IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 2823 Disciplinary Docket No. 3
	:	No. 122 DB 2021
v.	:	Attorney Registration No. 43170
	:	(Out of State)
CHARLES C. DALEY, JR. Respondent	:	

ORDER

PER CURIAM:

AND NOW, this 1st of October, 2021, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is granted, and Charles C. Daley, Jr. is suspended on consent from the Bar of this Commonwealth for a period of three months, with the suspension stayed in its entirety. During his period of disciplinary probation, Respondent shall not violate the Rules of Professional Conduct. Respondent shall pay the costs to the Disciplinary Board. *See* Pa.R.D.E. 208(g).

Justices Dougherty and Mundy dissent and would issue a rule to show cause why Respondent should not be subject to reciprocal discipline in the form of censure.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	ODC File No. C1-20-151
v.	:	
CHARLES C. DALEY, JR., Respondent	:	Atty. Reg. No. 43170 (Out of State)

JOINT PETITION IN SUPPORT OF DISCIPLINE ON CONSENT UNDER Pa.R.D.E. 215(d)

Petitioner, Office of Disciplinary Counsel ("ODC"), by Thomas J. Farrell, Chief Disciplinary Counsel, and Harriet R. Brumberg, Disciplinary Counsel, and Respondent, Charles C. Daley, Jr., Esquire, file this Joint Petition In Support of Discipline on Consent under Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and respectfully represent that:

I. PARTIES TO DISCIPLINE ON CONSENT

1. Petitioner, whose principal office is located at PA Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings.

2. Respondent, Charles C. Daley, Jr., was born in 1955 and was admitted to practice law in the Commonwealth of Pennsylvania in May 1985.

3. Attorney registration records state that Respondent maintains an office for the practice of law at 1200 Hooper Avenue, Toms River, NJ 08753.

4. Pursuant to Pa.R.D.E. 201(a)(1), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

II. FACTUAL ADMISSIONS AND VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT

5. Respondent specifically admits to the truth of the factual allegations and conclusions of law contained in paragraphs 1 through 33 herein.

6. In 1982, Respondent lawfully purchased a .22 caliber handgun and a .38 caliber revolver.

7. Respondent did not have an active NJ Firearms ID or a permit to carry a handgun.

8. Prior to September 17, 2018, Respondent placed his handgun, loaded with hollow-point bullets, into his knapsack.

9. On September 17, 2018, Respondent placed his legal files into his knapsack.

10. At approximately 9:00 a.m. on September 17, 2018, Respondent went to the Ocean County Courthouse where he was scheduled to appear before a New Jersey Superior Court judge.

11. Respondent then put his knapsack onto the x-ray machine at the second floor screening area and proceeded to walk through the metal detector.

12. The Ocean County sheriff assigned to the screening area identified a handgun at the bottom of Respondent's knapsack, confiscated the knapsack, and met Respondent at the other end of the screening area.

13. The sheriff's report indicated that after the sheriff told Respondent that he was going to search Respondent's knapsack and be detained, Respondent informed the sheriff that "he forgot that" his handgun was in his knapsack and he had put the handgun in his knapsack "to show someone."

14. Respondent subsequently took a polygraph test, the results of which showed that Respondent was not dissembling when he denied being conscious that his loaded handgun was in his knapsack on September 17, 2018.

15. Respondent, while thinking aloud about the date he had put his handgun in his knapsack, told the Sheriff that he believed he "has been to other places with it, he has been to other Courthouses with it and nobody found it."

16. Respondent was arrested and charged with unlawful possession of a handgun, N.J.S.A. 2C:39-5(b)(1), a second-degree crime, and unlawful possession of hollow-point bullets, N.J.S.A. 2C:39-3f(1), a fourth-degree crime.

17. In New Jersey, crimes of the second degree are punishable by a maximum term of 10 years of imprisonment and a maximum fine of $150,000; crimes of the fourth degree are punishable by a maximum term of 18 months of imprisonment and a maximum fine of $10,000.

18. On June 17, 2019, Respondent appeared before the Honorable Wendel E. Daniels, Superior Court, Ocean County, entered a conditional guilty plea to unlawful possession of a handgun, and was admitted to the Pre-Trial Intervention Program (PTI) for thirty-six months with conditions; Judge Daniels dismissed the charge of possession of hollow-point bullets.

19. As conditions of the PTI, Respondent was ordered to receive weekly psychotherapy sessions, required to undergo periodic risk evaluations, and prohibited from possessing a handgun, destructive device, or any other dangerous weapon now or in the future; upon Respondent's successful completion of the PTI program, New Jersey agreed to dismiss Respondent's plea and criminal charges.

20. Respondent promptly reported his arrest to the New Jersey Office of Attorney Ethics (OAE) and Office of Disciplinary Counsel.

21. On July 16, 2020, argument was held before the New Jersey Disciplinary Review Board (NJ Rev. Bd.) on the OAE's motion for final discipline.

22. On February 3, 2021, following the Review Board's consideration of the facts presented, aggravating and mitigating factors, and precedent, the five-member majority of the Review Board recommended that Respondent receive a six-month suspension with the condition that Respondent demonstrate proof of his fitness to practice law, attested to by a mental health professional approved by OAE, within 30 days of the New Jersey Supreme Court's Order. (NJ Rev. Bd. Decision at pp. 19-20) (Attachment A) Four members of the Review Board dissented and recommended a censure. (Dissent at p. 10) (Attachment B)

23. On May 20, 2021, the New Jersey Supreme Court ordered that Respondent was "hereby censured" and that Respondent provide proof of his fitness to resume the practice of law, attested to by a mental health professional approved by the OAE, within 30 days after the filing date of the Court's Order. (Attachment C)

24. On June 14, 2021, Respondent submitted his fitness to practice law evaluation to the OAE; by letter dated June 15, 2021, the OAE found that Respondent had satisfied the New Jersey Supreme Court's May 20, 2021 Order.

25. By his conduct as alleged in paragraphs 5 through 24 above, Respondent violated the following Rules of Professional Conduct:

a. RPC 8.4(b), which states 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 other respects; and

b. RPC 8.4(d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

III. JOINT RECOMMENDATION FOR DISCIPLINE

26. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of three months, stayed in its entirety, with the condition that Respondent not violate any attorney disciplinary rules during the period of his stayed suspension.

27. Respondent hereby consents to the discipline being imposed by the Disciplinary Board of the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Pa.R.D.E. 215(d), which states

that Respondent consents to the recommended discipline and the mandatory acknowledgements contained in Pa.R.D.E. 215(d)(1) through (4).

28. Respondent and ODC respectfully submit that there are the following aggravating factors, Respondent's:

a. carrying an unlicensed handgun loaded with hollow-point bullets while entering a courthouse[1];

b. conduct created potential danger to the public, judicial employees, and other judges; and

c. lack of a permit to carry a handgun.

29. ODC and Respondent submit there are the following mitigating factors, Respondent:

a. promptly notified ODC of his arrest and cooperated with ODC's investigation;

b. has no record of discipline;

c. expressed sincere remorse for his misconduct; and

d. provided evidence of good character.

30. In Pennsylvania, attorneys who have been convicted of firearms-related offenses routinely receive public discipline for their misconduct. In ***Office of Disciplinary Counsel v. Stanley A. Nowak***, 67 DB 86, 48 Pa. D.&C. 3rd 202

[1] In Pennsylvania, it is a misdemeanor of the first degree to carry a firearm without a license, 18 Pa.C.S.A. § 6106(a)(2), and a misdemeanor of the third degree to knowingly possess a firearm or other dangerous weapon in a court facility, 18 Pa.C.S. § 913(a)(1).

(1988), Nowak was indicted by a New Jersey grand jury for unlawful possession of a handgun and possession of a controlled substance. Nowak was denied PTI, pled guilty to possession of a firearm without a permit before the New Jersey Superior Court, and was sentenced to six-months of probation and a $750 fine. Thereafter, Nowak failed to report his conviction to the Secretary of the Disciplinary Board as mandated by Pa.R.D.E. 214(a) (revised 3/19/2012, effective 4/18/2012). Upon ODC's discovery of Nowak's conviction, ODC notified the Pennsylvania Supreme Court, who entered an order immediately placing Nowak on temporary suspension and referring the matter to the Disciplinary Board for formal proceedings to determine the extent of final discipline to be imposed. In ascertaining the appropriate discipline for the totality of Nowak's misconduct, the Disciplinary Board concluded that Nowak's conviction of a weapons charge in conjunction with his failure to report the conviction warranted a three-month suspension. (*Id.* at p. 206)

In ***Office of Disciplinary Counsel v. Douglas Gerald Kunkle,*** 101 DB 2001 (D.Bd. Rpt. 4/01/2002) (S.Ct. Order 4/19/2002), Kunkle had a gun collection in his home, which included a loaded 9 mm 1911 handgun without a safety lock. When Kunkle picked up the handgun to see how many bullets were in the clip, the clip slid out; when Kunkle slid the

clip back into the gun, the gun went off and a bullet went through the wall of Kunkle's residence to an adjoining residence, coming within five feet of a six-year-old girl and scattering plaster from the wall onto the girl's mother. Kunkle pled guilty to one count of recklessly endangering another person and was sentenced to two-years of probation.

At his disciplinary hearing, Kunkle admitted that "he used poor judgment in handling his guns and also in smoking marijuana the evening of the incident." (D.Bd. Rpt. at p. 8.) The Hearing Committee reasoned "that [Kunkle's] lapse of judgment was severe enough that he take a step back from the practice of law to examine the harm he caused" and recommended that Kunkle receive a six-month suspension. (*Id.* at p. 8.) The Disciplinary Board agreed and found that Kunkle "engaged in a course of activity that placed other persons at risk of harm." (*Id.* at p. 9) The Supreme Court imposed the recommended six-month suspension.

In ***Office of Disciplinary Counsel v. Ivan S. Devoren,*** No. 103 DB 2019 (D.Bd. Rpt. 1/21/2021) (S.Ct. Order 4/1/2021), Devoren was convicted of disorderly conduct, discharging a firearm in the City of Pittsburgh, possession of controlled substances, and possession of drug paraphernalia. Devoren failed to report his convictions to the Office of Disciplinary Counsel as required Pa.R.D.E. 214(a). (D.Bd. Rpt. at p. 11)

Devoren, also a member of the New Jersey Bar, received a six-month suspension from the New Jersey Supreme Court for his Pennsylvania convictions. (D.Bd. Rpt. at p. 8) In sharp contrast, the Pennsylvania Disciplinary Board recommended Devoren's receipt of a two-year suspension, finding that the "serious nature of [Devoren's] conduct exemplifies his disregard for the law and warrants his license suspension." (*Id.* at p. 11) The Pennsylvania Supreme Court agreed and imposed a suspension of two years on Devoren.

31. The respondents in the foregoing cases, like the instant Respondent, all engaged in misconduct that involved their possession of a handgun. In addition, Nowak, Kunkle, Devoren, and the instant Respondent all have similar mitigating facts, including recognition of their wrongdoing, remorse for their misconduct, and no record of discipline.

32. The aggravating conduct of Respondent is also similar to the aggravating conduct of Nowak, Kunkle, and Devoren, in that it involved a course of conduct that potentially placed the public in serious danger. But Devoren, Kunkle, and Nowak have additional aggravating conduct. The crimes of Nowak, Kunkle, and Devoren, unlike Respondent's crimes, involved possession or use of illegal drugs. Furthermore, Deveron's misconduct included Devoren's intentional shooting of his gun in the city of Pittsburgh and

Kunkle's misconduct included Kunkle's accidental shooting of his handgun at his residence, which endangered the welfare of his neighbors and caused property damage. Moreover, both Nowak and Devoren failed to report their convictions to disciplinary authorities.

33. Respondent's conduct, which involved Respondent's placing his unpermitted handgun loaded with hollow-point bullets in his knapsack, subsequently placing his legal files in the same knapsack, and then taking the knapsack into a government facility with the intent to take the knapsack into a courtroom, created an egregious danger of serious bodily injury to others that warrants a term of suspension. Nowak, who like Respondent, was convicted in New Jersey of possessing an unlicensed handgun, received a three-month suspension. But unlike Nowak, Respondent received PTI and reported his arrest and conviction to disciplinary authorities. Thus a suspension of three months, stayed in its entirety with the condition that Respondent not violate any disciplinary rules during the term of the stayed suspension, would be the appropriate quantum of discipline herein. This discipline should also serve to deter other attorneys from committing similar misconduct. ***In the Matter of Dennis J. Iulo***, 766 A.2d 335 (Pa. 2001) (deterrence is a considerable factor in matters of attorney discipline).

