SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-007
District Docket No. XIV-2011-0336E

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| IN THE MATTER OF | : |
| JOHN G. KOUFOS | : |
| AN ATTORNEY AT LAW | : |

Argued: April 17, 2014

Decided: July 11, 2014

Timothy J. McNamara 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 (OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea, in the Superior Court of New Jersey, to second-degree hindering apprehension or prosecution, contrary to N.J.S.A. 2C:29-3B(3);

third-degree knowingly leaving the scene of a motor vehicle accident resulting in serious bodily injury, contrary to N.J.S.A. 39:4-129 and 2C:12-1.1; and third-degree witness tampering, contrary to N.J.S.A. 2C:28-5A(2) and (5). The OAE seeks respondent's disbarment. Respondent suggests that the appropriate discipline is a one- or two-year suspension, with conditions, specifically, "forbidding his use of alcohol and participating in Alcoholic Anonymous . . . and/or [the] New Jersey Lawyers Assistance Program . . . and/or mental health treatment." Further, respondent is willing to be supervised by a proctor.

For the reasons set forth below, we granted the motion for final discipline and determined to impose a three-year prospective suspension on respondent, with conditions.

Respondent was admitted to the New Jersey bar in 2003. At the relevant times, he maintained an office for the practice of law in Long Branch, operating as Koufos & Norgaard, LLC. The firm has since dissolved.

Respondent has no disciplinary history. However, on March 22, 2012, he was temporarily suspended from the practice of law, after he pleaded guilty to the criminal offenses that are the

subject of this motion for final discipline. In re Koufos, 209 N.J. 592 (2012). Respondent remains suspended.

The facts were taken from the transcripts of respondent's guilty plea and sentencing, as well as the judgment of conviction.

On June 17, 2011, respondent attended an Ocean County Bar Association function at Gabriella's of Ortley Beach, where he became involved in an argument "with someone." After respondent left the restaurant alone and as he drove his car along Route 35 North, the argument continued, on his mobile phone, via calls and either emails or text messages.

While respondent was driving along Route 35 and looking down at his phone to read the next email or text message, he "heard a boom," "panicked," and "took off." Respondent had struck "K.O.," a seventeen-year-old young man, who suffered serious orthopedic and neurological injuries, as a result of the accident. Respondent did not stop and did not return to the scene of the accident.

The record does not indicate whether respondent knew, at the time of the accident, that he had struck a person. However, the next day, he met with Greg Terlizzi, a friend since 1996, who had worked for him "on and off for the last five years," and

persuaded Terlizzi to state that he was driving respondent's car, at the time of the accident.

During his discussion with Terlizzi, respondent reviewed the New Jersey Criminal Code with him and advised him that, by taking responsibility for leaving the scene of the accident, Terlizzi would likely receive PTI or probation. Because the statute contained no such presumption, respondent knew that Terlizzi was risking incarceration, while respondent "would walk."[1]

On June 24, 2011, respondent was charged with hindering apprehension, leaving the scene of a motor vehicle accident that caused the victim serious injuries, and aggravated assault. Bail was set at $75,000, with no ten percent option. Later that

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[1] The pre-sentence investigation report contains a more-detailed account of respondent's conduct, before and after the accident. Given the confidential nature of the document, however, we cannot disclose its contents, even though we have relied on factual information in the report, in determining the appropriate measure of discipline for respondent's misconduct. We also took into account psychological information pertaining to respondent, which is part of the record, but cannot be disclosed because it is under seal. Finally, we considered respondent's compelling oral presentation before us.

day, respondent turned himself in, posted bail, and was released.

On March 15, 2012, respondent pleaded guilty to second-degree hindering apprehension or prosecution, third-degree knowingly leaving the scene of a motor vehicle accident that resulted in serious bodily injury to the victim, and third-degree witness tampering. On May 11, 2012, respondent was sentenced to three years in prison for knowingly leaving the scene of the accident and another three years for hindering prosecution, which were to run consecutively.[2] He was incarcerated from May 11, 2012 to October 10, 2013.

Respondent filed a 138-page brief with Office of Board Counsel, with eighty exhibits, sixty-five of which are character letters. Respondent's brief added a fact that is not evident from the transcripts or even the pre-sentence investigation report. He claimed that, as early as June 21, 2011, he "attempted to set the record straight," through his attorney, who tried to convince the prosecutor that respondent, not

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[2] The witness tampering charge was merged into the hindering prosecution charge.

Terlizzi, had caused the accident. According to the brief, respondent and his attorney had "multiple meetings and phone conversations with the prosecutor's office to clear Mr. Terlizzi and have respondent admit to his conduct, but the authorities simply elected to charge respondent later in the week."

In his brief, respondent asserted that there is "significant quantitative and qualitative mitigation" in his favor. He argued that, based on the totality of the facts, he "is not beyond redemption and that he has a powerful message to carry to lawyers in need."

According to respondent, when he became a lawyer, he embraced the profession. He developed friendships and participated in many bar association and other social activities. When he started a law firm with a friend, attorney Veronica Norgaard, he worked seven days a week. He professed to be an effective advocate, who was assigned some of the "most difficult clients and cases" by the Public Defender, adding that his professional achievements were numerous. At the age of thirty-four, he became a certified criminal trial attorney.

In mitigation, respondent offered that his "contrition and remorse is [sic] atypical in its [sic] scope and the steps he has taken to show his remorse." Specifically, at his guilty

plea, he stated that "[t]here's not a day goes by that – that that doesn't kill me." At sentencing, he stated the following:

> I have been, and I mean no disrespect to Don [his lawyer], I have been fighting with him to get an apology to the [O.] family against every lawyerly instinct any one of us would have. Without a deal, I went to IOP without a deal, I did all these things without a deal. And I did them because every day since my mind cleared that week, and it cleared, the clearing continued when Don and his son Jonathan got to the house, my house. I spent weeks on end wanting to die, weeks on end because not only do I sit, no matter what you do today, I sit with [K.O.'s] blood on my hands and no way to fix it or almost no way to fix it. I know that if I had those advantages, I might have been somebody different and I extinguished somebody, nearly extinguished somebody.
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> [OAEbEx.D at 26-27.][3]

Respondent added that he was a highly-respected certified criminal trial attorney and adjunct professor, with an unblemished disciplinary history. Other mitigating factors he cited included his ready admission of wrongdoing; his cooperation with the OAE; the fact that his unethical conduct did not involve the practice of law; the "substantial

[3] "OAEb" refers to the OAE's brief to us.

punishment" that he has already suffered; the unlikelihood that he will commit another offense; the aberrational nature of his misconduct; the exemplary conduct he has demonstrated since that time; the substantial service that he has provided to the community; and his youth.

Respondent currently works for Caola & Company, in Hamilton, New Jersey, as a client development manager.

Following a review of the full record, we determine to grant the OAE's motion for final discipline.

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), and In re Principato, 139 N.J. 456, 460 (1995). Specifically, the conviction 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." Hence, the sole issue is the extent of discipline to be imposed for a violation of RPC 8.4(b). R. 1:20-13(c)(2); In re Magid, supra, 139 N.J. at 451-52, and 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." Ibid. (citations omitted). Rather, many factors must be taken into consideration, 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). Yet, even if the misconduct is not related to the practice of law, it must be kept in mind that an attorney "is bound even in the absence of the attorney-client relation to a more rigid standard of conduct than required of laymen." In re Gavel, 22 N.J. 248, 265 (1956). "To the public he is a lawyer whether he acts in a representative capacity or otherwise." Ibid.

Over the years, we have considered a number of cases involving attorneys who left the scene of a motor vehicle accident that they had caused. The discipline in those matters has ranged from an admonition to a three-year suspension. See, e.g., In re Terrell, 203 N.J. 428 (2010) (admonition imposed on 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; mitigating factors included his unblemished disciplinary record, his cooperation with the OAE, and the lack of serious injuries to the occupants of the other vehicle); In re Cardullo, 175 N.J. 107 (2003) (reprimand imposed on attorney who pleaded guilty to assault by auto, a fourth-degree crime, driving while intoxicated, and leaving the scene of an accident; 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 very 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 the NJLAP plan); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension imposed on attorney who caused a minor motor vehicle accident in a parking lot and placed the blame on her babysitter).

In Kornreich, the attorney was involved in a fender bender in a shopping center parking lot. After the incident, the driver of the other car, Susan Yezzi, exited her vehicle and

began to fumble through her purse for her insurance information to exchange with Kornreich. Meanwhile, Kornreich remained sitting in her car, "staring" at Yezzi. After Yezzi wrote down the license plate on Kornreich's car, Yezzi approached the vehicle and confronted Kornreich, who said nothing and continued to stare at her. As Yezzi tried to coax Kornreich out of her car to exchange information, Kornreich "just took off."

Yezzi reported what had happened to the police. When the police questioned Kornreich about the incident, she denied that she had been involved in an accident, but admitted that she had been in the parking lot at the time.

When the police officer returned to Kornreich's home to question her again, she maintained that she had not been involved in a car accident. She and her attorney-husband threatened the officer with a lawsuit, if he did not "drop the investigation." Despite Kornreich's denials, she was issued summonses for failure to report a motor vehicle accident and leaving the scene of the accident.

When Yezzi, who was required to appear as a witness at the municipal court trial of Kornreich, arrived in the courtroom, she was told that she could go home, as the case against Kornreich had been dismissed and charges were going to be filed

against her former live-in babysitter, Angelique Franson. Prior to Yezzi's arrival, Kornreich's attorney had informed the court that Franson had been driving the car at the time of the accident. His statement to the court was prompted by a detailed story by Kornreich and her husband, both of whom agreed to testify against Franson. Kornreich later denied that she had told her attorney that Franson was driving the car.

Prior to Franson's trial, she called Kornreich for advice (Franson had moved to the west coast.) Although Kornreich told Franson that she did not need to appear, that it was "no big deal," and that "they would not come after [her]," Franson showed up anyway. When Yezzi appeared in the courtroom for Franson's trial, she did not recognize Franson. When Kornreich walked into the courtroom, Yezzi informed the investigating police officer that Kornreich was the driver of the car. Consequently, the case against Franson was dismissed. Ultimately, Kornreich pleaded guilty and was accepted into the PTI program.

In our decision, we noted that, as of the date of oral argument before us, Kornreich continued to refuse to admit her wrongdoing and to show any remorse. In assessing the appropriate measure of discipline to impose on Kornreich, we

considered two cases offered by the OAE, in support of its request for a six-month suspension: In re Poreda, 139 N.J. 435 (1995), and In re Lunn, 118 N.J. 163 (1990). In Poreda, the attorney received a three-month suspension for fabricating and submitting a motor vehicle insurance card in defense of a charge of driving without insurance. We noted that Kornreich's conduct "was much more serious than attorney Poreda's" and, thus, deserving of a longer term of suspension.

In Lunn, the attorney was suspended for three years for fabricating a certification, on behalf of his deceased wife, to support allegations in a personal injury suit. He then refused to admit, for two years, that he had done so. We noted that Kornreich's conduct was as serious -- if not more serious -- than Lunn's. However, we took into account that, once caught in a web of lies, Kornreich might have found it difficult to extricate herself. In addition, we were left with the feeling that her character was not unsalvageable, as she was young and hopefully capable of learning from her own mistakes. A five-member majority of this Board voted to suspend Kornreich for a period of one year.

The Supreme Court disagreed with our assessment of Kornreich's mitigation and imposed a three-year suspension.

Former Justice Coleman, joined by former Chief Justice Poritz, dissented. They would "disbar respondent because her conduct was so egregious and so inimical to the integrity of the judicial system that any lesser sanction would fail to protect the public."

Like Kornreich, this respondent was involved in an automobile accident and left the scene of the accident. Instead of accepting responsibility for the accident, he, like Kornreich, proceeded to pin the blame on someone else. Unlike Kornreich, who at least stopped after the fender bender, respondent never stopped, never looked back, and did not render aid to K.O. or call for help.

Respondent's treatment of Terlizzi was similar to Kornreich's treatment of Franson. The only difference is that, unbeknownst to Franson, Kornreich blamed her for the accident, whereas Terlizzi agreed to take the fall for respondent.

Respondent claimed that he attempted to come clean, before he was finally arrested, seven days after the accident. He stated that, as early as June 21, 2011, his defense attorney tried to convince the prosecution to drop the case against Terlizzi and allow respondent to take responsibility for the accident. Even if we accept this alleged development, it cannot

be ignored that the accident had occurred four days earlier. This delay is troubling to us.

Undoubtedly, the problems that respondent advanced in his brief to us generate a large measure of human sympathy. Remarkably, he was able to graduate from high school, obtain a law degree, and become a well-regarded, successful lawyer, who provided legal services to those who could not afford them. However, on the night of the accident, he demonstrated a very serious deficiency of character: he fled the scene of an accident that he caused; he asked an innocent person, Terlizzi, to take the blame; and he concocted the story for Terlizzi to tell the police. He did not attempt to come forward until four days after the accident.

Despite these terrible acts, however, we are not convinced that respondent is unsalvageable or beyond redemption. We are persuaded that he should be given another chance and not be disbarred. In our view, a three-year prospective suspension, which, in effect, will be a five-year suspension, given his temporary suspension in March 2012, is sufficient discipline for this respondent. In addition, prior to reinstatement, he must submit proof of regular attendance at AA meetings and proof of

fitness to practice law, as attested to by a mental health professional approved by the OAE.

Vice-Chair Baugh and Member Gallipoli voted to disbar respondent.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John G. Koufos
Docket No. DRB 14-007

Argued: April 17, 2014

Decided: July 11, 2014

Disposition: Three-year suspension

| ***Members*** | Disbar | Three-year Suspension | Reprimand | Dismiss | Disqualified | Did not participate |
|---|---|---|---|---|---|---|
| Frost | | X | | | | |
| Baugh | X | | | | | |
| Clark | | X | | | | |
| Gallipoli | X | | | | | |
| Hoberman | | X | | | | |
| Singer | | X | | | | |
| Yamner | | X | | | | |
| Zmirich | | X | | | | |
| Total: | 2 | 6 | | | | |

Ellen A. Brodsky
Chief Counsel