

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 09-011  
District Docket No. XIV-07-161E

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IN THE MATTER OF  
MICHAEL P. MURPHY, JR.  
AN ATTORNEY AT LAW

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Decision

Argued: May 21, 2009

Decided: July 16, 2009

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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"), following the Supreme Court of Pennsylvania's imposition of a six-month suspension on respondent for his conviction of

aggravated assault by vehicle while driving under the influence, reckless endangerment of another person, and driving under the influence of alcohol or controlled substance. The suspension was stayed in its entirety and, instead, the Pennsylvania Supreme Court placed respondent on four years' probation, subject to certain conditions aimed at treating his alcoholism.

The OAE recommends the imposition of a six-month suspension. Respondent requests that we impose discipline identical to that received in Pennsylvania. For the reasons set forth below, we determine to impose a reprimand.

Respondent was admitted to the Pennsylvania bar in 2003 and to the New Jersey bar in 2004. At the relevant times, he practiced law with the Philadelphia law firm of Martin J. Sobol & Assoc., P.C. Respondent has no disciplinary history in New Jersey.

The facts are taken from the June 4, 2008 Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania ("the Pennsylvania Board").<sup>1</sup>

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<sup>1</sup> The Report is Attachment 2 to the appendix supporting the OAE's brief and will be referred to as OAEaEx.2.

On May 13, 2006, at approximately 3:00 a.m., respondent entered the westbound lanes of the Pennsylvania Turnpike, while proceeding in an eastward direction. At the time, his blood alcohol content was in excess of .20 percent. As respondent proceeded eastward in the westbound lane, he crashed head-on into a vehicle, injuring three of the passengers, one of whom suffered a broken right femur, necessitating surgical insertion of a rod, plates, and bolts.

On June 6, 2006, respondent was arrested and charged by the Chester County District Attorney with aggravated assault by vehicle while driving under the influence, 75 Pa.C.S.A. §3735.1; recklessly endangering another person, 18 Pa.C.S.A. §2705; and driving under the influence of alcohol or controlled substance, 75 Pa.C.S.A. §3802(c). On January 12, 2007, respondent pleaded guilty to these offenses and was sentenced on that day.

For aggravated assault by vehicle, respondent received a term of incarceration of no fewer than six months nor more than twenty-three-and-a-half months at the Chester County prison, with the first three months of parole subject to electronic home confinement and the period of parole to be followed by six years probation. In addition, he was ordered to perform 516 hours of community service, make restitution to the victims, pay a \$1500

fine and court costs, and receive alcohol treatment. For recklessly endangering another person, respondent was sentenced to two years' probation, to run concurrently with the assault by vehicle sentence. The DUI charge merged with the assault-by-vehicle charge.

Respondent was incarcerated on the date of his sentencing and was eligible for work release on January 23, 2007. On February 28, 2007, respondent notified the OAE of the convictions and provided the OAE with a copy of the sentencing sheet, which reflected the convictions, sentences, and other information related to the criminal proceeding, such as his blood alcohol level on the date of the accident and the requirement that he undergo an alcohol evaluation and follow any recommended treatment.

At the Pennsylvania disciplinary hearing, respondent presented the expert testimony of Winston Collins, Ph.D., the Director of Addictive Behavior Treatment Services at J.F.K. Community Mental Health Center for twenty-two years. Dr. Collins was a character and fitness evaluator for the Pennsylvania Board of Law Examiners and an evaluator for Lawyers Concerned for Lawyers. The Pennsylvania Office of Disciplinary

Counsel neither challenged Dr. Collins' qualifications as an expert nor presented its own expert witness testimony.

