Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-187
District Docket No. XIV-2019-0497E

In the Matter of	:
Robert L. Garibaldi, Jr.	:
An Attorney at Law	:

Decision

Argued: November 18, 2021

Decided: February 14, 2022

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

Patrick J. McCormick 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 disciplinary stipulation between the Office of Attorney Ethics (the OAE) and respondent. Specifically, respondent stipulated to having violated RPC 1.15(a) (failing to safeguard funds); RPC

1.15(b) (failing to promptly deliver funds to the client or a third party); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

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

Respondent earned admission to the New Jersey bar in 1981 and has no disciplinary history. At all relevant times, he maintained a practice of law in Glen Rock, New Jersey.

Respondent and the OAE entered into a disciplinary stipulation, dated August 19, 2021, which sets forth the following facts in support of respondent's admitted ethics violations.

In 2009 or 2010, Billy Fisher retained respondent to defend against a foreclosure action involving Fisher's commercial car wash, Regency Car Wash and Quality Lube, LLC (the Car Wash). The lender, JYS Investments, LLC (JYS), also sought to recover funds owed by Fisher under the terms of a mortgage, note, and accompanying loan documents. The law firm of Piro, Zinna, Cifelli, Paris & Genitempo, LLC (the Piro law firm) represented Jesse Sayegh, who was the principal of JYS, in the action against Fisher.

In April 2010, Sayegh and his counsel met with Fisher and respondent, at respondent's law office, in an effort to negotiate a lease agreement that would allow Fisher to continue operating the Car Wash. In advance of that meeting,

Fisher obtained two cashier's checks from TD Bank, which were intended to cover the first two months of rent on any such lease. The checks, dated March 3 and April 4, 2010, were each in the amount of $25,000, totaling $50,000, and were made payable to JYS.

When Sayegh and Fisher were unable to reach an agreement, Fisher instructed respondent to hold the two checks until a final agreement might be negotiated. Respondent took possession of the two checks but did not deposit the funds in his attorney bank accounts.

On June 16, 2010, the parties appeared before the Honorable Elijah Miller, J.S.C., on an Order to Show Cause in the foreclosure action captioned JYS Investments, LLC v. BBF Realty, LLC, Docket No. BER-L-5463-08, in which Sayegh sought possession of the Car Wash. The court granted the writ of possession but stayed the order for thirty days to allow the parties an opportunity to devise a plan for the continued operation of businesses on the property, including the Car Wash. The court further ordered that any profits and assets of the Car Wash be held in a constructive trust and appointed Sayegh, as the largest creditor, to serve as the trustee.[1] The order explicitly referenced the two checks

[1] Fisher filed for bankruptcy to address various creditors and liens, and the creditors filed an application with the court to seize the assets of the Car Wash and to have them sold to pay off the debts.

held by respondent, and directed that no party could use any Car Wash funds, including "any funds or checks of Regency in the possession of Regency's counsel, including those which may have been previously designated as being for use and occupancy of [the Car Wash], such as two bank checks, each in the amount of $25,000 made payable to JYS" (emphasis added).

On November 18, 2013, the foreclosure action captioned JYS Investments, LLC v. Billy B. Fisher, et al., Docket No. BER-L-6568-11, settled. The Honorable Kenneth J. Slomienski, J.S.C., ordered the termination of the constructive trust imposed on the assets of the Car Wash, and further ordered that the proceeds of the trust be remitted to JYS as the largest creditor. The November 18, 2013 order stated that "the certified funds in the amount of $50,000.00, currently being held pursuant to the Constructive Trust by [respondent], be and hereby shall be paid to [JYS] within 21 days of the date of this Order." On November 25, 2013, respondent received a copy of this order. Respondent, however, failed to deliver the checks to JYS. To the contrary, respondent admitted that he had failed to properly safeguard the checks and that, as a result, they had been inadvertently misplaced by his office staff.

On February 6, 2014, Sayegh's attorney again provided respondent with a copy of the November 25, 2013 order and inquired when "JYS may receive

the certified funds in the amount of $50,000 being held by you on behalf of Regency." Respondent again failed to produce the checks to counsel for JYS.

