

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2192 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 215 DB 2015
	:	
v.	:	Attorney Registration No. 64987
	:	
ADAM J. RODGERS,	:	(Philadelphia)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 18th day of July, 2019, upon consideration of the Report and Recommendations of the Designated Board Member, the probation order for Adam J. Rodgers dated June 1, 2016, is modified as follows:

1. Respondent shall obtain a new sponsor in Narcotics or Alcoholics Anonymous, who is not a blood relative;
2. Respondent shall maintain weekly contact with that sponsor;
3. Respondent shall provide the name of his new sponsor to his appointed sobriety monitor;
4. Respondent shall file monthly written reports with the Disciplinary Board; and
5. The other conditions of the June 1, 2016 Order shall remain in effect.

Respondent shall pay the additional expenses incurred as a result of the probation revocation proceedings. See Pa.R.D.E. 208(g).

Justices Baer and Mundy dissent. Due to Respondent's inability to conform his conduct to both the disciplinary rules and the probationary conditions set forth in this

Court's order of June 1, 2016, they would issue a rule to show cause why Respondent's probation should not be revoked.

A True Copy Patricia Nicola
As Of 07/18/2019

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 2192 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 215 DB 2015
v.	:	
	:	Attorney Registration No. 64987
ADAM J. RODGERS	:	
Respondent	:	(Philadelphia)

THE REPORT AND RECOMMENDATION OF
DESIGNATED MEMBER OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(h)(1) of the Pennsylvania Rules of Disciplinary Enforcement, this designated member of the Disciplinary Board of the Supreme Court of Pennsylvania herewith submits a recommendation to your Honorable Court with respect to the Petition to Modify Probation Order filed by Petitioner.

I. HISTORY OF PROCEEDINGS

By Order dated June 1, 2016, the Supreme Court of Pennsylvania granted the Joint Petition in Support of Discipline on Consent and suspended Respondent from the practice of law for a period of two years, with three months to be served and the remaining twenty-one months stayed, and placed Respondent on probation for a period of two years, subject to conditions. By Order dated January 19, 2018, the Court

certified Respondent to resume active status, subject to the terms of probation set forth in the Court's June 1, 2016 Order. By letter to Respondent dated February 8, 2018, the Board informed Respondent that his probation commenced immediately.

On March 18, 2019, Office of Disciplinary Counsel filed a Petition to Modify Probation Order Pursuant to Pa.R.D.E. 208(h), which alleged that Respondent violated the conditions of his probation. Petitioner requested that a member of the Disciplinary Board be designated to hold a hearing as required by Pa.R.D.E. 208(h), to determine whether Respondent's probation should be revoked. On April 2, 2019, Respondent filed an Answer to Petition to Modify Probation Order.

A hearing was held on April 3, 2019 and May 24, 2019, before Board Member Dion G. Rassias, Esquire. Respondent appeared and was represented by Samuel C. Stretton Esquire. Petitioner offered into evidence Exhibits ODC-1 through ODC-5, which were admitted. Respondent offered into evidence Exhibit R-1, which was admitted. Respondent testified on his own behalf and presented the testimony of [REDACTED] his appointed sobriety monitor; [REDACTED] his brother and Narcotics Anonymous ("NA") / Alcoholics Anonymous ("AA") sponsor; and the collective testimony of Troy Wilson, Esquire; William Houston, Esquire; Dr. Sherman Justice; and Pastor Willie Jackson.

II. FACTUAL FINDINGS

Respondent's probation commenced on February 8, 2018. Pursuant to the conditions of probation, Respondent was required to, among other things, abstain from using alcohol or drugs; obtain an NA or AA sponsor and maintain weekly contact

with that sponsor; meet at least twice monthly and maintain weekly telephone contact with an appointed sobriety monitor; and file quarterly written reports with the Board. By quarterly report filed on April 16, 2018, shortly after Respondent's probation commenced, [REDACTED] Respondent's sobriety monitor, reported to the Board that Respondent was maintaining his sobriety but had not met some conditions of the probation; namely, failing to adhere to the required schedule for meeting with and contacting his sobriety monitor. Further, Respondent failed to timely file with the Board his first written quarterly report that was due on April 15, 2018. The Board referred the matter to Petitioner, who determined after investigation that Respondent's infractions did not warrant seeking to revoke or modify his probation, as Respondent expressed his resolve to meet conditions of his probation.

