Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 19-427, 20-237,
and 20-240
District Docket Nos. XIV-2018-0425E;
XIV-2018-0411E; and XIV-2019-0551E

In the Matters of	:
Scott Michael Marinelli	:
An Attorney at Law	:

Decision

Decided: July 21, 2021

Lauren Martinez, on behalf of the Office of Attorney Ethics, waived appearance for oral argument in DRB 20-237.

Colleen L. Burden, on behalf of the Office of Attorney Ethics, waived appearance for oral argument in DRB 20-240.

Robert E. Ramsey, on behalf of respondent, waived appearance for oral argument in DRB 20-237 and DRB 20-240.

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

These matters we consolidated for our review. DRB 19-427 was before us on a certification of the record filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 8.1(b) (two instances – failure to cooperate with disciplinary authorities).[1]

DRB 20-237 was before us on a motion for final discipline filed by the OAE, pursuant to R. 1:20-13(c)(2), following respondent's conviction, in Pennsylvania, of third-degree passing bad checks, a felony, in violation of 18 Pa.C.S.A. § 4105(a)(1). The OAE asserted that this offense constitutes a violation of RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

DRB 20-240 was before us on a motion for final discipline filed by the OAE, pursuant to R. 1:20-13(c)(2), following respondent's adjudication, in New Jersey, of purposely or knowingly violating an order entered under the

[1] Due to respondent's failure to file an answer to the formal ethics complaint, the OAE amended the complaint to include the second RPC 8.1(b) charge.

provisions of the Prevention of Domestic Violence Act of 1991, a disorderly persons offense, contrary to N.J.S.A. 2C:29-9(b)(2). The OAE asserted that this offense constitutes a violation of RPC 8.4(b).

For the reasons set forth below, we determine to grant the OAE's motions for final discipline and to impose a consolidated, two-year suspension for the totality of respondent's misconduct.

Respondent was admitted to the New Jersey bar in 2001. In 2002, he was admitted to the New York bar and, in 2003, he was admitted to the District of Columbia bar.

Effective August 25, 2017, the Court temporarily suspended respondent for his failure to cooperate with the OAE. In re Marinelli, 230 N.J. 341 (2017). He remains suspended to date.

On November 18, 2019, the Court censured respondent in connection with consolidated default matters. In re Marinelli, 240 N.J. 181 (2019) (Marinelli I). In the first matter, respondent violated RPC 8.1(b) and RPC 8.4(d) (conduct prejudicial to the administration of justice) by failing to file an affidavit of compliance following his 2017 temporary suspension, as R. 1:20-20(b)(15) requires. In the second matter, respondent violated RPC 8.1(b) by failing to file a written reply to an ethics grievance.

DEFAULT
DRB 19-427 and District Docket No. XIV-2018-0425E

Service of process was proper. On September 20, 2019, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record. On October 8, 2019, the certified mail was delivered, but the signature on the return receipt is illegible. The regular mail was not returned.

On October 15, 2019, the OAE sent a letter, by certified and regular mail, to respondent's home address, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The certified letter was unclaimed and returned to the OAE. The regular mail was not returned.

As of November 14, 2019, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

On March 9, 2020, we determined to stay this matter, pending disposition of respondent's motion for reconsideration of the December 3, 2019 order of the Honorable Stuart A. Minkowitz, A.J.S.C., which denied, without prejudice, respondent's motion, pursuant to R. 1:20-4(g)(2), for the appointment of counsel, on the basis of indigency, in this and other pending ethics cases. On October 28, 2020, Robert E. Ramsey, Esq., notified the Office of Board Counsel that he had been assigned, pro bono, to represent respondent in this matter. On behalf of respondent, Ramsey asked us to lift the stay of this matter, to reinstate the default, and to consider the matter "for the imposition of final discipline."

We now turn to the allegations of the complaint.

