Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-004
District Docket No. IV-2019-0031E

In the Matter of	:
A. Charles Peruto, Jr.	:
An Attorney at Law	:

Decision

Argued: May 20, 2021

Decided: September 16, 2021

Thomas McKay, III, Esq. appeared on behalf of the District IV Ethics Committee.

Kenneth D. Aita, Esq. appeared on behalf of respondent.

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 IV Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (gross neglect); RPC 1.1 (b) (pattern of 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 promptly comply with reasonable requests for information); RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 1.15(b) (failure to promptly deliver to the client any funds or other property that the client is entitled to receive); RPC 1.16 (b) (a lawyer may withdraw from representation if the withdrawal can be accomplished without material adverse effects on the interest of the client); RPC 1.16(c) (failure to comply with applicable law requiring notice to or permission of a tribunal when terminating a representation); RPC 1.16(d) (failure to protect a client's interests upon termination of representation and to refund the unearned portion of the fee); RPC 5.1(b) and (c) (failure to supervise a subordinate lawyer); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

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

Respondent earned admission to the New Jersey bar in 1981 and to the Pennsylvania bar in 1979. He maintains a law office in Philadelphia, Pennsylvania.

On March 4, 1992, he received a private reprimand (now, an admonition) for violating RPC 1.3 and RPC 1.4(a) (failure to inform a prospective client how, when, and where the client may communicate with the lawyer), after he failed

to follow proper procedure in being relieved as counsel and obtaining an extension from the Appellate Division to file a brief. Respondent also failed to notify the client – who wished to allege ineffective assistance of counsel in respondent's handling of the underlying trial – that the appeal had been dismissed. In the Matter of A. Charles Peruto, Jr., DRB 91-339 (March 4, 1992).

The facts of this matter are as follows. On January 8, 2019, Alfred W. Ricco, Jr. filed a grievance against respondent alleging that, from February 14, 2011 through January 31, 2013, respondent had engaged in unethical conduct.

Specifically, on February 14, 2011, Ricco retained respondent's firm, the Law Offices of A. Charles Peruto, Jr. (the Firm), to assist him with litigation against his sister, Eileen M. Vogel. Ricco testified that his initial meeting at the Firm included respondent; Richard L. DeSipio, Esq.[1] (an associate at the Firm); a third, unknown man; and secretarial staff. Respondent testified that it was common for all attorneys in the Firm to attend new client meetings in case he assigned the new matter to an associate.

At the retainer meeting, Ricco explained to respondent his concerns regarding his mother's will. Ricco claimed that Vogel had altered the wills of both their mother, Sophia J. Ricco, who passed away on May 28, 2009, and their

[1] New Jersey Supreme Court records reflect DeSipio as administratively ineligible to practice law, with no transactions since November 1, 2019. The Disciplinary Board of the Supreme Court of Pennsylvania lists DeSipio as deceased.

aunt, Marie Bittner, who passed away on March 7, 2003. Ricco further claimed that Vogel also had committed a series of thefts. Finally, Ricco asserted that Vogel's actions had resulted in the wrongful death of their mother.

Following the initial client meeting, Ricco signed a retainer agreement and agreed to pay the Firm a $5,000, non-refundable fee to assist him with a "will contest and series of thefts." Thereafter, respondent assigned DeSipio to handle Ricco's matter. Ricco testified that, following the retainer meeting, Ricco's understanding was that respondent was going to handle the will contest and theft matter and that DeSipio was going to commence a separate, wrongful death action against Vogel.

Respondent testified that, although he ran a "mom and pop" law firm and that each attorney handled his or her own cases, it was the Firm's practice to hold weekly meetings to discuss cases and update respondent on issues occurring in Firm matters.

On June 10, 2011, despite retaining the Firm for the wills contest and thefts matter, Ricco filed a pro se complaint in the Superior Court of New Jersey, Law Division, Camden County, to protect against statute of limitations defenses, captioned Alfred W. Ricco, Jr., Administrator of the Estate of Sophia J. Ricco v. Eileen M. Vogel, Docket No. L-2972-11. Ricco testified that he filed the pro se complaint on the advice of DeSipio.

On February 9, 2012, DeSipio filed on behalf of Ricco an amended complaint for wrongful death, survival, and emotional distress in the Camden County matter. In the amended complaint, pursuant to R. 4:25-4, DeSipio designated himself, as a member of the Firm, trial counsel for Ricco. Three months later, DeSipio consented to an extension of time for Betsy G. Ramos, Esq., Vogel's counsel, to file a responsive pleading to the amended complaint. The stipulation was prepared by Ramos' law firm.

Ricco testified that, from February 2011 through approximately March 2012, he had no concerns regarding DeSipio's handling of the litigation against Vogel. However, beginning in March 2012, Ricco began to question the Firm's handling of the Vogel case, because DeSipio had failed to include information in the amended complaint regarding the funds that Ricco and his sister had agreed to use for their mother's healthcare – a fact Ricco believed was integral to the wrongful death claim. On April 11, 2012, Ricco sent an e-mail to DeSipio, with a copy to respondent, stating he had not heard anything regarding the case and had been unsuccessful in speaking with Jim Lloyd, another associate from the Firm who was working on the case. Ricco further stated that, during their last meeting, respondent and DeSipio had informed him that the file had been lost, and Ricco questioned whether it had been found. Respondent did not reply to Ricco.

