Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-220
District Docket No. VI-2020-0002E

In the Matter of	:
Conrad J. Benedetto	:
An Attorney at Law	:

Decision

Argued: January 20, 2022

Decided: March 24, 2022

Anthony J. Vignier appeared on behalf of the District VI Ethics Committee.

John McGill, III 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 censure filed by the District VI Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 3.3(a)(4) (offering to a tribunal evidence the lawyer knows to be false); RPC 3.3(a)(5) (failing to disclose a material fact

to a tribunal, knowing that the omission is reasonably certain to mislead the tribunal); RPC 5.1(b) (failing to make reasonable efforts to ensure that a lawyer, over whom the lawyer has direct supervisory authority, conforms to the Rules of Professional Conduct); RPC 5.1(c)(1) and (2) (holding a lawyer responsible for another lawyer's violations of the Rules of Professional Conduct if the lawyer orders or ratifies the conduct or the lawyer has direct supervisory authority over the other lawyer and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action); RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

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

Respondent was admitted to the New Jersey bar in 1983 and to the Pennsylvania bar in 1981. At the relevant times, he maintained a practice of law in Cherry Hill, New Jersey.

On September 2, 1988, respondent received a private reprimand (now, an admonition) for violating former RPC 5.5(a) (failing to maintain a bona fide New Jersey office). In the Matter of Conrad J. Benedetto, DRB 88-202 (September 2, 1988).

On May 9, 2001, respondent received a reprimand for practicing law in South Carolina without a license to do so, in violation of RPC 5.5(a)(1) (engaging in the unauthorized practice of law). In re Benedetto, 167 N.J. 280 (2001).

We now turn to the facts of this matter.

On May 23, 2013, Margaret Rothgerber died testate, survived by her three adult children – John Rothgerber, Eileen Gravenstein, and Peggy Ann Rothgerber. Margaret's children, however, were unaware that, prior to her death, Margaret had executed a last will and testament, and had named Eileen and John as her executors.

On November 15, 2013, John filed with the Camden County Surrogate's Court an application to become the administrator of Margaret's estate, which application indicated that Margaret had died intestate and that he was Margaret's only heir. Approximately four months later, on March 7, 2014, Eileen went to the Surrogate's Court to apply to become the estate's administrator. Following Eileen's application, the Surrogate's Court denied John's November 2013 application because he had failed to either obtain "renunciation[s]"[1] from Eileen

[1] In the context of estate administration, an individual executes a "renunciation" to demonstrate that he or she has no intent to become administrator. See In re Estate of Watson, 35 N.J. 402, 408 (1961).

and Peggy Ann or to provide them notice of his intent to become administrator, as R. 4:80-3 requires. On April 17, 2014, Eileen passed away, before the Surrogate's Court could decide her application to become administrator. Eileen was survived by multiple adult children.

In July 2014, John retained respondent to assist him in becoming the administrator of Margaret's estate.[2] Respondent assigned John's matter to his newly hired associate, who had neither experience nor formal training in handling estate matters.[3]

On August 15, 2014, respondent's office manager, John Groff, accompanied John to the Surrogate's Court, where John again attempted to apply to become administrator of Margaret's estate.[4] The Surrogate's Court, however, rejected John's application because he had failed to either obtain renunciations from all of Margaret's descendants,[5] including Eileen's children, or to provide them notice of his intention to become administrator. Consequently, if

[2] Sometime earlier in 2014, John had retained respondent to assist him in becoming guardian of his disabled sister, Peggy Ann.

[3] In April 2014, the junior attorney joined respondent's firm as a law clerk. In June 2014, he became an associate. According to Court records, the associate was admitted to the New Jersey bar in 2013. The associate has no prior discipline and was not charged in this matter.

[4] Respondent's associate did not accompany John and Groff to the Surrogate's Court because he was on vacation.

[5] A "[d]escendant[] of an individual means all of his [or her] progeny of all generations . . . ." See N.J.S.A. 3B:1-1.

respondent's firm could not obtain the necessary renunciations, the Surrogate's Court required John to file a formal court application for estate administration, with notice to all of Margaret's descendants.[6]

Thereafter, Groff expressed his disagreement to Surrogate's Court staff regarding the need for renunciations, left the courthouse, and notified respondent that the Surrogate's Court would not appoint John as administrator. Respondent immediately called the Surrogate's Court and spoke with the the Surrogate's Counsel, who informed respondent that he would need to obtain renunciations from all of Margaret's descendants, including Eileen's children, or file a formal application, with notice to the descendants, to proceed with John's appointment as administrator.[7] Additionally, although the Surrogate's Counsel directed respondent to the Court Rules applicable to file a conforming

[6] As noted above, R. 4:80-3 requires an applicant who seeks to administer the estate of an intestate decedent to provide notice to, or to obtain the renunciations of, all qualified adults with equal standing to become administrator. Pursuant to N.J.S.A. 3B:10-2, when a person dies intestate and without a surviving spouse, administration of the decedent's estate "shall be granted to [. . .] the remaining heirs of the estate." N.J.S.A. 3B:1-1 defines "heirs" as, among other things, "descendants of the decedent, who are entitled under the statutes of intestate succession to the property of a decedent." Because Margaret's children and grandchildren, as her descendants, had equal standing to her property under the laws of intestate succession (see N.J.S.A. 3B:5-4(a)), John was required to provide notice to Eileen's children, or obtain their renunciations, before seeking appointment as the estate's administrator.

