Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-238
District Docket No. XIV-2017-0340E

In the Matter of	:
Michael Charles Cascio	:
An Attorney at Law	:

Decision

Argued: January 21, 2021

Decided: June 15, 2021

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a recommendation for a reprimand filed by the District IIIA Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to keep a client reasonably informed

about the status of a matter and to comply with reasonable requests for information); RPC 3.3(a)(1) (false statement of material fact to a tribunal); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 3.4(d) (failure to comply with reasonable discovery requests); RPC 4.1(a)(1) (false statement of fact or law to a third person); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to impose a censure, with conditions.

Respondent gained admission to the New Jersey bar in 1992 and to the Pennsylvania bar in 1991. He maintains an office for the practice of law in Marlton, New Jersey. He has no prior discipline.

On February 26, 2018, the Office of Attorney Ethics (the OAE) filed a formal ethics complaint against respondent. Respondent's alleged misconduct stemmed from his representation of Joseph Paoline in a divorce proceeding involving his then wife, Lisa Paoline, who was represented by Shira Katz Scanlon, Esq. On May 20, 2018, respondent filed an answer and, on January 23, 2019, filed a supplemental answer. On May 20, 2019, the DEC hearing panel held a one-day hearing at which respondent appeared pro se.

In October 2015, Paoline retained respondent to represent him in a divorce proceeding filed on August 10, 2015 by Lisa Paoline, which was pending before the Honorable Guy Ryan, J.S.C., in New Jersey Superior Court, Burlington County. On February 5, 2016, Scanlon served upon respondent a demand for Paoline's answers to interrogatories and a notice to produce documents.

On February 15, 2016, respondent sent a letter to Scanlon, acknowledging that he had received the discovery demands. Scanlon testified that respondent never called her to discuss those discovery demands. On February 22, 2016, Judge Ryan issued a case management order, setting a deadline of April 15, 2016 for Paoline's answers to interrogatories and the notice to produce.

As of May 3, 2016, respondent had not provided any discovery. In his answer to the ethics complaint, respondent admitted that he failed to provide the discovery, claiming that he was waiting for Paoline to gather the necessary information. On May 3, 2016, based on respondent's failure to provide discovery, Scanlon filed a motion seeking an order to both compel answers to discovery and enter a default judgment against Paoline in the event that those answers were not timely provided.

Thereafter, on May 26, 2016, the day before the return date of the motion, respondent wrote a letter to Judge Ryan. The letter stated that Paoline "bears no responsibility whatsoever for the failure to respond to the plaintiff's motion. To

the contrary, [Paoline] [h]as complied with every request I have made and has otherwise been cooperative in all aspects." The letter further stated: "The fault for not filing a response rest[s] solely upon my shoulders inasmuch as I only briefly looked at the plaintiff's motion and ignorantly assumed it was a simple motion to compel discovery . . . ."

By the return date of the motion, May 27, 2016, respondent had neither filed a response to the motion nor provided discovery. Consequently, on that date, Judge Ryan ordered that Paoline provide discovery by June 3, 2016. He concurrently denied Scanlon's request for entry of a default, and reserved the right to revisit that request, should Paoline not comply.

On June 28, 2016, Scanlon filed a certification renewing her requests for sanctions for respondent's failure to provide discovery. Respondent failed to oppose the motion. In his answer to the ethics complaint, respondent admitted that he failed to meet the deadline to file Paoline's discovery. He conceded that he had not found Scanlon's discovery requests to be frivolous and acknowledged his obligation to comply therewith. On July 8, 2016, Judge Ryan issued an order entering a default judgment against Paoline and striking his pleadings. Thereafter, on August 23, 2016, respondent filed a motion to vacate the default and to reinstate the pleadings; on August 24, 2016, respondent provided some discovery.

Scanlon testified that respondent had failed to offer a reason for the discovery delays and observed that his objections to discovery were generalized. Thus, on August 25, 2016, Scanlon made a formal demand that respondent be required to cure, by September 7, 2016, identified deficiencies in Paoline's discovery submission. Respondent failed to reply to the August 25, 2016 letter.

On December 2, 2016, Judge Ryan issued an order granting respondent's motion to vacate the default and reinstating Paoline's pleadings. Judge Ryan also directed Scanlon to provide a letter to respondent identifying any outstanding discovery issues. On December 6, 2016, Scanlon provided to respondent the required letter. Respondent neither provided the outstanding discovery nor filed a motion seeking relief from discovery requests.

On January 17, 2017, citing respondent's failure to provide the outstanding discovery, Scanlon filed a motion to again strike Paoline's pleadings and to enter a default for his failure to produce discovery. Respondent failed to file a reply or opposition to the motion and failed to provide the supplemental discovery. On March 3, 2017, Judge Ryan entered an order granting in part Scanlon's motion to strike and granting Scanlon's motion to enter default against Paoline for failure to provide discovery. Further, Judge Ryan's order set May 24, 2017 as the date for the final hearing for a judgment of divorce by default.

On May 23, 2017, which was the day before the scheduled default hearing, respondent submitted a letter to Judge Ryan and Scanlon seeking emergent relief. The letter, in pertinent part, read:

> The purpose of this letter is to seek emergent relief in that I am unable to proceed tomorrow. I am under psychiatric care of Dr. Ellen Brooks. I have contacted the NJ Lawyers Assistance program and have a tentative meeting with Bill Kane tomorrow. It is respectfully respected [sic] that the default hearing scheduled for May 24, 2017, be adjourned so that I can address my personal issues. The defendant will be severely prejudiced if this matter is resolved by way of a default hearing.
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> [C¶37,Ex17.]

On May 24, 2017, the parties, including respondent, appeared before Judge Ryan. Paoline explained to Judge Ryan that he had been unaware of the default hearing date until he spoke to Lisa Paoline, about two weeks prior to the hearing. Paoline made several attempts to contact respondent; however, respondent failed to return Paoline's calls until May 18, 2017, several days prior to the hearing. Paoline further stated that he was not aware of the court's March 3, 2017 order until May 18, 2017, three days prior to the hearing. At that time, respondent told Paoline that he would "take care of everything."

Respondent asserted that he did not recall making such a statement to Paoline. Nevertheless, in his answer to the ethics complaint and in his hearing testimony, respondent admitted that he failed to inform Paoline of the May 24,

2017 default hearing until several days prior to the hearing. He also admitted that he failed to return Paoline's calls until about three days prior to the default hearing.

At the hearing before Judge Ryan, respondent accepted responsibility for the discovery deficiencies and conceded that he should have filed applications to formally vacate the default and to reinstate the pleadings. By order dated May 24, 2017, Judge Ryan granted an adjournment and referred respondent to the OAE. Judge Ryan further ordered Paoline to pay $500 toward Scanlon's attorneys' fees.

Soon after the entry of the May 24, 2017 order, Michael Weinberg, Esq. substituted for respondent as counsel for Paoline. Scanlon testified that she performed a forensic accounting and concluded that Lisa Paoline paid a total of $69,879.73 to obtain her divorce, of which only $27,794 was incurred after respondent was relieved as counsel.

Respondent asserted reasons for his failure to provide discovery, including: that the requests were excessive and irrelevant; that he had been taking medication that caused him to have a short attention span, racing thoughts, and to become easily aggravated; that the effects of the medication prevented him from filing a motion to limit discovery; and that Scanlon was intent on prolonging litigation as shown by her failure to disclose the post-

nuptial agreement in her Case Information Statement (CIS). Scanlon testified that respondent never informed her that any action or inaction on his part was due to medication.

Respondent represented that he was fit to practice law at the time of the default. However, he attributed his poor decision-making to his medication. In his answer to the ethics complaint, respondent likewise asserted that the long-term consequences of taking medication, along with several other factors, affected his ability to practice law at the time he represented Paoline.

At the OAE interview, respondent admitted that he had recognized that Paoline could have been harmed by his misconduct. He, therefore, told Judge Ryan that medication was responsible for his failure to provide discovery and to respond to motions, knowing that the judge would not be able to proceed.

Respondent denied that his statement in the May 23, 2017 letter, whereby he advised Judge Ryan and Scanlon that he was "unable to proceed" with the default hearing, was false. He further denied that his failure to respond to some discovery requests resulted in the majority of Lisa Paoline's legal expenses but conceded that he was responsible for her incurring extra legal expenses.

Respondent admitted in his answer that his conduct had violated RPC 1.3, RPC 1.4(b), and RPC 3.4(d). Moreover, in his summation brief, he admitted that his conduct violated RPC 3.4(c).

