SUPREME COURT OF ARIZONA

In the Matter of a Member of the State Bar of Arizona	)	Arizona Supreme Court No. SB-17-0033-AP
RONALD M. DEBRIGIDA JR., Attorney No. 15697	)	Office of the Presiding Disciplinary Judge No. PDJ20169114
Respondent.	)	**FILED: 11/1/2018**

DECISION ORDER

Pursuant to Rule 59, Rules of the Arizona Supreme Court, the State Bar appealed from the hearing panel's order dismissing the disciplinary complaint with prejudice. The panel's four-page decision, however, did not contain findings of fact and conclusions of law as to each count and each charge in the complaint. On January 10, 2018, this Court remanded the matter to the hearing panel with directions to file "a supplemental decision including findings of fact and conclusions of law as to each count and each charge alleged in the disciplinary complaint."

On April 4, 2018, the panel filed its Supplemental Decision. The Court notes that the panel failed to comply with the Court's remand order. The Supplemental Decision does not contain findings of fact and conclusions of law as to each count and each charge alleged in the complaint. Nevertheless, the Court has considered the Supplemental Decision, the parties' briefs, and the record in this matter. The Court concludes that DeBrigida engaged in misconduct by violating several ethical rules, as set forth in this order. We impose an admonition and place DeBrigida on probation for two years.

DeBrigida was appointed to represent three inmate clients in Rule 32 of-right proceedings. Each client filed a complaint with the State Bar alleging that DeBrigida had failed to communicate with them or to act diligently in representing them in their post-conviction proceedings. DeBrigida failed to meet numerous court-ordered deadlines, instead seeking extensions of time or complying only after the deadlines had passed. The State Bar filed a three-count complaint and DeBrigida admitted most of the factual allegations.

With respect to **Count One**, the Court rejects the panel's findings, explicit or implicit, that DeBrigida did not violate ERs 1.3, 1.4, and 8.4(d). DeBrigida's admitted conduct demonstrates by clear and convincing evidence that he failed to act with reasonable diligence and failed to adequately communicate with his client during

the representation. Further, this pattern of delay and failure to abide by court-ordered deadlines negatively impacted his client and the court. This conduct served to undermine the client's confidence in DeBrigida's trustworthiness. *See* ER 1.3, Comment 3. This type of conduct also negatively impacted the court and the administration of justice by necessitating additional oversight and hearings. Contrary to the panel's conclusion, the impact on the administration of justice was not de minimus.

With respect to the charge that DeBrigida's conduct violated ER 3.4(c), the panel's finding that DeBrigida did not "knowingly" violate the court orders was not clearly erroneous. "Knowledge" is "the conscious awareness of the nature or attendant circumstances of the conduct." *In re Van* Dox, 214 Ariz. 300, 305 ¶ 21 (2007) (quoting the ABA Standards). DeBrigida presented evidence that his failure to comply with the orders was a result of his calendaring and docketing practice and the transition to a new case management system. His failure to comply with court orders was more likely a result of negligence rather than a knowing decision. DeBrigida admitted that he remained responsible for the management of his law office. The sheer number of errors and the fact that the errors occurred over a significant period of time demonstrates that, at a minimum, DeBrigida was negligent in his office management. Accordingly, the Court accepts the panel's dismissal of the ER 3.4(c) violation. The Court rejects, however, the panel's findings that this conduct was unconscious and that there was insufficient proof that the conduct was negligent.

With respect to **Count Two**, the Court rejects for the same reasons as to Count One, the panel's findings, explicit or implicit, that DeBrigida did not violate ERs 1.3, 1.4, 3.2, and 8.4(d). As with Count One, the Court accepts the panel's dismissal of the ER 3.4(c) violation. The Court also accepts the panel's dismissal of the ER 1.15(d). The State Bar does not challenge the panel's dismissal of this charge.

With respect to **Count Three**, the Court again rejects the panel's findings, explicit or implicit, that DeBrigida did not violate ERs 1.3, 1.4, 3.2, and 8.4(d). As with Counts One and Two, the Court accepts the panel's dismissal of the ER 3.4(c) violation.

The undisputed facts demonstrate a pattern of lack of communication, lack of diligence, failure to expedite litigation, and negligence in complying with court orders. Accordingly, the Court finds DeBrigida's conduct in these matters violated ERs 1.3, 1.4, 3.2, and 8.4(d).

Given these findings and conclusions, the Court must consider the appropriate sanction. In doing so, the Court and the hearing panel look to the American Bar Association's *Standards for Imposing Lawyer Sanctions*. Ariz. R. Sup. Ct. 58(k); *In re Alexander*, 232 Ariz. 1, 13 ¶ 49 (2013). Several factors affect the appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the potential or actual injury caused by the lawyer's conduct, and (4) the existence of aggravating or mitigating factors. *In re Phillips*, 226 Ariz. 112, 117 ¶ 29 (2010).

DeBrigida violated his duties to his clients by violating ERs 1.3, 1.4, and 3.2. He also violated his duties to the legal system by violating ER 8.4(d). His pattern of misconduct was clearly negligent. This pattern of delay and failure to abide by court-ordered deadlines negatively impacted his clients and the courts. Under ABA Standard 4.42(b), suspension is the presumptive sanction when "a lawyer engages in a pattern of neglect and causes injury or potential injury to a client."

A presumptive sanction may be overcome by aggravating and mitigating factors. *In re Abrams*, 227 Ariz. 248, 252 ¶ 26 (2011). DeBrigida presented significant mitigation: lack of a discipline record, his earnest attempts to address the law office management problems, and his good character references. These factors call for a downward adjustment of the sanction to an admonition. The Court also finds that DeBrigida should be subject to a two-year period of probation with supervision by the Law Office Management Assistance Program (LOMAP). Accordingly,

IT IS ORDERED granting the State Bar's appeal.

IT IS FURTHER ORDERED vacating the hearing panel's decision dismissing the complaint with prejudice.

IT IS FURTHER ORDERED that DeBrigida is admonished and placed on probation for a period of two years under the following terms and conditions:

1) Within thirty days of this order, DeBrigida must contact the Compliance Monitor at the State Bar and submit to a LOMAP assessment. DeBrigida shall enter into a LOMAP contract based on the recommendations following the assessment. DeBrigida shall be responsible for any costs associated with LOMAP.
2) The State Bar shall report material violations of the terms of probation pursuant to Rule 60(a)(5)(C), and a hearing may be held within thirty days to determine if the terms of probation have been violated and if an additional sanction should be

imposed. The burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that DeBrigida shall pay the costs and expenses of the disciplinary proceedings.

DATED this 1st day of November, 2018.