[7] In his verified answer to the formal ethics complaint, respondent denied that the Surrogate's Counsel had informed him of the need to obtain renunciations from Eileen's children. However, at the ethics hearing and in his May 28, 2015 conversation with the DEC investigator, respondent admitted that the Surrogate's Counsel had instructed him to obtain such renunciations.

complaint for estate administration, respondent admitted that he had failed to "check the [R]ules" and did not "even know which ones they were." Following his conversation with the Surrogate's Counsel, respondent called Groff and instructed him to follow the Surrogate's Court's instructions and to advise the associate to "check the [R]ules and make sure . . . that the complaint complies with whatever [R]ules we need to comply with."

On August 21, 2014, respondent's associate returned from vacation and discovered on his desk a draft complaint for John's appointment as administrator.[8] The complaint listed Margaret's three children, John, Eileen, and Peggy Ann,[9] but failed to list any of Eileen's children and falsely stated that John was "the only competent heir" of Margaret's estate. After respondent's associate had reviewed the complaint for grammatical errors, he discussed the document with respondent and Groff and directed John to verify its factual content. During the ethics hearing, respondent admitted that he only reviewed

[8] Respondent's associate believed that Groff had prepared the draft complaint, however, Groff alleged that respondent's associate had drafted the document. Respondent denied drafting the complaint and indicated that either his associate or Groff could have prepared the complaint. Although the DEC did not expressly resolve this factual dispute, as discussed in greater detail below, the DEC found Groff's testimony to be incredible and determined that respondent's associate's testimony was neutral, balanced, and credible.

[9] As noted above, Peggy Ann was "incapacitated" and under the care of a guardian, who had executed a renunciation of Peggy Ann's intent to serve as administrator. Peggy Ann's court-appointed attorney had no objection to the renunciation.

the complaint for spelling and grammatical errors[10] and relied on his associate to ensure that the complaint was factually, legally, and "substantive[ly]" correct, and complied with Court Rules. Respondent, moreover, asserted that he was "not hands on with the complaint[,]" stated that it was his associate's responsibility to draft the complaint after investigating the facts, and placed the burden on his associate to make "a final decision [. . . .] according to the [R]ules." Following respondent's limited review, he returned the complaint to his associate, who signed the complaint and filed it with the Surrogate's Court.

On August 22, 2014, the Surrogate's Counsel reviewed the complaint and, based on John's prior unsuccessful attempt to become administrator only one week earlier, determined that it not only failed to notice Eileen's children, but also falsely asserted that John was Margaret's only competent heir. Consequently, the Surrogate's Counsel called respondent's associate and informed him that the complaint had failed to identify or provide notice to Eileen's children and contained other procedural deficiencies. Respondent's associate then immediately spoke with respondent and Groff regarding the Surrogate's Counsel's concerns. According to respondent's associate, either respondent or Groff, who were both present in the same room as the associate,

[10] In his May 28, 2015 conversation with the DEC investigator, however, respondent asserted that he would have reviewed the complaint to make sure it was correct "in all aspects" before it was filed.

claimed that the firm had consulted with an estate attorney, who had not only advised them that John was the only competent heir to serve as administrator, but also had rejected the Surrogate's Counsel's concerns regarding notice to Eileen's children. Thereafter, respondent instructed his associate to inform the Surrogate's Counsel to file the complaint "as submitted."

In his May 28, 2015 interview with the DEC investigator, respondent, consistent with his associate's version of the events, maintained that he had consulted with an estate attorney[11] and had then instructed his associate to file the complaint as submitted, notwithstanding the Surrogate's Counsel's concerns. However, during the ethics hearing and in his verified answer, respondent denied that he had directed his associate to file the complaint as submitted and, instead, alleged that he had told his associate to "do whatever research was necessary[,]" "check the appropriate [Court] Rules[,]" and contact an estate attorney, who respondent knew, if he had any questions.[12]

On August 25, 2014, the Surrogate's Counsel sent respondent's associate a letter, explaining that the complaint contained procedural deficiencies;

[11] In his May 28, 2015 interview with the DEC investigator, respondent could not identify the estate attorney with whom he had spoken.