As stated above, effective August 25, 2017, the Court temporarily suspended respondent from the practice of law. On May 21, 2018, the OAE received an ethics grievance from Sean Markham, Esq., a South Carolina attorney, who alleged that respondent was practicing law while suspended. Specifically, on September 15, 2017, Markham's client, Jarrod A. Bank, had retained Synergy Law LLC (Synergy) to represent him in connection with a bankruptcy matter. Respondent, a member of Synergy's "locally licensed Of Counsel Attorney Network," had solicited Bank by direct mail and was the attorney assigned to handle Bank's matter.

On August 9, 2018, the OAE sent a copy of Markham's grievance to respondent, by certified mail, and directed him to submit, on or before August 20, 2018, a written reply to the allegations. On August 23, 2018, the OAE sent another copy of the grievance to respondent, by certified mail, and directed him to submit a reply on or before September 5, 2018.

On August 27, 2018, respondent accepted delivery of both certified letters. He failed, however, to submit a written reply to the grievance.

Based on the above facts, the complaint charged respondent with having twice violated RPC 8.1(b) by failing to submit a written reply to the grievance and by failing to file an answer to the complaint.

MOTION FOR FINAL DISCIPLINE
DRB 20-237 and District Docket No. XIV-2018-0411E

From the summer of 2016 until the summer of 2017, respondent was employed by Homestead Land Services (Homestead). In that position, he handled numerous real estate closings. On June 2, 2017, Thomas Fiers and Robert Kasper, the owners of Mountain Lakes Abstract Company (Mountain Lakes), sold Mountain Lakes to respondent. In connection with the transaction, respondent received Mountain Lakes' business records, files, and documents,

which included blank checks from a closed account with Penn Security Bank and Trust (Penn Security).

On June 29, 2018, the Honorable Kristina Anzini, M.D.J., issued a warrant for respondent's arrest and a criminal complaint, charging respondent with having committed certain third-degree felony and first-degree misdemeanor crimes in Stroudsburg, Pennsylvania, between August 31, 2017 and April 5, 2018, in connection with four real estate transactions involving Mountain Lakes and Homestead. Specifically, the criminal complaint charged respondent with third-degree felony theft by deception – false impression, contrary to 18 Pa.C.S.A. § 3922(a)(1), for issuing, on March 27, 2018, an $11,316 check to the Monroe County Recorder of Deeds and a $2,486.50 check to the Lehigh County Recorder of Deeds, from the closed Penn Security account.

In connection with real estate closings for Jasmine Homes and Chad Scholl, which took place on September 29, 2017 and March 16, 2018, respectively, respondent collected $11,316 from Jasmine Homes and $2,486.50 from Chad Scholl. Respondent knew that he had a legal obligation to disburse those funds but failed to do so. He, thus, was charged with two counts each of the following third-degree felonies: (1) theft by failing to make required disposition of funds, contrary to 18 Pa.C.S.A. § 3927(a); (2) receiving stolen

property, contrary to 18 Pa.C.S.A. § 3925(a), by intentionally receiving, and then disposing of, the funds, knowing that they were stolen; and (3) deceptive business practices – making false or misleading written statements for the purpose of obtaining property or credit, contrary to 18 Pa.C.S.A. § 4107(a)(6).

In connection with a real estate closing for Fred and Deborah Neibauer, on August 31, 2017, respondent collected $987.68 to pay their property taxes, but failed to do so. In addition, on December 19, 2017, he collected $1,011 from Daniel and Tamara Ann Harrington for payment of an insurance premium, which he failed to pay. The criminal complaint, thus, charged respondent with having committed two counts each of the following first-degree misdemeanor crimes: (1) theft by unlawful taking – movable property, contrary to 18 Pa.C.S.A. § 3921(a); (2) theft by failing to make required disposition of funds, contrary to 18 Pa.C.S. § 3927(a); (3) receiving stolen property, contrary to 18 Pa.C.S.A. § 3925(a); and (4) deceptive business practices – making false or misleading written statements for the purpose of obtaining property or credit, contrary to 18 Pa.C.S.A. § 4107(a)(6).

In connection with all four matters, the criminal complaint further charged respondent with four counts of first-degree misdemeanor impersonating a notary public, contrary to 18 Pa.C.S.A. § 4913, between September 29, 2017 and March

16, 2018, by serving as a title insurance/closing agent during four real estate closings.