On May 8, 2015, respondent was ordered, for the second time, to turn over the two $25,000 checks. Specifically, the court granted JYS' motion to enforce litigant's rights, and ordered that:

> [Respondent] shall turn over to counsel for [JYS] the two certified checks from Regency Car Wash and Quality Lube in the collective amount of $50,000 pursuant to the terms of the Order of the Honorable Kenneth Slomienski, J.S.C. dated November 18, 2013 in the above matter within 21 days of the date of this Order
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> [Ex4p5.][2]

Despite this second court order, respondent failed to produce the checks.

More than one year later, on October 17, 2016, respondent was ordered by the Honorable James J. DeLuca, J.S.C., to meet with counsel for JYS, within forty-five days, "to determine the status of the two (2) checks of $25,000 each which were the subject of the prior orders of the Court including, but not limited to, the order of May 8, 2015." The order provided that, in the event the parties were unable to resolve the matter, counsel for JYS again could file a motion to compel the production of the checks.

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[2] "Ex" refers to exhibits to the August 19, 2021 disciplinary stipulation.

On October 30, 2017, respondent was ordered for the third time – this time by the Honorable Rachelle L. Harz, J.S.C. – to turn over to counsel to JYS "the two certified checks from Regency Car Wash and Quality Lube in the collective amount of $50,000 pursuant to the terms of the Orders of the Honorable Kenneth Slomienski, J.S.C., dated November 18, 2013, and the Honorable James J. DeLuca, J.S.C., dated May 8, 2015 and October 17, 2016." Still, respondent failed to produce the two checks.

On February 20 and June 5, 2019, counsel for JYS wrote to respondent seeking the checks.

Despite four court orders and repeated requests from counsel for JYS, respondent failed to provide the two $25,000 checks to JYS or its counsel.

Moreover, respondent replied to counsel for JYS on only one occasion. Specifically, on June 1, 2015, respondent told Sayegh's attorney that his entire file was in the possession of a law firm defending him in an action initiated by the Fishers; that he had believed the checks had been sent to the Piro law firm

in June 2010; and that he was certain he had not returned the checks to the Fishers.[3]

After the OAE docketed the investigation underlying this matter, respondent located the two checks and, on February 20, 2020, mailed both checks to the Piro law firm. Respondent stated that the checks "seemed to have been inadvertently placed into a file not pertaining to the litigation by my previous staff" and that, prior to locating them, he "was under the impression that they were mailed out by my old staff and never had reason to believe otherwise."

On March 27, 2020, Sayegh's attorney informed respondent that the checks no longer represented funds on deposit and that, because they had not been negotiated sooner, the $50,000 had escheated to the state government. Respondent offered to assist in seeking the re-issuance of the checks but undertook no tangible effort.

Based upon applicable disciplinary precedent, discussed in detail below, the OAE urged us to impose a reprimand. During oral argument, the OAE

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[3] In 2011, Fisher filed a lawsuit against respondent and other attorneys who were involved with the loan transaction. Fisher asserted a claim against respondent for failure to return to him the two $25,000 checks. Respondent retained counsel to represent him in defense of this action and transferred all files related to his representation of Fisher to his attorney. Ultimately, Fisher's case was dismissed.

reiterated the mitigating factors set forth in the parties' stipulation which underpinned the OAE's recommended discipline of a reprimand. Specifically, the parties agreed that respondent had no prior discipline; his misconduct was not committed for personal gain; he exhibited contrition and remorse; he acknowledged his wrongdoing; he cooperated with the disciplinary authorities; and the circumstances of this matter are unlikely to recur.

On October 20, 2021, respondent, through his attorney, Patrick J. McCormick, Esq., submitted a corrected brief in support of the disciplinary stipulation and, like the OAE, urged us to impose a reprimand. Respondent fully admitted that he failed to tender the two checks to JYS and offered the following:

> Prior to the hearing that led to the June 16, 2010 Order, Fisher instructed Respondent not to turn over the checks. Respondent recalls having the impression when he was leaving the courtroom when the hearing adjourned that the checks were to go to Sayegh, and not Fisher. To the best of Respondent's recollection, and because Respondent left the hearing thinking the checks were to go to Sayegh, he would have instructed his staff to tender the checks. Respondent acknowledges that he did not fully appreciate the import of the Order, and this was because of his understanding of what occurred at the hearing. Respondent emphasizes these facts to demonstrate that he genuinely thought the checks had been released. Respondent admits that he either did not tell the staff to send the checks out, or if he did, the staff did not send the checks. Obviously, the checks were not released and remained in Respondent's office and were not held appropriately. Respondent admits that he is responsible

> for the actions of his office staff when the checks were not safeguarded in a manner in which they could easily be found.
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> [Rbpp3-4.][4]

Respondent also explained that his failure to act upon his receipt of the court orders was the result of his mistaken belief that the checks already had been released:

> Respondent acknowledges there was no obedience to the 2013, 2016 and 2017 Orders insofar as the Orders were not acted upon by Respondent. Respondent thought the checks were released and was increasingly puzzled as to the repeated Orders. Respondent acknowledges that upon the repeated receipt of the Orders which obviously indicated the checks were still not turned over and something was amiss, the information conveyed by the Orders should have prompted greater persistence on his part to confirm the location of the checks and by not doing so, this was disobedience. As stated above, this was not a situation where Respondent knew he had funds and willfully refused to turn them over. He did not search more thoroughly.
>
> [Rbp11.]

Respondent also acknowledged receiving correspondence from the Piro law firm and admitted that he "should have moved with greater dispatch."

[4] "Rb" refers to respondent's October 20, 2021 corrected brief to us.

Respondent reiterated his offer to assist the Piro law firm in recovering the $50,000 that had escheated to the state government.

Respondent urged us to impose a reprimand.[5] In addition to the mitigation set forth in the disciplinary stipulation, respondent stated that he has been an attorney for the Borough of Glen Rock for over twenty-five years; is the former vice-chairman of the fee arbitration committee for Bergen County; served for eight years as a member of the Kinnelon Board of Education; and is a founding member of the Kinnelon Education Foundation, which was formed to supplement school programs.

At oral argument, respondent, through his counsel, expressed deep regret for the waste of disciplinary system resources caused by his misconduct. Respondent's counsel confirmed for us, however, that respondent never offered to make restitution to JYS.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent violated RPC 1.15(a); RPC 1.15(b); RPC 3.4(c); and RPC 8.4(d).

Respondent was entrusted with safeguarding two checks, totaling $50,000, on behalf of his client and for the benefit of his client's lender, JYS.

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[5] Respondent relied upon the same disciplinary precedent cited by the OAE in the disciplinary stipulation.

Indeed, he was court-ordered to do so. RPC 1.15(a) expressly states that property held by a lawyer on behalf of a client or third party "shall be identified as such and appropriately safeguarded." Likewise, RPC 1.15(b) requires a lawyer to "promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive." Considering that respondent and his staff misplaced the checks, respondent clearly failed to safeguard the two checks. Consequently, the $50,000 escheated to the State. Further, respondent failed to take appropriate measures to locate or to replace the checks after the Superior Court, in 2013, first ordered him to turn the checks over to JYS. Consequently, JYS was deprived of $50,000 to which it was entitled. Respondent's conduct in this regard violated RPC 1.15(a) and RPC 1.15(b).

RPC 3.4(c) prohibits an attorney from knowingly disobeying an obligation under the rules of the tribunal. RPC 8.4(d) likewise prohibits an attorney from engaging in conduct prejudicial to the administration of justice. Respondent disobeyed four separate orders from the Superior Court that required him to turn over the two checks to counsel for JYS. Specifically, he failed to comply with Judge Slomienski's November 18, 2013 order, which required him to pay to JYS "the certified funds in the amount of $50,000." He subsequently failed to comply with Judge DeLuca's May 8, 2015 order which, again, required him to turn over the two checks to counsel for JYS. Respondent also failed to comply with Judge

DeLuca's October 17, 2016 order that required the parties to meet and confer to determine the status of the two checks. Further, respondent failed to comply with Judge Harz's October 30, 2017 order which, once again, ordered him to turn over the two checks to counsel for JYS. Respondent's failure to comply with multiple orders of the Superior Court constituted violations of RPC 3.4(c) and RPC 8.4(d).

