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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 06-308  
District Docket No. XIV-06-016E

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IN THE MATTER OF  
KRISTEN K. TOLAND  
AN ATTORNEY AT LAW

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Decision

Argued: January 18, 2007

Decided: March 30, 2007

Richard J. Engelhardt appeared on behalf of the Office of Ethics.

Respondent did not appear, despite proper service.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's July 25, 2006 one-year and one-day suspension in Pennsylvania. We determine to impose a one-year suspension retroactive to November 6, 2005, the date of respondent's temporary suspension in Pennsylvania.

Respondent was admitted to the New Jersey bar in 2001. She has no prior discipline in New Jersey. On September 30, 2002, however, she was declared ineligible to practice law for failure

to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection ("CPF"). She remains ineligible to date.

On March 27, 2006, respondent and Pennsylvania ethics authorities entered into a "joint petition in support of discipline on consent." It involved respondent's unethical conduct in two separate matters.

**I. Assault By Auto/Driving While Intoxicated**

The first matter concerned respondent's involvement in an automobile accident on the New Jersey Turnpike. The facts set out in the Pennsylvania joint petition indicate that

[o]n March 28, 2004, respondent, a Pennsylvania resident, was driving, while intoxicated (B.A.C. 0.27%), a motor vehicle that was involved in a multiple-car accident on the New Jersey Turnpike as the result of the respondent making an illegal u-turn. As a result of the accident, four people, including respondent were injured. In particular:

a. Orlando Perez, age 5, suffered a complex, deep laceration that required stitches to close; fracture of the medial wall of the right orbit; fracture of the nasal bone; and soft tissue swelling of the right periorbital.

b. Geisha Rolon, age 30, suffered a fracture of the left wrist; a laceration of the left thumb; and multiple contusions.

c. Maritza Perez, age 28, suffered chest and abdominal contusions.

13. On or about March 28, 2004, the Mercer County Prosecutor's Office filed in the Superior Court of New Jersey, Mercer County, an Accusation charging respondent with the crime of assault by auto, in violation of N.J.S.A. 2C:12-1c(3), a crime of the third degree, as a result of driving while intoxicated and causing serious bodily injury in a case captioned State of New Jersey v. Kristen K. Toland, No. 04-11-1055.

14. On November 1, 2004, respondent entered a negotiated guilty plea to the crime charged in the Accusation, as a crime of the third degree, in return for a recommendation from the prosecutor for a sentence of probation with four months inpatient treatment after TASC evaluation, restitution, and dismissal of all moving violations.

15. It was determined that respondent was without automobile insurance at the time of the accident.

16. On January 7, 2005, respondent appeared before New Jersey Superior Court Judge Thomas P. Kelly, at which time Judge Kelly imposed a sentence of five years probation, with the condition that respondent attend an inpatient drug/alcohol program (Malvern Institute). In addition, the court ordered respondent to provide a DNA sample; and pay restitution in the amount of \$3,375 plus damages for physical injuries, a \$50 Violent Crime assessment, a \$75 Safe Neighborhood Services Fund assessment, and a \$30 Law Enforcement Officers Training and Equipment Fund penalty.

17. The crime of Assault by Auto, third degree, is punishable by imprisonment not to exceed five years. N.J.S.A. 2C:43-6a(3). Therefore, this crime is a "serious crime," as defined by Pa.R.D.E. 214(i).

18. Respondent's conviction constitutes a per se ground for discipline under Pa.R.D.E. 203(b)(1).

19. On January 30, 2006, respondent entered into Joint Stipulations of Fact and Law with the Office of Disciplinary Counsel admitting the foregoing statements of facts and law.

20. Respondent admits that by her conduct as detailed in Paragraphs 12 through 19 above, she violated Pa.R.D.E. 203(b)(1), which provides that conviction of a crime, which under Enforcement Rule 214 (relating to attorneys convicted of crimes) may result in suspension, shall be grounds for discipline.

[Att.3¶2-¶20.]

Respondent stipulated additional facts concerning her misconduct:

21. On November 1, 2004 and prior to sentencing, respondent underwent a court-ordered substance abuse evaluation with Ms. Karen M. Rivers, a court-appointed substance abuse evaluator.

22. Ms. Rivers prepared a computer-generated typewritten report prepared during the interview with respondent.

23. In pertinent part, the report indicated that respondent told Ms. Rivers that respondent had a significant drug (cocaine) and alcohol abuse problem. [Document reference omitted.]

24. In or about November 1989, respondent had received a citation for underage drinking, and in or about June 2002, respondent was admitted to the A.R.D. program in Philadelphia for another charge of Driving Under the Influence.

25. Respondent was admitted to the New Jersey bar on January 29, 2001. [Document reference omitted.]

26. On cross-examination, respondent denied having an alcohol or drug abuse problem, initially denied the use of controlled substances other than marijuana, and subsequently admitted using cocaine but denied using it after attending college.

- a. Respondent denied telling Ms. Rivers of the extent of the abuse of drugs and alcohol contained within the report

prepared by Ms. Rivers. [Document reference omitted.]