[12] Groff also claimed that respondent had instructed his associate to comply with the Surrogate's Counsel's instructions and to call an estate attorney if he had questions. Groff then allegedly provided respondent's associate with the telephone number of an estate attorney.

however, the letter did not address the complaint's misrepresentations or its failure to notice Eileen's children. In response to the letter, respondent's associate called the Surrogate's Counsel and discussed the procedural issues with the complaint. During the ethics hearing, the Surrogate's Counsel explained that he did not discuss with respondent's associate the misrepresentations in the complaint, because the associate had already instructed the court to file the complaint as submitted. Moreover, the Surrogate's Counsel explained that the court could not address the substantive issues with the complaint until the procedural issues were resolved.

Following his discussion with the Surrogate's Counsel, respondent's associate prepared an amended complaint to correct the procedural deficiencies. The amended complaint, however, still misrepresented that John was Margaret's only competent heir and failed to list any of Eileen's children or to provide them notice of John's intent to become administrator. Although respondent asked his associate whether he had "check[ed] the [R]ules" and "corrected whatever mistakes [had been] made[,]" respondent failed to review the amended complaint for anything other than grammatical errors. Thereafter, on September 5, 2014, respondent's associate filed the amended complaint containing the same misrepresentations as in the original complaint.

In October 2014, John located Margaret's will, which, as noted above, named him and Eileen as executors of her estate. Consequently, on October 17, 2014, respondent's associate voluntarily withdrew John's complaint for estate administration and, on October 29, 2014, considering Eileen's death, the Surrogate appointed John executor of Margaret's estate.

In his answer to the formal ethics complaint and in his submissions to the DEC, respondent denied having committed any ethics violations and maintained that he did not know that the complaints contained false statements because he had reviewed them only for grammatical errors. Respondent also denied that he had failed to supervise his associate in connection with John's matter because he had conveyed to his associate that he was always available to assist him as necessary. Additionally, respondent urged, as mitigation, his lack of personal gain; his cooperation with disciplinary authorities; the fact that the incident was isolated and unlikely to recur; the lack of injury to John or harm to the justice system; and his "[s]ubsequent remedial measures."[13] However, at the conclusion of the ethics hearing, when asked whether he had come to realize that the complaint omitted material facts by failing to identify Eileen's children, respondent alleged that he "still [did not] know."

[13] Respondent failed to identify any remedial measures he had purportedly undertaken to ensure that future associates would be properly supervised.

Finally, respondent pressed, before the DEC hearing panel, numerous objections, in which he alleged that the DEC investigator was required to recuse himself, based on a conflict of interest, because the investigator had become a "necessary witness" to the ethics proceedings. Specifically, respondent claimed that, because the DEC investigator had developed certain facts underlying the instant matter from an unrelated investigation, the investigator should have recused himself, during the investigation stage, to allow a new investigator to objectively assess respondent's behavior.

The DEC rejected, as irrelevant to its determination of whether respondent had violated the Rules of Professional Conduct, respondent's objections regarding the investigator's alleged bias toward him. However, the DEC allowed respondent wide latitude to cross-examine the investigator regarding his credibility.

The DEC found that the investigator; respondent; his associate; and the Surrogate's Counsel testified credibly regarding their recollection of the facts.[14] However, the DEC determined that Groff's testimony was incredible because he had admitted to multiple criminal convictions, one of which involved theft, and

[14] The DEC, however, emphasized that the investigator's testimony was "unnecessary" to their determination of whether respondent had violated the Rules of Professional Conduct. The DEC explained that its determination of whether respondent had violated the Rules of Professional Conduct did not rest upon the investigation of the ethics grievance but was "based solely upon the evidence presented at the [ethics h]earing."

could not recall what other crimes he had committed. Moreover, despite serving as the firm's office manager, he could not recall how many attorneys worked at respondent's firm. Finally, the DEC found incredible Groff's attempt to deny that John was a client of the firm, despite Groff having accompanied John to the Surrogate's Court, in August 2014.

The DEC determined that respondent violated RPC 5.1(b) by failing to make reasonable efforts, as the supervising attorney, to ensure his associate's compliance with the Rules of Professional Conduct, in connection with his associate's handling of John's matter. Specifically, the DEC found that respondent knew, based on his discussion with the Surrogate's Counsel, that John's complaints for estate administration needed to identify, and provide notice to, all of Eileen's children. However, rather than convey this specific information to his associate, respondent merely told his associate to investigate the matter, comply with Court Rules, and call other estate attorneys for advice. Although respondent was aware of the required substantive information to avoid misleading the court, he merely reviewed the complaints for grammatical errors. The DEC observed, however, that a substantive review of the complaints could have readily ensured his associate's compliance with the Rules of Professional Conduct.

Similarly, the DEC determined that respondent violated RPC 5.1(c)(1) and (2) by directing his associate to file the deceptive complaints, which falsely alleged that John was Margaret's only competent heir. The DEC emphasized that, although respondent had multiple opportunities to correct the substantive errors in the pleadings, he failed to undertake any remedial measures and, instead, merely conducted cursory grammatical reviews. Respondent, moreover, knew that the complaints were required to identify and provide notice to all of Eileen's children; however, respondent improperly relied upon his inexperienced associate to comply with the Court Rules.