In sum, we find that respondent violated RPC 1.15(a); RPC 1.15(b); RPC 3.4(c); and RPC 8.4(d). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Respondent's most egregious misconduct was his failure to comply with the orders of the Superior Court that obligated him to turn over the two checks to counsel for JYS, a violation of RPC 3.4(c) and RPC 8.4(d). 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.

Ordinarily, the minimum discipline for conduct violating RPC 3.4(c) and RPC 8.4(d) is a reprimand. See In re Ali, 231 N.J. 165 (2017) (reprimand for

attorney who disobeyed court orders by neither appearing in court when ordered to do so nor filing 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 respondent's inexperience and unblemished disciplinary history, and the fact that his conduct was limited to a single client matter); In re Casci, 231 N.J. 136 (2017) (reprimand for attorney who violated RPC 1.15(c) (failing to keep separate funds over which the lawyer and another claimed an interest, until there was an accounting and severance of their interests) and RPC 3.4(c) by disbursing to himself a fee in violation of a court order precluding that disbursement; the attorney's conduct also violated RPC 8.4(d); no aggravating factors and substantial mitigation); In re Cerza, 220 N.J. 215 (2015) (reprimand for attorney who 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, violative of RPC 1.15(b); prior discipline included an 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)

(reprimand for attorney found 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 was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors included the attorney's financial problems, his battle with depression, and significant family problems; his ethics history included two private reprimands and an admonition).[6]

Censures have been imposed where an attorney's unethical conduct had a significant negative impact upon court operations, whether by severely impeding a single case, or adversely impacting multiple cases. See In re D'Arienzo, 207 N.J. 31 (2011) (attorney 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, his failure to provide the court with advance notice of his conflicting calendar prevented

[6] Respondent and the OAE cited Casci, Cerza, and In re Mason, 197 N.J. 1 (2008), in support of a reprimand for respondent's failure to comply with a court order, in violation of RPC 3.4(c).

the judge from scheduling other cases for that date; prior three-month suspension, two admonitions, and failure to learn from similar mistakes justified a censure), and In re LeBlanc, 188 N.J. 480 (2006) (attorney's misconduct in three client matters included conduct prejudicial to the administration of justice for failure to appear at a fee arbitration hearing, failure to abide by a court order requiring him to produce information, and other ethics violations; mitigation included the attorney's recognition of and stipulation to his wrongdoing, his belief that his paralegal had handled post-closing steps, and a lack of intent to disregard his obligation to cooperate with ethics authorities; no prior discipline).

Cases involving an attorney's failure to safeguard funds, in violation of RPC 1.15(a),[7] and to promptly deliver funds to clients or third persons, in violation of RPC 1.15(b),[8] usually result in the imposition of an admonition, depending on the circumstances. See, e.g., In re Sternstein, 223 N.J. 536 (2015) (admonition; after the attorney had received five checks from a bankruptcy

[7] Respondent and the OAE cited In re Marra, 134 N.J. 521 (1993), to support a reprimand in matters where an attorney fails to safeguard client funds. Unlike the matter before us, however, the attorney in Marra failed to cooperate with disciplinary authorities, in violation of RPC 8.1(b), and engaged in conduct involving fraud, dishonesty, deceit and misrepresentation, in violation of RPC 8.4(c), a charge not present here.