On January 10, 2019, [REDACTED] filed his quarterly report with the Board and once again advised that Respondent was maintaining his sobriety but had not complied with conditions of the probation to meet twice monthly and to maintain weekly telephone contact with his sobriety monitor. In particular, [REDACTED] noted that Respondent had not met with him at all during the months of November and December 2018. As to the telephone contacts, [REDACTED] listed six weeks during which he did not hear from Respondent. On January 30, 2019, Respondent filed a quarterly report with the Board (which had been due on January 15, 2019) and reported that he had not met twice monthly with [REDACTED], nor had he maintained weekly telephone contact with [REDACTED]. While Respondent reported that he maintained weekly contact with his NA/AA sponsor, his list of the contact dates revealed that for a period of 26 days, Respondent had no contact with his sponsor.

Upon this record, I conclude that Respondent violated his probation by failing to adhere to the Supreme Court-ordered conditions. There is no dispute on this issue, as Respondent testified at the hearing and admitted that he did not fulfill his obligations pursuant to the Court's June 1, 2016 Order.

██████████ credibly testified at the hearing. He has been active with Lawyers Concerned for Lawyers ("LCL") for nine or ten years and is on the LCL Board. ██████████ is an experienced sobriety monitor, having served in that capacity in a previous matter. ██████████ testified that during his in-person and telephone contacts with Respondent, ██████████ never observed that Respondent was under the influence of alcohol or drugs. Although there was a period of time when Respondent did not see or talk with ██████████ in particular November and December 2018, ██████████ testified that based on his overall interaction with Respondent, his own experience with recovery from addiction and his experiences with LCL and as a sobriety monitor in general, he concluded that Respondent has maintained his sobriety and has abstained from using alcohol or drugs during his probation.

██████████ testified that post-2018, he has witnessed marked improvement in Respondent's attendance at in-person meetings with ██████████ and in the frequency of his telephone contacts, which ██████████ described as "abundant." ██████████ indicated that this change occurred toward the end of February 2019, which was prior to the date Petitioner filed the Petition to Modify Probation. According to ██████████, Respondent is more sincere, has a better attitude and has displayed spirit and energy.

[REDACTED] indicated that Respondent has organizational and scheduling problems which have prevented him from attending some scheduled in-person meetings, but that Respondent is not actively ignoring [REDACTED] and tries to reschedule the missed appointments. [REDACTED] is aware that Respondent is trying to manage other life issues. [REDACTED] noted that even though Respondent has exhibited spotty attendance at some face-to-face appointments, they still have frequent telephone contacts and [REDACTED] makes a point to check-in with Respondent when they see each other at AA and LCL meetings.

[REDACTED] testified that Respondent means well, has his clients' interests at heart and is not harming his clients. When asked whether he has any concern, on an increasing scale of one to ten, that Respondent will jeopardize a client's matter, [REDACTED] testified that his concern is at the lowest level of one. [REDACTED] primary concern is Respondent's organizational skills, and he has given Respondent advice on how to be more organized. When asked if he would change any terms of Respondent's probation, [REDACTED] noted that Respondent's NA/AA sponsor is Respondent's brother. [REDACTED] testified that Respondent would benefit from having a sponsor who is not his brother or a blood relative, in order to keep an arm's length relationship. Finally, [REDACTED] testified that he does not think it is necessary to revoke Respondent's license. He believes it would be a cataclysmic event for Respondent, and believes Respondent is worth another chance.

[REDACTED] is Respondent's brother and his NA/AA sponsor. Mr. [REDACTED] credibly testified that he sees Respondent two or three days per week and talks on the telephone with his brother at least five days per week. Mr. [REDACTED]

testified that Respondent is free of drugs and alcohol. Mr. [REDACTED] concluded that Respondent is abstinent based on the fact that Respondent regularly participates in 12-step meetings at NA and AA. In Mr. [REDACTED] experience, if Respondent was using drugs or alcohol, he would disappear so no one would know, and that has not been the case. Mr. [REDACTED] testified that he believes Respondent is in a more positive place and has changed in the past year because Respondent used to think he could help himself with his problems, and now he is asking for help. While currently acting as Respondent's NA/AA sponsor, Mr. [REDACTED] agreed that it was in Respondent's best interests for him to step aside and let Respondent choose a new sponsor.

