Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-077
District Docket No. VI-2019-0009E

In the Matter of	:
Santo V. Artusa, Jr	:
An Attorney at Law	:

Decision

Argued: May 24, 2023

Decided: September 27, 2023

Rachel A. Mongiello appeared on behalf of the District VI Ethics Committee.

Raymond S. Londa 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 VI Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (committing gross neglect);

RPC 1.3 (lacking diligence); and RPC 1.5 (b) (failing to set forth in writing the basis or rate of the legal fee).

For the reasons set forth below, we determine that a reprimand, with conditions, is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 2009. During the relevant timeframe, he maintained a practice of law in Jersey City, New Jersey

On May 6, 2021, respondent was censured, on a motion for discipline by consent, for having violated RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 8.1(b) (failing to cooperate with disciplinary authorities); RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). In re Artusa, 246 N.J. 154 (2021) (Artusa I).

In that matter, respondent failed to maintain an attorney trust account from April 2015 through May 2018, and passed to the Superior Court (Hudson vicinage) sixteen bad checks, ranging in amounts from $50 to $325, and totaling $3,353. In the Matter of Santo V. Artusa, Jr., DRB 20-184 (October 21, 2020) at 1. Thirteen of the checks were for amounts that constituted a fourth-degree crime, pursuant to N.J.S.A. 2C:21-5(c)(3) ($200 to $999.99), and three were for

amounts that constituted a disorderly persons offense, pursuant to N.J.S.A. 2C:21-5(c)(4) (less than $200). Id. at 2-3.

In determining the quantum of discipline, we noted that few disciplinary cases had addressed the quantum of discipline imposed on attorneys who passed bad checks and, thus, compared respondent's conduct to that of attorneys who had engaged in less serious criminal conduct and had received an admonition or reprimand. Id. at 5-6. On balance, we determined that respondent's misconduct was most analogous to the attorney in In re Alper, 242 N.J. 143 (2020), who received a reprimand for his illegal and unauthorized access to his former employer's subscription database. Id. at 4.

We found, in mitigation, that, although respondent had passed bad checks, he did not do so for pecuniary gain or other personal benefit. Id. at 5. He also stipulated to his misconduct; had been a member of the bar for eleven years; and had no prior discipline. Ibid. In aggravation, however, respondent had not only repeatedly engaged in the passing of bad checks but had passed them to the Superior Court. Ibid. We, thus, determined that the aggravating factors outweighed the mitigation, warranting a censure. Ibid. The Court agreed.

On September 13, 2023, the Court censured respondent, in a default matter, for violating RPC 1.15(d) and RPC 8.1(b) (two instances), in connection with a random audit by the Office of Attorney Ethics (the OAE). In re Artusa,

__ N.J. __ (2023) (Artusa II). In that matter, respondent failed to comply with his recordkeeping obligations by incurring debit balances in his trust account; failing to prepare three-way monthly reconciliations; and failing to properly maintain client ledger cards and receipt and disbursement journals. Respondent also failed to cooperate with the OAE's investigation and allowed the matter to proceed as a default. In determining that a censure was the appropriate quantum of discipline for misconduct that, typically, is met with an admonition or reprimand, we weighed, in aggravation, respondent's heightened awareness of the significance of his recordkeeping duties and his obligation to cooperate with disciplinary authorities, given the investigation and disciplinary proceedings underlying Artusa I. In the Matter of Santa V. Artusa, Jr., DRB 22-209 (May 2, 2023) at 17. We also considered, in aggravation, that respondent failed to bring his records into compliance despite the OAE's instructions and dogged efforts, and had allowed the matter to proceed as a default. Ibid.

As conditions to the discipline, the Court required respondent to (1) complete a recordkeeping course approved by the OAE; (2) bring his records into compliance with the Court Rules; and (3) provide to the OAE monthly reconciliations of his accounts, on a quarterly basis, for a two-year period.