[8] Respondent and the OAE cited In the Matter of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012); In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004), and In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) where admonitions were imposed for misconduct violative of RPC 1.15(b).

court, representing payment of his clients' claim against the bankrupt defendant, he failed to deposit the checks in his attorney trust account, choosing instead to place the checks in his desk, a violation of RPC 1.15(a); the attorney also failed to inform his clients of his receipt of the funds, and, only after numerous inquiries, first from the clients and then from an attorney retained by them to pursue their interests, did he finally take the steps necessary to receive the funds from the bankruptcy court, which he then turned over to the clients, a violation of RPC 1.15(b); despite two prior suspensions, we did not enhance the discipline because those matters were remote in time and involved unrelated conduct); In the Matter of Jeffrey S. Lender, DRB 11-368 (January 30, 2012) (admonition where attorney lacked diligence and failed to safeguard, and promptly deliver, funds to a third party in a real estate transaction, in violation of RPC 1.3 and RPC 1.15(b)); and In the Matter of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (admonition for attorney who, in three separate matters, violated RPC 1.4(b), RPC 1.4(c), and RPC 1.15(b); in mitigation, the attorney suffered from a medical conduction that required him to work abbreviated hours at the time the misconduct occurred, clients suffered no financial harm and no prior discipline).

Here, respondent's misconduct most closely resembles that of the attorney in Cerza, whom we reprimanded for violations of RPC 1.15(b), RPC

3.4(c), RPC 8.4(d). In the Matter of John E. Cerza, DRB 14-102 (October 9, 2014). In that case, we determined that Cerza had violated RPC 3.4(c) and RPC 8.4(d) by knowingly disobeying a bankruptcy court's order compelling him to comply with a subpoena, similar to respondent's failure to abide by the Superior Court's orders. (slip op. at 8-9). Further, like respondent, Cerza violated RPC 1.15(b) for failing to promptly delivery funds to a client for a period of more than five years. Id. at 8. Cerza, like respondent, presented substantial mitigation, including his admission of wrongdoing and remorse and his service to the community. Id. at 7. In aggravation, Cerza had a prior admonition for his failure to promptly satisfy tax liens out of funds that had been escrowed for that purpose. Based upon the totality of the circumstances, including aggravating and mitigating factors, we determined that a reprimand was the appropriate sanction for Cerza's misconduct. Id. at 11.

Based upon the above-cited precedent, and the Cerza decision in particular, we conclude that the appropriate baseline discipline for respondent's misconduct is a reprimand.

In crafting the appropriate discipline, we also consider the presence of any aggravating and mitigating factors.

In aggravation, respondent ignored not one, but four, court orders and failed to take reasonable steps to locate two checks that he was obligated to

safeguard. In re Silber, 100 N.J. 517, 521 (1985) (considering in aggravation that attorney failed to remediate despite several opportunities to do so). In further aggravation, respondent's failure to promptly comply with the court's orders deprived JYS of $50,000 that has since escheated to the State. Moreover, although respondent offered his assistance in recovering the escheated funds, he has concededly never offered to provide restitution for the financial harm caused by his misconduct. Thus, the harm that respondent inflicted upon JYS remains.

In mitigation, we accord some weight to respondent's unblemished record in forty years at the bar. In re Convery, 166 N.J. 298, 308 (2001). Further, the misconduct appears unlikely to recur. In re Barbour, 109 N.J. 143, 161 (1988) (considering in mitigation that there was "little or no likelihood that the attorney will repeat the transgressions"). Moreover, respondent readily admitted his fault by entering into this disciplinary stipulation, he expressed contrition, and his misconduct was not for personal gain.

Overall, however, we find that respondent's blatant disregard of four Superior Court orders represented a complete abdication of his professional responsibility. That dereliction, along with the substantial prejudice that respondent's misconduct has caused JYS, warrants a sanction more severe than a reprimand. We, thus, determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Vice-Chair Singer voted to impose a reprimand (as the OAE recommended), finding substantial mitigation, including respondent's unblemished forty years at the bar; no motive to benefit himself by the misconduct; and the OAE's finding that the misconduct is unlikely to recur. Thus, with baseline discipline of a reprimand (as per the majority -- at p. 17) and considering the majority's statement (at p. 16) that "respondent's misconduct most closely resembles that of the attorney in Cerza" who was reprimanded even with a prior admonition on his record, she disagrees that: (a) precedent supports a censure, and (b) the aggravation outweighs the mitigation here.

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 Robert L. Garibaldi, Jr.
Docket No. DRB 21-187

Argued: November 18, 2021

Decided: February 14, 2022

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