

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF A MEMBER § No. 184, 2007
OF THE BAR OF THE SUPREME §
COURT OF THE STATE OF §
DELAWARE: § Board Case Nos. 44, 2001
§ and 53, 2003
CHRISTOPHER A. AMALFITANO, §
§
Respondent. §

Submitted: May 7, 2007
Decided: May 31, 2007

Before **STEELE**, Chief Justice, **HOLLAND**, and **BERGER**, Justices.

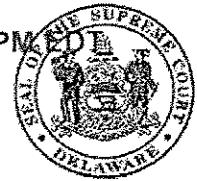
ORDER

This 31st day of May 2007, it appears to the Court that the Board on Professional Responsibility has filed its Report in this matter pursuant to Rule 9(d) of the Delaware Lawyers' Rules of Disciplinary Procedure. Neither the Respondent nor the Office of Disciplinary Counsel has filed objections to the Board's Report. The Court has reviewed the matter pursuant to Rule 9(e) and concludes that the Board's Report should be approved.

NOW, THEREFORE, IT IS ORDERED that the Report of the Board on Professional Responsibility filed on April 12, 2007 (copy attached) is hereby APPROVED. The matter is hereby CLOSED.

BY THE COURT:

/s/ Carolyn Berger
Justice



BOARD ON PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF DELAWARE

In the Matter of a Member of the Bar of the)
Supreme Court of Delaware,)
CHRISTOPHER A. AMALFITANO,)
Respondent.)

Board Case Nos. 44, 2001 and 53, 2003

CONFIDENTIAL

**REPORT OF THE BOARD ON PROFESSIONAL
RESPONSIBILITY ON VIOLATIONS AND SANCTIONS**

Pending before a panel of the Board of Professional Responsibility ("Board") are two petitions for discipline in Case Nos. 44, 2001 and 53, 2003. These consolidated cases have been stayed since 2004 while the Respondent, Christopher A. Amalfitano ("Respondent"), was on disability/inactive status. On October 21, 2006, the Respondent petitioned the Supreme Court for transfer to active status. The Office of Disciplinary Counsel ("ODC") supported the petition and, on November 6, 2006, the Supreme Court granted the petition. In the Matter of Amalfitano, No. 534, 2006 (Nov. 6, 2006)(ORDER).

By letter dated December 12, 2006, the ODC requested that the Board consider the previously stayed petitions. The Board convened a hearing on March 7, 2007 for this purpose. Prior to March 7 hearing, the Chair of the Board had two telephonic conferences with the parties. During the second conference, both the Respondent and ODC agreed that the Board should proceed based on the record developed in Case Nos. 44, 2001 and 53, 2003 as well as any new evidence offered at the March 7 hearing. The prior record consists of, among other things, the petitions in both cases, responses to the petitions, a Revised Stipulation of Admitted Facts and Violation and Joint Recommendation of Sanctions in Case No. 44, 2001 (the "Revised Stip.")

and transcripts of hearings held on September 11, 2002 (Case No. 44) and December 16, 2003 (Case No. 53).

The Facts

Respondent was admitted to the Bar of this Court in 1981. Revised Stip. ¶1. He was in private practice until approximately 2001. Id.

On April 16, 2001, Respondent was charged with three misdemeanor criminal offenses: leaving the scene of an accident resulting in property damage; failing to report an accident; and falsely reporting an accident. Id. ¶2. On September 3, 2001, Respondent was arrested for driving under the influence of alcohol, also a misdemeanor. Id. ¶3. By Order dated October 16, 2001, the Supreme Court transferred Respondent to disability inactive status. In re Amalfitano, No. 465, 2001. On November 20, 2001, Respondent entered a plea of guilty to a second offense of driving under the influence of alcohol and he pleaded *nolo contendere* to leaving the scene of an accident. Revised Stip. ¶5. Respondent was sentenced to 18 months imprisonment, suspended for 16 months at level three after serving 60 days at level five. Id. ¶6.

As a result of the above, ODC filed a Petition for Discipline on July 11, 2002 in Case No. 44 alleging a violation of Rule 8.4(b) of the Delaware Lawyers' Rules of Professional Conduct. Respondent admitted the violation and he and the ODC agreed that the appropriate sanction was a public reprimand. Revised Stip. A panel of the Board held a hearing on September 11, 2002 and issued a report on December 19, 2002 recommending that the Respondent be publicly reprimanded. On March 19, 2003, while Case No. 44 was pending before the Supreme Court, the Supreme Court remanded the matter back to the Board for reconsideration in light of the Court's recently issued opinion in In re Steiner, 817 A.2d 793

(2003).¹ After supplemental submissions addressing Steiner, the Board issued a supplemental report on May 15, 2003. The supplemental report again recommended a public reprimand.