WHEREFORE, Petitioner and Respondent respectfully request that:

a. Pursuant to Pa.R.D.E. 215(e) and 215(g), the three-member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and recommend to the Pennsylvania Supreme Court that the Court enter an Order suspending Respondent from the practice of law for three months, staying the suspension in its entirety, with the condition that Respondent not violate any disciplinary rules during the period of the stayed suspension; and

b. Pursuant to Pa.R.D.E. 215(i), the three-member panel of the Disciplinary Board recommend to the Pennsylvania Supreme Court that the Court enter an Order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter, and that under Pa.R.D.E. 208(g)(1), all expenses be paid by Respondent within 30 days after notice transmitted to the Respondent of taxed expenses.

Respectfully and jointly submitted,

OFFICE OF DISCIPLINARY COUNSEL

Thomas S. Farrell
CHIEF DISCIPLINARY COUNSEL

Date August 20, 2021 By _____
Harriet R. Brumberg
Disciplinary Counsel

8/23/21 By _____
Date Charles C. Daley, Jr., Esquire
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	ODC File No. C1-20-151
v.	:	
CHARLES C. DALEY, JR., Respondent	:	Atty. Reg. No. 43170 (Philadelphia)

VERIFICATION

The statements contained in the foregoing Joint Petition In Support Of Discipline On Consent Under Pa.R.D.E. 215(d) are true and correct to the best of our knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Date August 20, 2021 By _____
Harriet R. Brumberg
Disciplinary Counsel

8/23/21 By _____
Date
Charles C. Daley, Esquire
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	
	:	ODC File No. C1-20-151
v.	:	
	:	
	:	Atty. Reg. No. 43170
CHARLES C. DALEY, JR., Respondent	:	(Philadelphia)

AFFIDAVIT UNDER RULE 215(d), Pa.R.D.E.

Respondent, Charles C. Daley, Jr., hereby states that he consents to the imposition of an Order that he receive a three-month suspension, stayed in its entirety, with the condition that Respondent not violate any disciplinary rules during the period of the stayed suspension, and further states that:

1. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and he has/~~has not~~ consulted with an attorney, in connection with the decision to consent to discipline;

2. He is aware that there are presently pending investigations involving allegations that he has been guilty of misconduct as set forth in the Joint Petition;

3. He acknowledges that the material facts set forth in the Joint Petition are true; and

4. He knows that if the charges are brought against him in the pending investigation, he could not successfully defend against them.

Charles C. Daley, Jr.
Respondent

Sworn to and subscribed
before me this 23
day of August, 2021.

Notary Public

ARIYANA M. MCPARLIN-RODRIGUES
Notary Public of New Jersey
My Commission Expires May 17, 2023
ID # 2457855

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. 20-037
District Docket No. XIV-2018-0535E

In the Matter of

Charles Canning Daley, Jr.

An Attorney at Law

Decision

Argued: July 16, 2020

Decided: February 3, 2021

Ashley Kolata-Guzik, Assistant Deputy Ethics Counsel, appeared on behalf of the Office of Attorney Ethics.

Joseph P. La Sala appeared on behalf of respondent.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea and conviction, in the Superior Court of New Jersey, to unlawful possession of a handgun, a second-degree crime, contrary to

N.J.S.A. 2C:39-5(b)(1). This offense constitutes a violation of RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects).

For the reasons set forth below, we determine to grant the motion for final discipline, deny respondent's motion to remand for a limited evidentiary hearing, and impose a six-month suspension, with a condition.

Respondent earned admission to the New Jersey and Pennsylvania bars in 1985. At the relevant times, he maintained an office for the practice of law in Hamilton Township, New Jersey. Respondent has no disciplinary history in New Jersey.

On September 17, 2018, respondent possessed a concealed, .22 caliber handgun loaded with hollow point bullets as he entered the Ocean County Courthouse, where he was scheduled to appear before a New Jersey Superior Court Judge. The sheriff's officers discovered the handgun when respondent's backpack passed through the metal detector. Respondent did not possess a valid permit to carry a concealed weapon and, when queried by the courthouse sheriffs, represented that he had placed the handgun in his backpack to show it to someone, but then forgot the handgun was in the bag.

On June 17, 2019, respondent waived indictment and pleaded guilty to one count of second-degree unlawful possession of a handgun, in violation of N.J.S.A. 2C:39-5(b)(1). That statute provides that "[a]ny person who knowingly has in his possession any handgun including any antique handgun, without first having obtained a permit to carry the same . . . is guilty of a crime of the second degree" (emphasis added). Respondent, thus, allocuted, under oath, that he had knowingly possessed the handgun while entering the courthouse. The maximum sentence for that offense is ten years in state prison. During his guilty plea, respondent testified that he had purchased the handgun in 1982, while working as a member of the District Attorney's Office in Philadelphia and, at that time, he was authorized to carry a firearm.

In connection with his guilty plea, respondent was admitted to the Pre-Trial Intervention (PTI) program for thirty-six months, with conditions including weekly psychotherapy sessions, continued treatment with his psychiatrist, and periodic risk evaluations performed by the psychotherapist and treating psychiatrist. Dr. Gianni Pirelli, Ph.D., a psychologist, recommended these conditions as a result of a court-ordered psychological examination. In addition, respondent is precluded from possessing a firearm, destructive device, or any other dangerous weapon,

now or in the future. If respondent successfully completes the PTI program, the charges and the plea will be dismissed.

On September 19, 2018, two days after his arrest, respondent reported his criminal charges to the OAE.

In respect of these disciplinary proceedings, respondent claimed that he took the handgun from a locked safe because he planned to go to a shooting range with a friend, but, when his plans changed, he forgot to return the firearm to the safe. He maintained that he forgot that the firearm remained in the backpack and used the same backpack to bring his files to the courthouse. Respondent participated in a polygraph examination, the results of which indicated that he believed his assertion that he did not intend to bring the firearm into the courthouse.

The OAE argued that respondent should be suspended for six months, with the condition that he submit psychological proof of his fitness to practice prior to any reinstatement. The OAE relied primarily on In re Wallace, 153 N.J. 31 (1998), to support its recommendation. In Wallace, the attorney arrived with a loaded handgun at the home of his former girlfriend approximately ten months after their six-year relationship had ended, and warned her that he had intended to kill both her and himself, but upon seeing her, decided he could not go through with his plan, removed the

bullets from the gun, and left the apartment. Although the OAE sought a six-month suspension, we imposed a three-month suspension, finding that the attorney placed his former girlfriend in fear for her life and that his conduct was serious, but was mitigated by the attorney's mental health issues, loss of employment, forfeiture of his public office, and the passage of almost five years since the event.

The OAE further argued that, in aggravation, respondent's handgun was loaded with unlawfully possessed hollow point bullets, and that his conduct touched upon the practice of law, because he was at the courthouse for a hearing.[1] The OAE remarked that the crime at issue in Wallace, unlawful possession of a handgun, a third-degree offense in 1993, subsequently was enhanced, in 2013, to a second-degree crime, reflecting the public sentiment that a harsher punishment is necessary to protect the public from firearm offenses. In mitigation, the OAE recognized that respondent reported the charges to the OAE and has no ethics history in thirty-five years at the bar.

[1] Respondent's charge, guilty plea, and conviction encompassed only the violation of N.J.S.A. 2C:39-5(b)(1), unlawful possession of a handgun, not possession of hollow point bullets.

PROCEDURAL HISTORY

On July 23, 2020, in response to our request to review the psychological evaluation performed by Dr. Pirelli as part of respondent's admission into the PTI program, respondent, through counsel, filed a motion to supplement the record with (1) an updated psychiatric report from Dr. Martin Bier, M.D., his treating physician since September 2018; and (2) a psychiatric evaluation from Dr. Pirelli, issued in connection with his underlying criminal case, provided that a confidentiality order was issued to comply with the Honorable Wendel E. Daniels, P.J.Cr.Div.'s January 23, 2019 order sealing the materials. By letter dated July 27, 2020, the OAE stated that it did not object to a sealed order permitting the release of the psychiatric evaluation from Dr. Pirelli, or an updated report from Dr. Bier, provided that such submissions were not used to assert a defense to respondent's knowledge that he possessed a firearm.

On July 28, 2020, we granted respondent's motion; directed respondent to seek the appropriate relief from the Superior Court of New Jersey, Ocean County, providing us and the OAE with the psychiatric evaluation performed by Dr. Pirelli; noted that we would promptly issue a protective order preserving the confidentiality of both the psychiatric evaluation performed by Dr. Pirelli and the updated psychiatric report of Dr. Bier; and reminded the

parties that we could not consider any evidence in mitigation inconsistent with the essential elements of the criminal matter. R. 1:20-13(c)(2).

On August 6, 2020, respondent, through counsel, filed a motion under seal with the Superior Court of New Jersey, Ocean County, Law Division, Criminal Part, to unseal the psychiatric evaluation performed by Dr. Pirelli. On August 24, 2020, Judge Daniels signed an order temporarily unsealing the evaluation to be submitted to us and the OAE for consideration in the instant matter and, at the conclusion of this matter, resealing it at the written request of respondent's counsel. Accordingly, respondent provided us with the two reports.

We have reviewed the two aforementioned reports and they do not alter our understanding of the facts in this matter.

RESPONDENT'S MOTION TO REMAND FOR A LIMITED EVIDENTIARY HEARING

As noted above, respondent argued that the appropriate measure of discipline is in the range of admonition to censure, but asserted that, if we impose greater discipline, good cause exists to remand the matter for a limited evidentiary hearing. Respondent filed the motion to remand the matter for the purpose of further developing the circumstances surrounding the incident, as well as his character. In turn, the OAE argued that respondent was using the

motion to remand as an attempt to demonstrate that his possession was something other than "knowing," by introducing evidence to establish that he has good character and that his misconduct was an unintentional, out-of-character action. The OAE contended that respondent cannot use the present matter to mount a collateral attack on his guilty plea, wherein he admitted that he had knowingly possessed the firearm. Although the OAE opposed respondent's motion, it did not object to expansion of the record to include respondent's proposed exhibits attached to his brief in support of his motion, to be considered in mitigation.

R. 1:20-13(c)(2) provides, in pertinent part, that in a motion for final discipline

> [t]he sole issue to be determined shall be the extent of final discipline to be imposed. The Board and Court may consider any relevant evidence in mitigation **that is not inconsistent with the essential elements of the criminal matter for which the attorney was convicted or has admitted guilt as determined by the statute defining the criminal matter**. No witnesses shall be allowed and no oral testimony shall be taken; however, both the Board and the Court may consider written materials otherwise allowed by this rule that are submitted to it. Either the Board or the Court, on the showing of good cause therefore or on its own motion, may remand a case to a trier of fact for a limited evidentiary hearing and report consistent with this subsection. (emphasis added)

Thus, on a showing of good cause, we may determine to remand the case for a limited evidentiary hearing.

In In re Gallo, 178 N.J. 115, 118 (2003), the OAE's evidence of the attorney's misconduct was limited to his statements at a criminal plea hearing during which he admitted to committing four acts of sexual contact. The Court determined that Gallo's "scant admissions" at the hearing did not provide a full context for evaluating the gravity of the misconduct, especially in light of the detailed allegations of the victims. The Court concluded that an evidentiary hearing was required "because the victim's allegations raise unanswered questions that bear on respondent's professional conduct." Id. at 122. The Court remanded the matter to us to develop a record that would address the victims' claims and the attorney's answers to those claims. Id. at 124.

Here, respondent's motion to remand focused on evidence of the circumstances surrounding the misconduct to establish that his possession of the handgun was unknowing and a mistake. However, respondent entered a guilty plea to unlawful possession of a handgun, for which knowing possession is an essential element (N.J.S.A. 2C:39-5(b)(1)). In this instance, there exist no "unanswered questions" which may have an effect on the evaluation of respondent's misconduct. Therefore, unlike Gallo, respondent has failed to

establish the "good cause" necessary for a limited evidentiary hearing. See In re Gallo, 178 N.J. at 122; R. 1:20-13(c)(2).

Accordingly, we determine to deny respondent's motion to remand, but accept into the record the exhibits attached to his brief in opposition to the motion for final discipline.

RESPONDENT'S OBJECTION TO THE MOTION FOR FINAL DISCIPLINE

Respondent objected to the OAE's recommendation of a term of suspension and argued that the appropriate range of discipline for his misconduct is between an admonition and a censure. Despite his sworn guilty plea, respondent maintained that the incident underlying the charges "can only be described as an inadvertent mistake." Respondent claimed that he normally kept his handgun in a locked safe in his home, but, on the morning of the hearing, he had taken the wrong backpack to the courthouse and forgotten about the handgun, which he had placed inside after using it at a shooting range with a friend.

Respondent argued that Wallace is distinguishable, because the attorney in that case had the intent to use the handgun and, as a result, put the victim in great fear for her life. Here, respondent made no threats, did not use the handgun, and simply forgot to remove it from his bag.

