SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-159
District Docket No. XIV-2010-0660E

IN THE MATTER OF	
MARTIN J. MILITA, JR.	
AN ATTORNEY AT LAW	

Decision

Argued: October 17, 2013

Decided: December 3, 2013

Melissa A. Urban appeared on behalf of the Office of Attorney Ethics.

Scott B. Piekarsky 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). The OAE recommended a three-month suspension for respondent's guilty plea to one count of hindering apprehension by providing false information to a law enforcement official, a disorderly persons offense (N.J.S.A. 2C:29-3b(4)) and two counts of harassment, petty disorderly persons offenses (N.J.S.A. 2C:33-4(c)),

violations of RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer). For the reasons expressed below, we determine that a censure is warranted.

Respondent was admitted to the New Jersey bar in 1981. He is not currently engaged in the practice of law, but is self-employed as a manager of a government consulting firm. He has no history of discipline.

On November 16, 2009, respondent was driving through the town of Clinton below the posted twenty-five mile per hour speed limit, when a car with two young men (ages nineteen and twenty) began to tailgate him. Respondent became upset with the driver of the vehicle and, when the speed limit increased to forty miles per hour, he continued to drive at a speed of twenty miles per hour. Respondent gestured with his middle finger at the other vehicle. Both individuals in the other vehicle returned the gesture. Respondent then slammed on his brakes, almost causing a collision. He pulled over to the side of the road, opened his car door, partially emerged from the vehicle, and brandished a knife. The two young men drove past respondent, at which time respondent got back into his vehicle and began to follow them through several towns for approximately nine to

twelve miles. During the pursuit, the passengers could still see respondent brandishing the knife.

One of the two young men called the police to report respondent's aggressive driving and to complain that he was waving a knife. The dispatcher instructed the young men to drive to the Hunterdon Medical Center where the police were waiting.

Initially, when the police questioned respondent at the scene, he denied that he had a knife but, later, admitted having one in his car. He falsely informed the police that a mechanic where his car had been serviced had given the knife to him to use to fix his vehicle. Respondent also told the police that the reason he followed the men was to annoy them.

Respondent was then taken to the police station, where he gave an audiotaped statement. His false statements to the police about what had occurred formed the basis of the "hindering apprehension" charge. Respondent knew that the information that he had originally given to the police was false. The two petty disorderly persons offenses related to respondent's actions in brandishing the knife with the intent to harass the victims.

Respondent's counsel pointed out that respondent has been receiving treatment, since January 2008, for depression and acute anxiety. Respondent's treating physician, Dr. George F. Wilson, issued a letter, dated December 9, 2009, several weeks

after respondent's arrest. Dr. Wilson opined that respondent's behavior had resulted from post-traumatic stress disorder (PTSD) of the delayed chronic type and that respondent had "a dissociative episode of which he has very limited memory and during which he behaved in an aggressive manner out of keeping with his usual personality."

Dr. Wilson added that, initially, respondent had no idea why he had followed the other car, why he had been seen as threatening to the other driver, or why he could not recall the events described in the legal charges. The letter pointed to three episodes in respondent's life as an explanation for his behavior: (1) at age nine, he witnessed an accident in which a teenage girl was thrown off of a motorcycle, hit her head, and was declared dead at the scene; respondent suffered from insomnia and upsetting dreams for days afterward; (2) at age eighteen, while respondent was working on a road crew, a truck veered off the road, missed hitting him by a few feet, and struck another young member of the crew who was dragged and killed instantly; respondent saw the dismembered body; he did not sleep well thereafter and had upsetting dreams for a number of years afterwards; and (3) in August 2007, a close family friend lost his fourteen-year-old son, who had been hit by a

car; the incident brought back images of the truck accident, causing respondent to experience disturbing dreams.

According to Dr. Wilson, as a result of these incidents, if respondent were followed closely by another vehicle, he would become angry, believing that his space was being invaded. On a number of prior occasions, respondent had slowed down or stopped to "make a point," lectured a young driver, or yelled at another driver when his daughter was in the car with him and he believed she was being endangered.

Respondent's counsel highlighted a portion of Dr. Wilson's letter that stated

> [respondent's] dissociative reaction was triggered only in this event because the other driver gave an angry and dismissive gesture, which seemed to mock [respondent's] fear and anger related to the driver of [the truck in a fatal motor vehicle accident] many years ago. In this dissociative state, [respondent] was pursuing the truck driver, not the actual impatient driver of the car.
>
> [Ex.D-5.]