FOR THE COURT:

/S/

_____

CLINT BOLICK, Justice

TO:
Patricia A Sallen
Hunter F Perlmeter
Amanda McQueen
Sandra Montoya
Maret Vessella
Beth Stephenson
Mary Pieper
Lexis Nexis
Don Lewis
Raziel Atienza

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **RONALD M. DEBRIGIDA, JR., Bar No. 015697** Respondent.	**PDJ-2016-9114** **SUPPLEMENTAL DECISION** [State Bar Nos. 16-0968, 16-1693, 16-1851] **FILED APRIL 4, 2018**

The three-count complaint was filed on November 14, 2016, alleging violations by Ronald M. DeBrigida ("Mr. DeBrigida") of the Arizona Rules of Professional Conduct, ("ERs") under Rule 42, Ariz. R. Sup. Ct.[1] The ERs alleged in the complaint to have been violated are: 1.3 (Diligence), 1.4 (Communication), 1.15 (Safekeeping Property), 3.2 (Expediting Litigation), 3.4(c) (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct).

Hunter F. Perlmeter appeared on behalf of the State Bar. Russell R. Yurk, *Jennings, Haug & Cunningham* appeared on behalf of Respondent, Mr. DeBrigida. In the State Bar's opening argument, its case was succinctly stated. It was explained that it was the State Bar's case that these ERs were violated because of two failings in each count.

[1] Unless otherwise stated, all Rule references are to the Ariz. R. Sup. Ct.

The first failing alleged was that each client "didn't receive any sort of communication from the respondent for many months, in some cases more than a year. As a result, they were deprived of the ability to provide input to their attorney in the pre-post-conviction relief process. Mr. DeBrigida didn't follow up with his clients to find out whether they had received an initial correspondence that he sent to all three of them." [State Bar's Opening Argument, Tr. 8:19-9:1.]

"The second part is a failure to abide by court orders as outlined in the prehearing memorandum. On at least ten occasions, Mr. DeBrigida failed to comply with court deadlines setting forth various things: well, first of all, deadlines concerning dates for filings, dates for returning property, and dates for making contact with his clients and filing notices of compliance." [Id. at 9:5-9:11.]

On April 27, 2017, the Hearing Panel ("Panel") heard the testimony of Dale Brakhop, Richard Albert Medina, and Mr. DeBrigida. The Panel considered the 70 exhibits. After consideration, the Panel filed its Order of Dismissal on April 27, 2017.

Rule 58(k) directs "the hearing panel shall prepare and file with the disciplinary clerk a written decision containing finds of fact, conclusions of law and an order regarding discipline…" Discipline is defined under Rule 46(f)(10). It "means those sanctions and limitations on members and the practice of law provided in these rules." Because the Panel found the State Bar failed to meet its burden of

proof, it determined there was neither sanctions nor limitations "on" Mr. DeBrigida and as a result, findings of fact and conclusions of law were not required. It did not consider that Rule 58(k) required such findings when decisions were issued *regarding* discipline. The Panel errored in not making findings of fact and conclusions of law. The State Bar appealed. On January 10, 2018, the matter was remanded by the Supreme Court for supplemental findings and conclusions of law.

I. DECISION

Rule 58(j)(3) requires the State Bar to prove the allegations contained in the complaint by clear and convincing evidence. Because the State Bar failed to prove by clear and convincing evidence the allegations in the complaint, the Panel comprised of James M. Marovich, attorney member, Howard M. Weiske, public member, and Presiding Disciplinary Judge, William J. O'Neil issue this supplemental report dismissing the case with prejudice.

II. FINDINGS OF FACT AND ANALYSIS OF ALLEGED RULE VIOLATIONS

The Panel finds the following facts were established by clear and convincing evidence. All referenced stipulated facts are from the Joint Prehearing Statement ("JPS") Stipulated Facts 1-38, pages 2-7. Where not otherwise indicated, the findings of fact are drawn from testimony or exhibits.

DeBrigida is a lawyer licensed to practice law in the state of Arizona having first been admitted to practice on December 4, 1995. [JPS ¶ 1.] He is subject to the

jurisdiction of the Arizona Supreme Court and the Panel in this disciplinary proceeding.[2] For over ten years beginning in 1996, he was employed as a Maricopa County Deputy County Attorney. [DeBrigida Testimony, Tr. 98:17-19[3].] He left the County Attorney's Office in 2007. He began doing criminal defense work in April or May, 2008. In 2009, he began accepting indigent attorney representation from The Office of Public Defense Services, ("OPDS"). [Id. at 19:1-9.] He has no prior disciplinary history. [Id. at 17:15-21.]

In each of the three counts, Mr. DeBrigida was appointed by the Superior Court in three separate non-related cases to represent a defendant in a criminal proceeding who had filed for post-conviction relief under Criminal Rule 32, (Brakhop, Medina and Johnson). Johnson and Medina had prior felony convictions. [Ex. 15 & 31.] Each had entered into and been sentenced under a plea agreement. The Court in each of their individual cases made factual findings that each defendant had waived his constitutional rights, the right to appeal, and that the plea was intelligently and voluntary made and not the result of force, threats, or promises (other than the plea agreement). [Ariz. R. Crim. P. 17.1(b) & (e); Ariz. R. Crim. P. 17.2; Ariz. R. Crim. P. 17.3.]

[2] Rule 46, Ariz. R. Sup. Ct.
[3] Denotes transcript, page and line.

A. The alleged ethical misconduct of failing to follow up with clients to determine if they had received his initial correspondence.

The reliance on OPDS.

Shortly after sentencing, each defendant filed a Rule 32 Notice of Post-Conviction Relief ("PCR") pursuant to Criminal Rule 32.4. In each case, OPDS chose Mr. DeBrigida for the representation of that defendant. OPDS typically obtains the address from the defendant. [DeBrigida Testimony, Tr. 106:12-15.] OPDS gave Mr. DeBrigida incorrect addresses and he reasonably relied on them. [Id. at 21:24-22:1.] There was no reason for him not to rely on the information given to him by OPDS. [Id. at 107:12-14.]

In each case, Mr. DeBrigida mailed individual two-page letters of introduction to each defendant. [Ex. 6, Bates 031-33, 22, Bates 109-111; and Ex. 52, Bates 200-202.] Each letter requested the respective defendant to list any issues that each one wanted Mr. DeBrigida to raise in the Petition for Post-Conviction Relief.

To assist the defendant, each letter listed common issues that are raised in post-conviction proceedings. Each letter explained common areas of misunderstanding regarding post-conviction proceedings. Each letter explained the "established practice" of Mr. DeBrigida to work with his post-conviction clients is communicating by correspondence. His letters explained why he discouraged direct communications. We find his explanations reasonable and prudent. [Id.]

The assigned DOC CO3.

Each imprisoned defendant is assigned a corrections officer, Level 3 ("CO3"). That officer is responsible for managing whatever requests an inmate has regarding their attorney. [DeBrigida Testimony, Tr. 111:25-112:11.] Each defendant had the ability to have the CO3 look up Mr. DeBrigida on the State Bar website or with the court, as do many defendant inmates. [Id. at 144:6-13.]

The credible testimony of Mr. DeBrigida.

Mr. DeBrigida's testimony regarding his reliance on certain factors was reasonable and credible. This is exemplified by his testimony regarding his representation of Mr. Brakhop. Mr. DeBrigida sent the letter to Mr. Brakhop at the address provided to him by OPDS. [DeBrigida Testimony, Tr. 21:24-22:1.] Mr. DeBrigida properly and reasonably relied on the address provided by the OPDS that was incorrect. There was no reason for Mr. DeBrigida to assume the letter was not properly delivered to Mr. Brakhop. He testified, "I didn't have any reason to think that he didn't get it." [Id. at 111:14-18.] It is clear Mr. DeBrigida wrote and sent the letter to each defendant. [JPS ¶ 3, 8; Complaint, Allegations 3, 11 & 31.] Those letters are in evidence. [Ex. 11 & 27.]

