SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-345
District Docket No. XIV-2006-0409E

IN THE MATTER OF	
JERRAMIAH T. HEALY	
AN ATTORNEY AT LAW	

Decision

Argued: February 18, 2010

Decided: April 5, 2010

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Michael Murphy 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). It arose out of respondent's conviction of obstruction of justice, a violation of N.J.S.A. 2C:29-1, and resisting arrest, a violation of N.J.S.A. 2C:29-2(a)(1). The OAE recommends the imposition of either a censure or a three-month

suspension. We determine that an admonition is the proper quantum of discipline for respondent's conduct.

Respondent was admitted to the New Jersey bar in 1978. He has no history of discipline.

The facts were taken primarily from an unpublished Appellate Division opinion affirming respondent's conviction. That opinion is attached to the record before us.

On June 16, 2006, respondent, the mayor of Jersey City, and some relatives were celebrating a family event at Barry's Tavern, in Bradley Beach, New Jersey. Starting at about 9:00 p.m., respondent drank five to seven glasses of beer, but testified that he was not drunk when he left, at 2:00 a.m. He intended to walk to his home, located several blocks from the tavern.

On leaving the tavern, respondent noticed a young man, Jeffrey Barnes, "on top of a car, carrying on." Respondent advised Barnes to get off the roof of the car and stop yelling because the Bradley Beach police officers would probably be at the scene shortly and "they don't play around." Barnes had been at the tavern since 9:30 p.m. and had consumed approximately ten beers and a "couple of shots of tequila." He admitted to feeling intoxicated when he left the bar, at 2:00 a.m.

Before arriving at the tavern, Barnes and his girlfriend

(now wife), Jacqueline Volante, had an argument.[1] Volante's father is a retired Bradley Beach Police Captain and a Bradley Beach Councilman. Volante arrived at the tavern at about 2:00 a.m. to prevent Barnes from attempting to drive home.

Barnes' cousin, Jessica Lewis, arrived in front of the tavern and offered him a ride, but Volante prevented him from entering the car. Barnes then climbed on the hood of Lewis' car and, "in a jokeful manner," told her to drive away while he held onto the hood.

It was at this point that respondent came upon the scene. Volante testified that respondent was "slurring his words," as he told Barnes to get off the hood. According to Lewis, respondent was trying "to diffuse [sic] the situation."

Shortly thereafter, Officer William Major of the Bradley Beach Police Department arrived at the scene, in response to a call to the police. Major, who knew respondent before this incident, began to conduct an investigation. Twenty minutes later, Patrolman Terry Browning arrived at the scene.

Major testified that respondent "continuously interrupt[ed]" Browning, as Browning was interviewing Volante. Volante testified that Browning asked respondent to leave the

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[1] Jacqueline's last name is spelled in the record both as Volante and Volonte.

scene approximately three times, but that respondent did not do so. According to Volante, Browning asked respondent to "walk away, to just leave," to no avail.

According to Browning, when he asked respondent if he was a relative or friend of Volante, respondent replied, "No, but I'm important around here and I've already settled this matter." Browning noted that a "strong odor of alcoholic beverage [was] coming from [respondent's] breath . . . [his] eyes were bloodshot and watery . . . [his] hand movements were slow and fumbling . . . [his] speech was slurred . . . [and] he swayed as . . . spoke [.]" When Browning told respondent to "move along," respondent said that "[he was not] going anywhere."

Browning testified that, when he told respondent that respondent "better be careful how you're talking to [him]," respondent replied that Browning did not know "who [he was] talking to" and that he "better watch how [he was] talking [to him." According to Browning, respondent was positioned "a foot or two" from him, but respondent's face "or his finger [was] that close to [Browning's] face, prompting [Browning] to put [his] hand up to avoid getting poked in the eye . . . ."

Browning continued:

> As soon as I mentioned that he needs to move along or he's going to be arrested, he became very, very aggressive, very upset, violently pointing the finger, telling me

> that I better be careful how I talk to him, I don't know who he is, he's friends with my Chief, I better get him down here . . . .
>
> [OAEbEx.7 at 6.][2]

Browning testified that he "reached for the hand that was pointing at [him,] grabbed it . . . and [respondent] violently jerked away." Browning added that, at this point, respondent accused him of "knock[ing] over" respondent's wife and "squared off in a boxing stance." When Browning attempted to grab respondent's arm, a "struggle" ensued. Browning and Major then pulled respondent to the ground. Major secured one of respondent's hands in a handcuff and Browning told respondent to "stop resisting, put your arms behind your back." According to Browning, respondent continued to say, "[Y]ou're not arresting me," and never "volunteer[ed] his arm out from under his body to submit to arrest."