On July 3, 2018, respondent appeared for a preliminary arraignment, and bail was set at $25,000. On July 23, 2018, District Judge Anzini included a non-monetary condition of bail – that respondent was "not to present himself as a Title Agent or Settlement Agent in any real estate transaction in the Commonwealth of Pennsylvania." On September 12, 2019, respondent was arraigned and entered a plea of not guilty.

On January 16, 2019, because respondent failed to appear for a pre-trial conference, the court issued a bench warrant for his arrest. On January 24, 2019, the court conducted a hearing on both the bench warrant and on the Commonwealth's corresponding motion to revoke respondent's bail. The court determined to revoke respondent's bail, based on new allegations made by the Commonwealth.

Specifically, the Commonwealth proffered evidence that, in addition to the four real estate transactions at issue in the instant matter, respondent had been involved in at least twenty-six transactions, while employed by Homestead, in which "mortgages, closing documents and/or deeds were not recorded," after he had collected $43,000 for that purpose; that he also charged improper fees

during the closings, including attorneys' fees; and that there were additional victims who had not yet been identified.

Also, while employed by Homestead, respondent had used a computer software program called Simplifile to record mortgages. Respondent failed, however, to forward to Simplifile more than $52,000 in recording fees that he had collected at various closings.

Further, while respondent was a Homestead employee, Homestead's insurance carrier paid $57,127.69 to Homestead, in satisfaction of a claim arising from a former Homestead employee's theft of funds. Respondent deposited the check in Homestead's bank account and, over the course of two days, issued to his attorney trust account eleven Homestead checks, totaling $55,260.71, without the knowledge or consent of Homestead's owner, Elwood Christie Kurtz, who claimed that none of the checks written to respondent's trust account had anything to do with Homestead. Regarding the above alleged misconduct, the Commonwealth asserted that respondent had improperly handled $150,000 in funds, in addition to the crimes leading to his arrest.

According to the motion to revoke bail, on January 22, 2019, an anonymous victim reported that respondent fraudulently had transferred title to four properties, owned by the victim, to AASTHA Real Estate Investments,

LLC, for a total of $238,000. The victim stated that he previously had worked with respondent at Mountain Lakes, without issue.

The victim further alleged that, although respondent had represented to the victim that he had investors interested in purchasing them, the victim did not consent to the sale of the properties; did not attend any closings; did not sign any documents; and did not receive any proceeds from the sales. Also, the victim claimed that his signature was forged on the deeds, and that mortgages were obtained against all four properties without his authorization.

As stated above, respondent's bail condition prohibited him from presenting himself as a title agent or settlement agent in any Pennsylvania real estate transaction. According to the Commonwealth, the signature of the "settlement agent and/or notary" appears to have been forged. Yet, respondent was the only suspect in the fraudulent transactions.

Next, the Commonwealth asserted that respondent was engaged in the unauthorized practice of law through his affiliation with Synergy,[2] a District of Columbia business that purported to provide mortgage modification assistance to homeowners, but, instead, counseled them to file pro se bankruptcy applications. One Synergy client, Joseph Quildon, who lived in Effort,

[2] Respondent's affiliation with Synergy was at issue in DRB 19-427.

Pennsylvania, produced a retainer agreement that identified respondent as his attorney.

Synergy has been enjoined, sanctioned, or ordered to disgorge fees in several federal districts, including the District of New Jersey. Yet, the Commonwealth asserted that respondent had traveled to those states in furtherance of Synergy's business, that he was engaged in the practice of law in those jurisdictions, and that his bank records for 2018 reflected receipt of approximately $129,000 from Synergy.

Moreover, the Commonwealth contended that respondent was under investigation for falsifying various documents, including an escrow agent application to First American Title Company; a third party's certification to the Supreme Court of New Jersey in respect of a New Jersey disciplinary action; and an application and credit card submitted to a document preparation firm. Finally, respondent had provided a former address on the bail bonds, instead of the required current address.

Based on the above information, the Commonwealth asserted that respondent "pose[d] a significant risk to the community, particularly individuals engaged in land transactions," and sought revocation of bail. The court revoked respondent's bail and denied his petition for modification.

