

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-301
District Docket No. XIV-03-495E

IN THE MATTER OF
LARRY J. McCLURE
AN ATTORNEY AT LAW

:
:
:
:
:
:
:

Decision
Default [R.1:20-4(f)]

Decided: November 22, 2004

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

Pursuant to R. 1:20-4(f), the Office of Attorney Ethics
("OAE") certified the record in this matter directly to us for
the imposition of discipline, following respondent's failure to
file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1971. He
previously maintained a law office in Hackensack, New Jersey,
but has been suspended since May 21, 2003.

In February 1999, respondent consented to an admonition for
conduct that included gross neglect, lack of diligence, failure
to communicate with a client, and failure to prepare a retainer

agreement. In the Matter of Larry J. McClure, Docket No. DRB 98-430 (February 22, 1999). He received a six-month suspension in 2003, effective May 21, 2003, for gross neglect, lack of diligence, failure to communicate with a client, failure to explain a matter to the client to the extent necessary to permit the client to make informed decisions about the representation, failure to communicate the basis or rate of the fee in writing, and misrepresentation. In re McClure, 176 N.J. 121 (2003). In 2004, respondent received a concurrent six-month suspension in a default matter that included gross neglect, pattern of neglect, lack of diligence, failure to communicate with a client, and failure to provide the client with a written retainer agreement. In re McClure, 180 N.J. 154 (2004). At that time, the Court also ordered that respondent remain suspended until the conclusion of all ethics matters pending against him as of March 10, 2004.

On May 17, 2004, the OAE mailed a copy of the complaint to respondent's last known address listed in the records of the New Jersey Lawyers' Fund for Client Protection, by regular and certified mail, return receipt requested. The certified mail was returned marked "unclaimed." The regular mail was not returned.

On May 21, 2004, respondent's wife informed the OAE that respondent was receiving in-patient therapy for an alcohol problem. As a result, by letter dated May 25, 2004, the OAE

extended to July 12, 2004, the time for respondent to file an answer to the complaint, and requested that respondent submit a letter from the treatment facility confirming his treatment. Respondent did not reply to the letter.

On July 13, 2004, the OAE sent respondent a second letter, by regular and certified mail, return receipt requested, informing him that, if he did not file an answer to the complaint within five days, the allegations of the complaint would be deemed admitted and the record would be certified directly to us for the imposition of sanction. The certified mail receipt was returned, signed by respondent on July 16, 2004. The regular mail was not returned. As of the date of the certification of the record, August 16, 2004, respondent had not filed an answer.

The complaint charged respondent with violations of RPC 8.1(b) (failing to respond to a lawful demand for information from a disciplinary authority) and RPC 8.4(d) (conduct prejudicial to the administration of justice) for failure to comply with R. 1:20-20.

As noted earlier by order dated April 24, 2003, the Court suspended respondent from the practice of law for six months, effective May 21, 2003.

Pursuant to the Court's order, respondent was directed to comply with R. 1:20-20, which requires, among other things, that an attorney "... within 30 days after the date of the attorney's prohibition from practice file with the [OAE] Director a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order." Respondent failed to comply with the Court's directive.

By letter dated August 22, 2003, the OAE wrote to respondent at his home address, by regular and certified mail, advising him of his responsibility to file the affidavit in compliance with R. 1:20-20, and requesting a reply by September 5, 2003. A certified mail receipt was returned to the OAE, signed by respondent on September 2, 2003. Respondent neither answered the letter nor filed the required affidavit.

On September 8 and December 2, 2003, the OAE sent the same letter to respondent by regular and certified mail, return receipt requested, marked "second request" and "third request," respectively. Both certified mail receipts were returned to the OAE, signed by respondent, indicating delivery on September 11, 2003 and December 5, 2003. Nevertheless, respondent did not file the required affidavit.

On January 8, 2004, the OAE called on respondent at his place of employment, which is unrelated to the practice of law. At that time, respondent informed the OAE that he would complete the affidavit within the week. He did not submit the affidavit. Therefore, the OAE telephoned respondent on February 11, 2004, at which time he stated that the affidavit would be filed by the end of the week.

When respondent again failed to file the affidavit, the OAE visited him once more at his place of employment. As before, respondent informed the OAE that the affidavit would be filed by the end of the week. As of the date of the complaint, May 14, 2004, respondent had not filed the affidavit.

As a result of the foregoing, the complaint charged that respondent willfully violated the Supreme Court's order and failed to take steps required of all suspended or disbarred attorneys, which included notifying clients and adversaries of the suspension and returning files to the clients.

The OAE memorandum to us, requesting the imposition of a three-month suspension, highlighted the following aggravating factors: (1) prior to filing the complaint, the OAE contacted respondent by mail, telephone, and in person to urge him to file the required affidavit; despite respondent's assurances that he would file the required document, he failed to do so; (2)

respondent was given an extension of time to file an answer to the complaint but failed to do so, thereby causing the matter to proceed on a default basis; and (3) respondent has a significant disciplinary history.

Service of process was properly made in this matter. The complaint contains sufficient facts to support a finding of unethical conduct. Because of respondent's failure to file an answer to the complaint, the allegations are deemed admitted. R. 1:20-4(f).

The complaint charged that respondent willfully violated the Court's order, thereby violating RPC 8.1(b) and RPC 8.4(d). We find that the facts alleged support a finding of these violations. The only issue for determination is the proper discipline to impose.

Recent cases that involve the failure to file affidavits in compliance with R. 1:20-20 are instructive. The court imposed a one-year suspension in In re King, ___ N.J. ___ (2004). 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 Mandle, 180 N.J. 158 (2004), the Court

imposed a one-year suspension where the attorney's ethics history included 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 the matters, the attorney failed to cooperate with disciplinary authorities. In In re Raines, ___ N.J. ___ (2004), the Court imposed a three-month suspension where the attorney's 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. The attorney in In re Girdler, 179 N.J. 227 (2004), also received a three-month suspension. His ethics history included a private reprimand, a public reprimand, and a three-month suspension. The three-month suspension had also proceeded as a default. Finally, in In re Moore, 181 N.J. 335 (2004), a default matter, where the attorney's disciplinary history included a one-year suspension, the Court imposed only a reprimand.

In this matter, respondent has a prior admonition and two concurrent six-month suspensions, one of which was before us as a default. In light of respondent's ethics history and the need for progressive discipline, particularly in default cases, we determine that a one-year suspension appropriately addresses respondent's conduct. Vice-Chair William J. O'Shaughnessy, Esq.

and Members Matthew P. Boylan, Esq. and Barbara Schwartz did not participate.

We also require that, prior to reinstatement, respondent provide proof of fitness to practice law, as attested by a mental health professional approved by the Office of Attorney Ethics.

We further determine to 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

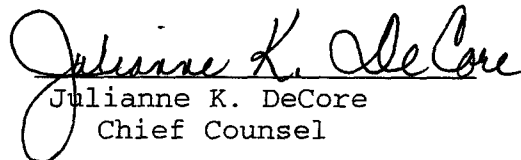
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Larry J. McClure
Docket No. DRB 04-301

Decided: November 22, 2004

Disposition: One-year suspension

Members	One-year Suspension	Reprimand	Admonition	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