The DEC, however, did not find, by clear and convincing evidence, that respondent violated RPC 3.3(a)(4) and (5), reasoning that he had reviewed the complaints only for grammatical errors and, thus, was unaware that they contained false information and material omissions that were reasonably certain to mislead the Surrogate's Court. The DEC, likewise, found no clear and convincing evidence that respondent violated RPC 8.4(a) and (c) because, in its view, respondent was unaware that he had induced his associate to file complaints containing false information. Although the DEC found that respondent exhibited gross neglect in his supervision of John's estate matter, the DEC could not clearly and convincingly find that respondent made knowing misrepresentations to the Surrogate's Court.

In recommending a censure, the DEC found that respondent failed to recognize his responsibility, as a supervising attorney, to substantively review his associate's work to ensure compliance with Court Rules and statutes. Consequently, the DEC found that there was "a great likelihood" that respondent would again fail to properly supervise a subordinate attorney. Additionally, the DEC rejected respondent's theory that his conduct did not harm the administration of justice because "[a]ny time" an ethics grievance "asserting lack of candor to [a] [c]ourt . . . is sustained, there is actual harm to the administration of justice" by the consumption of judicial resources and the erosion of public confidence in the bar.[15] Finally, the DEC weighed, in aggravation, respondent's failure to correct the false pleadings, despite having had several opportunities to do so, his failure to demonstrate that he had undertaken any remedial efforts to ensure current or future associates are properly supervised, and his prior discipline for unrelated misconduct.

Although, during the ethics hearing, respondent denied that he had committed any unethical conduct in connection with his supervision of his associate's handling of the estate matter, at oral argument and in his December 1, 2021 brief to us, he reversed that position. Before us, through his counsel,

[15] The formal ethics complaint, however, did not charge respondent with having violated RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

respondent acknowledged that he had violated RPC 5.1(b) and RPCs 5.1(c)(1) and (2) by failing to ensure that his associate conformed to the Rules of Professional Conduct. Specifically, respondent claimed that he should have done more to properly supervise his associate and that he should have been more "hands on" with his associate's work product. Further, respondent agreed with the DEC's determination to dismiss the RPC 3.3(a)(4) and (5) and RPC 8.4(a) and (c) charges, asserting that he did not have the requisite intent to commit these infractions because he had merely reviewed his associate's complaints for grammatical errors.

In urging the imposition of a reprimand, respondent stressed that his 1988 private reprimand and 2001 public reprimand were both unrelated to the circumstances underlying the instant matter, and far removed in time. Additionally, respondent alleged that his misconduct was an isolated incident, which is unlikely to recur, because he has accepted responsibility for his actions. Further, respondent urged us to reject the DEC's reasoning that the administration of justice is harmed whenever an ethics charge alleging lack of candor is sustained because, in the instant matter, the DEC dismissed the RPC 3.3(a)(4) and (5) and RPC 8.4(a) and (c) charges.

Finally, at oral argument, respondent noted his "continuing objections[,] made at the hearing panel level[,]" regarding the conduct of the DEC

investigator, whom he alleged "became a witness and [. . .] was the catalyst it appears to the charges in the complaint." Respondent, however, offered to "waive[,]" "as moot[,]" his "continuing objections made at the hearing panel level," but "only if the Board is in agreement [with the DEC] to dismiss" the RPC 3.3(a)(4) and (5) and RPC 8.4(a) and (c) charges.[16] Respondent further stated that:

> [i]f the Board questions the panel's decision in that regard, then respondent would ask the Board to consider all of his continuing objections that are in the record and all of his arguments challenging the conduct of [the DEC investigator].
>
> [Transcript of oral argument before the Board, page 7.]

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 clear and convincing evidence that respondent violated RPC 5.1(b) and RPC 5.1(c)(1) and (2). Additionally, we agree with the DEC's conclusion that the record does not clearly and convincingly establish that respondent knowingly engaged in deceptive conduct and, thus, determine to dismiss the RPC 3.3(a)(4) and (5) and RPC 8.4(a) and (c) charges.

[16] Of course, we reject this invitation and review this matter de novo in accordance with the Rules.

As a preliminary matter, we reject respondent's claim that the DEC investigator had become an improper "witness" in the instant matter and, thus, should have recused himself as investigator, because he had investigated certain facts of this case during his investigation of a different matter. We find that not only is the record devoid of any indication that the DEC investigator held any bias towards respondent, but, as the DEC correctly explained, the investigator's testimony regarding the manner in which he conducted any investigations is also irrelevant to our de novo review of the record.

Turning to our de novo review of respondent's conduct, RPC 5.1(b) requires a lawyer having direct supervisory authority over another lawyer to make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. Although respondent had direct supervisory authority over his inexperienced associate, he failed to make any reasonable efforts to ensure that his associate's complaints were factually and legally correct.