The "struggle" lasted "a couple of minutes," during which time both officers told respondent that he was under arrest and cautioned him to stop resisting "[a]t least four or five times." When respondent continued to struggle and not adhere to the instruction to "put your hand behind your back," Browning warned him to cease or he would use pepper spray. After warning

[2] OAEb denotes the OAE's brief in support of its motion for final discipline. Exhibit 7 is the unpublished Appellate Division opinion.

respondent twice, Browning applied the pepper spray to respondent's eyes.

Volante testified that respondent refused to leave "when the officer asked him to walk away" and that the officer warned respondent that he would be arrested if he did not. According to Volante, respondent's wife said, "[Y]ou don't know who you're talking to, I know the Chief of Police." Volante stated that an officer and respondent "wrestled" onto the ground, as the officer tried to secure handcuffs on respondent.

Respondent, in turn, testified that he did not point at Browning, but instead at Volante, in an attempt to explain what had occurred and that, in response, Browning "grabbed [his] right arm [and] put it behind [his] back." Respondent testified further that he was warned only once to move along and that he was never warned that he would be arrested if he did not, although he "knew that this guy was going to arrest him." He added that he never left the area because he "never got an opportunity to comply."

Respondent was charged with obstructing the administration of law, a violation of N.J.S.A. 2C:29-1, resisting arrest, a violation of N.J.S.A. 2C:29-2a(1), and disorderly conduct, a violation of N.J.S.A. 2C:33-2a(1).

At a trial, on June 18, 2007, the Bradley Beach municipal judge found respondent guilty of obstruction of justice and

resisting arrest. The judge found that, "as a matter of law . . . [the disorderly conduct charge] must be merged into the obstructing because the same set of facts would be needed to prove both. So, therefore, I will merge and dismiss the disorderly violation . . . ."

Respondent appealed from the judgment of conviction. On September 29, 2007, the Superior Court, Monmouth Vicinage, Criminal Division, on a trial de novo, convicted respondent of the same two offenses. Respondent appealed to the Appellate Division, contending that he had "committed no physical act which interfered with Bradley Beach Police Department activity and the failure to commit a physical act requires acquittal of obstruction." Respondent further contended that "a finger is not a body part which normally can be used to cause physical harm and finger pointing is not a violent gesture." Finally, respondent contended that "his criticism of Officer Browning's threat to arrest him did not meet the requisite element of physical interference enumerated in N.J.S.A. 2C:29-1a."

In its opinion, the Appellate Division addressed respondent's contentions:

> [E]ven though [the Superior Court judge] found that "defendant's verbal interruptions and refusal to leave the scene prevented the officers from conducting an investigation," he also found that "defendant was aware that his conduct was interfering with the

> officer's [sic] investigation, because he was told repeatedly to leave the scene and did not follow instruction." Moreover, independent of the physical act of finger pointing, Browning, Major and Volante testified that defendant refused to leave the scene after being instructed to do so, and there is sufficient evidence in the record to support the finding that defendant's physical presence after being directed to leave obstructed the investigation. The reasons for defendant's conduct are simply irrelevant, and to the extent defendant raises a constitutional defense, we simply note that the conviction was based on defendant's conduct, not upon his speech or criticism of the police.
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> [OAEbEx.7 at 15.]

According to the Appellate Division, "the record support[ed] the finding that, for whatever reason defendant had, there came a time that he resisted arrest." The Appellate Division concluded:

> [The Superior Court judge], based on the deference he had to give the judge who observed the witnesses testify, found that the testimony of Browning and Major was "extremely credible." The judge gave reasons to support his findings, and we cannot disturb them.
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> [OAEbEx.7 at 16.]

The Appellate Division affirmed the conviction on trial de novo. The Supreme Court denied respondent's petition for certification on October 6, 2008.

