

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

Decided and Entered: May 16, 2024

PM-94-24

In the Matter of DEVON JOSEPH
CASERTINO, an Attorney.

ATTORNEY GRIEVANCE
COMMITTEE FOR THE
THIRD JUDICIAL
DEPARTMENT,

MEMORANDUM AND ORDER
ON MOTION

Petitioner;

DEVON JOSEPH CASERTINO,
Respondent.

(Attorney Registration No. 5693601)

Calendar Date: April 29, 2024

Before: Egan Jr., J.P., Aarons, Pritzker, Reynolds Fitzgerald and Fisher, JJ.

*Monica A. Duffy, Attorney Grievance Committee for the Third Judicial
Department, Albany (Lauren S. Cousineau of counsel), for Attorney Grievance
Committee for the Third Judicial Department.*

Devon Joseph Casertino, Latham, respondent pro se.

Per Curiam.

Following his 2014 graduation from law school, respondent passed the July 2017 bar exam and thereafter applied to this Court for admission to practice. His application materials raised character and fitness concerns and, following the character and fitness

process, respondent was admitted to practice by this Court, by February 2019 order, subject to the conditions that he associate with a lawyer of no less than five years of practice experience and not engage in the solo practice of law or serve as a partner in a firm. Respondent was further directed to certify compliance with the aforementioned conditions on a quarterly basis and this Court's order further provided that respondent could seek to terminate the conditions of his admission after two years. By February 15, 2023 correspondence to petitioner, the Court's Office of Attorney Admissions has alleged that respondent has been noncompliant with the conditions of his admission and referred the issue to petitioner for whatever action it deems appropriate. In response to such referral, respondent moved to terminate the conditions of his admission by motion made returnable March 20, 2023. Petitioner and the Office of Attorney Admissions opposed the motion by separate correspondence to the Court, and we directed, by April 3, 2023 correspondence, that respondent's motion be held in abeyance pending the resolution of petitioner's investigation. By verified petition marked returnable March 11, 2024, petitioner has alleged that respondent's noncompliance with the conditions of his admission constitutes professional misconduct deserving of public discipline. By notice of joint motion marked returnable April 29, 2024, the parties now move this Court for the imposition of discipline upon respondent by consent (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.8 [a] [5]).

As to the parties' joint motion, petitioner and respondent appropriately submitted a stipulation of facts and respondent conditionally admits to those facts, as well as a rule violation, specifically that his failure to comply with the terms of his conditional admission order constitutes a violation of Rules of Professional Conduct (22 NYCRR § 1200.0) rule 8.4 (d). In addition to the aggravating and mitigating factors cited by the parties, the parties have also included the agreed-upon sanction of a censure, and respondent freely and voluntarily consents to the joint motion, denies any coercion and acknowledges that he is fully aware of the consequences in entering into such a stipulation (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.8 [a] [5] [iii]). Given this, we consider the procedural requirements of Rules for Attorney Disciplinary Matters (22 NYCRR) § 1240.8 (a) (5) satisfied and turn to the assessment of the appropriate sanction based upon the underlying conduct (*see Matter of Toomey*, 219 AD3d 1596, 1597 [3d Dept 2023]; *Matter of Cail*, 198 AD3d 1094, 1094-1095 [3d Dept 2021]).

In aggravation, petitioner cites respondent's pattern of misconduct (*see* ABA Standards for Imposing Lawyer Sanctions standard 9.22 [c]), his multiple offenses (*see* ABA Standards for Imposing Lawyer Sanctions standard 9.22 [d]), and that each offense

is a knowing failure to comply with the Court's order. In mitigation, respondent indicates that the majority of his quarterly reports were timely, that his errors were inadvertent and unintentional, were the result of misconceptions or misunderstandings and that he did not seek to willfully or blatantly disregard the Court's order (*see* ABA Standards for Imposing Lawyer Sanctions standard 9.32 [b]). While not stated by either party, given respondent's admission to the practice of law in 2019, respondent's inexperience in the practice of law may also be considered as a mitigating factor (*see* ABA Standards for Imposing Lawyer Sanctions standard 9.32 [f]). Given the totality of the circumstances, including the procedural history of this matter, and in order to protect the public, maintain the honor and integrity of the profession and deter others from committing similar misconduct, we find a censure to be an appropriate sanction for respondent's misconduct (*see Matter of Winograd*, 184 AD3d 1073, 1075 [3d Dept 2020]), and we therefore grant the parties' joint motion.

Turning to respondent's motion to terminate the conditions attendant to his admission, we note that such motion has been pending during petitioner's disciplinary investigation, which has now concluded with respondent's censure, as noted above. Given respondent's demonstrated past failures to abide by the conditions of his admission to practice, we do not view termination of those conditions to be advisable at this time. As such, we deny respondent's motion to terminate the conditions as stated in our February 2019 order and we caution respondent that an order of this Court must be strictly complied with, and he is obligated to thoroughly review its terms and abide by them (*see id.* at 1076). The conditions set forth in this Court's February 2019 order of admission are therefore continued until further order of this Court, with respondent's next quarterly report to be filed with this Court's Office of Attorney Admissions on or before June 1, 2024, and every 90 days thereafter. Respondent may reapply to this Court to terminate the conditions of his admission, on notice to both the Court's Office of Attorney Admissions and petitioner, no earlier than June 1, 2025.

Egan Jr., J.P., Aarons, Pritzker, Reynolds Fitzgerald and Fisher, JJ., concur.

ORDERED that respondent's motion to terminate the conditions of his admission is denied; and it is further

ORDERED that the joint motion by the parties for the imposition of discipline by consent 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