

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-044
District Docket No. XIV-2023-0097E

In the Matter of Toshisada Onishi
An Attorney at Law

Decided
August 19, 2024

Certification of the Record

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Introduction

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).¹

For the reasons set forth below, we determine that a three-month suspension, with conditions, is the appropriate quantum of discipline for respondent's misconduct.

Ethics History

Respondent earned conditional admission to the New Jersey bar in 2017. According to the Court's Central Attorney Management System (CAMS), during the relevant timeframe, he maintained a practice of law in Harrison, New

¹ Due to respondent's failure to file an answer to the formal ethics complaint, and on notice to him, the OAE amended the complaint to include the second RPC 8.1(b) charge.

Jersey. However, it is unclear from the record before us whether respondent actively engaged in the practice of law.

Effective October 17, 2022, the Court declared respondent administratively ineligible to practice law for failing to comply with continuing legal education (CLE) requirements.

Effective June 24, 2024, the Court declared respondent administratively ineligible to practice law for failing to pay the required annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF), as R. 1:28A-2(b) requires.

To date, respondent has not cured his CLE or CPF deficiencies and, thus, remains ineligible to practice law on both bases.

Service of Process

Service of process was proper.

On November 15, 2023, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record, with another copy sent via electronic mail, to his e-mail address of record. The certified mail was returned to the OAE marked "Moved" and the regular mail was returned marked "Unable to Forward." The e-mail was delivered

successfully, although no delivery notification was sent by the destination server.

One month later, on December 15, 2023, the OAE sent a second letter to respondent's home address of record, by regular mail, and to his e-mail address of record, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The regular mail was returned to the OAE noting a forwarding address for respondent located in Virginia.² The e-mail was delivered successfully.

On January 4, 2024, the OAE sent an additional copy of the formal ethics complaint, by certified and regular mail, to respondent's Virginia address, and by electronic mail, to his e-mail address of record. The certified mail was returned, unclaimed, to the OAE, the regular mail was not returned, and the electronic mail was delivered successfully.

² New Jersey attorneys have an affirmative obligation to inform both the CPF and the OAE of changes to their home and primary law office addresses, "either prior to such change or within thirty days thereafter." R. 1:20-1(c). As of the date of our decision in this matter, respondent's billing and home address of record, as reflected in CAMS, remains the same Harrison, New Jersey address.

On February 6, 2024, the OAE sent an additional letter to respondent's Virginia address, by certified and regular mail, and to his e-mail address of record, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The certified mail was returned to the OAE, marked "Unable to Forward." The regular mail was not returned to the OAE, and the electronic mail was delivered successfully.

Thereafter, between February 9 and 12, 2024, the New Jersey Law Journal and The Record-Herald published, in their respective newspapers, the OAE's public notice informing respondent that a formal ethics complaint had been filed against him. The notices informed respondent that, unless he filed a verified answer to the complaint within twenty-one days, the allegations of the complaint would be deemed admitted and the record would be certified to us for the imposition of discipline.

As of March 4, 2024, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

On April 1, 2024, Chief Counsel to the Board sent respondent a letter, by certified and regular mail, to his home address of record, with another copy sent via electronic mail, to his e-mail address of record, informing him that this matter was scheduled before us on May 24, 2024, and that any motion to vacate the default must be filed by April 22, 2024. According to the United States Postal Service (the USPS) tracking system, the certified mail was delivered on April 22, 2024. The regular mail was returned to the Office of Board Counsel (the OBC), marked “FORWARD TIME EXP RTN TO SEND[ER].” The electronic mail was delivered.

Moreover, on March 28, 2024, the Office of Board Counsel (the OBC) published a notice in the New Jersey Law Journal, stating that we would consider this matter on May 24, 2024. The notice informed respondent that, unless he filed a successful motion to vacate the default by April 22, 2024, his prior failure to answer would remain deemed an admission of the allegations of the complaint.

On April 18, 2024, after the April 1, 2024 scheduling letter was returned to the OBC noting respondent’s Virginia forwarding address, Chief Counsel to the Board sent respondent another letter, by certified and regular mail, to his Virginia address, with an additional copy via e-mail, informing him that this

matter remained scheduled before us on May 24, 2024, but allowing him until May 1, 2024, to file a motion to vacate the default.

Respondent did not file a motion to vacate the default.