Respondent provided a full and accurate history to Dr. Collins, upon which the doctor was able to reach a reliable diagnosis of alcoholism. Dr. Collins opined that respondent's alcoholism had caused him to drive under the influence on May 13, 2006 and to become involved in the accident on the Pennsylvania Turnpike. Dr. Collins described respondent as a functional alcoholic, inasmuch as he had continued his use of alcohol, despite having recurrent alcohol-related problems. Dr. Collins opined that respondent had been in denial of the true nature of his alcohol use and, therefore, was unable to have any meaningful personal analysis of his alcohol experiences and to modify his behavior.

The Pennsylvania Board recited respondent's history of alcohol abuse. Respondent's use of alcohol increased from high school to college, both in amount and frequency, resulting in many problems, including fights with others and injury to himself. Respondent incurred over \$15,000 in credit card charges for alcohol-related purchases over a five-year-period, from college through law school.

During law school, respondent continued to drink to excess on the weekends. In November 2000, his first year of law school, he was arrested in West Chester, Pennsylvania for driving while intoxicated. The case resulted in an accelerated-rehabilitative disposition ("ARD")<sup>2</sup> and the charges were dismissed. Respondent reported his ARD on his application to the Pennsylvania Bar in 2003, but claimed that the DUI was an isolated incident, as he was a moderate drinker who rarely became drunk.

Respondent's pattern of drinking continued after he became a lawyer. He stated that drinking alcohol was a daily part of his life. He unsuccessfully tried to cut back on his alcohol consumption after he married, but continued to drink excessively outside the presence of his wife, who had expressed concern about his drinking.

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<sup>2</sup> An accelerated-rehabilitative disposition is a program whereby a defendant may earn a dismissal of charges pending against him. Rule 312 of the Pennsylvania Code. Upon successful completion of the program, the charges are dismissed and the record of the defendant's arrest is expunged. Rule 320 of the Pennsylvania Code.

The early-morning accident on May 13, 2006 was preceded by respondent's participation in a celebration that had begun the day before. On May 12, 2006, in celebration of respondent's brother-in-law's college graduation, respondent played golf with friends, drank four beers during dinner, and continued to drink at a bar in Levittown. He had no recollection of how many beers he had consumed during that evening and into the early morning hours of May 13, 2006. He had no recollection of the details of the accident.

Respondent's blood alcohol level on the morning of May 13, 2006 was found to be .24%. (Presumably, respondent underwent a blood test after, and as a result of, the accident.)

After the May 13, 2006 accident, respondent realized that he had an alcohol problem and sought treatment. He began attending AA meetings. As of the date of the disciplinary hearing, had been sober for sixteen months. In June 2006, he enrolled in "Rehab After Work," a five-week intensive outpatient treatment program for alcoholism. He successfully completed the program, with a good prognosis at the time of discharge. From July 2006 until October 2006, he was treated at Life Counseling Services, in Philadelphia, on a weekly basis.

Since December 4, 2006, respondent has attended weekly individual counseling sessions with Dr. Collins. Dr. Collins had given respondent a very good prognosis and recommended that he stay involved in AA and continue psychological treatment. Moreover, according to Dr. Collins, respondent was not a danger to the courts or to the public.

At the time of the disciplinary hearing, respondent was attending five AA meetings a week. He had entered into a voluntary sobriety monitor agreement with the Lawyer's Assistance Committee of the Pennsylvania Bar Association.

Several individuals who were involved with respondent in his recovery testified about his progress. His sobriety monitor, attorney Brian Quinn, confirmed that respondent was compliant with the program's requirements. Respondent's AA sponsor, attorney Kevin Callahan, stated that respondent had a good understanding of what is necessary to stay sober. Respondent's employer, attorney Martin Sobol, described respondent's legal work and competence as beyond reproach. Sobol stated that respondent had never appeared at work under the influence of alcohol. Moreover, respondent immediately informed him of the May 13, 2006 accident. Finally, Sobol observed that respondent had handled the stress of the accident



and his recovery in an admirable fashion and that he has not allowed the circumstances to deter his advancement at work.

Respondent expressed sincere remorse for his actions. Moreover, he cooperated in the disciplinary proceedings. However, although he timely reported his criminal convictions to the Secretary of the Pennsylvania Disciplinary Board, he did not promptly notify the United States District Court for the Eastern District of Pennsylvania. He explained that his late notice to the District Court was the result of his confusion about the meaning of the phrase "serious crime."

The Pennsylvania Board concluded that respondent had violated RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects) and Pennsylvania Rule of Disciplinary Enforcement 203(b)(1) (conviction of a crime is grounds for discipline). The Pennsylvania Board found that respondent had established by clear and convincing evidence that his alcoholism had caused his misconduct and, thus, constituted

a mitigating factor.<sup>3</sup> The Board also noted that respondent had been given a good prognosis for recovery, that he did not pose a danger to either the courts or the public, that he had paid his debt to society by virtue of his conviction and sentence, that his misconduct did not harm either his clients or the courts, and that his employer had praised his competence, diligence, and effectiveness as a lawyer.

The Pennsylvania Board recommended that respondent be placed on probation for four years, subject to a number of conditions related to alcohol testing, counseling, and maintenance of sobriety. One Board member filed a dissenting opinion, recommending a six-month suspension, followed by four years of probation, based on respondent's untruthful statements about his alcohol consumption on his application to the Pennsylvania bar and to Dr. Collins.

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<sup>3</sup> Alcoholism is not a mitigating factor in New Jersey. Cf. In re Schaffer, 140 N.J. 148, 157, 161 (1995) (drug addiction, which gives rise to criminal and ethics offenses, is not considered mitigation; however, an attorney's "consistent attempts" to address an addiction after an arrest, including participation in a rehabilitation program and regular attendance at AA meetings, is a mitigating factor).

On September 22, 2008, the Supreme Court of Pennsylvania suspended respondent for six months, but stayed the suspension in its entirety. The Court placed respondent on probation for a four-year period, subject to the following conditions:

1. Respondent shall abstain from using alcohol or any other mind-altering chemical;
2. Respondent shall regularly attend Alcoholics Anonymous meetings on a weekly basis;
3. Respondent shall obtain a sponsor in Alcoholics Anonymous and maintain weekly contact with that sponsor;
4. A sobriety monitor shall be appointed to monitor Respondent in accordance with Disciplinary Board Rule §89.293(c);
5. Respondent shall furnish his sobriety monitor with his Alcoholics Anonymous sponsor's name, address and telephone number;
6. Respondent shall establish his weekly attendance at Alcoholics Anonymous meetings by providing written verification to the Board on a Board-approved form;
7. Respondent shall undergo any counseling, out-patient or in-patient treatment, prescribed by a physician or alcohol counselor;

8. Respondent shall file with the Secretary of the Board quarterly written reports;
9. With the sobriety monitor, Respondent shall:
  - a) meet at least twice a month
  - b) maintain weekly telephone contact
  - c) provide the necessary properly executed written authorizations to verify his compliance with the required substance abuse treatment; and
  - d) cooperate fully.
10. The appointed sobriety monitor shall:
  - a) monitor Respondent's compliance with the terms and conditions of the order imposing probation;
  - b) assist Respondent in arranging any necessary professional or substance abuse treatment;
  - c) meet with Respondent at least twice a month and maintain weekly telephone contact with him;
  - d) maintain direct monthly contact with the Alcoholics Anonymous chapter attended by the Respondent;
  - e) file with the Secretary of the Board quarterly written reports; and

- f) immediately report to the Secretary of the Board any violations by the Respondent of the terms and conditions of the probation.

[OAEaEx.1.]

In his February 11, 2009 brief to us, respondent provided additional facts that have arisen since the entry of the Supreme Court of Pennsylvania's September 2008 order. On January 5, 2009, the United States District Court of the Eastern District of Pennsylvania imposed on him the same discipline meted out by the Supreme Court of Pennsylvania. As of January 13, 2009, he had maintained thirty-two months of sobriety and abstinence from alcohol. Moreover, as of the date of his brief, he continued to attend weekly AA meetings and maintain weekly contact with his AA sponsor and his sobriety program monitor. He was in compliance with the conditions set forth in the Supreme Court of Pennsylvania's September 2008 order.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state. We, therefore,

adopt the findings of the Pennsylvania Board, which were approved by the Court.