On May 7, 2012, Ricco sent another e-mail to respondent and informed him that the two associates of his Firm were ignoring Ricco and his case. Ricco stated his concern that his cases had been pending for more than one year and that the Firm was unresponsive to his inquiries. Ricco wrote that he had sent a "series of emails stating certain particulars" to ensure that everyone understood where the cases stood but had not heard back. Ricco informed respondent that he wanted to know if there were any issues, so that Ricco could make corresponding decisions regarding the case. Respondent did not reply to Ricco.

On June 5, 2012, Ricco sent respondent a letter, via certified mail. Ricco wrote that the letter was necessary due to respondent ignoring his prior written communications and telephone calls. Ricco informed respondent that he had received a notice from the Superior Court of Camden County indicating that the Vogel case would be dismissed for lack of prosecution. Ricco detailed the issues of the case from his own perspective and referenced a November 11, 2011 meeting with respondent and DeSipio, wherein Ricco provided the Firm with an additional $5,000 retainer to pursue a claim for wrongful death against Vogel. Ricco ended the letter by listing the three checks he had provided to the Firm, with the dates and amount of each.

Two days later, Ricco sent an e-mail to respondent reiterating his attempt to obtain information on the Vogel case. Ricco again informed respondent that

he had received notice that the court was going to dismiss the matter for lack of prosecution and questioned what work the Firm had performed on the case. Ricco also accused respondent of breaching their attorney-client privilege and speculated that the breach might be the reason respondent was refusing to communicate with him. Ricco stated he wanted to resolve the issues so that he could defend himself "properly rather than remain in the dark and my attorneys bound, gagged, and unable to do for me in my best interest." Ricco concluded the letter by asking respondent to acknowledge receipt.

On June 13, 2012, respondent sent his first reply to Ricco since Ricco began communicating his concerns two months earlier. In his e-mail, respondent wrote:

> with respect to the status of the matter, you filed a pro se wrongful death action against your sister claiming that she forged a will, thereby stealing an inheritance that was due you, and had you received that inheritance, your mother would not have ended up in a state run nursing home, would have treated properly, which would have extended her life.

Respondent also informed Ricco that he understood that Ricco had filed a will contest in the Bittner matter, but that the Firm did not represent him in that case. Respondent also informed Ricco that the Firm had re-drafted the Vogel complaint after it had assisted with service of Ricco's pro se complaint, "to avoid automatic dismissal." Respondent asked Ricco to "state exactly what we

should be doing and how we are not doing our job in the correct way." Ricco replied the same day, informing respondent that the matter for which he retained the Firm was still outstanding, and representing that a more detailed description of the Firm's mishandling of his cases would be forthcoming.

Ricco provided more detailed information via a July 6, 2012 e-mail he sent to respondent. Ricco expressed that he was upset and frustrated that he was not receiving communication from the Firm. Ricco asserted that he had paid a $5,000 retainer in the wills and theft matter more than one year earlier and that the Firm still had not collected documents in furtherance of the Vogel matter. Ricco also reminded respondent that they met on August 2, 2011, to discuss the wrongful death action regarding his mother. At that meeting, Ricco asked respondent if he needed an additional retainer, to which respondent replied that he would work off the original retainer. Nevertheless, Ricco explained in the e-mail to respondent that he provided the Firm with two separate $2,500 checks, in November 2011 and December 2011, to ensure the Firm would be able to pursue both matters.

Respondent replied to Ricco's e-mail the same day, informing Ricco that he was tired of hearing that the Firm did not respond to Ricco; that Ricco's cases were not worth pursuing; that Ricco was "already over [his] retainer;" and that "this matter is closed with [the Firm]. If you want to seek another opinion, I will

forward [the] file."

On July 10, 2012, despite respondent's statement to Ricco, four days earlier, that Ricco's case was closed with the Firm, respondent and DeSipio sent Ricco a letter providing him with interrogatories that were served on the Firm by defense counsel in the Vogel case. The Firm asked Ricco to answer the questions and advised Ricco that the Firm would then revise the answers and insert legal objections as appropriate.

On July 11, 2012, Ricco wrote a letter to the Honorable John T. Kelley, J.S.C., the judge overseeing the Vogel litigation, with a copy to respondent, and expressed his inability to communicate with respondent. Ricco related to the judge the same concerns he had previously articulated to respondent. He also asked Judge Kelly to issue an order directing certain businesses related to the wills and theft case to produce records containing signatures, so that he could compare signatures on those documents. By letter dated July 19, 2012, Judge Kelley wrote to Ricco, with a copy to respondent, and suggested that Ricco either speak with respondent or seek new counsel.

Two weeks later, on July 26, 2012, Ramos sent a letter to Ricco. Ramos informed Ricco that, after she received the letter he had sent to the court, she called respondent's office to inquire whether the Firm still represented Ricco. Ramos wrote that she received a message from Lloyd's secretary that the Firm

still represented Ricco and, thus, informed him that she could not communicate with a represented party. Lloyd and DeSipio were copied on the letter.

