SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-178
District Docket No. XIV-2024-0183E

In the Matter of Edward Joseph Crisonino
An Attorney at Law

Argued
October 17, 2024

Decided
January 24, 2025

Colleen L. Burden 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 disciplinary stipulation between the Office of Attorney Ethics (the OAE) and respondent. Respondent stipulated to having violated RPC 1.1(a) (engaging in gross neglect); RPC 1.3 (lacking diligence); 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 1.5(b) (failing to set forth, in writing, the basis or rate of the legal fee); RPC 3.1 (two instances – engaging in frivolous litigation); RPC 3.2 (failing to expedite litigation); RPC 8.4(c) (two instances – engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (two instances – engaging in conduct prejudicial to the administration of justice).

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

Ethics History

Respondent earned admission to the New Jersey bar in 1987 and to the Virginia bar in 1984. During the relevant timeframe, he maintained a practice of law in Westmont, New Jersey.

On March 22, 2010, the Court reprimanded respondent in connection with his gross mishandling of a criminal appeal. In re Crisonino, 201 N.J. 415 (2010) (Crisonino I).

In that matter, in December 2004, a client retained respondent to represent him in his ongoing appeal of his carjacking conviction for which he was serving a fourteen-year custodial sentence. In the Matter of Edward J. Crisonino, DRB 09-275 (December 16, 2009) at 2. At the time he assumed the representation, the parties had not yet filed their appellate briefs. Id. at 2-3. Two months later, in February 2005, the client requested that respondent provide him an update on the status of his appeal, including whether he had completed his brief. Id. at 3. In reply, respondent provided proof to his client that the Appellate Division had granted him a thirty-day extension to file his brief. Ibid.

After receiving a second thirty-day extension, respondent failed to file a brief, as R. 2:6-11 requires; consequently, in July 2005, the Appellate Division dismissed the appeal. Ibid. Respondent, however, failed to advise his client that

his appeal had been dismissed. Ibid. Rather, on two occasions between 2005 and 2007, he visited his client in prison and misrepresented that his appeal was proceeding apace. Id. at 4. We found that respondent had engaged in misrepresentation, intentionally obscuring the truth from his client. Id. at 7.

Thereafter, in October or November 2007, respondent visited his client a third time and informed him that he had failed to file a brief. Id. at 4-5. Although respondent assured his client that he would seek to have the appeal reinstated, he failed to make any attempt to do so. Id. at 5. During the ethics hearing in that matter, respondent apologized for his misconduct and claimed that his childcare responsibilities had impeded his ability to attend to his law practice. Id. at 5-6.

In determining that a reprimand was the appropriate quantum of discipline, we weighed, in aggravation, the fact that respondent's deception toward his client spanned two years, while his client's liberty was at stake. Id. at 9. In mitigation, however, we weighed respondent's then lack of prior discipline, remorse and good character, and childcare difficulties. Id. at 8. The Court agreed with our recommended discipline.

Facts

As in Crisonino I, respondent's conduct in the instant matter arises out of his gross mishandling of a client's criminal appeal and post-conviction relief (PCR) petitions.

By way of background, on March 26, 2009, a Burlington County grand jury indicted Meredith Rogers with first-degree murder, in violation of N.J.S.A. 2C:11-3(a), and second-degree endangering the welfare of a child, in violation of N.J.S.A. 2C:24-4(a). The charges stemmed from the death, due to assault and shaken baby syndrome (SBS),[1] of Rogers's then girlfriend's seventeen-month-old child (the victim), who was in his care.

On November 29, 2010, a jury convicted Rogers of first-degree aggravated manslaughter, in violation of N.J.S.A. 2C:11-4(a), and second-degree endangering the welfare of a child. Private counsel unaffiliated with respondent represented Rogers at trial.

In December 2010, Rogers's mother, Elise Swan, and stepfather, Burness Swan (the Swans), retained respondent to represent Rogers at sentencing "and for post-sentencing work." On December 28, 2010, following his meeting with

[1] SBS "is a multidisciplinary diagnosis based on the theory that vigorously shaking an infant – with or without impact – creates such great rotational acceleration and deceleration forces that result in a constellation of symptoms that may not manifest externally." State v. Nieves, 476 N.J. Super. 609, 652 (App. Div. 2023).

Rogers at the Burlington County Jail, respondent filed a substitution of attorney with the Superior Court of New Jersey.

Following respondent's substitution as counsel, the State filed a motion to have Rogers sentenced to an extended, fifty-year term of imprisonment, as a persistent offender, pursuant to N.J.S.A. 2C:44-3(a) and N.J.S.A. 2C:43-7, given his prior convictions for firearms and drug-related offenses.

On January 18, 2011, respondent filed an opposition letter to the State's motion, maintaining that, although Rogers was "eligible for an extended term sentence," the Superior Court retained discretion to sentence Rogers within the "normal range of sentences available to the court." Between January 20 and 24, 2011, in advance of the sentencing hearing, respondent submitted various character letters on behalf of Rogers.

On January 28, 2011, the Swans verbally agreed to pay respondent a $10,000 flat fee to appear at Rogers's sentencing hearing, to file his direct appeal, and to pursue his PCR petition. Respondent, however, failed to set forth the basis of his fee in writing, as RPC 1.5(b) requires. During his November 19, 2021 demand interview with the OAE, respondent could not explain why he had failed to provide the Swans with a written fee agreement.

Following their verbal agreement, the Swans immediately provided respondent a $7,000 cash payment toward his flat fee. Thereafter, on an undisclosed date, the Swans provided respondent a $1,200 payment to cover the transcription costs for Rogers's direct appeal. The Swans, however, made no additional payments toward the remaining $1,800 balance of respondent's flat fee.