Effective August 21, 2023, the Court temporarily suspended respondent for his failure to comply with fee arbitration awards in three client matters. In

the Matter of Santo V. Artusa, Jr., DRB No. 23-101 (June 21, 2023), In re Artusa, __ N.J. __ (2023), 2023 N.J. LEXIS 850; In the Matter of Santo V. Artusa, Jr., DRB No. 23-103 (June 21, 2023), In re Artusa, __ N.J. __ (2023), 2023 N.J. LEXIS 851; In the Matter of Santo V. Artusa, Jr., DRB 23-107, In re Artusa, __ N.J. __ (2023), 2023 N.J. LEXIS 852.

We now turn to the facts of this matter.

On January 26, 2022, prior to the commencement of the ethics hearing in this matter, the OAE and respondent, through his counsel, entered into a stipulation of facts, adopting most, but not all, of the facts alleged in the complaint. Respondent admitted that his conduct violated RPC 1.3. Respondent denied, however, having violated RPC 1.1(a) and RPC 1.5(b). On January 27, 2022, a hearing occurred, focusing on the admission of exhibits and mitigation.

In February 2018, the grievant, Andrew J. Daniels, Jr., retained respondent to initiate a guardianship proceeding related to his adult son, D.D., who was incapacitated. Daniels sought an order of guardianship that would enable him and D.D.'s mother to handle D.D.'s affairs, including to procure D.D.'s passport in anticipation of a scheduled vacation in August 2018. At the time respondent accepted the representation, he assured Daniels that he could accomplish the legal work prior to the scheduled vacation.

On February 17, 2018, in response to an e-mail from Daniels attaching the "guardianship paperwork," respondent confirmed the representation, stating:

> We can handle this for sure. We charge a $1500 flat fee upfront. I will text/call you to confirm a time for later today.
>
> [Ex10.] [1]

By invoice dated February 17, 2018, respondent acknowledged payment of $1,500 by Daniels for "Legal Services." Respondent did not prepare any other written agreement memorializing the terms of the parties' agreement for legal representation. Respondent previously had not represented Daniels.

In February 2018, Daniels provided respondent with the documentation respondent had requested of him, including reports from D.D.'s treating physicians. Thereafter, in March or April 2018, respondent contacted Daniels and informed him that updated physician reports were needed before he could file the petition for guardianship. Specifically, respondent explained to Daniels that the physician reports had to be dated within the past six months, and not the past year, as he previously had told Daniels. Although Daniels provided respondent with the updated paperwork as respondent requested, Daniels later

[1] "T" refers to the transcript of the formal ethics hearing held on January 27, 2022; "Ex" refers to the presenter's exhibits admitted into evidence during ethics hearing; "RS" refers to respondent's February 22, 2022 summation brief.

learned that the physician reports had to be dated within the past thirty days, and not six months, as respondent had advised.[2]

Respondent failed to obtain updated medical reports from D.D.'s treating physicians.

On May 28, 2018, respondent filed a verified complaint to appoint Daniels and D.D.'s mother as guardians of D.D., in the Superior Court of New Jersey, Passaic County. In support of the guardianship petition, respondent attached the certifications of Neil Jasey, M.D., and Puja Joshi, M.D., D.D.'s treating physicians.

Less than two months later, on July 23, 2018, the Passaic County Surrogate's Court rejected the petition as non-conforming and returned all paperwork and the filing fee to respondent.[3] In her detailed cover letter to respondent, however, the clerk of the Surrogate's Court advised him as to the numerous deficiencies and, importantly, provided him with detailed instructions on how to correct each deficiency. The deficiencies included missing or inconsistent information, such as the parties' names; failure to separately submit certain documents; and deficiencies in the doctors' certifications, including their

[2] R. 4:86-2(b)(2), governing actions for guardianship, expressly requires that the complaint be accompanied by affidavits or certifications of two physicians who personally examined the allegedly incapacitated person not more than thirty days prior to the filing of the complaint.

