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October 24, 2018

Via Certified Mail, R.R.R., Regular Mail and E-Mail

Bartholomew Baffuto
c/o James N. Butler, Jr., Esq.
601 Bangs Avenue, Suite 507
Asbury Park, New Jersey 07712
jamesbutler601@optimum.net

Re: **In the Matter of Bartholomew Baffuto**
Docket No. DRB 18-249
District Docket No. IX-2017-0005E
LETTER OF ADMONITION

Dear Mr. Baffuto:

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.

Specifically, you represented Tracey Deacon in the Superior Court, Monmouth County, Law Division, Criminal Part, for an appeal of her Wall Township Municipal Court conviction for driving while under the influence. After some discussion with Deacon, she agreed that you would appeal only the municipal court's denial of her motion to suppress certain evidence and, therefore, would order only that portion of the transcript that addressed that issue. You suggested this strategy because the municipal court judge had made

I/M/O Bartolomew Baffuto, DRB 18-249

October 24, 2018

Page 2 of 5

specific findings regarding Deacon's blood alcohol level and were concerned that the reviewing court would be prejudiced by those findings. Consistent with that understanding, you obtained the trial transcripts, but only for those trial days relevant to the suppression of evidence.

In November 2016, the law clerk for the Honorable Richard W. English, J.S.C., the judge assigned to the appeal, informed you of the prosecutor's position that all of the trial transcripts should be submitted. You took the position that only those portions of the transcript limited to the issue on appeal were necessary. Nevertheless, the law clerk informed you that the appeal would be dismissed unless all of the transcripts were provided.

On November 30, 2016, the court notified you that, unless you submitted the complete municipal court trial record within one week, the appeal would be dismissed for failure to comply with Rule 3:23-8.

Although you continued in your belief that you should have been permitted to limit the production of transcripts to those you considered pertinent to the appeal, you neither discussed that issue with the prosecutor nor presented your theory to the court.

On December 8, 2016, the day prior to the hearing on appeal, you informed Deacon, via a text message, that you had been diagnosed with severe bronchitis, and that the hearing scheduled for the next day was "off." Unbeknownst to you, however, Judge English had entered an order dismissing Deacon's appeal that day. The December 8, 2016 order stated, in relevant part, that you provided the State and the court only with transcripts from the first day of the municipal court trial, although the court had informed you, on October 3, 2016, that the record provided was incomplete, and that the entire trial record must be provided to the State and the court in a timely manner. Moreover, the order stated that, on November 30, 2016, the court notified you that, without your submission of the complete municipal court trial record within one week, the appeal would be dismissed for failure to comply with Rule 3:23-8. Because you failed to comply, the appeal was dismissed.

I/M/O Bartolomew Baffuto, DRB 18-249

October 24, 2018

Page 3 of 5

You testified at the ethics hearing that you first saw the dismissal order in late April or early May 2017,¹ and you produced the original envelope that had contained the court order. That envelope from the court bore a December 14, 2016 postmark, just two days before your hospitalization, as discussed below.

On December 16, 2016, you were admitted to a hospital, where it was determined that your previously diagnosed "bronchitis" was actually "severe heart failure." You remained hospitalized until December 31, 2016, after which you were unable to return to work at your law office until May 2017.

You admitted at the ethics hearing that you had not informed Deacon or her husband, with whom you had been communicating, about your conversation with the judge's law clerk. Thus, you admittedly did not give Deacon the choice or opportunity to decide whether to pay for and submit all of the trial transcripts, or, in the alternative, to allow the appeal to be dismissed and "fight the issue before the Appellate Court," as had been your inclination. Moreover, although the Deacons repeatedly texted you after December 9, 2016 for updates about the status of the appeal, the couple received no further communication from you.

In March 2017, Deacon communicated directly with the Superior Court about her matter and learned that her appeal had been dismissed. Thereafter, she retained a new attorney, who succeeded in reinstating the appeal.

During your office absence, you had no secretary or support staff at your law office to review incoming mail, contact clients and courts, or, at a minimum, inform clients and courts of your condition. Ultimately, on a date not disclosed in the record, your wife and other attorneys came to your aid in that respect.

The Board found that, despite your troubles, you were obligated to protect Deacon's claim during your office absence, by arranging for another attorney or your wife to contact the court about your predicament. Your failure to do so amounted to gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively. Additionally, you failed to reply to Deacon's reasonable requests for information and to provide her with crucial information about events in the case, so that she could make informed decisions about the representation, violations of RPC 1.4(b) and (c), respectively.

¹ The record erroneously referred to the year as 2016.

I/M/O Bartolomew Baffuto, DRB 18-249

October 24, 2018

Page 4 of 5

The Board found that your failure to inform your client that her appeal had been dismissed was not the product of any intent to mislead on your part. Rather, you were not specifically aware that the court had issued an order dismissing the appeal. Thus, the Board dismissed the RPC 8.4(c) charge.

In aggravation, Deacon was compelled to retain a new attorney, who succeeded in having her appeal reinstated, which limited the damage caused by your inaction. In mitigation, you have no prior discipline in twenty-eight years at the bar. In addition, your serious medical issues required hospitalization and drew your attention away from this matter. After weighing all of the above, the Board determined to impose an admonition.

Your conduct has adversely reflected not only upon you as an attorney but also upon 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, it will be taken into consideration.

The Board has also directed that the costs of the disciplinary proceedings be assessed against you. An invoice of costs will be forwarded under separate cover.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/paa
See Attached List

I/M/O Bartolomew Baffuto, DRB 18-249

October 24, 2018

Page 5 of 5

- c: Chief Justice Stuart Rabner
Associate Justices
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Gail G. Haney, Deputy Clerk
Supreme Court of New Jersey (w/ethics history)
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District IX Ethics Committee (e-mail and regular mail)
I. Mark Cohen, Esq., Presenter
District IX Ethics Committee (e-mail)
Richard Deacon, Grievant (regular mail)