

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 10-445  
District Docket No. XIV-2009-563E

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IN THE MATTER OF  
PETER H. JACOBY  
AN ATTORNEY AT LAW

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Dissent

Argued: February 17, 2011

Decided: April 28, 2011

Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics.

Alan L. Zegas appeared on behalf of respondent.

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

I concur with my fellow members on all aspects of their decision, with the exception of the discipline to be imposed for respondent's second assault upon his wife. For the following

reasons, I believe that a three-year suspension is required under the circumstances of this case.

As the Board observed in Jacoby I, until the Supreme Court's decision in In re Margrabia, 150 N.J. 198 (1997), attorneys who had been convicted of acts of domestic violence were reprimanded. See, e.g., In re Magid, 139 N.J. 449 (1995), and In re Principato, 139 N.J. 456 (1995). However, in Magid, the Court noted and detailed society's and this State's Legislature's growing intolerance of domestic violence. In re Magid, supra, 139 N.J. at 453. The Court observed:

The national spotlight is focused on domestic violence. Between three and four million women each year are battered by husbands, partners, and boyfriends. Domestic Violence: Not Just A Family Matter: Hearing Before the Subcomm. on Crime and Criminal Justice of the House Comm. on the Judiciary, 103rd Cong., 2nd Sess. (June 30, 1994) (statement of Senator Joseph Biden, Jr.). The New Jersey Legislature has found that

domestic violence is a serious crime against society; that there are thousands of persons in this State who are regularly beaten, tortured and in some cases even killed by their spouses or cohabitants; that a significant number of women who are assaulted are pregnant; that victims of domestic violence come from all social and economic backgrounds

and ethnic groups; that there is a positive correlation between spousal abuse and child abuse; and that children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence. It is therefore, the intent of the Legislature to assure the victims of domestic violence the maximum protection from abuse the law can provide.

[N.J.S.A. 2C:25-18].

Based on those findings, the Legislature enacted one of the toughest domestic violence laws in the nation. N.J.S.A. 2C:25-17 to -33. During the last decade the number of complaints filed in New Jersey courts has increased from 13,842 in fiscal year 1984 to 55,639 in 1994, an increase of 302 percent. Dana Coleman, Domestic violence charges explode by 302% in decade, New Jersey Lawyer, Feb. 13, 1995, at 1 (citing the Administrative Office of the Courts).

[Ibid.]

Guided by these statistics and the growing intolerance of domestic violence by society and our legislature, the Magid Court ruled that, in the future, attorneys who are convicted of even a single act of domestic violence will, ordinarily, receive a three-month suspension. That pronouncement was made sixteen years ago.

Last year, the Court reiterated its position regarding attorneys who commit acts of domestic violence. In re Witherspoon, 203 N.J. 343 (2010). In that case, which involved a lawyer who made unwelcome sexual advances on three female clients and the adult daughter of another client, the Court recited a detailed history of the discipline imposed on attorneys who commit sexual offenses and other types of sexual criminal convictions. Id. at 351-54.

The Court observed that, although it had cautioned, in 2003, that attorneys who commit sexual offenses against their clients "will be treated severely," in the past, enhancement of discipline did not always follow when an attorney engaged in inappropriate sexual behavior with a client. Id. at 354 (citing In re Liebowitz, 104 N.J. 175 (1985), where the attorney was reprimanded for making outrageous and unwelcomed sexual advances on an indigent client). The Court noted, however, that since Liebowitz, it has "chartered a different course." Id. at 356.

The majority explained:

For example, we have adopted a harsher view when imposing discipline on attorneys who have been convicted of acts of domestic violence. That approach reflects the fact that domestic violence involves victims who are particularly vulnerable, and is in keeping with the expression of public policy

evidenced in our strict domestic violence laws.

[Id. at 356.]

Thus, fifteen years after Magid, the Court's view of domestic violence remained unchanged, as a matter of public policy and because of its devastating impact on victims, families, and society in general.

Together, respondent's behavior in Jacoby I and, now, in this matter, demonstrates a classic pattern of spousal abuse. See, e.g., State v. Kelly, 97 N.J. 178, 193-94 (1984) (noting that a battering cycle consists of three stages: the tension-building stage involving minor verbal and physical abuse, the battering incident, and the abuser's subsequent plea for forgiveness and promise to never abuse again - until the cycle begins anew).

In Jacoby I, an enraged respondent grabbed his wife by the throat with both hands, began choking her, and then threw her against a wall, ultimately dislocating her shoulder. Afterward, he proclaimed his love for her and his deep remorse for what he had done, and agreed to go into counseling. Unfortunately, a year-and-a-half of counseling did not prevent respondent from attacking his wife a second time, thereby continuing the cycle.

Like many abusers, respondent's contrition was short-lived. Eighteen months after he received the October 2006 censure for his 2005 attack on Laurann, he assaulted her again. However, unlike before, this time, he threatened to kill her. The blood generated by the beating was so great that he had to change his clothes.

When called upon to account for his behavior, respondent sought to deflect responsibility to his wife, whom he now describes as an alcoholic. According to respondent, the altercation began as a result of her "indisputably provocative behavior," at a time when she was under the influence of alcohol. He claimed, on the one hand, that he acted in self-defense. Yet, on the other hand, he admitted that his actions went beyond what was necessary to defend himself against the provocateur. Evidently, respondent's love for his wife and contrition for what he had done in 2005 were not enough to overcome what is deeply rooted in his character: a violent disposition that manifests itself only against his spouse.

In this matter, as before, respondent seeks to explain his violent reaction by claiming that he suffers from intermittent explosive disorder, which results in the loss of verbal or physical control due to "stress or provocation." I note,

however, that his outbursts of violence are limited to his wife. He is apparently able to control himself around everybody else. Nevertheless, I am unconvinced that his physical separation and divorce from Laurann have eliminated the risk that he will target somebody else, now that she is no longer a part of his life.

In Jacoby I, respondent told the sentencing court that he loved his wife, that he was contrite and remorseful for what he had done, and that he would take steps to ensure that his conduct would not be repeated. He repeated those assertions to the Board and to the Supreme Court. Although, in this second matter, respondent has abandoned his declaration of love for Laurann, he once again seeks to convince the Board of his contrition and remorse, and he persists in his claim that he will continue with counseling in order to reform his violent tendencies. The similarity between the cycle of domestic violence and respondent's repeated claims to the sentencing court, to the Board, and, undoubtedly, when the time comes, to the Supreme Court is not lost on me.

Finally, respondent's attempt to distinguish his behavior from that of the attorneys in Principato and Magid is alarming and underscores his failure, or refusal, to acknowledge his

abusive behavior. Ironically, he refers to Principato's assault on a client who was referred to him by a battered woman's shelter as "particularly disturbing," but fails to recognize that his repeated attacks on his own wife were equally disturbing. He separates himself from Magid on the ground that Magid attacked a client, not his wife - as if an attack on a wife is somehow understandable, maybe even acceptable. Assaults in domestic violence cases cannot be distinguished and ranked according to the status of the victim involved, be the victim a client, an employee, or a spouse.

In 2006, respondent was the beneficiary of an indulgent reduction in what is the ordinary measure of discipline in domestic violence cases, when he received a censure. Yet, he went on to commit another attack on his wife, an attack that was more violent than the previous one and so severe that he was required to serve one full year of a three-year prison sentence. His behavior and criminal punishment are without parallel in prior disciplinary cases.

As the Supreme Court observed in In re Principato, supra, 139 N.J. at 460 (citations omitted),

[t]he primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar. The

appropriate discipline depends on 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."

No amount of mitigation can overcome the distressing reality of the obvious ineffectiveness of one-and-a-half years of counseling, respondent's continued inability to control himself, the escalation in the brutality of the second attack on Laurann, the resulting one-year imprisonment, and respondent's claim that he should be treated differently because his victim was his wife. The public must be assured that attorneys such as respondent will not be permitted to continue as a member of the bar unless and until they are able to control their violent behavior. Therefore, I vote to impose a three-year suspension.

*Bonnie C. Frost*  
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