

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-092
District Docket Nos. XIV-2020-0348E and
IIIA-2022-0900E

In the Matter of Bartholomew Baffuto
An Attorney at Law

Argued
June 20, 2024

Decided
October 7, 2024

HoeChin Kim appeared on behalf of
the Office of Attorney Ethics.

Robert E. Ramsey appeared on behalf of respondent.

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Introduction

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 IIIA Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (engaging in gross neglect); RPC 1.3 (lacking diligence); RPC 1.4(b) (failing to communicate with a client); RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 3.2 (failing to expedite litigation); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 5.5(a)(1) (practicing law while administratively ineligible); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

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

Ethics History

Respondent earned admission to the New Jersey bar in 1990. During the relevant timeframe, he maintained a practice of law in Toms River, New Jersey. He has prior discipline in New Jersey.

Baffuto I

On October 24, 2018, respondent received an admonition for his gross mishandling of a client's municipal appeal concerning her conviction for driving while intoxicated (DWI), in violation of N.J.S.A. 39:4-50. In the Matter of Bartholomew Baffuto, DRB 18-249 (October 24, 2018) (Baffuto I). In that matter, the client agreed with respondent to limit the scope of her appeal to the municipal court's denial of her motion to suppress certain evidence. Id. at 1. Consistent with that understanding, respondent obtained only the trial transcripts relevant to the suppression of evidence. Id. at 2.

However, in November 2016, the Superior Court twice notified respondent that, unless he provided all trial transcripts, his client's appeal would be dismissed. Ibid. Although he persisted in his belief that he should have been permitted to limit the production of transcripts to those he deemed pertinent to the appeal, respondent failed to present his theory to the Superior Court. Ibid.

Additionally, respondent failed to communicate with his client to the extent reasonably necessary to give her the opportunity to decide whether to pay for all the transcripts or to allow the appeal to be dismissed and to “fight the issue before the Appellate Court.” Id. at 3.

On December 8, 2016, the day before the scheduled hearing on his client’s appeal, respondent informed his client that he had been diagnosed with a severe illness and that the hearing was “off.” Id. at 2. Unbeknownst to respondent, however, the Superior Court had issued an order dismissing the appeal that same date, based on his failure to procure all transcripts. Ibid. On December 14, 2016, the Superior Court sent respondent the dismissal order, via regular mail. Id. at 3.

Meanwhile, between December 16, 2016 and sometime in May 2017, respondent remained hospitalized. Ibid. During the ethics hearing in that matter, he claimed that he first discovered the dismissal order in May 2017, when he returned to his office. Ibid.

We found that, despite his medical difficulties and his lack of office support staff, respondent had grossly mishandled his client’s matter by failing to make arrangements to protect her claim during his absence. Ibid. Moreover, we found that, after December 9, 2016, respondent altogether failed to

communicate with his client, who, in March 2017, independently discovered that her appeal had been dismissed. Ibid.

In determining that an admonition was the appropriate quantum of discipline, we weighed, in aggravation, the fact that the client was forced to retain a new attorney to have her appeal reinstated. Ibid. However, in mitigation, we emphasized respondent's then lack of prior discipline and his serious medical issues, requiring hospitalization, that drew his attention away from the representation. Ibid.

Administrative Ineligibility Order

Effective November 16, 2020, the Court declared respondent administratively ineligible to practice law for failing to comply with continuing legal education (CLE) requirements. Respondent's ineligibility period continued for nearly four months, until he cured it and was restored by the Court, on March 4, 2021.

Facts

The facts of this matter are undisputed, and respondent stipulated that his conduct violated the charged Rules of Professional Conduct.

The Maldonado Client Matter

In or around October 2017, Hector Maldonado retained respondent to defend him in connection with charges of DWI, in violation of N.J.S.A. 39:4-50, and DWI in a school zone, in violation of N.J.S.A. 39:4-50(g). Respondent's primary area of practice was DWI defense. On September 19, 2018, following a trial in which respondent appeared on behalf of Maldonado, the West New York municipal court found Maldonado guilty of DWI but dismissed the related school zone offense. The West New York municipal court sentenced Maldonado to an eight-month suspension of his driver's license, among other fines, penalties, and conditions, including the installation of an interlock device for one year after the restoration of his driving privileges. Thereafter, respondent appealed Maldonado's DWI conviction and sentence to the Superior Court of New Jersey.

