

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-078

IN THE MATTER OF
CHARLES H. McAULIFFE
AN ATTORNEY AT LAW

Decision

Argued: July 19, 2001

Decided: October 16, 2001

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

Keith L. Flicker 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 based on a motion for final discipline filed by the Office of Attorney Ethics (“OAE”), based upon respondent’s guilty plea to a one-count accusation charging him with third degree conspiracy to possess a controlled dangerous substance, Tylenol with Codeine, in violation of N.J.S.A. 2C:5-2 and N.J.S.A. 2C:35-10a(1).

Respondent was admitted to the New Jersey bar in 1969. He is general counsel to a Florida company that manufactures and sells siding products. He has no disciplinary history.

On July 21, 2000, respondent pleaded guilty to an accusation that charged that, between August and November 1997, he obtained Tylenol with Codeine in amounts in excess of the amounts authorized on the prescriptions. Although respondent had legitimate prescriptions for the medication, he arranged with a pharmacist he knew to obtain additional pills "as a matter of convenience" so that he did not have to visit his doctors or the pharmacy as often as he otherwise would.

Since at least 1990, respondent has suffered from gastroesophageal reflux defect, recurrent episodes of pneumonia and respiratory distress. He has undergone four surgeries and numerous prolonged hospitalizations. At one time, he spent four weeks in an intensive care unit. On another occasion, he was in the hospital for sixty-eight days. Both John Edoga, M.D., respondent's surgeon, and Harvey Gerhard, M.D., respondent's pulmonary specialist, agreed that respondent required pain medication. In his July 2000 letter, Dr. Edoga stated that respondent "did have and does continue to have a tremendous amount of pain related to his primary illness and complications thereof and the various operations he has had to undergo to correct these problems." Dr. Gerhard agreed that respondent "has had a real and continuing pain syndrome," which required medication. According to Dr. Gerhard, respondent required pain medication in order to "maintain his daily activities and gainful employment." Both physicians stated that respondent has also received treatment at a pain management center.

In May 1999, Dr. Gerhard referred respondent to a psychiatrist, Clifford A. Taylor, M.D. Respondent's presenting symptoms were "depressed affect, anergy, decreased initiative and capacity to maintain effort, and significant demoralization secondary to a chronic pain syndrome." Dr. Taylor prescribed antidepressant medication. According to Dr. Taylor, respondent's "use of analgesic narcotics was for real and significant continuing pain...and not for pleasurable manipulation of his affect and mood."

Respondent was sentenced to one year's probation.

* * *

The OAE urged that we suspend respondent for three months. Respondent argued that an admonition or a reprimand was adequate discipline.

* * *

Upon a review of the full record, we determined to grant the OAE's Motion for Final Discipline.

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's conviction established a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). The sole issue to be determined is the

quantum of discipline to be imposed. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The level of discipline imposed in disciplinary matters involving the commission of a crime depends on numerous factors, including the “nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent’s reputation, his prior trustworthy conduct, and general good conduct.” In re Lunetta, supra, 118 N.J. at 445-46. That respondent’s offense does not relate directly to the practice of law does not negate the need for discipline. Even a minor violation of the law tends to lessen public confidence in the legal profession as a whole. In re Addonizio, 95 N.J. 121, 124 (1984).

In In re Zem, 142 N.J. 638 (1995), the Court reprimanded an attorney for violating RPC 8.4(b). Like respondent, Zem had been charged with conspiracy to possess a controlled dangerous substance. In Zem’s case, however, the substance was cocaine. The charges were dismissed after Zem successfully completed the Pre-Trial Intervention Program (“PTI”). Zem had used cocaine for only a limited time, when she was having difficulty coping with the deaths of her mother and brother. In our decision recommending that Zem receive a three-month suspended suspension, we recognized that possession of small amounts of cocaine, absent aggravating circumstances, usually warranted a three-month suspension. However, we recommended that the suspension be suspended due to the unique circumstances, namely, the tragic reasons for her brief period of drug use, her successful

completion of PTI, the lack of any need for rehabilitation, her genuine remorse, her efforts to put her life back on track and her inability to avail herself of an accelerated suspension procedure instituted subsequent to Zem's case. Instead, the Court determined to impose a reprimand. Many of the mitigating circumstances found in Zem are equally applicable to respondent. We also considered that respondent had legitimate prescriptions for the medication, medication that he needed in order to perform his daily activities and that the additional pills that he obtained were for his personal use. Finally, we took into account that respondent has enjoyed a previously unblemished thirty-year legal career.

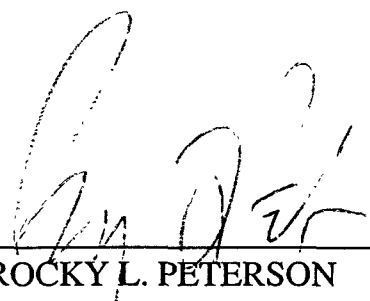
In light of the above circumstances, we were convinced that a reprimand sufficiently addresses both the goal of the disciplinary system – to protect the public – and the nature of respondent's offense. Therefore, we unanimously determined to reprimand respondent. Two members did not participate.

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

Dated: _____

Oct 11e 2001

By: _____



ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY


**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Charles H. McAuliffe
Docket No. DRB 01-078**

Decided: October 16, 2001

Disposition: reprimand

| Members | Disbar | Three-month suspension | Reprimand | Admonition | Dismiss | Disqualified | Did not participate |
|----------------------|--------|------------------------|-----------|------------|---------|--------------|---------------------|
| Peterson | | | X | | | | |
| Maudsley | | | X | | | | |
| Boylan | | | X | | | | |
| Brody | | | X | | | | |
| Lolla | | | | | | | X |
| O'Shaughnessy | | | X | | | | |
| Pashman | | | X | | | | |
| Schwartz | | | | | | | X |
| Wissinger | | | X | | | | |
| Total: | | | 7 | | | | 2 |

 12/6/01
Robyn M. Hill
Chief Counsel