Mr. DeBrigida testified that he was not surprised that he received no response, "Because it's not uncommon, to be honest with you." [DeBrigida Testimony, Tr. 173:8-14.] He explained that defendants will file the notice for varying reasons.

Some file because the form says it must be filed within ninety days. Some file because other individuals in custody tell them to file it, but they often actually don't even know what they are asking the court to do. [Id. 173:16-24.]

The proper reliance on the absence of returned mail.

The letter from Mr. DeBrigida to Mr. Brakhop was never returned to Mr. DeBrigida. The non-return of his letter was also relied upon by Mr. DeBrigida. We find he did so reasonably. There was objective evidence in this hearing that the DOC returns non-deliverable letters. While there may be aberrant failings by DOC to return incorrectly addressed letters, the objective evidence before us substantively prove that they do return such letters.

A.) On April 12, 2016, the State Bar sent a letter to Mr. Brakhop (Count One), but addressed it incorrectly. The letter was returned and received by the State Bar on April 18, 2016. [Ex. 4.]

B.) On August 31, 2016, the State Bar sent a letter to inmate Mr. Medina (Count Two), but addressed it incorrectly. The letter was returned and received by the State Bar on September 8, 2016. [Ex. 27.]

C.) On August 31, 2016, the State Bar sent a letter to Mr. Brakhop (Count One), but addressed it incorrectly. The letter was returned and received by the State Bar on September 13, 2016. [Ex. 11.]

We find the return of the State Bar letters to be consistent with the experience of Mr. DeBrigida. "I'll get mail returned from a particular facility at DOC that will say 'insufficient address.' But other DOC facilities will just look at the DOC number of that person and forward it on to the correct location. So I'm always expecting that I'm gonna get some feedback (from the DOC) one way or another." [DeBrigida Testimony, Tr. 113:4-9.] We find Mr. DeBrigida relied on the address he was given, but also upon the fact that his letter to Mr. Brakhop was not returned. While the State Bar urges that Mr. DeBrigida had an ethical obligation to verify with documentary evidence that his client received each communication, no support was offered for that position. [Id. at 34:1-6.]

The absence of the DOC "logs" of mail received by inmates

When questioned by the State Bar, Mr. Brakhop initially testified he did not do any investigation to determine if the letter from Mr. DeBrigida was received by the Department of Corrections ("DOC"). The State Bar rephrased and essentially again asked what investigation he had done. "Did you ever look at the logs to see whether anything had come in?" Mr. Brakhop swore, "There was nothing." We conclude from the question that the State Bar knew there were "logs" or records maintained by the DOC of correspondences received by the inmates.

The State Bar sought clarification a third time. This time asking, "Well, but more specifically did you look?" Mr. Brakhop abandoned his earlier answers and

impeaching his prior testimony, swore to the efforts of his investigation, “Oh yes. I did ask if there had been anything that had come in, and they went through the files and checked, and they said that they received nothing.” [Brakhop Testimony, Tr. 68:15-69:5.]

This grossly inconsistent testimony is one of multitude reasons the Panel finds the testimony of Mr. Brakhop unreliable and disregarded the hearsay testimony of the purported prison officials disregarded. However, it is clear from the answer that the DOC maintains “logs” that identify what correspondence is received by each defendant. The concern of the absence of these “logs” as an exhibit was expressed to the State Bar.

The PDJ stated, “[C]ertainly, we've learned in the hearing today that anybody could have gone to the DOC and said, ‘Give us the list of the documentations received,’ and we would have had that exhibit, and we could see exactly what they did get or didn't get. That would -- might have helped us. We don’t have that.” [Tr. 189:21-190:1.]

The only testimony that the letters were not received is from the individual defendants. The burden upon the State Bar of Arizona is by clear and convincing evidence. We perceive our duty is to be evidence based. The knowledge of the existence of reliable, but unpresented evidence, was left unexplained. Moreover, the

unreliable testimony of Mr. Brakhop exemplifies why the Panel declines to find the evidence clear and convincing that the letters were not received.

The Unreliable Testimony of Mr. Brakhop

In compliance with Criminal Rule 32.4, Judge Cohen on October 9, 2014, informed multiple individuals, including Mr. Brakhop, of the "Initiation of Rule 32 proceedings following a plea agreement, appointment of counsel and briefing schedule." [JPS ¶ 2; Ex. 1, Bates SBA005.] The Judge promptly issued copies of the appointment of Mr. DeBrigida to Mr. Brakhop. Mr. Brakhop admitted in his testimony that he received that notice from the Court in the middle of October, 2014. Mr. Brakhop admitted he knew Mr. Debrigida was his court appointed lawyer at that time. [Brakhop Testimony, Tr. 66:18-67:5; Ex. 1, Bates SBA002.]

Impeached Statements. We find Mr. Brakhop was untruthful in testifying that after learning the name of Mr. DeBrigida, that he attempted to contact Mr. DeBrigida through the CO3 and then through his sister and wife. [Id. Tr. 67:22-68:5.] We find the declarations of his sister, Linda Goyne, establish his untruthfulness when he "expressed concern" to her, "several times on the phone saying he has not heard from an attorney and didn't even know the person's name." [Ex. 1, Bates SBA004.] That Mr. Brakhop was untruthful in his interactions with his sister, brought his credibility significantly into doubt.

The apparent use of the letter. The Rule 32 Petition Mr. Brakhop wrote and filed also bolsters the appearance that he received the letter from Mr. DeBrigida. In that letter, Mr. DeBrigida requested that Brakhop outline "as thoroughly as possible any claim of error that you believe exists in your case." Mr. DeBrigida explained to Mr. Brakhop the issues that are commonly raised in Rule 32 proceedings to aid him in writing back to Mr. DeBrigida. Included in those common issues for Rule 32 review was an explanation that an ineffective assistance of counsel issue only exists when two grounds or prongs are met. First, the attorney "performs below prevailing professional norms," and second, "the defendant is prejudiced." [Ex. 6, Bates SBA031-32.] These grounds appeared in the Petition for Post-Conviction Relief ("Petition"), written and filed by Mr. Brakhop.

His Petition filed on February 12, 2016, argued that the "legal malpractice" of Mr. DeBrigida, "failed to follow set procedures," in other words was below prevailing professional norms, and thereby met the first prong. He then argued that the failure of Mr. Debrigida to follow the Arizona Rules of Professional Conduct constituted "prejudice" thereby meeting the second prong. These stated grounds are virtually identical to those stated in the letter from Mr. Debrigida to him. Mr. Brakhop claimed if Mr. Debrigida "had been diligent his client would be in front of the Trial Judge." [Ex. 6, Bates SBA054-58.]