On July 30, 2012, in response to Ramos' letter, Ricco wrote yet another letter to respondent. Ricco expressed confusion as to whether the Firm was still representing him because, although respondent wrote in his July 6, 2012 e-mail that Ricco's case was closed with the Firm, the Firm had told Ramos that it was still representing Ricco. Ricco requested that respondent resolve the representation issue.

On August 8, 2012, respondent sent Ricco an e-mail stating "you know from the top of your head to the bottom of your feet that I no longer represent you." Respondent informed Ricco that he could pick up his file at the Firm's office and stated that the "charges for services provided to date greatly exceed the retainer that you previously paid." Respondent also told Ricco that the Firm did not and could not represent Ricco in any of his pending matters, due to their lack of merit.

Approximately one week later, Ricco sent another letter to Ramos, with a copy to respondent. Ricco quoted the language from respondent's August 8, 2012 e-mail to renew his request that Ramos contact him directly about the Vogel case.

On August 17, 2012, respondent sent an e-mail to Ricco, in response to Ricco's letter to Ramos. Respondent told Ricco that he was uncooperative; never replied to the Firm's requests to assist in responding to interrogatories; that the Firm disagreed with Ricco's desired course of action; and again reminded Ricco that his "retainer [was] exhausted and [he had] not paid [the Firm] additional funds owed or provided an additional retainer." Respondent asked that Ricco advise the Firm immediately if he wished to terminate the attorney-client relationship, and stated that, if so, the Firm would file a substitution of attorney with the court.

By letter dated August 21, 2012, Ricco again expressed to respondent his confusion whether the Firm represented him or not. Ricco informed respondent that he wanted his file and would pick it up at the Firm's office, if necessary. Ricco also requested that respondent provide an accounting of the $10,000 retainer he had paid the Firm, because he felt it was unbelievable that the Firm had exhausted the retainer to file one document on his behalf, and because his previous requests for a detailed accounting had been ignored.

On September 24, 2012, respondent sent an e-mail to Ricco. Respondent informed Ricco that the Firm had spent $5,290 on his case and offered to "gladly refund [Ricco's] money once I hear that is your wish. Please advise." Ricco did not reply to respondent's e-mail.

On December 31, 2012, Ricco filed a notice of motion to remove the Firm as his attorney of record and to allow him to proceed pro se. In the motion, Ricco outlined the ways in which he had attempted to obtain information on the Vogel matter from the Firm, and how he had been met with silence. Ricco also enumerated the times respondent, via e-mail, had informed him that the attorney-client relationship had been terminated. Respondent received a copy of the motion.

On January 24, 2013, respondent sent Ricco an e-mail. Respondent expressed to Ricco that he did not "know what to make of" the motion to remove his Firm as attorney of record. Respondent told Ricco that he had offered to have Ricco come to the office so that respondent could explain why his cases were not worthwhile, but Ricco had not done so.

By order filed January 25, 2013, Judge Kelley granted Ricco's motion. In determining to grant Ricco's motion, Judge Kelley noted that respondent had not filed opposition and opined that respondent's actions were not proper because "you can't simply abandon a client."

By letter dated January 31, 2013, Ricco provided respondent with a copy of Judge Kelley's order. Ricco again requested that respondent provide him with his file, an accounting of the funds spent on his case, and the unearned retainer funds. Respondent did not reply.

As noted above, on March 9, 2020, the DEC filed a formal ethics complaint against respondent. On April 14, 2020, respondent provided his verified answer to the complaint, attesting that he had read every paragraph of the answer and that his responses were true.

In his answer, respondent claimed that, despite the "filed" stamp appearing on the February 6, 2012 amended complaint prepared by DeSipio, it was never actually filed in the Camden County Superior Court because the court rejected it. Respondent further claimed that his Firm never formally entered an appearance as Ricco's attorney of record. Respondent questioned the authenticity of DeSipio's signature on the complaint and claimed that, if DeSipio had filed the complaint, he did so with respondent's knowledge or approval.

Respondent admitted that Ricco hired the Firm for the purpose of a "will contest and series of thefts." Respondent claimed the attorney-client relationship effectively ended when Ricco sent his June 7, 2012, e-mail. Additionally, respondent maintained that Judge Kelley's January 25, 2013, order was unnecessary, because his Firm had never formally entered an appearance on that matter.

As to count one, which alleged violations of RPC 1.4(b) and (c), respondent conceded that, as owner of the Firm, he was entrusted with the ultimate responsibility over the Vogel matter. Respondent denied that the Firm

was counsel of record because of his belief that the court rejected the amended complaint filing. Respondent conceded that he did not respond to Ricco's request for an accounting, but instead agreed to a refund and offered a meeting to Ricco to discuss why, in his view, Ricco's matters lacked merit. Respondent did not address why, once he was personally made aware, in April 2012, that members of his Firm were non-responsive to Ricco, he did not affirmatively step in to provide Ricco with information.

Respondent admitted that he violated RPC 1.3 by not diligently providing Ricco with the accounting he had requested. Respondent, however, justified his conduct by asserting that he had offered Ricco the opportunity to meet with him to discuss the cases.

As to count three, respondent denied that he violated RPC 1.1 by abandoning his client. Respondent claimed his Firm was not counsel of record in the Vogel matter because the court had rejected the initial filing.