On June 12, 2019, respondent entered a guilty plea to one count of third-degree passing bad checks, a felony, contrary to 18 Pa.C.S.A. § 4105(a)(1),[3] based on his passing or issuing checks for the payment of money, between August 31, 2017 and March 27, 2018, knowing that they would not be honored. The court sentenced respondent to a term of incarceration in the Monroe County Correctional Facility for four to twelve months, followed by a one-year term of probation. In addition to requiring respondent to pay the cost of the proceedings and supervisory fees for probation and parole supervision, the court ordered respondent to pay restitution as follows: $11,316 to the Monroe County Recorder of Deeds; $2,486.50 to the Lehigh County Recorder of Deeds; $987.68 to First American Title Insurance Company; and $1,011 to the Harringtons. Because respondent had served in excess of the minimum sentence, the court placed him on parole and prohibited him from engaging in any real estate transactions on behalf of third persons.

In its motion for final discipline, the OAE sought a three-year suspension based on respondent's conviction, the harm to the victims, and the presence of "several aggravating factors." Specifically, the OAE argued that his misconduct

[3] Under Pennsylvania law, third-degree felony passing bad checks addresses checks that are $75,000 or more. 18 Pa.C.S.A. § 4105(c)(1)(v).

was part of a pattern, which required him to make restitution to other parties; emphasized that he provided an incorrect address to the Commonwealth, which, in part, resulted in the revocation of his bail; and noted his disciplinary history.

In support of its request, the OAE cited In re Petrocelli, 186 N.J. 223 (2006), in which the Court disbarred an attorney who grossly neglected two matters; engaged in criminal conduct in five matters; acted dishonestly or made misrepresentations in six matters; practiced law while suspended in two matters; lied to ethics authorities; failed to comply with the notice and affidavit provisions of R. 1:20-20 governing suspended attorneys; and failed to cooperate with the OAE in an audit of his financial books and records. The many acts of misconduct included his issuance of a series of bad checks. In the Matter of Lucio Petrocelli, DRB 05-263 (December 27, 2005).

Through counsel, respondent submitted a certification proffering mitigating factors. According to respondent, the Pennsylvania matter represented his first involvement as a defendant in the criminal justice system, and his incarceration deprived his four children (ages thirteen (twins), eleven, and six) of their father and his income, resulting in dependence on food stamps and potential eviction. Respondent expressed shame and remorse, stemming from "this catastrophe," which he described as a burden that he must carry with

him for the rest of his life. Respondent maintained that, since his release from incarceration, he has tried to make amends with his family, and he has been employed in a non-law-related capacity on a full-time basis, allowing him to modestly support his family and to provide them with health insurance. Finally, respondent stated that a three-year suspension would "drastically reduce the likelihood" that he will ever practice law again in New Jersey. Instead, he contended that a term of suspension, to be served concurrently with the temporary suspension, would both protect the public and impose a level of discipline that is fair to him.

MOTION FOR FINAL DISCIPLINE
DRB 20-240 and District Docket No. XIV-2019-0551E

On October 20, 2018, the Honorable Andrew M. Wubbenhorst, P.J.M.C., then presiding judge of the municipal courts of Morris and Sussex Counties, New Jersey, entered a pre-trial release order following respondent's alleged terroristic threats against another person. On November 20, 2018, respondent was arrested for allegedly violating the pre-trial release order by contacting the victim by telephone, contrary to N.J.S.A. 2C:29-9(a), a fourth-degree crime. In addition, he was charged with anonymously harassing the victim, at extremely inconvenient hours, in offensively coarse language, and in a manner likely to

cause annoyance or alarm, by continuously text messaging and calling the victim from an anonymous number, contrary to N.J.S.A. 2C:33-4(a), a disorderly persons offense.

On August 12, 2019, the Morris County Prosecutor charged respondent with purposely or knowingly disobeying a judicial order, specifically, Judge Wubbenhorst's October 2018 pre-trial release order, contrary to N.J.S.A. 2C:29-9, a fourth-degree crime. That same day, respondent waived indictment and agreed to be tried in the Superior Court of New Jersey, Law Division – Criminal Part, Morris County. Pursuant to a twelve-month Pre-trial Intervention (PTI) Order of Postponement, entered on that date, respondent agreed to certain conditions, including completion of a program.

