SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-140
District Docket No. XIV-2011-0167E

IN THE MATTER OF

JOHN J. COLLINS

AN ATTORNEY AT LAW

Decision

Argued: July 16, 2015

Decided: December 15, 2015

Hillary Horton appeared on behalf of the Office of Attorney Ethics.

John McGill appeared on behalf of respondent.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea, in the Superior Court of New Jersey, Law Division, Criminal Part, to three disorderly persons offenses: two counts of simple assault, in violation of N.J.S.A. 2C:12-1(a), and one count of criminal

mischief, in violation of N.J.S.A. 2C:17-3(b)(1).[1] The OAE recommends that we impose a six-month suspension on respondent. Respondent requests that we impose a reprimand, or, in the alternative, a sanction not greater than a censure. For the reasons set forth below, we determine to grant the OAE's motion for final discipline and impose a three-month suspension on respondent.

Respondent was admitted to the New Jersey bar in 2005. He maintains a law office in Jersey City, New Jersey.

On January 3, 2013, respondent was temporarily suspended from the practice of law, apparently for failing to cooperate with an OAE investigation into an allegation of knowing misappropriation. In re Collins, 216 N.J. 88 (2013). With the OAE's consent, he was reinstated to the practice of law, with conditions, on March 8, 2013. In re Collins, 213 N.J. 84 (2013).[2] That matter is currently in the hearing stage.

On July 19, 2011, before the Honorable Paul M. DePascale, J.S.C., respondent entered a guilty plea to the three aforementioned disorderly persons offenses. The negotiated plea agreement provided that the State would amend the charged

[1] The proper charge is actually N.J.S.A. 2C:17-3(a)(1), as (b)(1) is the grading portion of this statute.
[2] It is unclear why the reinstatement order was published before the suspension order was published.

indictable offenses of aggravated assault and criminal mischief to the disorderly persons offenses to which respondent pleaded guilty and would dismiss a criminal weapons charge.

During his guilty plea allocution, respondent provided a factual basis to support the reduced charges. On April 7, 2011, while on Washington Avenue in Jersey City, he was involved in a "road rage" incident. Angered by the actions of another driver, respondent exited his vehicle, retrieved a baseball bat from the trunk, and struck the driver's vehicle multiple times. Respondent's strikes to the vehicle broke the windshield and a side mirror and caused the driver and a passenger in the vehicle to be placed in imminent fear of bodily injury. Respondent did not admit striking either of the victims with his fist, attempting to strike either of the victims with the baseball bat, or causing actual injury to either of the victims, as had been alleged in the criminal complaints that had been filed against him. Neither the State nor the court required respondent to address these allegations during his plea allocution.

As part of the negotiated plea agreement, respondent paid a total of $1,500 in restitution - $500 to the owner of the vehicle he damaged and $1,000 to the owner's automobile insurance company. Judge DePascale imposed a "forth put" (simultaneous) sentence on respondent: three concurrent one-year

terms of probation, no contact with the victims, and the mandatory statutory fines for violent offenses.

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Respondent's guilty plea to two counts of simple assault, in violation of N.J.S.A. 2C:12-1(a), and one count of criminal mischief, in violation of N.J.S.A. 2C:17-3(b)(1), establishes three respective violations of RPC 8.4(b). Pursuant to R. 1:20-13(c)(1), it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Hence, the sole issue to be determined is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, supra, 139 N.J. at 451-52; In re Principato, supra, 139 N.J. at 460.

In determining the appropriate measure of discipline, the interests of the public, the bar, and the respondent must be considered. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." In re Principato, supra, 139 N.J. at 460. Thus, we must take into consideration many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's

reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

Discipline is imposed even when the attorney's offense is not related to the practice of law. In re Kinnear, 105 N.J. 391 (1987). "It is well-established that private conduct of attorneys may be the subject of public discipline." In re Magid, supra, 139 N.J. at 454.

The OAE relied on multiple cases to support its recommendation for the imposition of a six-month suspension. First, the OAE cited In re Viggiano, 153 N.J. 40 (1997), as the "appropriate 'baseline' discipline for a simple assault conviction." In Viggiano, the attorney was involved in a minor traffic accident. In the Matter of Thomas J. Viggiano, DRB 97-112 (November 18, 1997) (slip op. at 1). He exited his vehicle, walked to the other vehicle, where the female driver was still seated, and began striking her with a closed fist. Ibid. Police officers arrived at the scene and attempted to physically restrain the attorney and end his assault on the victim, at which point the attorney began to push and kick the police officers. Id. at 1-2. After pleading guilty to assaulting the victim and one of the officers, the attorney was sentenced to a one-year period of probation and was required to pay statutory fines. Ibid.