Facts

We now turn to the allegations of the complaint.

In July 2015, respondent passed the New Jersey Bar Examination. Approximately one-and-a-half years later, in March 2017, the Supreme Court Committee on Character (the COC) conducted a hearing concerning respondent's fitness to practice law, pursuant to Regulation 303 of the Regulations Governing the Committee on Character (RG 303).³ Following the hearing, on August 25, 2017, the COC and respondent executed a stipulation recommending to the Court that he be conditionally admitted to the New Jersey bar for at least two years, and until further Order of the Court. Pursuant to the stipulation, respondent agreed to the following enumerated conditions on his bar admission.

³ RG 401:1 provides, in relevant part, that all COC records are confidential and shall not be disclosed unless we or the OAE requests such records "in connection with the consideration and determination of the appropriate sanctions that should be imposed on an attorney who has engaged in unethical conduct."

First, respondent agreed that he would not engage in the solo practice of law or become a partner “in any law practice.” Additionally, any attorney that respondent “associate[d]” with must have been admitted to the practice of law “for a minimum . . . of five years to ensure that [respondent] ha[d] the guidance of a more seasoned attorney.”

Second, respondent agreed that, within two years of his conditional bar admission, he would not only attend a trust accounting and recordkeeping course, but also complete six additional CLE credit hours, pre-approved by the COC, focusing on “honesty in the profession,” including the “ethical requirements relating to the production of evidence and candor with the tribunal.”

Third, respondent agreed to continue his “counseling/therapy” and participate in two sessions per month with a counselor or therapist approved by the COC. Respondent further agreed that his counselor or therapist would provide the COC independent verification of his continued attendance at counseling and would notify the COC of any non-compliance.

Fourth, respondent agreed to certify his compliance with the foregoing conditions to the COC, on a quarterly basis. As part of his quarterly certification, respondent agreed to verify his employment and provide proof his attendance at

the relevant CLE classes. Respondent also agreed to notify the COC, within thirty days, of any change in employment or “violation of any law.”

Respondent agreed that his conditions would remain in effect for at least two years, “until sufficient rehabilitation [was] demonstrated,” and until further Order of the Court following his petition to terminate the conditions. Respondent also acknowledged that his failure to comply with his conditions could result “in a referral of the matter to the [OAE] for possible disciplinary action.”

On August 31, 2017, the Court issued an Order granting respondent conditional admission to the New Jersey bar, subject to the conditions detailed above. The Court Order also required respondent to submit his first quarterly certification of compliance by November 1, 2017.

On December 7, 2021, approximately four years after granting his conditional admission, the Court denied respondent’s motion to terminate the conditions of his admission to the New Jersey bar.⁴ In its Order denying the motion, the Court required that respondent’s conditions continue for at least another two-year period, “until sufficient rehabilitation [was] demonstrated,” and until further Order of the Court.

⁴ The content of respondent’s motion to terminate his conditions is not set forth in the record before us.

Eight months later, on July 19, 2022, the Court denied respondent's motion for reconsideration of its December 7, 2021 Order. In denying the motion, the Court found that respondent had "failed to comply with the conditions imposed on his license, including the requirement that he file certifications attesting to his compliance with the enumerated conditions, among which is the requirement that he continue counseling[/]therapy and provide independent verification of continued counseling/therapy." The Court also required respondent to fully comply with the conditions of his bar admission within thirty days. Additionally, the Court stated that it would provide no extensions or "other forms of relief in connection with the requirement" that respondent comply with his bar admission conditions. If respondent failed to demonstrate such compliance, the Court cautioned that his license would be suspended pending further Order of the Court and that the matter would be referred to the OAE for investigation.

Respondent failed to comply with the Court's directive to adhere to his bar admission conditions. Further, on February 18, 2023, the Court Clerk's Office notified respondent that the Court would take "no action" on his procedurally improper request to seek reconsideration of the Court's July 19, 2022 Order. The Clerk's Office further informed respondent that it would not

accept “repetitive motions for reconsideration of prior orders” and reminded him of his continuing obligation to comply with the conditions of his admission.