Meanwhile, on January 28, 2011, the Honorable Jeanne T. Covert, P.J.Cr., sentenced Rogers to an aggregate forty-seven-year extended term of incarceration. Pursuant to N.J.S.A. 2C:43-7.2 (the No Early Release Act), Judge Covert ordered that Rogers serve eighty-five percent of his sentence before he could become eligible for parole. On February 3, 2011, Judge Covert issued a judgment of conviction reflecting Rogers's convictions and sentence.

Five days later, on February 8, 2011, respondent sent Rogers a letter indicating that he intended to contact an expert in the field of SBS in connection with his appeal. Thereafter, on February 27, 2011, Rogers's biological father, Joseph Rogers (Joseph), provided respondent with the contact information of a purported medical expert who, according to Joseph, had agreed to "help out in any way he [could] with [Rogers's] case." The next day, on February 28, respondent sent the expert a letter enclosing the victim's medical records. On

March 8, 2011, respondent sent Rogers, Joseph, and the Swans a copy of the expert's report of "his review of [the victim's] medical records."

Meanwhile, on March 8, 2011, respondent filed with the Appellate Division a timely notice of appeal of Rogers's convictions. Two days later, on March 10, respondent sent the Appellate Division a transcript request form indicating that, in addition to the January 28, 2011 sentencing transcript, he sought to obtain the trial transcripts in connection with the appeal. Respondent, however, failed to specify the trial dates in his transcript request form, as R. 2:5-1(g)(1) requires. Rather, he stated that the "trial dates [were] not [yet] supplied by the County trans[script] office."

On March 15, 2011, the Appellate Division sent respondent an e-mail directing that, within twenty-one days, he file a corrected transcript request form specifying the trial dates. One week later, on March 23, respondent filed a corrected transcript request form listing the dates of trial. Additionally, on that same date, respondent submitted to the Burlington County Superior Court a $1,200 check, made payable to the Transcription Unit of the Superior Court (the Transcription Unit), to cover the deposit for the preparation of the transcripts.

However, on March 28, 2011, the Transcription Unit informed respondent's secretary that it required a $7,000 deposit to prepare the transcripts.

The next day, on March 29, the Transcription Unit sent respondent a letter returning his $1,200 check and informing him that his secretary had agreed to provide the $7,000 deposit.

Further, on March 29, 2011, respondent sent the Swans and Joseph a letter, noting that "the transcripts [were] going to be more expensive than originally indicated" and requesting that they remit an additional $5,800 payment to cover the transcription costs.

During respondent's November 2021 demand interview, he claimed that the Swans and Joseph "disagreed amongst each other regarding the payment of transcript and expert costs." Respondent, however, maintained that neither the Swans nor Joseph expressly "limited the amount of funds which could be expended towards transcript and expert costs." Accordingly, when the Swans, at some point, declined to pay the additional costs associated with the representation, respondent claimed that Joseph elected to pay such costs.

On March 29, 2011, the Appellate Division notified respondent that Rogers's appeal would be dismissed if he did not provide the transcripts within thirty-five days. Respondent, however, failed to file the transcripts because of his failure to remit the $7,000 deposit to the Transcription Unit.

More than two months later, on June 6, 2011, the Transcription Unit sent respondent a written notice informing him that it had denied his request for transcripts due to his failure to pay the $7,000 deposit. He failed to reply to the notice or to provide the Transcription Unit with the required deposit.

Meanwhile, on June 8, 2011, Rogers sent respondent a letter, expressing his approval of the expert's review of the victim's medical records and inquiring whether other experts may share a similar opinion. Additionally, Rogers requested that respondent provide copies of the transcripts to Joseph. Finally, Rogers directed that respondent provide him updates "on anything and everything concerning [his] appeal." Following his receipt of Rogers's letter, respondent failed to obtain the transcripts.

On June 30, 2011, respondent sent the victim's medical records to a second purported SBS expert and, on July 26, 2011, he provided Rogers with that expert's written response to his review of those records.

On August 3, 2011, the Appellate Division issued an order dismissing Rogers's appeal for failing to provide the transcripts. During his demand interview, respondent conceded that, although "funds for the transcripts were not an issue," he had failed to remit the required $7,000 deposit to allow the Appellate Division to consider the appeal on the merits.

On August 26, 2011, following the dismissal of the appeal, respondent met with Joseph to discuss SBS experts. Based on respondent's handwritten notes describing the meeting, it does not appear that he had advised Joseph that his son's appeal had been dismissed only three weeks earlier. Further, on August 26, respondent provided the victim's medical records to a third purported SBS expert.

On September 16, 2011, respondent sent the Transcription Unit a $4,000 attorney trust account check representing a portion of the $7,000 deposit required for the transcripts. He failed, however, to remit the remaining $3,000 balance to the Transcription Unit.[2]

On November 1, 2011, respondent met with Rogers to discuss an unrelated legal matter concerning his client. Based on respondent's handwritten notes describing that meeting, it does not appear that he had advised Rogers that his appeal had been dismissed three months earlier.

Following his meeting with Rogers, respondent failed, for nearly five years, to perform any meaningful work in furtherance of the appeal. Rather, between March 2012 and January 2016, Joseph sent respondent numerous e-

[2] Based on respondent's submission of the $4,000 payment, the Transcription Unit appeared to have completed four of the at least seven trial transcripts comprising the record before the Superior Court.

mails containing news articles related to SBS and expressing his concerns regarding the State's presentation during his son's trial.[3]

On May 3, 2016, more than five years after the issuance of the February 3, 2011 judgment of conviction, respondent filed an untimely PCR petition on behalf of Rogers.[4] In support of the petition, respondent included only a six-line certification, executed by Rogers, who maintained that he "wish[ed] to challenge [his] conviction" based on "issues directly related to the due process clauses of the New Jersey and United States Constitutions [that] have never before been raised either on appeal or in a [PCR] application."

Ten days later, on May 13, 2016, nearly five years after the dismissal of Rogers's appeal, respondent filed a motion with the Appellate Division to vacate the dismissal and to reinstate the appeal. In support of his motion, respondent certified that, although the appeal had been dismissed for his failure to file the transcripts, he since had "filed the transcripts with this pleading." He also

[3] Based on the record before us, it is unclear whether respondent replied to any of Joseph's e-mails.

[4] Pursuant to R. 3:22-12(a), a defendant's first PCR petition shall not be filed more than five years after the issuance of the judgment of conviction being challenged unless it alleges: (1) "facts showing that the delay beyond said time was due to defendant's excusable neglect and that there is a reasonable probability that if the defendant's factual assertions were found to be true[,] enforcement of the time bar would result in a fundamental injustice;" (2) "a claim or relief" based on a "newly recognized" constitutional right that is "made retroactive . . . to cases on collateral review; or (3) "a claim for relief" in which "the factual predicate for the relief sought . . . could not have been discovered earlier through the exercise of reasonable diligence."

expressed his view that the State would "suffer no prejudice from the late filing of the defendant's brief" or by the reinstatement of the appeal. Respondent, however, failed to explain why it had taken him almost five years to make any attempt to reinstate the appeal.

Significantly, respondent's certification misrepresented the status of the transcripts to the Appellate Division because, at the time of his May 2016 motion to reinstate the appeal, he knew that the Transcription Unit had not completed its preparation of the final three trial transcripts comprising the record before the Superior Court. Specifically, on June 13, 2016, the Transcription Unit received respondent's $500 payment towards the remaining $2,674[5] balance owed for the preparation of the final three transcripts. Thereafter, on June 13, 2016, the Transcription Unit sent him an invoice for the remaining $2,174 balance and, on June 22, 2016, the Transcription Unit completed its preparation of the final three transcripts. Shortly after the completion of the transcripts, respondent submitted the final $2,174 payment to the Transcription Unit, which then "immediately" sent the final three trial transcripts to respondent.

[5] As noted above, by September 16, 2011, respondent owed a $3,000 balance to the Transcription Unit. The record before us, however, is unclear whether, between September 2011 and June 2016, respondent had submitted an intervening payment to reduce the $3,000 balance to $2,674.

According to publicly available court records, on June 6, 2016, the Honorable Carmen Messano, P.J.A.D., issued an order denying respondent's motion to reinstate the appeal, citing his failure to submit all trial transcripts. In his order, Judge Messano noted that respondent's March 2010 transcript request form "indicated transcripts from many more trial dates than the four transcripts submitted with this motion." Judge Messano emphasized that the appeal was "now more than six years old, and has been dismissed since 2011." Judge Messano required that, if respondent did "not file all transcripts within 30 days of this order, the appeal, already dismissed, shall be dismissed with prejudice."

Meanwhile, on June 22, 2016, Judge Covert issued an order denying Rogers's PCR petition, without prejudice, noting that Rogers could not "have two appeals pending."[6]

On July 1, 2016, respondent sent the Appellate Division a letter enclosing the three "missing" trial transcripts comprising the record before the Superior Court. Subsequently, on August 22, 2016, he filed a second motion with the Appellate Division, seeking to vacate the dismissal and to reinstate the appeal based on his view that he had submitted all "missing" trial transcripts. Like his

[6] R. 3:22-3 provides, in relevant part, that a PCR petition "may not be filed while . . . appellate review . . . is pending."

May 2016 motion, respondent argued that the State would suffer "no prejudice" by the reinstatement of the appeal but, again, failed to explain his almost five-year delay in attempting to reinstate the matter.

According to publicly available court records, on September 26, 2016, Judge Messano denied respondent's motion, without prejudice, based on his failure to provide the sentencing hearing transcript along with two additional trial transcripts for proceedings that purportedly took place on October 26 and 27, 2010.

On October 12, 2016, respondent filed a third motion to vacate the dismissal and to reinstate the appeal, noting that he had enclosed the transcript of the sentencing proceeding with his motion. Additionally, based on his discussions with Burlington County Criminal Case Management and the Transcription Unit, respondent certified that no court proceedings took place on October 26 and 27, 2010, in connection with Rogers's matter. Again, he failed to explain his substantial delay in connection with his attempt to reinstate the appeal.

On October 24, 2016, the State filed an opposition to respondent's motion, arguing that the underlying appeal had been dismissed more than five years ago

and, thus, the State would face significant prejudice if forced to re-try Rogers's criminal case.

On December 20, 2016, Judge Messano denied respondent's motion, without prejudice, based on his failure "to explain the nearly five-year delay between dismissal of the appeal in 2011, and the first motion to reinstate the appeal in May 2016."

Meanwhile, on October 24, 2016, Joseph sent respondent an e-mail stating that he was sending respondent "a check for the transcripts." In his e-mail, Joseph stated that, based on his recollection, the transcripts "were purchased and copie[d] way back when you were first hired. I remember providing the funds to cover the cost."

Two months later, on December 29, 2016, respondent sent Joseph a letter requesting a $2,000 fee to retain "an expert" to review Rogers's "file." On January 2, 2017, Joseph sent respondent a reply e-mail requesting that he contact the Swans to obtain such additional funding. Consequently, on January 26, 2017, respondent sent the Swans a letter stating that he required a $2,000 fee to retain an expert "to review" Rogers's "file."

Three months later, on April 26, 2017, Joseph sent respondent a $2,000 check to cover the cost of the expert. In his accompanying letter, Joseph noted

that "the Swans who [had] hired (retained) you don't seem to have any intention [of] paying for the services that will be rendered." On May 18, 2017, following his receipt of the $2,000 payment, respondent sent the victim's medical records to the expert for his opinion on whether the victim had died as a result of SBS.