[3] Respondent used form guardianship documents that he completed by hand.

timeliness and missing, illegible, and inconsistent information. In addition, the clerk included handwritten notes throughout the rejected pleadings with corrective instructions. The clerk provided respondent with her telephone number and e-mail address, inviting him to contact her with any questions.

On July 24, 2018, Daniels sent an e-mail to respondent, inquiring as to the status of the guardianship paperwork, reminding respondent that they were "getting close to the cruise date and need the paperwork to procure his passport." The next day, on July 25, 2018, respondent replied to Daniels' e-mail, stating that he was "pushing" and would have "more details ASAP." Respondent also informed Daniels that, in the event the paperwork was not complete before they departed for their cruise, "we may have another option under the circumstances . . . will keep you posted, I will call a friend of mine in the main office."

Subsequently, in late July 2018, Daniels was contacted by a person named "Leah" of respondent's office and advised that the guardianship filing in Passaic County was extremely difficult. Thereafter, Daniels went to respondent's office and obtained a copy of the rejected paperwork.

Daniels and D.D.'s mother obtained their son's passport on their own. However, when they returned home from the cruise in August 2018, D.D. became extremely ill and was hospitalized. During the course of D.D.'s medical

care, Daniels again required the completion of the guardianship application to address issues that arose.

On November 27, 2018, Daniels sent an e-mail to respondent, expressing his frustration that respondent had not completed the guardianship, despite having been retained in February. Daniels emphasized that the Court had returned the guardianship petition months earlier, in July 2018, detailing what needed to be corrected, yet, respondent had not yet re-submitted the petition. Specifically, Daniels stated:

> [T]he letter from Passaic County was dated for July and they added what needed to be corrected when they sent it back to your office. Although [] some of the doctor's information was incorrect the actual motion had a lot of errors in it also. We really, really need to this done and now it's heading into the holidays and we still don't have a court date. I understand that you have other cases but without the guardianship paperwork it's becoming increasingly more difficult to do things for him. **Please** give this a little more attention, we're closing in on a year.
>
> [Ex13.]

Respondent replied, stating he would contact a friend in the Hudson County Surrogate's office for assistance. When Daniels followed up a few weeks later, respondent thanked him for his patience.

Respondent failed to obtain updated physician reports and, despite the detailed instructions provided by the Passaic County Surrogate's Court to

correct the guardianship petition, respondent failed to correct the petition or to refile same.

In December 2018, ten months after retaining respondent, Daniels requested that respondent refund the $1,500 legal fee. In reply, on December 4, 2018, respondent informed Daniels that the guardianship work had proved to be more difficult than he had anticipated, stating there were "many other issues that caused delay between us and the doctors and beyond." He agreed to refund the money, however, and asked Daniels for his mailing address. Daniels replied via e-mail on the same date, providing respondent with his address for the refund check.

On December 20, 2018, having not received a refund check despite respondent's promise, Daniels sent an e-mail to respondent for a status update on the refund. The next day, on December 21, 2018, Daniels sent another e-mail to respondent, again asking about the status of his refund. Respondent replied to Daniels' e-mail that same date, stating that the refund check had been mailed.

On December 23, 2018, Daniels confirmed with the Passaic County Surrogate's Office that respondent had neither communicated with the court nor refiled the guardianship petition since July 2018, when the papers were returned as non-conforming. Thereafter, Daniels completed the guardianship petition on his own behalf, which has since been granted by the court.

On January 2 and January 5, 2019, Daniels sent e-mails to respondent regarding the status of the refund check. In his January 5, 2019 e-mail, Daniels detailed his multiple efforts to communicate with respondent and to recoup the $1,500 fee. Daniels demanded a full refund, stating he preferred to resolve the matter amicably but was prepared to file an ethics complaint and pursue a civil action in small claims court.

> While your email dated November 28, 2018 references the fact that [] I have been a gentleman and you appreciate my patience and kindness with all of the delays, the anxiety and stress that I have endured with the oversight and mishandling of my case, by your firm is insurmountable. Your firm has been handling this case for approximately ten (10) months without a hearing date being scheduled, or at a minimum the appropriate motion being filed with the Court.
>
> Therefore, kindly, accept this communication as a formal demand that my full payment of fifteen hundred ($1500) be immediately refunded to me.
>
> [Ex16.]

Despite Daniels' demand and his prior promise, respondent failed to issue a refund check. Thus, on January 16, 2019, Daniels filed a complaint against respondent in the Superior Court of New Jersey, Hudson County, Special Civil Part, seeking a refund of the $1,500 fees he paid to respondent, captioned Daniels v. Artusa, Docket No. HUD-SC-88-19. On February 22, 2019, the scheduled trial date, the parties settled the case for $1,500, whereby respondent

agreed to refund the full legal fee in two equal installments, due March 8 and April 8, 2019.

Respondent made the first installment payment; however, upon presentment, the bank would not honor the check because respondent's office had been burglarized and his law firm checks stolen – an incident he had reported to the bank.

Subsequently, respondent refunded the $1,500 fee to Daniels.

Based upon the foregoing facts, the DEC charged respondent with having violated RPC 1.1(a); RPC 1.3; and RPC 1.5(b). During the ethics hearing, the presenter relied solely upon the parties' stipulation of facts, as well as the exhibits that were admitted into evidence without objection.

Respondent admitted, through his counsel, that his misconduct detailed above violated RPC 1.3. Respondent also admitted that his conduct was negligent but asserted that it did not constitute gross neglect, violative of RPC 1.1(a). Respondent also denied that he violated RPC 1.5(b), maintaining that his February 17, 2018 e-mail to Daniels and subsequent invoice acknowledging receipt of the $1,500 legal fee satisfied the writing requirements of the Rule.

Respondent briefly testified at the hearing. He explained that, following his receipt of the July 23, 2018 letter from the Passaic County Surrogate's Court, he repeatedly attempted to contact D.D.'s treating physicians to obtain updated

reports but was unsuccessful. Respondent testified that the doctors were difficult to reach, both before and after he had filed the guardianship petition (T25-T26).

> Q: But is that what the delay was? That's your testimony is the delay was based on the issues getting in touch with doctors?
>
> A; Trying to get the documents signed – filled out and signed correctly.
>
> [T26.]

In mitigation, respondent testified that he was relying upon the mitigating circumstances set forth in his amended answer and, if questioned about those allegations, his answers would remain the same.[4] No additional testimony was elicited in this respect.

In his amended answer, respondent asserted the following mitigating circumstances: his cooperation with the ethics investigation; the fact no client was harmed by his misconduct; that he had been the victim of numerous thefts, including that his office had been burglarized more than four times since 2018-2019, resulting in the loss of approximately $22,000; his ongoing marital problems and, specifically, that he had separated from his wife for most of 2018 when the instant misconduct occurred; his mental health struggles, including

[4] Respondent clarified that his amended answer stated, incorrectly, that he had no disciplinary history. Although that was accurate at the time he submitted his answer, he subsequently was disciplined in connection with Artusa I.

panic attacks, depression, and anxiety, for which he has been receiving treatment since 2001; the emotional effects of his father's Parkinson's disease diagnosis and subsequent death in July 2019; and his alcohol addiction, for which he has been in recovery since May 10, 2019.

Also in mitigation, respondent asserted that he regularly offers pro bono legal services to veterans and active military personnel. Further, he frequently volunteers for charitable organizations, including the American Red Cross and Salvation Army of Jersey City and Hoboken, among others.

Respondent entered into evidence numerous letters attesting to his involvement with his community and charitable organizations; his commitment to providing pro bono services; his prior service as a municipal public defender; and his good character and reputation.

In his February 22, 2022 summation brief, respondent, through his counsel, admitted that his conduct violated RPC 1.1(a) and RPC 1.3 but, based upon disciplinary precedent, warranted discipline no more severe than a reprimand.[5]

[5] Respondent cited the following cases, in which reprimands were imposed. In re Riva, 157 N.J. 34 (1999) (reprimand; attorney committed gross neglect and lacked of diligence; attorney failed to file an answer on his client's behalf, despite telling his client he had done so; default and default judgment were entered against his client; no prior discipline in nearly twenty years at the bar); In re Zukowski, 152 N.J. 59 (1997 (reprimand; attorney lacked diligence and failed to communicate in two client matters, and committed gross neglect in one client matter; no prior discipline); In re Vaughn, 148 N.J. 87 (1997) (reprimand; attorney

(footnote cont'd on next page)

Respondent maintained that the presence of significant mitigation, however, supported an admonition, stating:

> Here, there was no dishonesty, no misrepresentation, no substantial prejudice to the Complainant, and any fee charged for services was returned. Respondent's problems with this Complainant occurred because of Respondent's alcohol dependency and not because of dishonesty.
>
> [RSp2.]

Citing In re Balbour, 109 N.J. 143, 159 (1988), respondent also urged us to consider, in mitigation, that his alcohol dependency contributed to his misconduct.

The presenter, in turn, asserted in his March 10, 2022 summation brief that respondent had violated all the charged RPCs. Specifically, the presenter stated that respondent had admitted having acted with gross neglect and a lack of diligence in his handling of the guardianship matter, in violation of RPC 1.1(a) and RPC 1.3. The presenter also argued that respondent violated RPC 1.5(b), stating that respondent's e-mail and subsequent invoice were

committed gross neglect, lacked diligence, and failed to communicate in multiple client matters, among other misconduct); In re Skoks, 147 N.J. 556 (1997) (reprimand); In re Ortiz, 147 N.J. 292 (1997) (reprimand); In re Lane, 147 N.J. 3 (1996) (reprimand); In re Picciano, 144 N.J. 82 (1996) (reprimand); In re Rosenblatt, 118 N.J. 559 (1990) (reprimand).

"insufficient to meet the requirements of this Rule as it did not set forth the scope of the representation nor the basis for the fee."

The presenter asserted that an admonition or reprimand would be appropriate discipline for respondent's mishandling of a single client matter. In mitigation, the presenter acknowledged that respondent had "submitted proofs in favor of mitigating factors," and emphasized respondent's full participation with the investigation and that his actions were, at least in part, due to his substance abuse.

The DEC found, by clear and convincing evidence, that respondent violated RPC 1.1(a) and RPC 1.3. Specifically, the DEC determined that the evidence established that respondent had filed a guardianship application that was deficient in numerous respects and, despite the court's letter clearly identifying the deficiencies and providing instructions to correct them, respondent failed to take any steps to correct the errors or file a conforming application. Further, respondent failed to promptly provide Daniels with the refund check, despite his repeated promises to do so.

The DEC concluded that respondent's conduct in this respect constituted gross neglect and a lack of diligence, citing In re Youmans, 118 N.J. 622, 628, 635-36 (1990); In re Albert, 120 N.J. 698, 703 (1990); In re Yetman, 113 N.J. 556, 562 (1989); In re Smith, 101 N.J. 568, 571-72 (1986).

The DEC determined, however that the presenter had failed to prove, by clear and convincing evidence, that respondent violated RPC 1.5(b). In particular, the DEC determined that respondent's February 17, 2018 e-mail to Daniels, prior to his commencement of any legal work, satisfied RPC 1.5(b) and its requirement of a "writing" that "communicate[s]" "the basis or rate of the fee" for respondent's handing of the guardianship matter. The DEC noted that a formal retainer letter was preferable but acknowledged that RPC 1.5(b) contained no such requirement.

In mitigation, the DEC weighed the numerous factors presented by respondent, including (1) his charitable contributions, commitment to public service, and participation in pro bono programs; (2) his struggles with substance abuse; (3) his marital and mental health problems; (4) character references; and (5) his cooperation in the investigation. The DEC also considered that respondent admitted his wrongdoing and appeared contrite and apologetic.

Although no aggravating factors were presented, the DEC stated that it recently had been provided with respondent's disciplinary history from the OAE, which revealed that the Court censured respondent on May 4, 2021 (Artusa I). The DEC afforded both parties the opportunity to submit additional briefing on the impact the discipline should have on the recommended quantum of discipline. On March 25, 2022, respondent, through his counsel, urged that

respondent's censure was for dissimilar conduct and should "not be used as a significant aggravating factor to increase discipline beyond the admonition" previously suggested in his summation brief.

The DEC determined to treat respondent's 2021 censure as an aggravating factor based upon the seriousness of the misconduct underpinning that matter; however, the DEC stated that it did not accord this factor significant weight "in light of the difference in the nature of the conduct underlying Respondent's prior disciplinary history and the violations at issue here."

Based upon the presence of significant mitigating factors and the absence of significant aggravating factors, the DEC recommended that respondent receive a reprimand.

At oral argument before us, the DEC[6] again urged the imposition of a reprimand for respondent's prolonged failure to finalize the guardianship paperwork, along with his subsequent failure to refund his fee. The DEC acknowledged, in mitigation, that respondent struggled with substantive abuse and mental wellness. The DEC also noted respondent's involvement with community service, his cooperation with the ethics investigation, and his contrition. In aggravation, the DEC reiterated to us that it had accorded some

[6] At the time of oral argument, the presenter was no longer a member of the DEC and, thus, Rachel A. Mongiello, Esq., who served as the DEC panel chair, appeared before us on behalf of the DEC.

weight to respondent's prior discipline in Artusa I. The DEC acknowledged, however, that the misconduct overlapped and was dissimilar.

Respondent, through his counsel, urged us to impose an admonition, stating that the presence of substantial mitigating factors, including his alcohol dependency, as acknowledged by the DEC, justified discipline less than a reprimand.

Following a de novo review of the record, we determine that the DEC's finding that respondent violated RPC 1.1(a) and RPC 1.3 is supported by clear and convincing evidence. We also conclude that the DEC correctly found that the evidence did not clearly and convincingly establish a violation of RPC 1.5(b).

RPC 1.1(a) prohibits a lawyer from handling a client matter in a way that constitutes gross neglect. Likewise, RPC 1.3 requires a lawyer to "act with reasonable diligence and promptness in representing a client." Respondent violated both Rules when he accepted a $1,500 fee to file an application for guardianship on behalf of his client and his client's adult son, who was incapacitated, and then failed to perform any meaningful work in furtherance of that representation. When respondent accepted the representation, he understood that time was the essence, because the family intended to go on a vacation in August of that same year. Despite not having obtained recent medical

documentation from D.D.'s treating physicians, as the Court Rules require, respondent filed a woefully deficient guardianship petition with the Superior Court of New Jersey, Passaic County.

When the Surrogate's Court rejected the filing and, in July 2018, returned it to respondent, it provided respondent with a detailed list of the deficiencies which included, but was not limited to, the recency of the medical documents. The Surrogate's Court also provided respondent with explicit instructions regarding how to cure the noted defects. However, instead of curing the identified deficiencies and refiling the petition, respondent did nothing. He failed to obtain updated medical reports and failed to file a corrected petition for guardianship.

In December 2018, ten months after having retained respondent, his client terminated respondent's services and demanded a full refund; although respondent eventually refunded the $1,500 fee, he only did so after the client was forced to commence litigation in the Superior Court. By accepting the representation and failing to perform any meaningful work in furtherance of that representation, respondent violated RPC 1.1(a) and RPC 1.3.

In contrast, we determine that there is insufficient evidence that respondent violated RPC 1.5(b), which requires that "the basis or rate of the fee shall be communicated in writing" to any client whom the lawyer has not

regularly represented. Further, the writing must be provided to the client before or within a reasonable time after the representation has commenced. Here, respondent admitted that he previously had not represented Daniels and, thus, was obligated to communicate his fee in writing. Although a more formal and detailed fee agreement would have been desirable, we conclude, as did the DEC, that respondent's February 17, 2018 e-mail to Daniels and his invoice of the same date, which were provided contemporaneous with the commencement of the representation, constitute a sufficient writing within the meaning of the Rule.

Importantly, RPC 1.5(b) exists to protect the parties to a retainer agreement, especially the client. Here, respondent and his client had a clear accord concerning the fees, including the client's obligation to pay a $1,500 flat fee and respondent's corresponding obligation to initiate the guardianship proceeding, which he admittedly failed to do. That agreement was sufficiently communicated in respondent's e-mail to Daniels and his subsequent invoice acknowledging the payment.

In sum, we find that respondent violated RPC 1.1(a) and RPC 1.3. We determine to dismiss the charge that respondent violated RPC 1.5(b).

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients (a violation not present here) ordinarily results in an admonition or a reprimand, depending on the number of client matters involved;

the gravity of the offenses; the harm to the clients; the presence of additional violations; and the attorney's disciplinary history. See, e.g., In the Matter of Mark A. Molz, DRB 22-102 (September 26, 2022) (admonition for attorney whose failure to file a personal injury complaint allowed the applicable statute of limitations for his clients' cause of action to expire; approximately twenty months after the clients had approved the proposed complaint for filing, the attorney failed to reply to the clients' e-mail, which outlined the clients' unsuccessful efforts, spanning three months, to obtain an update on their case; the record lacked any proof that the attorney had advised his clients that he had failed to file their lawsuit prior to the expiration of the statute of limitations; in mitigation, the attorney had an otherwise unblemished career); In re Barron, __ N.J. __ (2022), 2022 N.J. LEXIS 660 (reprimand for attorney who engaged in gross neglect in one client matter; lacked diligence in three client matters; failed to communicate in three client matters; and failed to set forth the basis or rate of his fee in one client matter (RPC 1.5(b)); in aggravation, we considered the quantity of the attorney's ethics violations, and the harm caused to multiple clients, which included allowing a costly default judgment to be entered against two clients; and failing to oppose summary judgment motions, resulting in the dismissal of another client's case; in mitigation, we considered the attorney's cooperation, his nearly unblemished career in more than forty years at the bar,

and his testimony concerning his mental health condition); In re Burro, 235 N.J. 413 (2018) (reprimand for attorney who grossly neglected and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in the accrual of $40,000 in interest and the imposition of a lien on property belonging to the executrix, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep the client reasonably informed about events in the case (RPC 1.4(b)); to return the client file upon termination of the representation (RPC 1.16(d)); and to cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney expressed remorse and had suffered a stroke that forced him to cease practicing law); In re Abasolo, 235 N.J. 326 (2018) (reprimand for attorney who grossly neglected and lacked diligence in a slip-and-fall case for two years after filing the complaint; after successfully restoring the matter to the active trial list, the attorney failed to pay a $300 filing fee, permitting the defendants' order of dismissal with prejudice to stand, in violation of RPC 1.1(a) and RPC 1.3; in addition, for four years, the attorney failed to keep the client reasonably informed about the status of the case, in violation of RPC 1.4(b); no prior discipline).

Based upon the above disciplinary precedent, respondent's misconduct in this single client matter could be met with an admonition. To craft the

appropriate discipline, however, we also consider both aggravating and mitigating factors.

In aggravation, we accord significant weight to the harm respondent caused his client. Respondent's prolonged failure to finalize the guardianship paperwork deprived his client of the legal authority he needed to make decisions on behalf of his adult son, who was incapacitated. Initially, respondent's dilatory behavior forced his client to obtain his son's passport – required for an impending vacation, of which respondent was aware – via other means. Worse, when the son became ill and was hospitalized, respondent's client lacked the required court order that would have enabled him to act on his son's behalf. Respondent's inaction in this respect caused overwhelming anxiety and stress to his client. Further, respondent's excusable failure to refund to his client the legal fee, despite his promise to do so, forced his client to institute a civil action and appear in court to recoup his money.

Next, we consider respondent's prior discipline. This matter represents respondent's third disciplinary matter before us. However, a review of respondent's disciplinary timeline is appropriate, particularly in view of the proximity to, and overlap with, the misconduct addressed in the instant matter, as well as the recency of the final discipline imposed.

In May 2021, the Court censured respondent in Artusa I for his violations of RPC 1.15(d), RPC 8.1(b), RPC 8.4(b), and RPC 8.4(c), conduct dissimilar to the instant matter. The misconduct underpinning Artusa I occurred in 2017 and 2018, thereby overlapping, in part, with the misconduct underpinning the instant matter, which occurred between February and December 2018. The OAE docketed its investigation into respondent's financial records in February 2018, and commenced its investigation which continued through 2019, thereby overlapping, in part, with the misconduct in the instant matter. The Court, however, did not enter its disciplinary Order until May 6, 2021, more than sixteen months after the complaint was filed in the instant matter. In view of the overlap of the instant misconduct with the misconduct addressed in Artusa I; the disparate nature of the misconduct in both matters; and the timing of the Court's final Order of discipline, principles of progressive discipline and heightened awareness are inapplicable.

On September 13, 2023, respondent was censured in Artusa II for his recordkeeping violations and failure to cooperate with the disciplinary authorities, conduct dissimilar to the instant matter. The misconduct addressed in Artusa II spanned November 2019 to September 2020 and was uncovered during the OAE's 2020 demand audit, thereby post-dating the misconduct in the instant matter. In determining that a censure was the appropriate quantum of

discipline, we weighed, in aggravation, respondent's heightened awareness of his recordkeeping duties and obligations to cooperate with the disciplinary authorities, based upon the disciplinary investigation underpinning Artusa I which was ongoing when he committed the misconduct in Artusa II. That rationale, however, is inapplicable to the instant matter because respondent's instant misconduct preceded and, minimally, overlapped with the initial stages of the OAE's investigation in Artusa I and, thus, respondent could not have possessed a heightened awareness or enhanced knowledge of his obligations pursuant to the Rules of Professional Conduct.

We have, on occasion, determined to impose no additional discipline where the instant misconduct overlaps with, and is of the same nature, as misconduct that we addressed in a prior matter. Here, however, additional discipline is required for respondent's mishandling of his client's guardianship matter. Although the misconduct occurred during the same time as the misconduct that we addressed in Artusa I, the disparate nature of the instant misconduct calls for independent discipline. Stated differently, if the instant matter had been consolidated with Artusa I for our review and imposition of a global sanction, the quantum of discipline – a censure – would have been enhanced to adequately address the myriad misconduct and, with respect to the instant matter, to address the harm befallen his client.

In mitigation, we consider the numerous personal hardships respondent suffered at the time of his misconduct, including his marital problems culminating in his recent divorce; the illness and death of his father; his mental health struggles; and his dependency and addiction to alcohol, for which he has sought treatment.

On balance, we determine that the serious harm to the client outweighs the mitigating factors and, thus, consistent with disciplinary precedent including Barron, Burro, and Abasolo, a reprimand is the appropriate quantum of discipline to protect the public and preserve the public's confidence in the bar.

Further, based upon respondent's invocation of his mental health and alcohol dependency as an explanation for his misconduct, we require respondent, as conditions to the discipline, to provide to the OAE (1) proof of his fitness to practice law, as attested to by a medical doctor approved by the OAE; and (2) proof of his continued treatment for alcohol addiction.

Members Petrou and Rodriguez voted to impose an admonition, with the same conditions.

Member Menaker voted to impose a censure, with the same conditions.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Santo V. Artusa, Jr.
Docket No. DRB 23-077

Argued: May 24, 2023

Decided: September 27, 2023

Disposition: Reprimand

Members	Reprimand	Admonition	Censure	Absent
Gallipoli	X			
Boyer				X
Campelo	X			
Hoberman	X			
Joseph	X			
Menaker			X	
Petrou		X		
Rivera	X			
Rodriquez		X		
Total:	5	2	1	1

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