On February 28, 2019, following a trial de novo on the record, the Honorable Shelia A. Venable, J.S.C., issued an order finding Maldonado guilty of DWI, beyond a reasonable doubt, and affirming the sentence imposed by the municipal court.

On April 12, 2019, respondent filed with the Appellate Division a timely notice of appeal of the Superior Court's order. Three days later, on April 15, the

Appellate Division notified respondent that his appeal was deficient for failing to serve the Hudson County Prosecutor's Office with a copy of his notice of appeal and appellate case information statement.¹ The Appellate Division's notice also stated that respondent failed to correctly caption the name of the matter in his notice of appeal, as R. 1:4-1 requires. The Appellate Division required respondent to correct the deficiencies within seven days. Respondent, however, failed to comply and, thus, on April 30, 2019, the Appellate Division sent respondent a second notice again directing him to cure the noted deficiencies in his appeal. Three weeks later, on May 22, 2019, respondent filed an amended notice of appeal correcting the deficiencies.

On May 20, 2019, the Appellate Division issued a scheduling order requiring that respondent submit his brief on behalf of Maldonado by July 5, 2019. On August 5, 2019, after receiving a thirty-day extension, respondent filed his brief with the Appellate Division. However, on August 7, 2019, the Appellate Division sent respondent a letter indicating that his brief contained several deficiencies, including that it failed to contain a compliant table of transcripts, as R. 2:6-8 requires, and contained a table of contents and judgments

¹ Respondent appeared to have served the New Jersey Office of the Attorney General with his appeal rather than the Hudson County Prosecutor's Office.

that failed to comply with R. 2:6-2(a)(1) and (2). Additionally, the Appellate Division notified respondent that his appendix failed to contain all the relevant municipal court documents. The Appellate Division required respondent to file an amended, conforming brief and appendix by August 22, 2019. Respondent, however, failed to file the required amended submissions.

Consequently, on September 16, 2019, the Appellate Division sent an additional notification to respondent, via e-Courts Appellate, reminding him of his responsibility to file an amended brief and appendix. Respondent again failed to comply.

On September 30, 2019, the Appellate Division issued an order requiring respondent to file an amended brief and appendix by October 7, 2019. Respondent, however, failed to comply, prompting the Appellate Division to send him an additional notification, on November 8, 2019, directing that he file an amended brief and appendix. Respondent failed to comply.

On January 21, 2020, the Honorable Carmen Messano, P.J.A.D. (Ret.), issued an order to show cause directing respondent to appear before the Appellate Division, on February 10, 2020, to explain why sanctions should not be imposed for his failure to file a conforming brief and appendix. The order to show cause would be withdrawn, however, if respondent filed the required

submissions by February 3, 2020. Nevertheless, he failed to file an amended brief and appendix and, further, failed to appear for the scheduled order to show cause hearing.

Despite his failure to make any attempt to file an amended brief and appendix, on October 21, 2020, the Appellate Division accepted for filing respondent's deficient brief and appendix. Thereafter, on November 20, 2020, the Hudson County Prosecutor's Office filed a timely response brief. Although the Appellate Division allowed respondent until December 2, 2020, to file any reply brief, he did not do so.²

Meanwhile, as noted above, effective November 16, 2020, the Court declared respondent administratively ineligible to practice law for his failure to fulfill his CLE obligations. As a result of respondent's ineligibility to practice law, on December 23, 2020, the Appellate Division sent Maldonado a letter informing him of respondent's ineligible status and inquiring whether he wished to proceed with his appeal as a pro se litigant or with new counsel. On February 3, 2021, Maldonado sent the Appellate Division a letter expressing his intent to withdraw his appeal, following which the Appellate Division issued an order

² The OAE alleged that respondent failed to file a reply brief to the Prosecutor's Office's November 20, 2020 brief. However, R. 2:6-5 provides that an appellant's reply brief is an optional submission.

dismissing the appeal as withdrawn.

