

Court of New Jersey, Hudson County, Law Division, Criminal Part, to third degree criminal restraint, in violation of N.J.S.A. 2C:13-2(a). We determine to impose a three-month suspension for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1978. At the relevant times, he was an Assistant Corporation Counsel for the City of Jersey City. He resigned as a result of his conviction.

Respondent has no disciplinary history. However, during the following time periods, he was placed on the Supreme Court's list of ineligible attorneys for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection: September 25 to 26, 1995; September 20 to October 29, 1999; September 25, 2000 to July 12, 2001; and September 25 to 26, 2006.

The incidents giving rise to respondent's criminal misconduct began on Saturday, June 9, 2007, when Charmaine Chaddan's next-door neighbors had a party. At approximately one o'clock in the morning on June 10, 2007, Jersey City police officers Burroughs and Rodriguez responded to a domestic violence call placed from Chaddan's neighbors' home. At the

time, Chaddan and respondent had been involved in a three-year romantic relationship.

When the police officers arrived, Chaddan told them that, when she and respondent had returned to her home from the neighbors' party, he started punching her in the face near her bathroom. Chaddan fell into the bathtub (presumably as the result of respondent's assault), and respondent began to strangle her. Chaddan kicked respondent until she was able to escape. She ran out of her house into the yard, where some of the partygoers helped her climb over the fence into the neighbors' yard. One of the partygoers placed the 9-1-1 call, while another went to the front door of the house and observed respondent walking down the street.

Officer Burroughs took Chaddan to the hospital. After Chaddan was treated and released, another officer assisted her in obtaining a temporary restraining order against respondent. She was then taken home. Hours later, respondent was arrested for aggravated assault.

In the early evening of Monday, June 11, 2007, a Jersey City detective and a police officer met with Chaddan, who apparently had reported that, between the time of the incident and the time of respondent's arrest, he had left two threatening

voice mail messages on her cell phone. They listened to both messages, which respondent had left for her at "06:48 hours."

The first message stated:

You're playing games, death to all your people, your children. Don't fucking call me. Fuck you."

The second message stated:

Yeah bitch, you like to play the games. I hope that you get whatever it is that you want, but you send the motherfucker after me I'm gonna kill them, your mother, your father, anybody. You understand that and don't get in my fucking way, you like to play games. Yea, I wish you success, fuck you.

Based on these voice mail messages, a warrant was issued against respondent for terroristic threats against Chaddan.

While Chaddan was giving her witness statement to police about the voice mail messages, she talked about the punching incident at her home. She stated that respondent had punched her in the face approximately six times, that he had strangled her repeatedly, and that he had pushed her into the bath tub. She also stated that she had "learned from Hospital staff that she suffered a broken nose from the assault".

Based on both incidents, respondent was charged with two counts of aggravated assault, in violation of N.J.S.A. 2C:12-

1b(1) and (7), and terroristic threats, in violation of N.J.S.A. 2C:12-3b.

On December 7, 2007, respondent pleaded guilty to third degree criminal restraint, in violation of N.J.S.A. 2C:13-2a.¹

The proceeding was sound recorded, but the transcript is replete with notations that the speaker was "away from recording microphone." Thus many details are unavailable. It appears, however, that, after the incident, respondent entered an anger management program and counseling at his church. Respondent, who did not make a statement on the record, was given one year probation, among other things.

In a letter to the OAE, respondent asserted the following:

As mitigating factors please consider:

1. I am extremely remorseful and devastated for the harm I caused to Ms. Charmine [sic] Patricia Chaddan, my former significant other of three and one-half years, and for the irretrievable loss of that relationship as evidenced by a Permanent Court Ordered Restraining Order.

¹ N.J.S.A. 2C:13-2a provides that "[a] person commits a crime of the third degree if he knowingly restrains another unlawfully in circumstances exposing the other to risk of serious bodily injury."

I have begun and continue to receive voluntary Psychological Counseling and Behavior and Personal Counseling from my Pastor Rev. Nathaniel Legay (Metropolitan AME Zion Church, Jersey City) and my elder Rev. Dr. George W. Maize III (Metropolitan AME Zion Church, Ridgewood, NJ) to address and eliminate personal problems exposed by this incident and,

2. As a direct result of this indictment I was forced to resign my position as an Assistant Corporation Counsel for the great City of Jersey City, a position I held in Good Standing for three and one-half years. I have been unemployed since my force [sic] resignation date of October 31, 2008, despite daily seeking a position as an attorney.

Further, as a consequence of my plea I was sentenced to one-year of Probation, with reporting and random alcohol and drug testing, and

3. Finally, due to the loss of esteem amongst my peers, and family, the loss of personal friends and associates and my own sense of remorse, guilt, and disgrace I have been living a never-ending nightmare. I seek closure and the opportunity to move forward and re-build my life. It is in this light that I humbly request that this Disciplinary Review Board not temporarily suspend, revoke or disbar my license to practice Law in The great State of New Jersey, and grant me the opportunity to renew my career and rebuild my life.

[Letter to Richard J. Engelhardt from H. Derek Edley, dated March 4, 2008.]

A week before oral argument on this matter, we received a letter from respondent's counsel, reiterating these mitigating factors. Counsel added that respondent had acted in self-defense and that he has been attending AA meetings and remains sober.

The OAE requests the imposition of a three-month suspension. Respondent requests a censure. Following a review of the full record, we determine to grant the OAE's motion for final discipline.

Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). The rule authorizes the OAE to file a motion for final discipline upon the conclusion of a criminal matter "involving findings or admissions of guilt." R. 1:20-13(c)(2).

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's guilty plea to third degree criminal restraint constituted a violation of RPC 8.4(b).

RPC 8.4(b) states that "[i]t is professional misconduct for a lawyer to . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." An attorney who commits a crime violates RPC 8.4(b). In re Margrabia, 150 N.J. 198, 201 (1997).

That respondent's conviction does not relate directly to the practice of law does not negate the need for discipline. The primary purpose of imposing discipline is not to punish, In re Gallo, 178 N.J. 115, 122 (2003), but "to protect the public from unfit lawyers and promote public confidence in our legal system." Ibid. As the Supreme Court has explained:

In addition to the duties and obligations of an attorney to his client, he is responsible to the courts, to the profession of the law, and to the public[.] He is bound even in the absence of the attorney-client relation to a more rigid standard of conduct than required of laymen. To the public he is a lawyer whether he acts in a representative capacity or otherwise.

[In re Gavel, 22 N.J. 248, 265 (1956) (citations omitted).]

Accord In re Katz, 109 N.J. 17, 23 (1987).

The central question here concerns the quantum of discipline to be imposed. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

Ordinarily, a three-month suspension is the appropriate measure of discipline for an act of domestic violence. In re Margrabia, supra, 150 N.J. at 201. Until Margrabia, 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 discussed at some length society's and this State's Legislature's growing intolerance of domestic violence. In re Magid, supra, 139 N.J. at 453. In light of this change, the Court believed that discipline greater than a reprimand was now appropriate and warned that "the Court in the future will ordinarily suspend an attorney who is convicted of an act of domestic violence." Id. at 455. Nevertheless, the Court was constrained to reprimand Magid because it had "not previously addressed the appropriate discipline to be imposed on an attorney who is convicted of an act of domestic violence." Ibid. In Magid's companion case, the Court repeated its warning. In re Principato, supra, 139 N.J. at 463.

The attorney in Marqrabia was convicted of simple assault. Id. at 200. He received a thirty-day suspended sentence, two years' probation, was ordered to perform 200 hours of community service, and required to pay \$160 in costs and penalties. Ibid. He also was required to attend AA meetings and the People Against Abuse program. Ibid.

In Marqrabia, we voted for a reprimand because the attorney had "acknowledged that his conduct was wrong and improper; he ha[d] already fulfilled the conditions attached to his criminal

conviction; and he did not display a pattern of abusive behavior." Id. at 201. The Court declined to impose a reprimand.

The Court found that Margrabia's misconduct had occurred seven months after the decisions in Maqid and Principato and, that, therefore, he was on notice of the potential discipline. Id. at 202. Accordingly, the Court suspended him for three months. Id. at 203.

In 2006, we followed the Maqid, Principato, and Margrabia trilogy and voted to impose a three-month suspension on an attorney who pleaded guilty to simple assault upon his wife. In the Matter of Peter H. Jacoby, DRB 06-068 (June 6, 2006). On review, however, the Supreme Court imposed a censure. In re Jacoby, 188 N.J. 384 (2006). Although the Supreme Court did not issue an opinion in Jacoby, presumably the Court found that the facts of that case warranted an exception to the general rule in domestic violence cases, namely that an attorney will "ordinarily" be suspended when convicted of an act of domestic violence. In re Maqid, supra, 139 N.J. at 455.

To be sure, the facts in the Jacoby matter were hardly ordinary, given the nature of the offense. In Jacoby, the attorney's assault was an aberration. Moreover, he took

immediate responsibility for the assault; returned home the next day and cared for his wife, driving her to doctor appointments, and paying for her unreimbursed medical expenses; he paid all of her personal bills that she had previously paid from her earnings and continued to pay these personal expenses after she returned to her employment; immediately following the incident, he sought professional help for his mental illness, including voluntarily entering an anger management program; and he was extremely remorseful for his behavior. Moreover, we noted that, prior to the incident, Jacoby had been the single parent of three children following his first wife's death more than twenty years earlier; that he had changed course in his career by becoming in house counsel to AT&T so that he could devote sufficient time to the emotional needs of his children; that he continued to care for two of his adult children, one of whom was dependent on him due to his own problems. We noted also that, since the incident, he and his wife had been in marriage counseling and that they moved to Washington, D.C. together so that he could continue his employment with AT&T. Finally, Jacoby's reputation, character and good conduct were stellar.

Here, discipline shorter than a suspension is unwarranted. In addition to assaulting Chaddan, respondent made terroristic

threats against her family. Although an undated psychological report states that the punching incident was caused by impaired judgment due to alcohol consumption, nearly six hours later, respondent left two voice mail messages on Chaddan's cell phone in which he threatened her children and her parents. One would presume that he had sobered up by then.

In light of the severity of respondent's attack on Chaddan and the extremely threatening voice mail messages that he left on her cell phone hours later, we find that a three-month suspension is warranted. Unlike the argument between Jacoby and his wife, which involved some pushing, shoving, and throat-grabbing, this incident was not just a blow up between respondent and his paramour. The closed-fist punches to her face demonstrate a level of violence that extends well beyond a heat-of-the-moment lapse in judgment. The two voice mail messages threatening Chaddan's children and her parents, made hours later, demonstrate a violent temperament rather than an aberrant act. We, therefore, determine to suspend respondent for three months.

Prior to reinstatement, respondent must provide proof of fitness to practice law, as attested to by a mental health professional approved by the OAE. Also, he should be required

to continue to attend AA meetings until further order of the Court.

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

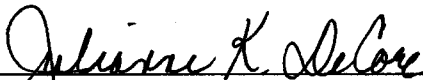
In the Matter of Henry D. Edley a/k/a H. Derek Edley
Docket No. DRB 08-115

Argued: June 19, 2008

Decided: July 31, 2008

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Boylan		X				
Clark		X				
Doremus		X				
Lolla		X				
Stanton		X				
Wissinger		X				
Total:		9				


Julianne K. DeCore
Chief Counsel