One month later, on March 10, 2023, the OAE sent respondent a letter, via certified, regular, and electronic mail, enclosing a copy of a referral made by the Clerk’s Office based upon his failure to comply with his Court-ordered bar admission conditions. The OAE directed that respondent provide a written reply to the referral by March 27, 2023. Later that same date, respondent sent the OAE a reply e-mail, confirming his receipt of the letter and claiming that he would “respond . . . as soon as possible.” Respondent, however, failed to submit the written reply.

Consequently, on April 12, 2023, the OAE sent respondent a second letter, via certified, regular, and electronic mail, (1) informing him that his reply to the Clerk’s Office’s referral was “outstanding and due immediately,” (2) requiring that he appear for a virtual demand interview on May 3, 2023, and (3) warning him that his failure to cooperate could subject him to discipline for violating RPC 8.1(b). The certified mail was delivered successfully, and the regular and electronic mail were not returned. Respondent, however, failed to reply to the OAE’s correspondence or to appear for the scheduled demand interview.

On May 3, 2023, following his failure to appear for the demand interview, the OAE sent respondent an additional letter, via certified, regular, and

electronic mail, advising him of his ongoing failure to cooperate and requiring that he appear for a virtual demand interview on May 25, 2023. The OAE also notified respondent that his continued failure to cooperate could result in his temporary suspension, pursuant to R. 1:20-3(g) and R. 1:20-11. The certified mail was delivered successfully, and the regular and electronic mail were not returned. Respondent, however, again failed to appear for the scheduled demand interview.

As of November 1, 2023, the date of the formal ethics complaint, respondent had failed to comply with the conditions of his bar admission or to submit a written response to the OAE.

Based on respondent's knowing failure to comply with his Court-ordered bar admission conditions, the OAE charged respondent with having violated RPC 3.4(c) and RPC 8.4(d). Additionally, based on his total failure to cooperate with the OAE's investigation concerning his non-compliance with his bar admission conditions, the OAE charged respondent with having violated RPC 8.1(b). Finally, based on his failure to file an answer to the formal ethics complaint, the OAE charged respondent with having committed a second violation of RPC 8.1(b).

Analysis and Discipline

Violations of the Rules of Professional Conduct

We find that the facts set forth in the formal ethics complaint support all the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Attorneys who knowingly fail to comply with their Court-ordered bar admission conditions violate RPC 3.4(c) and RPC 8.4(d). See In the Matter of Thomas D. Allen, Jr., DRB 08-114 (July 8, 2008) (following the attorney's conditional admission to the New Jersey bar, he violated his bar admission conditions requiring that he maintain sobriety, by abusing alcohol and illicit drugs, in violation of RPC 3.4(c); additionally, we noted that the attorney's failure to comply with his Court-ordered bar admission conditions also would have violated RPC 8.4(d) if the formal ethics complaint had included that charge).

Here, as in Allen, respondent violated RPC 3.4(c) and RPC 8.4(d) by knowingly failing to comply with his Court-ordered bar admission conditions. Specifically, on August 31, 2017, the Court ordered respondent's conditional admission to the New Jersey bar, for at least two years and until further Order of the Court, subject to the limitations set forth in respondent's August 25, 2017

stipulation with the COC. Pursuant to his stipulated conditions, respondent agreed to (1) attend a trust accounting and recordkeeping class; (2) complete six CLE credit hours focused on honesty in the profession; (3) continue to attend at least two monthly counseling sessions with a COC approved therapist; and (4) practice law only as an associate attorney of another lawyer with at least five years of experience at the bar. Additionally, the Court required that respondent provide quarterly certifications to the COC attesting to his compliance with his conditions.

In December 2021, the Court denied respondent's motion to terminate his bar admission conditions and required that his conditions continue for at least another two years, until further Order of the Court. However, rather than attempt to comply with the limitations placed upon his law license, the Court's July 2022 Order found that respondent "failed to comply with the conditions imposed on his license, including the requirement that he file certifications attesting to his compliance with the enumerated conditions." Consequently, in its July 2022 Order, the Court required that respondent "fully comply" with his bar admission conditions within thirty days or face potential temporary suspension. Respondent again failed to comply with the Court's directive. Instead, he filed a procedurally improper motion seeking reconsideration of the Court's July 2022 Order denying his motion for reconsideration. Despite multiple Court

Orders requiring that he adhere to his bar admission conditions, respondent's non-compliance with his conditions has continued, unabated.