Based on respondent's failure to prosecute Maldonado's appeal and his failure to comply with Judge Messano's order to show cause, the Appellate Division sent the Office of Attorney Ethics (the OAE) a letter referring respondent for potential disciplinary action.

Practicing Law While Ineligible

On June 23, 2021, in connection with the OAE's investigation of his conduct underlying Maldonado's client matter, respondent sent the OAE a letter detailing the legal work he had performed during his period of administrative ineligibility, which spanned November 16, 2020 through March 4, 2021. Specifically, from November 17, 2020 through March 3, 2021, respondent conceded that he had "sen[t] letters and appear[ed] virtually" in connection with eight client matters. Additionally, respondent told the OAE that he had completed his required CLE courses for the 2018 through 2019 biannual compliance period by January 11, 2021, following which he "considered himself to be in compliance," even though the Court did not restore him to practice until March 4, 2021. During the ethics hearing, respondent claimed that the "public notice lagged in reinstating" him to the practice of law.

Respondent's Position Before the OAE and the Hearing Panel

In his submissions to the OAE and to the DEC hearing panel, respondent conceded that he violated RPC 1.1(a), RPC 1.3, and RPC 3.2 by repeatedly failing to comply with the Appellate Division's directives to file a conforming brief and appendix on behalf of Maldonado. Moreover, respondent agreed with the OAE's position that, other than submitting a deficient brief in August 2019, he otherwise "abandoned his client's appeal."

Additionally, respondent admitted that he violated RPC 1.4(b) and RPC 1.4(c) by failing to keep Maldonado reasonably informed about the status of his appeal to the extent reasonably necessary to have permitted him to make informed decisions concerning the representation. Specifically, during his June 8, 2021 demand interview with the OAE, respondent stated that, although Maldonado had not contacted him regarding the status of his appeal, he failed to advise Maldonado that he was not working to correct his deficient brief and appendix. Similarly, respondent conceded that he failed to communicate with Maldonado during the pendency of his appeal, which Maldonado had entrusted him to handle.

Further, respondent admitted that he violated RPC 3.4(c) by failing to appear for the February 10, 2020 order to show cause hearing before Judge

Messano, and that he violated RPC 8.4(d) by unnecessarily wasting the Appellate Division’s resources in connection with its attempts to have him file a conforming brief and appendix.

Finally, respondent conceded that he violated RPC 5.5(a)(1) by practicing law while administratively ineligible in connection with eight client matters.

In his verified answer and during the demand interview, respondent noted that, in early September 2019, he began suffering serious health issues which “prevented him from properly fulfilling his obligations as an attorney.”³ Additionally, although respondent noted that he had arranged for a colleague to handle his pending municipal court matters, he did not request that his colleague handle Maldonado’s appeal. Respondent candidly acknowledged that, although he “could have asked [his colleague] to assist him” in connection with the appeal, he failed to do so. In respondent’s view, he “just didn’t get [Maldonado’s] file over to [his colleague or] communicate with the [Appellate Division].”

Further, respondent conceded that, although he had received the Appellate Division’s notices, he “did not respond or request [his colleague]” to reply to

³ On August 8, 2023, the hearing panel chair issued a protective order, on consent, sealing the details of respondent’s medical issues from public dissemination.

the court. Respondent, however, insisted to the OAE that no clients other than Maldonado were “impacted” by his medical issues. Respondent also noted that, at some point during the OAE’s investigation, he had spoken with Maldonado, who expressed his “understanding” of respondent’s medical issues and stated that his driver’s “license status was back on track.”

Moreover, respondent maintained that his personal struggles were compounded by the “pressures and demands of surviving with little income from his law practice and the unfinished business of settling the estates . . . of his late mother and brother.” Similarly, respondent emphasized that he operated a solo practice of law without any help from support staff. Finally, during the demand interview, respondent alleged that his medical issues had been brought “under control” and that he had returned, full-time, to the practice of law.

During the ethics hearing, respondent testified that he had refunded to Maldonado the \$1,500 flat fee he had charged him in connection with the appeal. Additionally, respondent explained that, at the suggestion of his counsel, he had contacted the Appellate Division to attempt to schedule an appearance before that court to allow him to receive a potential sanction for his failure to appear for the February 2020 order to show cause hearing. However, respondent stated that he had not yet received a reply. Also, during the ethics hearing, respondent

testified that Maldonado recently had spoken with him and expressed his appreciation for “how hard [respondent had] fought for him in municipal court and in [the] Law Division.”