We do not dismiss that Mr. Brakhop may well have determined it would be in his best interest to state that he did not have the letter. The evidence is not clear and convincing that any of the defendants did or did not receive the letters.

Conclusion

The "logs" of the DOC that recorded when or if a correspondence or package was received by any of the three defendants was apparently never sought and clearly not offered. The evidence offered by the State Bar was insufficient and unpersuasive. The evidence does support that each of the letters were written and sent to these defendants by Mr. DeBrigida as alleged in the complaint. There was no meaningful evidence or argument of what duty is imposed on attorneys to verify that the letters which were stipulated sent, were received.

In each count, the evidence failed to convince the Panel that violations of the Ethical Rules occurred regarding this first issue. The evidence presented was ineffective on this issue and the Panel was unable to extract any information that would prompt them to decide otherwise.

B. The alleged ethical misconduct of failing to comply with court deadlines

The State Bar asserts Mr. DeBrigida acted knowingly in "ignoring court orders and failing to communicate, while pocketing fees." [State Bar Prehearing Memorandum, pg. 14.]

COUNT ONE (File No. 16-0968/Brakhop)

Defendant Dale Brakhop was represented through trial by Michael Lee Esq. ("Mr. Lee") of the Maricopa County Office of the Legal Defender in CR2013-423334. Mr. Brakhop entered into a plea agreement by which he was sentenced to prison. On October 3, 2014, Mr. Brakhop filed a Rule 32 Notice of Post-Conviction Relief ("PCR") with the Superior Court in Maricopa County pursuant to Criminal Rule 32.4

The court ordered that a copy of the transcripts "shall be provided to the defendant." [Ex. 1, Bates SBA006.] That order informed DeBrigida that Mr. Brakhop would receive the transcripts at or about the same time as he did. We conclude those orders were complied with and Mr. Brakhop received those transcripts at or about the same time as Mr. DeBrigida, approximately between November to early December, 2014. [Ex. 6, Bates SBA025.]

Compliance with Orders, Diligence and Expediting Litigation

On February 24, 2015, the court ordered that Mr. DeBrigida file the petition for Mr. Brakhop no later than April 27, 2015. On June 20, 2015, Mr. DeBrigida belatedly filed a Notice of Completion ("Notice") of his review and requested additional time for Mr. Brakhop to prepare and submit his own petition. [Ex. 1, Bates SBA008-09 & Ex. 15, Bates SBA089.]

It was undisputed that Mr. DeBrigida did a thorough review and that his Notice was based on his actual review of the case of his client. The complaint generally alleges multiple ER violations. Neither in the prehearing memorandum, the opening statement nor the closing was it identified which specified Rules were being referenced for the two categories claimed by the State Bar. We view this filing in light of the alleged violations of ERs 3.4(c) and 8.4(d).

ER 3.4(c) prohibits lawyers from disobeying, or advising their clients to disobey, court orders. *See, e.g., Ligon v. Stilley*, 371 S.W.3d 615 (Ark. 2010) (lawyer had subpoenas and deposition notices issued contrary to judge's order, and lawyer's language toward court "clearly intemperate, contemptuous, and disrespectful"). ER 8.4(d), "requires proof of some nexus between the conduct charged and an adverse effect upon the administration of justice." *People v. Jaramillo*, 35 P.3d 723 (Colo. 2001). The conduct must be improper, bear directly on the judicial process, and "taint the judicial process in more than a *de minimus* way." *In re Carter*, 11 A.3d 1219 (D.C. 2011). See also *In Re Smith*, 848 P.2d 612 (Or. 1993).

The State Bar seems to argue that any untimeliness is *de facto* disobedience that is violative of ER 3.4(c) and thereby, also violative of 8.4(d). The State Bar offered no legal support for its view that ER 3.4(c) is violated when a lawyer is late in compliance, rather than knowingly disobeying an order.

The State Bar also asserts ERs 3.4(c) and 8.4(d) were violated when Mr. DeBrigida tried to set up a conference with Mr. Brakhop, but was unsuccessful in timely doing so because of the DOC being unable to swiftly schedule the call. DeBrigida actively tried to comply with a later court order to consult with Mr. Brakhop and file a Notice of Completion by October 15, 2015. [Ex. 6, Bates SBA045-46.] His call was five days late because that was the earliest the DOC could schedule the call. [DeBrigida Testimony, Tr. 118:18-119:2.]

The absence of an Attorney-Client Discussion before filing the Notice

The State Bar in its opening arguments assured the Panel that, "All three matters were post-conviction relief matters. We'll get into what that means during the hearing." [State Bar's Opening Argument, Tr. 8:16-18.] All three counts involved imprisonment sentences arising from a voluntary change of plea. The State Bar offered no meaningful testimony or case law analysis regarding the harm or potential harm from the circumstances before us.

The only evidence regarding the PCR process was from Mr. DeBrigida. He testified in detail why he felt comfortable filing a notice of completion even though he had not heard from his client. We find his explanation reasonable. Despite the assurances from the State Bar that PCR would be explained in depth, there was no clear and convincing evidence offered that Mr. DeBrigida acted improperly in filing

the Notice of Completion without communication with his client. [DeBrigida Testimony, Tr. 113:24-114:25.]

To the contrary, it appears the procedural protections arising from the Notice of Completion filed by Mr. DeBrigida precluded potential harm. As in this Count, once Mr. DeBrigida heard from his client, he still had an opportunity to withdraw his Notice if something the client presented caused him to change his mind. [Id. at 114:20-115:18.] Nothing was presented to Mr. DeBrigida by Mr. Brakhop. While Mr. Brakhop testified his petition could have been aided by the input of an attorney, he chose not to utilize Mr. DeBrigida because he disagreed with the advice provided by Mr. DeBrigida. The claimed absence of communication with Mr. DeBrigida was also was a major position stated by Mr. Brakhop for the granting of his petition.

The Delay in Filing

The testimony of Mr. DeBrigida that explained his delay in all three counts in filing the Notice of Completion was uncontradicted. He shared an office with another attorney and they moved into new office space in November or December 2014. Having practiced for many years, they each had many physical files acquired over the years and began to settle on a new case management system. We find the move, coupled with the efforts to settle on a new case management system, brought an unconscious delay in his filing. Under the circumstances, we find Mr. DeBrigida did all that he could but was delayed. He did not act knowingly, negligently or

disobediently in his late filing. [DeBrigida Testimony, Tr. 116:3-118:3.] We find no violation of ER 3.4(c).

No case law analysis was offered in this proceeding to assist our consideration. *In re Discipline of Att'y*, 815 N.E.2d 1072 (Mass. 2004) states that conduct that does not violate any other ethics rule cannot violate Rule 8.4(d), "unless it is so 'egregious' and 'flagrantly violative of accepted professional norms' as to 'undermine the legitimacy of the judicial process'". (Internal citations omitted.) We find none.

There was no evidence of abandonment or inaction. Mr. DeBrigida did a complete review of the records prior to filing his Notice. Mr. DeBrigida mailed that Notice to Mr. Brakhop at the same address he had previously used because he believed it to be a correct address. He properly relied on the information given to him for that address. [Ex. 6, Bates SBA041-43.] It was not returned to Mr. DeBrigida. It is not clear to us that is was not received by Mr. Brakhop.