While Case No. 44 was on remand, however, additional information came to light with respect to new and subsequent criminal charges against the Respondent. Respondent's counsel advised the Board that the Respondent had been charged with driving under the influence in December, 2002. On October 23, 2003, the ODC advised the Supreme Court that the Respondent had been cited for driving while his license was revoked in May 2003. See In the Matter of Amalfitano, C.A. No. 700, 2002 (Nov. 3, 2003)(ORDER). In addition, the ODC initiated a separate disciplinary matter relating to Respondent's 2003 conviction of driving under the influence of alcohol. Id. In light of these developments, the Supreme Court entered an Order staying Case No. 44 and ordering it to be consolidated with any additional disciplinary proceedings that might be filed arising out of the 2003 conduct. Id.

On November 19, 2003, the ODC filed a second petition for discipline in Case No. 53. This Petition alleged that in December, 2002, Respondent had been arrested for driving under the influence and for driving with a revoked driver's license. It also alleged that on August 1, 2003, Respondent entered a plea of guilty to driving a vehicle while under the influence of alcohol for which he was sentenced to 60 days incarceration at level five. Finally, the petition alleged that on August 5, 2003, Respondent entered a guilty plea to operating a motor vehicle with a revoked driver's license for which he was sentenced to 87 hours of community service.

On December 10, 2003, Respondent filed an Answer to the Petition in Case No. 53 in which he admitted many of the allegations including violating Rule 8.4(b). Respondent, however, raised for the first time an affirmative defense under Rule 19(c) of the Delaware

¹ Steiner was decided on February 27, 2003 just a few months after the Board's initial December 19, 2002 report.

Lawyers' Rules of Disciplinary Procedure. Procedural Rule 19(c), in pertinent part, provides that if the Court concludes that a respondent in a disciplinary proceeding is incapacitated, then the disciplinary proceeding shall be held in abeyance.

The Board held a hearing on December 16, 2003 in both cases. During the course of that hearing, Respondent testified and admitted that he had operated a vehicle without a valid driver's license on December 7, 2002 and on May 21, 2003. Dec. 16, 2003 Tr. 33. He also admitted that he was intoxicated at the time of the December 7, 2002 offense but not on May 21, 2003. *Id.* Respondent testified that he had not had anything to drink since September or October 2003 and was an active member of Alcoholics Anonymous. *Id.* at 35-39. Respondent also testified that he has battled alcoholism for many years and that he had an eight year period of sobriety that ended after his mother died and his marriage fell apart. *Id.* at 43-44.

At the hearing, counsel for the parties argued whether, under Procedural Rule 19(c), the cases should be stayed. On January 30, 2004, the Board issued a report concluding that the proceedings should be held in abeyance under Procedural Rule 19(c). On June 8, 2004, the Supreme Court entered an Order staying all disciplinary proceedings against the Respondent for as long as he remained on disability inactive status. In the Matter of Amalfitano, No. 700, 2002 (June 8, 2004)(ORDER).

As noted above, on November 6, 2006, the Supreme Court granted the Respondent's Petition for Transfer to Active Status. The Petition was based on the Respondent's representations that his disability had been removed and that he had demonstrated a sustained abstinence period exceeding three years. Petition for Transfer at ¶¶ 2, 3. As additional proof, Respondent stated that he is employed as an associate clinician in a long term dual diagnosed rehabilitation facility, which employment requires a proven period of meaningful and sustained

rehabilitation. Id. 4. The ODC's Answer to the Petition admitted that Respondent had demonstrated a meaningful and sustained period of successful rehabilitation and that Respondent should be transferred to active status.

The March 7, 2006 Hearing

The March 7, 2006 Board hearing was devoted primarily to argument on an appropriate sanction. This is because the Respondent previously admitted to violating Rule of Professional Conduct 8.4(b) in Case No. 44, 2001. He also admitted to a violation of Professional Conduct Rule 8.4(b) in his response on Case No. 53, 2003. Professional Conduct Rule 8.4(b) provides that it is "professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." In addition, during the December 16, 2003 hearing in Case No. 53, 2003, Respondent admitted to driving without a license two different times in 2003 and driving under the influence of alcohol on one occasion in 2003. These admissions constitute additional violations of Professional Conduct Rule 8.4(b).

ODC argues that the Respondent should be suspended for a period of 18-24 months retroactive to either October 16, 2001, the date Respondent was transferred to disability inactive status, or June 8, 2004, the date the Supreme Court ordered the disciplinary proceedings be held in abeyance. March 7, 2006 Tr. at 14. The Respondent's position is that a suspension is unnecessary at this point because the public perception for the past five years is that Respondent has been disbarred. Id. at 65.