Meanwhile, on January 18, 2017, respondent filed a fourth motion to vacate the dismissal and to reinstate the appeal. In support of the motion, he certified that, following his March 2011 notice of appeal, he had "ordered" the trial and sentencing transcripts and provided them to the Appellate Division upon receipt. He also certified that, although the appeal had been dismissed based on his failure to provide "all of the" trial transcripts, he "did not realize until sometime later that [he] had not received all of the transcripts from the trial." He maintained that, upon that discovery, his staff "began endeavoring to receive all the transcripts to file them with" the Appellate Division. Additionally, he stated that he "eventually learned" that no proceedings took place in connection with "some of the [trial] dates originally listed" in his transcript request form and, further, that the "delay in this process was not deliberate or an attempt to impede or delay" the Appellate Division.

In this disciplinary matter, respondent stipulated that he falsely certified to the Appellate Division that he did not "realize until sometime later" that he

had not obtained all the trial transcripts. In fact, he conceded that, between September 2011 and June 2016, he continuously was aware that he had owed approximately $3,000 to the Transcription Unit to cover the cost of the remaining transcripts. He also stipulated that he had made an "[un]supported" statement to the Appellate Division by claiming that the "delay in the process was not deliberate or an attempt to impede or delay the [Appellate Division]."

On January 31, 2017, the State filed a letter in opposition to respondent's fourth reinstatement motion asserting the same arguments it had advanced in opposing his third reinstatement motion.

On February 9, 2017, Judge Messano denied the motion, finding that respondent's "most recent certification again fail[ed] to explain in any detail the reason for the nearly five-year delay between the 2011 dismissal of the appeal and the first motion to reinstate."

On March 24, 2017, respondent filed a new PCR petition on Rogers' behalf that was substantially the same as the original May 2016 petition. In support of the petition, he submitted an identical copy of Rogers's six-line certification that he had included in the original petition. As respondent stipulated, both petitions contained no arguments in law or fact to support the applications beyond Rogers's express "wish to challenge his conviction."

On April 11, 2017, respondent sent Rogers a letter advising him that the Superior Court had scheduled a hearing on September 22 in connection with the petition. Two months later, on June 19, 2017, Judge Covert granted respondent's request for a thirty-day extension, until July 12, 2017, to file his brief in support of the petition. In light of that extension, the Superior Court rescheduled the hearing date to November 17, 2017, and, on June 30, respondent notified Rogers of that new hearing date.

In July 2017, the Superior Court granted respondent two additional extensions, until July 28, 2017, to file his brief in support of the petition. On July 28, 2017, following his failure to comply with the briefing deadline, the Superior Court sent respondent an e-mail requesting a copy of his brief. Respondent, however, failed to reply and, thus, on July 31, 2017, Judge Covert issued an order dismissing the petition, without prejudice.

Respondent stipulated that he had filed the PCR petitions "in the hopes of discovering an expert to undermine the State's theory supporting Rogers's convictions." However, in his May 19, 2021 reply to the ethics grievance, respondent admitted that he was unable to locate an expert "to contradict the State's expert's conclusion" that the victim had died from SBS. Following his inability to locate such an expert, respondent conceded that he had "allowed"

the PCR petitions "to be dismissed without prejudice" because, in his view, "it allowed [Rogers] the opportunity to file another [PCR] application in the future should he be able to find an expert to challenge the [SBS] diagnosis."

On April 11, 2019, respondent executed a substitution of attorney, withdrawing as counsel and allowing a new lawyer to assume the representation. Four days later, on April 15, 2019, substitute counsel filed a new motion to vacate the dismissal and to reinstate the appeal based on respondent's failure to prosecute the appeal and to file timely PCR petitions. Substitute counsel also requested that the Appellate Division declare Rogers indigent and assign the matter to the Office of the Public Defender (the OPD).

On June 13, 2019, Judge Messano issued an order reinstating the appeal and referring the matter to the OPD for evaluation of Rogers's eligibility for services.

On December 16, 2020, after the OPD assumed the representation, the Appellate Division issued an opinion rejecting Rogers's arguments regarding the admissibility of the State's expert testimony and affirming his convictions and sentence in their entirety. State v. Rogers, 2020 N.J. Super. Unpub. LEXIS 2408 (App. Div. Dec. 16, 2020).

Based on the foregoing facts, respondent stipulated that he violated RPC 1.5(b) by failing to set forth, in writing to the Swans, the basis or rate of his $10,000 flat legal fee. He also stipulated to having violated RPC 1.1(a), RPC 1.3, and RPC 3.2 by grossly mishandling Rogers's direct appeal and PCR petitions. Specifically, respondent failed, for five years, to ensure that the Appellate Division received the trial transcripts necessary for appellate review and, rather than take any timely corrective action, he simply allowed the appeal to remain dismissed. Further, he conceded that he filed "duplicative" motions to reinstate the appeal, without including the necessary transcripts or attempting to explain why he had failed, for five years, to prosecute the appeal. Additionally, he failed to adhere to Judge Covert's briefing deadlines in connection with the second PCR petition.

Respondent stipulated to having violated RPC 1.4(c) by failing to advise Rogers or the Swans of (1) the "procedural impropriety and negligible likelihood of success of the PCR" petitions, (2) the dismissal of the PCR petitions and the appeal, and (3) his inability to obtain an expert "who would testify in Rogers's favor." Specifically, although he provided Rogers, the Swans, and Joseph with copies of "some" of his Superior Court and Appellate Division filings, his clients remained unaware of the "status" of the appeal or the PCR petitions, including

his mishandling of those matters, until substitute counsel assumed the representation, in April 2019.

Additionally, respondent admitted having violated RPC 3.1 by filing multiple PCR petitions without any basis in law or fact. Specifically, at the time he filed the petitions, he knew he had not obtained an expert to undermine Rogers's convictions. Further, the parties stipulated that respondent's "concurrent[] . . . pursuit of a direct appeal" while filing a PCR petition was procedurally improper. Moreover, he admittedly violated RPC 3.1 by filing multiple motions to reinstate the appeal, without any basis in fact, because, in many of those motions, he knew that he had not obtained the entire "transcribed record."