Additionally, respondent violated RPC 8.1(b) by altogether failing to cooperate with the OAE in two respects.

First, between March and May 2023, respondent failed to comply with the OAE's multiple letters requiring that he submit a written explanation for his failure to adhere to his bar admission conditions. Similarly, during that same timeframe, respondent failed to appear for two scheduled demand interviews. Other than acknowledging his receipt of one of the OAE's letters and promising to reply "as soon as possible," respondent refused to make any attempt to comply with the OAE's repeated efforts to investigate his misconduct.

Second, respondent failed to file an answer to the formal ethics complaint, thus, allowing this matter to proceed as a default.

In sum, we find that respondent violated RPC 3.4(c), RPC 8.1(b) (two instances), and RPC 8.4(d). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

We rarely encounter disciplinary cases implicating conditional admission to the practice of law in New Jersey. However, in In re Allen, 197 N.J. 34 (2008),

detailed above, an attorney received an indefinite suspension for failing to comply with his bar admission conditions.

In that matter, in 2004, Allen earned conditional admission to the New Jersey bar, subject to the conditions that he (1) abstain from the use of all intoxicating substances; (2) attend a minimum of three weekly Alcoholics Anonymous meetings; (3) practice law only under the supervision of another attorney approved by the COC; and (4) and maintain a local sponsor. In the Matter of Thomas D. Allen, Jr., DRB 08-114 at 3. The Court required that Allen file quarterly certifications with the COC attesting to his compliance with his conditions, which would remain in effect for at least two years, and until further Order of the Court. Id. at 4.

On four occasions, between March 2005 and November 2006, Allen failed to comply with his conditions by relapsing in alcohol and illicit drug use. Id. at 6. Additionally, in his first 2005 quarterly certification of compliance, Allen misrepresented to the COC that he had “remained abstinent from the use of all intoxicants.” Id. at 5. Thereafter, in an October 2005 letter to the Court, Allen falsely alleged that he had remained compliant with his bar admission conditions. Ibid. Finally, for a two-month period in 2005, Allen practiced law while ineligible for failing to pay the annual assessment to the CPF. Ibid.

In determining that a six-month suspension was the appropriate quantum of discipline, we emphasized that Allen had violated his Court-ordered conditions from at least February 2005 to November 2006, filed a false certification with the COC and a false letter with the Court, and failed to report his conduct to the OAE. Id. at 9. We also noted that, although Allen had practiced law while ineligible for two months, the record did not disclose whether Allen was aware of his ineligibility. Id. at 9-11. Finally, we weighed, in aggravation, the fact that Allen had failed to file an answer to the formal ethics complaint and, thus, allowed the matter to proceed as a default. Id. at 11.

Following his failure to appear for the Court's Order to Show Cause, the Court indefinitely suspended⁵ Allen and required that, prior to reinstatement, he submit proof of his sobriety and fitness to practice law, as attested to by a mental health and substance abuse counselor approved by the OAE. Allen, 197 N.J. at 35. The Court also required that, upon his reinstatement, Allen comply with the conditions of his bar admission until further Order of the Court. Ibid. In imposing an indefinite suspension, the Court observed that "substantial discipline [was] required because of [Allen's] repeated lapses of sobriety and submission of certifications falsely attesting to compliance with the terms of his

⁵ An indefinite suspension allows an attorney to apply for reinstatement "any time after an indefinite suspension has been ordered." R. 1:20-21(a).

conditional admission, thereby jeopardizing [his] license to practice law and risking the revocation of the license.” Ibid.

In 2004, in a matter similar to Allen, the Court reprimanded an attorney for lying in a quarterly certification of compliance to the COC concerning the conditions of his bar admission. In re McLaughlin, 179 N.J. 314 (2004). In that matter, McLaughlin earned conditional admission to the New Jersey bar in 1999, with the requirement that he file quarterly certifications with the COC, for at least two years, stating that he had refrained from the use of alcohol or intoxicating substances. In the Matter of Michael A. McLaughlin, Sr., DRB 03-236 (Dec. 18 2003) at 2. In December 2001, McLaughlin elected not to file an application to terminate his bar admission conditions and, thus, continued to file quarterly certifications with the COC. Ibid.