In his brief to us, respondent's counsel offered the following version of the events, entirely supported by transcript

citations:[3]

> On June 16, 2006, between 9:00 P.M. and 2:00 A.M., [respondent] attended a party at Barry's Tavern to celebrate his niece's graduation from the Sea Girt Police Academy. Respondent is a licensed New Jersey attorney, a former prosecutor, and a former municipal court judge.
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> . . . .
>
> When Ms. Lewis [Barnes' cousin] saw respondent, respondent tried to defuse the situation by asking the arguing parties to stop arguing and go home. Ms. Lewis believed that respondent did not scream or yell at the police, posed no threat to anyone and "was just trying to help." Ms. Lewis stood a few feet away from respondent when she heard a police officer advise respondent that he would be arrested if he did not leave the scene.
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> . . . .
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> Mr. Barnes indicated that respondent "was basically, I would say, coming in to be a mediator, trying to calm us down." Mr. Barnes was told by an officer on the scene to leave the area and the second officer ran to respondent and knocked him on the ground.
>
> . . . .
>
> When respondent observed Mr. Barnes on top of the hood of Ms. Lewis's car, respondent and his wife told Mr. Barnes that he should get off because the police would arrive. One officer with black hair advised respondent to leave or he would be arrested. Ms. Volonte then heard Mrs. Healy tell the

[3] For ease of reading, all transcript citations will be omitted from the quoted text.

investigating police, "You don't know who you're talking to, I know the Chief of Police." The officer threatened respondent with arrest and wrestled him to the ground because he did not leave the area. Ms. Volonte indicated that the police officers did not advise respondent he was under arrest. In a period which Ms. Volonte testified lasted thirty seconds, one police officer attempted to grab respondent's hand and moved his hands away and was wrestled to the ground. Ms. Volonte stated that after handcuffs were placed on respondent, one of the investigating officers told Ms. Volonte she should leave the scene since she had accomplished her objective of obtaining her car keys from Mr. Barnes. Ms. Volonte testified that respondent never made a fighting stance or clenched his fist when he spoke to the officers.

. . . .

Respondent testified the officer he later learned was Police Officer Terry Browning arrived on the scene and angrily yelled at Ms. Volonte and him to come over to his police car and speak to them. Respondent and Ms. Volonte approached Police Officer Browning and respondent advised Police Officer Browning that Ms. Volonte did nothing wrong and the problem between Ms. Volonte and Mr. Barnes had been resolved. Police Officer Browning told respondent to "keep going" and respondent pointed to Ms. Volonte and repeated to Officer Browning that Ms. Volonte did nothing wrong. Officer Browning told respondent "don't point at me," and when respondent replied that he was not pointing at him and advised Officer Browning again that Ms. Volonte did nothing wrong, Officer Browning grabbed respondent's finger and right hand and respondent initially pulled his hand and finger away from Officer Browning. Officer Browning did not advise respondent that he was under

> arrest, but said "that's it" and grabbed respondent's right hand and put it behind his back.
>
> Although Officer Browning did not advise respondent that he was under arrest, respondent realized Officer Browning planned to arrest him and attempted to put his left hand around his back so Officer Browning could handcuff him. Officer Browning then shoved respondent and respondent pulled his left hand to break his fall. After respondent fell, he felt one officer kneeling on his neck and another officer on his butt/back area. Respondent tried to get his left hand to his back so he could be handcuffed and advised the arresting officers that he was not resisting arrest but was attempting to place his left hand behind his back so he could be handcuffed.
>
> Respondent was quickly handcuffed while he was on the ground. An officer kneeling on respondent's neck shoved respondent's face into the pavement and respondent asked his wife standing nearby to remove his eyeglasses so they would not get crushed. After he was shoved to the ground and handcuffed, respondent was pepper sprayed in his left and right eye . . . . Respondent denied any resistance to the officers and indicated he may have told the officer "you're not arresting me, question point, exclamation" which was not a command to the officers but an expression of shock that he was being arrested because "I couldn't believe what was happening."
>
> [Rb1-Rb5.][4]

Counsel then named six witnesses who disputed the factual basis for respondent's conviction of resisting arrest and

[4] Rb denotes respondent's counsel's brief to us.

obstruction. One witness testified that, immediately after respondent gestured to Browning with his index finger, Browning "grabbed respondent's finger and shoved Mrs. Healy to the ground when she approached and asked what was going on." Three other witnesses "saw respondent placed in handcuffs immediately after he was knocked down by Officer Browning." Three of the six witnesses denied that respondent had "clenched his fists or st[ood] in a boxer's stance." Two witnesses saw the officers "place their knee on respondent's neck, shoulder and back after they pushed respondent's body to the ground." Three witnesses testified that respondent "was assaulted and pepper sprayed after he was placed in handcuffs."

In his brief, counsel argued that the "Court has never held that disorderly persons convictions require imposition of disciplinary sanctions on an attorney." Counsel pointed out that, although the rules require attorneys charged with indictable offenses to report the charge to the OAE, the rules impose no such duty on attorneys charged with a disorderly persons' offense. Although counsel acknowledged that, in a disciplinary proceeding against an attorney convicted of a disorderly persons' offense, the conduct shall be deemed conclusively established, R. 1:20-13(c)(1), counsel argued that "a court is permitted to review the circumstances surrounding the offense in determining the

appropriate discipline to be imposed" (citing In re Addonizio, 95 N.J. 121, 123 (1984)).

Counsel's position was that respondent's conviction of a disorderly persons' offense does reflect adversely on respondent's honesty, trustworthiness, or fitness as a lawyer, RPC 8.4(b), as charged by the OAE. Counsel pointed to the trial judge's recognition that, in all likelihood, respondent was moved by a good faith desire "to calm the situation down or defuse the situation." Counsel echoed the judge's remark, urging us to consider the "Good Samaritan" role that respondent played to attempt to "'defuse' a potential domestic disturbance and assist police in the investigation."

Counsel asserted that no New Jersey cases involve facts analogous to the within case and that the cases cited by the OAE, In re Korpita, 197 N.J. 496 (2009) (three-month suspension), In re Gibson, 185 N.J. 235 (2005) (one-year suspension), In re Angelucci, 183 N.J. 472 (2005) (reprimand), In re Magee, 180 N.J. 302 (2004) (reprimand), and In re Viggiano, 153 N.J. 40 (1998) (three-month suspension), "involve egregious misconduct different from respondent's disorderly persons offense." Counsel noted that, unlike some of the above attorneys, respondent did not drive while intoxicated and, therefore, did not endanger the lives of others (Korpita and

Magee); did not threaten to use his public office to take reprisals against police officers (Korpita); did not commit violent acts against third parties (Viggiano and Gibson); and was solely moved by his altruistic desire to resolve a potential domestic violence incident or to assist the police in its investigation.

Counsel further noted that a polygraph examination of respondent revealed that respondent was truthful, when he denied making certain statements contained in the police report ("I am an important person;" "Sweep this under the rug;" "You'll be sorry."); that the Monmouth County Prosecutor, the Hudson County Prosecutor, and the Attorney General had not sought the forfeiture of respondent's office; and that two assignment judges had dismissed forfeiture actions brought by respondent's political opponents, ruling that the opponents lacked standing.

As to the OAE's statement that respondent has not acknowledged any wrongdoing, counsel asserted that respondent's criticism of the integrity of the Bradley Beach Police Department was justified for two reasons. First, it is constitutionally protected by the First Amendment. Second, it was the result of respondent's legitimate questions about the reasonableness of the officers' use of force, in that he had been "brutalized and sprayed with pepper spray when he was lying

in a prone position," and was also the result of respondent's legitimate concern for the officers' inexplicable failure to arrest Barnes, the future son-in-law of retired Bradley Beach Police Captain and Councilman Tom Volonte, given that it was Barnes' drunken disorderly conduct that had caused the police to be called to the scene. Counsel added that "respondent's vigorous defense to the charges and his respectful disagreement with the results of his case should not be a basis for discipline." Counsel urged the dismissal of the charges against respondent.

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)), even if the conviction arises out of a disorderly persons' offense. R. 1:20-13(c)(1). Respondent's conviction of obstruction of justice and resisting arrest establishes his 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. 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 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." In re Principato, supra, 139 N.J. at 460 (citations omitted).