Respondent also denied that he violated RPC 1.16(c) because, according to him, the court's purported rejection of the amended complaint in Vogel rendered Ricco a pro se litigant and, thus, no substitution of attorney was necessary.

In his verified answer to the ethics complaint, respondent further admitted that he had violated RPC 1.16(d), RPC 1.15(b), RPC 8.4(c), and RPC 5.1(b) and

(c).

In mitigation, respondent stressed that he had no disciplinary history and asserted that his admitted misconduct was an isolated incident and was unlikely to recur.

At the outset of the ethics hearing, at the request of the panel chair, counsel for respondent recounted that respondent had admitted to violating RPC 1.3; RPC 1.4(b) and (c); RPC 1.15(b); RPC 1.16(d); RPC 5.1(b) and (c); and RPC 8.4(c).

During his hearing testimony, respondent claimed that, if his Firm had agreed to represent Ricco in the wrongful death action, he would have had Ricco sign a new retainer. Respondent claimed that DeSipio's signatures on his letter to the DEC and on the amended complaint were different and, thus, proved that DeSipio was not the one who filed the amended complaint. Respondent offered no evidence other than his belief the two signatures differed, and insinuated that Ricco was, in fact, the one who filed the complaint. Despite respondent being the one to question the authenticity of DeSipio's signatures before the panel, he did not attempt to compare the signatures against any other contemporaneous documents that DeSipio prepared, in approximately 2011-2012, to support his claim. When confronted with the similarity of DeSipio's signature on the amended complaint and on the stipulation to an extension of time, which was

prepared by Ramos' law firm, respondent would not concede that DeSipio had signed the document. Rather, respondent testified that he had satisfied himself that his claim was accurate and, despite being the one to raise the issue, did not think it would be "all that important" at the ethics hearing.

Respondent repeatedly testified that he had little or no recollection of many details surrounding his Firm's handling of Ricco's case due to the passage of time. Respondent testified that he did not have a copy of Ricco's file or any accounting done in the case and speculated that it was discarded due to its age. Yet, respondent claimed that DeSipio was somehow able to gain access to respondent's e-mail account and that it was DeSipio who authored some of the e-mails to Ricco that respondent purportedly sent. However, respondent offered no proof to support his claim, and could not pinpoint which e-mails DeSipio allegedly sent via respondent's e-mail address.

During his testimony, respondent also stated that he was busy with his trial schedule at the time his answer to the formal ethics complaint was due. He maintained that he, therefore, had employed the services of "a Gregory Noonan" to assist him in preparing his answer. Respondent claimed that, after he and his current counsel, Kenneth D. Aita, Esq., met in preparation for the ethics hearing, they both realized that Noonan "took [respondent's answer to the formal ethics complaint] for granted, and he did not check with [respondent] on this, and [he]

didn't think [accuracy of some admissions] was important." Despite respondent's assertion that Noonan was the one who took the answer to the formal ethics complaint for granted, respondent claimed that he had not reviewed the verified answer before he signed it. Respondent testified that he and his current attorney, after realizing the mistake in the verified answer, made the decision to not file an amended answer.

Regarding the refund that Ricco had requested, respondent testified that Ricco did not respond to his September 14, 2012 e-mail and, therefore, Ricco's request was not addressed. Respondent conceded that Ricco filed an ethics grievance against him in Pennsylvania in 2018, prior to filing an ethics grievance in New Jersey. Respondent explained that he then decided not to refund Ricco's retainer while the ethics matters were pending, because he thought it would make it seem as though respondent was "trying to pay [Ricco] off," so that Ricco would not attend the ethics hearing. Respondent testified that, as of September 22, 2020, the date of his testimony, he was prepared to issue a refund to Ricco. However, concerning the amount due to Ricco, respondent could not explain what work DeSipio or Lloyd had conducted on the case.

Respondent testified that, at the time Ricco requested an accounting and refund, it would have taken "hardly any" time to verify how much of Ricco's retainer had been spent working on the case prior to sending the three e-mails to

Ricco informing him that his retainer had been exhausted. Nevertheless, respondent did not do so and, thus, misrepresented to Ricco, for more than a month, that his retainer had been exhausted.

At the conclusion of the hearing, and at the request of the panel chair, the presenter, Thomas McKay, III, Esq., went through each RPC violation alleged in the complaint with respondent. Despite having admitted violating RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 1.15(b); RPC 1.16(d); RPC 5.1(b); RPC 5.1(c); and RPC 8.4(c) in his verified answer, respondent claimed he did not think he was guilty of those RPC violations. At the ethics hearing, respondent's position was that his only RPC violation was his failure to properly supervise DeSipio and Lloyd, in violation of RPC 5.1(b) and RPC 5.1(c).

Respondent testified that Ricco's January 13, 2013 letter made clear that he did not want to come to the office and meet with respondent and, instead, wanted respondent to send him the file, an accounting, and the unearned retainer. Nonetheless, respondent took the position at the ethics hearing that he could not reply to the letter if he did not know about it.

After reviewing the evidence and testimony presented at the ethics hearing, the DEC concluded that respondent had violated RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 1.15(b); RPC 1.16(d); and RPC 5.1.[2] The DEC dismissed the

[2] Although not found with specificity, it is clear the DEC found that respondent violated both

charges that respondent had violated RPC 1.1(a) and RPC 8.4(c). The DEC was silent as to the allegations that respondent violated RPC 1.1(b), RPC 1.16(b), and RPC 1.16(c). The DEC further found that, although respondent initially admitted to most of the RPC violations charged in the complaint, he had retracted those admissions during the ethics hearing.

