless, the conflicted representation spanned at least four years, from April 2005, when respondent filed the Superior Court complaint on behalf of Northern and Satec, and April 2009, when the Superior Court dismissed the balance of the complaint against Robbins and his company. During that timeframe, respondent altogether failed to comply with the safeguards of RPC 1.7(b). More egregiously, he altogether failed, until September 2007, to even inform Satec of its status as a named plaintiff to the lawsuit. Fortunately for respondent, however, Satec did not object to its role in the lawsuit or respondent's decision to pursue recovery, on its behalf, on a contingent fee basis.

Moreover, even after Judge Epstein had alerted respondent to the existence of the conflict, in February 2008, respondent's conflicted representation continued, largely unabated. Specifically, although respondent arranged for Parsells to represent Northern at mediation, as Judge Epstein had required, respondent never provided Parsells with any documents relating to the matter. Similarly, respondent advised Parsells that his role at mediation was merely to step in if a conflict arose. Rather than allow Parsells to effectively represent Northern, respondent continued to "take the lead" on the negotiations.

Additionally, following the conclusion of the Superior Court litigation, respondent failed, for almost three-and-a-half years, to file Northern's federal lawsuit. During that timeframe, respondent repeatedly ignored Puzyk's pleas for information and mislead Puzyk into believing that he had filed the lawsuit, in January 2012. Respondent's inaction forced Puzyk, in January 2014, to retain new counsel to investigate the status of the federal lawsuit. Weeks later, on February 19, 2014, the same day that Puzyk's new attorney had conducted his inspection of Puzyk's client file, respondent finally filed Northern's federal lawsuit. The very next day, respondent engaged in further deception by falsely informing Puzyk that the complaint "summonses" were "out for service now."

Finally, like the reprimanded attorney in Purvin, respondent falsely advised the OAE that he was unaware of why Judge Epstein had waived his remaining mediation fees in the Honeywell matter.

Standing alone, respondent's conflicted representation, lack of diligence and misrepresentations to Puzyk, and deception to the OAE would each warrant a reprimand. The totality of respondent's misconduct, however, warrants a censure, given his repeated acts of deception towards Puzyk and the OAE; his failure to effectively remediate his conflicted representation, despite Judge Epstein's warning; and his inexplicable failure, for at least two years, to notify Satec of its status as a named plaintiff to the Superior Court litigation.

In mitigation, however, nine years have elapsed since respondent's misconduct ended and, in that time, respondent has had no additional discipline. See In the Matter of Angeles Roca, DRB 20-347 (August 16, 2021) (the Board weighed, in mitigation, the passage of eight years since the attorney had committed the underlying misconduct), so ordered, 250 N.J. 512 (2022). Indeed, this matter represents respondent's first brush with the disciplinary system in his thirty-six-year career at the bar.

On balance, weighing respondent's otherwise unblemished legal career against his protracted conflict of interest, his utter lack of diligence in pursuing Northern's federal complaint, and his multiple acts of deception toward his client and the OAE, the Board determined that a censure is the appropriate quantum of discipline necessary to protect the public and to preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated November 28, 2022.

2. Stipulation of discipline by consent, dated November 28, 2022.

3. Affidavit of consent, dated November 21, 2022.

4. Ethics history dated February 22, 2023.

Very truly yours,

/s/ *Timothy M. Ellis*

Timothy M. Ellis
Acting Chief Counsel

TME/lg
Enclosures
c: (w/o enclosures)
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair
Disciplinary Review Board (e-mail)
Johanna Barba Jones, Director
Office of Attorney Ethics (e-mail and interoffice mail)
Ryan J. Moriarty, Assistant Ethics Counsel
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Mark M. Tallmadge, Respondent's Counsel (e-mail and regular mail)
Stefan Puzyk, Grievant (regular mail)