On August 12, 2019, respondent appeared before the Honorable Stephen J. Taylor, J.S.C., and entered a guilty plea to purposely or knowingly violating an order entered under the provisions of the Prevention of Domestic Violence At of 1991, a disorderly persons offense, contrary to N.J.S.A. 2C:29-9(b)(2). The court then admitted him to the PTI program.

In its brief, the OAE sought either a censure or a three-month suspension for respondent's adjudication, given his disciplinary history and his failure to inform the OAE that he had been charged with an indictable offense. Through

counsel, respondent acknowledged that either quantum of discipline would be "reasonable and fair."

* * *

Turning first to the default matter (DRB 19-427), we find that the facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

R. 1:20-3(g)(3) requires a lawyer to cooperate in a disciplinary investigation and to reply in writing within ten days of receipt of a request for information. RPC 8.1(b), in turn, prohibits a lawyer from knowingly failing to reply to a lawful demand for information from a disciplinary authority. By ignoring the OAE's requests that he reply to the grievance, respondent violated RPC 8.1(b). Respondent again violated RPC 8.1(b) by failing to answer the ethics complaint.

When an attorney fails to cooperate with disciplinary authorities, and previously has been disciplined, but the attorney's ethics record is not serious, reprimands have been imposed. See, e.g., In re Larkins, 217 N.J. 20 (2014) (default; attorney did not reply to the ethics investigator's attempts to obtain

information about the grievance and failed to file an answer to the formal ethics complaint; although we noted that a single violation of RPC 8.1(b), in a default matter, does not necessitate enhancement of the discipline from an admonition to a reprimand, a reprimand was imposed based on a prior admonition and, more significantly, a 2013 censure, also in a default matter, in which the attorney had failed to cooperate with an ethics investigation); and In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct).

Here, however, respondent has a disturbing history of evading his obligations as a member of the bar. The Court imposed the 2019 censure just days after the complaint in this matter was served on respondent. Thus, it cannot be said that respondent has refused to learn from prior mistakes, but another aggravating factor may be considered in respect of this misconduct.

On August 27, 2018, more than a year before the Court's imposition of the 2019 censure, respondent accepted the OAE's August 2018 letters requesting his reply to the grievance in this matter. Certainly, as of that date, respondent was aware that his conduct underpinning Marinelli I was under scrutiny, because he had accepted delivery of similar letters in that case, as early as June 2018. In the Matters of Scott Michael Marinelli, DRB 18-352 and 18-376 (May 15, 2019)

(slip op. at 7). Moreover, on the day that respondent accepted delivery of the OAE's August 2018 letters in this matter, he also accepted delivery of the ethics complaint filed in Marinelli I, which issued on August 17, 2018. Id. at 5. Despite respondent's awareness that his conduct was under scrutiny in Marinelli I, which included a charge arising from his failure to submit a written reply to a grievance, he continued to evade and avoid the disciplinary system by ignoring his obligation to submit a written reply to the grievance in this matter and by failing to file an answer to the ethics complaint. We accord this factor weight in aggravation, thus, enhancing the appropriate quantum of discipline to a censure.

In further aggravation, we also consider the default status of this matter. "[A] respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted). In light of respondent's default and the aggravation detailed above, at least a censure is appropriate in the default matter.

Turning to the additional matters before us, we determine to grant both OAE motions for final discipline. Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that Rule, a criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In

re Magid, 139 N.J. 449, 451 (1995); and In re Principato, 139 N.J. 456, 460 (1995). Respondent's Pennsylvania guilty plea to third-degree felony passing bad checks, contrary to 18 Pa.C.S.A. § 4105(a)(1), and his New Jersey guilty plea to purposely or knowingly violating an order entered under the provisions of the Prevention of Domestic Violence Act of 1991, contrary to N.J.S.A. 2C:29-9(b)(2)(2), a disorderly persons offense, thus, establish two violations of RPC 8.4(b). Pursuant to that Rule, it is unethical conduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer."