Respondent presented the collective testimony of Attorneys Troy Wilson and William Houston, Pastor Willie Jackson and Dr. Sherman Justice. These individuals have known Respondent personally and professionally for decades. They credibly testified that Respondent grew up in challenging circumstances, he is a good lawyer and they are aware that he is in recovery from addiction.

Respondent testified on his own behalf. He is 53 years of age, has been admitted to the bar of the Supreme Court of Pennsylvania since 1992, and is a first generation attorney in his family. Respondent practices law at 100 South Broad Street in Philadelphia. Respondent shares space with other lawyers but does not have a partnership arrangement with them. Respondent estimated that currently he has less than twenty active cases, approximately ten of which are criminal matters. He has not missed any deadlines and has not been held in contempt or to his knowledge had complaints filed against him. Respondent testified that he respects the fact that practicing law is a privilege and not a right.

Respondent has been sober since May 26, 2017. He attends AA and LCL meetings on a regular basis, generally Monday, Tuesday, Wednesday and Friday each week. He has had the opportunity to chair AA meetings. Additionally, Respondent has received psychological counseling on three occasions to address various life stressors.

Respondent does not dispute that he failed to comply with conditions of his probation. Respondent admitted that he has had the most difficulty in scheduling required meetings with Mr. [REDACTED] and keeping meeting dates, but he did not make excuses for his derelictions. Respondent acknowledged that it is his responsibility to comply with the conditions, and further acknowledged the seriousness of his situation, in light of the fact that in 2018, Petitioner was alerted to Respondent's difficulty meeting his conditions, did not seek revocation and advised Respondent of the necessity that he adhere to conditions of probation. Respondent is aware that he has been given opportunities to meet his Court-ordered obligations, and that this is his last opportunity to do so. Respondent expressed sincere remorse that he did not comply with the probationary conditions and is ready to demonstrate full compliance going forward. Respondent agreed that he should obtain a sponsor other than his brother and testified that he has talked with two individuals about the possibility of acting in that capacity.

III. CONCLUSIONS OF LAW

Petitioner met its burden to prove that Respondent violated his probation by failing to meet the conditions set forth in the Court's June 1, 2016 Order.

IV. DISCUSSION

The evidence of record demonstrates that Respondent failed to comply with the conditions of his Supreme Court-ordered probation. He failed to meet twice monthly and failed to maintain weekly telephone contact with his sobriety monitor. Respondent further failed to maintain weekly contact with his AA sponsor. Respondent filed untimely the required quarterly reports regarding his compliance with the terms of his probation.

The evidence of record demonstrates that Respondent is sober and has abstained from alcohol and drug use since May 2017. The evidence further demonstrates that Respondent's continued practice of law while on probation has not prejudiced any clients. The Chair asked during the hearing the level of concern that Mr. [REDACTED] has for the Respondent's ability to continue to practice law without jeopardizing a client or a potential client. The response, which is found to be highly credible and highly probative, is as follows:

Q. Do you have, as you testified today under oath, any concern – whether it's a 1 concern or a 10 concern on a scale of 1 to 10 – that he would jeopardize a client or a potential client's case if he were to be retained, or in the cases that he's handling now?

A. That's a tough question. I'm going to say on a scale of 1 to 10, a 1, only because I want to see Adam use calendaring better to avoid missing deadlines. You know?

But I don't see any history of that. So I'm almost tempted to say I don't have any concerns. That's why I chose a 1.

I just want him to set up -- and use a tool, like his phone, to set dates, appointments, reminders.

I know I do it. And if I didn't do that, I'd be in a world of trouble because I get reminders that I got a deadline coming up in a week or two or whatever, or I need to be somewhere, like this chair (indicating) today at 10 o'clock.

N.T. (May 24, 2019), pp. 60-61, l. 8-2.

The testimony of [REDACTED] and [REDACTED] shows that Respondent has exhibited positive changes in 2019 in terms of his willingness to comply with his Court-ordered probation and in his attitude and behavior. The testimony of Respondent's other witnesses evidences that he has the support of his community in his efforts to practice law and recover from addiction. The specific testimony was as follows:

MR. JUSTICE: I am Dr. Sherman Justice, S-H-E-R-M-A-N J-U-S-T-I-C-E, of the Yahruba Group, Y-A-H-R-U-B-A. I'm the CEO of the company.

