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February 22, 2024

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

Re: **In the Matter of Kecia M. Clarke**
Docket No. DRB 23-276
District Docket No. XIV-2022-0101E

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 to impose a reprimand for respondent's violation of RPC 4.2 (improperly communicating with a person represented by counsel) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

According to the stipulation, G.R. retained respondent – a longtime family friend of married couple G.R. and W.R. – to represent her in divorce proceedings initiated by W.R.¹ Subsequently, G.R. obtained a domestic violence temporary restraining order (TRO) against W.R. and retained respondent to represent her in that matter, as well. Bette R. Grayson, Esq., represented W.R. in both matters.

¹ Because the underlying matters involved allegations of domestic violence, initials are used to preserve the litigants' anonymity.

In connection with the divorce proceedings, the court ordered respondent and Grayson to arrange for an inventory of marital property held in W.R.'s storage facility. Accordingly, on February 7, 2022, respondent, Grayson, and W.R. met with an appraiser and, after several hours spent conducting the inventory, the group left the storage space. Respondent and W.R. entered the elevator first, and either before or after doing so, they conversed briefly about speaking, by telephone, at a later date. According to W.R., respondent proposed the telephone call, to which he agreed; according to respondent, it was W.R. who proposed the call, to which she agreed. Thereafter, respondent failed to obtain Grayson's permission to discuss the divorce or restraining order matter with W.R.

On February 11, 2022, respondent called W.R. and spoke to him for approximately forty-five minutes. Respondent's paralegal was present for the telephone call, which respondent conducted by speakerphone.

W.R. later stated that he and respondent spent about thirty minutes of the telephone call discussing issues related to the divorce and restraining order matters. In contrast, respondent stated that they spent most of the call discussing topics unrelated to the legal matters. However, near the end of the call, W.R. asked whether the TRO could be dismissed in exchange for a concession in the divorce matter, and respondent admitted that she then discussed the pending matters with him.

On February 18, 2022, respondent; Grayson; W.R.; and G.R. appeared before the Honorable Marcy M. McMann, J.S.C., in the restraining order matter. Before the proceeding began, Grayson made an oral motion to disqualify respondent from G.R.'s representation based on her unauthorized, direct communication with W.R. On the same date, Judge McMann held a hearing on the motion, during which she heard testimony from W.R., respondent, and respondent's paralegal. Thereafter, on March 14, 2022, Judge McMann entered an order disqualifying respondent from her continued representation of G.R. In her accompanying statement of reasons, Judge McMann concluded that respondent's communication with W.R. was prejudicial to the parties' restraining order matter. To permit G.R. time to retain new counsel, Judge McMann adjourned an upcoming hearing and scheduled a case management conference for a later date.

On May 11, 2022, the Honorable James M. DeMarzo, P.J.F.P., who was presiding over the divorce proceedings, likewise disqualified respondent as G.R.'s counsel. He found that, as in the restraining order matter, respondent's misconduct was "detrimental and violative" in the divorce matter. He provided G.R. time to retain new counsel, resulting in a delay in the divorce proceedings.

Due to respondent's disqualification as counsel in both matters, G.R. had to retain two new attorneys and incur additional expenses.

Based on the above facts, the parties stipulated that respondent violated RPC 4.2 and RPC 8.4(d). Specifically, in violation of RPC 4.2, she admittedly communicated about the restraining order and divorce matters with W.R., whom she knew to be represented by counsel, without the consent of W.R.'s attorney, a court order, or other legal authorization. Further, in violation of RPC 8.4(d), she prejudiced the administration of justice by wasting judicial resources on court proceedings to address whether she should be disqualified from her continued representation of G.R., and by causing delays in both the restraining order and the divorce matters, due to her disqualification.

The OAE and respondent correctly analogized the present matter to In re Ibrahim, 236 N.J. 97 (2018). In that matter, the Court censured an attorney who violated RPC 4.2 in one client matter and, additionally, violated RPC 1.5(b) (failing to set forth in writing the basis or rate of the fee) in a second client matter. Relevant here, while representing the defendant in a domestic violence matter, the attorney in Ibrahim spoke directly to the represented plaintiff, without her counsel's leave, and offered to secure "guarantees" from his client toward resolution of the case. In the Matter of Ihab Awad Ibrahim, DRB 18-057 and 18-058 (August 3, 2018) at 5-6, 13. Subsequently, the trial court disqualified the attorney from the representation and adjourned the hearing on the restraining order so that his client could obtain new counsel. Id. at 7. In recommending a censure, the Board weighed, in aggravation, respondent's prior reprimand, as well as his "noted lack of candor during the ethics hearing." Id. at 9, 13-14.

Here, unlike the censured attorney in Ibrahim, respondent did not also violate RPC 1.5(b). Moreover, in mitigation, she had no prior discipline in her twenty-four years at the bar; cooperated with the OAE's investigation; expressed remorse; and entered into the present disciplinary stipulation, thereby accepting responsibility for her misconduct and conserving disciplinary resources. Respondent also submitted information regarding her numerous community

service activities. However, in aggravation, her conduct caused harm to G.R., who needed to retain new counsel in both matters at additional expense.

On balance, 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 December 21, 2023.
2. Stipulation of discipline by consent, dated December 28, 2023, with Exhibits 1 through 9 (Exhibits 3, 4, and 7 **sealed** and **confidential** pursuant to February 22, 2024 protective order)
3. Affidavit of consent, dated December 21, 2023.
4. Protective order, dated February 22, 2024.
5. Ethics history, dated February 22, 2024.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

TME/res
Enclosures

c: (w/o enclosures)
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Disciplinary Review Board (e-mail)
Johanna Barba Jones, Director
Office of Attorney Ethics (e-mail and interoffice mail)

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Marc D. Garfinkle, Respondent's Counsel (e-mail and regular mail)

W.R., Grievant (e-mail)