



IN RE: JAMES C. HEE

NO. BD-2011-055

S.J.C. Order of Temporary Suspension entered by Justice Cordy on August 25, 2011.¹

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

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. BD-2011-055

IN RE: James C. Hyde

MEMORANDUM AND ORDER

In the petition before me, bar counsel requests that James C. Hyde ("respondent") be temporarily suspended from the practice of law, pursuant to S.J.C. Rule 4:01, §12(4). Bar Counsel's petition follows respondent's conviction in Essex Superior Court of two counts of filing a false motor vehicle insurance claim, G. L. c. 266, § 111B; two counts of attempt to commit a crime, G. L. c. 274, § 6; and two counts of larceny over \$250, G. L. c. 266, § 301(1). Respondent was sentenced to concurrent terms of two and one-half years in the house of correction followed by five years' probation. A Superior Court judge stayed respondent's sentence pending the outcome of his appeal. Respondent asks that he not be temporarily suspended while his appeal is pending. I conclude that respondent should be temporarily suspended.

Where a member of the bar is convicted of a "serious crime"¹ and has been given an opportunity to "show cause why [he] should

¹ S.J.C. Rule 4:01, §12(3).

not be immediately suspended from the practice of law,"² S.J.C. Rule 4:01, §12(4), empowers a Single Justice to "make such order of suspension or restriction as protection of the public may make appropriate." The pendency alone of an appeal is not a mitigating circumstance justifying a delay in temporary suspension. Matter of Norton, 3 Mass. Att'y Disc. Rep. 164 (1983). The factors relevant to deciding whether temporary suspension should be imposed are:

(1) whether the sentence was stayed pending appeal, (2) whether the appeal is meritorious, (3) whether the attorney is pursuing the appeal diligently, (4) the seriousness of the crime and whether it is related to the attorney's practice of law; (5) the threat to the public interest should the attorney continue to practice, and (6) whether the temporary suspension would be longer than the sanction imposed after discipline.

Matter of Bryant, 18 Mass. Att'y Disc. Rep. 91, 95 (2002), citing Matter of Burke, 3 Mass. Att'y Disc. R. 25 (1982).

In Matter of Bryant, supra, a strikingly similar case to this, an attorney was temporarily suspended following his conviction for conspiring with a client to present fraudulent claims for damages in three motor vehicle insurance cases. There, respondent had diligently pursued an appeal, his sentence had been stayed, and his claim was described as meritorious. Id. at 95-96. Nonetheless, the Single Justice concluded temporary suspension was appropriate "because his illegal activities

² S.J.C. Rule 4:01, §12(4).

involved fraud and deception in conspiracy with a former client" and because "the discipline imposed after proceedings will exceed the length of the temporary suspension." Id. at 96-97.

By comparison, in Matter of Burke, supra, a lawyer was permitted to continue practicing law pending his appeal of a conviction for conspiracy to violate the conflict of interest laws. Id. at 25, 28. As in Bryant, the appeal had been diligently pursued, the appeal was described as "meritorious," and the lawyer's sentence had been stayed. Id. at 25-26. However, the Single Justice rejected temporary suspension because the nature of the crime was unrelated to the practice of law; the lawyer's practice was limited in scope; the lawyer volunteered to inform all present and future clients that he had been convicted and of the possible consequences to their representation if the conviction was affirmed; and temporary suspension was likely to exceed the punishment following disciplinary proceedings. Id. at 26-27.

Here, bar counsel argues that respondent's behavior is most analogous to Bryant insofar as both cases involve the conviction of lawyers assisting clients in fraudulent conduct. Bar counsel also notes that temporary suspension will not exceed the ultimate discipline (disbarment) that will likely be imposed if the disciplinary proceedings are concluded in its favor.³ Respondent

³ Respondent does not contest this proposition.

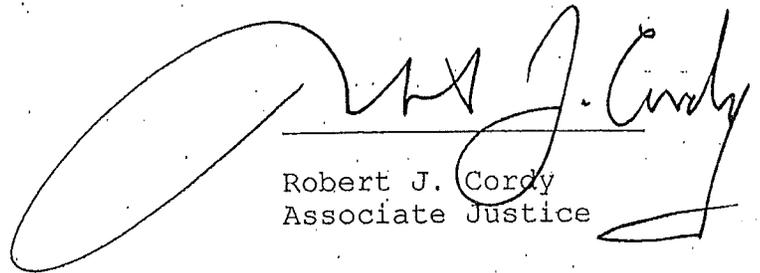
answers by highlighting the merits of his appeal and its likelihood of success. He argues that his conviction likely will be reversed because there was no direct evidence establishing his knowledge of the specific fraudulent claims at issue; rather, his conviction was secured on circumstantial evidence alone. As in Burke, respondent also argues that he poses little threat to the public because his practice is extremely limited in scope and he will inform every existing and future client about his conviction and the potential consequences flowing therefrom.

Having considered these arguments, I conclude that temporary suspension is appropriate. While it is fair to conclude that respondent's appeal has some merit,⁴ this is not enough to tip the balance away from temporary suspension where respondent has been convicted after a jury trial of serious crimes bearing directly on his fitness to practice law. Burke is distinguishable because the crime was both of a lesser magnitude and did not relate to the practice of law. Ultimately, the public's perception of, and confidence in the integrity of the

⁴ Although I decline to predict the outcome of respondent's appeal, Commonwealth v. Lonardo, 74 Mass. App. Ct. 566 (2009), is instructive regarding respondent's likelihood of success on his insufficiency of the evidence argument. In that case, the Appeals Court affirmed an attorney's conviction under G. L. c. 266, § 111B, and in doing so, rejected his argument that the circumstantial evidence was insufficient to establish knowledge of the fraudulent scheme. Id. at 568-570. This is significant given that respondent relies heavily on the merits of his appeal in making his case against temporary suspension.

practice of law would be diminished should I permit respondent to hold himself out as a lawyer in the community after his conviction.

Accordingly, an order shall enter temporarily suspending respondent from the practice of law pending the outcome of disciplinary proceedings.



Robert J. Cordy
Associate Justice

ENTERED: August 23, 2011