Respondent also stipulated to having violated RPC 8.4(c) (two instances) by misrepresenting, in his October 12, 2016 and January 18, 2017 certifications to the Appellate Division, the timeframe in which he had obtained all required trial transcripts. Likewise, respondent twice violated RPC 8.4(d) by wasting both the Superior Court's and the Appellate Division's judicial resources through his filing of duplicative motions and PCR petitions that "had no viable basis."

The Parties' Positions Before the Board

Although the OAE declined to recommend the imposition of a specific quantum of discipline, it asserted that disciplinary precedent supported either a censure or a short term of suspension for respondent's misconduct. Specifically, the OAE emphasized that, unlike the admonished attorney in In the Matter of Mark A. Molz, DRB 22-102 (September 26, 2022), who grossly mishandled a client matter for approximately twenty months, respondent's mishandling of Rogers's appeal spanned more than five years. The OAE also underscored how respondent had filed Rogers's PCR petitions "to toll the statute of limitations in the hopes of discovering an expert to undermine the State's theory supporting Rogers's convictions." In the OAE's view, respondent's "sole purpose" in filing the petitions "was not to progress litigation based on new evidence, but instead to buy time."

Further, like the reprimanded attorney in In re Rudnick, __ N.J. __ (2022), 2022 N.J. LEXIS 258, who failed to attempt to reinstate his client's matter after allowing it to be dismissed, the OAE noted that respondent failed to timely file Rogers's PCR petitions and allowed the second such petition to be dismissed for failing to file a brief. He also filed the petitions knowing that he had no basis in

law or fact for doing so, resulting in an unnecessary expenditure of judicial resources.

The OAE urged, as aggravation, the fact that respondent's misconduct was "strikingly similar" to his unethical behavior in Crisonino I, wherein he grossly mishandled a client's criminal appeal and misled his client into believing that his appeal was proceeding apace. In mitigation, however, respondent was contrite and stipulated to his misconduct. Moreover, the OAE noted that respondent appeared to have operated under the "misguided hope that he would be able to locate an expert" to support Rogers's PCR petitions.

Respondent did not submit a brief for our consideration. However, he appeared, through counsel, for oral argument before us. In urging the imposition of a censure, he argued that, despite his gross mishandling of Rogers's matter, he did not "abandon" his representation of Rogers, who, in his view, suffered no ultimate harm as a result of his misconduct. In support of his contention, respondent noted that, in 2020, the Appellate Division issued an opinion affirming Rogers's convictions and sentence, following substitute counsel's successful motion to reinstate the appeal. He also expressed his view that Rogers's appeal was unlikely to succeed on the merits. Finally, he emphasized,

in mitigation, the fact that he stipulated to his misconduct and, thus, conserved disciplinary resources.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a review of the record, we determine that the stipulated facts in this matter clearly and convincingly support the finding that respondent committed most, but not all, of the charged unethical conduct.

RPC 1.5(b)

In relevant part, RPC 1.5(b) requires a lawyer to set forth, in writing, the basis or rate of the legal fee before or within a reasonable time after commencing the representation. The purpose of the Rule "is to have the client fully informed as to the terms of the hiring and know without question his or her financial responsibility, as well as to prevent an attorney from overcharging." DeGraaf v. Fusco, 282 N.J. Super. 315, 320 (App. Div. 1995).

As the parties stipulated, respondent violated RPC 1.5(b) by failing to set forth, in writing to the Swans, the basis of his flat $10,000 legal fee. However, in addition to the Swans, respondent appeared to also have formed an attorney-

client relationship with Joseph, as early as March 2011, when he notified both Joseph and the Swans that he required additional funds to cover the transcription costs on appeal. Further, at some point during the representation, the Swans ceased all financial contributions in connection with Rogers's appeal and PCR petitions and, thereafter, Joseph began paying such costs, including a $2,000 expert fee. Moreover, for at least four years, between March 2012 and January 2016, Joseph sent respondent numerous e-mails enclosing news articles that, in his view, could have assisted respondent in representing his son.

In our view, based on these circumstances, respondent and Joseph entered into an aware, consensual attorney-client relationship in which respondent sought Joseph's financial contributions to the representation. Further, although Rogers could not contribute financially to the representation, respondent unquestionably formed an attorney-client relationship with him – indeed, he was the client. Consequently, respondent's RPC 1.5(b) obligations required that he set forth, in writing to Rogers, the Swans, and Joseph, the scope of the representation and the parties responsible for the payment of legal fees and costs.

RPC 1.1(a) and RPC 1.3

RPC 1.1(a) prohibits an attorney from grossly neglecting a matter entrusted to them. Similarly, RPC 1.3 requires an attorney to act with reasonable diligence and promptness in representing a client.

Here, respondent admittedly violated RPC 1.1(a) and RPC 1.3 by grossly mishandling Rogers's appeal. Specifically, by March 2011, respondent knew that the Transcription Unit required him to remit a $7,000 deposit to obtain the trial and sentencing transcripts for Rogers's appeal. Despite Joseph's willingness to cover the transcription costs and respondent's admission that "funds for the transcripts were not an issue," he, inexplicably, failed to remit the full deposit to the Transcription Unit and, consequently, in August 2011, the Appellate Division dismissed the appeal, citing the missing transcripts. Rather than take prompt corrective action to procure the transcripts and to reinstate the appeal, respondent failed to perform any meaningful legal work in connection with the appeal for almost five years, until May 2016, when he filed his first motion to reinstate the appeal in which he falsely certified that he had filed all the required transcripts with his motion. Following the denial of his first motion to reinstate the appeal, respondent filed three additional reinstatement motions

in which he repeatedly failed to adequately explain his near five-year delay in attempting to prosecute the appeal.