In his summation brief, respondent contended that he did not commit gross neglect, citing the research and work that he completed, such as summarizing discovery and identifying and briefing legal issues, laying the groundwork for Weinberg to take over Paoline's case. Respondent admitted that his lack of diligence was the "primary reason" for the delays in the litigation, but noted that there were many documents to review, and that Paoline had undergone back surgery around the time the discovery was due. Respondent took no position as to whether his part in the delays constituted conduct prejudicial to the administration of justice, in violation of RPC 8.4(d).

Moreover, respondent maintained that his statement to Judge Ryan that he "was unable to proceed" was not false and misleading. Rather, respondent claimed that he was prepared to proceed, but contended that he could not proceed in good faith and in the best interests of his client. Respondent believed that he was ethically obligated to advise the court of his state of mind prior to proceeding, so as not to prejudice Paoline. He asserted that, had he proceeded with the default hearing, he likely would not have been subject to ethics charges, and that by not proceeding, he put his client's interests over his own. Respondent asserted that, several days after the default hearing, he quit his medications "cold turkey" and contacted the New Jersey Lawyers' Assistance Program (NJLAP). Finally, respondent argued that the OAE had not demonstrated by clear and

convincing evidence that he made false statements of material fact when he represented to Judge Ryan that he was unable to proceed.

In mitigation, respondent noted that he provided the OAE with all requested documents, appeared for a recorded interview, and executed a HIPAA release for his psychiatric records. Moreover, respondent pointed to his unblemished disciplinary record; the fact that he did not financially gain from his representation of Paoline; that he had taken affirmative steps to correct the problems he experienced in Paoline's case; and that he has worked on addressing his medical and psychological issues. Respondent did not suggest an appropriate quantum of discipline for his admitted misconduct.

In light of respondent's admissions, the OAE's summation brief primarily focused on its allegation that, on May 23, 2017, respondent made a false statement to Judge Ryan by claiming that he was "unable to proceed" in Paoline's matter. The OAE contended that respondent was psychologically stable at that time, had not visited a psychologist for approximately three months prior, and was not seeking emergent care for his psychological condition. Further, the OAE noted that respondent had been taking Concerta for fifteen years prior to the representation at issue.[1] To the contrary, the OAE asserted,

[1] Respondent stated in his summation brief that he had been taking medication for ADHD for over fifteen years, and Concerta specifically for five years. The Concerta dose had been steadily increased until he was taking approximately three times the normally-prescribed

respondent's statement was a "last-ditch effort" to postpone the proceedings, because he had "dropped the ball" and his hands were tied on evidentiary issues. The OAE argued that respondent devised the idea to inform Judge Ryan that he was under the care of a psychiatrist after speaking to staff at the NJLAP, right before the May 24, 2017 default hearing. The OAE asserted that respondent was not credible, pointing his contradictory statements, wherein he insisted that he was fit to practice law at the time he represented Paoline, and noted that medications did not impact his ability to contemporaneously represent his other clients.

As to the quantum of discipline, the OAE argued that a reprimand or censure would be appropriate. The OAE asserted that respondent's conduct delayed the matter and cost Lisa Paoline over $18,000 in legal expenses. In mitigation, the OAE recognized that respondent had no ethics history; had not defaulted on the matter; had shown genuine remorse; and was unlikely to repeat his missteps. Further, the OAE acknowledged that respondent's conduct was limited to one client matter.

The DEC found that respondent admitted that his actions violated RPC 1.3, RPC 1.4(b), RPC 3.4(c), and RPC 3.4(d). It further found that the OAE had

amount. However, at the disciplinary hearing, respondent testified that he had been taking Concerta for fifteen years.

proven by clear and convincing evidence respondent's violations of RPC 1.1(a), RPC 3.3(a)(1), RPC 4.1(a)(1) and RPC 8.4(c).

However, the DEC found that the RPC 8.4(d) charge had not been proven by clear and convincing evidence. In support of this determination, the DEC stated that respondent's conduct, "although unethical pursuant to RPCs 3.4(c) and 3.4(d) . . . was not sufficiently violative of accepted professional norms to conclude by clear and convincing evidence that respondent violated RPC 8.4(d)." The DEC considered respondent's misconduct to be sufficiently addressed by its findings that he had violated RPC 3.4(c) and RPC 3.4(d).