On June 24, 2015, the court sent to Mr. Brakhop a minute entry notifying him of the filing of the Notice of Completion of Post-Conviction Review and Notice of Compliance filed on June 20, 2015, "asserting no colorable claim for relief." [Ex. 1, Bates SBA008-9.]

The State Bar in its leading questions of Mr. DeBrigida attempted to establish that there was a lack of diligence on the part of him. The State Bar intimated it had

received no evidence from Mr. DeBrigida that he may have called Mr. Brakhop prior to Mr. Brakhop filing his motion on July 16, 2015.

Q.· ·Okay.· And despite your client's input being essential, you never had a single conversation with Mr. Brakhop concerning his PCR case; is that correct?

A. No, that's not true. We did have a legal call. [DeBrigida Testimony, Tr. 25:12-15.]

It was uncontroverted that Mr. DeBrigida called and discussed the case with Brakhop on October 20, 2015. [Brakhop Testimony, Tr. 71:15-17.]

The Panel refers to this because of the questioning that followed soon after. Mr. DeBrigida was asked repeatedly by the State Bar whether a statement by Mr. Brakhop was accurate in saying Mr. Brakhop had never spoken or received correspondence from him. Mr. DeBrigida repeatedly answered, "I don't think it is." [.] The State Bar finally asked, "Why don't you think it is?" Mr. DeBrigida explained why. [DeBrigida Testimony, Tr. 31:5-13, and 30:23-33:15.]

The State Bar then proceeded, "Let me ask this: Mr. DeBrigida, the Bar's been looking at these matters for many, many months, and we've been in formal proceedings for many, many months. Have you ever provided any sort of documentation indicating that you had any communication with Brakhop prior to July 16, 2015?" Mr. DeBrigida answered, "You recall the response I prepared for you, initially; don't you?" [Id. at 34:1-8.]

In context of the prior questions this lengthy leading question was troubling to the Panel because it appeared to be an effort by the State Bar to present that Mr. DeBrigida was making up new assertions that were not previously presented to the State Bar. But the evidence is clear that the State Bar knew that assertion had been presented to it early in the case on April 30, 2016. [Ex. 6, Bates SBA025-27.]

The response of Mr. DeBrigida to the State Bar initial inquiry establishes that he informed the State Bar early in its investigation that he believed he had spoken with Mr. Brakhop in "May or June" of 2015. Although Mr. DeBrigida expressly chose to default to the memory of Mr. Brakhop at this early stage rather than argue with his prior client, it does not mean the assertion was not made more than once to the State Bar.

Mr. DeBrigida set up a legal call with Mr. Brakhop in July 2015. He did it either as a result of a call from Mr. Brakhop's sister, or as a result of Mr. Brakhop filing his motion. Mr. Brakhop's sister stated she spoke to Mr. DeBrigida by phone at the end of June 2015. "DeBrigida then asked me if I was requesting him call Dale [Brakhop] and I answered, 'Yes'. He said that he would do so." [Ex. 1, Bates SBA004.] Mr. DeBrigida testified, "I think I did set a legal call up with him immediately. Yeah. Pretty—pretty soon, I guess." [DeBrigida Testimony, Tr. 36:2-3.]

The State Bar then asked, "You don't have any evidence of that; do you?" Mr. DeBrigida answered, "I don't maintain evidence of a phone call. No." and then stated, "I don't record phone calls." [Id. at 36:18-21.] The State Bar continued, "I've asked sort of a specific question whether you'd provided evidence to the State Bar of such a phone call. Have you ever said to the State Bar that you had a phone call with Mr. Brakhop prior to December 19 of 2015?" He again answered, "Yeah. And this is what I found. If you go back to Exhibit 6, on page 26-Bate 26." Why the assertion by Mr. DeBrigida that he called Mr. Brakhop is not evidence troubled the Panel.

Similarly, the unsupported assertion by the State Bar that Mr. DeBrigida did nothing to earn his fees does not prove his untimeliness in filing his Notice was more than *de minimus*. We view the reasons given for that untimely compliance and the context of the proceedings to determine if Mr. DeBrigida knowingly ignored court orders and failed to communicate "while pocketing" unjustified fees. [State Bar Prehearing Memorandum, pg. 14.]

We note that none of the assigned Judges issued sanctions or even admonishments regarding the delayed filings in any of the counts. We do not defer to the trial judge findings, nor absence of findings, regarding the issues before us. Attorney disciplinary proceedings are *sui generis*. Rule 48(a). However, the trial judge is in a better position to judge whether the late filings were violative of the

orders issued. The context is important is to us. There was nothing offered nor argued that demonstrated the judicial process was tainted in more than a *de minimus* way by the late filings of Mr. DeBrigida.

The Context of the Proceedings

It is apparent from the evidence that while there are efforts to perfectly comply with Court orders, that this does not always occur. The Orders of Judge Cohen informed DeBrigida that Lee was to provide him with the defendant's file "no later than October 24, 2014. Lee did not timely provide the file. Mr. Lee delivered the file for DeBrigida to OPDS, with a cover letter dated October 28, 2014. [Ex. 6, Bates SBA025 & SBA029.] The court orders also informed Mr. DeBrigida that transcripts had been ordered to be prepared and were required to be filed no later than December 8, 2014. [Ex. 1, Bates SBA006.] Two of the transcripts were not. The Court on February 19, 2015, issued Orders to Show Cause to two of those Court Reporters for non-compliance with that order. [Ex. 6, Bates SBA034-36.] The second transcript was filed 77 days late on February 23, 2015. The third transcript was filed on 78 days late on February 24, 2015. [Ex. 15, SBA089.]

We do not cite these to mitigate the conduct of Mr. DeBrigida but to put in context that perfection is sought but sometimes inadvertently not achieved. Ethical violations require more than inadvertent conduct.

It is clear to us that Mr. DeBrigida did not act knowingly and it is not clear to us that he acted negligently. The burden is upon the State Bar to prove its allegations by clear and convincing evidence. It seems to us that the State Bar argues when a lawyer does not adhere to best practices that the lawyer de facto breaches the ethical rules. Regardless, the evidence must be clear and convincing. We find the State Bar did not meet that burden of proof.

COUNT TWO (File No. 16-1693/Medina)

Defendant Richard Medina ("Mr. Medina") was initially represented by Stephen Mercer ("Mr. Mercer") in CR2012-125059. Mr. Medina entered into a plea agreement by which he was sentenced to prison. Mr. DeBrigida was appointed by Judge Cohen to represent Mr. Medina in the PCR proceedings. [Ex. 22, Bates SBA105.]

On January 9, 2015, Mr. Medina filed a Rule 32 Notice of PCR with the Superior Court in Maricopa County pursuant to Criminal Rule 32.4. Mr. Medina received the notice that Mr. DeBrigida was assigned as his counsel in February 2015. [Medina Testimony, Tr. 88:15-16.]