Adam has done pro bono work with us for the past five years. We are a 501(c)(3) community development corporation.

I too have known Adam since he was 16, and we matriculated through college together. And subsequently, when I needed an attorney, he was there. He's been there. And he's helped us out immensely through our process in terms of what we do here in the city for Philadelphia.

N.T. (April 3, 2019), pp. 25-26, l. 13-6.

Throughout the course of this hearing, I have been extremely mindful and careful to fully assess the balance between the Respondent's technical violation of his obligations with the service that he provides to a community in North Philadelphia which is and remains in dire need of not only legal services, but a role model such as the Respondent, who fought through extraordinarily challenging circumstances to become

an attorney in the first place.¹ With that, and while this balancing necessity is difficult, the fact that the Respondent has not jeopardized a client, is presently not a realistic threat to jeopardize a client and because this community is and remains in dire need for the Respondent's presence, I believe that addressing the Respondent's organizational problem is a better and more just result in this case.

As described by [REDACTED] and Respondent, the crux of Respondent's inability to meet his conditions is organizational in nature, and not a question of his sobriety. While the evidence suggests that there have been multiple telephone contacts between Respondent and [REDACTED], and they see each other occasionally at AA or LCL meetings, where they are able to converse, Respondent has difficulty scheduling in-person meetings with [REDACTED] and adhering to the schedule. Respondent recognizes that he is under a Supreme Court order to meet with [REDACTED] in-person at least twice monthly and he must fulfill that condition, as well as the other conditions set forth in the Court's June 1, 2016 Order, in order to continue practicing law.

Recognizing that this is his last opportunity to keep his law license, Respondent credibly testified that he will comply fully with all terms and conditions of his

¹ William Houston testified:

And like this gentleman here, I too can say that I have an infinity [sic] with him that goes past being a lawyer in that I grew up in the same projects that he did, at 25th and Diamond here in Philadelphia.

And I know – I think I do have some experience of what it takes to become a lawyer after that experience. And I think you have to avoid all of the bad things in your life, and charge after all the good things. And if you're successful and have a whole lot of luck, you know, you graduate from college. And then, with a whole lot of luck, you graduate from law school. And Adam has done those things.

So I've seen him climb several mountains in his life. And I'm just waiting for him to finish climbing the one that I know he's climbing now.

probation going forward and understands that his failure to do so will result in his inability to practice law. Respondent demonstrated sincere remorse for his derelictions and explained that he never intended to shirk his responsibilities to the Board and the Court.

Respondent's probationary conditions are in place for the protection of the public. I conclude that there is no evidence that Respondent harmed any clients or that he is unfit to practice law and poses a danger to the public. While Respondent has not fully complied with each condition in the past, the evidence supports the conclusion that Respondent has partially complied, has demonstrated improved commitment in 2019 to meet his probationary conditions, and has the intent and desire to achieve full compliance.

Under these circumstances, I conclude that revocation of Respondent's probation is not required and modification of the conditions is appropriate. In order to ensure Respondent's full compliance and give the Board appropriately strict oversight, I recommend that the conditions be modified to require that Respondent file his written reports with the Board on a monthly basis, instead of on a quarterly basis. Further, I recommend that the conditions be modified to require that Respondent obtain a new sponsor in NA or AA that is not a blood relation, and that Respondent provide the new sponsor's name to his appointed sobriety monitor.

V. RECOMMENDATION

This Member respectfully recommends that the probation previously ordered by the Supreme Court on June 1, 2016, be modified as follows:

1. Respondent shall obtain a new sponsor in Narcotics or Alcoholics Anonymous who is not a blood relative and shall maintain weekly contact with that sponsor;
2. Respondent shall provide the name of his new Narcotics or Alcoholics Anonymous sponsor to his appointed sobriety monitor;
3. Respondent shall file with the Board monthly written reports;
4. The other conditions contained in the June 1, 2016 Order shall remain in effect.

It is further recommended that the additional expenses incurred in connection with the violation of probation proceeding be paid by Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 

Dion G. Rassias, Member

Date: 5/31/19