Further, by passing bad checks in Pennsylvania, respondent also violated RPC 8.4(c), which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent's issuance of two checks, to the Monroe and Lehigh County Recorders of Deeds, against an account that he knew to be closed, was an act of dishonesty, in violation of that RPC.

In sum, we find that respondent violated RPC 8.1(b) (two instances), RPC 8.4(b) (two instances), and RPC 8.4(c).

Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, 139 N.J. at 451-52; and In re Principato, 139 N.J. at 460.

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and the respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Ibid. (citations omitted). Fashioning the appropriate sanction involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them relevant to the nature and extent of discipline to be imposed." Magid, 139 N.J. at 452. In motions for final discipline, it is acceptable to "examine the totality of the circumstances" including the "details of the offense, the background of respondent, and the pre-sentence report" before "reaching a decision as to [the] sanction to be imposed." In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

That respondent's conduct did not involve the practice of law or arise from a client relationship does not excuse the ethics transgression or lessen the degree

of sanction. In re Musto, 152 N.J. 165, 173 (1997). Offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995). The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect his or her clients. In re Schaffer, 140 N.J. 148, 156 (1995).

Regarding the first motion for final discipline (DRB 20-237), three New Jersey disciplinary cases have addressed the disciplinary consequences imposed on attorneys who pass bad checks. In re Downer, 127 N.J. 168 (1992) (reprimand); In re Artusa, 246 N.J. 154 (2021) (censure); and In re Petrocelli, 186 N.J. 223 (disbarment).

In Downer, the Court imposed a reprimand on the attorney for violations of RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.15(b) (failure to promptly deliver a client's property); RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6); RPC 1.16(d) (improper withdrawal from a representation in a matter); RPC 4.1(a)(1) and RPC 8.4(d) (misrepresentation to a court clerk the attorney's reasons for not appearing in court in a matter); RPC 5.5(a) (failure to maintain a bona fide office); RPC

8.1(b) (failure to cooperate with the district ethics committee); and RPC 8.4(b) and (c).

Specifically, Downer's conduct involved three matters, in addition to charges arising from recordkeeping violations, failure to maintain a bona fide office, and failure to cooperate with the district ethics committee. In the Matter of John L. Downer, Jr., DRB 91-008 (May 23, 1991) (slip op. at 1, 3, 5, 7, 11). The first ethics matter arose from the return of two checks issued by Downer for the purchase of a typewriter. Id. at 1-2. After both checks were returned for insufficient funds, the payee filed criminal charges against Downer for issuing bad checks and committing theft by deception. Id. at 2. Downer failed to appear for the original and rescheduled trial dates, resulting in the issuance of two bench warrants. Ibid.

When the district ethics committee asked Downer why he had not rectified the matter, he testified that he was unable to communicate with the court clerk, who was on vacation, and he was unable to make restitution because he did not have a job at the time. Ibid. Downer promised the committee that he would resolve the matter after the clerk returned from vacation and would provide the committee with documentation of the resolution. Ibid. Downer failed, however,

to provide the promised documentation. Ibid. His conduct violated RPC 8.4(b) and (c) and contributed to the finding of a pattern of neglect. Id. at 3, 13.

In the second matter, Downer lied to a municipal court clerk to avoid appearing at a trial (RPC 4.1(a)(1) and RPC 8.4(d)); failed to properly terminate his representation of the client (RPC 1.16(d)); and engaged in conduct prejudicial to the administration of justice (RPC 8.4(d)). Id. at 4.

In the third matter, Downer failed to file opposition to a motion to dispossess his clients from a residential property. Id. at 6. Further, at the court hearing, he did not tender any possible defenses, although he claimed that he had done so in the judge's chambers that day. Ibid. Thereafter, Downer claimed that it did not occur to him to file an appeal, although he claimed to have discussed the matter with his clients, who contradicted his claim. Id. at 7.

Downer also failed to provide a third party with an appraisal for which he had paid half the fee. Ibid. Finally, although the committee granted Downer's request for a two-week recess to allow him to produce his files in the matter, he failed to follow through. Ibid.

In our view, the most serious charge against Downer was his failure to deliver the monthly rental payments on behalf of his clients, which resulted in their eviction. Id. at 13. Although we suspected the negligent misappropriation

of funds, we were unable to make such a determination because Downer's recordkeeping practices were so deficient. Id. at 13-14.

Downer received a reprimand, given the extensive mitigation, which included documented memory problems, exacerbated by long-term drug and alcohol abuse, his successful rehabilitation efforts, and his departure from the practice of law. Id. at 15. Thus, we concluded that a suspension would not serve the purpose of justice. Id. at 16.

In Petrocelli, a default matter, the Court disbarred the attorney for misconduct in six matters, including one matter in which he passed several bad checks to the holder of a $68,000 judgment against his client, one of which he knew was drawn against insufficient funds; another matter in which he repaid someone who had lent him $42,000 by issuing three checks against two accounts that he knew were closed; a third matter involving a certified public accountant (CPA) who had billed him $5,000 to reconcile his attorney trust account, which Petrocelli paid by passing a bad check issued against a closed account, finally paying him in cash after the CPA had filed a criminal complaint and a warrant was issued for his arrest; and, finally a matter in which he issued to an attorney who had taken over the representation of Petrocelli's client a $3,000 check, which was returned for insufficient funds. In the Matter of Lucio Petrocelli,

DRB 05-263 (December 27, 2005) (slip op. at 4-9;15-18). Petrocelli even issued bad checks, drawn against accounts he knew to be closed, to the New Jersey Lawyers' Fund for Client Protection. Id. at 9.

In addition to Petrocelli's criminal conduct in five matters and his dishonest actions or misrepresentations in six matters, he practiced law while he was temporarily suspended in two matters; grossly neglected two matters; lied in an affidavit to ethics authorities; failed to comply with the notice and affidavit provisions of R. 1:20-20 regarding suspended attorneys; failed to cooperate with the OAE in the audit of his attorney trust and business accounts; and allowed the complaint against him to proceed as a default. Id. at 19.

In our view, practicing while suspended was one of Petrocelli's "most serious infractions." Ibid. In addition, he "showed a penchant for passing bad checks – a chronic and criminal practice." Id. at 22. We elaborated:

> [h]e intentionally defrauded his payees over and over again through the illegal use of closed bank accounts. He did so month after month. Even as bad checks were returned to him by the banks involved, he brazenly issued new bad checks on those and other accounts, knowing that they were closed.
>
> [Ibid.]

Because Petrocelli's conduct "struck at the core of an attorney's character – lies, dishonesty, and criminal activity," disbarment was "the only appropriate sanction for [his] grievous ethics and criminal offenses." Id. at 24-25.

In a recent case, In the Matter of Santo V. Artusa, Jr., DRB 20-184 (October 21, 2020) (slip op. at 1), on a motion for discipline by consent, we imposed a censure on an attorney who, in addition to failing to comply with the recordkeeping provisions of R. 1:21-6 and failing to comply with the OAE's request for certain attorney books and records, violated RPC 8.4(b) and (c), by passing to the Hudson Vicinage sixteen bad checks, ranging from $50 to $325, and totaling $3,353. Thirteen of the checks were for amounts that constituted a fourth-degree crime, pursuant to N.J.S.A. 2C:21-5(c)(3) ($200 to $999.99), and three were for amounts that constituted a disorderly persons offense, pursuant to N.J.S.A. 2C:21-5(c)(4) (less than $200). Id. at 2-3.

In Artusa, we found in mitigation that, although the attorney had passed bad checks, he did not do so as part of a scheme to receive anything of personal value in return. Id. at 5. He also stipulated to his violations; had been a member of the bar for eleven years; and had no disciplinary history. Ibid. In aggravation, however, Artusa had not only "repeatedly engaged" in the passing of bad checks,

he passed them to the court. In our view, the aggravation outweighed the mitigation, warranting a censure.