- b. Respondent's testimony is in direct contradiction to the contents of the substance abuse report prepared by Ms. Rivers.
- c. Respondent denied being admitted to the New Jersey bar. [Document reference omitted.]
- d. Respondent's testimony is in direct contradiction to the 2001-2001 Pennsylvania Annual Fee Form that respondent completed indicating that she was a member of the New Jersey bar. [Document reference omitted.]
- e. Respondent's testimony is in direct contradiction to her New Jersey bar admission/oath card which was signed and sworn to by respondent on or about January 29, 2001.

[Att.3¶21-¶26.]

### The Erik Sims Matter

The second ethics matter involved respondent's mishandling of a client matter:

27. On June 6, 2003, respondent was appointed by the Philadelphia Court of Common Pleas to represent Erik Sims on an appeal to the Pennsylvania Superior Court, in the matter of Commonwealth v. Erik Sims, Docket Number 867 EDA 2003.

28. On June 17, 2003, the Honorable Renee Cardwell Hughes entered an Order requiring respondent to file a Statement of Matters Complained of on Appeal within fourteen days of the date of the order in compliance with Pennsylvania Rule of Appellate Procedure 1925(b).

- a. On July 1, 2003, respondent filed the Statement of Matters Complained of on Appeal.

29. On July 14, 2003, the Pennsylvania Superior Court entered respondent's appearance on behalf of Erik Sims.

30. On or about July 30, 2003, the Pennsylvania Superior Court entered a briefing schedule.

31. On September 29, 2003, respondent filed an application for an extension of time within which to file the brief.

- a. On October 1, 2003, the Pennsylvania Superior Court granted the extension requiring the appellant's brief to be filed on November 10, 2003.

32. On October 17, 2003, respondent filed a docketing statement with the Superior Court.

33. On December 16, 2003, the Pennsylvania Superior Court entered an Order due to respondent's failure to file a brief:

- a. dismissing the appeal without prejudice to Mr. Sims' right under the Post-Conviction Relief Act;
- b. directing that if respondent were court-appointed that [sic] the trial court withhold respondent's fee; and
- c. directing respondent to file with the court a certification that respondent had notified Mr. Sims of the dismissal.

34. Respondent failed to file the certification with the Superior Court and to notify her client that the appeal was dismissed due to respondent's failure to file the brief.

- a. The client did not find out that the case was dismissed until on or about September 30, 2005.

35. In her answer to the DB-7, respondent stated that she had notified the Superior Court of an inability to continue in the representation of Mr. Sims and the necessity to withdraw.

36. Respondent has not provided the Office of Disciplinary Counsel with any evidence corroborating her claim that she had notified the Superior Court.

37. Office of Disciplinary Counsel has been unable to find any evidence in the official court record that the Superior Court received any notice from respondent that she was unable to complete the representation.

38. Respondent admits that by her conduct as detailed in paragraphs 27 through 37 above, she violated Rule of Professional Conduct ("RPC") RPC 1.1 (a lawyer shall provide competent representation to a client); RPC 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); RPC 1.4(a) (a lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information); and RPC 8.4(d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

[Att. 3127-138.]

In aggravation, Pennsylvania disciplinary authorities considered that respondent (a) had over three times the legal alcohol limit in her system at the time of her arrest; (b) seriously injured three people; (c) later attempted to minimize the role that alcohol and drugs had played in her life; (d) had been driving without automobile insurance at the time of the accident; and (e) had provided disciplinary authorities with false and/or misleading information during her disciplinary hearing.

Pennsylvania disciplinary authorities considered several mitigating factors: (a) respondent's lack of a disciplinary history; (b) her cooperation with ethics authorities; and (c) her admissions of wrongdoing.

The OAE recommends a one-year suspension. The OAE has no objection to the suspension being retroactive to November 6, 2005, the date of respondent's temporary suspension in Pennsylvania.

Upon a review of the full record, we determine to grant the OAE's motion for reciprocal discipline. We also adopt the findings of the Pennsylvania Court.

Respondent pleaded guilty to third-degree assault by auto (N.J.S.A. 2C:12-1(c)(3)), after making an illegal u-turn on the New Jersey Turnpike, thereby causing an accident with another motor vehicle. At the time, her blood-alcohol content was .27%, over three times the allowable legal limit (.08%) in New Jersey. Three people in the other vehicle were seriously injured in the crash, including two young women and a five-year old boy.

In a separate matter involving a client, respondent represented Eric Sims in an appeal before the Pennsylvania Superior Court. Although respondent filed an initial "statement of matters complained of on appeal," she later failed to file a required appellate brief, resulting in the appeal's dismissal.



Respondent was thereafter required to certify to the court that she had notified her client of the dismissal. Respondent failed to notify Sims of the dismissal or to file the required certification. Subsequently, in her reply to Pennsylvania disciplinary authorities, she claimed to have notified the court and her client that she was unable to continue the representation, but did not support her claim. Likewise, the official court file in the matter contained no notification from respondent.

Respondent was found guilty of violating RPC 1.1 (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client) and RPC 8.4(d) (conduct prejudicial to the administration of justice). She received a one-year and one-day suspension.