The OAE’s Post-Hearing Submission

In its summation brief to the DEC hearing panel, the OAE argued that a reprimand or a censure was the appropriate quantum of discipline for respondent’s gross mishandling of Maldonado’s appeal, failure to comply with the Appellate Division’s order to show cause, and practice of law while administratively ineligible. In support of its recommendation, the OAE underscored that respondent had received a 2018 admonition in Baffuto I for substantially similar misconduct and, further, that the discipline in that matter was imposed only six months before he filed Maldonado’s notice of appeal. Thus, respondent should have had a heightened appreciation of his responsibilities towards his clients and the courts. Nevertheless, rather than arrange for a colleague to help cover Maldonado’s appeal, as he had done for his pending municipal court matters, respondent “abandoned” Maldonado’s appeal and chose not to reply to the Appellate Division’s notices. Despite

respondent's sympathetic personal circumstances, the OAE argued that a censure was the most appropriate quantum of discipline.

On September 7, 2023, respondent, through counsel, sent the hearing panel a letter noting his concurrence with the OAE's legal arguments and recommendations.

The Hearing Panel's Findings

The DEC hearing panel found that respondent violated RPC 1.1(a), RPC 1.3, and RPC 3.2 by grossly mishandling Maldonado's appeal. Specifically, the DEC found that, after submitting Maldonado's August 5, 2019 appellate brief, respondent "abandoned his client's appeal" by failing to attempt to comply with the Appellate Division's numerous directives to file a conforming amended brief and appendix. Further, the DEC determined that respondent violated RPC 3.4(c) by knowingly failing to appear for the Appellate Division's February 10, 2020 order to show cause hearing concerning his failure to prosecute Maldonado's appeal. Similarly, the DEC found that respondent violated RPC 8.4(d) by wasting the Appellate Division's resources in connection with its repeated attempts to ensure that he filed a conforming amended brief and appendix.

Additionally, the DEC concluded that respondent violated RPC 1.4(b) and

RPC 1.4(c) by failing to keep Maldonado informed of the status of his appeal to the extent reasonably necessary to have permitted him to make informed decisions regarding the representation. Finally, the DEC determined that respondent violated RPC 5.5(a)(1) by knowingly practicing law while administratively ineligible by “sending letters and appearing virtually” in connection with eight client matters during his four-month period of ineligibility.

In recommending the imposition of a censure, the DEC observed that, during the timeframe underlying his misconduct in this matter, respondent knew that he needed assistance to help cover his client matters. Nevertheless, respondent failed to reply to the Appellate Division’s notices or to attempt to arrange for a colleague to help cover Maldonado’s appeal. The DEC also underscored how respondent had received his 2018 admonition in Baffuto I for substantially similar ethics infractions, only one year before his misconduct commenced in this matter. Consequently, the DEC found that respondent’s misconduct had occurred even though he “should have been more attuned to comply with his ethical responsibilities to his client and to the court system.”

The Parties' Arguments to the Board

At oral argument before us, the OAE urged the imposition of a censure, emphasizing that respondent had a heightened awareness of his responsibilities towards his clients and the courts because of his recent admonition in Baffuto I. The OAE also stressed how respondent had failed to make any arrangements to ensure that Maldonado's appeal could proceed apace during any periods of personal absence.

Respondent likewise urged us to impose a censure and to adopt the DEC's findings and recommendations. In mitigation, he noted that he had fully refunded his \$1,500 fee to Maldonado. Moreover, respondent emphasized his efforts to contact the Appellate Division to receive a potential sanction for his prior failure to appear for its February 2020 order to show cause hearing.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a de novo review of the record, we are satisfied that the DEC's findings are fully supported by clear and convincing evidence.

RPC 1.1(a), RPC 1.3, and RPC 3.2

RPC 1.1(a) prohibits a lawyer from handling a client matter in a way that constitutes gross neglect. Similarly, RPC 1.3 requires a lawyer to act with reasonable diligence in representing a client, while RPC 3.2 requires a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client.