Specifically, on August 15, 2014, the Surrogate's Counsel informed respondent that John's complaint for administration needed to identify and provide notice to Eileen's children, who, pursuant to R. 4:80-3, had equal standing to administer Margaret's estate. However, rather than convey that material information to his associate, respondent merely told Groff to inform the associate to "check the [R]ules." One week later, respondent's associate

reviewed the proposed complaint for grammatical errors and submitted the draft to respondent, who failed to conduct a substantive review to ensure that Eileen's children were properly identified and that the Surrogate's Court was on notice that John was not, in fact, Margaret's only competent heir, as the complaint falsely alleged. Thereafter, the Surrogate's Court notified respondent's associate that Eileen's children were neither identified in the complaint nor provided notice of its filing. However, when his associate sought respondent's advice regarding these issues, respondent, inexplicably, dismissed the Surrogate's Court's concerns and directed his associate to file the complaint as submitted.[17] Finally, despite the Surrogate's Court's repeated instructions regarding the inclusion of Eileen's children, respondent again conducted a limited grammatical review of his associate's draft amended complaint, which, likewise, falsely alleged that John was Margaret's only competent heir. Ultimately, respondent had numerous opportunities to ensure that the pleadings were free of deception. However, respondent repeatedly shirked his supervisory responsibilities and failed to ensure that his associate conformed to the Rules of Professional Conduct, in violation of RPC 5.1(b).

[17] Although respondent denied, at the ethics hearing, that he had instructed his associate to file the complaint as submitted, his denial lacks credibility given his May 28, 2015 admission to the DEC investigator that he had provided exactly that instruction to his associate. Respondent's associate, likewise, testified that respondent had directed him to file the complaint as submitted.

RPC 5.1(c) imposes responsibility on a lawyer for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders or ratifies the conduct involved; or (2) the lawyer having direct supervisory authority over the other lawyer knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action. In this case, respondent violated the Rule on both bases. Specifically, he instructed his associate to file John's complaints for estate administration, which falsely alleged that John was Margaret's only competent heir, despite the Surrogate's Court's prior warnings that Eileen's children were also eligible to serve as administrator. Additionally, respondent, who was on notice that Eileen's children were interested parties in John's complaints, had multiple opportunities to correct his associate's recklessly false pleadings. However, respondent failed to substantively review the complaints, failed to properly advise his associate of the applicable law and Court Rules, and failed to take any other reasonable remedial action to avoid deceiving the Surrogate's Court, in violation of RPC 5.1(c)(1) and (2).

In our view, there is insufficient evidence to find, by a clear and convincing standard of proof, that respondent knew, at the time he directed his associate to file John's complaints for estate administration, that the complaints contained false information, in violation RPC 3.3(a)(4) and (5) and RPC 8.4(a)

and (c).

RPCs 3.3(a)(4) and (5) explicitly prohibits an attorney from "knowingly" offering false evidence or failing to disclose a material fact to a tribunal, knowing that the omission is reasonably certain to mislead the tribunal. Similarly, RPC 8.4(a) expressly forbids an attorney from "knowingly" violating, or attempting to violate, the Rules of Professional Conduct through the acts of another. It is well-settled that a violation of RPC 8.4(c) requires proof of intent. See In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011) (case dismissed for lack of clear and convincing evidence that the attorney had knowingly violated R. 1:39-6(b), which prohibits the improper use of the New Jersey Board of Attorney Certification emblem; the attorney's website, which was created by a nonlawyer who wanted it to look "attractive and appealing," contained the emblem, even though the attorney was not a certified civil trial lawyer; the attorney was unaware of the emblem's placement on the website and, upon being told of its presence, had it removed immediately; the emblem was not on his letterhead or business cards, and he did not tell anyone that he was a certified civil trial attorney).

Here, although respondent failed to properly supervise his associate's handling of the estate matter, the record does not clearly and convincingly demonstrate that respondent intended to deceive the Surrogate's Court. Not only

was the Surrogate's Court aware, prior to the filing of the complaints, that Eileen's children had standing to become administrators, but the record does not clearly and convincingly establish that respondent, following his limited grammatical review, knew that the complaints omitted Eileen's children as eligible administrators and falsely stated that John was Margaret's only competent heir. It was patently unreasonable for respondent to conduct a mere grammatical review – as discussed above, our Rules require a greater standard of care. However, because the record does not clearly and convincing establish that respondent knowingly induced his associate to deceive the Surrogate's Court, we determine to dismiss the RPC 3.3(a)(4) and (5) and RPC 8.4(a) and (c) charges.