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a) (4), which provides that

The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E).

Only the imposition of discipline remains. Discipline ranging from a reprimand to a two-year suspension has been imposed on attorneys involved in automobile accidents where alcohol is a factor, and where injuries or death to others has resulted. See, e.g., In re Cardullo, 175 N.J. 107 (2003) (reprimand for attorney who pleaded guilty to assault by auto; the attorney rear-ended an automobile that was turning into a parking lot, left the scene, and was later stopped by police; the attorney had a blood alcohol reading of .17%; the driver of the other vehicle suffered neck and back injuries; the attorney was sentenced to 180 days in the county jail, but received credit for her 180-day in-patient alcohol rehabilitation program and the two days she spent in jail; mitigation included the lack of serious injury to the other driver and the attorney's steps

to embark on the road to recovery from her alcohol addiction, including a six-month stay in an in-patient treatment facility, her regular counseling for addiction, and compliance with the New Jersey Lawyers' Assistance Program plan); In re Howard, 143 N.J. 526 (1996) (three-month suspension for attorney convicted of death by auto, a crime of the third degree; the attorney drove her car recklessly over her husband; although there was no evidence that the attorney had been drinking prior to the accident, the Court warned that "[l]onger suspensions will be called for when alcohol plays an aggravating role in a vehicular homicide case," id. at 533); In re Saidel, 180 N.J. 132 (2004) (six-month suspension for attorney who drove his automobile at an excessive rate of speed, causing an accident in which his automobile flipped over, resulting in serious injuries to both of his passengers; a breathalyzer test revealed the attorney's blood alcohol concentration to be .067% over two hours after the collision); In re Barber, 148 N.J. 74 (1997) (six-month suspension for attorney convicted of vehicular homicide for the death of a passenger; although the attorney had not been convicted of driving while intoxicated, his consumption of alcohol prior to the one-car accident was considered an aggravating factor); and In re Guzzino, 165 N.J. 24 (2000) (two-year suspension for attorney who pleaded guilty to second-degree manslaughter and driving while intoxicated; while driving at a

high rate of speed, the attorney lost control of his vehicle and struck two other vehicles, killing a passenger in one of the vehicles).

In mitigation, we considered that respondent has no prior discipline in New Jersey, cooperated with ethics authorities, and admitted her wrongdoing.

We also took into account several aggravating factors. Respondent conceded that she had been less than candid during the Pennsylvania disciplinary hearing. First, she downplayed the frequency and extent of her drug and alcohol use, which had been described by the Mercer County substance abuse evaluator as a serious problem. Second, she denied that she was admitted to the New Jersey bar. Yet, in documents such as the Pennsylvania annual attorney registration form, completed by respondent herself, she had indicated that she held a license in New Jersey. Third, respondent's accident caused serious injury to three people, including a five-year old boy. Her blood alcohol content at the time was over three times the legal limit, and she was without motor vehicle insurance at the time of the crash. Finally, she failed to notify New Jersey ethics authorities of her Pennsylvania ethics matters.

This case is distinguishable from Cardullo, where the Court imposed only a reprimand after a guilty plea to assault by auto. Unlike this respondent, that attorney had taken substantial

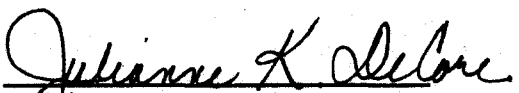
steps to combat her alcohol addiction, including 180 days of in-patient treatment. So, too, this case is more serious than Howard (three-month suspension), where alcohol was not to blame for the death by auto, or Saidel (six-month suspension), where the attorney's blood alcohol content was within the legal limit (.067%) and only a small fraction of that found here (.27%).

On the other hand, unlike Guzzino (two-year suspension), where the attorney was under the influence of alcohol, the injuries to the third parties here were not fatal. In Guzzino, the occupants of one of the vehicles struck by the attorney had to remove their flipped-over vehicle off the head of their partially-ejected co-passenger, who later died at the hospital of his injuries.

The foregoing precedent demonstrates that the appropriate discipline for this respondent is in line with the one-year plus one-day suspension meted out in Pennsylvania. We, thus, determine to impose a one-year suspension, retroactive to November 6, 2005, the effective date of respondent's temporary suspension in Pennsylvania. We also determine that, prior to reinstatement, respondent must provide proof of fitness to practice law, as attested by a drug and alcohol counselor approved by the OAE. Members Lolla and Baugh did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board  
William J. O'Shaughnessy  
Chair

By:   
Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Kristen K. Toland  
Docket No. DRB 06-308

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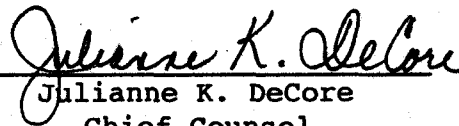
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Argued: January 18, 2007

Decided: March 30, 2007

Disposition: One-year suspension

Members	Disbar	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy		X				
Pashman		X				
Baugh						X
Boylan		X				
Frost		X				
Lolla						X
Neuwirth		X				
Stanton		X				
Wissinger		X				
Total:		7				2

  
Julianne K. DeCore  
Chief Counsel