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June 23, 2023

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

Re: **In the Matter of Anthony M. Orlando**
Docket No. DRB 23-094
District Docket Nos. XIV-2019-0253E and I-2022-0902E

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), 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 1.4(b) (failure to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information); RPC 1.15(b) (failure to promptly deliver funds to the client or a third party); RPC 5.5(a)(1) (unauthorized practice of law – engaging in the practice of law while ineligible); and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

The stipulated facts are as follows. Respondent has been continuously ineligible to practice law since November 17, 2014 due to his failure to comply with New Jersey Continuing Legal Education (CLE) requirements. Additionally,

from 2016 to 2019, the Court has declared respondent ineligible five times for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF) and his failure to comply with the mandatory procedures for annual Interest on Lawyers Trust Accounts registration (IOLTA). Respondent has cured his IOLTA deficiency but remains ineligible on the other two bases. Furthermore, effective April 8, 2022, the Court temporarily suspended respondent for his failure to cooperate with the OAE's investigation underlying this matter. In re Orlando, 250 N.J. 362 (2022). He remains temporarily suspended to date.

In August 2016, despite being ineligible to practice law due to his CLE deficiency, respondent represented Donato Villatoro and Saira Soto (husband and wife) in their purchase of real property. Respondent further served as settlement agent in the transaction, which closed on August 11, 2016.

Following the closing, Villatoro and Soto reviewed the HUD-1 Settlement Statement and came to believe that respondent was holding funds belonging to them, in the amount of \$5,926. From October 2018 to January 2019, they reached out to respondent, on multiple occasions, to discuss the matter. In response to their inquiries, respondent repeatedly promised to investigate their file, but then failed to do so. On January 14, 2019, respondent conceded that he was holding a "small balance" and stated that he would send Soto an accounting the next day. However, he did not actually send any information the next day.

On March 25, 2019, Villatoro filed the ethics grievance underlying this matter against respondent. Thereafter, respondent proved to Villatoro and Soto's satisfaction that he did not owe them any funds. However, he was holding \$3,964.16 belonging to third parties in connection with the couple's transaction. He did not disburse this amount to the relevant third parties until February 25, 2020, more than three years after that transaction closed. Respondent stipulated that, by waiting so long to distribute the funds, he had failed to "promptly deliver funds to an entitled party."

Moreover, at some point in 2019, respondent learned of his ineligibility to practice law; yet, he continued to practice, despite that knowledge.

From June 2019 to November 2020, the OAE attempted to contact respondent on numerous occasions in an effort to investigate Villatoro's grievance. Respondent failed to reply to most of the OAE's communications.

On September 7, 2021, due to respondent's continued noncompliance, the OAE filed a motion with the Court, seeking respondent's temporary suspension, pursuant to R. 1:20-3(g)(4) and R. 1:20-11. On April 8, 2022, the Court entered an Order suspending respondent, effective immediately. As previously stated, respondent remains suspended to date.

Based on the above facts, the parties stipulated that respondent violated RPC 1.4(b); RPC 1.15(b); RPC 5.5(a)(1); and RPC 8.1(b). The parties also stipulated that respondent's violation of RPC 5.5(a)(1) was knowing, because he became aware of his ineligibility at some point in 2019, yet, continued to practice law thereafter.

Following a review of the record, the Board determined to grant the motion for discipline by consent and found that the stipulated facts clearly and convincingly support the charges that respondent violated RPC 1.4(b); RPC 1.15(b); RPC 5.5(a)(1); and RPC 8.1(b). Respondent violated (1) RPC 1.4(b) by failing to provide a meaningful answer to Villatoro and Soto's inquiry regarding whether he was holding their funds; (2) RPC 1.15(b) by failing to promptly disburse funds to third parties in the real estate transaction; (3) RPC 5.5(a)(1) by knowingly practicing law while ineligible; and (4) RPC 8.1(b) by failing to cooperate with the OAE.

Generally, an attorney's failure to communicate with a client is met with an admonition, even when accompanied by other non-serious offenses. See In the Matter of Sarah Ruth Barnwell, DRB 21-270 (June 20, 2022), so ordered, ___ N.J. ___ (2022) (the attorney undertook to represent a client in a child custody matter and, thereafter, ignored most of the client's communications; the attorney also failed to take any affirmative step to advance the client's matter and ultimately terminated the six-month representation without providing any explanation, invoice, or refund; violations of RPC 1.1(a) (gross neglect); RPC 1.2(a) (failure to abide by the client's decisions concerning the scope and objectives of representation); RPC 1.3 (lack of diligence); RPC 1.4(b); and RPC 1.16(d) (failure to refund the unearned portion of the fee to client upon termination of representation); thirteen years at the bar without disciplinary history), and In the Matter of Christopher J. LaMonica, DRB 20-275 (January 22, 2021) (the attorney promised to take action to remit his client's payment toward an owed inheritance tax; despite the attorney's assurances that he would act, he failed to remit the payment until two years later; the attorney also failed to return his client's telephone calls or to reply to correspondence; violations of

RPC 1.3 and RPC 1.4(b); the Board considered, in mitigation, the attorney's unblemished disciplinary history in more than twenty-five years at the bar).

