

**SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON
JUDICIAL CONDUCT**

DOCKET NO: ACJC 2018-224

IN THE MATTER OF

**GUY W. KILLEN,
JUDGE OF THE MUNICIPAL COURT**

**STIPULATION OF
DISCIPLINE BY CONSENT**
R. 2:15-15A(b)

THIS STIPULATION is made and entered into between Hon. Guy W. Killen, J.M.C., (“Respondent”) and Maureen G. Bauman, Disciplinary Counsel / Presenter for the Advisory Committee on Judicial Conduct (“ACJC” or the “Committee”).

Respondent is a member of the Bar of the State of New Jersey, having been admitted to the practice of law in 1981. At all times relevant to this matter, Respondent served as a part-time judge in the Municipal Court of Vineland City, a position he continues to hold. At all times relevant to this matter, Respondent also operated his law office as “Guy W. Killen, P.C.,” a professional corporation.

A. FACTS

Pursuant to Rule 1:28A, any attorney admitted to practice law in New Jersey must maintain an interest-bearing account or accounts (“IOLTA”) into which all sums received on behalf of clients are deposited. Failure to maintain such accounts results in the inclusion of the attorney on a list of attorneys who, by Supreme Court order, are ineligible to practice law until they submit the required trust account forms to the IOLTA Fund Trustee.

On or about October 17, 2017, pursuant to Rule 1:28A-2(d), the Supreme Court of New Jersey entered an Order, effective October 20, 2017, declaring Respondent administratively ineligible to practice law based on his noncompliance with Rule 1:28A in respect of the Court's mandatory IOLTA program. **Exhibit 1.** Respondent, nonetheless, appeared in court on behalf of clients and continued to sit as a municipal court judge in Vineland City during the period of IOLTA ineligibility.

On or about March 29, 2018, Respondent satisfied the requirement to comply with IOLTA by submitting the proper registration forms to the IOLTA Fund Trustee and on April 3, 2018, the Court removed Respondent from the IOLTA ineligibility list.

Pursuant to Rule 1:21-1A, et seq., attorneys or law firms practicing as professional corporations in New Jersey shall maintain professional liability insurance. Each professional corporation shall file a certificate of insurance with the Clerk of the Supreme Court within 30 days after it files its certificate of incorporation. Pursuant to Rule 1:21-1A(a)(3), Respondent was required to obtain and maintain, in good standing, a policy of lawyers' professional liability insurance because he operated his law office as a professional corporation. Respondent was further required to file a certificate of insurance with the Clerk of the Supreme Court of New Jersey within 30 days after filing a certificate of incorporation, pursuant to Rule 1:21-1A(b).

On or about February 11, 2014, March 20, 2014, and August 24, 2016¹, the Clerk of the Supreme Court wrote to Respondent requesting a copy of the certificate of insurance evidencing his procurement of professional liability insurance in conformity with Rule 1:21-1A(a)(3). **Exhibit 2.** Respondent failed to file the requisite certificate of insurance with the Clerk of the Supreme Court.

¹ The May 11, 2017 letter from the Clerk of the Supreme Court of New Jersey states that the August 24th letter was sent in 2014, however, the supporting documents reflect it was sent on August 24, 2016 (see Exhibit 2).

On or about July 10, 2014, a voicemail message was left at Respondent's law firm on behalf of the Clerk of the Supreme Court of New Jersey advising Respondent that his failure to produce the required certificate of insurance would result in notification of such non-compliance to the Office of Attorney Ethics ("OAE"). **Exhibit 3.** Respondent failed to provide proof of professional liability insurance, as requested, and the matter was referred to the OAE on May 11, 2017.

On or about March 29, 2018, the OAE filed a Complaint against Respondent. The OAE's Complaint alleged that Respondent was administratively ineligible to practice law due to his failure to comply with the requirements of the IOLTA program but did not charge Respondent with having violated RPC 5.5 (a)(1) relative to his IOLTA noncompliance. The OAE's Complaint charged Respondent with violating RPC 5.5 (a)(1) (unauthorized practice of law) based on Respondent's failure to maintain professional liability insurance in violation of Rule 1:21-1A (a)(3) and RPC 8.1 (b) (failure to cooperate with disciplinary authorities) based on Respondent's failure to respond to the OAE's and Clerk of the Supreme Court's inquiries requesting proof of insurance. **Exhibit 4.**

In his Answer to the OAE's Complaint and at a hearing on December 5, 2018 before the District IV Ethics Committee ("DEC") Hearing Panel, Respondent admitted that he failed to comply with the requirements of the IOLTA program. **Exhibit 5 at ¶ 4; Exhibit 6 at T18-22 thru T19-1.** Respondent further admitted that he failed to obtain and maintain in good standing a policy of lawyers' professional liability insurance, as required by Rule 1:21-1A (a)(3). **Exhibit 5 at ¶ 6; Exhibit 6 at T19-2-6.** In recommending a censure for Respondent's misconduct, the Panel found mitigating factors which included Respondent's contrition, admission of wrongdoing, and his otherwise unblemished attorney disciplinary history throughout his 38 years of practicing law. The DEC noted as aggravating factors that "Respondent was well aware over a lengthy period of

time, that the OAE was trying to reach him to discuss something and he repeatedly chose to ignore the contact.” **Exhibit 5 at ¶¶ 29 and 30.**

As per Rule 1:20-15 (f)(1), the Disciplinary Review Board (“DRB” or the “Board”) reviewed the DEC’s recommendations and on December 5, 2019, recommended a reprimand for Respondent’s misconduct, noting that the DEC erred in two of its findings. First, since the OAE’s Complaint did not charge Respondent with having violated RPC 5.5(a)(1) due to his IOLTA ineligibility and was not amended to include that violation, the DEC erred in finding that violation. Second, as to the charge of a violation of RPC 8.1(b) based on Respondent’s failure to acknowledge communications from the Clerk of the Supreme Court, since the Clerk is not a disciplinary authority, and since the Clerk’s requests were not made in connection with a disciplinary matter, the DRB dismissed the RPC 8.1(b) charge as it relates to the Clerk. The Board limited its review of the record to the professional liability issue and found that Respondent violated RPC 5.5(a)(1), by practicing as a professional corporation without professional liability insurance, and RPC 8.1(b), by ignoring the OAE’s requests for information in that regard. **Exhibit 8.** Respondent’s attorney disciplinary matter remains pending before the Supreme Court.

In his Verified Answer to the Formal Complaint filed by the ACJC, Respondent admitted he was on the IOLTA list of ineligible attorneys from October 17, 2017 through March 29, 2018 for failing to comply with Rule 1:28A. Respondent further admitted that he failed to obtain and maintain in good standing a policy of lawyers’ professional liability insurance, as required by Rule 1:21:1A (a)(3).

B. MISCONDUCT COMMITTED

Respondent, by his conduct as set forth above, violated Canon 1, Rule 1.1 and Rule 1.2, and Canon 2, Rule 2.1, of the Code of Judicial Conduct. Respondent also violated Rule 1:14 and Rule 1:18 of the New Jersey Court Rules.

C. AGGRAVATING / MITIGATING CIRCUMSTANCES

Respondent has no prior judicial disciplinary history. As reflected in Respondent's Verified Answer, filed on July 1, 2019, Respondent admitted the facts alleged in the Formal Complaint. Respondent admitted that the facts as alleged constituted multiple violations of the canons of the Code of Judicial Conduct, as explained above, and Rule 1:14 and Rule 1:18 of the New Jersey Court Rules. Respondent has demonstrated remorse for his misconduct.

According to Respondent, he addressed successfully certain personal issues that precipitated his misconduct in this instance and rectified his IOLTA ineligibility after receiving oral notification of same on March 29, 2018. **Exhibit 6 at T19-13-17.** There is no evidence to indicate that Respondent's attention to his judicial duties faltered during the period of ineligibility or that he failed to attend appropriately to the matters before the Vineland Municipal Court during that period. In a May 14, 2018 Statement of Mitigation attached to his Answer to the OAE's Complaint, Respondent stated that he had been "in denial with regard to certain aspects of his personal and professional responsibilities," and, for a period of time, he "did not open nor respond to correspondence [w]ith potential negative ramifications" due to difficulties in his personal life. A death in Respondent's family and his divorce after a lengthy marriage triggered this "situation" and he subsequently sought help, including treatment for mild depression. Respondent testified at the hearing before the DEC that he could not afford to carry professional liability insurance and, since 2014 or 2015, had stopped holding himself out as a professional corporation, identifying

himself on letterhead and pleadings as “Guy W. Killen, Attorney at Law.” Respondent now realizes that he had not formally dissolved the professional corporation. **Exhibit 6 at T28-3-9 and T36-16 thru T37-12.**

D. AGREED DISCIPLINARY SANCTION AND LEGAL PRECEDENT

The agreed recommended disciplinary sanction for this misconduct is a range of public admonition to public reprimand. As a member of the Judiciary and a practicing member of the bar, it is incumbent upon Respondent to remain compliant with the court rules applicable to the practice of law in New Jersey. Respondent failed to meet his obligations in this regard and compounded that harm when he continued to sit as a municipal court judge for five months (i.e. October 17, 2017 through March 29, 2018) though ineligible to practice law due to his IOLTA noncompliance. While these facts are a matter of first impression in the New Jersey judicial disciplinary context, other states have disciplined judges for hearing cases while administratively suspended from the practice of law.

In Texas, a district court judge’s law license had been administratively suspended for non-payment of dues on five separate occasions. Each time, the judge paid her dues, along with a penalty, after which her law license was reinstated. The judge submitted an affidavit from her court coordinator that stated she did not open or disseminate the mail to the judge or apprise the judge of the content of the mail. When the judge was made aware of her administrative suspension, she immediately paid the dues and penalty. The Texas State Commission on Judicial Conduct issued a public warning to the judge. See Public Warning of Guaderrama (Texas State Commission on Judicial Conduct July 16, 2017).

In another matter, the Texas State Commission on Judicial Conduct imposed a public reprimand on a judge for failing to maintain her Texas law license in good standing and failing to

cooperate with the Commission. The judge's law license was administratively suspended for short periods of time in 2013, 2015, 2016, 2017 and from September 1, 2018 to June 26, 2019. The judge admitted that she did not pay her bar dues but blamed the lapses on the treasurer of her officeholder account, the individual to whom she delegated that responsibility. See Public Reprimand of Slaughter (Texas State Commission on Judicial Conduct February 7, 2020).

The Arkansas Judicial Discipline & Disability Commission publicly admonished three municipal court judges who had been suspended from the practice of law for failing to pay annual fees and, therefore, had not been an attorney in good standing as required by law for municipal court judges. See Letter to Harrison (Arkansas Judicial Discipline & Disability Commission January 24, 1995) (municipal court judge failed to pay annual attorney license fees for 5 years); Letter to Adams (Arkansas Judicial Discipline & Disability Commission January 24, 1995) (municipal court judge failed to pay annual attorney license fees for 3 years) and Letter of Admonishment to Alford (Arkansas Judicial Disability Commission November 29, 2004) (municipal court judge failed to pay annual attorney license fees for 3 years).

In Washington, pursuant to a stipulation, a judge consented to an admonishment for serving as a judge pro tempore on nine separate occasions from June 6, 1997 until June 24, 1997, when he had been suspended from the practice of law for nonpayment of dues. The judge stated to Commission counsel that he paid the funds to reinstate his license immediately after he first became aware of the order of suspension. See In re Seidlitz, Washington State Commission on Judicial Conduct June 5, 1998.

In this instance, as in Guaderrama, Slaughter, Harrison, Adams, Alford and Seidlitz, Respondent's administrative ineligibility to practice law, which lasted for a period of five months, was occasioned by his prolonged inattention to his professional licensing responsibilities the

consequence of which implicated his standing to serve as a jurist. Though Respondent eventually rectified his IOLTA ineligibility after receiving oral notification of same, he failed repeatedly to respond to the prior written notifications concerning that ineligibility. Respondent has acknowledged that his ineligibility was the result of his own failure to open mail and has accepted responsibility for this conduct. In respect of his failure to file a certificate of insurance with the Clerk of the Supreme Court, Respondent, again, failed to devote sufficient attention to these professional obligations. Believing, incorrectly, that he was holding himself out as a sole practitioner, not a corporation, Respondent understood that he was not required to maintain professional liability insurance, which he could not afford at the time. Respondent, appreciating his misconduct in this instance, has accepted responsibility for his neglect of his professional licensing responsibilities and has corrected his professional association to reflect his standing as a sole practitioner, not a corporation.

As a member of the bench and bar, Respondent is obligated to maintain his license to practice law in good standing and to rectify, promptly, any ethical or administrative issues that affect the validity of that license. Having failed to do so, and informed by the judicial disciplinary precedent in other jurisdictions as noted herein, the agreed recommended range of disciplinary sanction is a public admonition to a public reprimand, which considers not only Respondent's misconduct but the higher standard to which jurists are held and the mitigating factors present in this case, as discussed above.

E. RESPONDENT REPRESENTATIONS

By entering into this Stipulation of Discipline, Respondent agrees that this disciplinary action will proceed directly to the Committee, by way of application for discipline by consent, for


its review and consideration on the written record in accordance with Rule 2:15-15A(b)(3). No further documentation beyond the record submitted will be accepted by the Committee.

Respondent understands that, should the Committee grant the application for discipline by consent and accept the recommendation herein, the Committee shall submit the written record to the Supreme Court for further action in accordance with Rule 2:15-15A(b)(4). Respondent understands that, in the event the motion for discipline by consent is denied by the Committee, the disciplinary proceeding shall resume as if no motion had been submitted and this Stipulation shall not be evidentiary.

F. LIST OF EXHIBITS IN SUPPORT OF STIPULATION

1. Notice to the Bar and October 17, 2017 Order of the Supreme Court;
2. February 11, 2014, March 20, 2014 and August 24, 2016 letters from the Clerk of the Supreme Court of New Jersey to Respondent;
3. March 20, 2014 letter from Clerk of the Supreme Court of New Jersey to Respondent with a handwritten notation regarding the voice mail message left for Respondent on 7/10/14;
4. Complaint dated March 29, 2018 filed by the Office of Attorney Ethics;
5. Respondent's Answer to the Office of Attorney Ethics' Complaint;
6. Transcript of hearing before District IV Ethics Committee held on December December 5, 2018;
7. Hearing Report Recommending Censure; and
8. December 5, 2019 Disciplinary Review Board Decision Recommending Reprimand


G. SIGNATURE, RECOMMENDATION AND APPROVAL



HON. GUY W. KILLEN, J.M.C.
Respondent

6/9/20

Date



MAUREEN G. BAUMAN, ESQ.
ACJC Disciplinary Counsel / Presenter

June 17, 2020

Date

/s/ Virginia A. Long

HON. VIRGINIA A. LONG, *RET.*
ACJC Chair

July 8, 2020

Date

SUPREME COURT OF NEW JERSEY
ADVISORY COMMITTEE ON JUDICIAL CONDUCT

HONORABLE VIRGINIA A. LONG, CHAIR
HONORABLE STEPHEN SKILLMAN, VICE CHAIR
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CONFIDENTIAL

July 8, 2020

VIA HAND-DELIVERY AND ELECTRONIC TRANSMITTAL

Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 W. Market Street
P.O. Box 970
Trenton, N.J. 08625

**Re: In the Matter of Guy W. Killen, J.M.C.
ACJC 2018-224**

Dear Chief Justice and Associate Justices:

Pursuant to Rule 2:15-15A(b)(3), please find enclosed herewith an application for discipline by consent filed with the Advisory Committee on Judicial Conduct ("the Committee" or "ACJC") on June 17, 2020 by Maureen G. Bauman, Esq., ACJC Presenter, and Respondent, Guy W. Killen, J.M.C., self-represented. Respondent has conceded to violating Canon 1, Rule 1.1 and Rule 1.2, and Canon 2, Rule 2.1 of the Code of Judicial Conduct, and New Jersey Court Rule 1:14 and Rule 1:18, when he practiced law and presided as a municipal court judge from October 17, 2017 to March 29, 2018 despite his administrative ineligibility based on his failure to comply with IOLTA requirements (Count I) and failed to obtain and maintain in good standing a policy of lawyers' professional liability insurance (Count II).

The Committee granted the application for discipline by consent on June 24, 2020. Pursuant to the enclosed stipulation, Presenter and Respondent agreed to a recommended disciplinary sanction within the range of a public admonition to a public

reprimand for Respondent's judicial misconduct. After careful consideration, and for the reasons stated below, the Committee respectfully recommends to this Court that the appropriate sanction for Respondent's misconduct is a public reprimand.

The facts presented here are a matter of first impression for this Court in the judicial disciplinary context. However, other states have disciplined judges for hearing cases while administratively suspended from the practice of law. For example, in Texas, the State Commission on Judicial Conduct issued a public warning to the judge after she was administratively suspended for non-payment of dues on five separate occasions. Public Warning of Guaderrama, July 16, 2017. In another matter, the Texas State Commission on Judicial Conduct imposed a public reprimand because the judge failed to maintain her law license in good standing and failed to cooperate with the Commission. Public Reprimand of Slaughter, February 7, 2020. In Arkansas, the Judicial Discipline and Disability Commission publicly admonished three municipal court judges who were suspended from the practice of law for failing to pay annual fees and, therefore, had not been attorneys in good standing as required to preside as a judge. Letter to Harrison, January 24, 1995; Letter to Adams, January 24, 1995; and Letter to Alford, November 29, 2004. In Washington, a judge consented to an admonishment from the State Commission on Judicial Conduct for serving as a judge *pro tempore* on nine separate occasions over the course of less than a month during a period for which he had been suspended from the practice of law for nonpayment of dues. In re Seidlitz, June 5, 1998.

Regarding the appropriate discipline to impose in this matter, Respondent's misconduct was not limited to one type of ethical breach, as occurred in the Guaderrama, Harrison, Adams, Alford, and Seidlitz cases cited above, all of which were cases where the discipline imposed was less than a reprimand. In Slaughter, the judge's misconduct included an additional breach aside from her failure to maintain her law license, for which she was reprimanded. In this matter, Respondent not only failed to maintain an IOLTA account, but he also failed to obtain and maintain in good standing a policy of lawyers' professional liability insurance. Furthermore, in Seidlitz, the judge was admonished for presiding as a judge for less than a month during his period of ineligibility, while Respondent in this matter presided as a judge during his period of ineligibility for five months. Respondent knew or should have known that it was incumbent upon him to comply with these obligations. Even after receiving notification on multiple occasions of these

obligations and his deficiencies, Respondent's continued failure to rectify these issues contravened the expectation that judges will observe high standards of conduct so that the integrity, impartiality, and independence of the judiciary is observed. Furthermore, Respondent's continued noncompliance in multiple respects, which was, in part, the subject of a complaint filed by the Office of Attorney Ethics, failed to promote public confidence in the judiciary. The Committee, on weighing Respondent's continued noncompliance and failure to timely address his obligations, which constitute multiple ethical breaches, against his otherwise unblemished judicial disciplinary history and his acknowledgement of wrongdoing, recommends the imposition of a public reprimand as the appropriate quantum of discipline consistent with case precedent.

Please find enclosed herewith the record in this matter, which consists of the following documents:

1. Stipulation of Discipline by Consent;
2. Affidavit of Consent;
3. All material exhibits (#1-8) in support of Stipulation;
4. Formal Complaint filed June 14, 2019; and
5. Verified Answer filed July 1, 2019.

Thank you.

Very truly yours,

/s/ Virginia A. Long

Virginia A. Long, Chair

Enclosures

Cc: Candace Moody, Esq., ACJC Chief Counsel / Exec. Director
Maureen G. Bauman, Esq., ACJC Presenter
Guy W. Killen, Respondent