When the transcripts were completed, the Court issued a minute entry filed April 6, 2015, ordering that the petition be filed by June 3, 2015. [Ex. 32.] The Court set an informal hearing for August 17, 2015, after Mr. DeBrigida did not file the petition by June 3, 2015. [Ex. 33, Bates SBA 158.] Mr. DeBrigida filed a motion to

extend, which the Court granted and the matter was reset for August 25, 2015. [Ex. 34, SBA159.]

The State Bar seemed to interpret this hearing as a form of admonishment for the belated filing or that the order found disobedience by Mr. DeBrigida. However, the nature of the informal conference was to resolve any ongoing general issues with DeBrigida's PCR clients. [DeBrigida Testimony Tr., 129:21-130:9.] Judge Viola did not use the hearing as an opportunity to caution or reprimand Mr. DeBrigida.

It was uncontroverted that during this time Mr. DeBrigida was migrating his office case management system from Dropbox to MyCase which incorporated into one site the program, calendaring and document system. [Id. at 116:5-117:24 and 128:19-129:3.]

Mr. DeBrigida was directed by the Court to move for another extension by September 2, 2015. He did. [Ex. 36.] Mr. Brigida also moved for an extension on October 12, 2015, citing that he was unable to complete the call to Mr. Medina due to issues with the DOC. [Ex. 37.] The motion was granted. [Ex. 38.] Mr. DeBrigida made other efforts to try to schedule a call with his client but was unable to do so.

Mr. Medina communicated to the Court by pleading on December 7, 2015, that he had not been contacted by Mr. DeBrigida. The Court ordered that Mr. DeBrigida schedule a call not later than December 28, 2015. [Ex. 40.] Mr. DeBrigida testified that he attempted to schedule contact with Medina by that date, but

encountered difficulty due to the holiday season and an understaffed DOC. Instead, Mr. DeBrigida contacted Medina on December 30, 2015, two (2) days after the deadline. [Id. at 134:3-12 and 134:22.] There was no contrary evidence. We find the two-day delay was not attributable to Mr. DeBrigida.

On January 11, 2016, Mr. DeBrigida filed a Notice of Completion of Post-Conviction Relief Review and a Notice of Compliance. There was no testimony that Mr. DeBrigida did not review the file in its entirety or that the Notice of Compliance was done in bad faith or negligently.

Safekeeping Property

In this count, the State Bar also alleged that Mr. DeBrigida violated ER 1.15 when he failed to timely transmit documents to Mr. Medina. Mr. Medina alleged to the Court on February 12, 2016, that Mr. DeBrigida failed to deliver a copy of the file to him. [Ex. 41.] Mr. DeBrigida remains adamant he had. [DeBrigida Testimony, Tr. 135:4-7 and 136:17-18.] In a minute entry dated March 3, 2016, the Court ordered Mr. DeBrigida to forward Mr. Medina the complete trial and appellate files by March 18. 2016, and to file a Notice of Compliance by that date. [Ex. 42, Bates SBA173-74.] This was the first time that Mr. DeBrigida was given notice that Mr. Medina alleged he had not received the case file.

Mr. Medina filed another motion on March 31, 2016 stating he had still not received the file. [Ex. 43.] Mr. DeBrigida testified he had everything printed out

again and sent it to him again. [DeBrigida Testimony, Tr. 137:9-13.] On March 31, 2016, Mr. Medina filed another motion stating he had not received the file. Mr. DeBrigida was in trial and requested an extension. [Ex. 44.] It was granted. [Ex. 45.] The Court ordered the files produced and Mr. DeBrigida filed a Notice of Compliance on May 23, 2016. On May 23, 2016, DeBrigida filed a Notice of Compliance and sent the file via U.S. Priority Mail. [Ex. 48, Bates SBA000183.]

As with Mr. Brakhop, the State Bar questioned Mr. Medina if he had reviewed the DOC "logs" to determine if correspondence had been received from Mr. DeBrigida. The State Bar sought hearsay testimony through Mr. Medina of purported statements from DOC personnel and whether they saw any entries of deliveries from Mr. DeBrigida. It is clear the DOC has "logs" that detail what is sent to and received by its defendants. That evidence was not presented to us and we decline to give any weight to the hearsay testimony presented from Mr. Medina. [Medina Testimony, Tr. 82:23-83:10.]

We find the evidence was not clear and convincing evidence that Mr. DeBrigida failed to timely deliver the files to Mr. Medina.

The absence of an Attorney-Client Discussion before filing the Notice

Criminal Rule 32.4(c)(2) states.

> In a Rule 32 of-right proceeding, counsel shall investigate the defendant's case for any and all colorable claims. If counsel determines there are no colorable claims which can be raised on the defendant's behalf, counsel shall file a notice advising the court of this

> determination. Counsel's role is then limited to acting as advisory counsel until the trial court's final determination. Upon receipt of the notice, the court shall extent the time for filing a petition by the defendant in propria persona.

The State Bar offered no meaningful testimony or case law analysis regarding the requirement for a Rule 32 appointed attorney to meet and discuss the case personally or by phone with the defendant. It is not clear to us what is required, common or routine in the duties for such appointed attorneys. The only testimony regarding the State Bar claim that such a meeting is required was based on an apparent interpretation of a statement in the form letters sent by Mr. DeBrigida that encouraged the defendant that he felt their input was "essential." Mr. DeBrigida swore there was no case law of such a requirement. [DeBrigida Testimony, 171:2-5.]

Regardless, Mr. DeBrigida contacted Mr. Medina on December 30, 2015 to discuss Mr. Medina's PCR case. Mr. Medina filed a pro per petition for PCR in July 2016. In Mr. DeBrigida's testimony, and his response to the State Bar he explained that he was willing to represent Mr. Medina as stated in the Criminal Rules after their December 30th meeting, because in any event, he felt it was the right thing to do. While Mr. Medina drafted the petition, Mr. DeBrigida provided guidance and assistance to ensure that his claims were heard by the Court. [Ex. 22, Bates SBA106.]

In an attempt to demonstrate harm, the State Bar asked Mr. Medina the following hypothetical question: "Had Mr. DeBrigida communicated with you

between February 4 and December 1 of 2015, was there any information that you would have shared with him concerning how you wanted your PCR pursued?" [Medina Testimony, Tr. 83:11-14.] In response to the question, Medina explained a situation where he felt the trial judge misled him by stating that Mr. Medina was looking at a life sentence. [Id at 83:15-22.]

We note he stated in his petition that this happened on the record and was thereby reviewed by Mr. DeBrigida. After signing the plea agreement, Medina independently reviewed the criminal codes and concluded that he would have rather "gone to trial if not for the misscalculation [sic] of the risk he faced if convicted." [Id. & Ex. 22, Bates SBA135.] The concern was addressed by Mr. Medina in his *pro per* PCR petition and would eventually be reviewed by the Court. The State Bar implied that Mr. Medina was harmed because he was unable to communicate his PCR case to Mr. DeBrigida. But offered no support for that position.

We do not determine that there are lesser duties for appointed counsel in a Rule 32 matter. However, we do require clear and convincing evidence to find less than what was required did in fact occurred.

Corrective Actions

Mr. DeBrigida implemented new procedures to ensure that the case management system was working properly and addresses were accurate. Mr. DeBrigida determined his office had an inadequate filing and docketing system

[DeBrigida Testimony, Tr. 116:12-14.] The transition to the new MyCase system "took a better part of the summer of 2015," which coincided with several deadlines for Medina's (and Brakhop's) matters. [Id. at 117:16-19.] Mr. DeBrigida testified that the MyCase system is better-suited for his practice than the procedure he was previously using.

As the State Bar pointed out, several deadlines were missed even after the summer of 2015. [Id. at 182:6-12.] However, Mr. DeBrigida responded to State Bar by explaining that the implementation of MyCase is an "evolving process." [Id. at 182:17-23.] The use of technology is not a direct substitute for human error. Technology is imperfect, just as people are. Mr. DeBrigida chose the MyCase software to safeguard his practice and his clients from the very issues that he faced with Mr. Brakhop, Mr. Medina, and Mr. Johnson. His conduct after the MyCase implementation was not perfect, but the desire to better his practice is adequate.

In regard to DOC addresses, Mr. DeBrigida's secretary now looks up the latest information on his client's location from the DOC website and verifies the locations by calling the appropriate jails. [Id. at 164:5-9.]

It is clear to us that Mr. DeBrigida did not act knowingly and it is not clear to us that he acted negligently. It is the State Bar's burden to prove by clear and convincing evidence that Mr. DeBrigida violated ERs 1.3, 1.4, 1.15, 3.2, 3.4(c), and 8.4(d), and here they have not done so.

COUNT THREE (File No. 16-1851/Johnson)

As part of its position that Mr. DeBrigida delayed the proceeding, the State Bar alleged, "On July 28, 2015 transcripts were filed triggering Respondent's 60 days to file a petition (due date of approx. September 28, 2015). Respondent failed to comply with the order." [Complaint, allegation 32.] It is the sixth and last contested fact deemed material by the State Bar. [JPS,] The allegation is baseless in the record before us and appears to be the foundational argument for the argument of delay by the State Bar.

On April 22, 2015, Judge Bruce R. Cohen and OPDS appointed Mr. DeBrigida to represent David Johnson ("Johnson") in post-conviction relief proceedings (CR2014-002277). He was previously represented by Roger Margolis and Julio Laboy. Mr. Margolis was ordered to deliver the file to Mr. DeBrigida not later than May 7, 2015. The Court Reporter was ordered to deliver a copy of the transcripts to Mr. Johnson. Mr. DeBrigida was ordered to file the petition within sixty days of the filing of the transcripts. [Ex. 61.]

On May 9, 2015, Mr. DeBrigida drafted and sent a letter to Mr. Johnson requesting that Mr. Johnson detail any issues that he wished for Mr. DeBrigida to raise in the petition. [Ex. 52, Bates SBA000200; DeBrigida Testimony, Tr. 141:1-8.] This letter was substantially identical to the letters that were sent to Mr. Brakhop and Mr. Medina, and our findings regarding this letter are identical.

Mr. DeBrigida initially awaited the filing of Mr. Johnson's transcripts with the clerk. Apparently overlooked by the State Bar is that due to an error with the equipment of the court, the audio was not salvageable from the change of plea proceedings of Mr. Johnson. As a result, the prior order was superseded on June 30, 2015, when Judge Viola ordered Mr. Margolis, and the prosecutor to prepare a statement of the proceedings for the Court's review. [Id. at 142:3-143:6; Ex. 52, Bates SBA000203-204.] The briefing scheduled was ordered "suspended" by the Judge. [Id.]

Mr. DeBrigida informed the State Bar of this in his letter of July 10, 2016. [Ex. 52.] He informed the State Bar that he received the transcripts of the settlement conference and the sentencing, *not the change of plea hearing*. He told the State Bar that the statement of the proceedings was not filed with the Court until October 22, 2015. [Id.] The Court docket verifies the statement of Mr. DeBrigida. [Ex. 60.] Mr. DeBrigida was unable to review Mr. Johnson's case because "without that information [the statement of facts], it's – it's pretty much a nonstarter for me." [DeBrigida Testimony, 143:12-13.]

On September 28, 2015, Mr. Johnson filed a *pro per* motion with the court indicating that Mr. DeBrigida had failed to contact him and requested that the court order him to do so. [Ex. 62.] For the reasons stated above, the State Bar has failed to demonstrate with clear and convincing evidence that Mr. Johnson did not receive

the letter. Mr. Johnson made no effort to contact Mr. DeBrigida through the CO3 officers. [DeBrigida Testimony, Tr. 60:1-3.] When asked by the State Bar why he didn't immediately call Mr. Johnson upon receiving the *pro per* motion, Mr. DeBrigida answered, "I'm not stating we didn't" and that "we may very well have done that." [DeBrigida Testimony, Tr. 60:4-7.]

On January 21, April 3, May 22, and July 11 of 2016, Mr. DeBridiga filed motions for extension so that he could "consult with the defendant so that defendant's notice or petition may be prepared and filed." The Court found good cause and granted each motion based on extraordinary circumstances. [Ex. 63, 65, 67, 69]. The extraordinary circumstances language is derived from Rule 32(c)(2)(a), but granting, or denying, extensions of time are under the courts discretion. [Id. at 175:8-14.] The minute entries from the Court, or any other evidence admitted, do not indicate that there was ever a concern that Mr. DeBrigida was requesting extensions. There is no evidence that the reasons stated for his extensions were not true. By example, in the May 22, 2016 motion for extension stated, "PCR counsel also needs to consult with Mr. Margolis, the defendant's trial counsel, this coming week…" [Ex. 67, Bates SBA228.] It is reasonable that Mr. DeBrigida would request an extension to consult with Johnson's trial attorney before moving forward. The attempt to seek out Mr. Margolis' input regarding a proceeding where no transcript

existed, coupled with his intent to speak to Johnson, is a substantial reason to ask the Court for an extension.

Mr. DeBrigida's ability to contact Mr. Johnson was complicated by his busy trial schedule and the limitations surrounding legal calls. We find that these extensions were not for the sole purpose of delay, but to allow Mr. DeBrigida the opportunity to make meaningful contact with his client.

There was nothing offered nor argued that demonstrated the judicial process was tainted in more than a *de minimus* way by the belated filings of Mr. DeBrigida. Good cause was found and the Court granted each motion. Furthermore, the Panel was not persuaded by the State Bar's argument that untimeliness is a *de facto* disobedience in violation of ER 3.4(c). There is no indication that the judge was troubled by the conduct of Mr. DeBrigida. The State Bar initially intended to call Mr. Johnson, but decided at the last moment not to. This left the testimony of Mr. DeBrigida unrefuted.

Lack of Harm to Johnson

Mr. DeBrigida testified there were a number of factors that necessitated his moving for extensions. He did approximately eight jury trials in the spring, summer and into the fall. [DeBrigida Testimony, Tr. 147:19-24.] On July 12, 2016, Mr. DeBrigida contacted Mr. Johnson. [JPS ¶ 36] Johnson expressed that he was unhappy with his sentence and pursued PCR because he wanted to have his

sentenced changed. [Id. at 148:19-20.] He was also regularly having conversations with Mr. Johnson about different aspects of his case, with the different questions that would be posed by Mr. Johnson. Mr. Johnson had prior felonies and multiple offenses he was charged with initially and much exposure as a result. [Id. at 147:24-149:15.]

All of these took time. But it was time Mr. DeBrigida was willing to invest in Mr. Johnson to assure that he got the best representation. Mr. DeBrigida went further than he was required to in his representation. Mr. Johnson felt his probation term after incarceration was too excessive. Mr. DeBrigida told Mr. Johnson that when he got out of DOC, the following year, that if Mr. Johnson wanted him to file a motion to modify your conditions of probation and ask the Court to shorten his probation term, "I'll do that for you." And Mr. Johnson was fine with that. [Id. Tr. 148:16- 22.] His assistance to Mr. Johnson increased his credibility before the Panel in a tangible way.

Mr. DeBrigida advised Mr. Johnson to dismiss his PCR case because "[Mr. Johnson] could be in a worse position than when [he] started." Mr. Johnson became unsure about how he wanted to proceed. [Id.] He "was really going back and forth about what to do in the Rule 32 situation." [Id. at 148:5-6.] Eventually, Mr. Johnson agreed with Mr. DeBrigida and chose to adhere to his advice.

At the time of the hearing, Mr. DeBrigida explained that he still represented Mr. Johnson and would continue representing him after Mr. Johnson is released. [Id. at 152:21-153:8.] His testimony was credible and important. The State Bar did not identify any harm that occurred to Johnson and, it appears to the Panel that no actual or potential harm occurred.

III. CONCLUSION

The State Bar concluded its examination of Mr. DeBrigida by eliciting from him that he was paid $500.00 for each of the three cases. Mr. DeBrigida, was then asked, "Did you refund any money to the court in any of these cases or to whatever the entity was that paid you?"

It is undisputed that Mr. DeBrigida reviewed the entire case files and ultimately filed, based on his analysis, notices of no colorable claims which could be raised on the defendant's behalf. No evidence was offered that his review was inaccurate, false, or misleading. The question served no meaningful purpose to our determination. Based on the findings of facts and conclusions of law we dismiss the complaint with prejudice as the State Bar failed to clearly and convincingly prove the ethical violations alleged.

DATED this 4th day of April, 2018.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

James M. Marovich

James M. Marovich, Attorney Member

Howard M. Weiske

Howard M. Weiske, Public Member

COPY of the foregoing e-mailed/mailed
on April 4, 2018, to:

Hunter F. Perlmeter
Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6288
Email: lro@staff.azbar.org

Patricia A. Sallen
3104 E. Camelback Road, Suite 541
Phoenix, AZ 85016-4595
Email: psallen@ethicsatlaw.com
Respondent's Counsel

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **RONALD M. DEBRIGIDA, JR., Bar No. 015697** Respondent.	**No. PDJ-2016-9114** **ORDER OF DISMISSAL** [State Bar Nos. 16-0968, 16-1693, 16-1851] **FILED APRIL 27, 2017**

On November 1, 2016, the Attorney Discipline Probable Cause Committee (ADPCC) issued Probable Cause Orders. The formal complaint was filed on November 14, 2016 alleging violations of ERs 1.3 (diligence), 1.4 (communication), 3.2 (failure to expedite litigation), 3.4(c) (knowing violation of court order), and 8.4(d) conduct prejudicial to the administration of justice. Thereafter, the Presiding Disciplinary Judge (PDJ), pursuant to Supreme Court Rule 58(c), held a mandatory initial case management conference on December 14, 2016 setting forth case management deadlines and a firm hearing date of March 29, 2017.

On that day, the hearing panel, comprised of James M. Marovich, Attorney Member, Howard M. Weiske, Public Member, and PDJ William J. O'Neil, heard argument and considered evidence. Hunter F. Perlmeter appeared on behalf of the State Bar and Russell R. Yurk, *Jennings, Haug & Cunningham* appeared on behalf

of Respondent, Ronald DeBrigida, Jr. At the conclusion of the hearing, the State Bar sought a sixty (60) day suspension and upon reinstatement, two (2) years of probation (LOMAP) and costs. Mr. DeBrigida asserts that the alleged misconduct did not result in harm to clients and did not involve dishonesty, deceit or misrepresentations.

The facts in this matter are generally undisputed. Mr. DeBrigida represented criminal clients in Rule 32 post-conviction relief (PCR) matters on behalf of the Office of Public Defense Services. On more than one occasion, Mr. DeBrigida relied on an incorrect addresses given to him by the Office of Public Defense Services when he attempted to make initial contact with his appointed clients by letter. He further allegedly failed to meet court imposed deadlines to file PCR petitions. The Court approved repeated requests for extensions. We do not find based on the evidence that such practice was unusual or a violation of ethical rules.

DISCUSSION

The State Bar was critical of Mr. DeBrigida for mailing initial engagement letters to new clients allegedly to wrong addresses. Ironically, the State Bar submitted as evidence three of its letters that had been returned by the U.S. Postal Service – the Bar had mailed each of those letters to those same clients. [SBA Exhibits 4, 11, & 27.] Even when pursuing discipline against this Respondent for faulty mailings, the hearing panel notes that the State Bar had the same experience.

The Respondent presented sufficient evidence to show that he has put systems in place to confirm all addresses supplied to him by the Office of Public Defense Services. He also showed that he has adopted a system of calendaring to track Office of Public Defense Services case deadlines.

CONCLUSION

The State Bar has the burden of clear and convincing evidence. While many of the facts are stipulated to, the implications of those facts were not stipulated to. The burden of proof relates to both facts and their implications. The State Bar having failed to meet its burden of proof,

IT IS ORDERED dismissing the matter with prejudice.

Concurring Comment by Attorney Panel Member James Marovich:

Margaret Atwood, the Canadian novelist and poet, has said that if she had to wait for perfection, she would never write a word. A similar idea also has been echoed in medicine, where it has been said that "because humans are not perfect, corrections must be made from time to time." Washington and Leaver, Principles and Practice of Radiation Therapy 38 (4th ed. 2016).

The same can be said for lawyers and the practice of law. We are human and we are not perfect, and if we had to wait for perfection, we would never be able to help our clients. Alan Dershowitz, in his Letters To A Young Lawyer, wrote that "[l]aw is an imperfect profession … all practicing lawyers – and most others in the

profession – will necessarily be imperfect, especially in the eyes of young idealists."

Reasonable under the rules does not mean perfect.

DATED this April 27, 2017.

William J. O'Neil
William J. O'Neil, Presiding Disciplinary Judge

James M. Marovich
James M. Marovich, Attorney Member

Howard M. Weiske
Howard M. Weiske, Public Member

COPY of the foregoing e-mailed/mailed
on April 27, 2017, to:

Hunter F. Perlmeter
Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6288
Email: lro@staff.azbar.org

Russell R. Yurk
Jennings, Haug & Cunningham
2800 N. Central Ave., Suite 1800
Phoenix, AZ 85004-1049
Email: rry@jhc-law.com
Respondent's Counsel

by: AMcQueen