An attorney's failure to promptly deliver funds to clients or third persons, even when accompanied by other ethics violations, ordinarily results in an admonition or a reprimand, depending on the circumstances. See, e.g., In the Matter of George W. Pressler, DRB 19-423 (March 20, 2020) (admonition; the attorney, in an estate matter, deducted his entire legal fee and the administrator's fee from a non-client beneficiary's share of the estate without the non-client beneficiary's authorization; in addition, he failed to disburse any funds to the non-client beneficiary for more than twenty months, in violation of RPC 1.15(b); the attorney had no prior final discipline); In the Matter of Jeffrey S. Lender, 11-368 (January 30, 2012) (admonition for attorney who failed to promptly deliver funds to an entitled party, in violation of RPC 1.15(b)); In re Dorian, 176 N.J. 124 (2003) (reprimand; the attorney failed to use escrowed funds to satisfy medical liens and failed to cooperate with disciplinary authorities; attorney previously admonished for gross neglect and failure to communicate, and reprimanded for gross neglect, lack of diligence, and failure to communicate).

Ordinarily, when an attorney practices law while ineligible, and is aware of the ineligibility, either a reprimand or a censure will result, depending on the existence and nature of aggravating factors. See, e.g., In re Sagota, ___ N.J. ___ (2023); 2023 N.J. LEXIS 147 (reprimand for the attorney who knowingly practiced law for three years while administratively suspended in Pennsylvania; twenty-seven years without disciplinary history); In re Mordas, 246 N.J. 461 (2021) (reprimand for the attorney who, despite his awareness of his ineligibility to practice law, twice appeared before the Superior Court in connection with his client's criminal matter; the attorney's trust account records also revealed that he had engaged in the unauthorized practice of law through a minimum of five trust account transactions in connection with three client matters; in mitigation, the attorney stipulated to his misconduct and had a remote disciplinary history); In re Perez, 240 N.J. 173 (2019) (reprimand for the attorney who, while serving as an attorney for the sellers in a real estate transaction, was notified by the buyers' counsel that he was ineligible to practice law; the attorney reassured the buyers' counsel that he would send proof of eligibility, which he did not do in the ensuing week, during which he continued to participate in correspondence, document review, and the provision of a rider related to the transaction; no prior discipline); In re Lancellotti, 249 N.J. 425 (2022) (in a default matter, censure for the attorney, who knowingly practiced law while ineligible, committed

recordkeeping violations, and failed to cooperate with the OAE's investigation; violations of RPC 1.15(d) (failure to comply with recordkeeping requirements), RPC 5.5(a)(1), and RPC 8.1(b) (two instances); the Board found that the baseline discipline was a censure and took into consideration both the matter's default status and the attorney's unblemished history of over twenty-five years at the bar); In re Freda, __ N.J. __ (2022) (censure for attorney, in a default matter, who knowingly practiced law while ineligible in connection with seven client matters; the attorney's business account bank statements demonstrated that, for more than one year, the attorney continued to provide unauthorized legal services; the attorney also failed to maintain financial records and referred to his law firm as a "law group" even though he was a solo practitioner; the attorney had no prior discipline in his nearly thirty-year career at the bar; the Board found that the aggravating and mitigating factors were in equipoise).

Admonitions typically are imposed for failure to cooperate with disciplinary authorities if the attorney does not have an ethics history. See In the Matter of Giovanni DePierro, DRB 21-190 (January 24, 2022) (the attorney failed to cooperate with disciplinary authorities and did not adequately communicate with a client, among other infractions), and In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (the attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)).

In the Board's view, the instant matter bears great resemblance to Lancellotti and Freda. Like the censured attorneys in those cases, respondent knowingly practiced law while ineligible, failed to cooperate with the OAE, and committed additional, non-serious offenses. Thus, the baseline level of discipline for the totality of respondent's conduct is a censure. In crafting the appropriate discipline, the Board also considered mitigating and aggravating circumstances.

In mitigation, respondent has no disciplinary history in his twenty years at the bar, a factor to which the Board accorded significant weight. In re Grimes, __ N.J. __ (2022), 2022 N.J. LEXIS 1165 (accorded significant weight to the attorney's unblemished disciplinary history of more than thirty years at the bar). He also admitted to his wrongdoing and entered into this disciplinary stipulation.

In aggravation, respondent repeatedly has demonstrated an unwillingness to fulfill his obligations as a New Jersey attorney by failing, on multiple occasions, to comply with IOLTA, CPF, and CLE requirements. See In the Matter of Douglas F. Ortelere, DRB 19-469 (November 23, 2020) at 10 (considering, in aggravation, the fact that the attorney had “had multiple periods of ineligibility for failure to comply with his CPF and CLE obligations, demonstrating his repeated refusal to timely comply with the obligations imposed on all New Jersey attorneys), so ordered, 245 N.J. 154 (2021).

In light of respondent’s complete failure to cure his CLE deficiency since 2014, along with his repeated incurrence of CPF and IOLTA deficiencies, the Board determined that the mitigating factors are not sufficiently compelling to warrant a decrease in the quantum of discipline in this case. Thus, the Board determined that a censure is the appropriate sanction for respondent’s misconduct.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated March 21, 2023.
2. Stipulation of discipline by consent, dated April 5, 2023.
3. Affidavit of consent, dated March 31, 2023.
4. Ethics history, dated June 23, 2023.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Acting Chief Counsel

TME/res
Enclosures

c: See attached list (w/o enclosures)

Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair
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Ryan J. Moriarty, Assistant Ethics Counsel
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Anthony M. Orlando, Respondent (e-mail and regular mail)
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