Respondent further violated RPC 1.1(a) and RPC 1.3 by grossly mishandling Rogers's PCR petition, which he submitted after the expiration of the five-year time bar set forth in R. 3:22-12(a). He failed, however, to assert whether any of the exceptions to the time bar applied to Rogers's matter. Indeed, he failed to make a single reference to the time bar in the petition. Ultimately, the Superior Court denied the petition based on respondent's ongoing attempts to reinstate Rogers's appeal. Following respondent's multiple unsuccessful efforts to reinstate the appeal, he filed a second, substantially identical PCR petition. Nevertheless, he allowed that petition to be dismissed based on his failure to adhere to the Superior Court's briefing deadlines.

RPC 3.2

Respondent also stipulated that his mishandling of Rogers's matter violated RPC 3.2, which requires, in relevant part, that a lawyer make reasonable efforts to expedite litigation consistent with the interests of the client. However, it is well-settled that RPC 3.2 is inapplicable to circumstances where there is no active litigation to expedite. See In the Matters of M. Blake Perdue, DRB 18-

319, 18-320, and 18-321 (March 29, 2019) (dismissing the RPC 3.2 charge for failing to expedite litigation because the attorney never initiated any litigation in the first place), and In the Matter of Diane Marie Acciavatti, DRB 19-321 (March 31, 2020) (noting that RPC 3.2 is typically reserved for litigation-specific ethics violations, such as failing to comply with case management orders or specific court deadlines).

Here, respondent's gross mishandling of Rogers's matter occurred largely while there was no pending litigation to expedite. In our view, because his misconduct is more appropriately encapsulated by the RPC 1.1(a) and RPC 1.3 charges, we dismiss the charge that he violated RPC 3.2.

RPC 1.4(c)

RPC 1.4(c) requires an attorney to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Here, respondent violated that Rule by failing to communicate with Rogers or the Swans[7] to the extent reasonably necessary to

[7] Although the parties stipulated that respondent's RPC 1.4(c) obligations extended to Rogers and the Swans, in our view, such obligations also extended to Joseph, who, as noted above, formed an attorney-client relationship with respondent.

have allowed them to make informed decisions concerning Rogers's post-conviction remedies.

As the parties stipulated, respondent failed to advise his clients that the PCR petitions had no basis in fact or that he was unable to obtain an expert to challenge the medical theory underlying Rogers's convictions. Moreover, although respondent provided his clients with some of his submissions to the Superior Court and the Appellate Division, he failed to advise them that his inaction had resulted in the dismissal of Rogers's appeal and PCR petitions. Unsurprisingly, until April 2019, when substitute counsel assumed the representation, Rogers and the Swans remained in the dark regarding the status of the matter.

RPC 3.1, RPC 8.4(c), and RPC 8.4(d)

RPC 8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and RPC 8.4(d) prohibits a lawyer from engaging in conduct prejudicial to the administration of justice. Similarly, RPC 3.1 provides, in relevant part, that a "[a] lawyer shall not bring or defend a proceeding, nor assert or controvert an issue therein unless the lawyer knows or reasonably believes that there is a basis in law and fact for

doing so that is not frivolous." Further, the Rule states that "[a] lawyer for the defendant in a criminal proceeding . . . may nevertheless so defend the proceeding as to require that every element of the case be established." However, in contrast to a criminal trial, where the burden is on the State to establish guilt beyond a reasonable doubt, at a PCR hearing, "the burden is on the petitioner to establish his right to 'relief by a preponderance of the credible evidence.'" State v. Nash, 212 N.J. 518, 541 (2013) (quoting State v. Preciose, 129 N.J. 451, 459 (1992)).

Here, respondent violated RPC 3.1 and RPC 8.4(d) by filing multiple baseless motions to reinstate Rogers's appeal. Specifically, in May 2016, almost five years after the Appellate Division had dismissed the appeal for his failure to file the trial transcripts, respondent filed his first motion to reinstate the appeal in which he falsely certified that he had submitted all the required transcripts. At the time of his reinstatement motion, respondent knew that at least three of the trial transcripts remained outstanding because of his ongoing failure to pay the $2,674 balance owed for the preparation of the transcripts.[8]

[8] Although the RPC 8.4(c) charge was not expressly premised on respondent's false statements to the Appellate Division in connection with his May 2016 reinstatement motion, we consider such uncharged conduct in aggravation. See In re Steiert, 201 N.J. 119 (2014) (evidence of unethical conduct contained in the record can be considered in aggravation, even though such unethical conduct was not charged in the formal ethics complaint).

Following the denial of his first reinstatement motion, respondent continued to file duplicative motions in which he repeatedly failed to provide any explanation for his prolonged delay in attempting to prosecute the appeal. Indeed, in his final, January 2017 motion, he violated RPC 8.4(c) by misrepresenting to the Appellate Division that, following the dismissal of the appeal, he did not "realize until . . . later that [he] had not received all of the transcripts from the trial." In fact, between September 2011 and June 2016, respondent continuously was aware that he had not obtained all the trial transcripts because of his prolonged failure to pay the outstanding deposit to the Transcription Unit. His conduct resulted in a significant waste of judicial resources, given that he filed multiple, deficient motions to reinstate the appeal, at least two of which brazenly misrepresented the circumstances underlying his procurement of the trial transcripts.

However, we dismiss the second charge that respondent violated RPC 8.4(c). Specifically, the parties stipulated that respondent misrepresented, in his October 12, 2016 motion to reinstate the appeal, the timeframe in which he had obtained all the trial transcripts. Although respondent's October 2016 motion failed to address his prolonged delay in attempting to prosecute the appeal, he correctly certified that he had enclosed the sentencing transcript with his motion

and appeared to have correctly asserted that no trial proceedings took place on October 26 and 27, 2010. He made no other relevant certified statements in connection with that motion. Consequently, based on the record before us, there is no clear and convincing evidence that respondent made any misrepresentations regarding the timeframe in which he had received the trial transcripts in connection with his October 12, 2016 reinstatement motion.