The doctor concluded that respondent's mild form of PTSD responds well to psychotherapy. In an updated report, Dr. Wilson predicted that, after four months of bi-weekly sessions,

> increased awareness and acceptance of these unconscious mental contents, along with the work with scenarios in identification of triggers . . . will enable [respondent] to deal with tailgating and similar driving situations in a more fully conscious manner

> and without dissociation. This process will make the recurrence of "road rage" highly unlikely
>
> [Ex.D-5].

The sentencing judge found one aggravating factor: the need for deterrence and two mitigating factors: that it was respondent's first brush with the criminal justice system and that he was particularly likely to respond affirmatively to probationary treatment. Determining that the mitigating factors outweighed the one aggravating factor, the judge sentenced respondent to one year of probation on each of the charges, to run concurrently; a $1,000 fine; and 100 hours of community service. Although the judge did not require respondent to undergo a psychological evaluation, he ordered him to continue his psychotherapy treatment with his current doctor and to comply with any other treatment that probation may require.

At his sentencing, respondent accepted responsibility for his actions. He apologized to everyone affected by his conduct: the driver and passenger of the other vehicle; the judge and law enforcement officers, whose time and resources were expended because of respondent's actions; and his family, friends, and colleagues, upon whom his actions brought "great shame and mortification."

In recommending a three-month suspension, the OAE relied on In re Bornstein, 187 N.J. 87 (2006) (six-month suspension for attorney who began to choke an individual who had broken the attorney's fall at a train station; the attorney also banged the victim's head several times against a window); In re Viggiano, 153 N.J. 40 (1998) (three-month suspension for attorney who was involved in a minor traffic accident, struck the driver, and assaulted the police officers who responded to the scene); and In re Thakker, 177 N.J. 228 (2003) (reprimand for attorney who pleaded guilty to harassing a former client and to being abusive to the police officer who responded in the matter).

The OAE analogized this case to Viggiano because both cases involved road rage, even though, here, respondent had not physically assaulted the two young men. The OAE emphasized that respondent's conduct was extreme – not only did he brandish a knife, but he also elevated the situation by tailgating the other vehicle for approximately twelve miles and then lied to the police about possessing the knife and about its purpose. As previously noted, the OAE recommended a three-month suspension.

According to respondent's counsel, respondent's PTSD and low blood sodium levels "caused a hallucination condition." However, the low sodium condition was not diagnosed until after

the underlying matter was resolved. Therefore, there were no formal reports about the condition in the criminal record.

Respondent's counsel highlighted the mitigating factors in this case: respondent's general good conduct as portrayed in the character letters appended to respondent's brief, his legal accomplishments, and the measures that respondent is taking to address his physical and psychiatric conditions. Counsel argued in his brief that the totality of factors requires discipline "in the admonition to censure range." However, at oral argument before us, respondent's counsel asked for the imposition of either an admonition or a reprimand. He emphasized that respondent has no disciplinary record, that his conduct is not likely to be repeated, and that he has taken remedial action for his misbehavior. Counsel also suggested that, if we were not satisfied with the medical proofs presented, we remand the matter for a limited evidentiary hearing in that regard.

In turn, the OAE pointed to respondent's misrepresentations to the police to try to conceal what had occurred. The OAE argued that the mitigation that respondent presented was not sufficient to save him from a suspension.

Following a review of the full record, we determine to grant the OAE's motion for final discipline. We find no need to remand this matter for an evidentiary hearing on respondent's

medical condition. The medical and psychiatric reports appended to respondent's brief to us are sufficient.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's guilty plea to having violated N.J.S.A. 2C:29-3b(4) and N.J.S.A. 2C:33-4(c) constitutes a violation of RPC 8.4(b). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The sanction imposed in disciplinary matters involving the commission of a crime depends on numerous 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 . . . prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46.

That respondent's criminal act did not relate directly to the practice of law does not negate the need for discipline. The primary purpose of discipline is not to punish an attorney. In re Gallo, 178 N.J. 115, 122 (2003). Rather, "the purpose of the disciplinary review process is to protect the public from unfit lawyers and promote public confidence in our legal system." Ibid. Even a minor violation of the law may lessen

public confidence in the legal profession. In re Addonizio, 95 N.J. 121, 124 (1984).

The discipline imposed in cases involving similar misconduct turns on the seriousness of the attorney's conduct, as well as on the presence of mitigating or aggravating factors.

In In re Bornstein, supra, 187 N.J. 87, the attorney received a six-month suspension. He had fallen backward while walking up the stairs at a Boston train station. A doctor broke his fall and tried to assist him. The attorney began to choke the doctor and slammed his head several times against a Plexiglas® window.

We found that the attorney's conduct – which was unprovoked, vicious, and outrageous – merited at least a three-month suspension. However, because the attorney defaulted in the case, we enhanced the discipline to a six-month suspension to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor.

A three-month suspension was imposed in In re Viggiano, supra, 153 N.J. 40. There, the attorney was involved in a minor traffic accident. After the collision, the attorney exited his vehicle, walked over to the other car, reached inside of it, and began to punch the driver. When two police officers arrived, they physically restrained the attorney to keep him from

continuing his assault on the other driver. The attorney then assaulted the police officers by pushing and kicking them. The attorney pleaded guilty to two counts of simple assault and was placed on probation for one year.

A censure was imposed in In re Nealy, 205 N.J. 264 (2011) (stipulated facts). The attorney was charged with assaulting a federal officer, in violation of 18 U.S.C.A. §111(a)(1) and (2). The charge stemmed 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 an ongoing federal investigation.

On arriving at the attorney's office, the agents identified themselves and informed the attorney that they wanted to talk to him and his wife about a federal investigation. The attorney then became increasingly agitated and aggressive. One of the agents informed the attorney that they were leaving and that he should contact them to set up an appointment with them.

When the special agents began to leave, the attorney followed them to the exit. His wife then came out of her office and stood between him and the special agents. The attorney pushed his wife out of the way, at which time one of the agents interceded. The attorney then pushed one of the agents against

a wall and struck him with his hands and arms. The special agents subdued and restrained the attorney until members of the police department arrived.

In mitigation, the stipulation stated that no one was seriously injured as a result of the attorney's actions. We found that the attorney's ethics history (a private reprimand, two reprimands, and a three-month suspension) was an aggravating factor.

Because it was the attorney's fifth run-in with the disciplinary system, we determined that his multiple encounters with disciplinary authorities evidenced a propensity to violate the RPCs, a circumstance that served to elevate the appropriate level of discipline from a reprimand to a censure.

See also In re Thakker, supra, 177 N.J. 228 (reprimand for attorney who pleaded guilty to harassment, a petty disorderly persons offense, for harassing a former client, telephoning her repeatedly, after she told him to stop, and being abusive to the police officer who responded in the matter, including inviting the officer to have a hand-to-hand encounter ("mano y mano"); alcohol was a contributing factor to his conduct); In re Margrabia, 150 N.J. 198 (1997) (three-month suspension for attorney convicted of simple assault in a domestic violence matter, after he had punched his wife and hit their child during

an argument); In re Predham, 132 N.J. 276 (1993) (six-month suspension for attorney who pleaded guilty to contempt of court, terroristic threats, aggravated assault with a deadly weapon, and possession of a weapon for unlawful purposes in a domestic violence matter where the attorney had entered his estranged wife's home, threatened to kill her and her mother, grabbed his wife, tore her shirt before she escaped, and hit her mother twice with a baseball bat); and In re Howell, 10 N.J. 139, 140, 142 (1952) (six-month suspension imposed on attorney who pleaded non vult to assault and battery after he had beaten a local newspaper editor with a rubber hose and riding crop).

In assessing the appropriate discipline for this respondent, we note that Thakker received only a reprimand, but did not physically assault anyone, even though he invited the responding police officer to settle things "mano y mano." The discipline in the Nealy matter was elevated to a censure because of the attorney's abysmal disciplinary record - it was his fifth brush with the disciplinary system. Moreover, Nealy had physical contact with federal agents and had to be subdued. In Viggiano, a true case of road rage, the attorney had to be physically restrained by the police to keep him from continuing his assault on the other driver. He also pushed and kicked the officers who restrained him. He received only a three-month suspension.

Bornstein received a six-month suspension because of the default nature of the case. He would have otherwise received a three-month suspension for trying to choke a good Samaritan and slamming the individual's head against a window.

Here, respondent had no physical contact with the driver and passenger of the other vehicle. His actions, however, were menacing. He followed them for several miles and waved a knife at them, prompting the young men to seek police intervention. In that regard, respondent's conduct is more serious than Thakker's (reprimand). However, his conduct is not as serious as that of the attorneys who received suspensions, where actual physical contact was involved. Furthermore, he is receiving treatment for his psychological and medical issues and is not an attorney from whom the public must be protected, given that he is not currently engaged in the practice of law. For these reasons, we determine to impose a censure, rather than the three-month suspension recommended by the OAE.

We also determine to require respondent to continue with the treatment regimen prescribed by a mental health professional approved by the OAE, until he is medically discharged.

Member Zmirich 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: Isabel Frank
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Martin J. Militia, Jr.
Docket No. DRB 13-159

Argued: October 17, 2013

Decided: December 3, 2013

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli			X			
Yamner			X			
Zmirich						X
Total:			6			1

Isabel Frank
Acting Chief Counsel