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

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on 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 disciplinary 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.

We are satisfied that the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). Subsection (E), however, applies in this matter because respondent's unethical conduct warrants substantially

different discipline from that meted out in Pennsylvania. In New Jersey, a reprimand would be the appropriate measure of discipline for respondent's violation of RPC 8.4(b).

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In this case, respondent was found to have violated RPC 8.4(b) based on his convictions of aggravated assault by vehicle while driving under the influence, reckless endangerment of another person, and driving under the influence of alcohol or controlled substance. In New Jersey, similar infractions typically result in the imposition of a reprimand when someone is injured in the accident. See, e.g., In re Fedderly, 189 N.J. 127 (2007) (on motion for final discipline, the Court reprimanded an attorney who was convicted of third degree assault by auto, N.J.S.A. 2C:12-1c(2), and driving while

intoxicated, N.J.S.A. 39:4-50; at the time of the accident, the attorney's blood alcohol level was .247; the passenger in the other vehicle sustained a broken ankle, which was considered a serious bodily injury) and In re Cardullo, 175 N.J. 107 (2003) (on motion for final discipline, the Court imposed a reprimand on an attorney who was convicted of fourth degree assault by auto as a result of rear-ending a vehicle that was turning into a parking lot; two breathalyzer tests yielded readings of 0.17% and 0.16%; the victim sustained unspecified "neck and back" injuries).

If the accident causes severe injury to more than one person, or there are substantial aggravating factors, or the (attorney also has committed ethics violations in the handling of a client matter, a suspension may be imposed. See, e.g., In re Toland, \_\_\_\_\_ N.J. \_\_\_\_\_ (2007) (on motion for reciprocal discipline, one-year suspension imposed on attorney who was suspended for a year and a day in Pennsylvania after she was convicted in New Jersey of assault by auto; the attorney, who was driving while intoxicated [0.27% blood alcohol level] and without automobile insurance, caused a multi-car accident when she made an illegal U-turn on the New Jersey Turnpike; three people suffered multiple broken bones, lacerations, and



contusions, including a five-year-old boy; the attorney was also guilty of gross neglect, lack of diligence, failure to communicate with the client, and conduct prejudicial to the administration of justice in her representation of a criminal defendant in a Pennsylvania matter; she was less than candid at the Pennsylvania disciplinary hearing, denying that she was admitted to practice law in New Jersey, and she failed to notify New Jersey disciplinary authorities of the disciplinary proceedings in Pennsylvania).<sup>4</sup>

Suspensions are in order when an automobile accident causes a fatal injury. See, e.g., In re Howard, 143 N.J. 526, 533 (1996) (three-month suspension for attorney convicted of death by auto, a third degree crime; 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"); In re Barber, 149 N.J. 74 (1997) (the attorney was suspended for six months after his conviction of vehicular

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<sup>4</sup> The decision, which does not appear in the New Jersey Supreme Court Reports, may be found at 2007 N.J. LEXIS 1064.

homicide when his passenger died in a one-car accident; although the attorney was not convicted of driving while intoxicated, his consumption of alcohol prior to the accident was considered to be an aggravating factor); In re Guzzino, 165 N.J. 24 (2000) (two-year suspension imposed on attorney convicted of second degree manslaughter and driving while intoxicated; the attorney killed a passenger in one of two vehicles that he struck after losing control of his vehicle as the result of driving at a high rate of speed); and In re Saidel, 180 N.J. 359 (2004) (on motion for reciprocal discipline, six-month suspension imposed on attorney convicted of two counts of "endangerment" in Arizona, where he was suspended from the practice of law for six months; the charges were brought against the attorney after he had caused "significant and serious injuries" to the two passengers in his car when, while driving intoxicated and at least thirty miles per hour in excess of the speed limit, he lost control of the car, causing it to flip in the air and crash).

In this case, respondent was so intoxicated that he drove in the wrong direction on the Pennsylvania Turnpike. One of the three passengers he harmed sustained a serious bodily injury (broken femur requiring surgical repair with plates and rods). Like the attorneys in Cardullo and Fedderly, the accident served

as a "wake up" call for respondent, leading him to take a number of steps to combat his alcoholism.

In Cardullo, for example, after the accident, the attorney spent six months in an in-patient alcohol rehabilitation program. She attended out-patient counseling and entered into a recovery plan with the New Jersey Lawyers' Assistance Program.

After his accident, the attorney in Fedderly stopped drinking immediately and enrolled in an out-patient alcohol treatment program. He attended AA meetings. He met with the director of the Lawyers' Assistance Program and continued to attend weekly meetings through the Program. In addition, he expressed remorse to the court, the victims, and to us, appearing to be sincere in his quest to change the direction of his life. So, too, is the case with respondent here.

By all accounts, it appears that respondent finally saw the light after the accident on the Pennsylvania Turnpike. As several witnesses attested, he undertook several measures to combat his alcoholism: entering and completing a "rehab after work" program, attending AA, obtaining an AA sponsor, attending counseling sessions, and entering into and abiding by a voluntary sobriety monitor agreement with the Lawyer's Assistance Committee of the Pennsylvania Bar Association. He

has expressed remorse for his actions. He reports that he has maintained his sobriety for nearly three years and that he has been compliant with the stringent requirements imposed on him by the Supreme Court of Pennsylvania.

Based on precedent, a reprimand is the appropriate measure of discipline to be imposed on respondent for his convictions of assault by auto and driving under the influence. We acknowledge the dissenting members' concern with the fact that respondent was driving the wrong way on the Pennsylvania Turnpike at the time of the accident. While we do not know the circumstances surrounding the motor vehicle accident in Fedderly, all other facts are nearly identical. In both cases, the attorney's blood alcohol levels were .24. In both cases, a passenger in the other vehicle sustained a serious bodily injury. Here, one of the passengers sustained a broken femur that required surgical repair. In Fedderly, one of the passengers sustained a broken ankle, which left her with difficulty in walking and in need of continuing treatment. In both cases, the attorneys had alcohol problems and, in both cases, the attorneys made remarkable attempts at recovery following the accidents.

In our view, precedent clearly calls for the imposition of a suspension only in cases where the accidents result in death

(Howard, Barber, Guzzino, and Saidel) or when the totality of the accident, the injuries, and the attorney's conduct before, during, and after the accident are so egregious that nothing less than a suspension will address the severity of all the circumstances (Toland).

We, therefore, determine to impose a reprimand on respondent, with the condition that he abide by all conditions imposed on him by the Supreme Court of Pennsylvania, supra at 11-13, and provide to the OAE proof of compliance with those conditions for the length of time required by the Pennsylvania Court.

Members Stanton, Wissinger, and Zmirich voted to impose a six-month suspension, retroactive to September 22, 2008, the date of the suspension imposed by the Supreme Court of Pennsylvania.

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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Michael P. Murphy, Jr.  
Docket No. DRB 09-011

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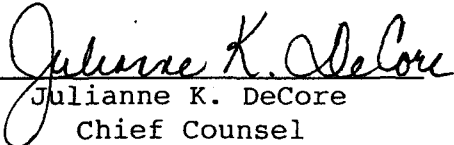
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Argued: May 21, 2009

Decided: July 16, 2009

Disposition: Reprimand

<i>Members</i>	Disbar	Six-month Suspension	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:		3	6			

  
Julianne K. DeCore  
Chief Counsel