Here, respondent violated each of these Rules by failing to diligently pursue Maldonado's appeal of his DWI conviction before the Appellate Division. Specifically, on August 5, 2019, respondent filed a deficient brief and appendix on Maldonado's behalf, that, notably, failed to include all the relevant municipal court documents. Thereafter, between August 7, 2019 and January 21, 2020, the Appellate Division issued at least one letter, two e-Courts Appellate notifications, and two orders directing respondent to file an amended, conforming brief and appendix. Respondent, however, failed to make any attempt to comply with the Appellate Division's directives.

Despite his medical issues that appeared to temporarily impede his ability to fulfill his obligations to his clients, respondent admittedly failed to make any arrangements to ensure that Maldonado's appeal could proceed apace. Indeed, although he had arranged for a colleague to cover his pending municipal court

matters, respondent failed to make similar arrangements to protect Maldonado's interests. As respondent conceded, following the filing of his deficient August 2019 brief and appendix, he "abandoned" Maldonado's appeal, forcing the Appellate Division, by October 2020, to accept respondent's deficient brief and appendix to avoid the outright dismissal of Maldonado's appeal.

RPC 1.4(b) and RPC 1.4(c)

RPC 1.4(b) requires a lawyer to keep a client reasonably informed about the status of the matter, and RPC 1.4(c) requires a lawyer to explain the matter to the extent reasonably necessary to permit the client to make informed decisions concerning the representation.

Respondent violated RPC 1.4(b) by failing to keep Maldonado reasonably apprised of the fact that, between August 2019 and October 2020, his appeal could not proceed as a direct result of respondent's failure to comply with the Appellate Division's repeated directives to file an amended brief and appendix. Although Maldonado had not contacted respondent regarding the status of his matter, respondent conceded that Maldonado had entrusted him to handle his appeal. However, by failing to advise Maldonado that, for more than a year, the Appellate Division would not accept his deficient brief and appendix for filing,

respondent effectively kept his client in the dark regarding the status of his matter.

Similarly, respondent violated RPC 1.4(c) by failing to communicate with Maldonado regarding the fact that his medical issues were preventing him from effectively prosecuting the appeal. Had respondent properly advised Maldonado of his inability to continue the representation, Maldonado would have had the opportunity to decide whether to retain new counsel, to proceed with the appeal as a pro se litigant, or to withdraw the appeal. Respondent, however, failed to communicate with Maldonado to the extent reasonably necessary to have permitted him to make such an informed decision.

RPC 3.4(c) and RPC 8.4(d)

RPC 3.4(c) prohibits an attorney from knowingly disobeying an obligation under the rules of a tribunal while RPC 8.4(d) prohibits an attorney from engaging in conduct prejudicial to the administration of justice.

Generally, attorneys who knowingly violate court orders commit violations of RPC 3.4(c) and RPC 8.4(d). See In the Matter of Lawrence A. Leven, DRB 20-002 (December 7, 2020) (the attorney violated RPC 3.4(c) and RPC 8.4(d) by disobeying the Court's Orders directing that he provide the OAE

with certain financial records). Additionally, attorneys who needlessly waste judicial resources violate RPC 8.4(d). See In the Matter of Edward Harrington Heyburn, DRB 19-443 (September 18, 2020) (the attorney’s prolonged failure to comply with a Superior Court order directing that he deposit escrow funds with the Superior Court Trust Fund resulted in a needless waste of judicial resources by requiring judges “to ascertain the status of the . . . funds that were ordered and overdue to be deposited,” in violation of RPC 8.4(d)).

Here, respondent admittedly violated RPC 3.4(c) and RPC 8.4(d) by knowingly failing to comply with Judge Messano’s January 21, 2020 order to show cause requiring him to appear before the Appellate Division, on February 10, 2020, to explain why he should not be sanctioned for his persistent failure to file a conforming brief and appendix. Rather than attempt to communicate with the Appellate Division regarding whether his medical issues may have prevented him from appearing for the scheduled order to show cause, respondent simply disregarded his obligation to appear and made no attempt to contact the court. Respondent compounded his violation of RPC 8.4(d) by needlessly wasting the resources of the Appellate Division which, during a span of five months, issued multiple notices and orders attempting, unsuccessfully, to direct him to cure his deficient brief and appendix.

RPC 5.5(a)(1)

RPC 5.5(a)(1) prohibits an attorney from engaging in the unauthorized practice of law by, among other things, practicing law while administratively ineligible.

Although an attorney's knowledge of his ineligibility is not required to sustain an RPC 5.5(a)(1) charge, the quantum of discipline is enhanced when an attorney knowingly practices law while ineligible. Compare In the Matter of Jonathan A. Goodman, DRB 16-436 (March 22, 2017) (admonition for an attorney who practiced law during two periods of ineligibility; he was unaware of his ineligibility), and In re Mordas, 246 N.J. 461 (2021) (reprimand for an attorney who, despite his awareness of his ineligibility to practice law, twice appeared before the Superior Court in connection with his client's criminal matter).

Here, between November 16, 2020 and March 4, 2021, respondent was administratively ineligible to practice law based on his failure to fulfill his CLE obligations. During his period of ineligibility, respondent conceded that he violated RPC 5.5(a)(1) by practicing law in connection with eight client matters. Specifically, respondent admitted that he had "sen[t] letters and appear[ed] virtually" in furtherance of those client matters during his ineligibility period.

Moreover, in our view, it appears that respondent was aware of his ineligibility given that, during his ineligibility period, he actively worked to complete his belated CLE obligations for the prior biannual compliance period. Even after respondent had completed the required CLE courses by January 11, 2021, he continued to practice law while ineligible, despite acknowledging that the Court did not restore him to practice until March 4, 2021.

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 3.2; RPC 3.4(c); RPC 5.5(a)(1); and RPC 8.4(d). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

Absent serious aggravating factors, such as harm to the client, conduct involving gross neglect; lack of diligence; failure to communicate with a client; and failure to expediate litigation ordinarily results in an admonition, even when accompanied by other non-serious ethics infractions. See In the Matter of Robert E. Kingsbury, DRB 21-152 (October 22, 2021) (throughout the three-year representation, the attorney failed to competently prosecute his client's tax-sale certificate foreclosure complaint beyond the pleading stage; during the

representation, the attorney repeatedly filed deficient motions, all of which were denied or rejected because of procedural issues that were well-within his control to cure; the attorney also failed to set forth, in writing, the basis of his flat fee; following the deterioration of the attorney-client relationship, the client retained substitute counsel to complete her matter; in mitigation, the attorney completely refunded the client, who suffered no ultimate financial harm; no prior discipline in more than forty-seven years at the bar), and In the Matter of Esther Maria Alvarez, DRB 19-190 (September 20, 2019) (following the attorney's retention to file a divorce complaint for a client, she failed, for nine months, to take any steps to pursue the matter, and failed to reply to all but one of the client's requests for information; in another matter, the attorney agreed to seek a default judgment, but waited more than eighteen months to file the necessary papers with the court; although the attorney obtained a default judgment, the court later vacated it due to the passage of time, which precluded a determination on the merits; no prior discipline in twenty-seven years at the bar).

The quantum of discipline is enhanced, however, when additional aggravating factors are present. See, e.g., In re Lueddeke, ___ N.J. ___ (2022), 2022 N.J. LEXIS 460 (reprimand for an attorney who, eight months after agreeing to pursue a breach of contract claim on behalf of a client, filed a request

with a court for a proof hearing; the court, however, rejected the attorney's request and notified him to file a motion for a proof hearing; the attorney failed to file the motion and, nearly five months later, the court dismissed the matter for lack of prosecution; the attorney failed to inform his client of the dismissal of his matter or to reply to his inquiries regarding the status of his case; more than a year later, the client independently discovered that his case had been dismissed, following which the attorney, at the client's behest, successfully reinstated the matter and secured a judgment on the client's behalf; prior admonition for similar misconduct, which give the attorney a heightened awareness of his obligations to diligently pursue client matters); In re Crisonino, 201 N.J. 415 (2010) (reprimand for an attorney who failed to file an appellate brief on behalf of a client concerning his serious criminal convictions, resulting in the dismissal of the appeal; the attorney, however, failed to advise his client that his appeal had been dismissed; rather, during a span of two years, the attorney twice visited his client in prison and misrepresented that the appeal was proceeding apace; thereafter, the attorney visited his client a third time and informed him that he had failed to file a brief; although the attorney assured his client that he would seek to have the appeal reinstated, he failed to make any attempt to do so; the client, however, filed a successful pro se motion to reinstate

the appeal and prepared his own brief in support of the appeal, allowing the Appellate Division to decide the matter on the merits; in aggravation, the attorney's deception to his client spanned two years, while his client's liberty was at stake; no prior discipline); In re Lenti, 250 N.J. 292 (2022) (censure for an attorney's combined misconduct encompassing five client matters and eleven RPC violations; in three of the client matters, the attorney failed to timely file necessary motions or pleadings in connection with matrimonial or child custody litigation; additionally, in connection with two of the matrimonial matters, the attorney made misrepresentations to her clients regarding the status of their cases; further, in connection with a third matrimonial matter and a separate probate matter, she failed to communicate with her clients; in aggravation, the attorney's misconduct resulted in the unnecessary delay of at least two client matters and the dismissal – and potential extinguishment – of at least one client matter; however, in mitigation, the attorney had no prior discipline in her nine-year career at the bar and expressed sincere remorse; additionally, the attorney, eventually, engaged a family law attorney to help her advance her outstanding family law cases).

Respondent, however, committed additional misconduct by failing to comply with the Appellate Division's January 2020 order to show cause and by

wasting the Appellate Division's resources. Ordinarily, a reprimand is imposed when an attorney fails to obey court orders, even if the infraction is accompanied by other, non-serious violations. See In re Hill, 249 N.J. 468 (2022) (the attorney knowingly violated a protective order that limited the use of documents and information contained therein to the prosecution or defense of a single litigation matter; the attorney's violation of the protective order allowed her to generate new clients and to file a separate lawsuit, in a different venue, against the same opposing party as in the first matter; the attorney's conduct resulted in a significant waste of opposing counsel's time and the judicial resources of two vicinages; the attorney also failed to supervise her paralegal, who, inexplicably, removed the privilege designations on certain confidential documents; limited remote discipline in her forty-three-year career at the bar), and In re Gellene, 203 N.J. 443 (2010) (the attorney failed to appear for the Appellate Division's order to show cause concerning his failure to file a brief; moreover, the attorney failed to notify the Appellate Division that he would not appear; the attorney failed to timely file appellate briefs for three clients and failed to keep one client reasonably informed about the status of his appeal; we rejected, as mitigation, the attorney's purported debilitating depression, given that he had failed to

submit documentary evidence to substantiate his claim; in aggravation, the attorney had two prior private reprimands and a prior admonition).

Finally, for nearly four months, respondent knowingly practiced law while administratively ineligible in connection with eight client matters. Ordinarily, when an attorney practices law while ineligible, and is aware of the ineligibility, either a reprimand or a censure will result, depending on the existence and nature of aggravating factors. See In re Mordas, 246 N.J. 461 (2021) (reprimand for an attorney who, despite his awareness of his ineligibility to practice law, twice appeared before the Superior Court in connection with his client's criminal matter; the attorney's trust account records also revealed that he had engaged in the unauthorized practice of law through a minimum of five trust account transactions in connection with three client matters; in mitigation, the attorney stipulated to his misconduct and had a remote disciplinary history), and In re Freda, ___ N.J. ___ (2022) (censure for an attorney, in a default matter, who knowingly practiced law while ineligible in connection with seven client matters; the attorney's business account bank statements demonstrated that, for more than a year, he had continued to provide unauthorized legal services; no prior discipline in nearly thirty years at the bar).

Based on respondent's disciplinary history, a reprimand would be the appropriate quantum of discipline for each of respondent's ethics infractions, standing alone. However, when viewed against the timing of his 2018 admonition in Baffuto I, respondent's combined misconduct, in our view, warrants the imposition of a censure.

