

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-224
District Docket No. XIV-07-432E

IN THE MATTER OF
WALTER D. NEALY
AN ATTORNEY AT LAW

Decision

Argued: September 16, 2010

Decided: November 9, 2010

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

Gerald D. Miller 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 stipulation between the Office of Attorney Ethics (OAE) and respondent, based on respondent's assault of a federal officer (18 U.S.C.A. 111(a)(1))

and (2)).¹ Respondent conceded that his conduct violated RPC 8.4(b) (commission of a criminal act that reflects adversely on an attorney's honesty, trustworthiness or fitness as a lawyer). The OAE recommended either a reprimand or a censure, while respondent's counsel urged the imposition of an admonition. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1984. He received a private reprimand, in 1990, for displaying a lack of diligence in a real estate refinance. He failed to complete post-closing tasks in a timely manner, resulting in a \$2,000

¹ Those sections state:

(a) In general. Whoever-

(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or

(2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 on account of the performance of official duties during such person's term of service,

shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and where such acts involve physical contact with the victim of that assault or the intent to commit another felony, be fined under this title or imprisoned not more than 8 years, or both.

financial injury to the mortgagee. In the Matter of Walter Nealy, DRB 90-096 (June 22, 1990).

In 2001, he received a reprimand for negligently misappropriating \$4,000 and failing to comply with the recordkeeping rules. In re Nealy, 170 N.J. 193 (2001).

In 2004, he was reprimanded again, based on a motion for discipline by consent. In re Nealy, 180 N.J. 527 (2004). In that case, respondent failed to file an affidavit of merit, resulting in the dismissal, with prejudice, of his client's complaint; failed to take any steps to have the complaint restored until after the ethics grievance was filed (his motion to restore the case was denied because it was untimely); and misrepresented to the client that the complaint could proceed to trial or settlement. Respondent admitted that he was guilty of gross neglect, lack of diligence, failure to communicate with the client, failure to explain a matter to the extent necessary to permit the client to make informed decisions, and misrepresentation.

Most recently, in 2008, respondent was suspended for three months for grossly neglecting two client matters. In re Nealy, 196 N.J. 152 (2008). In one of the matters, respondent failed to file an appellate brief, resulting in the dismissal of the

appeal. He also failed to inform his clients of the dismissal. In another matter, he grossly neglected a bankruptcy case, after agreeing to re-open it and failed to communicate with the client. He was reinstated in January 2009. In re Nealy, 197 N.J. 431 (2009). The Court ordered that he practice law under the supervision of a proctor for two years.

The conduct that gave rise to this disciplinary matter was as follows:

On August 6, 2007, respondent 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 on July 25, 2007, when special agents from the United States Department of State, Diplomatic Security Service, traveled to respondent's office to interview respondent and his wife in connection with an ongoing federal investigation.

On arriving at respondent's office, the agents identified themselves as special agents with the Department of State and informed respondent that they wanted to talk to him and his wife about a federal investigation. Respondent then became "increasingly agitated and aggressive." Special Agent Ariel Kaufman advised him that they were leaving and that respondent should contact them to set up an appointment with them.

When the special agents began to leave respondent's office, he followed them to the exit. His wife then came out of her office and stood between respondent and the special agents. Respondent pushed his wife out of the way, at which time special agent Kaufman interceded. Respondent then pushed special agent Kaufman against a wall and struck him with his hands and arms. The special agents subdued and restrained respondent until members of the Hackensack Police Department arrived.

On January 30, 2009, respondent entered a pre-trial diversion program. The diversion agreement provided that respondent's prosecution would be deferred for six months, provided that respondent would accept responsibility for his behavior and would abide by the conditions set forth in the agreement. On February 3, 2009, the Honorable Patty Shwartz, United States Magistrate Judge, granted the United States Attorney's Office leave for the filing of the dismissal of the complaint against respondent, without prejudice.

In mitigation, the stipulation stated that no one was seriously injured as a result of respondent's actions. In aggravation, the stipulation cited respondent's two prior reprimands and his three-month suspension. The stipulation omitted any reference to respondent's private reprimand.

Upon a de novo review of the record, we are satisfied that the stipulated facts support a finding that respondent's conduct was unethical. Respondent admitted that he violated RPC 8.4(b).

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 assessing the suitable form of discipline for criminal or quasi-criminal conduct, we 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).

Respondent's counsel argued, in his letter-brief to us, that respondent should receive no more than an admonition for his actions, in light of mitigating circumstances. Counsel

urged us to consider that the conduct occurred three years ago, that respondent was not criminally convicted, that he did not enter a guilty plea to the charged offenses, and that, following the pre-trial diversion agreement, the complaint against respondent was dismissed. That respondent was not convicted of a crime does not erase his misconduct or lessen its magnitude.

Respondent inexplicably resorted to physical violence against a federal agent, who was attempting to exit his office. Discipline more serious than an admonition is, therefore, required. The following cases provide guidance on the measure of discipline that respondent's conduct deserves.

In In re Angelucci, 183 N.J. 472 (2005), 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 (2005) (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 judge who convicted him found him "hostile" and "antagonistic" toward the officers, necessitating the use of force. Id. at 5. Angelucci had no prior discipline.

In In re Magee, 180 N.J. 302 (2004), 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. When 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 DWI. Ibid. Magee had not been previously disciplined.

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. Lekas had been privately reprimanded in 1992.

In In re Viggiano, 153 N.J. 40 (1998), 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. Viggiano had not been previously disciplined.

In In re Gibson, 185 N.J. 235 (2005), 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). He was convicted of disorderly conduct, public drunkenness, simple assault, aggravated assault, and aggravated harassment of a public officer. Ibid. The Court imposed a one-year suspension on Gibson, the same discipline meted out in Pennsylvania, where the convictions had taken place. Gibson had not been previously disciplined.

Recently, we voted to impose an admonition on an attorney convicted of obstruction of justice and resisting arrest. In the Matter of Jerramiah T. Healy, DRB 09-345 (April 5, 2010). We concluded that Healy's conduct was most akin to that of the attorneys in Angelucci and Lekas, where reprimands were imposed, but, because of the compelling mitigation present, an admonition was appropriate. The Court agreed with our determination. Healy had no history of discipline.

Despite counsel's urging, this is not an admonition case. Unlike Healy, there is no compelling mitigation here. In fact,

there are no mitigating factors. The fact that there were no injuries as a result of respondent's actions is not relevant.

But for respondent's disciplinary history, a reprimand would be appropriate discipline. However, this is respondent's fifth run-in with the disciplinary system.² Respondent's multiple encounters with disciplinary authorities evidence a propensity to violate the RPCs, which serves to elevate the appropriate level of discipline. We, therefore, unanimously determine to impose a censure.

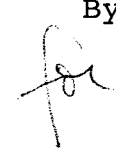
We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and

² Respondent's counsel urged us not to consider respondent's three-month suspension because respondent's misconduct "occurred before the Board made its prior determination concerning Walter Nealy and the Supreme Court entered its Order." However, the grievances in the two matters that led to respondent's three-month suspension had been filed prior to the within misconduct. Thus, at a minimum, respondent was aware that his conduct was under scrutiny.

actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: 

 Paul Stand
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Walter D. Nealy
Docket No. DRB 10-224

Argued: September 16, 2010

Decided: November 9, 2010

Disposition: Censure

Members	Disbar	Suspension	Censure	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			


By Julianne K. DeCore
Chief Counsel