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October 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 Adrian Ja Waun Johnson**
Docket No. DRB 23-186
District Docket Nos. VIII 2023-0901E and XIV-2020-0394E

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 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 to impose a reprimand for respondent's violations 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 1.16(d) (failing to refund the unearned portion of a fee upon termination of representation); and RPC 8.1(a) (knowingly making a false statement of material fact to disciplinary authorities).

The stipulated facts are as follows. On May 24, 2016, Valerie Diodonet and her husband, Christiam Cerda Cruz, retained respondent's then-law firm, Claudio & Johnson, LLC, to file the paperwork necessary to secure permanent residency status for Cruz so that he could remain in the United States (the

Diodonet/Cruz matter). Brian M. Miranda, Esq., an associate of the firm who handled the majority of the firm's immigration matters, signed the written fee agreement and, initially, handled the representation.¹

Pursuant to the fee agreement, the firm agreed to prepare and file the following forms with the United States Citizenship and Immigration Services (the USCIS): Form I-130 (Petition for Alien Relative); Form I-601A (Application for Provisional Unlawful Presence Waiver); and Form I-485 (Application to Register Permanent Residence or Adjust Status). For the representation, Diodonet and Cruz agreed to pay \$3,000 plus an additional \$2,075 in filing fees.

On January 25, 2017, Miranda filed with the USCIS the completed Form I-130 petition, along with other supporting documents and a \$535 filing fee. Ten months later, in November 2017, Miranda left respondent's law firm but, unbeknownst to respondent, did not take the Diodonet/Cruz matter with him. Consequently, the Diodonet/Cruz matter "slipped through the cracks."

In early 2018, Diodonet contacted respondent for a status update, and in February 2018, she and Cruz met with respondent. Thereafter, respondent reviewed the file and discovered that, although Miranda successfully had filed the I-130 petition, the I-601A and I-485 applications had not been completed. On March 29, 2018, respondent apologized to Diodonet, via e-mail, for Miranda's "mishaps on this file," and informed her that, once he obtained confirmation that the I-601A application had been completed, he would file the remaining applications.

On April 3, 2018, respondent filed his entry of appearance and the I-601A application with the USCIS. On April 11, 2018, however, the USCIS notified respondent that it had rejected the filing as deficient because it was missing a fee receipt from the Department of State, and the NVC consular case number.

On April 25, 2018, in response to Diodonet's request for an update, respondent informed her that the USCIS was seeking "additional

¹ In January, 2017, respondent formed a new law firm and, since that time, has operated as "Johnson & Associates at Law, P.C." Miranda joined respondent's new firm and continued to handle the Diodonet/Cruz matter.

documentation,” which he intended to provide to the USCIS “by the end of this week.” Months later, in July 2018, respondent assured Diodonet that the matter was nearing conclusion, but asked her if she possessed the required documentation. In response, Diodonet contacted USCIS and confirmed what documents remained outstanding, obtained proof that the fee receipt had been paid, and provided respondent with the consular number.

On August 29, 2018, respondent sent to Diodonet, via e-mail, the I-485 application to complete, which she completed and returned to respondent the next day.

Respondent claimed that, on September 18, 2018, he re-filed the I-601A application; however, he failed to correct the two deficiencies that had been identified by the USCIS on April 11, 2018. In fact, the I-601A application he claimed to have re-filed was identical to the deficient application he previously submitted to the USCIS. Specifically, it failed to include the fee receipt provided by the Department of State or the consular number.

Respondent failed to successfully submit the I-601A application and, consequently, he did not file the I-485 application on Cruz’s behalf.

In his October 29, 2020 written response to the grievance, respondent told the OAE that the USCIS erroneously had rejected the filing. Specifically, respondent claimed to the OAE that “[a]fter many calls with [USCIS] it was found out the application for I-601(a) was incorrectly rejected” and that “[w]e were instructed to resubmit the same back [to USCIS] for processing.” Respondent also told the OAE that he had advised Diodonet that the USCIS told him to simply resubmit the previously filed documents. Respondent’s statements to the OAE in these respects were inconsistent with his actual e-mail communications with Diodonet between April 25 and August 31, 2018, in which he admitted to her that the deficiencies needed to be corrected and that he was having difficulty finding the necessary information.

Respondent also told the OAE, without any corroborating evidence, that Diodonet had directed him to resubmit the I-601A application which previously had been rejected by the USCIS. To the contrary, Diodonet contacted USCIS, obtained the necessary information, and provided it to respondent so that he could correct the deficiencies in his refiling.

Respondent also told the OAE that “[o]nce [the I-601A application] was resubmitted, we found ourselves in a pattern of waiting for them to complete processing and move our client to the next step in this process,” and that he continued to follow up with USCIS. However, there is no evidence that the USCIS received respondent’s purported September 18, 2018 submission. Respondent was unable to produce to the OAE confirmation from the USCIS that it received his September 18, 2018 filing.

Between November 2018 and January 2019, Diodonet attempted to contact respondent, but he failed to reply to her requests for information. Diodonet retained new counsel to complete Cruz’s immigration paperwork.

Diodonet paid respondent \$5,390 in legal and filing fees. Diodonet pursued fee arbitration and, on April 10, 2020, the District VIII Fee Arbitration Committee (the DFAC) awarded her a partial refund of \$3,970. Following the Board’s denial of his appeal of the DFAC determination, respondent refunded \$3,970 to Diodonet.

Based on the foregoing facts, the parties stipulated that respondent violated RPC 1.3; RPC 1.4(b); RPC 1.16(d); and RPC 8.1(a).

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 stipulated misconduct. Specifically, respondent violated RPC 1.3 by failing to timely address the deficiencies identified by the USCIS in its April 11, 2018 rejection notice, and by failing to file a corrected application. Respondent’s failure to take the necessary steps to ensure that his clients’ immigration paperwork was prepared and filed, in compliance with USCIS requirements, needlessly delayed the immigration proceeding and, in fact, his clients were forced to retain new counsel to complete their matter.

Further, respondent violated RPC 1.4(b) by failing to inform his clients that Miranda was no longer employed by his firm or handling their immigration matter and, subsequently, by failing to provide them with updates as to the status of their matter, despite Diodonet’s repeated attempts to contact him for information.

Respondent violated RPC 1.16(d) by failing to refund to Diodonet the unearned portion of her fee in the immigration matter. Although respondent

eventually refunded the money to Diodonet, he did so only after she successfully pursued fee arbitration.

Additionally, as respondent admitted, he made several false statements to the OAE, in violation of RPC 8.1(a), by claiming that the USCIS had informed him that it had “incorrectly rejected” the I-601A application that respondent had filed and, further, that he should simply re-file the same form. Respondent also falsely claimed that he had informed Diodonet of this development and that she had directed him to re-file an uncorrected I-601A application. Respondent’s untruthful statements to the OAE are contradicted by the USCIS’s deficiency notice, as well as respondent’s own e-mails to Diodonet between April 25 and August 31, 2018, in which he informed her that the deficiencies needed to be corrected and that he was having difficulty finding the information.

Generally, an admonition is the appropriate form of discipline for lack of diligence and failure to communicate with a client. See, e.g., 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); In the Matter of Christopher G. Cappio, DRB 15-418 (March 24, 2016) (after the client had retained the attorney to handle a bankruptcy matter, paid the fee, and signed the bankruptcy petition, the attorney failed to file the petition or to return his client’s calls in a timely manner); In the Matter of Charles M. Damian, DRB 15-107 (May 27, 2015) (the attorney filed a defective foreclosure complaint and failed to correct the deficiencies, despite notice from the court that the complaint would be dismissed if they were not cured; after the complaint was dismissed, he took no action to vacate the dismissal, a violation of RPC 1.3; the attorney also failed to tell the clients that he never amended the original complaint or filed a new one, that their complaint had been dismissed, and that it had not been reinstated, a violation of RPC 1.4(b); in mitigation, the attorney had no other discipline in thirty-five years at the bar; staffing problems in his office negatively affected the handling of the foreclosure case; he was battling a serious illness during this time; and other family-related issues consumed his time and contributed to his inattention to the matter).

Likewise, an admonition is the appropriate sanction for an attorney's failure to promptly refund the unearned portion of a fee. See In the Matter of Larissa A. Pelc, DRB 05-165 (July 28, 2005); In the Matter of Stephen D. Landfield, DRB 03-137 (July 3, 2003).

Generally, less egregious misrepresentations to ethics authorities will result in a reprimand. See, e.g., In re Purvin, 248 N.J. 223 (2021) (reprimand for an attorney who 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 proof of his corrective measures, the attorney admitted his misrepresentation, but noted that he since had taken the necessary corrective action; the attorney violated RPC 1.15(a) (failing to safeguard client funds), RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6). and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); no prior discipline in twenty-nine years at the bar, and he stipulated to his misconduct); In re Clemente, 241 N.J. 489 (2020) (reprimand for attorney who informed the OAE, following a random audit, that he had corrected all of the deficiencies when, in fact, he had not done so; the attorney also entered into an improper business transaction with a client without having obtained his client's informed consent, in violation of RPC 1.8(a); no prior discipline in thirty-eight years at the bar); In re Maziarz, 238 N.J. 476 (2019) (reprimand for attorney who misrepresented to the OAE that he had corrected deficiencies uncovered during an OAE audit of his attorney trust and business accounts; the attorney failed to comply with the recordkeeping requirements, and negligently misappropriated client funds (RPC 1.15(a)); the attorney also failed to cooperate with the underlying investigation (RPC 8.1(b)); in mitigation, the attorney had no prior discipline in forty-two years at the bar; he stipulated to his misconduct, which saved valuable resources; and he faced medical challenges associated with having suffered two strokes, which affected his ability to practice law).

Respondent's misconduct is most similar to the misconduct committed by the attorneys in Purvin, Clemente, and Maziarz, who were reprimanded. Like respondent, the attorneys in those matters made misrepresentations to the OAE, committed other, less serious misconduct, and presented significant mitigation. Accordingly, based upon disciplinary precedent, respondent's misconduct warrants at least a reprimand. To craft the appropriate discipline, however, the Board also considered mitigating and aggravating factors.

In mitigation, respondent has no prior formal discipline in his ten years at the bar. He also accepted responsibility for his misconduct by entering into the disciplinary stipulation, thereby saving disciplinary resources. Further, respondent stated that difficulties in his personal life at the time of his representation contributed to his inattention to his clients.

There is no aggravation to consider.

On balance, the mitigating factors are insufficient to justify a downward departure from the discipline imposed in Purvin, Clemente, and Maziarz. Thus, the Board determined that a reprimand is the appropriate quantum of discipline to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated August 17, 2023.
2. Stipulation of discipline by consent, dated August 17, 2023.
3. Affidavit of consent, dated August 8, 2023
4. Ethics history, dated October 23, 2023.

Very truly yours,

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

Disciplinary Review Board (via e-mail)

Johanna Barba Jones, Director

Office of Attorney Ethics (via e-mail and interoffice mail)

Amanda W. Figland, Deputy Ethics Counsel

Office of Attorney Ethics (via e-mail)

Thomas Ambrosio, Respondent's Counsel (via e-mail and regular mail)