

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-229

IN THE MATTER OF :
SALVATORE PRINCIPATO, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 8, 1993

Decided: August 1, 1994

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Saverio Principato appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before the Board on a Motion for Final Discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's conviction of simple assault, in violation of N.J.S.A. 2C:12-1a(1).

Respondent was admitted to the New Jersey bar in 1983. On February 14, 1992, a former client, Julie A. Maloney, filed a complaint in Haddon Township Municipal Court charging respondent with simple assault, in violation of N.J.S.A. 2C:12-1a(1) (Exhibit A to OAE's brief). Respondent was tried and found guilty as charged. He was fined \$200, assessed \$25 in court costs, and received a \$50 violent crimes penalty (Exhibit B to OAE's brief).

In August 1992, Jennifer A. Fries of SOLACE (Service for Victims of Domestic Violence) informed the OAE of the incident and of respondent's conviction (Exhibit C to OAE's brief). The OAE initiated a review that culminated in this Motion for Final Discipline.

On February 8, 1993, while the OAE's review was ongoing, Ms. Maloney filed an ethics grievance against respondent with the District IV Ethics Committee ("DEC") (Exhibit D to OAE's brief). The grievance alleged that respondent had represented Ms. Maloney in a matrimonial action and that respondent and Ms. Maloney began "having an affair" after the representation commenced. The grievance further alleged that respondent assaulted Ms. Maloney on August 2, 1991 and had been found guilty of assault in Haddon Township Municipal Court. Respondent submitted a response to that grievance on April 19, 1992 (Exhibit E to OAE's brief). When the OAE learned of the grievance, it directed the DEC to transfer the matter to its office (Exhibit F to OAE's brief). The OAE did not conduct an investigation of the allegations contained in the grievance, filing the within Motion for Final Discipline based on respondent's criminal conviction for simple assault.

The record discloses that, in February 1990, Ms. Maloney was referred to respondent by the Battered Women's Shelter for advice on filing a domestic violence complaint against her husband (Exhibit G to OAE's brief at 5 and 84). Ms. Maloney decided not to file the complaint. She had no further contact with respondent until approximately one year later, when she consulted with him

about a problem she was having at work. Respondent gave Ms. Maloney advice, which he characterized as "a common sense approach and . . . not . . . legal advice per se" (Exhibit E to OAE's brief at 4).

Subsequently, the professional relationship between respondent and Ms. Maloney evolved into a social relationship. The Haddon Township Municipal Court found, as a matter of fact, that respondent and Ms. Maloney had a professional relationship that extended into 1990. Moreover, during the course of that professional relationship, a social/sexual relationship developed and continued for a number of months (Exhibit B to OAE's brief at 4).

On April 11, 1991, shortly after their relationship became physically intimate, Ms. Maloney telephoned respondent. Quite agitated, she related that her husband had taken her daughter and run off (Exhibit G to OAE's brief at 89-90). Although respondent realized the impropriety of maintaining both a sexual and professional relationship with Ms. Maloney, he indicated "my normal protective instincts kind of kicked in and I wanted to help her" (Exhibit G to OAE's brief at 90). Respondent accepted a retainer of \$2,500 on April 19, 1991, to represent Ms. Maloney in custody and divorce proceedings. (Exhibit H to OAE's brief).

Respondent acknowledged that he continued seeing Ms. Maloney on an intimate basis through July 1991 (Exhibit E to OAE's brief at 7). He stated that, sometime in June of 1991, he determined to end the relationship because he realized it was wrong and had gotten

out of control (Exhibit B to OAE's brief at 5). However, the Haddon Township Municipal Court found that the content of two letters sent by respondent to Ms. Maloney in early July indicated that, contrary to his testimony, he was not trying to break off the relationship (Exhibit G to OAE's brief at 91-97, 111-115) but, instead, to perpetuate it (Exhibit B to OAE's brief at 9).

On August 2, 1991, respondent went to Ms. Maloney's home. There, respondent admitted to yelling and using profanity. The court found, in addition, that respondent overturned the mattress on which Maloney was sitting and, with Ms. Maloney pinned behind the mattress, "[Respondent] lost control of himself, possibly because she was ending this relationship [H]e began to pummel her against the mattress, he never hit her skin directly, but he did pummel the mattress forcefully at least 10 or 15 times . . . the matter lasted at least 10 seconds" (Exhibit B to OAE's brief at 12). The court found that, although Ms. Maloney did not sustain serious injuries, she was in fear for her life, suffered pain, and received a scratch on her arm (Exhibit B to OAE's brief at 12). As noted above, the court concluded that respondent's actions constituted simple assault, in violation of N.J.S.A. 2C:12-1a(1).

Respondent remained attorney of record in Ms. Maloney's divorce action until the case was taken over by her new attorney in November 1991 (Exhibit E to OAE's brief at 3). However, respondent apparently took no further action on behalf of Ms. Maloney after the incident on August 2, 1991 (Exhibits I and J to OAE's brief).

The OAE requested that the Board recommend a public reprimand.

CONCLUSION AND RECOMMENDATION

A conviction in a criminal matter is conclusive evidence of a respondent's guilt in a disciplinary proceeding. In re Goldberg, 105 N.J. 278, 280 (1987); In re Tusco, 104 N.J. 59, 61 (1986); In re Rosen, 88 N.J. 1, 3 (1981); R. 1:20-6(c)(1). No independent examination of the underlying facts is, therefore, necessary to ascertain guilt. In re Bricker, 90 N.J. 6, 10 (1982). The only issue to be determined is the quantum of discipline to be imposed. In re Goldberg, supra, 105 N.J. at 280; In re Kaufman, 104 N.J. 509, 510 (1986); In re Kushner, 101 N.J. 397, 400 (1986).

Respondent was convicted of the disorderly persons offense of simple assault, in violation of N.J.S.A. 2C:12-1a(1). Respondent's conviction is clear and convincing evidence of his violation of RPC 8.4(b) (conduct that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer). The Court has consistently emphasized that "(g)ood moral character is a basic condition for membership in the bar," In re LaDucca, 62 N.J. 133, 140 (1973), and that "any misbehavior, private or professional, which reveals a lack of character and integrity essential for the attorney franchise constitutes a basis for discipline." In re Mattera, 34 N.J. 259, 264 (1961); See also In re Peia, 111 N.J.

318, 322 (1988) ("an attorney is obligated to adhere to a high standard of conduct").

In its brief, and at oral argument before the Board, the OAE urged the Board to recommend the imposition of a public reprimand, relying on In re Liebowitz, 104 N.J. 175 (1985) (sexual misconduct with an assigned client warranted a public reprimand), and In re Rea, 128 N.J. 544 (1992) (although a sexual relationship with a client is not unethical per se, when the client lacked the capacity to freely consent because of her dependent position as an assigned client who had psychological problems stemming from a history of abusive relationships, the conduct was unethical, warranting a public reprimand).

Unlike the case at hand, Rea and Liebowitz deal exclusively with the issue of sexual misconduct by an attorney. In the present case, the issue before the Board is not whether respondent's misconduct was unethical because of his sexual relationship with Ms. Maloney. It is not the law in this state that a sexual relationship is per se unethical, nor is the Board prepared to so find. In addition, the matter of this relationship has not been the subject of a hearing at the DEC level. The propriety or impropriety of the relationship has not been appropriately reviewed within the ethics process. Thus, the sole issue before the Board is the appropriate discipline to be imposed for respondent's criminal conviction of simple assault. In motions for final discipline, the independent examination and evaluation of the entire record required of the Board and the Court is limited to

facts underlying a criminal conviction or guilty plea. R. 1:20-6(c)(2)(ii). Respondent's intimate relationship with his client only serves, therefore, to put his actions into context.

True to the principle above, the Board now turns to the question of the appropriate form of discipline for respondent's criminal offense. Respondent's assault upon Ms. Maloney, a client, was a serious breach of his responsibility as an attorney. The Haddon Township Municipal Court referred to respondent as someone who had "done something extremely foolish, something impulsive, something that was perhaps even almost beyond his control" (Exhibit B to OAE's brief at 15). Also, it cannot be forgotten that Ms. Maloney was referred to respondent by the Battered Women's Shelter and, as such, she was particularly vulnerable.

However, the Board has taken into consideration a number of mitigating factors in determining the proper discipline in this matter. First, respondent recognized that he used poor judgment in becoming personally involved with Ms. Maloney. He acknowledged his wrongdoing in assaulting Ms. Maloney and was contrite for what he had done. Second, his conduct was aberrational and is highly unlikely to reoccur. The Board is also mindful of the impact that the negative publicity generated by respondent's case has had on his career (See, e.g., exhibit C to OAE's brief). Moreover, the incident occurred nearly three years ago. The Board has taken these factors into account and has further considered respondent's previous unblemished ethics record.


Respondent's misconduct should not be condoned. Nevertheless, after considering all of the relevant circumstances and substantial mitigating factors, the Board is of the unanimous view that a private reprimand is sufficient discipline for respondent's misconduct. One member recused himself.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: _____

7/1/1994

By: _____


Raymond R. Trombadore
Chair
Disciplinary Review Board