

IN RE: DIANE R. MCGARVEY

NO. BD-2013-114

S.J.C. Order of Term Suspension entered by Justice Spina on January 23, 2015.¹

SUMMARY²

Diane R. McGarvey, the respondent, was admitted to the bar of the Commonwealth on June 20, 1991. On January 21, 2014, the respondent was temporarily suspended from the practice of law as a result of the criminal convictions detailed below.

On July 31, 1992, the respondent was convicted in Peabody District Court of operating under the influence of liquor in violation of G.L. c. 90, § 24(1)(a)(1). She was sentenced to probation for one year subject to conditions. She was discharged from probation on January 13, 1994. The respondent violated her obligation under S.J.C. Rule 4:01, § 12(8), to report the conviction to bar counsel within ten days of the conviction.

On January 18, 2012, the respondent admitted to sufficient facts in Haverhill District Court to operating under the influence-drugs, first offense, in violation of G.L. c. 90, § 24(1)(a)(1). The case was continued without a finding until January 18, 2013, subject to conditions. The respondent violated her obligation under S.J.C. Rule 4:01, § 12(8), to report the conviction to bar counsel within ten days of the conviction.

On October 17, 2012, the respondent was arrested on charges of leaving the scene of property damage in violation of G.L. c. 90, § 24(2)(a), and a marked lanes violation, G.L. c. 89, § 4A. As a result of the above arrest, on February 25, 2013, the respondent was found in violation of probation in the Haverhill matter, and the continuance of that matter without a finding was extended until December 5, 2013.

Subsequently, on March 7, 2013, a complaint was issued against the respondent in Haverhill District Court on charges stemming from the arrest on October 17, 2012. On September 12, 2013, the respondent pleaded guilty to leaving the scene of property damage in violation of G.L. c. 90, § 24(2)(a). The respondent was sentenced to six months in the house of correction at Framingham, all suspended with probation until September 11, 2015, conditioned upon the respondent's admission to a six-month inpatient program at Webster Place in Franklin, New Hampshire. The respondent violated her obligation under S.J.C. Rule 4:01, § 12(8), to report the conviction to bar counsel within ten days of the conviction.

Also on September 12, 2013, the Haverhill court found the respondent in violation of probation in the first Haverhill matter and revoked the continuance of that matter without a finding. The respondent pleaded guilty to operating under the influence-drugs, first offense,

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

² Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

in violation of G.L. c. 90, § 24(1)(a)(1), and received the same suspended sentence with the same probationary terms as were imposed in the second Haverhill matter.

Finally, on December 24, 2013, the respondent pleaded guilty in Lawrence District Court to operating a motor vehicle with a suspended license. The respondent was sentenced to ten days in the house of correction, all suspended, and placed on probation until December 24, 2015, subject to the conditions imposed in the above Haverhill District Court matters.

In mitigation, the respondent's criminal conduct was not related to the practice of law, and her crimes are misdemeanors. In aggravation, the respondent was suspended for two months in 1999 (1) for failing to disclose on her 1991 bar application that in 1987 she had voluntarily surrendered her nursing license after admitting that she had taken controlled substances for her own use while on duty, and (2) for failing as a nurse anesthetist in 1993 to document and administer to patients controlled substances she had signed out. See Matter of McGarvey, 15 Mass. Att'y Disc. Rep. 390 (1999). In addition, the number of crimes going back to 1992 is a matter in aggravation, as is the fact that the arrests resulting in the last two convictions occurred while the respondent was on probation on the 2012 conviction.

On December 1, 2014, bar counsel filed a petition for discipline, and the respondent filed an answer admitting to the allegations and that her criminal conduct, violation of probation and failure to report three convictions had violated Mass. R. Prof. C. 3.4(c), 8.4(b), (d) and (h). The parties also stipulated that a suspension of one year and one day was the appropriate sanction, retroactive to February 6, 2014, the date on which she complied with her temporary suspension.

On December 8, 2014, the Board of Bar Overseers voted unanimously to accept the stipulation of the parties and to recommend that the respondent be suspended for one year and one day. On January 23, 2015, the county court (Spina, J.), entered an order suspending the respondent for one year and one day, retroactive to February 6, 2014, the date on which she complied with the order of temporary suspension.