In sum, we find that respondent violated RPC 5.1(b) and RPC 5.1(c)(1) and (2). We dismiss the charges that respondent violated RPC 3.3(a)(4) and (5) and RPC 8.4(a) and (c). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Cases involving an attorney's failure to supervise junior attorneys are often combined with other violations and ordinarily result in a reprimand. See In re Kobin, 212 N.J. 291 (2012) (reprimand for attorney who failed to properly supervise his associate; the associate filed a personal injury complaint, without the attorney's permission, in an action that the attorney had deemed unviable;

thereafter, instead of specifically instructing his associate how to proceed, the attorney merely told his associate that he was not a "happy camper" and to "straighten this out;" additionally, rather than take charge of the matter, the attorney failed, for several months, to follow up with his associate to ensure that the matter had been satisfactorily addressed; the client's matter, however, was dismissed for lack of prosecution; in imposing a reprimand, we weighed the attorney's unblemished twenty-five year career at the bar against his arrogant, disdainful attitude in communicating with disciplinary authorities); In re Diaz, 209 N.J. 89 (2012) (reprimand for managing attorney in the New Jersey office of a national law firm that processed mortgage loan defaults through foreclosures and related bankruptcy matters; for five years, the firm used pre-signed certifications in support of ex parte applications for relief in bankruptcy court, even after the attorney who signed them had left the firm; moreover, the client-providers of the information did not actually review and attest to the accuracy of the certifications, before they were filed in bankruptcy court; the attorney failed to supervise a junior attorney who filed the pre-signed certifications, in violation of RPC 5.1(c)(1); RPC 8.3(c); RPC 8.4(a); and RPC 8.4(d) ; in mitigation, we considered the attorney's lack of prior discipline, the discontinued use of the certifications six years prior to our decision, and the attorney's full cooperation with disciplinary authorities); In re DeZao, 170 N.J.

199 (2001) (reprimand for attorney who failed to supervise his associate, who improperly sent a letter to the court indicating that he would not oppose a motion to dismiss the client's complaint, in violation of RPC 5.1(b); the lawyer also was guilty of gross neglect (RPC 1.1(a)); pattern of neglect (RPC 1.1(b)); lack of diligence (RPC 1.3)); failure to communicate with a client (formerly RPC 1.4(a)); and failure to explain a matter to the extent necessary to permit the client to make an informed decision about the representation (formerly RPC 1.4(b)); In re Rovner, 164 N.J. 616 (2000), and In re Rovner, Allen, Seiken & Rovner, 164 N.J. 617 (2000) (reprimand for both the law firm and the partner in charge for failing to supervise junior lawyers; in one client matter, during a three-year period, a junior lawyer allowed a client matter to be dismissed for lack of prosecution and, thereafter, a second junior lawyer unsuccessfully moved to reinstate the complaint based on her allegation that she had not received the court's notice of dismissal; the Appellate Division characterized the neglect of the matter as "blatant and totally unprofessional;" in another client matter, a junior lawyer filed a personal injury action, but allowed the matter to be dismissed for failure to file the required notice under the New Jersey Tort Claims Act; thereafter, the client successfully sued the firm for malpractice; in mitigation, we considered the managing partner's lack of prior discipline and the law firm's compliance with the RPCs for nine years prior to our decision);

and In re Fusco, 142 N.J. 636 (1995) (reprimand for attorney who stipulated that he improperly delegated recordkeeping responsibilities for his firm's trust account to an associate over whom he had direct supervisory authority; the lawyer's failure to supervise the junior attorney resulted in the knowing misappropriation of client funds). But see In re Macias, 159 N.J. 516 (1999) (three-month suspension for attorney who failed to supervise a junior lawyer assigned to a personal injury case; the junior lawyer neglected the matter, resulting in the dismissal of the client's complaint for failure to serve two of the defendants and for failure to pursue a judgment against a third defendant; we found that, because the attorney had failed to take any remedial action to correct the junior lawyer's mistakes, the attorney violated RPC 5.1(c)(2); in aggravation, we weighed the lawyer's two prior reprimands, one of which involved similar misconduct for pattern of neglect and lack of diligence).

On September 20, 2021, the Court imposed a three-month suspension on Stephen C. Gilbert, a senior attorney who failed to ensure that a junior lawyer avoided an egregious conflict of interest, in which both the senior and junior attorneys concurrently represented the buyer and seller in a failed commercial real estate transaction. In re Gilbert, __ N.J. __ (2021). There, the senior attorney directed the junior lawyer to violate RPC 1.7(a)(1) (concurrent conflict of interest) by instructing him to participate in the prohibited representation by

reviewing and revising documents related to the transaction and by taking no action to put an end to the improper conduct, in violation of RPC 5.1(b) and (c). In the Matters of Aaron Scott Gilbert and Stephen C. Gilbert, DRB 20-044 and 20-045 (February 10, 2021) (slip op.at 32).[18] The failed transaction resulted in significant financial harm to the prospective buyer, who canceled the deal after discovering significant issues with the property and business. Id. at 41. In our split decision, then Chair Clark and Members Boyer and Singer voted to impose a censure, and Members Petrou, Hoberman, and Zmirich voted for a three-month suspension.[19] Id. at 39-40.