Respondent again violated both RPC 3.1 and RPC 8.4(d) by filing the belated PCR petitions, despite knowing that he had no basis to challenge Rogers's convictions via that mechanism. Specifically, respondent's petitions were supported only by a six-line certification executed by Rogers, who merely expressed his "wish" to challenge his convictions based on "the due process clauses of the New Jersey and United States Constitutions." As the parties stipulated, he filed the petitions in the hope that, at some point in the future, he would "discover" an expert to undermine Rogers's convictions. Because respondent knew that he had no factual basis to support Rogers's petitions, he attempted to delay the dismissal of the second petition by securing multiple extensions to file a brief in support of that application. However, he did not appear to have any intention of filing a brief and, on the date of the final deadline, he simply ignored the Superior Court's inquiry regarding the

whereabouts of his brief, resulting in the dismissal of the petition. Like his conduct before the Appellate Division, respondent's decision to knowingly file baseless PCR petitions resulted in a needless waste of judicial resources.

Finally, the RPC 3.1 charge concerning respondent's PCR petitions was also premised, in part, on the theory that, pursuant to R. 3:22-3, he had no basis to file the PCR petitions while simultaneously prosecuting Rogers's direct appeal. Although R. 3:22-3 prohibits the filing of a PCR petition "while appellate review . . . is pending," in this case, Rogers's appeal remained dismissed during the pendency of the PCR petitions. Indeed, it was not until June 2019, following a motion by substitute counsel, that the Appellate Division reinstated Rogers's appeal, eight years after respondent had allowed the matter to be dismissed. Because Rogers had no active appeals during the pendency of his PCR petitions, we find that the allegation that respondent violated RPC 3.1 on this alternative basis is unsupportable as a matter of law.

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(c); RPC 1.5(b); RPC 3.1 (two instances); RPC 8.4(c) (one instance); and RPC 8.4(d) (two instances). For the reasons set forth above, we dismiss the charge that respondent violated RPC 3.2, as well as the second charged instance of RPC 8.4(c). Further, based on the lack of any evidence that an active appeal

was pending at the time respondent filed the PCRs on Rogers's behalf, we decline to find that he separately violated RPC 3.1 on this basis. The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

The crux of respondent's misconduct was his gross mishandling of Rogers's criminal appeal and PCR petitions, his efforts to conceal his inaction from his clients, and his misrepresentations to the Appellate Division concerning his procurement of the trial transcripts.

Absent serious aggravating factors, such as harm to the client, conduct involving gross neglect, lack of diligence, and failure to communicate with a client ordinarily results in an admonition, even when accompanied by other non-serious ethics infractions, such as a violation of RPC 1.5(b). See In the Matter of Hayes R. Young, DRB 23-215 (November 22, 2023) (the attorney filed a medical malpractice lawsuit on behalf of a client without having obtained the required affidavit of merit; seven months later, the court dismissed the lawsuit for lack of prosecution; the attorney, however, failed to notify his client that he had filed her lawsuit or that it had been dismissed due to his inaction;

meanwhile, during the span of several months, the attorney failed to reply to several of his client's e-mails inquiring about the status of her case; the attorney also failed to set forth the basis of his legal fee in writing; no prior discipline in thirty-eight years at the bar; finally, during the timeframe of the attorney's misconduct, the attorney experienced extenuating circumstances underlying his wife's illness and death), and In the Matter of Mark A. Molz, DRB 22-102 (September 26, 2022) (the attorney's 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; no prior discipline in more than thirty-five years at the bar).

The quantum of discipline is enhanced, however, when additional aggravating factors are present, such as a disciplinary history for neglecting client matters. See 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 2015 admonition for similar misconduct, which gave the attorney a heightened awareness of his obligations to diligently pursue client matters).

Moreover, like in Crisonino I, wherein he concealed the dismissal of a client's criminal appeal during his visits with the client in prison, respondent, in the instant matter, masked his mishandling of Rogers's matter from his clients.

Standing alone, misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions, such as gross neglect or failure to communicate. See In re Rudnick, __ N.J. __ (2022), 2022 N.J. LEXIS 258 (the attorney allowed his client's

lawsuit to be dismissed for his failure to respond to interrogatories; thereafter, the attorney failed to attempt to reinstate his client's matter; the attorney also failed to reply to his client's inquiries regarding the case and misrepresented to his client that the entire case had been dismissed for reasons other than the attorney's failure to respond to interrogatories; the attorney's misconduct occurred during a one-year timeframe; in mitigation, the attorney had no prior discipline, accepted responsibility for his misconduct, and fully refunded the client's fee, on his own accord), and In re Dwyer, 223 N.J. 240 (2015) (the attorney made a misrepresentation by silence to his client; specifically, the attorney failed to inform his client, despite ample opportunity to do so, that her complaint had been dismissed because he had failed to serve interrogatory answers and ignored court orders compelling service of the answers; the attorney also failed to reply to his client's requests for information or to otherwise inform his client of the significant developments of her matter; no prior discipline).

Additionally, respondent filed frivolous PCR petitions with the Superior Court and false certifications with the Appellate Division concerning his procurement of Rogers's trial transcripts.

Absent serious aggravation, the discipline imposed on attorneys who make misrepresentations to a court ranges from a reprimand to a short-term

suspension, including if their conduct results in the filing of frivolous litigation or the prejudicial administration of justice. See, e.g., In re Vaccaro, 245 N.J. 492 (2021) (reprimand for an attorney, in a reciprocal discipline matter, who lied to a judge, during a juvenile delinquency hearing, that he had no knowledge of his client's other lawyer or his client's counseling in connection with his client's immigration matter; prior censure); In re Jaffe, 230 N.J. 456 (2017) (censure for an attorney for his combined misconduct in two consolidated matters; in the first matter, the attorney failed to file an expungement petition for his client, despite his client's numerous attempts to obtain information regarding his case; following the client's termination of the representation, the attorney immediately filed with the court a deficient expungement petition, without his client's knowledge, that misrepresented to the court that he still represented his client; in the second matter, the attorney failed to diligently defend his client in a criminal matter, ignored numerous requests for information regarding the case, and failed to provide his client or replacement counsel with the client file; in aggravation, the attorney failed to cooperate with disciplinary authorities in the first matter, repeatedly engaged in dismissive treatment toward his clients, and previously was reprimanded twice – the first time for gross neglect, lack of diligence, failure to communicate, and failure to cooperate with disciplinary

authorities, and the second time for lack of candor to the tribunal); In re Freeman, 235 N.J. 90 (2018) (three-month suspension for a pool attorney with the OPD; the attorney failed to communicate with his client about an upcoming hearing on a PCR petition; the attorney appeared at the hearing without the client, took actions that were contrary to the client's wishes, and made misrepresentations to the court and the OPD; those statements would later negatively impact the client's ability to pursue an appeal; during the ethics investigation, the attorney lied to the investigator and, later, to the hearing panel; no prior discipline); In re DeClement, 241 N.J. 253 (2020) (six-month suspension for an attorney who, in an attempt to secure a swift dismissal of a federal lawsuit, made multiple, brazen misrepresentations to a federal judge; specifically, the attorney misrepresented, in a certification under penalty of perjury to the federal judge, that earlier state court litigation had settled, despite knowing that it merely had been dismissed without prejudice; to support his deception, the attorney omitted, in his submissions to the federal judge, critical portions of the state court record; the attorney then continued to misrepresent to the federal judge and, later, to the OAE, the status of the state court matter; violations of RPC 3.1 and RPC 3.3(a)(1) (knowingly making a false statement of material fact to a tribunal)).

In our view, respondent's prolonged mishandling of Rogers's criminal matter represents an escalation of the alarming pattern of deception, failure to communicate, and total lack of diligence that he has exhibited since Crisonino I. In that matter, after allowing his client's criminal appeal to be dismissed for failing to file a brief, respondent, during a two-year period, misled his client into believing that his appeal was proceeding apace. Thereafter, although he notified his client of his intent to reinstate the appeal, he failed to make any attempt to do so, prompting the client to take such corrective action himself.

On the heels of his 2010 reprimand in Crisonino I, respondent, in the instant matter, embarked upon a far more egregious iteration of the same form of misconduct. Specifically, in 2011, he allowed Rogers's criminal appeal to be dismissed by failing to file the trial transcripts, despite his clients' willingness to cover the transcription costs. Following the dismissal of the appeal, respondent failed to take any corrective action until five years later, in 2016, when he filed multiple unsuccessful motions to reinstate the appeal which completely failed to address his serious delay in prosecuting the matter.

Significantly, unlike in Crisonino I, wherein respondent did not engage in any acts of dishonesty to a court, in the instant matter, he lied, in at least two certifications to the Appellate Division, regarding the circumstances underlying

his procurement of the trial transcripts, in an attempt to reinstate the appeal under false pretenses.

Further, unlike in Crisonino I, wherein respondent did not file any frivolous submissions with a court, in this case, he filed two PCR petitions beyond the five-year time limitation knowing that he had no basis in fact to challenge Rogers's conviction via that mechanism. Specifically, he filed the petitions in the mere hope that, at some point in the future, a medical expert may come forward to challenge the theories underlying Rogers's conviction. Rather than advise his clients that he had no basis to file the petitions, he filed the applications and, in an attempt to delay the dismissal of the second petition, requested multiple extensions to file a brief. On the date of the final deadline, he elected to ignore the Superior Court's inquiries concerning his brief and, consequently, allowed the matter to be dismissed.

Additionally, like his conduct in Crisonino I, wherein he concealed his mishandling of an appeal from a client during a two-year period, respondent, for several years, masked his mishandling of this matter from his clients. Indeed, his clients remained in the dark regarding the status of Rogers's appeal and PCR petitions until 2019, when substitute counsel successfully moved to reinstate the appeal based on respondent's prolonged, eight-year failure to prosecute the

matter. In our view, respondent's protracted course of dishonesty resulted in substantial harm to Rogers, who, for several years, believed – incorrectly – that his post-conviction remedies were meritorious and proceeding apace while he remained incarcerated.

Respondent's persistent disregard to the interests of his incarcerated clients demonstrates that he clearly has failed to utilize his experiences with the disciplinary system as a foundation for reform. See In re Zeitler, 182 N.J. 389, 398 (2005) ("[d]espite having received numerous opportunities to reform himself, [the attorney had] continued to display his disregard, indeed contempt, for our disciplinary rules and our ethics system"). His conduct also needlessly wasted the judicial resources of both the Superior Court and the Appellate Division, occurred while his client's liberty interest was at stake, and smacked of the same misrepresentations he made in Crisonino I. However, respondent's misconduct in the instant matter spanned far longer than the two-year timeframe in Crisonino I and, unlike in that matter, his acts of dishonesty in this matter repeatedly were targeted towards a court.

Conclusion

Despite numerous opportunities to rectify the representation, respondent, for years, inexplicably refused to pursue Rogers's basic post-conviction remedies for which he had been retained. Rather, he engaged in a prolonged course of dishonesty towards his clients and repeatedly filed false or frivolous submissions with courts, in an attempt to obscure his inexcusable and gross mishandling of this matter. Considering the timing of his prior reprimand for substantially similar infractions, his persistent and alarming indifference to the interests of his incarcerated clients, and the lack of any compelling mitigation, we determine, consistent with disciplinary precedent, that a six-month suspension is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Rodriguez voted to recommend the imposition of a three-month suspension.

Vice-Chair Boyer and Member Menaker were 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. 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 Edward Joesph Crisonino
Docket No. DRB 24-178

Argued: October 17, 2024

Decided: January 24, 2025

Disposition: Six-month suspension

Members	Six-Month Suspension	Three-Month Suspension	Absent
Cuff	X		
Boyer			X
Campelo	X		
Hoberman	X		
Menaker			X
Petrou	X		
Rodriguez		X	
Spencer	X		
Total:	5	1	2

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