In mitigation, respondent asserted that the misconduct was an isolated incident; that he has a good reputation and character; that he promptly reported the charges to the OAE; that he acknowledged responsibility and expressed remorse for the misconduct; that he has no ethics discipline in more than thirty years at the bar; and that he submitted twenty-five character reference letters in his behalf, which were originally submitted in support of his application for PTI. The letters were from clients, police officers, family members, neighbors, his pastor, friends, and attorneys, including co-workers and adversaries, attesting to his upstanding character as an attorney, and in his personal life. These references have known respondent for long periods of time, some for more than thirty years. The recurrent theme throughout these letters is that respondent is trustworthy, moral, and fair; has a "stellar reputation;" is a "credit to the profession;" and exercises the "highest ethical and professional standards." Many of the references stated that the present incident is inconsistent with respondent's character, and, therefore, must have been a mistake. Also, respondent has performed service to the community as a volunteer with his children's local recreational basketball program.

Further, respondent contended that his misconduct was an isolated incident, no one was harmed, and his action was unrelated to his law practice.[2] In addition, respondent has been a Certified Civil Trial Attorney since 1993. Respondent emphasized that, once he completes the PTI program, the charge will be dismissed and the guilty plea will have no effect, pursuant to the PTI statute. As stated, respondent also submitted a polygraph examination report which confirmed the truthful nature of his statement that he did not know that the handgun was contained in the backpack prior to its discovery. Finally, respondent argued that the appropriate range of discipline is between an admonition and a censure.

* * *

Following a review of the record, we determine to grant the OAE's motion for final discipline. In New Jersey, R. 1:20-13(c) governs final discipline proceedings. Under that Rule, a criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995).

[2] Although respondent stated that this was an isolated incident, he informed the sheriff's officer that he had entered other courthouses with the same bag, and the gun went undetected. Also, respondent argued that the conduct was unrelated to his law practice, but, by his own admission, he was present at the courthouse for a scheduled court appearance before a judge.

Respondent's guilty plea to one count of second-degree unlawful possession of a handgun, contrary to N.J.S.A. 2C:39-5(b)(1), establishes a violation of RPC 8.4(b).

Pursuant to RPC 8.4(b), it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer." Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, 139 N.J. at 451-52; and In re Principato, 139 N.J. at 460.

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and the respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Ibid. (citations omitted). Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

In sum, we find that respondent violated RPC 8.4(b). The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct.

The OAE urged the imposition of a six-month suspension, with the condition that, prior to reinstatement, respondent submit psychological proof of his fitness to practice. Respondent argued that the appropriate range of discipline is between an admonition and a censure

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them relevant to the nature and extent of discipline to be imposed." In re Magid, 139 N.J. at 452. In motions for final discipline it is acceptable to "examine the totality of the circumstances" including the "details of the offense, the background of respondent, and the pre-sentence report" before "reaching a decision as to [the] sanction to be imposed." In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

Respondent's criminal conduct in this case presents us with a case of first impression. The Court has never disciplined a New Jersey attorney for the unlawful possession of a firearm under such circumstances. The following cases provide some guidance regarding the appropriate quantum of discipline to be imposed.

When conduct involving criminal acts is not of the utmost seriousness, admonitions and reprimands have been imposed. See, e.g., In the Matter of

Michael E. Wilbert, DRB 08-308 (February 11, 2009) (admonition for attorney who possessed eight rounds of hollow point bullets, a violation of N.J.S.A. 2C:39-3(f), a fourth degree crime, and a violation of RPC 8.4(b); the attorney attempted to transport hollow point bullets from New Jersey to Florida via airplane; the attorney entered into a PTI program; in mitigation, at check-in, the attorney had declared the bullets to the airline's agent, there was no evidence that he intended to conceal the possession of the bullets, and he had an unblemished disciplinary record in his thirty-seven years at the bar); In the Matter of Shauna Marie Fuggi, DRB 11-399 (February 17, 2012) (admonition for attorney who brought some of her estranged husband's belongings outside on the driveway, after he left the marital home for the evening to be with his long-term girlfriend, set the belongings on fire, and sent him a text message informing him that his possessions were aflame; the attorney was charged with third-degree arson, in violation of N.J.S.A. 2C:17-1(b), and successfully completed a PTI program; in mitigation, her action was impulsive due to the context of the marital difficulties; she unsuccessfully attempted to extinguish the fire; only personal property was damaged; she admitted the misconduct; and she cooperated with law enforcement); In re Murphy, 188 N.J. 584 (2006) (reprimand for attorney who twice presented his brother's driver's license to police in order to avoid prosecution for driving under the influence charges, in

violation of RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d); in addition, the attorney failed to cooperate with the OAE's investigation of the matter (RPC 8.1(b)); and In re Thakker, 177 N.J. 228 (2003) (reprimand for an attorney who pleaded guilty to harassment, in violation of N.J.S.A. 2C:33-4(a), a petty disorderly persons offense; the attorney harassed a former client, telephoning her repeatedly, after she told him to stop; additionally, the attorney was abusive to the police officer who responded in the matter; despite that police officer's warning, the attorney continued to call the former client and the police officer).

For more serious crimes, censures have been imposed. See, e.g., In re Milita, 217 N.J. 19 (2014) (censure for attorney who pleaded guilty to one count of hindering apprehension by providing false information to a law enforcement officer, a disorderly persons offense (N.J.S.A. 2C:29-3b(4)), and two counts of harassment, petty disorderly persons offenses (N.J.S.A. 2C:33-4(c)); the attorney became angry when two teenagers in a car tailgated him; he made an obscene hand gesture, pulled over, brandished a knife, and then followed the teens for several miles, still brandishing the knife, before being apprehended by police; the attorney first denied that he had a knife, but later admitted to its possession, claiming that it had been given to him by a mechanic to fix his car) and In re Osei, 185 N.J. 249 (2005) (attorney was

censured for causing $72,000 worth of damage to his own house, which was the subject of a foreclosure; aggravating factors included the deliberate nature of the attorney's actions and the extent of the damage to the property, which demonstrated that his actions had occurred over a significant period of time; no prior discipline).

Terms of suspension generally have been imposed when the attorney commits or threatens acts of violence. See, e.g., In re Gonzalez, 229 N.J. 170 (2017) (three-month suspension for attorney who violated RPC 8.4(b) and RPC 8.4(d) and was indicted on one count of third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d), and one count of fourth-degree criminal mischief, N.J.S.A. 2C:17-3(a)(1), when he initiated a "road rage" incident and, after the victim stopped her vehicle at an intersection, the attorney exited his vehicle, retrieved a golf club, swung the club at the victim's vehicle, and threw it at her car as she attempted to drive away, at which time the club struck her vehicle multiple times, causing damage; the attorney left the scene without contacting the police; attorney successfully completed the PTI program with conditions of restitution for the damage to the victim's car and completion of an anger management course; the victim stated that she was unable to sleep for fear of another attack; prior reprimand and admonition); In re Marcinkiewicz, 240 N.J. 207 (2019) (one-year suspension, with conditions,

for attorney who pleaded guilty to one count of aggravated assault and one count of endangering the welfare of a child, third-degree crimes; during an alcoholic blackout, the attorney inflicted severe injuries on her eight-week-old daughter); and In re Guzzino, 165 N.J. 24 (2000) (two-year suspension for attorney convicted of second-degree manslaughter and driving while intoxicated).

Arguably, respondent's crime of unlawful possession of a handgun is less serious than the attorneys' crimes in Gonzalez, Marcinkiewicz, and Guzzino, which involved actual, not potential, violence. Moreover, Wallace, on which the OAE relied, is distinguishable from the present case, because Wallace involved a near murder-suicide where the attorney intended to use the handgun to kill a victim, and his actions resulted in a victim who feared for her life. Unlike the attorney in Wallace, respondent's misconduct was a unique instance, because, although it constituted a second-degree crime, it was non-violent, did not involve a victim, and no one was harmed. Respondent's misconduct, however, created the potential for violence.

To craft the appropriate discipline in this case, we considered both mitigating and aggravating factors. In aggravation, respondent brought the handgun to a courthouse where he was scheduled to appear before a judge, and it was loaded with illegal, hollow point bullets. In mitigation, respondent's

misconduct was an isolated incident; he reported his criminal charges to the OAE two days after his arrest; he has no disciplinary history in thirty-five years at the bar; he expressed remorse and took responsibility for his misconduct; and he submitted twenty-five persuasive letters from attorneys, friends, and family members attesting to his good character and reputation.

We accord significant weight to the fact that respondent brought the loaded handgun into a courthouse where he was scheduled to appear before a judge, a scenario which created an egregious potential for danger to the public, judiciary employees, and other judges. Although respondent stressed that his misconduct was an inadvertent mistake and an isolated incident, his position does not comport with the knowing element of the crime to which he pleaded guilty, under oath, nor the fact that he represented to the sheriff's officer that he had entered other courthouses, undetected, with the same loaded handgun. Therefore, we find respondent's explanation for his misconduct to be neither reasonable nor compelling.

On balance, given the extreme recklessness of respondent's misconduct and the totality of the circumstances, we conclude that the aggravation outweighs the mitigation, and determine that a six-month suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

We further require that, within thirty days of the Court's Order in this matter, respondent provide proof of fitness to practice law, as attested to by a mental health professional approved by the OAE. This condition mirrors the conditions imposed in connection with respondent's PTI.

One additional point in this case warrants further mention. It is extremely troubling that, despite his entry of a guilty plea, under oath, in Superior Court, respondent has sought to aggressively refute his guilty plea, in the context of the disciplinary charges against him, by claiming that the knowing criminal charge to which he pleaded guilty was merely an "inadvertent mistake."

Very recently, during the oral argument for the order to show cause in In re Thompson, 240 N.J. 263 (2020), the Court expressed serious concern regarding a similar attempt to argue in the alternative following a criminal conviction. Specifically, during the Court's questioning at an order to show cause, and facing our recommendation that he be disbarred for his public corruption, the attorney began to argue that he had entered into a guilty plea to fourth-degree falsifying records for reasons other than the truth of that plea. The Court interjected, cautioning the attorney that, not only was his argument inappropriate pursuant to the Rule governing motions for final discipline, but that he was treading on dangerous ground by potentially admitting that he had

lied, under oath, to secure a favorable plea agreement in the criminal proceedings against him.

Here, respondent has gone further than to begin such a line of argument. Through counsel, he has repeatedly made the argument in connection with formal disciplinary proceedings pending against him. His alternative version of the truth, that he truly did not know that the handgun was in his bag, and that it was a mistake, is inapposite to the knowing element of the crime to which he pleaded guilty under oath. This inconsistency begs the question as to whether respondent pleaded guilty to the charge, which included the knowing element, in order to secure the result of PTI, which is a much more desirable result than the uncertain outcome of a jury trial, where respondent could have been sentenced to a maximum of ten years in state prison. Therefore, we observe that respondent may have perjured himself when he pleaded guilty, under oath, to the knowing element of the charge. Simply put, if respondent lied under oath to obtain a favorable outcome in the criminal setting, we cannot sanction such misconduct.

Chair Clark, and Members Boyer, Hoberman, and Singer voted to impose a censure with the same condition and filed a separate dissent.

* * *

Vice-Chair Gallipoli and Member Zmirich wrote separately, as follows:

We write to concur with the majority decision and to respond to the minority dissent.

We submit the Court should not be unmindful that respondent was charged with and pled guilty to one count of the second-degree offense of unlawful possession of a handgun (loaded with hollow point bullets) as he entered the Ocean County Courthouse. "Knowing" possession is an essential element of the offense to which respondent pled guilty and allocuted, apparently as part of the plea agreement with the Prosecutor that allowed for respondent's admission into the PTI program.

The dissent argues that respondent's statements in this ethics proceeding, that he "didn't know the gun was in his backpack when he attempted to enter the courthouse," do not contradict that facts to which he allocuted nor do they disavow any element of the crime of knowing possession to which he pled. We respectfully disagree. The dissent further argues that respondent's position has always been consistent. Again, we beg to disagree. When questioned by the courthouse sheriffs, respondent represented that he had placed the handgun in his backpack to show it to someone but then forgot it was in his backpack. In the disciplinary proceedings, respondent claimed that he took the handgun

from a locked safe because he planned to go to a shooting range with a friend but those plans subsequently changed.

Additionally, the dissent argues the majority "stretches" to justify its recommendation, taking issue with the majority's opinion that respondent's conduct "created the potential for violence." The dissent criticizes the majority for "leaving the reader to imagine what 'potential for violence' exists and by whom it would be committed, especially when the gun was in a backpack with legal files and respondent himself didn't know it was there." In point of fact, if the respondent is taken at his word that he was unaware of the handgun's presence in his backpack, then it takes very little imagination to infer the "possibility" of an accidental discharge, or a third-person finding the backpack unattended or unguarded by respondent and then the "possibility" of a catastrophe taking place.

Finally, the dissent cites the Court to its decision in In re Spina, 121 N.J. 378, 389, (1990), urging the Court to "examine the totality of the circumstances," including the details of the offense and the background of the respondent. We echo that invitation. No carry permit. Loaded handgun. Hollow-point bullets. Conditions imposed with entry into PTI, including weekly psychotherapy sessions; continued treatment with his psychiatrist; periodic risk evaluations performed by the psychotherapist and treating

psychiatrist; all recommended after a court-ordered psychological examination.

* * *

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
Maurice J. Gallipoli, Vice-Chair

By: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Charles Canning Daley, Jr.
Docket No. DRB 20-037

Argued: July 16, 2020

Decided: February 3, 2021

Disposition: Six-Month Suspension

Members	Six-Month Suspension	Censure	Recused	Did Not Participate
Clark		X		
Boyer		X		
Gallipoli	X			
Hoberman		X		
Joseph	X			
Petrou	X			
Rivera	X			
Singer		X		
Zmirich	X			
Total:	5	4	0	0

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

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-037
District Docket No. XIV-2018-0535E

In the Matter of

Charles Canning Daley, Jr.,

An Attorney at Law

Dissent

Decided: February 3, 2021

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

We write separately to express our disagreement with the five-member Board majority who recommend suspending respondent for six months based on his conviction for unlawful possession of a handgun, a 2nd-degree crime, a conviction which will be nullified after he successfully completes a 36-month pre-trial intervention program. Unlike the majority, we believe that respondent, a Board Certified Civil Trial attorney who has no ethics history over a 35-year legal career, should be censured for his charged conduct which involved no violence and caused no harm to anyone. We also highlight at the outset, as

discussed in more detail below, that no precedent supports the majority's sanction.

This case involves a loaded and unregistered handgun. As the majority opinion details, a handgun inside respondent's backpack set off a metal detector when the backpack, also carrying respondent's legal files, was scanned as respondent entered the Ocean County Courthouse to argue a motion on September 17, 2018. Respondent, who did not possess a permit to carry a concealed gun, forgot that he had placed the gun inside that backpack days earlier, intending at that time to go with a friend to a firing range. When that plan changed, he forgot to return the firearm to the locked safe where he usually kept it. He had owned the gun since his days as a member of the District Attorney's Office in Philadelphia when, in that capacity, he was authorized to carry a firearm and had legally obtained it.

There are three points central to the majority's analysis with which we take issue: (1) the majority opinion fails to identify any case remotely similar to the facts here which justifies imposing a six-month suspension or indeed any suspension at all; (2) the majority accords "significant weight" as an aggravating factor that respondent brought the handgun to a courthouse; and (3) the majority strongly criticizes respondent for asserting that he was not conscious that the gun was in his backpack when he entered the Ocean County Courthouse. The

majority sees this as inconsistent with his guilty plea to knowingly possessing a handgun. Our disagreement with each of these points is now discussed in turn.

1. **There is no precedent supporting a six-month suspension in this case**. The majority opinion terms this case one "of first impression." It then discusses cases of respondents who were disciplined based on criminal convictions which it implies should be considered, never identifying any of the cases as comparable. In fact, all of the three cited cases where respondents were suspended involved violence or the threat of violence. (Opinion, at 14-18). In re Gonzalez, 229 N.J. 170 (2017) (three-month suspension for attorney with prior ethics infractions who possessed a weapon, initiating a "road rage" incident, swinging a club at the victim's vehicle); In re Marcinkiewicz, 240 N.J. 207 (2019) (one-year suspension for attorney who seriously injured her eight-week old child and pleaded guilty to aggravated assault and endangering the welfare of a child); and In re Guzzino, 165 N.J. 24 (2000) (two-year suspension for attorney convicted of second-degree manslaughter and driving intoxicated). Here, there is not even a scintilla of evidence suggesting that this was a violent act or that violence was threatened.

Further, the majority acknowledges (Opinion, at 18) that the case relied on by the OAE to support a six-month suspension, In re Wallace, 153 N.J. 31 (1998), is distinguishable "because Wallace involved a near murder-suicide

where the attorney intended to use the handgun to kill a victim," whereas here respondent's crime "was non-violent, did not involve a victim, and no one was harmed."

Even the conduct in the two censure cases cited by the majority (Opinion, at 16) was more serious than that here: In re Milita, 217 N.J. 19 (2014) (brandishing a knife at two teenagers and hindering apprehension by providing false information to police officer) and In re Osei, 185 N.J. 249 (2005) (causing $72,000 worth of damage over a period of time to his own house which was in foreclosure).

Lacking any precedent for its decision, the majority stretches to justify it. Thus, it says that although no violence or threat of violence was involved here, respondent's conduct "created the potential for violence" (Opinion, at 18), "created an egregious potential for danger to the public, judiciary employees, and other judges" and was "extreme[ly] reckless[]" (Opinion, at 19). It does not explain these conclusory remarks, leaving the reader to imagine what "potential for violence" exists and by whom it would be committed, especially when the gun was in a backpack with legal files and respondent himself didn't know it was there.

2. **That respondent unknowingly brought the gun to a courthouse is not an aggravating factor**. We do not consider the fact that the handgun was discovered when respondent was entering a courthouse to be an aggravating factor, much less deserving the "significant weight" accorded by the majority. Aggravating factors include conduct, circumstances, or characteristics that reflect added culpability. It is hard to see how something that was an unconscious mistake, without intent or pattern, that says nothing about respondent's character or capacity, can fairly be weighed as an aggravating factor.

There is no dispute that respondent was not conscious that the firearm was in his backpack at the time he entered the courthouse. That is what he told the arresting officers. It was confirmed by his passing a voluntary polygraph examination which detected no dissembling when he denied such knowledge. Respondent has never said anything to the contrary, and there is no evidence to the contrary. Significantly also, the gun had not been detected when he previously had entered other courthouses with that same backpack, leaving him unaware of his oversight until the incident in Ocean County. That respondent was unaware that the handgun was in his backpack at the moment he went into a courthouse was not a defense to the underlying criminal charge — and is not

a defense to the ethics charge — but it certainly negates treating the gun's presence in a courthouse lobby as an aggravating factor.

3. **There is no basis to penalize respondent for his argument that he forgot about the gun in his backpack**. The majority criticizes respondent for calling his misconduct "an inadvertent mistake" because, it says, this "does not comport with the knowing element of the crime to which he pleaded guilty, under oath." (Opinion, at 19). In substance, the majority seems to be accusing respondent of lying, either under oath in entering his guilty plea or now before the Board. We submit that this conclusion wrongly characterizes respondent's plea and his allocution and, in doing so, penalizes respondent for making a perfectly proper mitigation argument.

As to this point, we first note the Supreme Court's holding that in motions for final discipline, it will "examine the totality of the circumstances" including details of the offense and background of respondent. In re Spina, 121 N.J. 378, 389 (1990). We also note, as did the majority (at p. 20), that the Court has expressed concerns about an attorney arguing that he entered a guilty plea for reasons other than the truth of that plea because it amounted to potentially admitting that he had lied under oath. We share that concern. However, we do not believe this to be such a case. That respondent raised his lack of awareness

of the gun in his backpack when he entered the courthouse was part of the "totality of the circumstances." If he had intended to bring a loaded gun into a courthouse, that would have been a relevant fact. Therefore, that he lacked such intent must also be a relevant fact.

Here, respondent never claimed that his allocution in entering his plea was inaccurate or tried to back away from it. He pleaded guilty to violating N.J.S.A. § 2C:39-5(b)(1), providing that, "[a]ny person who knowingly has in his possession any handgun including any antique handgun, without first having obtained a permit to carry the same . . . is guilty of a crime of the second degree." Whether respondent was conscious that the handgun was in his backpack as he entered the Ocean County Court House was not an element of the offense and was not part of the plea.

In his allocution, respondent testified: (a) that on September 17, 2018, he went through a metal detector at the Ocean County Courthouse; (b) at that time he had a backpack with a gun in it; and (c) the gun belonged to him, being one that he had purchased in 1982 when he was, as a member of the Philadelphia DA's office, authorized to carry a firearm. He never allocated that he knew the gun was there *when he entered the courthouse* nor did he need to do so in order to provide a factual basis supporting the elements of knowing possession. Rather he admitted simply that the firearm that was found in his backpack in the

courthouse belonged to him, and that he had owned it since 1982. (See transcript of guilty plea in the record of this case). His recent statements in this ethics case that he didn't know the gun was in his backpack *when* he entered the courthouse do not contradict the facts to which he allocuted nor do they disavow any element of the crime of knowing possession to which he pled guilty. Pursuant to Spina, he was entitled, and some might say obligated, to explain "the totality of circumstances" of his offense.

It would be a different situation entirely if respondent had pleaded guilty to a criminal statute making it unlawful to carry a firearm into a courthouse. However, the statute to which he pleaded guilty does not include the location in which possession was found as an element of the offense. All that is required is that he was in possession of the unlicensed firearm. Respondent clearly was. He knew that that the firearm was his, had been placed in a backpack owned and controlled by him, and that, whether at his home, in his car or on his person, it was in his possession. Pleading guilty and allocuting to facts supporting the elements of the offense at issue does not mean that he knew his unlawfully possessed firearm was in the backpack *when he took it into the Courthouse* on

the date in question.[1] Nothing in the transcript of his guilty plea indicates that either.

Respondent's position has always been consistent -- that the gun was his, that he had it in his backpack (and thereby in his possession) and that when he went into the Courthouse he did not realize it was in the backpack he took into the Courthouse. He told this to the arresting officers in the courthouse when the gun was discovered, to the polygraph examiner whose polygraph indicated he was being truthful, and more recently to this Board. His statements are not only not contradicted, they are inherently credible. It makes no sense that an attorney would knowingly go through a courthouse metal detector with a handgun that he had to believe surely would be detected. All the evidence shows that respondent has been consistently truthful throughout what must have been an agonizing process for him. None of his statements contradict those he made in entering his guilty plea.

In addition to these points, we find compelling the significant evidence of mitigation that is given only cursory mention by the majority. This was an isolated, aberrant incident; respondent immediately reported his arrest to the OAE; he has no disciplinary history in 35 years at the bar; he expressed sincere

[1] There was evidence suggesting that respondent had two different backpacks and that he had mistakenly brought the wrong one to the Courthouse on the day in question.

remorse; he cooperated fully in the investigation, he documented his good character and reputation with many character letters; and his offense caused no harm.

In light of the above, the majority's determination to impose a six-month suspension is, in our view, too harsh. Under all of the circumstances presented, we believe that a censure is the appropriate discipline for this lawyer with no prior ethics history. A suspension would be unjustified and unduly punitive for what we see as being an unfortunate act of negligent forgetfulness, which already has had dire consequences for this respondent, who has by all accounts otherwise had a distinguished and unblemished career.

Disciplinary Review Board
Bruce W. Clark, Chair
Peter J. Boyer, Esquire
Thomas Hoberman
Anne C. Singer, Esquire

By: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
D-48 September Term 2020
085337

In the Matter of

Charles Canning Daley, Jr.,

An Attorney At Law

(Attorney No. 001321985)

: ORDER

FILED

MAY 20 2021

Heather J. Baker
CLERK

The Disciplinary Review Board having filed with the Court its decision in DRB 20-037, concluding that as a matter of final discipline pursuant to Rule 1:20-13 (c) (2), **Charles Canning Daley, Jr.,** of **Toms River**, who was admitted to the bar of this State in 1985, should be suspended from the practice of law for a period of six months based on respondent's conditional plea of guilty to second-degree unlawful possession of a handgun without proper permit (N.J.S.A. 2C: 39-5 (b) (1)), conduct in violation of RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects);

And the Disciplinary Review Board having further concluded that respondent should be required to provide proof of his fitness to practice law;

And the Court having determined from its review of the decision of the Disciplinary Review Board, pursuant to Rule 1:20-16 (b), that a censure is the

appropriate quantum of discipline for respondent's unethical conduct and that respondent should demonstrate proof of his fitness to practice law;

And good cause appearing;

It is ORDERED that **Charles Canning Daley, Jr.,** is hereby censured; and it is further

ORDERED that respondent shall provide proof of his fitness to practice law, as attested to by a mental health professional approved by the Office of Attorney Ethics, which proof shall be provided within thirty days after the filing date of this Order; and it is further

ORDERED that the entire record of this matter be made a permanent part of respondent's file as an attorney at law of this State; and it is further

ORDERED that respondent reimburse the Disciplinary Oversight Committee for appropriate administrative costs and actual expenses incurred in the prosecution of this matter, as provided in Rule 1:20-17.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 18th day of May, 2021.

Heather J. Baker

CLERK OF THE SUPREME COURT

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania*: *Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Office of Disciplinary Counsel

Signature: Harriet R. Brumberg

Name: Harriet R. Brumberg, Disciplinary Counsel

Attorney No. (if applicable): 31032