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RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 962
TRENTON, NEW JERSEY 08625-0962
(609) 815-2920

TIMOTHY M. ELLIS
ACTING CHIEF COUNSEL
BARRY R. PETERSEN, JR.
DEPUTY COUNSEL
NICOLE M. ACCHIONE
FRANCES L. BOWDRE
SALIMA ELIZABETH BURKE
ROCCO J. CARBONE, III
NICHOLAS LOGOTHETIS
ASSISTANT COUNSEL
KIMBERLY P. WILL
ASSOCIATE COUNSEL

July 12, 2023

VIA CERTIFIED, REGULAR, AND ELECTRONIC MAIL

Wolfgang Heimerl, Esq.
c/o Howard B. Mankoff, Esq.
Marshall Dennehy, PC
425 Eagle Rock Avenue, Suite 302
Roseland, NJ 07068
hbmankoff@mdwcg.com

Re: In the Matter of Wolfgang Heimerl
Docket No. DRB 23-090
District Docket No. XIII-2020-0015E
LETTER OF ADMONITION

Dear Mr. Heimerl:

The Disciplinary Review Board has reviewed your conduct in the above matter and has concluded that it was improper. Following a review of the record, the Board determined to impose an admonition for your violation of RPC 1.7(a) (engaging in a concurrent conflict of interest). The Board further determined to dismiss the charged violation of RPC 1.13(a) and (e) (while representing an organization, failing to secure consent to also represent an employee of the organization).

Specifically, in January 2019, you were retained by a construction company (the LLC) in connection with a dispute against a window supplier that

had allegedly delivered faulty windows to a home construction site. Your retainer letter, signed by the LLC's sole member (the LLC Member), stated: "This is to confirm your agreement to retain this firm to render legal services in connection with the dispute with [the window supplier] and securing the refund of the deposit paid to him, and any other matter you may request from time to time." The LLC paid you an initial retainer of \$1,500.

Because the window purchase had been secured with a check from the joint account of the LLC and the homeowner, you drafted a limited power of attorney, to be executed by the homeowner, authorizing the LLC's pursuit of claims against the supplier. However, the homeowner declined to sign the document. Thus, you did not file a complaint. In February 2019, for services rendered in January, you billed the LLC \$295, which you deducted from the \$1,500 retainer. You kept the \$1,205 retainer balance on account. Thereafter, you provided no other legal services to the LLC. Throughout your work on the window matter, your only contact at the LLC was employee Ronny Forleo.

On July 10, 2019, the LLC Member died unexpectedly. In August, the LLC Member's former spouse (the Grievant) was appointed administrator of the Estate. In the interim, she terminated Forleo's employment by the LLC.

On July 30, 2019, after Forleo's employment by the LLC ended, he retained you in connection with claims against the LLC Member and the LLC for charges allegedly made to his personal credit card on the LLC's behalf and for an alleged ownership interest in the LLC's construction equipment. Your retainer letter, signed by Forleo, stated your agreement to "render legal services in connection with any claims against [the LLC Member] and [Forleo's] former employer [the] LLC, [Forleo] may have, and any other matter" he might "request from time to time." Forleo paid you a \$2,500 retainer toward the representation.

Thereafter, and continuing through December 2019, you undertook efforts to advance Forleo's claims. You drafted a proposed agreement for Forleo to purchase the equipment from the LLC, but no agreement was reached. Further, you filed a UCC-1 asserting his claim of a security interest in the equipment; contacted an individual, with whom the LCC had a construction contract, to demand that a portion of payments for that project be withheld from the Estate to pay the LLC's alleged charges to Forleo's credit card; and, responding to correspondence from a bankruptcy attorney with whom the Grievant consulted, you asserted and expanded on Forleo's claims against the LLC. Finally, in

correspondence with that attorney and with the Grievant, you stated you could or would petition the Grievant to be removed as administrator of the Estate.

In the meantime, on an unspecified date, the Grievant discovered paperwork at the LLC's office that documented your prior retention by the LLC. In October 2019, she sent you an e-mail, stating that she believed it was a conflict of interest for you to represent Forleo against the LLC. You replied that you were not engaged in a conflict. Thereafter, you continued representing Forleo.

On November 19, 2019, the Grievant sent you an e-mail, requesting information regarding the window matter. You replied, via e-mail, that, "as far as I know, the Power of Attorney was never signed and we did nothing further." You also stated that "i[t] seems [the LLC] has a \$1,205 retainer balance remaining. We can make a refund check payable to [the LLC]. Where should we mail it?" The Grievant provided you with a mailing address. Some months later, you issued a check, payable to the Estate, for the refund. At the subsequent hearing, the Grievant testified that the check was not received, and you volunteered that "if the check was never cashed, we'll . . . reissue it."

On November 20, 2019, the Grievant filed an ethics grievance against you, alleging that your representation of Forleo constituted a conflict of interest. Subsequently, on an unspecified date, you received a copy of the grievance. You immediately informed Forleo that you could no longer represent him.

In June 2022, a hearing took place before a panel of the District XIII Ethics Committee (the DEC). The DEC found, by clear and convincing evidence, that you violated RPC 1.7 and RPC 1.13.

In your brief to the Board, as well as during oral argument before the Board, you stated, through counsel, that you accepted the DEC's conclusions. You emphasized that your violations were inadvertent and that you regretted that your incorrect analysis caused any damage to the Grievant.

Following a de novo review of the record, the Board found that clear and convincing evidence established that you violated RPC 1.7. However, the Board determined to dismiss the charge of misconduct under RPC 1.13.

RPC 1.7(a)(1) states, in relevant part, that “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: . . . the representation of one client will be directly adverse to another client[.]” Your retainer agreement with the LLC clearly contemplated a relationship that extended to matters other than the initial dispute with the window supplier. You had neither terminated the representation nor refunded the balance of the LLC’s retainer fee when you undertook Forleo’s representation. Nor did the LLC cease to exist upon the LLC Member’s death. To the contrary, the evidence established that it continued to receive revenue and pay debts, and its certificate of dissolution was not filed until 2021 or 2022.

In addition, your representation of Forleo was directly adverse to the LLC. The adversarial nature of the representation was clear from the wording of your retainer agreement with Forleo, wherein you agreed to pursue claims against the LLC. Beyond this initial description, you then took numerous steps to advance Forleo’s claims to reimbursement for amounts charged by the LLC to his personal credit card and for his alleged interest in the LLC’s equipment.

You also were charged with violating RPC 1.13(a) and (e). These provisions set forth, in relevant part, that an attorney for an organization represents the organization (not its employees) and may concurrently represent an employee only if the representation complies with RPC 1.7. Here, Forleo was no longer employed by the LLC when he retained you. Thus, in the Board’s view, your conduct in representing the LLC and Forleo concurrently did not implicate RPC 1.13, and, thus, the Board dismissed the charged violation of that Rule.

In imposing only an admonition, the Board accorded considerable mitigating weight to your lack of prior discipline in your more than twenty-five-year career at the bar. The Board also found that the unique circumstances surrounding the LLC’s status when you undertook Forleo’s representation strongly suggest that your misconduct was an isolated incident, unlikely to recur. Most significantly, in contrast to the majority of cases in which attorneys have received reprimands for engaging in concurrent conflicts of interest, there is no evidence that your concurrent representation caused any economic injury to the LLC. In aggravation, the Board weighed the fact that you did not take corrective action when the Grievant brought the conflict of interest to your attention.

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,

/s/ Timothy M. Ellis

Timothy M. Ellis
Acting Chief Counsel

TME/res

c: Chief Justice Stuart Rabner
Associate Justices
Heather Joy Baker, Clerk
Supreme Court of New Jersey
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)
Isabel McGinty, Statewide Ethics Coordinator
Office of Attorney Ethics (e-mail)
Anne M. Mohan, Chair
District XIII Ethics Committee (e-mail)
Donna P. Legband, Secretary
District XIII Ethics Committee (regular mail and e-mail)
Carrie Ferraro, Presenter (regular mail and e-mail)
Lori Rossi, Grievant (regular mail)