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse the ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 167, 173 (1997). 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 this instance, there is great divergence between the facts found by the courts and respondent's version of the incident. Respondent contended that he had not pointed at Browning, but, rather, at Volante; that only once had he been warned to move along; that the officer had never warned that he would be arrested if he did not leave; that he had not resisted

arrest but, instead, had attempted to place his left hand behind his back so that he could be handcuffed; and that he had been pepper-sprayed in both eyes after he had been shoved to the ground and handcuffed. Three witnesses corroborated respondent's last statement. Several witnesses, including Volante, denied that respondent had clenched his fists or "stood in a boxer's stance."

The above accounts are at odds with the officers' testimony and the courts' findings. As indicated above, however, in a motion for final discipline, an attorney's criminal or quasi-criminal conduct shall be deemed conclusively established by a judgment of conviction. Therefore, notwithstanding respondent's assailing of the conviction, we are bound by the findings that he resisted arrest and obstructed justice. The only issue left is the measure of discipline that respondent's conduct deserves.

In assessing the suitable form of discipline for criminal or quasi-criminal conduct, we may consider many factors, including the nature and severity of the crime, an attorney's reputation, general good conduct, and any other relevant mitigating circumstances. In re Lunetta, 118 N.J. 443, 445-46 (1989).

The following cases, although not quite similar to the one at hand, provide some guidance on the discipline for

respondent's offenses.

In In re Angelucci, supra, 183 N.J. 472, the attorney received a reprimand, following his conviction of obstructing the administration of law or other governmental function, a disorderly persons' offense. In the Matter of John Scott Angelucci, DRB 04-456 (March 30, 2005) (slip op. at 2). Specifically, Angelucci, whose van registration had expired and against whom there was an arrest warrant, refused to emerge from the house when an officer attempted to serve him with the warrant and also denied ownership of the van. Id. at 3. Ultimately, when three police officers were at the scene, Angelucci resisted arrest and was wrestled to the floor. Ibid. The court that convicted him found him "hostile" and "antagonistic" toward the officers, necessitating the use of force. Id. at 5.

In In re Magee, supra, 180 N.J. 302, another reprimand case, the attorney attempted to evade a police officer's efforts to stop his car, after the officer observed the attorney's erratic driving. After the officer activated the overhead lights and siren, Magee accelerated to a speed in excess of sixty miles per hour in a forty-mile-per-hour zone. In the Matter of Mark E. Magee, DRB 03-360 (March 31, 2004) (slip op. at 2). After the officer was finally able to stop the car, he smelled an

alcoholic beverage odor coming from Magee and also noted that Magee's eyes were watery and his speech was slurred. When the officer attempted to handcuff Magee, Magee refused to release his hand from the car. Id. at 3. Magee pleaded guilty to eluding a police officer, resisting arrest, and driving while intoxicated ("DWI"). Ibid.

In re Lekas, 136 N.J. 514 (1994), too, led to the imposition of a reprimand. There, the attorney was convicted of the disorderly persons' offense of obstructing the administration of law, a violation of N.J.S.A. 2C:29-1, for interrupting a trial and refusing to sit down and leave the courtroom, when ordered to do so by the judge numerous times. Lekas' improper conduct also included pacing in front of the judge's bench during a trial unrelated to the case in which she was acting as attorney for one of the parties. In the Matter of Melissa Lekas, DRB 93-341 (February 28, 1994) (slip op. at 4).

Ultimately, Lekas had to be escorted out of the courtroom by a police officer. She struggled against the officer, grabbing onto the pews, as she was being led out of the courtroom. Once out, she attempted to re-enter the courtroom, forcing the officer to bolt the door. Lekas then pounded on the courtroom door. Id. at 5. Our decision characterized her behavior as "defiant and outrageous." Id. at 15.

In In re Korpita, supra, 197 N.J. 496, the attorney was so intoxicated that he passed out behind the wheel of his car, at a traffic light. When the light turned green, the car remained motionless for about ten seconds, then slowly proceeded through the light and finally drifted into the left lane. When the officer activated his car's overhead lights, Korpita's car veered back into the right lane, turned right, and then pulled into a driveway. When the police officer approached the car, he saw Korpita slouched towards the seat on the passenger's side. The officer asked how Korpita was doing, but Korpita remained motionless. In the Matter of George R. Korpita, DRB 08-221 (December 4, 2008) (slip op. at 2).

The second time the officer asked Korpita how he was, Korpita responded "I'm fine, Bro." Asked to produce his driver's license, Korpita instead handed the officer a New Jersey Judiciary identification card, saying "I'm a judge." At the time, Korpita was a municipal court judge. When the officer asked Korpita to step out of the car, Korpita had "to grasp and lean onto the driver's side with his right arm for support while attempting to exit." Id. at 2-3.

After Korpita was transported to police headquarters, he "made [certain] statements that caused [the officer] great concern as a police officer as well as a citizen." Id. at 3.

Specifically, Korpita told the officer that he had always been a strong supporter of law enforcement; that, "when the cops beat the shit out of a guy, [he did] the right thing;" that, in cases that could have gone "either way," he had "always ruled for the cops;" and that he "was done," "never again" would he protect "the cops." Korpita repeatedly asked a sergeant if the sergeant could issue him a careless or reckless driving ticket, instead of a DWI ticket. Id. at 4.

Korpita pleaded guilty to the DWI charge and to the third degree crime of threat to a public servant. Ibid. In the disciplinary matter that ensued, Korpita was suspended for three months.

In In re Viggiano, supra, 153 N.J. 40, after becoming involved in a minor traffic accident, the attorney approached the other car, reached into the driver's window, and began to punch the driver. When police officers attempted to restrain him, he pushed and kicked them. In the Matter of Thomas J. Viggiano, DRB 97-112 (November 18, 1997) (slip op. at 1-2). Viggiano pleaded guilty to two counts of simple assault. Id. at 2. He received a three-month suspension from the practice of law.

In In re Gibson, supra, 185 N.J. 235, a much more serious case, the attorney, who had been arrested for public drunkenness

and was still heavily intoxicated at the police station, spat on and assaulted a police officer. In the Matter of Robert T. Gibson, DRB 05-050 (June 23, 2005) (slip op. at 2). Gibson was convicted of disorderly conduct, public drunkenness, simple assault, aggravated assault, and aggravated harassment of a public officer. Ibid. The New Jersey Supreme Court imposed a one-year suspension on Gibson, the same discipline meted out in Pennsylvania, where the convictions took place.

Here, unlike attorneys Korpita (three-month suspension) and Magee (reprimand), respondent was not driving while intoxicated and, therefore, did not place the lives of others at risk; unlike Korpita, he did not threaten to use his public position to retaliate against the police officers; unlike Viggiano (three-month suspension), he did not assault the officers by pushing them and kicking them; and, unlike Gibson (one-year suspension), he was not convicted of aggravated assault and aggravated harassment of a public officer, among other offenses.

Respondent's conduct was more analogous to Angelucci's (reprimand for obstruction of the administration of law by resisting arrest) and Lekas' (reprimand for obstruction of the administration of law by refusing to leave the courtroom, as ordered by the judge). Respondent did not leave the scene when instructed by Browning to do so and he resisted arrest.

In neither Angelucci nor Lekas were there mitigating circumstances. In turn, respondent's conduct was not without considerable mitigation. The record demonstrates that his motive was to calm down a situation that might have brought serious consequences to Barnes, a young man whose "clowning around" was obviously the product of intoxication. Respondent himself neither started nor was involved in an incident that precipitated a call to the police. He was motivated by a desire to help others. Moreover, he has an unblemished thirty-two-year professional record.

We are unable to agree with the OAE that respondent's lack of recognition of wrongdoing is an aggravating factor in this case. It is true that, throughout the record, respondent disputed the officers' version of the events. His disagreement with the officers, however, rested on a factual basis. In fact, some of the witnesses corroborated respondent's account of the incident. Respondent's factual dispute is to be contrasted to that of other respondents who acknowledge the established facts as true, but insist that their actions are neither unlawful nor unethical. In other words, they wrongfully refuse to acknowledge the disciplinary authorities' position that the behavior at issue was against the rules of the profession. Those are the instances when a respondent's obstinate refusal to acknowledge

any wrongdoing is deemed an aggravating factor.

Comparing respondent's conduct to that of the cases cited above, we find that, standing alone, his actions would merit no more than a reprimand. Because, however, of the compelling mitigating factors present in this case, we are convinced that an admonition is sufficient discipline for respondent's transgressions.

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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jerramiah T. Healy
Docket No. DRB 09-345

Argued: February 18, 2010

Decided: April 5, 2010

Disposition: Admonition

Members	Disbar	Suspension	Admonition	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			9			

Julianne K. DeCore
Chief Counsel