SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-114
District Docket No. XIV-2006-0275E

IN THE MATTER OF

THOMAS D. ALLEN, JR.

AN ATTORNEY AT LAW

Decision

Decided: July 8, 2008

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

This matter came before us on a certification of default filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-4(f). The complaint charged respondent with having violated a Supreme Court order, having provided a false certification to the Court, and having practiced while ineligible, violations of RPC 3.4(c), RPC 8.4(c), and RPC 5.5(a), respectively. We determine that respondent should be suspended for six months, with conditions.

Respondent was admitted to the New Jersey bar in 2004, subject to the conditions detailed below. He has no prior discipline. Since September 26, 2005, however, he has been ineligible to practice law for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection ("CPF").

Service of process was proper. On January 16, 2008, the OAE sent a copy of the complaint to respondent's last known home address, 142 Sunrise Drive, North Wales, Pennsylvania 19454, as well as respondent's last known business address, 327 South Alarcon Street, Prescott, Arizona 86303. Both copies were sent by regular and certified mail.

The regular and certified mail sent to the home address were returned as "not deliverable as addressed, unable to forward." The card from the certified mail sent to the business address was returned with an illegible signature. The regular mail was not returned.

On February 15, 2008, the OAE sent a letter to both addresses, informing respondent that, if he did not file an answer within five days of his receipt of the letter, the record would be certified to us for the imposition of discipline.

The certified mail to the home address was returned as "not deliverable as addressed, unable to forward;" the regular mail

was not returned. The certified mail to the business address was returned as "unclaimed;" the regular mail was not returned.

As of the date of the certification of record, respondent had not filed an answer to the complaint.

The facts of this matter are as follows:

On June 29, 2004, the Court adopted the Committee on Character's recommendation that respondent be certified for admission to the New Jersey bar, subject to the following conditions:

> 1. Mr. Allen shall remain abstinent from the use of all intoxicating substances, unless prescribed by a treating physician;
>
> 2. He shall attend a minimum of three AA meetings per week one of which may be LCL, and shall provide verification of his attendance at a minimum of one meeting per week;
>
> 3. He shall maintain a sponsor locally;
>
> 4. Mr. Allen shall not practice as a sole practitioner in the State of New Jersey except under the auspices of a supervising attorney [approved by the Committee on Character] . . . . If he practices as a sole practitioner in New Jersey, he shall cause the supervising attorney to submit the proper verifications quarterly with the Supreme Court by forwarding same to the [Committee on Character].
>
> 5. Mr. Allen shall certify compliance with the above conditions quarterly and shall provide verification of attendance at one meeting per week from a sponsor or other

> person with personal knowledge of his attendance at a weekly meeting.
>
> [CEx.2.][1]

The Court order further provided that the conditions would "remain in effect for two years and until further Order of the Court with the first certifications being due on or before October 1, 2004."

The complaint charged that respondent "violated the conditions of the Court Order requiring him to remain sober." According to the complaint, a review of respondent's records at three rehabilitation facilities disclosed that he had received treatment during the following periods and at the following locations: from early to late March 2005, at Twelve Oaks, in Florida; from December 2005 to February 2006 and from March 2006 to April 2006, at Friary Treatment Center, in Florida; and from April 2006 to approximately November 2006, at Decision Point, in Arizona. Those facilities' records show that respondent abused cocaine, prescription drugs, and alcohol.

The first count of the complaint charged that the above conduct violated RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal).[2]

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[1] "C" denotes the formal ethics complaint.

[2] The more applicable RPC is 8.4(d) (conduct prejudicial to the administration of justice). When respondents violate court orders, we and the Court find that they have violated RPC 8.4(d). The complaint did not charge a violation of that RPC, however.

The second count alleged that respondent falsely certified to the Court, by way of a certification dated January 1, 2005, that he had "remained abstinent from the use of all intoxicants." The second count further alleged that, in a letter to the Court, dated October 21, 2005, respondent misrepresented that, "[t]hroughout this time period, I have remained in compliance with the requirements of the Statewide Panel." In fact, the complaint charged, respondent knew that he had suffered a relapse in February 2005 and March 2005.

The second count charged respondent with having violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The third count alleged that, for a period of two months, respondent practiced law while ineligible for failure to pay the annual attorney assessment to the CPF. Specifically, respondent became ineligible on September 26, 2005. Yet, from August through December 2005, he worked at a law office in Trenton.

The third count charged respondent with having violated RPC 5.5(a).

The complaint contains sufficient facts to support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f).

Respondent was certified for admission to the bar, subject to his continuing abstinence from the use of all intoxicating substances. He was required to attend AA meetings and to certify to the Court, via the Committee on Character, that he was in compliance with the above conditions. The first certification was due on or before October 1, 2004. The conditions were to remain in place for two years.

Respondent did not comply with the conditions. On four occasions, between March 2005 and November 2006, he received treatment for abuse of cocaine and alcohol (as well as prescription drugs) at three facilities. In addition, on January 1, 2005, he falsely certified to the Committee on Character, an arm of the Court, that he had remained abstinent from the use of all intoxicants. Subsequently, in a letter dated October 21, 2005, he misrepresented to the Court that he had "remained in compliance with the requirements of the Statewide Panel." By violating the conditions imposed by the Court and making false certifications to the Court, respondent violated RPC 3.4(c) and RPC 8.4(c).

He also practiced law during a two-month period of ineligibility for failure to pay the CPF assessment, a violation of RPC 5.5(a).

An attorney who, like respondent, violated a Court order requiring that he abstain from using alcohol and other intoxicating substances and that he file quarterly reports for two years, certifying to his sobriety, received a reprimand. In re McLaughlin, Sr., 179 N.J. 314 (2004). Although the attorney did file certifications during the two-year period, he did not file an application to terminate the filing requirement and, therefore, continued to provide the quarterly reports. In the Matter of Michael A. McLaughlin, Sr., DRB 03-236 (December 18, 2003) (slip op. at 2).

Four months after the expiration of the two-year period, the attorney had a one-evening relapse. He was charged with driving while intoxicated ("DWI"). Ibid. Two months later, he filed his first certification after the DWI arrest. The certification stated that he had refrained from the use of alcohol, as ordered by the Court. Ibid.

During his appeal from his DWI conditional guilty plea, the attorney became concerned that the Board of Bar Examiners would learn of his DWI arrest. He, therefore, consulted with an attorney, who reported the matter to the OAE. By way of a disciplinary stipulation, the OAE recommended that the attorney receive a reprimand. Ibid. We and the Court agreed with that measure of discipline. Id. at 4; In re McLaughlin, Sr., supra,

179 N.J. at 314. See also In re Guilday, 134 N.J. 219 (1993) (attorney suspended for six months for failure to disclose on his bar application that, beginning when he was seventeen and until he was twenty-seven, he had been arrested five times for DWI and once for disorderly conduct; the attorney chose to perpetuate his wrongdoing when given an opportunity to rectify it).

More severe consequences have flowed from more egregious conduct. See, e.g., In re Czmus, 170 N.J. 195 (2001) (attorney who surrendered his medical license after being threatened with revocation did not disclose that material fact on his bar application; thereafter the attorney exhibited a pattern of deception by making numerous misrepresentations to the OAE during its investigation and also in his answer to the complaint; the attorney also made misrepresentations to his medical experts about the circumstances surrounding his medical discipline and his bar application; he even lied to his own attorney and to his character witnesses; the attorney refused to accept responsibility for his actions, blaming innocent individuals for the misrepresentations; the attorney's license to practice law was revoked); In re Gouiran, 130 N.J. 96 (1992) (revocation for attorney who knowingly did not fully reply to questions on his bar application regarding the revocation of his

realtor license in New York; the Court ordered that the revocation of the attorney's license to practice law be stayed to allow the attorney, within forty-five days, to apply to the Committee on Character for certification for admission to the bar; the attorney's license was revoked after he failed to make a timely application); In re Scavone, 106 N.J. 542 (1987) (license revoked; the attorney misrepresented on his law school application that he was a member of a minority group, altered his law school grades on his transcript, and falsified his resumé, all to obtain employment; after his law school discovered his improprieties, he was given the option of withdrawing or being expelled; the attorney chose to withdraw and subsequently graduated from another law school; in his certified statement of candidate, he failed to disclose that he had withdrawn from the prior law school under threats of disciplinary charges; the attorney showed no remorse for his misconduct).

Here, to revoke respondent's license would be too draconian because his conduct was not as grievous as that of Czmus, Gouiran, and Scavone. On the other hand, it was more serious than McLaughlin's. Instead of a single relapse and one false certification, as in McLaughlin, respondent breached the Court-imposed conditions from at least February 2005 to November 2006

and filed two false reports with the Court. On four occasions, he received treatment for cocaine and alcohol abuse. Unlike McLaughlin, he did not report his conduct to the OAE. Moreover, he practiced law while ineligible and allowed this matter to proceed to us as a default.

Attorneys who practice law while ineligible ordinarily receive an admonition, if they are unaware of the ineligibility or advance compelling mitigating factors. See, e.g., In the Matter of William C. Brummel, DRB 06-031 (March 21, 2006) (attorney practiced law during a four-month period of ineligibility; the attorney was unaware of his ineligible status); In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004) (attorney practiced law during nineteen-month ineligibility; the attorney did not know that he was ineligible); and In the Matter of Juan A. Lopez, Jr., DRB 03-353 (December 1, 2003) (attorney practiced law while ineligible for nine months; the attorney was not aware that he was ineligible).

If the attorney knows that he or she is ineligible and practices nevertheless, a reprimand is usually imposed. See, e.g., 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) and <u>In re Perrella</u>, 179 <u>N.J.</u> 499 (2004) (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). Here, the complaint does not reveal whether respondent was aware or unaware of his ineligibility, when he practiced for two months. At a minimum, thus, an admonition is appropriate for that infraction alone.

In fashioning the appropriate form of discipline in this case, we considered that, when respondent's conduct is compared to that of McLaughlin, a pattern of violations of the Court-imposed conditions emerges. McLaughlin had one relapse; respondent had multiple. Moreover, twice he falsely represented to the Court that he had complied with the conditions, as opposed to McLaughlin's single misrepresentation; he did not report his conduct to the OAE, unlike McLaughlin; he practiced law while ineligible; and he defaulted in this proceeding. When attorneys default, the quantum of discipline that is appropriate for their transgressions is enhanced to reflect their failure to

cooperate with disciplinary authorities. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6).

Taking into consideration that respondent's violation of the Court's conditions and misrepresentations to the Court were more serious than McLaughlin's, that his conduct was not mitigated by any circumstances, that he practiced law while ineligible and defaulted in this matter, we determine that a six-month suspension is the appropriate quantum of discipline in this case. We also determine that, when respondent applies for reinstatement, he should provide proof of fitness, including proof that he has been sober. After reinstatement and until further order of the Court, he should continue with the treatment sessions ordered by the Court and should file quarterly certifications that he has remained abstinent. Respondent is hereby warned that, should he stray from sobriety again, the consequences could be harsher.

We further determine to require respondent to reimburse the Discipline 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: [signature]
Julianne K. DeCore
Chief Counsel

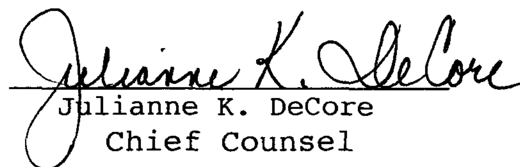
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Thomas D. Allen, Jr.
Docket No. DRB 08-114

Decided: July 8, 2008

Disposition: Six-month suspension

Members	Disbar	Six-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Boylan		X				
Clark		X				
Doremus		X				
Lolla		X				
Stanton		X				
Wissinger		X				
Total:		9				



Julianne K. DeCore
Chief Counsel