The DEC found that Ricco retained the Firm on February 14, 2011 to assist with the will contest and theft allegations, and that there was no indication that the initial fee Ricco paid to the Firm was related to a wrongful death claim. Nonetheless, the DEC found that, in November 2011, when Ricco met with respondent and DeSipio, he provided the Firm with an additional $5,000 retainer fee in connection with the wrongful death claim.

Regarding the amended complaint in the wrongful death action, the DEC concluded that, although the document was marked "filed" by the court, it appeared to have only been received by the court, and not actually filed.

The DEC found that, beginning in March 2012, the majority of Ricco's communications with the Firm involved Ricco's attempts to discuss with respondent his concerns about the status of his case, and the lack of communication he had received from the Firm.

RPC 5.1(b) and RPC 5.1(c)(2).

The DEC also found that, following Ricco's motion to remove the Firm as counsel of record, the Firm should have filed correspondence with the court to indicate its position that it was not counsel of record. Respondent had neither sent a full accounting of the case to Ricco nor returned the unearned portion of the $10,000 retainer to him. Respondent also failed to provide Ricco with a copy of his file, as Ricco had requested. Importantly, the DEC found that there was very little evidence that any legal work had been conducted on the two initial matters for which Ricco unquestionably had retained the Firm.

However, the DEC determined that respondent did not violate RPC 1.1(a) because DeSipio "seemingly acted outside the knowledge of the respondent on many issues," and there was no requirement that respondent supervise DeSipio on matters outside of those in the Firm's retainer agreement. Conversely, the DEC found that respondent violated RPC 1.3 because there was no proof that respondent investigated the status of the two matters for which his Firm was retained after he was made aware, on June 5, 2012, that Ricco was dissatisfied with the Firm's representation.

The DEC posed the rhetorical question of whether the Firm kept Ricco reasonably informed about the status of his case, in accordance with RPC 1.4(b) and (c), given that the facts regarding the wrongful death case diverged. The DEC acknowledged that Ricco believed that DeSipio and Lloyd and, thus, the

Firm, were representing him in the wrongful death action. However, the DEC also acknowledged respondent's position that the Firm did not represent Ricco in the wrongful death action and, therefore, was not required to keep Ricco informed. The DEC, however, found that respondent had violated RPC 1.4(b) and (c) because there was no evidence presented that, between November 2011 and August 8, 2012, the Firm updated Ricco on the status of the wills contest and theft case.

The DEC found that there was no question that Ricco paid the Firm $10,000. The DEC also concluded that respondent "clearly had no idea" how much money Ricco provided the Firm or how the Firm spent the retainer. Nonetheless, the DEC found that, once respondent was aware of Ricco's overpayment, despite Ricco's requests, respondent did not return the fee. The DEC rejected respondent's statement that he was waiting to have a face-to-face meeting with Ricco, noting that it had been seven years since the meeting had been offered, and that respondent should have returned the unearned portion of the fee. Therefore, the DEC found that respondent violated RPC 1.15(b). Related, the DEC found that respondent violated RPC 1.16(d) by not providing the file to Ricco.

The DEC accepted respondent's admission and found that the evidence supported the allegation that respondent failed to properly supervise DeSipio

and Lloyd in the Firm's representation of Ricco, and found, without noting a subsection, that in so doing, respondent violated RPC 5.1.

The DEC did not find that respondent violated RPC 8.4(c), because there was no evidence that the inaccurate information he provided to Ricco regarding the exhaustion of the retainer was intentional. Rather, the DEC found that it appears "that respondent was attempting to be honest with the grievant at all times but was grossly uninformed."

In aggravation, the DEC found that respondent failed to return Ricco's file and the unearned portion of the fee for seven years, failed to respond to a letter from Judge Kelley regarding the inactions of the Firm, and created a hardship for the presenter and the panel by initially admitting to many of the allegations in his verified answer, but then retracting his admissions during the hearing.

In mitigation, the DEC emphasized the eighteen character letters submitted on respondent's behalf; his remorse for his lack of supervision of his attorney employees; that his misconduct was not for personal gain; the passage of time since the violations (not including the failure to return the unused portion of Ricco's retainer); and his minor disciplinary history.

In determining that a reprimand was the appropriate quantum of discipline, the DEC found that the mitigating factors slightly outweighed the aggravating factors. However, the DEC found that respondent's most egregious

ethics violation was his failure to timely return the unearned portion of Ricco's retainer. The DEC urged that the respondent return the unearned component of the retainer, with interest, to Ricco.

Finally, the panel noted that it was difficult for it to "completely evaluate this matter due to the length of time since the incident and the resulting lack of a file and complete memories, coupled with DeSipio's [unavailability] and no one having produced Lloyd."

In his brief to us, respondent claimed that most of the evidence in this matter was based on interpretations of old e-mails. Counsel for respondent claimed that respondent "shall return the fee with interest prior to the full Disciplinary Order" but also claimed, without providing proof, that respondent, after seven years, had already returned Ricco's unearned fee.

Although respondent had admitted his misconduct and then retracted his admissions, respondent again argued that he violated RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 1.15(b); RPC 1.16(d); and RPC 5.1(a), but that no discipline need be imposed. Respondent argued that there are no aggravating factors for us to consider, except the "possible exception" of his failure to refund Ricco's funds.

During oral argument before us, the presenter agreed with the findings made by the hearing panel and emphasized that respondent did not fully cooperate with the panel. The presenter stated that he had been informed by

respondent's counsel that respondent had provided a refund of the retainer to Ricco, but expressed confusion as to how the amount of the check was calculated.

For his part, respondent was not able to offer any reasonable explanation for his failure to refund Ricco's fee. Respondent argued that he was truthful and candid regarding his behavior, has shown remorse, and has taken the ethics matter very seriously. Respondent argued that he did not intend to create a hardship for the DEC by retracting his earlier admissions to RPC violations. Respondent argued that his unblemished disciplinary history "cannot be overstated" and that he has an excellent reputation in the legal community.

Respondent's counsel clarified that the April 9, 2021 check that respondent sent to Ricco represented the unearned fee plus interest as calculated by respondent. Counsel for respondent urged us to consider the age of this matter. He also argued that respondent fully cooperated with the ethics proceeding and requested the imposition of an admonition.

Following oral argument, we requested confirmation that respondent provided Ricco with a refund check, that the check cleared, and that Ricco was satisfied with the refund of his retainer fee plus interest.

Counsel for respondent confirmed that the check was negotiated on May 20, 2021. The presenter provided a letter from Ricco explaining that he

negotiated the check following oral argument before us. Ricco explained that, pursuant to his reading of R. 4:42-11(a)(ii) (interest rates on judgments in tort actions), respondent's calculation of interest on the unearned retainer fee was short by $49.16.

* * *

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.

Specifically, we find that the DEC's determination that respondent violated RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 1.15(b); RPC 1.16(d); and RPC 5.1 (with particularity, subsections (b) and (c)), is supported by clear and convincing evidence. We further agree with its determination to dismiss the allegations that respondent violated RPC 1.1 and RPC 8.4(c). Although the DEC made no findings regarding the allegations that respondent violated RPC 1.1(b) and RPC 1.16(b), we find that the evidence does not support a finding that respondent violated those Rules. Additionally, the DEC made no findings regarding the allegation that respondent violated RPC 1.16(c), however, we find the violation to be supported by clear and convincing evidence.

Specifically, respondent violated RPC 1.3 when, for nine months, he failed to investigate any of Ricco's claims that DeSipio and Lloyd – associates

of the Firm – were neglecting Ricco's case. Instead, respondent chose to engage in superficial arguments with Ricco, a client, regarding the merits of his cases. By doing so, respondent ignored the fact that his Firm had not advanced Ricco's interests in the matters for which it had been retained in February 2011. Moreover, respondent's communications to Ricco improperly sought to place the burden on Ricco to inform respondent what work needed to be done, when, in fact, Ricco had asked that question of respondent, who was duty-bound to not only work on a case, but to provide information to the client when requested. The only reliable evidence before us is the e-mail exchanges between respondent and Ricco; those documents demonstrate that, under respondent's supervision, the Firm failed to diligently work on Ricco's case.

Respondent also lacked diligence when he, without confirming the information, asserted to Ricco that his retainer had been exhausted, and then repeated that false claim to Ricco two more times before actually determining how much of the retainer had been used. By respondent's own admission, it would have taken "hardly any time" for him to have obtained an accurate answer for the client in the first instance.

Likewise, respondent unquestionably violated RPC 1.4(b) and (c) when he, along with associates at his Firm, repeatedly refused to answer Ricco's questions regarding his case. Beginning in April 2012, Ricco informed

respondent that DeSipio and Lloyd were not working on his case. Rather than investigate what work had, or had not, been done, respondent embarked on a course of e-mail exchanges accusing Ricco of being difficult, culminating in respondent improperly terminating the attorney-client relationship. As demonstrated in the multiple e-mail exchanges between respondent and Ricco, respondent failed to explain to Ricco anything about his case because respondent was focused on extraneous details concerning the representation, and not the substance of the case. Indeed, the evidence clearly establishes that respondent failed to provide any answer to Ricco's April 11, 2012, question regarding "where do we stand" with the case. Therefore, any attempt by respondent to escape accountability by deflecting his misconduct onto DeSipio ignores that respondent clearly was on notice that members of his Firm were not keeping a client abreast of his case.

Similarly, Ricco was steadfast in his request that the Firm provide him with a refund of the unearned portion of the retainer. It had been seven years since Ricco stopped communicating with respondent, yet, until April 9, 2021, just over one month before oral argument in this matter, respondent had not provided Ricco with a refund of his retainer fee. Respondent's violation of RPC 1.15(b) is rendered even more grievous by his brazen denial of the violation at the ethics hearing. By his own admission, respondent had not returned Ricco's

retainer; yet, he blamed Ricco for his failure to accept respondent's offer for a meeting as the reason Ricco did not receive a refund. Respondent clearly violated RPC 1.15(b) by refusing to promptly refund to Ricco the unearned portion of the retainer.

Furthermore, respondent violated RPC 1.16(c) and RPC 1.16(d) by (1) unilaterally terminating the attorney-client relationship, and (2) refusing to comply with Ricco's request that he be provided his file, despite respondent's own offers and Ricco's explicit requests of August 21, 2012 and January 31, 2013. Respondent was aware of the proper way to terminate his representation, as shown by his offer to file a substitution of attorney with the court in the Vogel litigation. However, not only did respondent not file a substitution with the court, he ignored the court altogether when he first received a letter from Judge Kelley and later a motion from Ricco seeking to proceed pro se due to respondent's failure to represent him.

Respondent admitted that he violated RPC 5.1(b) and RPC 5.1(c) by failing to properly supervise DeSipio and Lloyd. The record supports those admissions. Indeed, for over one year after Ricco retained the Firm to represent him in the will contest and theft matters, there is no evidence that respondent supervised their actions at all, as demonstrated by respondent's expressed surprise that DeSipio filed an amended complaint in the wrongful death case.

Nonetheless, once Ricco made respondent aware that DeSipio and Lloyd were not working on his case, respondent chose to again abdicate his supervisory responsibilities and instead criticized Ricco for his supposedly meritless cases. Therefore, there is no evidence that, during the representation, respondent took any action to ensure that the associates in his Firm conformed their conduct to the Rules of Professional Conduct. Nor is there any question that Ricco made respondent aware that the associates in his Firm were violating the Rules by ignoring him and his case. Therefore, because the evidence clearly establishes that respondent knew of his associates' misconduct, his failure to take any reasonable action to remediate the misconduct supports a finding that he violated RPC 5.1(c)(2).

In sum, we find that respondent violated RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 1.15(b); RPC 1.16(c); RPC 1.16(d); RPC 5.1(b); and RPC 5.1(c)(2). We determine to dismiss the charges that respondent violated RPC 1.1(a); RPC 1.1(b); RPC 1.16(b); and RPC 8.4(c). The sole issue remaining for determination is the appropriate quantum of discipline for respondent's misconduct.

Attorneys with no disciplinary history who violate RPC 1.3, RPC 1.4(b), and RPC 1.16(d), even when accompanied by other, non-serious ethics infractions, receive admonitions. See e.g., In the Matter of William E. Wackowski, DRB 09-212 (November 25, 2009) (attorney permitted a complaint

to be administratively dismissed, failed to inform his client of the dismissal, and failed to turn over the file to the client upon termination of the representation); In re Cameron, 192 N.J. 396 (2007) (attorney twice permitted a personal injury matter to be dismissed, failed to disclose the dismissals to the client, failed to return the client's telephone calls, and failed to turn the file over to successor counsel; in addition to RPC 1.3, RPC 1.4(b), and RPC 1.16(d), the attorney was deemed to have engaged in gross neglect, a violation of RPC 1.1(a)); and In the Matter of Vera E. Carpenter, DRB 97-303 (October 27, 1997) (in a personal injury matter, attorney failed to act diligently to advance the client's claim, failed to return the client's telephone calls, and failed to turn over the client's file to new counsel).

Standing alone, an admonition is the appropriate sanction for an attorney's failure to promptly return the unearned portion of a fee. See, e.g., In re Gourvitz, 200 N.J. 261 (2009), In the Matter of Larissa A. Pelc, DRB 05-165 (July 28, 2005), and In the Matter of Stephen D. Landfield, DRB 03-137 (July 3, 2003). Those cases, however, are not on all fours with the instant matter. Here, respondent acknowledged, years ago, that he owed to Ricco a refund of the unearned portion of the retainer. Respondent's deliberate and protracted withholding of funds in the face of an acknowledged obligation makes his withholding of Ricco's funds markedly worse than the misconduct addressed in

Gourvitz, Pelc, and Landfield.

Few reported disciplinary cases address violations of RPC 1.16(c). In one such case, In re Saavedra, 162 N.J. 108 (1999), a three-month suspension was imposed. There, the attorney unilaterally withdrew from the representation of a minor in connection with a delinquency complaint. We found that Saavedra violated RPC 1.16(c), as well as RPC 1.1(a), RPC 1.3, and RPC 8.4(d) (conduct prejudicial to the administration of justice). In imposing a three-month suspension, we considered the attorney's significant disciplinary record, which included a private reprimand, a reprimand, and a three-month suspension.

In In re Kern, 135 N.J. 463 (1994), after twenty-six days of a medical license hearing before the Office of Administrative Law (OAL), Kern moved to be relieved as counsel, on the ground that his clients had failed to pay fees and costs then due, in the amount of approximately $85,000. The Administrative Law Judge (ALJ) was primarily concerned with the integrity of the administration of process and with the clear prejudice that would result if Kern were permitted to step away at that late stage of the proceedings. Anticipating that the complex administrative proceeding would likely continue for another twenty-five to fifty days, the ALJ denied the attorney's application. Following that determination, when Kern's several vigorous attempts to be relieved as

counsel proved unsuccessful, he refused to appear when the administrative hearings resumed.

We found that, once the OAL issued an order, regardless of the grounds advanced by the attorney, "he had an absolute obligation" to continue to represent his client, absent a contrary order from a higher court or tribunal. Kern could not unilaterally terminate that representation.

