Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-119
District Docket No. XIV-2022-0348E

In the Matter of	:
Mary E. Warner	:
An Attorney at Law	:

Decision

Argued: July 20, 2023

Decided: November 14, 2023

Michael S. Fogler appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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 (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea and conviction, in the Superior Court of New Jersey, Monmouth County, Criminal Division, to fourth-degree criminal contempt, in

violation of N.J.S.A. 2C:29-9(a)(1); driving while under the influence of alcohol (third offense), in violation of N.J.S.A. 39:4-50; and operating a motor vehicle while license is suspended (second offense), in violation of N.J.S.A. 39:3-40. The OAE asserted that respondent's offenses constituted violations of RPC 3.4(c) (knowingly disobeying an obligation under the rules of the tribunal); RPC 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to grant the motion for final discipline and conclude that a reprimand, with a condition, is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1990. During the relevant time, she was the President of HFO Services, Inc., located in Red Bank, New Jersey.[1]

Effective July 22, 2019, the Court declared respondent administratively ineligible to practice law for failure to pay her annual assessment to the New Jersey Lawyers' Fund for Client Protection (the CPF), as R. 1:28-2 requires. Respondent was removed from the Court's ineligibility list on March 22, 2021,

[1] Upon her entry into rehabilitation, respondent stopped working and, at the time of her January 20, 2023 sentencing, remained unemployed.

as memorialized in a March 31, 2021 Notice to the Bar.

Effective June 27, 2022, the Court again declared respondent administratively ineligible to practice law for failure to pay her annual assessment to the CPF.

Effective October 16, 2023, the Court declared respondent administratively ineligible to practice law for failure to comply with her continuing legal education (CLE) requirements.

Respondent has not cured her CPF or CLE deficiencies and remains ineligible, on both bases, to date.

We now turn to the facts of this matter.

On August 22, 2022, in the Superior Court of New Jersey, Criminal Division, Monmouth County, respondent entered a guilty plea to fourth-degree criminal contempt, in violation of N.J.S.A. 2C:29-9(a)(1);[2] driving under the influence of alcohol, in violation of N.J.S.A. 39:4-50 (third offense); and driving while license is suspended, in violation of N.J.S.A. 39:3-40(d) (second offense).

On January 20, 2023, the Honorable Henry Butehorn, J.S.C., sentenced respondent, for her criminal conviction, to a one-year period of non-custodial probation, and ordered her to pay $155 in fines and assessments. For her motor

[2] N.J.S.A. 2C:29-9(a)(1) provides, in relevant part, "a person is guilty of a crime of the fourth degree if the person purposely or knowingly disobeys a judicial order or protective order."

vehicle offenses, respondent was sentenced to jail for ninety-three days and assessed the statutorily mandated fines and costs.

The facts underlying respondent's criminal conviction and motor vehicle offenses are as follows.

On July 30, 2020, the Red Bank Police Department dispatched a police officer in response to a reported hit-and-run motor vehicle accident on a local road. Upon arriving at the scene, the responding officer, Officer Hernandez, observed a parked vehicle with damage to the driver's side rear bumper. The owner of the parked vehicle informed the officer that the accident had been captured on surveillance video from a camera located on the side of a building. The officer obtained the video footage of the incident, which revealed a female, later identified as respondent, driving a dark gray Land Rover that had struck the parked car. No injuries were reported. A second witness to the incident contacted the police and provided a description of the vehicle, including its license plate number.

On the same date, an unidentified individual found a cellular telephone, later determined to belong to respondent, near the scene of the accident and provided it to Officer Shea, who also had responded to the accident. While in possession of the cellular telephone, Officer Shea answered an incoming telephone call in an attempt to make contact with the owner. The caller identified

himself as Trooper Caso with the New Jersey State Police (the NJSP). Trooper Caso reported that he had just placed respondent under arrest for driving under the influence of alcohol and inquired whether a hit-and-run had been reported in Red Bank. Subsequently, Officer Shea went to the NJSP station, located in Holmdel, to transfer custody of the cellular telephone. According to his police report, Officer Shea, while at the NJSP station, spoke with respondent, who admitted she had hit a vehicle in Red Bank and fled the scene.

As a result of the foregoing, respondent was charged with the following four motor vehicle offenses: failing to report an accident, in violation of N.J.S.A. 39:4-130; reckless driving, in violation of N.J.S.A. 39:4-96; leaving the scene of an accident involving an unattended vehicle, in violation of N.J.S.A. 39:4-129(d); and driving while license is suspended, in violation of N.J.S.A. 39:3-40.

The facts giving rise to respondent's arrest by the NJSP are as follows. On July 30, 2018, the same date as the hit-and-run accident, Trooper Caso observed respondent driving erratically and failing to maintain her lane of travel on the Garden State Parkway. Based on her erratic driving, the trooper initiated a traffic stop in Middletown Township. The trooper advised respondent that she nearly caused a car accident and, further, that he would assist her since she had a flat tire.

According to his police report, the trooper detected the odor of alcohol emanating from inside respondent's vehicle. When asked where she was coming from and whether she had been drinking, respondent replied "Red Bank" but denied having had any alcohol. The trooper observed that respondent's eyes were "glossy" and asked her to step out of her vehicle. He also observed damage to the front right side of her vehicle, which was the same side "where her tire was blown out" and that it "appeared she was involved in a motor vehicle accident."

The trooper then requested that respondent perform field sobriety tests. Respondent was unable to follow the trooper's instructions with respect to the horizontal gaze nystagmus test. Respondent next was asked to perform the walk and turn test. However, the trooper reported that respondent was "swaying back and was unable to remain in the starting position," that she "fell off to the side multiple times," and that, due to the high level of impairment, he had to terminate the remaining field sobriety tests.

Consequently, the trooper arrested respondent on suspicion of driving while under the influence of alcohol. While at the police station, when respondent's cellular telephone could not be located, the trooper called the telephone number associated with the telephone. As detailed above, Officer Shea of the Red Bank Police Department answered respondent's telephone and,

subsequently, went to the NJSP station to transfer custody of the telephone.

As the result of her arrest by the NJSP, respondent was charged with driving under the influence of alcohol, in violation of N.J.S.A. 39:4-50; refusal to submit to a breathalyzer, in violation of N.J.S.A. 39:4-50.4(a); possessing an open container of alcohol in her motor vehicle, in violation of N.J.S.A. 39:4-51(b); reckless driving, in violation of N.J.S.A. 39:4-96; making an unsafe lane change, in violation of N.J.S.A. 39:4-88(b); and driving while license is suspended, in violation of N.J.S.A. 39:3-40 (second offense).

Respondent's court dates were scheduled for August 13, 2020 with respect to the hit-and-run accident in Red Bank, and May 27, 2021 with respect to her arrest for driving under the influence of alcohol.

Subsequently, on January 25, 2022, respondent was indicted for fourth degree operating a motor vehicle during a period of suspension, while her license was suspended for a second violation of N.J.S.A. 39:4-50, in violation of N.J.S.A. 2C:40-26(b). Prior to entering her guilty plea, the charge was amended to reflect a violation of N.J.S.A. 2C:29-9(a), criminal contempt, also a crime of the fourth degree.

On August 22, 2022, respondent pleaded guilty to fourth degree criminal contempt; driving under the influence of alcohol (third offense); and driving while her driver's license was suspended (second offense). In exchange for her

guilty plea, the remainder of the motor vehicle charges were dismissed. Before accepting her guilty plea, Judge Butehorn engaged in a lengthy colloquy to ensure her plea was knowing, informed, and consensual.

In support of her plea, respondent testified that, on July 30, 2020, she operated her vehicle in Middletown despite her knowledge that her driver's license had been suspended on January 22, 2019, following her appearance in the Bedminster Municipal Court for driving under the influence of alcohol (second offense) when she was ordered not to drive for a period of two years. Specifically, in response to questioning by her attorney, respondent testified as follows:

> Q: Okay. And on January 2nd, 2019, you were given by the Municipal Court an order not to drive your Motor Vehicle for a period of two years, is that correct?
>
> A: That is correct.
>
> Q: Okay. And the Judge read that order to you in court when [s]he sentenced you for a violation of 39:4-50, is that correct, second offense?
>
> A: Yes, she did.
>
> Q: Okay. And despite that order not to operate your motor vehicle on the highways in the State of New Jersey you, on July 30, 2020 operated your motor vehicle, is that correct?
>
> A: Yes, I did.
>
> Q: Okay, and in doing so, you knowingly disobeyed a

judicial order, correct?

A: Yes, I did.

[1T15-1T16.][3]

Respondent further admitted that, while operating her motor vehicle in Middletown, she was stopped by an NJSP trooper, who detected the odor of alcohol because she had been drinking vodka prior to operating her vehicle. She admitted that she was under the influence of alcohol, which impaired her ability to drive. She acknowledged that, although there was no breathalyzer reading, she was unable to perform the field sobriety tests.

Respondent also admitted that, prior to driving in Middletown, she had operated her vehicle in Red Bank, despite her knowledge that her driver's license had been suspended on January 22, 2019, as a result of her guilty plea to driving under the influence (her second offense).

On January 19, 2023, in advance of her sentencing, respondent, through her counsel, submitted to the Superior Court a sentencing memorandum, describing respondent's personal and professional background, along with her extensive efforts at sobriety over the past decade. Specifically, respondent, a wife and mother of three children, began her legal career in private practice,

[3] "1T" refers to the August 22, 2022 plea transcript; "2T" refers to the January 20, 2023 sentencing transcript.

eventually securing employment as corporate counsel to Quick Chek Corporation and, most recently, as President of HFO Services.

In 2013, respondent began efforts to address her alcohol addiction. After completing a twenty-eight-day program, she remained sober for two years. Thereafter, despite her attendance at Alcoholics Anonymous (AA) meetings, she struggled to maintain her sobriety. In 2018, after her second driving under the influence charge, she participated in an intensive outpatient program for several months. Her struggles, however, continued and, in 2019, she admitted herself to a twenty-eight-day relapse treatment program. Thereafter, due to the stress associated with her new employment and the pandemic, she was unable to maintain sobriety.

Following the issuance of the charges in the instant matter, respondent has made extensive efforts toward obtaining her sobriety, including her voluntary completion of a twenty-eight-day in-patient program in September 2020; her continued in-person attendance at AA meetings; and her eight-month stay in a sober house from September 2020 to May 2021. Recognizing she required additional treatment, in February 2022, respondent was admitted to, and successfully completed, an additional twenty-eight-day in-patient treatment program. Immediately thereafter, she successfully completed another in-patient program.

Respondent recounted her ongoing and daily attendance at AA meetings, that she has a sponsor who she talks to on a daily basis, and her completion of AA's step program. She described her completion of the steps as "a significant achievement because in all of the years that she has been attempting to address her alcoholism, she has never completed the steps."

As an additional measure to maintain her sobriety, respondent stated that she received three vivitrol injections following her completion of in-patient treatment, and was taking Gabapentin and Campral, both of which weaken cravings for alcohol, and Antibuse, which makes one violently ill if alcohol is ingested.

On January 20, 2023, respondent again appeared before Judge Butehorn for sentencing. The court stated it had reviewed the pre-sentence report, as well as respondent's January 19, 2023 sentencing memorandum, with exhibits.

Respondent, through her counsel, emphasized that she had reached a low point in her life, but recognized the severity of her actions and accepted responsibility. Respondent's counsel described her extensive rehabilitative efforts, following her arrest, stating that the threat of a custodial sentence had finally set her in the right direction. Specifically, he stated:

> She really, finally and, unfortunately, it took a custodial sentence … or the underlying threat of that to get her in the right direction, but it's worked for her. She's healthy, she's lucid, she's ready to move on with this

> and move on with her life.
>
> And, Judge, just because she's, you know, she's not going to State Prison with regard to this, it doesn't mean the consequences end here, Judge. As a member of the Bar there are going to be some significant consequences before the ethics panel but, ultimately, there are two things that she's recognized from this. That she did put people's lives in danger by driving and, again, for the grace of God, nothing ever happened to hurt someone else. But more so, that she has finally gotten to a place in her life where she doesn't have to drink, and she can live a life sober.
>
> [2T6-2T7.]

Respondent, on her own behalf, humbly expressed her pride in having finally embraced AA, and her fortune in having family and friends that have supported, and will continue to support, her recovery.

In determining to sentence respondent to non-custodial probation, rather than a period of incarceration, with respect to the fourth-degree criminal contempt conviction, Judge Butehorn concluded that the presence of strong mitigating factors outweighed the one, albeit serious, aggravating factor. Specifically, in aggravation, Judge Butehorn considered the need to deter respondent and others from breaking the law, given the substantial dangers of mixing alcohol with operating a motor vehicle. In mitigation, he concluded that, despite her past difficulties combatting her alcohol addiction, he found the circumstances were unlike to recur. In this respect, Judge Butehorn stated:

> It might be interesting to some that I would find this considering what has taken place in the past, meaning that these circumstances have occurred before, so people would think well, it's a fair probability that they're going to happen again. However, I'm going to find this considering what you've done over the past almost year. The in-patient admissions, your attendance at AA, your recognition and the extent to which you have gone out to not only recognize your need for help and support, but seeking it regularly and knowing that you need it and reach out for it. That was reflected by you here, by [your attorney] in his submission, as well as the exhibits that were submitted as well.
>
> …
>
> I do think you genuinely want to make a change and you're making those efforts to make that change so that these circumstances don't occur….
>
> [2T16-2T17.]

Also in mitigation, Judge Butehorn accorded significant weight to his finding that respondent was particularly likely to respond affirmatively to probation, based upon her character and attitude, along with having, on her own initiative, admitted herself to an in-patient treatment and, subsequently, an extended treatment program. Thus, respondent was sentenced in accordance with the terms of the plea agreement.

For her crime of fourth degree criminal contempt, Judge Butehorn imposed a one-year term of non-custodial probation, the minimum period, and assessed $155 in costs. As a condition to her probation, Judge Butehorn required

respondent to continue her regular attendance at AA meetings, as well as her continued compliance with medications, as prescribed by her physician.

For her motor vehicle offenses, Judge Butehorn imposed the mandatory minimum penalties. Specifically, for driving under the influence of alcohol, her third offense, respondent was sentenced to jail for ninety-three days;[4] assessed $1,390 in fines and costs; her driver's license was revoked for eight years; she was required to participate in the Intoxicated Driver's Resource Center (the IDRC) (forty-eight hours); and ordered to install an ignition interlock device upon her primary vehicle, during her period of suspension and two years thereafter. For driving while suspended, her second offense, respondent was sentenced to jail for thirty days, concurrent with her ninety-three day term of jail; assessed $1,250 in fines and costs; and her driver's license was revoked for two years (concurrent).

The court dismissed the remaining motor vehicle charges. A judgment of conviction was entered on January 23, 2023.

Respondent notified the OAE of her criminal conviction, as R. 1:20-13(a)(1) requires.

[4] For a third or subsequent violation, N.J.S.A. 39:4-50(a)(3) imposes mandatory jail time of one hundred and eighty days. However, the jail term may be reduced by ninety days, based upon verified proof of attendance in an approved in-patient rehabilitation program.

The OAE asserted, in its written submission and during oral argument before us, that respondent's guilty plea, which conclusively establishes her criminal conduct, constitutes violations of RPC 3.4(c); RPC 8.4(b); and RPC 8.4(d). Specifically, respondent's conviction for fourth-degree criminal contempt, contrary to N.J.S.A. 2C:29-9(a), along with her guilty plea to driving under the influence, contrary to N.J.S.A. 39:4-50 (third offense); and driving while suspended, contrary to N.J.S.A. 39:3-40 (second offense), constitutes a "criminal act that reflects adversely on [her] honesty, trustworthiness or fitness as a lawyer," in violation of RPC 8.4(b).

Citing disciplinary precedent, discussed below, the OAE recommended that respondent be reprimanded for her misconduct. The OAE asserted that respondent's misconduct most closely resembled the misconduct of the attorney in In re Dempsey, 240 N.J. 221 (2019), who was reprimanded following his conviction for fourth-degree operation of a motor vehicle during a period of suspension, and driving while under the influence (his fourth offense).

In aggravation, the OAE emphasized that this was respondent's third offense for driving under the influence. Although the OAE observed, in mitigation, respondent's lack of prior discipline and the significant steps she has made toward her recovery, it maintained that the mitigating factors were insufficient to justify a downward departure from the baseline discipline of a

reprimand. As a condition to her discipline, the OAE recommended that respondent provide to the OAE, for a period of two years, quarterly reports of her ongoing alcohol addiction treatment.

At oral argument before us, respondent accepted full responsibility for her misconduct. She candidly explained her struggles with alcohol addiction for the past decade, a disease she described as more difficult to combat than her battle with cancer. Following her arrest, however, she began a successful path toward her recovery and has maintained sobriety since January 28, 2022. She consistently attends AA meetings (five days per week), is in therapy, and is genuinely prepared and ready to move forward with her life and career. She readily agreed to submit quarterly reports, as the OAE had recommended, even offering to provide them for a lengthier period of time. Having already paid so dearly for her misconduct, including a period of incarceration, she urged that we impose an admonition, at most, for her misconduct.

Following a review of the record, we determine to grant the OAE's motion for final discipline. Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that Rule, 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 and conviction for fourth-degree criminal contempt, in violation of N.J.S.A. 2C:29-9(a)(1), establishes a violation of RPC 8.4(b). 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 also pleaded guilty to the following motor vehicle offenses: driving while under the influence of alcohol (third offense), in violation of N.J.S.A. 39:4-50, and driving while license suspended (second offense), in violation of N.J.S.A. 39:3-40.

Moreover, respondent violated RPC 3.4(c) and RPC 8.4(d) by operating her vehicle in violation of a court order. Pursuant to RPC 3.4(c), it is misconduct for an attorney to "knowingly disobey an obligation under the rules of a tribunal." Respondent admittedly was aware of the January 22, 2019 order of suspension issued by the Bedminster Municipal Court, directing that she not operate her motor vehicle during the two-year period of suspension. Her failure to abide by that order constitutes a violation of RPC 3.4(c).

Further, her failure to comply with the order of suspension wasted judicial resources, in violation of RPC 8.4(d), as a result of the subsequent criminal and municipal proceedings that were necessitated following her June 30, 2022, arrest. See In re Waldman, 253 N.J. 4 (2023) (we determined that, had the attorney been formally charged, the attorney's repeated and prolonged violations

of two protective orders, and his subsequent contempt charge, were violative of both RPC 3.4(c) and RPC 8.4(d)); because the attorney was not charged, we were unable to find violations thereof); In re Hartman, 142 N.J. 587 (1995) (for fifteen months, the attorney knowingly disobeyed a court order that obligated him to pay his adversary's fees, necessitating repeated and additional court action; violations of RPC 3.4(c) and RPC 8.4(d)).

In sum, we find that respondent violated RPC 3.4(c); RPC 8.4(b); and RPC 8.4(d). The sole issue left for our determination is the proper quantum of discipline for respondent's misconduct. R. 1:20-13(c)(2); Magid, 139 N.J. at 451-52; and Principato, 139 N.J. at 460.

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." In re Magid, 139 N.J. at 452. Fashioning the appropriate penalty involves the 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).

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them

relevant to the nature and extent of discipline to be imposed." Magid, 139 N.J. at 452. In motions for final discipline, it is acceptable to "examine the totality of the circumstances," including the "details of the offense, the background of the respondent, and the pre-sentence report," before reaching a decision as to the sanction to be imposed. In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

That an attorney's misconduct 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. 165, 173 (1997). Offenses that evidence ethics shortcomings, although not committed in an 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).

As the OAE observed, standing alone, the attorney disciplinary system does not address driving under the influence offenses. See In re Terrell, 203 N.J. 428 (2010) (observing that, ordinarily, the disciplinary system does not address driving while intoxicated violations that are unaccompanied by other

misconduct). Routinely, however, attorneys have been disciplined for offenses arising out of alcohol-related automobile incidents, though the discipline greatly varies, dependent upon the facts and circumstances presented, including the severity of the crime, whether injuries were sustained, the attorney's disciplinary history, and whether the attorney committed additional misconduct.

Generally, attorneys convicted of alcohol-related vehicular offenses, where there is no serious bodily injury, have received admonitions or reprimands, even if they improperly left the scene of an accident. See e,g., In re Terrell, 203 N.J. 428 (2010) (admonition for attorney who rear-ended an automobile on his way home from an office holiday party and left the scene; the struck automobile sustained minor damage and one of the occupants was taken to the hospital for neck pain; the attorney pleaded guilty to fourth-degree assault by auto, driving while intoxicated, and leaving the scene of an accident; in mitigation, we considered the attorney's unblemished disciplinary record, his cooperation with the OAE, and the lack of serious injuries to the occupants of the other vehicle); In re Dempsey, 240 N.J. 221 (reprimand for attorney convicted of fourth-degree operation of a vehicle during a period of driver's license suspension (second or subsequent violation), contrary to N.J.S.A. 2C:40-26(b), and driving under the influence (fourth offense); the attorney, who was in an accident that caused no injuries to others, remained at the scene and

cooperated with the police; in mitigation, we considered the attorney's lack of prior discipline and that the attorney had already paid a high price for his relapse, including his inability to practice law during his period of incarceration); In re Shiekman, 235 N.J. 167 (2018) (reprimand for attorney convicted of fourth-degree assault by auto and driving under the influence; the attorney, whose blood alcohol content was more than twice the legal limit, exited a highway toll booth and struck the vehicle in front of him, causing non-serious injuries to the occupants of that vehicle; no prior discipline); In re Dowgier, 233 N.J. 291 (2018) (reprimand for attorney convicted of third-degree eluding a police officer and driving under the influence (his second offense); the attorney, who had an exceptionally high blood alcohol content, failed to pull over after law enforcement signaled for him to stop; in aggravation, we considered the attorney's prior conviction for driving while intoxicated; in mitigation, we noted that the attorney's misconduct stemmed from alcoholism; no prior discipline); In re Fedderly, 189 N.J. 127 (2007) (reprimand for attorney convicted of third-degree assault by auto and driving while intoxicated; at the time of the accident, the attorney's blood alcohol level was .247; the passenger in the other vehicle suffered a broken ankle; in mitigation, after the accident, the attorney immediately stopped drinking and enrolled in an outpatient alcohol treatment program, regularly began attending AA and Lawyers' Assistance Program

(LAP) meetings, and expressed sincere remorse for his misconduct; no prior discipline); In re Cardullo, 175 N.J. 107 (2003) (reprimand for attorney convicted of fourth-degree assault by auto, driving while intoxicated (third offense), and leaving the scene of an accident; the attorney rear-ended a vehicle that was turning into a parking lot and then left the scene; the driver of the other vehicle sustained neck and back injuries, requiring a month of physical therapy; the attorney initially denied involvement in the accident, until she was told that there were witnesses; mitigating factors included the absence of serious injuries; the attorney's treatment for her alcohol addiction, including six months in an in-patient treatment facility; her continued counseling for her addiction; and her compliance with a LAP plan; no prior discipline).

Here, respondent's misconduct is most similar to that of the attorney in Dempsey, who was reprimanded. In Dempsey, the attorney, like respondent, operated his vehicle while intoxicated and was involved in a motor vehicle accident resulting in no bodily injury. In the Matter of Stephen P. Dempsey, DRB 18-380 (June 25, 2019) at 1-2. Dempsey, like respondent, pleaded guilty to a fourth-degree crime directly related to his driving while suspended, as well

as driving while under the influence of alcohol, contrary to N.J.S.A. 39:4-50.[5] Also like respondent, Dempsey previously had been convicted of driving while suspended (like respondent, it was Dempsey's second offense), and driving under the influence (Dempsey's fourth offense, whereas this matter represents respondent's third offense). Id. at 4.

Like respondent, Dempsey was sentenced to a jail term. Id. at 4. The court imposed fines, costs, and surcharges, and suspended Dempsey's license for two years, to run concurrently with any existing suspension, followed by use of an ignition interlock for one year, plus an additional six months in county jail or a residential treatment facility, to be served concurrently. Id. at 4-5.

In determining that a reprimand was the appropriate quantum of discipline for Dempsey's misconduct, we considered disciplinary precedent, including Terrell, where the attorney had been admonished for similar misconduct. Unlike the attorney in Terrell, we concluded that Dempsey's repeated convictions for driving under the influence (his fourth offense) and driving while suspended (his second offense) outweighed any mitigation, including his lack of prior discipline

[5] Dempsey pleaded guilty to operating a motor vehicle while his driver's license was suspended, contrary to N.J.S.A. 2C:40-26(b), whereas respondent pleaded guilty to fourth-degree criminal contempt, contrary to N.J.S.A. 2C:29-9(a), stemming from her failure to abide by the order suspending her license.

in nearly twenty years at the bar, and the absence of bodily injury resulting from his accident. Id. at 12. Thus, we imposed a reprimand.

Based upon the above disciplinary precedent, and Dempsey in particular, we determine that a reprimand is the baseline discipline for respondent's misconduct. However, to craft the appropriate quantum of discipline in this case, we also consider mitigating and aggravating factors.

In mitigation, respondent has had an unblemished legal career with more than thirty years at the bar. See In re Convery, 166 N.J. 298, 308 (2001). Further, respondent accepted responsibility for her misconduct by pleading guilty and, as we observed and as Judge Butehorn stated, has made significant strides toward her recovery. She expressed sincere contrition and remorse to us, and has continued a successful path toward her sobriety.

However, in aggravation, this represents respondent's third conviction for driving under the influence of alcohol, and her second conviction for driving while her license was suspended, a consideration that we accord weight in fashioning our discipline. See In re Dempsey, 240 N.J. 221 (weighing, in aggravation, that the conduct underpinning the disciplinary matter represented the attorney's fourth conviction for driving under the influence); In re Dowgier, 233 N.J. 291 (2017) (weighing, in aggravation, that the attorney's misconduct stemmed from his second conviction for driving under the influence). Further,

it was fortuitous that respondent did not injure anyone when she crashed into the parked car or, subsequently, when she proceeded to drive her vehicle on a major highway until her eventual arrest.

On balance, in view of the seriousness of the underlying offense, we conclude that respondent's lack of a disciplinary history and her rehabilitative strides, though significant and laudable, are not sufficient mitigation to justify a downward departure from the baseline quantum of discipline and, thus, we determine that a reprimand remains the proper quantum of discipline to protect the public and preserve the public's confidence in the bar.

As a condition to her discipline, we require, for a two-year period, that respondent continue to participate in substance abuse programs and submit to the OAE, on a quarterly basis, reports of her ongoing treatment for her alcohol addiction.

Member Rodriguez voted to impose an admonition, with the same condition.

Member Hoberman was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: */s/ Timothy M. Ellis*
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Mary E. Warner
Docket No. DRB 23-119

Argued: July 20, 2023

Decided: November 14, 2023

Disposition: Reprimand

Members	Reprimand	Admonition	Absent
Gallipoli	X		
Boyer	X		
Campelo	X		
Hoberman			X
Joseph	X		
Menaker	X		
Petrou	X		
Rivera	X		
Rodriguez		X	
Total:	7	1	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel