SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-208
District Docket No. XIV-2010-0175E

IN THE MATTER OF	:
LAWSON R. McELROY	:
AN ATTORNEY AT LAW	:

Decision

Argued: September 16, 2010

Decided: December 1, 2010

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

George T. Dougherty appeared on behalf of respondent.

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

This matter was before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). Respondent admitted to having violated RPC 8.2(b) (failure to comply with the Code of Judicial Conduct after confirmation for judicial office), RPC 8.4(c) (conduct involving dishonesty,

fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). The OAE recommended a censure. Respondent's counsel urged either an admonition or a reprimand. We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1983. He has no prior attorney discipline. On September 29, 2008, in a judicial disciplinary proceeding, the Supreme Court censured him, based on the misconduct giving rise to the present matter, and permanently barred him from judicial office. In re McElroy, 196 N.J. 457 (2008). On March 7, 2008, in an earlier judicial discipline proceeding, the Court publicly reprimanded respondent for furnishing one of his law clients with a note for the prosecutor of a neighboring municipality, requesting that the client's speeding ticket be downgraded. In re McElroy, 179 N.J. 418 (2004).

The relevant facts are contained in the Advisory Committee on Judicial Conduct (ACJC) presentment in the underlying matter. That document, as well as the ACJC complaint and final order, are incorporated by reference into the stipulation.

At all relevant times, respondent was a full-time municipal court judge for the City of Trenton, having been

appointed to that position on July 24, 2000. Respondent retired at the end of his April 1, 2008 court term.

On June 13, 2007, Maria Cosme, the court administrator for the Trenton Municipal Court, met with court security officer Maria Ivette Gonzales to discuss the daily presence of Gonzales' niece in the court offices, while Gonzales was on duty. A few minutes into the meeting, and in view of other employees, respondent

> appeared at Cosme's closed office door, knocked loudly and sternly ordered Ms. Gonzales, through the closed office door, to remain silent. Respondent further stated, through the closed office door, that he was, in fact, Ms. Gonzales's lawyer, and that she needed her lawyer present. In an angry and hostile tone, Respondent demanded to be a part of the meeting. Ms. Cosme did not initially open her office door, but rather replied to Respondent, through the closed door, that she was having a meeting with one of her staff members, that the meeting had just started and that Ms. Gonzales did not need a lawyer present at the meeting. Respondent continued to knock loudly and angrily demand to be admitted and Ms. Cosme directed Ms. Gonzales to open the office door. Ms. Cosme again advised Respondent that she was meeting with one of her employees and that the employee did not need a lawyer. Respondent replied by again directing Ms. Gonzales to remain silent and advising Ms. Cosme that he would file a lawsuit against her, the Court Director, and the City of Trenton. Ms. Cosme replied to Respondent that it was within her job duties

> to conduct meetings with her staff. Ms. Cosme then directed Ms. Gonzales to return to her desk without having had the opportunity to discuss with Ms. Gonzales the purpose of the meeting.
>
> [S.Ex.A4.][1]

Shortly thereafter, Cosme met with the chief judge of the Trenton Municipal Court, Louis Sancinito, and Eunice Samuels Lewis, the court director, in Judge Sancinito's chambers. In the middle of the meeting, respondent knocked on the door and requested to participate in the meeting. Judge Sancinito excused Cosme and Lewis, and called respondent into his chambers alone. When questioned about his interaction with Cosme, respondent "did not deny" advising Cosme that he represented Gonzales and threatening to sue the city.

Respondent also stipulated that he maintained a law office at 529 West State Street, Trenton, during the relevant time period, and that, on two separate occasions, he represented Trenton municipal court employees in real estate transactions.

The Supreme Court adopted the ACJC findings that respondent's actions had violated Canon 1 (a judge should

[1] S refers to the disciplinary stipulation.

observe high standards of conduct); Canon 2A (a judge should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary); Canon 3A(3)(a judge should be patient, dignified, and courteous to those with whom he deals in an official capacity); and Canon 5G (a full-time judge shall not practice law). The Court concurred with the ACJC that respondent's actions constituted "misconduct in office," a violation of R. 2:15-8(a)(1); practicing law while a full-time judge, a violation of R. 1:15-1(a) and Trenton Municipal Ordinance No. 01-83; and engaging in intemperate conduct and conduct prejudicial to the administration of justice that brings the judicial office into disrepute, a violation of R. 2:15-8(a)(4) and (6).

In turn, respondent stipulated that his actions violated the Rules of Professional Conduct governing attorneys of this state, specifically, RPC 8.2(b) (failure to comply with the Code of Judicial Conduct after confirmation for judicial office), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

In recommending a censure for respondent's misbehavior, the OAE cited In re Yaccarino, 117 N.J. 175 (1989), for the proposition that an attorney's misconduct, while acting as a judge, may, in addition to triggering possible removal as a judge, subject the individual to further professional discipline as an attorney. No attorney disciplinary cases were cited in support of a censure as the appropriate sanction.

Following a review of the record, we are satisfied that the stipulation fully supports findings of a violation of RPC 8.2(b). As detailed below, we are unable to find that respondent's actions violated RPC 8.4(c) and RPC 8.4(d), as stipulated.

Undeniably, respondent was prohibited by R. 1:15(1)(a) and by a Trenton ordinance from practicing law, while acting as a full-time municipal court judge. Respondent admitted that, despite this prohibition, he represented two clients, while acting as a full-time municipal judge. Such conduct violated RPC 8.2(b).

On the other hand, respondent's intrusion in a personnel matter at the Trenton Municipal Court offices did not constitute violations of RPC 8.4(c) and RPC 8.4(d), as stipulated. Nothing in the record establishes that respondent's conduct, albeit

intemperate and discourteous to the court administrator, was dishonest, fraudulent, or deceitful or that it involved a misrepresentation. Similarly, it did not prejudice the administration of justice. It may have affected the process of a personnel matter that the court administrator was attempting to handle, but it did not imperil the administration of justice.

We note that, at the time that the ACJC charged respondent with having violated R. 2:15-8(a)(6) (conduct prejudicial to the administration of justice that brings the judicial office into disrepute), the ACJC routinely cited that rule to substantively address judicial misconduct. However, in In re Boggia, 203 N.J. 1 (2010), a very recent judicial misconduct case, the Court frowned upon that practice, finding it to be a rule of procedure and not of substantive law. The Court held:

> Rule 2:15-8 outlines the process to be followed by the ACJC and the scope of its jurisdiction. Section (a) lists six areas that the Committee may investigate, which in many respects parallel the categories of misconduct set forth in the canons of the Code of Judicial Conduct. Nonetheless, Rule 2:15-8 does not provide alternative, substantive standards of conduct for judges to follow. Those standards can instead be found in the Code of Judicial Conduct, the Rules of Professional Conduct, and certain other rules. See, e.g., R. 1:18 ("It shall be the duty of every judge to abide by and to enforce the provisions of the Rules of

> Professional Conduct, the Code of Judicial Conduct and the provisions of R. 1:15 [(limiting practice of law)] and R. 1:17 [(limiting political activity)].").
>
> We recognize that language in certain prior cases, see, e.g., In re Subryan, 187 N.J. 139, 153 (2006); In re Mathesius, 188 N.J. 496, 520 (2006), could lead to an alternative view and therefore direct that, going forward, Rule 2:15-8 not be used as a basis for a substantive ethical violation.
>
> [In re Boggia, 203 N.J. 1,11 n.1 (2010).]

The charge against respondent was levied pre-Boggia, which now clarifies that R. 2:15-8(a)(6) deals only with ACJC investigative authority and procedure. It is not to be used substantively as a basis for ethics violations. For that reason and because the stipulation fails to cite facts to support a finding of conduct prejudicial to the administration of justice, we determine to dismiss the RPC (8.4(d)) charge.

Neither do we find that respondent's rude behavior toward the court administrator violated RPC 8.2(b) (a lawyer confirmed for judicial office shall comply with the Code of Judicial Conduct) for having been found in violation of Canons 1, 2A, and 3A(3). We interpret those Canons as addressing conduct by a judge in an official capacity, that is, in the exercise of his

or her judicial duties. Here, respondent was not acting in his official capacity as a judge.

We now turn to the issue of the appropriate discipline for respondent's practicing law despite a prohibition.

No attorney discipline cases specifically address a full-time judge's improperly practicing law. The situation is somewhat analogous, however, to attorneys who practice law while ineligible to do so for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). If, similar to respondent, the ineligible attorneys practice law knowing of their ineligibility, they receive reprimands. See, e.g., In re Marzano, 195 N.J. 9 (2008) (motion for reciprocal discipline; attorney represented three clients after she was placed on inactive status in Pennsylvania; the attorney was aware of her ineligibility); In re Davis, 194 N.J. 555 (2007) (motion for reciprocal discipline; attorney represented a client in Pennsylvania when the attorney was ineligible to practice law in that jurisdiction as a non-resident active attorney and later as an inactive attorney; the attorney also misrepresented his status to the court, to his adversary, and to disciplinary authorities; extensive mitigation considered); In re Kaniper, 192 N.J. 40 (2007) (attorney practiced law during two periods of

ineligibility; although the attorney's employer gave her a check for the annual attorney assessment, she negotiated the check instead of mailing it to the CPF; later, her personal check to the CPF was returned for insufficient funds; the attorney's excuses that she had not received the CPF's letters about her ineligibility were deemed improbable and viewed as an aggravating factor); In re Coleman, 185 N.J. 336 (2005) (motion for reciprocal discipline; attorney who was ineligible to practice law in Pennsylvania for nine years signed hundreds of pleadings and received in excess of $7,000 for those services); In re Perrella, 179 N.J. 499 (2004) (motion for reciprocal discipline; attorney advised his client that he was on the inactive list and then practiced law; the attorney filed pleadings, engaged in discovery, appeared in court, and used letterhead indicating that he was a member in good standing of the Pennsylvania bar); and In re Forman, 178 N.J. 5 (2003) (motion for reciprocal discipline; for a period of twelve years, the attorney practiced law in Pennsylvania while on the inactive list; compelling mitigating factors considered).

Four members of the Board, Members Baugh, Doremus, Stanton, and Wissinger, determined that a reprimand sufficiently addresses respondent's representation of two clients while

serving as a judge. Although those members are aware that the colleague who voted for a censure took into account two aggravating factors, they believe that, notwithstanding those factors, a reprimand is adequate discipline in this instance.

Member Zmirich voted for a censure, finding that respondent's 2004 reprimand and his obviously rude behavior toward the court administrator and interference with a personnel matter are aggravating factors that call for more than a reprimand.

Chair Pashman, Vice-Chair Frost, Member Clark and Member Yamner voted for dismissal, on the bases that respondent has already been disciplined in the appropriate forum and that his conduct would not have been a violation of an RPC, if not for his position as a judge.

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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Lawson R. McElroy
Docket No. DRB 10-208

Decided: December 1, 2010

Disposition: Reprimand

Members	Disbar	Censure	Reprimand	Dismiss	Disqualified	Did not participate
Pashman				X		
Frost				X		
Baugh			X			
Clark				X		
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner				X		
Zmirich		X				
Total:		1	4	4		

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel