

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: September 27, 2012

D-43-12

In the Matter of TERENCE L.
KINDLON, an Attorney.

COMMITTEE ON PROFESSIONAL
STANDARDS,

MEMORANDUM AND ORDER

Petitioner;

TERENCE L. KINDLON,
Respondent.

(Attorney Registration No. 1034057)

Calendar Date: September 5, 2012

Before: Peters, P.J., Rose, Lahtinen, Spain and Kavanagh, JJ.

Peter M. Torncello, Committee on Professional Standards,
Albany, for petitioner.

Kindlon Shanks & Associates, Albany (Lee C. Kindlon of
counsel), for respondent.

Per Curiam.

Respondent was admitted to practice by this Court in 1974
and maintains an office for the practice of law in the City of
Albany.

Petitioner moves to confirm a Referee's report as to the
specification of a single charge that the Referee sustained and
to disaffirm the report as to those specifications that the
Referee did not sustain. Respondent cross-moves to confirm the
Referee's report in its entirety. We have heard respondent on

the motions and in mitigation.

We grant petitioner's motion to confirm the Referee's report, deny the motion to disaffirm the report and grant respondent's cross motion to confirm the report in accordance with the findings of professional misconduct set forth in this decision. Respondent's misconduct arose out of his representation of a criminal defendant. During a recess in the trial and while the prosecutor was outside the courtroom, respondent viewed, handled and photographed a document that was on the prosecution's table. Respondent did not seek, nor was he ever granted, permission by the prosecutor to examine, handle or photograph the document.

The Referee found, and we agree, that respondent engaged in undignified and/or discourteous conduct, as well as conduct that adversely reflects on his fitness as a lawyer in violation of the Rules of Professional Conduct (22 NYCRR 1200.0) rules 3.3 (f) (2); 8.4 (h). In aggravation of respondent's misconduct, we note that petitioner has issued three letters of caution to respondent since 1997. In mitigation, we note respondent's otherwise distinguished legal career and laudable community service.

Under all of the circumstances presented, we conclude that respondent should be censured.

Peters, P.J., Rose, Lahtinen, Spain and Kavanagh, JJ., concur.

ORDERED that respondent is found guilty of the professional misconduct set forth in charge 1, specification 1 only insofar as it alleges a violation of Rules of Professional Conduct (22 NYCRR 1200.0) rule 3.3 (f) (2) and rule 8.4 (h); and it is further

ORDERED that petitioner's motion to confirm and disaffirm the Referee's report is granted and denied accordingly and respondent's cross motion to confirm the Referee's report is granted; and it is further

ORDERED that respondent is censured.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court