

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-295
District Docket No. XIV-02-553E

IN THE MATTER OF
PHILIP J. BATTAGLIA
AN ATTORNEY AT LAW

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Decision

Argued: October 21, 2004

Decided: November 30, 2004

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Frederick J. Dennehy 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 recommendation for discipline filed by the District IIIA Ethics Committee ("DEC"). The complaint charged respondent with violating RPC 3.4(c) (knowingly disobeying an obligation under the rules of a

tribunal), RPC 8.1 [presumably 8.1(b)] (failure to cooperate with disciplinary authorities), RPC 8.4 [presumably 8.4(d)] (conduct prejudicial to the administration of justice), and Rule 1:20-20.

Respondent was admitted to the New Jersey bar in 1981. He was suspended for three months in 1995 for possession of cocaine. In re Battaglia, 139 N.J. 610 (1995). On June 19, 2002, he was temporarily suspended for failure to cooperate with disciplinary authorities. In re Battaglia, 172 N.J. 562 (2002). On April 22, 2004, he was suspended for three months, retroactively to the date of his temporary suspension, June 19, 2002, for failure to promptly pay funds to a third party, practicing law while ineligible, failure to cooperate with disciplinary authorities, and conduct involving dishonesty, fraud, deceit, or misrepresentation. In re Battaglia, 179 N.J. 419 (2004). Although that matter proceeded by way of default, we permitted respondent to submit documents in mitigation. He remains suspended to date.

As mentioned above, on June 19, 2002, respondent was temporarily suspended. As is customary, the suspension order required that respondent comply with Rule 1:20-20. Among other things, that rule requires suspended attorneys to file with the

Office of Attorney Ethics ("OAE"), within thirty days of the prohibition from practice, an affidavit specifying their compliance with the rule and the Court order. Respondent failed to timely file the affidavit of compliance.

On March 28, 2003, the OAE requested, in writing, that respondent submit the affidavit of compliance by April 17, 2003. Prior to the filing of the complaint, respondent failed to submit the required affidavit or to otherwise communicate with the OAE.

In his answer, respondent admitted the allegations of the complaint. He also asserted that his "compulsive drinking and the psychological problems connected to that drinking were the primary causative factors of the events referenced in the complaint." Along with his answer, respondent submitted the overdue affidavit of compliance.

According to respondent, as of the date of his temporary suspension, he had only two clients. He was in court representing one of them when the judge received a "fax" informing him of respondent's suspension. After the judge showed him the "fax" and continued the hearing, respondent immediately notified that client of his suspension. On July 15, 2003, he

disclosed his suspension to his other client and the judge hearing that case.

Respondent testified that he suffers from alcoholism, attends Alcoholics Anonymous meetings, and is being treated by a physician.

The DEC found that respondent violated RPC 3.4(c), RPC 8.1, RPC 8.4(d), and Rule 1:20-20. The DEC recommended that respondent's suspension since June 19, 2002 be "deemed, retroactively, to constitute full and sufficient penalty for the violations charged and proven against him" and that reinstatement be conditioned on continued treatment for substance abuse.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence. By Supreme Court order dated June 19, 2002, respondent was temporarily suspended. The order required him to comply with Rule 1:20-20, governing future activities of suspended or disbarred attorneys. Pursuant to Rule 1:20-20(b)(15), within thirty days after the date of the attorney's prohibition from practice, the attorney is required to file with the OAE a detailed affidavit specifying how the attorney has complied with each of the provisions of the rule. Failure to file the affidavit within the prescribed time shall

preclude our consideration of an application for reinstatement for a period of three months from the filing date of the affidavit. Rule 1:20-20(b)(15) and Rule 1:20-21(i)(A).¹

Respondent admitted that he did not file the affidavit of compliance, thus failing to comply with Rule 1:20-20, in violation of RPC 8.1(b) and RPC 8.4(d). Because RPC 3.4(c) does not apply, we dismiss that charge.

The remaining issue is the quantum of discipline to be imposed. In similar cases, the OAE has asserted that, presumptively, a reprimand is the appropriate sanction for attorneys who fail to file an affidavit in compliance with Rule 1:20-20, subject to individual assessments of aggravating and mitigating factors. In this case, respondent's counsel urged the hearing panel to recommend either a reprimand or a short suspension, retroactive to the date of the temporary suspension. The OAE did not oppose respondent's request that the suspension take effect as of the date of the temporary suspension.

In several recent cases, the Court has imposed discipline based solely on an attorney's failure to comply with Rule 1:20-20. In In re Girdler, 179 N.J. 227 (2004), a three-month

¹ Effective September 1, 2004, the rule provides for a six-month period.

suspension was imposed on an attorney whose prior disciplinary history included a private reprimand, a public reprimand, and a three-month suspension. In In re Mandle, 180 N.J. 158 (2004), the Court imposed a one-year suspension. In a six-year span, Mandle received three reprimands, a temporary suspension for failure to comply with an order requiring that he practice under a proctor's supervision, and two three-month suspensions. In three of those matters, he failed to cooperate with disciplinary authorities. The Court also imposed a one-year suspension on the attorney in In re King, ___ N.J. ___ (2004), 2004 WL 2377143. In that case, the attorney had an extensive disciplinary history, including a reprimand, a temporary suspension for failure to return an unearned retainer, a three-month suspension in a default matter, and a one-year suspension. The attorney had remained suspended since 1998, the date of the temporary suspension. In In re Moore, 181 N.J. 335 (2004), a default matter, an attorney whose disciplinary history included a one-year suspension received a reprimand. Finally, in In re Raines, ___ N.J. ___ (2004), the Court imposed a three-month suspension on an attorney whose disciplinary history included a private reprimand, a three-month suspension, a six-month suspension, and

a temporary suspension for failure to comply with a previous Court order.

Here, respondent's ethics history includes two concurrent three-month suspensions and a temporary suspension. Unlike Girdler, Mandle, King, and Moore, who defaulted, respondent filed an answer to the complaint and participated in the hearing. In addition, respondent has made substantial efforts toward alcohol rehabilitation. Although not a defense, recovery or rehabilitation from alcoholism is recognized as a mitigating factor in disciplinary cases. See, e.g., In re Gillespie, 124 N.J. 81, 87 (1991); In re Willis, 114 N.J. 42, 47 (1989).

Attorneys who file late affidavits receive an indirect suspension because they are precluded from seeking reinstatement for three months, or as noted earlier - effective September 1, 2004 - for six months, from the date that the affidavit is filed. Respondent filed the affidavit in December 2003, making him eligible to seek reinstatement in March 2004.

In our view, a three-month suspension, retroactive to December 18, 2003, the date that respondent filed the affidavit of compliance, is the appropriate sanction. We so vote. Before he is reinstated, respondent must demonstrate proof of fitness to practice law, as attested to by a mental health professional

approved by the OAE. In addition, he must demonstrate that he is receiving continued treatment for alcoholism. Vice-Chair William J. O'Shaughnessy, Esq. and Members Matthew P. Boylan, Esq. and Barbara F. Schwartz did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

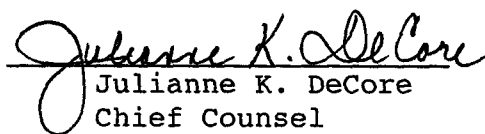
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Disposition: Three-month suspension

Members	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley	X				
O'Shaughnessy					X
Boylan					X
Holmes	X				
Lolla	X				
Pashman	X				
Schwartz					X
Stanton	X				
Wissinger	X				
Total:	6				3


Julianne K. DeCore
Chief Counsel