Recommended Sanction

Both parties agree that In re Steiner sets forth the analysis for determining the appropriate sanction. As set forth in Steiner, "[i]n determining an appropriate disciplinary sanction, this Court looks to the four-part framework set forth in the ABA Standards for Imposing Lawyer

Sanctions ("ABA Standards"). This framework requires the Court to determine first: (i) the ethical duty violated; (ii) the lawyer's state of mind; and (iii) the actual or potential injury caused by the lawyer's misconduct." 817 A.2d at 796. After examining these considerations, a preliminary determination of the appropriate sanction is made. *Id.* Next, particular aggravating and mitigating circumstances are considered to determine if an increase or decrease in the sanction is justified. *Id.* ABA Standard 9.22 sets forth aggravating factors that may be considered while ABA Standard 9.32 sets forth mitigating factors.

Here, as in Steiner, the ethical duties violated are the lawyer's duties to the public, to the legal system, and to the legal profession. 817 A.2d at 796. The Respondent's state of mind was knowing. *Id.* Unlike Steiner, however, the Respondent's conduct did not cause any injury although the potential for injury to clients or the public was certainly present. Under the circumstances and in light of Steiner and ABA Standard 5.12,² the Board believes that a suspension is an appropriate sanction.

The next issue is what is the appropriate length of the sanction and when should it commence to run. In Steiner, the Court imposed a three year suspension. Steiner, however, involved facts not present here. For example, Steiner violated an express "zero tolerance" order of the Superior Court and his conduct caused significant physical injuries to two people. In contrast, Respondent did not violate any Court orders nor did he injure anyone. Given (1) the factual differences between this case and Steiner and (2) the ODC's position that an 18 -24 month suspension period is more appropriate, the Board recommends an 18 month suspension. An 18 month suspension is consistent with the sanction entered in In re Melvin, 807 A.2d 550 (Del. 2002) which, in the Board's view, involved more egregious facts than exist here.

² "Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 [involving dishonest conduct or serious intentional criminal conduct] and that seriously reflects on the lawyer's fitness to practice."

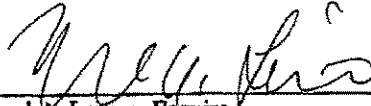
An 18 month suspension is also appropriate in light of the aggravating and mitigating circumstances in these cases. The aggravating factors are (1) Respondent's prior disciplinary record which includes a 1991 private admonition for alcohol related misconduct and a 1997 conviction for driving under the influence; and (2) a pattern of misconduct. The mitigating factors are (1) Respondent's conduct did not reflect a dishonest or selfish motive; (2) Respondent suffered from personal or emotional problems; (3) Respondent demonstrated a meaningful and sustained period of successful rehabilitation from alcoholism, and the recovery arrested the misconduct and recurrence of the misconduct is unlikely; (4) other penalties and sanctions have been imposed on Respondent; and (5) Respondent has demonstrated remorse. With respect to the Respondent's rehabilitation, the Board was impressed with Respondent's determination to control his condition and to move beyond the many setbacks he has faced over the past several years.

After weighing the aggravating and mitigating factors discussed above, the Board further recommends that the suspension be made retroactive to June 8, 2004, the date of the Supreme Court order staying the proceedings under Procedural Rule 19(c). The Board notes that this portion of its recommendation may be inconsistent with the following provision in the June 8, 2004 Order: "the time during which Amalfitano is on inactive/disability status will not be considered in determining an appropriate sanction for his misconduct." The Board does not understand this part of the Court's order to preclude a suspension with a retroactive effective date. Rather, the Board believes that the Court's comment was directed at the sanction itself. In determining that a suspension was an appropriate sanction, the Board did not take into account the lengthy period during which the Respondent was on disability inactive status. The Board also believes that the suspension should be made retroactive because that is consistent with other

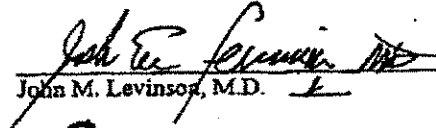
similar cases. The suspensions in Steiner, Melvin and Howard, 765 A.2d 39 (Del.2000) were all made retroactive to the dates each of those attorneys were transferred to inactive status.

Conclusion

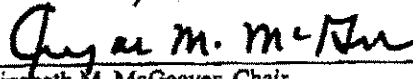
For the reasons set forth in this report, the Board finds that Respondent violated Professional Conduct Rule 8.4(b) and recommends that Respondent be given an 18 month suspension retroactive to June 8, 2004.



Richard A. Levine, Esquire



John M. Levinson, M.D.



Elizabeth M. McGeever, Chair

Dated:

07/04/07