The Chair and the two Members who voted for a censure weighed, in mitigation, the passage of nine years since the underlying conduct; that the senior attorney had a nearly unblemished thirty-nine-year career at the bar, with the exception of a 1996 reprimand for unrelated misconduct; and that the senior attorney's behavior was unlikely to recur. Id. at 40.

The three Members who voted for a three-month suspension weighed, in

[18] The Court separately imposed an admonition on Aaron Scott Gilbert, the junior attorney, for abiding by the senior attorney's direction that he participate in the conflict of interest, in violation of RPC 1.7(a)(1) and RPC 5.2(a) (a lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person). In re Aaron Scott Gilbert, 248 N.J. 270 (2021). In unanimously imposing an admonition, we emphasized the fact that the junior attorney had been admitted to the bar for just three years and had acted at the direction of the senior attorney. In the Matters of Aaron Scott Gilbert and Stephen C. Gilbert, DRB 20-044 and 20-045 (February 10, 2021) (slip op. at 41).

[19] Then Vice-Chair Gallipoli was recused. Members Joseph and Rivera did not participate.

aggravation, that the senior attorney had engaged in a known conflict of interest to further his pecuniary interest, as both the buyer and seller owed him legal fees; encouraged the transaction even after the buyer could not obtain conventional financing; suggested that the transaction take place as a stock sale, with bootstrap financing, which leveraged every asset the buyer owned and imposed on the buyer the responsibility for the property's liabilities; and the fact that the senior attorney directed his junior attorney to work on the matter, thus, embroiling him in the conflict. Id. at 39-40.

On September 16, 2021, we imposed a censure on a senior attorney, who, among other things, failed to provide any supervision to his associates, who ignored their client's numerous communications and neglected his wrongful death action. In the Matter of A. Charles Peruto, Jr., DRB 21-004 (September 16, 2021). Although the client had informed the senior attorney that his associates were not working on his case, the senior attorney failed to investigate what work had been done. Id. at 26-27. Rather, the senior attorney accused the client of being difficult; failed to explain to the client anything about the substance of the case; failed to refund his client's retainer fee for seven years after the client had stopped communicating with the attorney; unilaterally terminated the attorney-client relationship; refused to turn over the client file; and failed to take any reasonable action to remediate his associates' misconduct,

in violation of RPC 1.3; RPC 1.4(b) and (c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions); RPC 1.15(b) (failure to promptly deliver client funds); RPC 1.16(c) (failure to comply with appliable law requiring notice to or permission of a tribunal when terminating a representation) and (d) (failure to protect the client's interests upon termination of the representation); and RPC 5.1(c)(2). Id. at 27-29.

In imposing a censure, we weighed, in aggravation, the senior attorney's retraction of his previous admissions in his verified answer, his utter lack of remorse, and his unsupported theories about how the misconduct occurred, including his allegation that one of his associates had sent the client clandestine e-mails from the senior attorney's e-mail address. Id. at 34. That decision is pending with the Court.

Here, respondent's misconduct arguably renders him more culpable than the reprimanded attorneys in Kobin, DeZao, and Rovner. Unlike those attorneys, who merely ignored their junior lawyers' mishandling of client matters, respondent expressly directed his inexperienced associate to file John's estate administration complaints, which materially omitted Eileen's children as eligible administrators and falsely alleged that John was Margaret's only competent heir. Although respondent was aware that John's complaints for estate administration needed to identify, and provide notice to, all of Eileen's

children, respondent, inexplicably, withheld that crucial information from his associate, conducted limited grammatical reviews of his associate's complaints, and merely instructed his associate to "check the [R]ules."

Nevertheless, unlike the attorney in Kobin, whose failure to supervise a junior lawyer persisted for several months and resulted in the dismissal of the client's matter for lack of prosecution, and the attorney in Rovner, who, for more than three years, failed to supervise multiple junior attorneys in connection with two client matters, each of which had been dismissed on procedural grounds, respondent's misconduct was limited to one matter and spanned only a few weeks, until John located Margaret's will that named him executor. Thus, unlike the clients in Kobin and Rovner, whose matters were dismissed, in part, because the senior attorneys had failed to properly supervise their junior lawyers, and the client in Gilbert, who suffered significant financial harm as a result of the attorney's misconduct, in the instant matter, John suffered no ultimate harm as a result of respondent's misconduct, albeit through no remedial action of respondent, because the Surrogate's Court had named John executor shortly after John had discovered Margaret's will.

Moreover, respondent's misconduct is less serious than the censured attorney in Peruto, whose failure to supervise his junior attorneys was accompanied by his utter lack of remorse, unsupported theories about how the

misconduct occurred, and numerous other ethics infractions, including his failure to refund his client's fee, for seven years; his unilateral termination of the attorney-client relationship; his refusal to turn over his client's file; and his total failure to explain to the client, whom he accused of being difficult, anything about the substance of the case. By contrast, respondent never mistreated his client and has now accepted responsibility for his misconduct, which was limited to his failure to properly supervise his inexperienced associate in a single estate matter, in which the client suffered no ultimate harm.

In further mitigation, almost eight years have elapsed since respondent's misconduct underlying the instant matter and, in that time, he has had no additional discipline.[20] See 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"). Moreover, respondent has a limited, remote disciplinary history, consisting of a 1988 private reprimand and a 2001 public reprimand for unrelated misconduct. See In re Sternstein, 223 N.J. 536 (2015) (attorney admonished for violations of RPC 1.15(a) (failure to safeguard property belonging to a client or third party) and RPC 1.15(b); despite two prior

[20] The ethics hearing in this matter concluded on December 20, 2017. Thereafter, following the parties' April 2018 written submissions, in July 2018, the DEC requested that the OAE provide respondent's disciplinary history. The DEC issued its hearing panel report on May 9, 2019. A conforming transmittal was docketed with the Office of Board Counsel on October 6, 2021.

suspensions, we did not enhance the discipline because those matters were remote in time and involved unrelated conduct).

In aggravation, however, respondent demonstrated a lack of candor by contradicting many of his statements to the DEC investigator, including his instruction to his associate to file the original complaint "as submitted[,]" in his verified answer and in his testimony at the ethics hearing. Further, during the ethics hearing, respondent expressed no remorse or contrition and, when asked whether he had come to realize that his associate's complaints had failed to identify Eileen's children, respondent, incredibly, answered, "I still don't know." Compounding matters, during the proceedings below, respondent attempted to justify his misconduct by relying on his alleged discussion with an unknown estate attorney, who had somehow rejected the Surrogate's Court's Rule-based concerns regarding proper notice to all of Margaret's descendants. Respondent's excuse, however, rings hollow in light of the specificity of the Surrogate's Court's repeated instructions and the fact that, although the Surrogate's Counsel had directly informed him of the applicable Court Rules in connection with an action for estate administration, respondent admitted that he had failed to "check the [R]ules" and "did not even know which ones they were."

Significantly, although respondent has now admitted that he should have done more to ensure his associate's compliance with the Rules of Professional

Conduct, during the proceedings below, respondent failed to appreciate his role as the supervising attorney to substantively review his associate's work to ensure it was free of deception. Respondent's failure to provide substantive guidance to his associate is particularly troubling given John's prior unsuccessful attempts to become the estate's administrator, without notice to Margaret's descendants, and the Surrogate's Court's clear instructions to respondent regarding the inclusion of the descendants in the pleadings. Respondent, however, was dismissive of his role as the supervising attorney, alleged that he was "not hands on with the complaint[,]" and failed to provide any meaningful assistance to his inexperienced associate beyond cursory grammatical reviews and his suggestion to Groff, following respondent's conversation with the Surrogate's Counsel, to instruct his associate "to check the [R]ules[.]"

The Court has emphasized that "leaving new lawyers to 'sink or swim' will not be tolerated." In re Yacavino, 100 N.J. 50, 55 (1985) (noting that had the young attorney, who had grossly neglected an uncontested adoption action, "received the collegial support and guidance expected of supervising attorneys, [the misconduct] might never have occurred") (quoting In re Barry, 90 N.J. 286, 293 (1982) (Clifford, J., dissenting)). Likewise, here, had respondent simply conveyed to his associate the Surrogate's Court's clear instructions regarding the substantive requirements of John's pleadings, the false filings with the court

could have been avoided.

On balance, weighing the passage of time since the underlying conduct and the lack of ultimate harm to John against respondent's lack of candor and dismissive behavior during the proceedings below, we determine that a reprimand is the appropriate quantum of discipline to protect the public and to preserve confidence in the bar.

Chair Gallipoli, Vice-Chair Singer, and Member Rivera voted to impose a censure and would have sustained all the charges of unethical conduct. Specifically, those Members found clear and convincing evidence that respondent violated RPC 3.3(a)(4) and (5) and RPC 8.4(a) and (c), reasoning that, even if respondent, during his grammatical review, ignored the fact that the complaints failed to identify Eileen's children and falsely alleged that John was Margaret's only competent heir, respondent would have become aware that the complaints contained such omissions and deceptive information after his associate had notified him that the Surrogate's Court had identified such errors – errors that the Surrogate's Court previously had directly discussed with respondent. Nevertheless, despite his awareness of the material omissions and false allegations in the complaints, respondent, inexplicably, instructed his associate to file the deceptive complaints "as submitted," in violation of RPC 3.3(a)(4) and (5) and RPC 8.4(a) and (c).

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 Conrad J. Benedetto
Docket No. DRB 21-220

Argued: January 20, 2022

Decided: March 25, 2022

Disposition: Reprimand

Members	Reprimand	Censure
Gallipoli		X
Singer		X
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera		X
Total:	6	3

Johanna Barba Jones
Chief Counsel