Specifically, respondent's misconduct underlying Maldonado's appeal represents an escalation of the same pattern of gross neglect and failure to communicate that he exhibited in Baffuto I. In that matter, respondent allowed his client's municipal appeal of her DWI conviction to be dismissed for his failure to procure the necessary municipal court transcripts. Thereafter, he failed to communicate with his client regarding the status of her matter and failed to make any arrangements to protect her claim during his medical absence. Respondent's misconduct in that matter forced his client to independently investigate the status of her matter and to retain a new attorney to have her appeal reinstated.

On the heels of his admonition in Baffuto I, respondent, in this matter, embarked upon a more serious iteration of the same form of misconduct. Following the filing of his August 2019 deficient brief and appendix on behalf of Maldonado, the Appellate Division, during the span of five months, sent

respondent one letter, two e-Courts Appellate notifications, and two orders requiring that he file a conforming amended brief and appendix. Respondent, however, repeatedly disregarded the Appellate Division's directives. Moreover, unlike in Baffuto I, where respondent was not alleged to have violated any court orders, in this matter, he knowingly failed to comply with Judge Messano's January 2020 order to show cause. Thereafter, respondent failed to inform Maldonado of the fact that his appeal was not proceeding apace, and he made no attempt to contact the Appellate Division to explain why he had failed to appear for its order to show cause or to provide an update regarding the status of his amended brief.

Although we are sympathetic towards respondent's medical issues that appeared to temporarily impede his ability to devote his full attention to Maldonado's appeal, he had a heightened awareness of his obligation to ensure arrangements were made to protect his clients during any periods of medical absence, given his admonition in Baffuto I for that same conduct. However, rather than advise Maldonado of his predicament to allow him to retain new counsel or to arrange for a colleague to temporarily cover the representation, as he had done for his pending municipal court clients, respondent conceded that he simply "abandoned" Maldonado's appeal, forcing the Appellate Division, by

October 2020, to accept the deficient brief and appendix for filing. Following his abandonment of Maldonado's appeal, respondent engaged in additional misconduct, between November 2020 and March 2021, by knowingly practicing law while administratively ineligible in connection with eight client matters.

By his conduct, respondent brazenly disregarded two Appellate Division orders, resulting in the needless waste of judicial resources; deserted his client in the midst of his appeal; and ignored the restrictions placed upon his license by knowingly practicing law while ineligible.

However, in mitigation, Maldonado voluntarily agreed to withdraw his appeal, after the Appellate Division had accepted respondent's deficient brief and appendix for filing and advised Maldonado of respondent's ineligible status. Further, respondent fully refunded his \$1,500 legal fee to Maldonado. Moreover, during the ethics proceedings, respondent contacted the Appellate Division in an attempt to appear before that court to receive a potential sanction for his prior failure to comply with its order to show cause. Although we accord some mitigating weight to respondent's medical issues, his struggles did not appear to have prohibited him from practicing law while ineligible by November 2020, when Maldonado's appeal, which he had abandoned more than a year earlier, was still active.

Conclusion

On balance, despite the lack of ultimate harm to Maldonado, respondent's conduct in this matter represents an escalation of the same form of unethical behavior he displayed in Baffuto I. Despite his heightened awareness of his obligations to protect his clients' interests, he knowingly deserted his representation of Maldonado and, unlike in Baffuto I, knowingly disregarded multiple court orders and practiced law while he was ineligible to do so. Thus, consistent with disciplinary precedent, and to protect the public and preserve confidence in the bar, we determine that a censure is the appropriate quantum of discipline for the totality of respondent's misconduct.

Members Petrou and Rivera voted to recommend the imposition of a three-month suspension, having accorded significant aggravating weight to respondent's failure to comply with multiple orders issued by the Appellate Division, ultimately causing the client to abandon his appeal rights challenging his conviction.

Member Rodriguez did not participate.

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. Mary Catherine Cuff, P.J.A.D. (Ret.),
Chair

By: /s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Bartholomew Baffuto
Docket No. DRB 24-092

Argued: June 20, 2024

Decided: October 7, 2024

Disposition: Censure

<i>Members</i>	Censure	Three-Month Suspension	Did Not Participate
Cuff	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Menaker	X		
Petrou		X	
Rivera		X	
Rodriguez			X
Spencer	X		
Total:	6	2	1

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