Citing Magid and Principato for the proposition that "[a]cts of violence are condemned in our society," we recommended a three-month suspension and required that the attorney submit proof of fitness to practice law, prior to reinstatement. Viggiano slip op. at 3. We cautioned that "any act of violence committed by an attorney will not be tolerated." Ibid. Condemning the attorney's physical assault of the other motorist and the police, we determined that "[n]othing less than a suspension would be appropriate for this kind of violent behavior." Ibid. The attorney had no prior disciplinary history. Id. at 1. The Court agreed with our determination.

The OAE also cited In re Gibson, 185 N.J. 235 (2005), in support of a term of suspension longer than that imposed in Viggiano. In Gibson, the attorney was involved in a bar fight in Pennsylvania. In the Matter of Robert Thomas Gibson, DRB 05-050 (June 23, 2005) (slip op. at 2). Police responded and the attorney was arrested for the summary offenses[3] of public drunkenness and disorderly conduct. Ibid. At the police station, an officer attempted to handcuff the attorney. Ibid. Still intoxicated, the attorney spat on and hit the officer. Ibid. The case proceeded to trial and the jury found the attorney guilty

[3] A Pennsylvania summary offense is the equivalent of a non-indictable offense in New Jersey, the type of offense adjudicated in municipal court.

of aggravated assault, simple assault, aggravated harassment by a prisoner, and the summary offenses of public drunkenness and disorderly conduct. Ibid. The attorney was sentenced to one month of incarceration (with work release), four months of electronic home confinement, 300 hours of community service, and was ordered to pay statutory fines. Id. at 2-3. After multiple appeals within the disciplinary system, the matter reached the Pennsylvania Supreme Court, which suspended the attorney for one year, retroactive to the date of his temporary suspension for the underlying criminal misconduct. Id. at 3-4.

We granted the OAE's motion for reciprocal discipline and imposed a one-year suspension on the attorney, retroactive to the date of his temporary suspension in New Jersey. Id. at 13. Additionally, we required him to continue treatment with a drug and alcohol counselor and to submit proof of fitness to practice law, prior to reinstatement. Ibid. However, our decision made clear that the imposition of a one-year suspension was not necessarily based on a comparison of Gibson's conduct to that of other attorneys who had been disciplined in New Jersey for assaultive criminal conduct. Id. at 12. Rather, the sanction was grounded largely in our determination that there was "no reason to deviate from Pennsylvania's determination inasmuch as the record before us is incomplete . . . and Pennsylvania – which

had the opportunity to review the entire record and, therefore, better assess the facts - was convinced that a one-year suspension was appropriate." Ibid. The attorney had no prior discipline. Id. at 1-2. The Court agreed with our determination.

Finally, the OAE cited In re Milita, 217 N.J. 19 (2014), in an effort to distinguish the misconduct and resulting sanction in that case from respondent's actions in the instant matter. In Milita, the attorney became involved in a "road rage" altercation after he felt he was being improperly "tailgated" by a vehicle behind him. In the Matter of Martin J. Milita, Jr., DRB 13-159 (December 3, 2013) (slip op. at 2). The incident began with an exchange of hand gestures between the occupants of the vehicles, but soon escalated when the attorney pulled over, partially emerged from his vehicle, and brandished a knife at the two young men in the other vehicle. Ibid. When the other vehicle drove by, respondent followed it through several towns, for approximately nine to twelve miles. Id. at 2-3. While following the young men, the attorney continued to brandish the knife. Id. at 3.

During the attorney's pursuit of the victims, they called the police, who instructed them to drive to a local hospital, where officers were waiting. Ibid. When questioned, the attorney initially lied to the police, denying he had brandished a knife.

Ibid. Later, he admitted having a knife, but claimed that his mechanic had given him the knife to use to fix a problem with his vehicle. Ibid. The attorney ultimately entered a guilty plea to hindering apprehension, a disorderly persons offense, and two counts of harassment, petty disorderly persons offenses. Id. at 3, 6. The court sentenced the attorney to serve three concurrent one-year periods of probation, to perform 100 hours of community service, and to pay mandatory statutory fines. Id. at 6.

Although the OAE had urged a three-month suspension, we instead imposed a censure and required the attorney to continue treatment with a mental health professional until medically discharged. Id. at 7-8, 14. In determining a censure to be the appropriate discipline, we stressed the following factors: the attorney's behavior was menacing, but he had no physical contact with the occupants of the other vehicle; he was receiving treatment for psychological and medical issues that contributed to his behavior; and he was not a practicing lawyer and, thus, the concern for protection of the public was reduced. Id. at 14. The attorney had no disciplinary history. Id. at 2. The Court agreed with our determination.

Respondent cited several cases to support his argument that a reprimand or, at most, a censure, should be imposed. First, respondent cited In re Bornstein, 187 N.J. 87 (2006), for the

proposition that a six-month term of suspension should be reserved for conduct more egregious than respondent's actions in the instant matter. In Bornstein, the attorney fell backward while walking up the stairs at a Boston train station. In the Matter of Eric H. Bornstein, DRB 06-073 (May 24, 2006) (slip op. at 4). A doctor broke his fall and tried to assist him. Ibid. Inexplicably, the attorney began to choke the doctor and slammed his head, several times, against a plexiglass window. Id. at 4-5. The attorney was charged with assault and battery and a weapons offense, but was allowed to enter a diversionary program in Massachusetts. Id. at 5. Although the attorney admitted, in court, the facts set forth above, he was never convicted of an offense. Ibid. He was placed on probation for three months and paid fines. Ibid.

We described Bornstein's violent actions as "unprovoked, vicious, and outrageous" and found his conduct to be most factually similar to that of Viggiano. Id. at 10. We determined to impose a three-month suspension but, due solely to the default status of the matter, enhanced the discipline to six-months. Id. at 10-11. The attorney had no prior discipline. Id. at 1. The Court agreed with our determination.

Next, respondent cited In re Nealy, 205 N.J. 264 (2011), in support of his argument that a reprimand is the appropriate

discipline for a simple assault conviction where no serious injuries to the victims occurred. In Nealy, the parties stipulated to the facts. The attorney was charged with assaulting a federal officer. In the Matter of Walter D. Nealy, DRB 10-224 (November 9, 2010) (slip op. at 4). The charge arose from an incident that occurred when special agents from the United States Department of State, Diplomatic Security Service, went to the attorney's office to interview him and his wife in connection with a federal investigation. Ibid.

Upon arrival, the agents identified themselves and told the attorney that they wanted to interview him and his wife. Ibid. The attorney became increasingly agitated and aggressive. Ibid. One of the agents informed the attorney that they were leaving and that he should contact them to arrange an appointment for the interview. Ibid.

When the agents began to leave, the attorney followed them to the exit. Id. at 5. His wife then came out of her office and stood between him and the agents. Ibid. The attorney pushed his wife out of the way, at which point one of the agents interceded. Ibid. The attorney then pushed one of the agents against a wall and struck him with his hands and arms. Ibid. The agents then subdued and restrained the attorney until local police officers arrived. Ibid.

The attorney was accepted into a federal court diversionary program, which he successfully completed. Ibid. The charge was then dismissed without prejudice. Ibid. The stipulation recited, as mitigation, the fact that no one was seriously injured as a result of the attorney's actions. Ibid. We found the attorney's disciplinary history (a private reprimand, two reprimands, and a three-month suspension) to be an aggravating factor. Id. at 5, 11. We, thus, imposed a censure rather than a reprimand. Id. at 11. The Court agreed with our determination.

Finally, respondent cited In re Thakker, 177 N.J. 228 (2003), in support of the imposition of a reprimand in this case. In Thakker, the attorney was reprimanded after pleading guilty to harassment, a petty disorderly persons offense. In the Matter of Jeff Edward Thakker, DRB 03-047 (June 5, 2003) (slip op. at 1). The attorney had harassed a client's wife, telephoning her repeatedly after she had warned him to stop calling. Id. at 2. The attorney was also verbally abusive to the police officer who responded in the matter, including inviting the officer to fight "mano y mano [sic]." Id. at 2-3. The attorney's behavior was attributable, at least in part, to alcohol abuse. Id. at 6. The attorney had no disciplinary history. Id. at 1. The Court agreed with our determination.

In summary, the OAE contended that Viggiano essentially established that a three-month suspension is the "baseline" discipline for violent behavior by attorneys and that, given the Court's ever-decreasing tolerance for violent conduct by members of the bar, a six-month suspension is the appropriate sanction in this case. In support of its recommended discipline, the OAE argued that respondent pleaded guilty to two counts of simple assault (versus one), that the conviction for criminal mischief should be viewed in aggravation, and that respondent had physical contact with the victims in this case.

Respondent disagreed with the OAE's recommendation, arguing that his conduct was most analogous to that of the attorney in Milita, but was actually less egregious, given Milita's lengthy pursuit of his victims. In support of his position, respondent stressed that his victims were not part of a specially-protected class, such as the police officers assaulted in Viggiano and Gibson, and that respondent committed simple assaults by physical menace, rather than through physical contact with the victims.

Following a review of the full record, we determine to grant the OAE's motion for final discipline. Here, respondent's convictions for three disorderly persons offenses conclusively establish three respective violations of RPC 8.4(b). R. 1:20-

13(c)(1). Since the Viggiano decision, in 1997, the New Jersey bar has been on notice that "any act of violence committed by an attorney will not be tolerated" and that "[n]othing less than a suspension" would likely be imposed in cases involving violent behavior.

A review of the case law since the Viggiano decision leads to the conclusion that a term of suspension is the appropriate quantum of discipline in this matter. Although physical contact and the characteristics of the victim(s) are among factors relevant for consideration, they are not, by themselves, dispositive. The nature of the attorney's violent behavior is the focus of our analysis. In Gibson, decided in 2005, and Bornstein, decided 2006, the Viggiano warning was enforced against attorneys based on the nature of the violence they had committed. Although both assaults involved physical contact with the victims, only Gibson involved a police officer. The character of the physical contact in each case was significantly different. Nevertheless, both attorneys received terms of suspension, based on the unique facts of their cases, for their respective violations of RPC 8.4(b).

We view the Nealy case, decided 2010, as an anomaly and therefore consider it to be of limited precedential value for purposes of determining the appropriate discipline in the

instant matter. In that case, the parties stipulated to the facts and, despite the presence of physical assaults by the attorney on his wife and a federal agent, the OAE recommended the imposition of only a reprimand or a censure. We determined that, standing alone, a reprimand would be the appropriate discipline for the attorney's assaultive behavior, but that, given respondent's disciplinary history, the discipline should be elevated to a censure. Although Nealy examines the Viggiano case, it does not explain why a term of suspension was not the appropriate discipline, given the presence of physical contact with the victims. Suffice it to say, however, that the violence and terrorization exhibited in this matter exceeded the limited physical contact with the victims in Nealy.

The conduct in Milita, decided in 2013, where a censure was imposed, is quite different from the facts in both Viggiano and the instant matter. In Milita, even though the attorney's prolonged brandishing of a knife was described as egregious and menacing, we clearly distinguished that misconduct from that of the attorneys in Viggiano, Gibson, and Bornstein, who received suspensions. Specifically, we considered that Milita did not have physical contact with the victims, had presented evidence of medical and psychological issues that contributed to his

unethical behavior, and was not a practicing lawyer at the time discipline was imposed.

The nature of the violent behavior in Thakker, too, is clearly distinguishable from respondent's conduct in this case. Thakker involved threats and harassment of a client's wife and a police officer by words alone. There was no physical contact and no behavior that even approached the violence in this matter. Moreover, we considered, in mitigation, that the attorney suffered from severe alcohol abuse.

In the instant matter, the nature of the violent behavior must be scrutinized in the context of Viggiano and subsequent case law. Respondent admitted that, while on a public street in Jersey City, during a "road rage" incident, he got out of his car, retrieved a baseball bat from the trunk, and struck another person's vehicle multiple times, breaking the windshield and side view mirror. Respondent conceded that his violent conduct placed the two victims, seated inside of the car, in imminent fear of bodily injury. Respondent's conduct is most akin to that of the attorney in Viggiano. His attack on the other vehicle is a classic "road rage" incident, stemming from some perceived violation of driving etiquette by the victim driver. Like the attorneys in Viggiano and Bornstein, respondent engaged in an unprovoked, vicious, and outrageous act of violence that

involved physical contact, albeit by bludgeoning the victim's vehicle versus the actual person.

Although the complaints filed by the police alleged that respondent struck a female occupant of the car with his fist, attempted to strike the male occupant with the baseball bat, and caused actual injuries to at least one of the victims, respondent did not admit this conduct during his plea allocution and was not required to address these allegations by either the State or the court. The OAE requests that we find, as facts, that respondent committed this conduct, but such a finding would be based solely on hearsay provided by the victims, with no independent corroboration from the police investigation. We, therefore, reject the OAE's suggestion and do not find these allegations as facts.

Respondent also pleaded guilty to one count of criminal mischief in this case. Although his RPC 8.4(b) violations relating to the simple assault charges are the lynchpin of the analysis in this case, the violation of RPC 8.4(b) in connection with the criminal mischief charge must also be considered in determining the sanction to be imposed. Standing alone, reprimands and censures have been imposed on attorneys convicted of criminal mischief. See, e.g., In re Press, 200 N.J. 437 (2009) (reprimand for attorney who stipulated to having

committed a fourth-degree crime of criminal mischief; the attorney purposely or knowingly damaged personal property of another by breaking windshield wipers off of vehicles; prior private reprimand); and In re Osei, 185 N.J. 249 (2005) (attorney was censured for causing $72,000 worth of damage to his own house, which was the subject of a foreclosure; aggravating factors included the deliberate nature of the attorney's actions and the extent of the damage to the property, which revealed that his actions had occurred over a significant period of time; no prior discipline).

A final component in crafting the appropriate discipline in this matter is an analysis of aggravating and mitigating factors. In mitigation, respondent turned himself into the police upon learning that the criminal complaints had been filed, entered a guilty plea acknowledging his criminal conduct, and agreed to pay a total of $1,500 in restitution in an effort to make his victims whole. Next, at sentencing, respondent expressed remorse and embarrassment over his criminal behavior. Additionally, based on a psychological review respondent underwent in 2013, his history of inappropriate and criminal behavior appears related to alcohol abuse, which was untreated at the time of his misconduct in this matter. Although respondent states in his brief that he was not under the

influence of alcohol during the road rage attack, he reported otherwise, in 2013, when he informed a psychologist that he was under the influence of alcohol when he attacked the victim's car with a baseball bat.

Finally, respondent submits that, since his plea in 2011, he attended both inpatient and outpatient treatment to address his alcohol abuse; has maintained his sobriety; became a firefighter and first responder with the Jersey City Fire Department; engaged in community service and pro bono legal work; and has had no additional contact with law enforcement.

As to aggravation, R. 1:20-13(a)(1) requires attorneys to report to the OAE, in writing, when they have been charged with an indictable offense. Respondent failed to report these charges to the OAE. Although he has argued that he was under no obligation to report disorderly persons convictions, the original charges were indictable offenses and, thus, triggered the reporting requirement.[4]

The relevant case law illustrates that disciplinary cases involving violent behavior by attorneys requires fact-sensitive considerations. Simply put, there is no typical or "baseline"

[4] We note that this is not the first time respondent failed to comply with the Rules requiring him to cooperate. As noted earlier, it was only after he was temporarily suspended that respondent cooperated with the OAE's misappropriation investigation that had been docketed against him.

measure of discipline for these cases and we decline to declare such an inflexible approach. In 1997, Viggiano warned the bar that "any act of violence committed by an attorney will not be tolerated" and that "[n]othing less than a suspension" would likely be imposed for violent behavior. Respondent's conduct is nothing short of violent, regardless of whether he made physical contact with his victims. We, thus, enforce and strengthen that warning by imposing a term of suspension in this case.

Simultaneously with this decision, we also issue decisions in In the Matter of Christopher J. Buckley, DRB 15-148 (December 15, 2015), and In the Matter of Michael P. Rausch, DRB 15-176 (December 15, 2015), in which we determined that a censure is the appropriate discipline for those attorneys' violent conduct in those cases. We viewed respondent's behavior in the instant matter as more serious than that of the attorneys in Buckley and Rausch. Here, in an act of "road rage," where he was likely under the influence of alcohol, respondent committed, and was convicted of, two acts of simple assault and one act of criminal mischief. Accordingly, three violations of RPC 8.4(b) are conclusively established. Although the record does not support a finding that respondent physically assaulted the victims, he undoubtedly terrorized them, as he repeatedly smashed the car they were seated within, including the door and windshield, with

a baseball bat. Mitigation and aggravation are arguably in equipoise and there is no cause to either elevate or reduce the otherwise appropriate discipline. Based on the vicious nature of respondent's violent behavior – an attack with a baseball bat on a car occupied by two victims, on a public street – we determine that a three-month suspension is the appropriate sanction to protect the public and to preserve confidence in the bar.

Member Clark did not participate in this decision.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John J. Collins
Docket No. DRB 15-140

Argued: July 16, 2015

Decided: December 15, 2015

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark						X
Gallipoli		X				
Hoberman		X				
Rivera		X				
Singer		X				
Zmirich		X				
Total:		7				1

Ellen A. Brodsky
Chief Counsel