In imposing a reprimand, we considered mitigating factors, including the attorney's unblemished disciplinary record and the fact that he found himself in difficult circumstances, "when he was forced to continue to represent individuals who engaged in a pattern of threats against him and who themselves recognized that such threats rendered effective representation extremely difficult." We also considered that, although misguided, the attorney's actions were the result of his sincere belief that it was impermissible for him to continue his representation.

Cases involving failure to supervise junior attorneys, coupled with a combination of other violations, such as gross neglect, lack of diligence, and failure to communicate with clients, ordinarily result in a reprimand. See, e.g., In re DeZao, 170 N.J. 199 (2001) (reprimand for gross neglect; pattern of neglect; lack of diligence; failure to communicate with a client; failure to explain a matter to the extent necessary to permit the client to make an informed decision

about the representation; and failure to supervise an attorney); In re Rovner, 164 N.J. 616 (2000) (reprimand for gross neglect; lack of diligence; failure to communicate with a client; and failure to supervise attorneys); In re Daniel, 146 N.J. 490 (1996) (reprimand imposed for lack of diligence, failure to communicate with the client, and failure to supervise an attorney employee); and In re Libretti, 134 N.J. 123 (1993) (public reprimand imposed where the attorney exhibited gross neglect; lack of diligence; failure to expedite litigation; failure to communicate with the client; failure to withdraw from the representation; and failure to properly supervise firm attorneys).

Here, the DEC panel recommended a reprimand for respondent's misconduct. Based on the case law cited above, however, we determine that a reprimand would serve as the baseline level of discipline merely for respondent's failure to supervise his associates at the Firm and his egregious and baseless refusal to return to Ricco the unearned portion of the retainer. That reprimand must be enhanced due to respondent's additional misconduct. Moreover, to craft the appropriate discipline in this case, we also consider applicable aggravating and mitigating factors.

Respondent's flagrant retraction during the ethics hearing of the admissions of misconduct he previously had made, via his verified answer, is clearly an aggravating factor for our consideration. The DEC found such

conduct to be an aggravating factor because it created a hardship for the hearing participants. Arguably, such conduct also could violate RPC 8.4(c). However, we are precluded from making such a finding because it was not charged in the formal ethics complaint. See R. 1:20-4(b) (a disciplinary complaint shall specify the ethics rules alleged to have been violated). We may, however, consider respondent's conduct in aggravation.

In further aggravation, we note respondent's total lack of remorse for his misconduct. As noted above, at the ethics hearing, respondent retracted almost every admission he had conceded in his verified answer. After retracting his earlier admissions, respondent offered unsupported theories about how the misconduct – of which he asserted he was not guilty – occurred, including that Ricco forged DeSipio's signature and filed the amended complaint; that the complaint which was stamp-filed by the court was not actually filed; and that DeSipio sent Ricco clandestine e-mails from respondent's e-mail address. We cannot turn a blind eye to respondent's attempts to deflect his misconduct onto others rather than accept that his own conduct, and not just that of DeSipio and Lloyd, violated the Rules of Professional Conduct.

In mitigation, the eighteen letters respondent submitted in support of his character reflect that he has a favorable reputation in the community. Additionally, although respondent previously has been disciplined for similar

misconduct, he has practiced nearly thirty years without further discipline.

Considering the totality of respondent's misconduct, and after balancing respondent's ethics violations and conduct during the disciplinary process against the mitigation present in this case, we determine that a censure is the appropriate quantum of discipline for respondent's misconduct.

Vice-Chair Singer voted to impose a reprimand, in accordance with the DEC's recommendation. Her vote is based primarily on: (a) the unusually long time between the events in this case which occurred between February 2011 and January 2013 (eight-plus to ten-plus years ago) and the imposition of discipline in 2021, a delay that prejudiced respondent's ability to answer the ethics complaint because the complete case file at issue was no longer available and an important witness, the associate who had worked on the case, had died; and (b) the fact that respondent had no ethics infractions in the intervening time. See, e.g., In re Verdiramo, 96 N.J. 183, 187 (1984) (with more than eight years having elapsed since the ethics violations, the Court suspended rather than disbarred the attorney, finding, "the public interest in proper and prompt discipline is necessarily and irretrievably diluted by the passage of time"); In re Alum, 162 N.J. 313 (2000) (after passage of eleven years with no further ethics infractions, discipline was tempered based on "considerations of remoteness"); and In re Davis, 230 N.J. 385 (2017) (in light of "extraordinary delay in

initiating ethics proceedings," the Court suspended the attorney for one year instead of three years).

Member Boyer was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

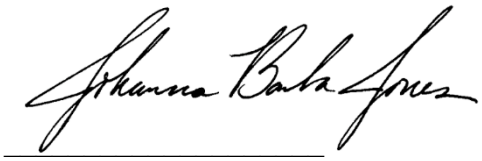
In the Matter of A. Charles Peruto, Jr.
Docket No. DRB 21-004

Argued: May 20, 2021

Decided: September 16, 2021

Disposition: Censure

Members	Censure	Reprimand	Absent
Gallipoli	X		
Singer		X	
Boyer			X
Campelo	X		
Hoberman	X		
Joseph	X		
Menaker	X		
Petrou	X		
Rivera	X		
Total:	7	1	1



Johanna Barba Jones
Chief Counsel