Here, respondent's misconduct lies between that of the attorneys in Artusa and Petrocelli. He intentionally issued two checks totaling $13,802.50 against a closed account, to the Monroe and Lehigh County Recorders of Deeds. Although he did not plead guilty to any crime relating to the checks issued to the Neibauers and Harringtons, the court ordered him to make restitution in the amounts of $987.68 to an insurance company and $1,011 to the Harringtons, representing funds that he had collected but failed to disburse.

Although the attorney in Artusa passed more bad checks than respondent, they totaled much less than the amount at issue in this case. Similarly, although the present record lacks evidence that respondent repeatedly passed bad checks, as did the attorney in Artusa, the bad checks were passed to separate Recorders of Deeds, which are government agencies. In addition, when respondent was granted bail, he provided an incorrect address to the Commonwealth, which, in part, resulted in the revocation of his bail.

Unlike Artusa, by writing bad checks against a closed account, respondent certainly expected to receive something of value in return. Moreover, in 2019, the Court censured respondent for his misconduct in two matters, both of which

involved failure-to-cooperate violations. Therefore, at a minimum, a suspension is in order. In our view, disbarment is a bridge too far. Respondent's conduct, as proven to date, pales in comparison to that of Petrocelli.

Regarding the second motion for final discipline (DRB 20-240), only one previous matter has addressed an illegal act similar to respondent's: In re Poveromo, 176 N.J. 507 (2003). There, the Court imposed a reprimand on an attorney who violated RPC 8.4(b), by virtue of his conviction of N.J.S.A. 2C:29-9(b)(1). In the Matter of Joseph E. Poveromo, DRB 02-400 (April 2, 2003) (slip op. at 1, 3). Following our survey of cases in which reprimands were imposed on attorneys who violated court orders and were adjudicated guilty of disorderly persons offenses, we determined to impose a reprimand on Poveromo. Id. at 4-5. Although Poveromo's disciplinary history comprised two reprimands imposed in two default matters, we did not enhance the discipline in the case involving his violation of the court order because, unlike the prior matters, Poveromo's conduct did not involve the practice of law. Id. at 5.

Here, respondent's violation of the October 2018 pre-trial release order occurred prior to the censure imposed on him in the two default matters (Marinelli I). Thus, the 2019 censure does not justify enhancing the discipline beyond a reprimand for respondent's violation of RPC 8.4(b) in this matter.

This leaves for determination the appropriate measure of discipline to impose for the totality of respondent's misconduct in the three matters now before us. As stated above, at least a censure is in order in the default matter, and a reprimand is warranted in the second motion for final discipline. In fashioning the term of suspension, a close examination of the nature of respondent's misconduct is in order.

First, respondent has engaged in a pattern of refusing to cooperate with disciplinary authorities. His 2017 temporary suspension arose from his failure to cooperate with disciplinary authorities, which continues, as the temporary suspension has been in effect for more than two years. His 2019 censure also arose, in part, from his failure to cooperate in two default matters. Here, the complaint in the default matter contains two charges of failure to cooperate with disciplinary authorities.

Second, respondent has demonstrated disdain for the courts. In the Pennsylvania motion for final discipline, his bail was revoked after he failed to appear for a pre-trial conference and provided an old address, and the Commonwealth pointed out evidence of the depth and breadth of his behavior. In the New Jersey motion for final discipline, respondent demonstrated that he is incapable of following a court order in a domestic violence matter.

In light of the aggravating factors mentioned above, plus the pattern of recalcitrance directed to authorities that every attorney should respect and obey, we impose a consolidated, two-year suspension for the totality of respondent's misconduct. Given the nature of his temporary suspension, which respondent has taken no action to dissolve, the two-year disciplinary suspension is not imposed retroactively.

Vice-Chair Gallipoli and Members Petrou and Rivera voted to recommend to the Court that respondent be disbarred.

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: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Scott Michael Marinelli
Docket Nos. DRB 19-247, DRB 20-237, and DRB 20-240

Decided: July 20, 2021

Disposition: Two-year suspension

Members	Two-year suspension	Disbar
Clark	X	
Gallipoli		X
Boyer	X	
Hoberman	X	
Joseph	X	
Petrou		X
Rivera		X
Singer	X	
Zmirich	X	
Total:	6	3

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel