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OF THE

SUPREME COURT OF NEW JERSEY

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March 24, 2017

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of Andrew T. McDonald**
Docket No. DRB 17-012
District Docket Nos. XIV-2016-0149E;
XIV-2016-0150E; XIV-2016-0151E;
XIV-2016-0152E; XIV-2016-0153E;
and XIV-2016-0154E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (censure to a short-term suspension, or such lesser discipline as the Board may deem appropriate), filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a censure is the appropriate measure of discipline for respondent's misconduct.

This matter originally was before the Board on motion for discipline by consent (reprimand). On March 21, 2016, the Board denied the motion and remanded the matter because the stipulation lacked sufficient detail and did not provide for an appropriate range of discipline or the imposition of necessary conditions.

The revised stipulation establishes that, between May and November 2014, respondent engaged in misconduct in six client matters.

In the Wall Township matter (XIV-2016-0152), on May 20, 2014, after consuming alcohol, respondent appeared in the conference room

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of Wall Township Municipal Court with three of his clients. Another attorney in the room suspected that respondent was intoxicated and alerted the municipal prosecutor that respondent should not be permitted to appear before the judge in that condition. The prosecutor spoke with respondent, who acknowledged that he had consumed alcohol after an eight-month period of sobriety, and that he was dressed inappropriately for a court appearance, with a jacket but no necktie. All three of respondent's cases were adjourned that day. Respondent conceded that his conduct in the courthouse violated RPC 3.2 (failure to treat others involved in the legal process with courtesy and consideration), and RPC 8.4(d) (conduct prejudicial to the administration of justice). The Board so found.

In the Ocean County I matter (XIV-2016-0151E), on September 11, 2014, respondent appeared in Lakewood Municipal court for the continuance of a trial, but was also scheduled to appear that day in the Superior Court of New Jersey, Ocean County, before the Honorable Melanie S. Appleby, J.S.C. Respondent was ineligible to practice law on that date, having been so declared by Court Order dated August 24, 2014, for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). Respondent never requested an adjournment of the Ocean County matter and failed to appear before Judge Appleby. Later that day, he was disrespectful in a telephone conversation with a probation officer regarding his absence, telling the officer that he was "full of s**t," before abruptly terminating the call. Respondent stipulated that his conduct constituted a violation of RPC 3.2, RPC 5.5(a)(1) (practicing law while ineligible), and RPC 8.4(d). The Board so found.

In the Lakewood Township matter (XIV-2016-0149E), on October 2, 2014, respondent appeared for a client in Lakewood Township Municipal Court, before the Honorable Scott J. Basen, J.M.C. At the time, respondent was on the CPF list of ineligible attorneys for his failure to pay the annual attorney assessment. Although respondent stipulated that, by his conduct, he violated RPC 3.2, RPC 5.5(a)(1), and RPC 8.4(d), the stipulation contained no facts to support the RPC 8.4(d) charge. Thus, the Board dismissed that charge, but found that respondent violated RPC 3.2 and RPC 5.5(a)(1).

In the Ocean County II matter (XIV-2016-0150E), on October 9, 2014, respondent appeared before Judge Appleby in the Superior Court, Ocean County, after having consumed alcohol. In a conference room adjacent to the courtroom, he directed profanities to other

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attorneys gathered there, including "Who the f**k are you," and "Don't f**k with me." In court before Judge Appleby, and while wearing sunglasses, respondent explained that he had "his lights knocked out" the previous evening. After the judge left the bench, respondent told the prosecutor that he was "going to the press" about his treatment that day, turning to the other attorneys in the courtroom and addressing them in a vulgar manner. Respondent stipulated that his actions violated RPC 3.2 and RPC 8.4(d) and the Board so found.

In the D'Heron matter (XIV-2016-0154), respondent had been retained in a family matter to oppose a motion and to prepare and file a cross-motion against his client's husband. Respondent failed to complete the cross-motion and, further, failed to promptly respond to his client's inquiries regarding the matter. On July 5, 2014, while the motion was pending, respondent appeared at the client's home, uninvited and intoxicated, and asked to be let in to use her bathroom. Once inside, distraught over an unrelated situation with his fiancée, respondent proceeded to cut his wrists, after which he was rushed to the hospital. Respondent stipulated that he violated RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to promptly respond to reasonable requests for information), and RPC 1.16(a)(2) (failure to terminate the representation when his physical or mental condition materially impaired his ability to represent the client). The Board so found.

In the Middlesex County matter (XIV-2014-0153E), on November 10, 2014, respondent appeared before the Honorable James F. Mulvihill, J.S.C. The stipulation reveals neither the client's name nor the type of case. During that appearance, respondent told the judge, "This man has been in jail, civilly committed, for 10 years for no f**king reason," as well as, "But to give a man 10 years back of his life, f**king pi**es me off." The Board found that, as stipulated, respondent's actions were in violation of RPC 3.2 and RPC 8.4d).

Finally, sometime in 2014, respondent hired a nonlawyer paralegal, Jonathan Phillips. In addition to his paralegal work, Phillips answered telephones and provided respondent with transportation. By that time, respondent had recognized his alcohol addiction and was having difficulty keeping the practice afloat while "working on his sobriety." In an apparent exchange for Phillips' assistance, respondent agreed to give him a forty-percent financial interest in the law firm. The stipulation is silent about any actual value that Phillips may have realized as a result of their agreement.

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At about that same time, respondent's former fiancée obtained a restraining order against him. On September 9, 2015, respondent violated the restraining order by knocking on the door of the woman's residence in an attempt to retrieve his personal belongings, after telephone calls to her for that purpose proved unsuccessful. Respondent stipulated that his actions violated RPC 3.4(c) (disobeying an obligation under the rules of a tribunal), RPC 5.4(b) (improper law partnership with a nonlawyer), and RPC 8.4(d). The Board so found.

Respondent's most serious and pervasive conduct was his disruptive, discourteous, and belligerent conduct in courthouses. Respondent's actions prejudiced the administration of justice on several occasions between May and November 2014. During those appearances, respondent was inebriated, and directed profanities at judges and fellow attorneys in courtrooms and adjacent areas. In three instances, adjournments were required because of respondent's behavior in court.

In In re Geller, 177 N.J. 505 (2003), a reprimand was imposed on an attorney who filed baseless motions accusing two judges of bias against him. The attorney failed to expedite litigation and to treat others with courtesy, including judges, using profanity to characterize one judge's orders and, in a deposition, referring to two judges as "corrupt," while labeling one of them "short, ugly and insecure," his adversary a "thief," the opposing party a "moron" who "lies like a rug," and an unrelated litigant as "that character who was in the courtroom this morning to see a psychologist." Geller also failed to comply with court orders, at times defiantly, and did so despite a special ethics master's direction not to contact one judge. Geller used means intended to delay, embarrass, or burden third parties, made serious charges against the two judges without any reasonable basis, and made a discriminatory remark about one judge. He also titled a certification filed with the court "Fraud in Freehold." In mitigation, Geller's conduct occurred in the course of his own, highly charged, child-custody case. In addition, he had an unblemished twenty-two-year career, had been held in high regard personally and professionally, was involved in legal and community activities, and taught business law. He was found guilty of having violated RPC 3.1, RPC 3.4(c), RPC 4.4, RPC 8.2(a), RPC 8.4(d), and RPC 8.4(g).

In In re Pribula, 224 N.J. 264 (2016), the attorney received a censure, albeit in a default matter, for conduct similar to respondent's. Pribula was found guilty of failure to communicate

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with clients, failure to withdraw from the representation when the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client, and failure to obey a court order, among other violations. Like Geller, Pribula had no prior discipline. Pribula's sanction was enhanced from a reprimand to a censure based on the default nature of the proceeding.

The Board found respondent's wrongdoing to be similar to that of the attorneys in the above cases, but somewhat more serious. Specifically, respondent engaged in a pattern of misbehavior in six matters, including engaging in a pattern of mistreatment, as opposed to Geller and Pribula, whose actions were limited to a single case.

The Board also considered respondent's significant mitigation. Specifically, respondent: (1) has no prior discipline;¹ (2) cooperated with the OAE, stipulating his misconduct, and saving disciplinary resources; (3) engaged in all but one of these acts within a sixth-month period in 2014; and (4) has completed a thirty-two day inpatient program, resides in a Transitional Sober Living Community in Louisiana, and continues to attend an intensive outpatient program in Baton Rouge.

Given respondent's obvious efforts to turn his life around after what appears to have been a fairly brief, six-month episode, as well as the lack of any prior discipline in seventeen years at the bar, the Board determined that a censure adequately protects the public.

Furthermore, respondent stipulated, and the Board requires, that he submit proof of fitness to practice law by a qualified medical doctor, and proof of attendance in an alcohol cessation program such as Alcoholics Anonymous, for the later of two years or until released from the obligation by the Court.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated January 11, 2017.
2. Stipulation of discipline by consent, dated January 10, 2017.
3. Affidavit of consent, dated January 5, 2017.

¹ Respondent, however, is currently temporarily suspended, based on non-compliance with a fee arbitration determination. In re McDonald, 223 N.J. 559 (2015).

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4. Ethics history, dated March 24, 2017.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/paa

c: w/o enclosures

Bonnie C. Frost, Chair (via e-mail)

Disciplinary Review Board

Charles Centinaro, Director (via e-mail)

Office of Attorney Ethics

Christina Blunda Kennedy, Deputy Ethics Counsel

Office of Attorney Ethics

Andrew T. McDonald, Respondent (via e-mail)