As for mitigation, the DEC noted respondent's "stated" contrition and remorse for his misconduct, as well as his full cooperation with the disciplinary proceedings. However, the DEC questioned respondent's sincerity, stating that "throughout respondent's testimony and summation brief, respondent attempts to place blame on others for the reason his client was undoubtedly prejudiced in the litigation."

Based on the foregoing, the DEC agreed with the OAE that the proper quantum of discipline for respondent's misconduct ranged from a reprimand to a censure and concluded that, because the misconduct was limited to one matter, a reprimand was appropriate.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent committed gross neglect, in violation of RPC 1.1(a); failed to act with diligence, in violation of RPC 1.3; failed to obey an obligation under the rules of a tribunal, in violation of RPC 3.4(c); and failed to comply with legally proper discovery requests, in violation of RPC 3.4(d). Specifically, he repeatedly failed to respond to Scanlon's discovery requests and motions, failed to file a motion to limit discovery, and failed to timely submit discovery. Consequently, Judge Ryan entered a default judgment against his client, Paoline. Despite his tardy claim to the OAE that Scanlon was over-litigating the case, respondent never raised specific objections to her or Judge Ryan, never asked her for an extension, and did not inform her about the alleged adverse effects of his medication.

Respondent admitted that, in hindsight, he should have filed motions to limit discovery and to vacate the default. Instead, he waited until a default judgment was entered against his client for the lack of discovery responses, and then, despite knowing the consequences, filed incomplete responses. When Judge Ryan gave respondent another chance to rectify his omissions for the

benefit of the client by way of his December 2, 2016 order, respondent again failed to provide complete responses, to the prejudice of his client.

Further, respondent failed to keep Paoline reasonably informed about his case, in violation of RPC 1.4(b). Respondent failed to promptly inform Paoline about the March 3, 2017 order, the entry of a default judgment against Paoline, and the default hearing scheduled for May 24, 2017. When Paoline learned of the order and hearing from his wife, he attempted to call respondent. Thus, respondent failed to communicate with Paoline and to inform him about his case, despite Paoline's repeated attempts to communicate with him.

Moreover, respondent made a false statement to a tribunal, in violation of RPC 3.3(a)(1); made a false statement of material fact to a third party, in violation of RPC 4.1(a)(1); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of RPC 8.4(c); and engaged in conduct prejudicial to the administration of justice, in violation of RPC 8.4(d). He made the false statement to Judge Ryan and Scanlon in the last-minute May 23, 2017 letter, wherein he claimed that he was "unable to proceed." Respondent's interview with the OAE demonstrated that his statement was a premeditated delay tactic, foolishly intended to protect his client's interests, to the detriment of judicial resources, and to the prejudice of his adversary. Specifically, respondent stated in the OAE interview that he knew when he made the

statement concerning his mental health that Judge Ryan would not be able to proceed with the case as a default matter. We do not endorse respondent's attempts to twist his misconduct into an argument that he was protecting his client's interests; respondent had numerous opportunities to ethically protect his client's interests by performing the legal services for which he had been retained.

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 3.3(a)(1); RPC 3.4(c); RPC 3.4(d); RPC 4.1(a)(1); RPC 8.4(c); and RPC 8.4(d). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Respondent's most serious misconduct was making a false statement of material fact to a tribunal, in violation of RPC 3.3(a)(1). The discipline imposed on an attorney who makes misrepresentations to a court or exhibits a lack of candor to a tribunal, or both, ranges from a reprimand to a long-term suspension. See, e.g., In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney who attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who had since died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); in mitigation, we found that the

attorney's actions were motivated by a misguided attempt at efficiency, rather than by dishonesty or personal gain); In re Schiff, 217 N.J. 524 (2014) (reprimand for attorney who filed inaccurate certifications of proof in connection with default judgments; specifically, at the attorney's direction, his staff prepared signed, but undated, certifications of proof in anticipation of defaults; thereafter, when staff applied for default judgments, at the attorney's direction, they completed the certifications, added factual information, and stamped the date; although the attorney made sure that all credits and debits reflected in the certification were accurate, the signatory did not certify to the changes, after signing, a practice of which the attorney was aware and directed; the attorney was found guilty of lack of candor to a tribunal and failure to supervise nonlawyer employees, in addition to RPC 8.4(a) and RPC 8.4(c)); In re McLaughlin, 179 N.J. 314 (2004) (reprimand imposed on attorney, who had been required by the New Jersey Board of Bar Examiners to submit quarterly certifications attesting to his abstinence from alcohol, but falsely reported that he had been alcohol-free during a period within which he had been convicted of driving while intoxicated, a violation of RPC 8.4(c); in mitigation, after the false certification was submitted, the attorney sought the advice of counsel, came forward, and admitted his transgressions); In re Duke, 207 N.J. 37 (2011) (attorney received a censure for failure to disclose his New York disbarment on

a form filed with the Board of Immigration Appeals, a violation of RPC 3.3(a)(5); the attorney also failed to adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); In re Monahan, 201 N.J. 2 (2010) (attorney censured for submitting two certifications to a federal district court in support of a motion to extend the time within which to file an appeal; the attorney misrepresented that, when the appeal was due to be filed, he was seriously ill and confined to his home on bed rest and, therefore, either unable to work or unable to prepare and file the appeal, a violation of RPC 3.3(a)(1); the attorney also practiced law while ineligible); In re Clayman, 186 N.J. 73 (2006) (censure imposed on attorney who misrepresented the financial condition of a bankruptcy client in filings with the bankruptcy court to conceal information detrimental to the client's Chapter 13 bankruptcy petition; in mitigation, we observed that, although the attorney had made a number of misrepresentations in the petition, he was one of the first attorneys to be reported for his misconduct by a new Chapter 13 trustee who had elected to enforce the strict requirement of the bankruptcy rules, rather than permit what had been the "common practice" of bankruptcy attorneys under the previous trustee; violations of RPC 3.3(a)(1), (2), and (5); RPC 4.1(a)(1) and (2); and RPC 8.4(c) and (d); in mitigation, the attorney also had an unblemished disciplinary record,

was not motivated by personal gain, and did not act out of venality); In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who, among other things, submitted to the court a client's CIS that falsely asserted that the client owned a home, and drafted a false certification for the client, which was submitted to the court in a domestic violence trial; violations of RPC 3.3(a)(1) and (4); other violations included RPC 1.8(a) and (e), RPC 1.9(c), and RPC 8.4(a), (c), and (d)); In re Perez, 193 N.J. 483 (2008) (on motion for final discipline, three-month suspension for attorney guilty of false swearing; the attorney, then the Jersey City Chief Municipal Prosecutor, lied under oath at a domestic violence hearing that he had not asked the municipal prosecutor to request a bail increase for the person charged with assaulting him; violations of N.J.S.A. 2C:28-2a and RPC 8.4(b)); In re Stuart, 192 N.J. 441 (2007) (three-month suspension for assistant district attorney in New York who, during the prosecution of a homicide case, misrepresented to the court that he did not know the whereabouts of a witness; however, the attorney had made contact with the witness four days earlier; violations of RPC 8.4(c) and (d); compelling mitigation justified only a three-month suspension); In re Forrest, 158 N.J. 428 (1999) (six-month suspension imposed on attorney who, in connection with a personal injury action involving injured spouses, failed to disclose the death of one of his clients to the court, to his adversary, and to an arbitrator, and advised

the surviving spouse not to voluntarily reveal the death; violations of RPC 3.3(a)(5), RPC 3.4(a), and RPC 8.4(c); the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (after an attorney concealed a judge's docket entry dismissing his client's divorce complaint, the attorney obtained a divorce judgment from another judge without disclosing that the first judge had denied the request; the attorney then denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was afraid; the attorney was suspended for six months; violations of RPC 3.3(a)(1) and (5) and RPC 8.4(c) and (d)); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve; violations of RPC 3.3(a)(1) and (2), RPC 3.5(b), and RPC 8.4(c) and (d); two prior private reprimands (now admonitions)); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false

evidence in an attempt to falsely accuse the babysitter of her own wrongdoing; violations of RPC 3.3(a)(4), RPC 3.4(f), and RPC 8.4(b)-(d)).

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, the presence of additional violations, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of Esther Maria Alvarez, DRB 19-190 (September 20, 2019) (admonition for attorney who was retained to obtain a divorce for her client, but for the next nine months, failed to take any steps to pursue the matter, and failed to reply to all but one of the client's requests for information about the status of her case, violations of RPC 1.1(a) and RPC 1.4(b); in another matter, the attorney agreed to seek a default judgment, but waited more than eighteen months to file the necessary papers with the court; although the attorney obtained a default judgment, the court later vacated it due to the passage of time, which precluded a determination on the merits, violations of RPC 1.1(a) and RPC 1.3); In the Matter of Michael J. Pocchio, DRB 18-192 (October 1, 2018) (admonition for attorney who filed a divorce complaint and permitted it to be dismissed for failure to prosecute the action; he also failed to seek reinstatement of the complaint, and failed to communicate with the client; violations of RPC 1.1(a),

RPC 1.3, RPC 1.4(b), and RPC 3.2); In re Burro, 235 N.J. 413 (2018) (reprimand for attorney who grossly neglected and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in $40,000 in accrued interest and a lien on property belonging to the executrix, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep the client reasonably informed about events in the case (RPC 1.4(b)); to return the client file upon termination of the representation RPC 1.16(d)); and to cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney suffered a stroke that forced him to cease practicing law and expressed his remorse); and In re Abasolo, 235 N.J. 326 (2018) (reprimand for attorney who grossly neglected and lacked diligence in a slip-and-fall case for two years after filing the complaint; after successfully restoring the matter to the active trial list, the attorney failed to pay a $300 filing fee, permitting the defendants' order of dismissal with prejudice to stand, in violation of RPC 1.1(a) and RPC 1.3; in addition, for four years, the attorney failed to keep the client reasonably informed about the status of the case, in violation of RPC 1.4(b)).

Ordinarily, a reprimand is imposed on an attorney who fails to obey court orders, even if the infraction is accompanied by other, non-serious violations. See, e.g., In re Ali, 231 N.J. 165 (2017) (attorney disobeyed court orders by

failing to appear when ordered to do so and by failing to file a substitution of attorney, violations of RPC 3.4(c) and RPC 8.4(d); he also lacked diligence (RPC 1.3) and failed to expedite litigation (RPC 3.2) in one client matter and engaged in ex parte communications with a judge, a violation of RPC 3.5(b); in mitigation, we considered his inexperience, unblemished disciplinary history, and the fact that his conduct was limited to a single client matter); In re Cerza, 220 N.J. 215 (2015) (attorney failed to comply with a bankruptcy court's order compelling him to comply with a subpoena, which resulted in the entry of a default judgment against him; violations of RPC 3.4(c) and RPC 8.4(d); he also failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b); prior admonition for recordkeeping violations and failure to promptly satisfy tax liens in connection with two client matters, even though he had escrowed funds for that purpose); and In re Gellene, 203 N.J. 443 (2010) (attorney was guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney also was guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors considered were the attorney's financial problems, his

battle with depression, and significant family problems; his ethics history included two private reprimands and an admonition).

A reprimand is the typical discipline for violations of RPC 4.1 and RPC 8.4(c), absent other serious ethics infractions or an ethics history. See, e.g., In re Walcott, 217 N.J. 367 (2014) (attorney misrepresented to a third party, in writing, that he was holding $2,000 in escrow from his client as collateral for a settlement agreement; violations of RPC 4.1(a)(1) and RPC 8.4(c)); In re Chatterjee, 217 N.J. 55 (2014) (for a five-year period, the attorney misrepresented to her employer that she had passed the Pennsylvania bar examination, a condition of her employment; she also requested, received, but ultimately returned, reimbursement for payment of the annual fee required of Pennsylvania attorneys; compelling mitigation considered); In re Liptak, 217 N.J. 18 (2014) (attorney misrepresented to a mortgage broker the source of the funds she was holding in her trust account; attorney also committed recordkeeping violations; compelling mitigation); In re Egenberg, 211 N.J. 604 (2012) (attorney was guilty of engaging in a conflict of interest in a real estate transaction and making misrepresentations on a RESPA statement, in violation of RPC 4.1(a) and RPC 8.4(c); we found, as significant mitigating factors, the attorney's unblemished twenty-three-year career at the time of his misconduct, and the thirteen years that had passed, without incident, before the grievance

was filed); and In re Frey, 192 N.J. 444 (2007) (attorney, while representing a purchaser, misrepresented to a real estate agent that he had received an additional deposit of $31,900; when the attorney received from his client an $11,000 installment toward the deposit, he later released those funds to his client, despite his fiduciary obligation to hold them and to remit them to the realtor).

Conduct prejudicial to the administration of justice comes in a variety of forms, and the discipline imposed for the misconduct typically results in discipline ranging from a reprimand to a suspension, depending on other factors present, including the existence of other violations, the attorney's ethics history, whether the matter proceeded as a default, the harm to others, and mitigating or aggravating factors. See, e.g., In re Ali, 231 N.J. 165 (2017) (reprimand for attorney who disobeyed court orders by failing to appear when ordered to do so and by failing to file a substitution of attorney, violations of RPC 3.4(c) and RPC 8.4(d); he also lacked diligence and failed to expedite litigation in one client matter and engaged in ex parte communications with a judge; in mitigation, we considered his inexperience, unblemished disciplinary history, and the fact that his conduct was limited to a single client matter); In re D'Arienzo, 207 N.J. 31 (2011) (censure for an attorney who failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at

two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, the complaining witness, and two defendants; in addition, the attorney's failure to provide the court with advance notice of his conflicting calendar prevented the judge from scheduling other cases for that date; prior three-month suspension and two admonitions plus failure to learn from similar mistakes justified a censure); In re DeClemente, 201 N.J. 4 (2010) (three-month suspension for an attorney who arranged three loans to a judge in connection with his own business, failed either to disclose to opposing counsel his financial relationship with the judge or to ask the judge to recuse himself, made multiple misrepresentations to the client, engaged in an improper business transaction with the client, and engaged in a conflict of interest); In re Block, 201 N.J. 159 (2010) (six-month suspension where the attorney violated a court order that he had drafted by failing to transport his client from prison to a drug treatment facility, instead he left the client at a church while he made a court appearance in an unrelated case; the client fled and encountered more problems while on the run; the attorney also failed to file an affidavit in compliance with R. 1:20-20, failed to cooperate with disciplinary authorities, failed to provide clients with writings setting forth the basis or rate of the fees, lacked diligence, engaged in gross neglect, and failed to turn over a client's file; prior reprimand

and one-year suspension); and In re Bentivegna, 185 N.J. 244 (2005) (motion for reciprocal discipline; two-year suspension for an attorney who was guilty of making misrepresentations to an adversary, negotiating a settlement without authority, filing bankruptcy petitions without authority to do so and without notifying her clients, signing clients' names to documents, making misrepresentations in pleadings filed with the court, violating a bankruptcy rule prohibiting the payment of fees before paying filing fees; the attorney was guilty of conduct prejudicial to the administration of justice, gross neglect, failure to abide by the client's decision concerning the objectives of the representation, failure to communicate with clients, excessive fee, false statement of material fact to a tribunal, and misrepresentations).

At a minimum, pursuant to Marraccini and Schiff, a reprimand is required for respondent's mishandling of Paoline's matter, as exacerbated by his misguided and false statement to the court and opposing counsel. Pursuant to the guidance of Cerza, where the attorney's similar misconduct also resulted in a prejudicial default ruling, the quantum of discipline is enhanced to at least a censure for respondent's failures to obey court orders and reasonable discovery requests.

To craft the appropriate discipline in this case, we also must consider both mitigating and aggravating factors. In aggravation, respondent caused financial

harm to Lisa Paoline by delaying litigation and causing her to incur additional legal fees. In mitigation, respondent has no discipline in twenty-eight years at the bar; testified that he was remorseful; and has taken measures to prevent a reoccurrence of such misconduct, and now attends to his mental and physical health.

On balance, considering the compelling mitigation present, we conclude that a censure is a sufficient quantum of discipline to protect the public and preserve confidence in the bar.

In light of the mental health issues attendant to respondent's misconduct, we require respondent to attend psychological counseling and to provide proof of fitness to practice law, as attested to by a mental health professional approved by the OAE, within sixty days of the Court's disciplinary Order in this matter. Further, respondent should be directed to provide to the OAE quarterly reports documenting his continued psychological counseling, for a period of two years.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bruce W. Clark, Chair

By: _____
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael Charles Cascio
Docket No. DRB 20-238

Argued: January 21, 2021

Decided: June 15, 2021

Disposition: Censure

Members	Censure
Clark	X
Gallipoli	X
Boyer	X
Hoberman	X
Joseph	X
Petrou	X
Rivera	X
Singer	X
Zmirich	X
Total:	9

Johanna Barba Jones
Chief Counsel