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November 22, 2024

VIA CERTIFIED, REGULAR & ELECTRONIC MAIL

Joseph A. Fortunato, Esq.
c/o John McGill III, Esq.
McGill Law Practice
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RE: In the Matter of Joseph A. Fortunato
Docket No. DRB 24-206
District Docket Nos. VC-2021-0005E and VC-2022-0007E
LETTER OF ADMONITION

Dear Mr. Fortunato:

The Disciplinary Review (the 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 1.1(a) (engaging in gross neglect in connection with the Idumonyi-Scott client matter); RPC 1.3 (two instances – lacking diligence); RPC 1.4(b) (two instances – failing to communicate with a client); RPC 1.5(b) (failing to set forth, in writing, the basis or rate of the legal fee); and RPC 1.16(d) (failing to protect a client’s interests upon termination of the representation).

The Board further determined to dismiss the charged violation of RPC 1.1(a) (engaging in gross neglect in connection with the Eversley client matter); RPC 1.5(a) (charging an unreasonable fee); RPC 1.5(b) (retaining an unearned legal fee); RPC 1.15(b) (retaining an unearned legal fee); and RPC 1.16(a) (failing to withdraw from the representation).

Specifically, the largely undisputed facts of this matter concern your mishandling of two separate client matters.

Regarding the first client matter, in March 2021, Norma Eversley retained you in connection with her dispute with a municipality concerning her damaged fence for which she received a citation. Eversley, whom you did not previously represent, paid you a \$1,500 retainer fee in connection with the representation. However, you failed to set forth the basis or rate of your legal fee in writing, in violation of RPC 1.5(b).

Additionally, you admittedly violated RPC 1.3 and RPC 1.4(b), respectively, by failing to diligently handle your representation of Eversley and to keep her reasonably informed of the status of her matter. Specifically, by May 2021, Eversley was forced to contact “Legal Match” – the website that had referred her to you – to complain that she had not heard from you in two months. Following her complaint with Legal Match, although you “contacted” Eversley, you admitted that you had performed only minimal work on her behalf and that a lawsuit “was far from ready to be filed.” Indeed, you conceded that Eversley’s file “consisted of only a barebones outline of a complaint and discovery requests,” which reflected that you devoted “almost no time whatsoever” to the representation. Moreover, you repeatedly failed to contact Eversley and keep her apprised of the status of her matter. Your lack of diligence and failure to communicate forced Eversley to terminate the representation, on May 31, 2021.

Following your termination as counsel, you violated RPC 1.16(d) by failing to comply with Eversley’s repeated requests to return her “evidence” and refund your unearned \$1,500 retainer fee. Specifically, on May 31, 2021, Eversley requested that you return her evidence so that she could retain a new lawyer. Following your failure to comply, Eversley continued to attempt to contact you, on at least two occasions, requesting that you return her evidence and refund your unearned legal fee. However, you failed to reply to her communications.

It was not until December 2021 or January 2022, after receiving a copy of the ethics grievance, that you returned the relevant evidence to Eversley. However, you failed to refund any portion of your unearned legal fee based on your mistaken impression that such a refund would have been inappropriate until the conclusion of the disciplinary proceedings.

The Board determined to dismiss the remaining charges of unethical conduct in connection with the Eversley client matter.

Specifically, the formal ethics complaint also charged you with having violated a second instance of RPC 1.5(b), along with RPC 1.15(b), based on your failure to refund your unearned \$1,500 retainer fee to Eversley. However, as detailed above, RPC 1.5(b) governs an attorney's obligation to set forth, in writing, the basis or rate of their legal fee. In turn, among other requirements, RPC 1.15(b) governs an attorney's obligation to promptly deliver to a client or a third party any funds or other property to which they are entitled. RPC 1.15(b), however, "does not apply to the failure to return unearned . . . fees. Rather . . . such conduct is governed by RPC 1.16(d)." In the Matter of Daniel James Domenick, DRB 17-176 (November 17, 2017) at 10. Because your failure to refund your unearned \$1,500 retainer fee is more appropriately encapsulated by the RPC 1.16(d) charge, the Board determined to dismiss, as inapplicable, the RPC 1.5(b) and RPC 1.15(b) charges premised on that same theory.

Additionally, the Board determined to dismiss the RPC 1.1(a) charge alleging that your mishandling of Eversley's matter constituted gross neglect. RPC 1.1(a) addresses "deviations from professional standards which are so far below the common understanding of those standards as to leave no question of inadequacy." In the Matter of Dorothy L. Wright, DRB 22-100 (November 7, 2022) at 17. Here, although you stipulated that you failed to timely file a lawsuit on Eversley's behalf and performed only minimal work on her matter, the limited record before the Board did not demonstrate that your conduct in that regard, which spanned only a two-month timeframe, constituted such a blatant indifference to the interests of Eversley to rise to the level of gross neglect. Because your conduct is more appropriately encapsulated by the RPC 1.3 charge, the Board determined to dismiss the RPC 1.1(a) charge.

Regarding the second client matter, you violated RPC 1.1(a) and RPC 1.3 by grossly mishandling Winifred Idumonyi-Scott's and her family members'

federal civil rights lawsuit. Additionally, you violated RPC 1.4(b) by failing to adequately communicate with Idumonyi-Scott throughout the representation.

Specifically, on July 29, 2020, following your receipt of a \$5,000 retainer payment, you filed the federal civil rights lawsuit against various law enforcement entities in connection with an August 2018 incident in which Idumonyi-Scott alleged that police physically attacked her and her family members. However, you failed to properly serve the defendants and, consequently, in February 2021, the court dismissed the lawsuit, without prejudice.

On February 18, 2021, after independently discovering the dismissal of her lawsuit, Idumonyi-Scott requested that you file a motion to reinstate her matter. Following your failure to file the reinstatement motion, Idumonyi-Scott sent you numerous messages, spanning approximately one year, inquiring about the status of that motion. In the Board's view, during that timeframe, you provided only sporadic, unsatisfactory replies to Idumonyi-Scott.

By February 2022, your protracted failure to file the motion forced Idumonyi-Scott and her family members to submit self-prepared motions to reinstate their matter. In April 2022, the court granted their pro se applications. Meanwhile, in March and May 2022, considering your prolonged mishandling of the matter, Idumonyi-Scott terminated you as counsel and, on June 22, 2022, the court granted your application to withdraw from the representation.

The Board determined to dismiss the remaining charges of unethical conduct in connection with the Idumonyi-Scott client matter. Specifically, the formal ethics complaint charged you with having violated RPC 1.5(a) by charging an unreasonable \$5,000 retainer fee, based on the quantum of work you had completed in connection with the representation.

The record before the Board, however, contained no analysis of the reasonableness of your fee against the eight RPC 1.5(a) factors. See In the Matters of Christopher Michael Manganello, DRB 20-199 and 20-235 (April 6, 2021) (dismissing the RPC 1.5(a) charge because the formal ethics complaint did not analyze the attorney's fees under the eight factors of RPC 1.5(a) and, thus, the Board could not determine that, had the attorney performed the work for which he had been retained, the fee charged would have been unreasonable).

Additionally, although you grossly mishandled the representation, the fact that you may not have earned your \$5,000 retainer fee does not, by itself, render your fee unreasonable. See In the Matter of Thomas J. Whitney, DRB 19-296 (May 12, 2020) (the Board dismissed the RPC 1.5(a) charge because, although the attorney did little to no work in connection with the client matters at issue, “the fact that he may not have earned his fee [did] not render his fee unreasonable;” the Board also observed that his failure to return unearned fees was captured by his violation of RPC 1.16(d)).

Here, you contended that you earned your \$5,000 retainer fee in connection with your preparation and filing of the civil rights complaint, which required you to conduct legal research, interview several members of Idumonyi-Scott’s family, and review discovery during a short timeframe. However, regardless of whether you earned your \$5,000 retainer fee, your fee was not clearly and convincingly unreasonable, particularly in light of the presenter’s decision to abandon this charge during the ethics hearing. Accordingly, the Board determined to dismiss the RPC 1.5(a) charge.

Finally, the Board determined to dismiss the RPC 1.16(a) charge. That Rule requires an attorney to withdraw from the representation if (1) the representation will result in a violation of the Rules of Professional Conduct, (2) the lawyer’s physical or mental condition materially impairs his ability to represent the client, or (3) the lawyer has been discharged. The formal ethics complaint charged you with having violated this Rule based on your purported personal struggles with the practice of law, as a consequence of your busy solo practice with potential logistical or technological issues. However, such circumstances clearly did not require you to withdraw from the representation, pursuant to RPC 1.16(a). Accordingly, the Board determined to dismiss the charge.

In imposing only an admonition, the Board considered, in mitigation, the fact that your misconduct appeared to have resulted, at least in part, by your previously untreated mental health conditions for which you are now receiving treatment. Moreover, the Board considered your sincere remorse and, most significantly, your unblemished disciplinary record in your forty-three-year career at the bar.

Finally, the Board determined to require you to disgorge your unearned \$1,500 legal fee to Norma Eversley within sixty (60) days of the issuance of this

admonition letter. The Board declined to impose the remaining conditions recommended by the hearing panel.

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 Office of Board Counsel. 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
Chief Counsel

TME/akg

c: Chief Justice Stuart Rabner
Associate Justices
Heather Joy Baker, Clerk
Supreme Court of New Jersey
Hon. Mary Catherine Cuff, P.J.A.D. (Ret.), Chair
Disciplinary Review Board (e-mail)
Johanna Barba Jones, Director
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District VC Ethics Committee (e-mail)
Paula Irene Getty, Esq., Secretary
District VC Ethics committee (regular mail and e-mail)
Thomas M. Wester, Esq., Presenter (regular mail and e-mail)
Norma P. Eversley, Grievant (regular mail)
Winifred Idumonyi-Scott, Grievant (regular mail)