In April 2002, McLaughlin was charged with driving while intoxicated (DWI). Ibid. In his June 2002 quarterly certification of compliance, McLaughlin falsely stated that he had refrained from alcohol use in accordance with the Court’s 1999 conditional admission Order. Ibid. While McLaughlin was appealing his conditional guilty plea to DWI, he became concerned that the Board of Bar Examiners would discover his arrest for DWI and contacted counsel, who reported the matter to the OAE. Ibid.

In determining that a reprimand was the appropriate quantum of discipline, we underscored how McLaughlin's misrepresentation was "self-serving and struck at the very heart of the conduct that had brought him before the bar examiners in the first place." Id. at 3. However, in mitigation, McLaughlin sought the advice of counsel and admitted his transgression. Ibid. The Court agreed with our recommended discipline.

Here, like the suspended attorney in Allen, respondent engaged in a protracted failure to comply with the terms of his conditional bar admission. Although there is no indication that respondent practiced law while ineligible or engaged in any acts of deception to the Court or the COC, as occurred in Allen, he disregarded multiple Court Orders requiring that he comply with the conditions placed upon his law license. Specifically, as the Court found in its July 2022 Order, respondent failed to file quarterly certifications attesting to his compliance with his conditions, including the requirement that he verify his continued attendance at counseling sessions. Thereafter, respondent refused to comply with the Court's directive, in its July 2022 Order, that he fully comply with his bar admission conditions within thirty days or face potential discipline and temporary suspension.

Unlike Allen, whose misconduct resulted from relapses in drug and alcohol addiction, respondent's conduct appears to have resulted from nothing

more than his outright refusal to adhere to the limited conditions placed upon his license that he had, at one point, agreed to abide. Rather than comply with the Court's directives, respondent refused to file his quarterly certifications of compliance, filed repeated and, at times, procedurally improper motions to terminate his conditions, and ignored the Clerk's Office's good faith attempt to remind him of his obligation to comply with the restrictions placed upon his license.

Additionally, unlike in Allen, where there was no indication that the attorney failed to cooperate in the underlying investigation of his misconduct, respondent altogether refused to cooperate with the OAE's investigation other than by sending a single e-mail claiming that he would reply to its correspondence "as soon as possible." Thereafter, like Allen, respondent failed to answer the formal ethics complaint and allowed this matter to proceed as a default. See In re Kivler, 193 N.J. 332, 342 (2008) (an attorney's "default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced").

In our view, any discipline short of a defined term of suspension would be insufficient to protect the public from an attorney who, like respondent, has

refused to comply with the terms of his conditional admission to the practice of law.

Historically, indefinite suspensions have been imposed only in a narrow set of circumstances, such as when an attorney, like Allen, suffered from debilitating drug or alcohol addiction that may have precluded their ability to practice law until they could regain sobriety. See Allen, 197 N.J. at 35, and In re Orlando, 104 N.J. 344, 351 (1986) (indefinitely suspending an attorney for possessing cocaine “until such time as he can demonstrate his fitness to practice law again”).

In contrast to the attorneys in Orlando and Allen, there is no evidence that respondent’s noncompliance with his bar admission conditions and subsequent failure to cooperate with the OAE resulted from a relapse in drug or alcohol use. Consequently, on this record, we find that an indefinite suspension would be inappropriate.

Conclusion

In conclusion, based on respondent’s protracted and ongoing failure to adhere to the conditions of his bar admission, his refusal to participate in the disciplinary process, and his demonstrated disinterest in maintaining his law

license, we determine that a three-month suspension is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Additionally, we recommend that the Court impose the condition that, prior to reinstatement, respondent fully demonstrate his compliance with the conditions placed upon his law license, as set forth in the Court's December 7, 2021 Order. Finally, given his persistent refusal to comply with the conditions of his bar admission, we recommend that the Court require respondent to show cause why he should not be disbarred or otherwise disciplined, pursuant to R. 1:20-16(b).

Member Campelo was absent.

We further determine to require respondent to reimburse the Disciplinary 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
Hon. Mary Catherine Cuff, P.J.A.D. (Ret.),
Chair

By: /s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Toshisada Onishi
Docket No. DRB 24-044

Decided: August 19, 2024

Disposition: Three-month suspension

<i>Members</i>	Three-Month Suspension	Absent
Cuff	X	
Boyer	X	
Campelo		X
Hoberman	X	
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez	X	
Spencer	X	
Total:	8	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel