

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. 17-277  
District Docket No. XIV-2016-0441E

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IN THE MATTER OF  
ROBERT S. SHIEKMAN  
AN ATTORNEY AT LAW

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Decision

Argued: October 19, 2017

Decided: January 17, 2018

Joseph A. Glyn appeared on behalf of the Office of Attorney Ethics.

Robert E. Ramsey 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 to an accusation charging him with fourth degree assault by auto and driving while intoxicated, violations of N.J.S.A. 2C:12-1c(2) and N.J.S.A. 39:4-50, respectively. The OAE recommends that we impose a reprimand. Respondent agrees with that recommendation.

For the reasons expressed below, we determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 2008. He practices law in Tenafly, New Jersey. He has no history of discipline.

On June 22, 2016, respondent was arrested on the New Jersey Turnpike in Woodbridge Township after rear-ending a car. A state police officer detected alcohol on respondent's breath, and observed that his eyes were bloodshot and watery, and that his speech was slurred. Respondent, however, denied consuming alcohol. The officer administered standard field sobriety tests, which were discontinued after respondent claimed that his neck, back, and arms hurt. The officer then placed respondent under arrest, after which he was transported to the Raritan Bay Medical Center for treatment. At the hospital, respondent again denied that he had consumed alcohol or taken any drugs and he refused to sign a consent form to have his blood drawn and tested. The officer, thus, obtained a telephonic search warrant for blood samples. After technicians drew respondent's blood, the officer transported respondent to the Cranbury police station for processing. The certified toxicology analysis, dated June 30, 2016, showed that respondent's blood alcohol level was 0.197%.

Respondent was charged with fourth-degree assault by auto, in violation of N.J.S.A. 2C:12-1c(2); being under the influence of a controlled dangerous substance for a purpose other than the treatment of sickness or injury as lawfully prescribed or administered by a physician, a disorderly persons offense, in violation of N.J.S.A. 2C:35-10b; and driving while intoxicated, in violation of N.J.S.A. 39:4-50. He was issued the following traffic citations: operating a vehicle while under the influence of liquor or drugs, in violation of N.J.S.A. 39:4-50; reckless driving, in violation of N.J.S.A. 39:4-96; careless driving, likely to endanger person or property, in violation of N.J.S.A. 39:4-97; following too closely, in violation of N.J.S.A. 39:4-89; unsafe lane change, in violation of N.J.S.A. 39:4-88B, and failure to obey traffic signs or signals, in violation of N.J.S.A. 19:9-13.

On January 9, 2016, respondent's attorney executed a waiver of indictment. Thereafter, the Middlesex County Prosecutor's Office filed an accusation, charging respondent with fourth-degree causing bodily injury to two individuals by driving a vehicle while under the influence.

On January 9, 2017, respondent entered a guilty plea before the Honorable Pedro J. Jimenez, Jr., J.S.C., Superior Court of New Jersey, Law Division, Criminal Part, Middlesex County.

Respondent admitted that he was guilty of the charges that had been filed against him. Specifically, he admitted that, on the day of the accident, he had been drinking beer "and spirits" and that approximately ninety minutes had elapsed between the time he had been drinking and his operation of the vehicle. The accident occurred after he had exited the Garden State Parkway and was entering the New Jersey Turnpike. He obtained a turnpike "billet to pay the toll," then accelerated, and struck the vehicle in front of him. Respondent conceded that he had consumed sufficient quantities of alcohol that day such that it was unsafe for him to be driving. Respondent admitted having a blood alcohol level of .19 - more than twice the legal limit under New Jersey law. He admitted further that, as a result of the accident, three individuals from the other vehicle were transported to the hospital with non-serious injuries.

On April 7, 2017, Judge Jimenez sentenced respondent to three years' probation, with the possibility of its termination after one year, at the discretion of the probation department, if respondent paid all fines, completed drug and alcohol evaluation, submitted to random urine monitoring, and otherwise complied with probation's requirements. The judge imposed fines and penalties, and suspended respondent's driver's license for seven months.

The OAE argued that, typically, a reprimand is imposed for assault by auto and driving while intoxicated, citing In re Fedderly, 189 N.J. 127 (2007) (attorney convicted of third-degree assault by auto and driving while intoxicated; attorney had a blood alcohol level of .247; the passenger in the other vehicle suffered a broken ankle) and In re Cardullo, 175 N.J. 107 (2003) (attorney pleaded guilty to fourth-degree assault by auto, driving while intoxicated, and leaving the scene of an accident after rear-ending another vehicle; she initially denied involvement in the accident; blood alcohol tests yielded results of .17 and .16; attorney had two prior driving while intoxicated convictions; we considered the absence of serious injury to the other driver and the attorney's efforts to recover from alcohol addiction).

The OAE noted further that suspensions have been imposed when car accidents have caused fatalities, citing In re Howard, 143 N.J. 533 (1996) (three-month suspension for third-degree death by auto (non-alcohol related); the Court warned that longer suspensions would be imposed when alcohol plays an aggravating factor in a vehicular homicide case); In re Barber, 149 N.J. 74 (1997) (six-month suspension where the attorney was convicted of vehicular homicide; consumption of alcohol prior to the accident was an aggravating factor); and In re Guzzino, 165

N.J. 24 (2000) (two-year suspension for attorney convicted of second-degree manslaughter and driving while intoxicated).

The OAE observed, as mitigating factors, that this was respondent's first criminal conviction and first disciplinary matter, and that as part of his probation, he is required to undergo alcohol and drug evaluation and to comply with court-ordered treatment. The OAE urged us to impose a reprimand and to require respondent to submit, for a one-year period, quarterly documentation of his continued attendance at substance-abuse counseling.

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Following a review of the record, we determine to grant the OAE's motion for final discipline. Final disciplinary proceedings in New Jersey are governed by R. 1:20-13(c). A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c); In re Magid, 139 N.J. 449, 451-52 (1995); In re Principato, 139 N.J. 456, 460 (1995). Pursuant to that Rule, 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." Respondent's guilty plea to fourth-degree assault by auto and driving while intoxicated establishes a violation of RPC 8.4(b). Hence, the sole issue 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 discipline, the interests of the public, the bar, and 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." Ibid. (citations omitted). Fashioning the appropriate penalty involves a consideration of 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).

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse an ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 167, 173 (1997) (citation omitted). Offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995). The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or

affect his or her clients. In re Schaffer, 140 N.J. 148, 156 (1995).

In addition to the above cases cited by the OAE, the following cases provide a baseline against which respondent's conduct may be measured. An admonition was imposed in In re Terrell, 203 N.J. 428 (2010), where the attorney rear-ended an automobile after attending his office holiday party. The accident caused minor damage to both vehicles. In the Matter of A. Dennis Terrell, DRB 10-052 (June 21, 2010) (slip op. at 2). The attorney exited his vehicle, examined the damage, and then left the scene of the accident. One of the passengers experienced neck pain from the accident and was taken to a hospital. When the police arrived at the attorney's house, he admitted that he had been drinking. The officer arrested him and charged him with reckless driving, leaving the scene of an accident, failure to report an accident, and driving while intoxicated. Thereafter, the attorney was admitted into the pre-trial intervention program following his guilty plea to an accusation charging him with fourth-degree assault by auto, driving while intoxicated, and leaving the scene of an accident. Id. at 3.

Suspensions have been meted out in driving while intoxicated cases when serious bodily injury to others has

resulted. The attorneys' efforts at rehabilitation and other mitigating factors have also been considered. See In re Murphy, 200 N.J. 427 (2009) (six-month suspension on a motion for reciprocal discipline (Pennsylvania), for attorney convicted of aggravated assault by vehicle while driving under the influence (blood alcohol content in excess of .2), reckless endangerment of another person, and driving under the influence of alcohol or controlled substance; the attorney had traveled in the wrong direction on the Pennsylvania Turnpike, causing a head-on collision with another vehicle, injuring the three passengers, one of whom suffered a broken femur, which required surgery); and In re Saidel, 180 N.J. 359 (2004) (six-month suspension on a motion for reciprocal discipline (Arizona), for attorney, who, while intoxicated (alcohol concentration of .067 more than two hours after the collision), flipped his vehicle; he was driving thirty miles over the speed limit and lost control of the car; his two passengers were seriously injured).

Here, in mitigation, we consider that the occupants of the other vehicle did not sustain serious injuries and that this is respondent's first brush with ethics authorities in his ten years at the bar. Based on these factors and on the above precedent, we determine that a reprimand is warranted.

We further determine that, for a two-year period, respondent submit to random urine testing on a schedule determined by the OAE, and that he provide proof to the OAE that he continues to participate in substance abuse counseling.

Vice-Chair Baugh and Member Boyer did not participate.

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  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Robert S. Shiekman  
Docket No. DRB 17-277

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Argued: October 19, 2017

Decided: January 17, 2018

Disposition: Reprimand

Members	Reprimand	Did not participate
Frost	X	
Baugh		X
Boyer		X
Clark	X	
Gallipoli	X	
Hoberman	X	
Rivera	X	
Singer	X	
Zmirich	X	
Total:	7	2

  
Ellen A. Brodsky  
Chief Counsel