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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-275
DISTRICT DOCKET NO. XIV-06-219
and XIV-06-404E

IN THE MATTER OF
ERIC D. WACHTEL
AN ATTORNEY AT LAW

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Decision

Argued: November 15, 2007

Decided: December 20, 2007

Richard J. Engelhardt 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 came before us on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's criminal conviction for two counts of stalking, in violation of N.J.S.A. 2C:12-1 (b), a fourth degree crime. The OAE recommends a six-month suspension. We voted to impose a prospective six-month suspension with conditions.

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Respondent was admitted to the New Jersey bar in 1988. He has no prior discipline.

I. The Union County Guilty Plea

On November 2, 2006, respondent pleaded guilty to a stalking charge, arising from the following incidents.

Between February 16 and June 22, 2006, respondent left several threatening telephone messages on the answering machine of Leonard Wolkstein, respondent's wife's divorce attorney. The assistant prosecutor in the criminal case read a transcription of one such message left for Wolkstein: "One mother-fucker you're going to be dead soon. I know it all, I know where you sleep, where you drive, where you work, one mother-fucker is going to be dead soon."

Knowing that Wolkstein's daughter was expecting a child soon, respondent also sent a box containing feminine hygiene products to Wolkstein's office. He enclosed a note that said, "Hoping the whore mother and child die in childbirth." Respondent also left Wolkstein the following message on his answering machine: "I hope the whore mother and child die in childbirth."

During the plea hearing, respondent claimed to have only a vague recollection of leaving the messages, because he had been "mixing prescribed medication with copious amounts of alcohol" at the time. After the judge warned that he would not accept a vague plea from respondent, respondent took responsibility for his offenses.

Respondent had at least five other communications with Wolkstein. He admitted knowing that they would reasonably cause Wolkstein to fear bodily injury to himself or his family.

On January 15, 2007, respondent was given fifty months' probation and a conditional prison sentence of 180 days. The custodial portion of the sentence was later vacated.

II. The Morris County Guilty Plea

On October 25, 2006, respondent pleaded guilty to a charge of fourth degree stalking (N.J.S.A. 2C:12-3(a)). Specifically, on June 12, 2006, respondent left obscene voicemail messages threatening a court-appointed mediator with bodily injury. During the plea hearing, the following exchange took place:

THE COURT:

Q. Count No. 1 of the Accusation 06-10-1397, in pertinent part, charges that on or about June 12th, 2006, in the Township of Morris, you, sir, purposely did repeatedly follow P.K.O. and engage in a course of

conduct or make a credible threat with the intent of annoying or placing the victim in reasonable fear of death or bodily injury, specifically by leaving voicemail messages that were threatening and violent in nature, this being a crime of the fourth degree. Understand the charge?

A. Yes.

Q. How do you plead?

A. Guilty.

Q. Do you know the person referenced as "P.K.O."?

A. Yes.

Q. Male or female?

A. Female.

Q. Did you at some point prior to June 12th, have a relationship with her?

A. I had an interaction with her.

Q. Tell me what you did on or about June 12th, 2006 that makes you guilty of this charge?

A. I left an obscene voicemail message for her.

Q. On her phone?

THE COURT: Does that comport with your discovery? He says "obscene." Your witness says something more than obscene.

Mr. NOSSEN: It was a message where you, at least on one occasion, where the message including doing certain sexual acts to [P.K.O.] Is that correct?

THE DEFENDANT: I don't dispute that.

THE COURT: I assume that's a yes.

Mr. D'ONOFRIO: That is a yes - if that's a yes, then -

THE COURT: Well, that's a lawyer "yes." But today, you're a defendant. Don't give me these tricky answers. I need a factual basis

for the crime. Are you satisfied Mr. Prosecutor?

MR. D' ONOFRIO: There were several messages that were left that were threatening in nature to injure Ms. - the individual, P.K.O., that were violent, left on her voicemail. Is that correct, Mr. Wachtel?

THE DEFENDANT: Yes.

MR. D' ONOFRIO: And you left those messages there?

THE DEFENDANT: Yes.

[OAEbEx.E12-16 to 14-18.]¹

On January 5, 2007, respondent received three years' probation and a 180-day conditional sentence. He was also ordered to undergo substance abuse treatment, as well as medical, psychiatric, and psychological counseling.

In addition to the above criminal convictions, respondent had a previous involvement with the law. On June 24, 2005, he pleaded guilty to disorderly conduct and possession of drug paraphernalia, after an arrest for shoplifting. The shoplifting charges were later dismissed. In a second matter, on April 26, 2006, respondent pleaded guilty to harassment, a disorderly persons offense.

Furthermore, in his role as executor of his father's estate, respondent sent a harassing letter to his sister's

¹ OAEb refers to the OAE's brief in support of the motion for final discipline.

attorney, Douglas Fendrick, after having been asked to account for disbursements from the estate. Respondent addressed a letter to "FENDICK," and enclosed a note stating, "Scumbag you will die." Respondent also left two harassing, obscene messages on Fendrick's answering machine.

Respondent offered evidence that he suffers from mental illness and that he has received psychiatric and psychological counseling since he was six years old. He admitted abusing drugs for many years, including smoking marijuana five times daily, from 1979 to 2005.

In 2001, respondent witnessed the World Trade Center bombings from his office, a few blocks away. He alleged that respondent's psychologist reported that the events of that day sent him into a psychological tailspin. By 2003, he was abusing alcohol along with marijuana, and taking prescription Klonopin to combat depression.

In 2005, respondent stopped smoking marijuana, but had his Klonopin dosage increased to five pills per day. In November 2005, he attempted suicide by inhaling gas fumes. He was hospitalized for nine days.

In February and March 2006, respondent was prescribed a number of potent drugs, including Ambien, Wellbutrin, Lunesta, and Seroquel.

In November 2006, the psychologist diagnosed respondent with major depressive disorder, drug and alcohol dependence, obsessive-compulsive personality traits, and post-traumatic stress disorder related to the World Trade Center bombings. The psychologist was careful to note that respondent knew, at the time of his acts, that they were wrongful.

Since at least March 2007, respondent has been under the care of Sidney J. Cohen, a clinical psychologist. In a July 2, 2007 report prepared for the Morris County court, Dr. Cohen stated that respondent's mood had improved and that he had become better equipped, through counseling, to deal with his anger and stress. Dr. Cohen noted that respondent was drug-and alcohol-free and opined that he was not a danger to himself or others.

Following a review of the 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); In re Principato, 139 N.J. 456, 460 (1995). Respondent's (guilty plea of or conviction for) 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 Maqid, 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). Fashioning the appropriate penalty involves a consideration of many 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, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

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. That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse the excuse an ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 167, 173 (1997) (citation omitted). Offenses that evidence ethical 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 In re Thakker, 177 N.J. 228 (2003), an attorney received a reprimand after pleading guilty to one count of harassment. The attorney made repeated telephone calls in the span of a few hours to his former client, and asked to speak with her husband. Respondent knew, and the client repeatedly reminded him during his first several calls, that her husband had been committed to a correctional facility that same day for an assault upon her. After the client called the police, the responding officer warned respondent over the telephone to cease or be charged with harassment. The attorney then challenged the officer to come to his house and fight him.

In In re Frankfurt, 159 N.J. 521 (1999), the attorney was suspended for three months after pleading guilty to a charge of fourth degree stalking, in violation of N.J.S.A. 2C:12-10(b)(1) and (2). The victim was a Passaic County judge. During a one-month period, the attorney visited the judge's chambers on numerous occasions and asked to speak to the judge, although he

had no matters pending before her. Even after the attorney was told that the judge would not speak to him, he returned to chambers repeatedly and asked to speak with her. The attorney was also found guilty of contempt for failing to appear at a trial, after having been directed by a judge to appear.

In In re Predham, 132 N.J. 276 (1993), the Court imposed a six-month suspension on an attorney who pleaded guilty to aggravated assault with a deadly weapon (baseball bat) and lesser charges, resulting from his entry into his soon-to-be ex-wife's house, and chasing her and her mother into the street, screaming that he would kill them. He swung the bat, hitting the mother-in-law twice.

This case is similar to Frankfurt (three-month suspension), also a fourth degree stalking case, albeit more serious because it involved two criminal proceedings.

In aggravation, we considered that, on June 24, 2005, respondent pleaded guilty to disorderly conduct and possession of drug paraphernalia and that he sent his sister's attorney a harassing letter and left two more harassing, obscene messages on the attorney's answering machine.

In mitigation, we took into account that respondent has had a lifetime battle with mental illness and suffers from severe depression. His presentation before us was compelling in that

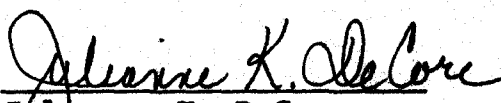
regard. We were persuaded that respondent's conduct was, in part, the product of his severe mental problems. He has also abused drugs and alcohol at various points in his legal career. Respondent is presently on prescription medication for his depression and is alcohol and drug-free.

Considering the three-month suspension (Frankfurt) as the starting point for respondent's stalking convictions, we conclude that his repeated stalking in different settings, combined with a prior penchant for harassment, is deserving of a six-month (prospective) suspension. Prior to reinstatement, respondent should provide proof of fitness to practice by an OAE-approved mental health professional, as well as proof that he is alcohol and drug-free.

Members Boylan and Lolla 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
William O'Shaughnessy
Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

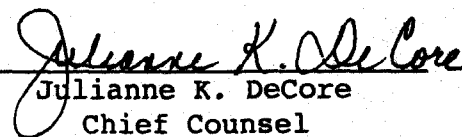
In the Matter of Eric D. Wachtel
Docket No. DRB 07-275

Argued: November 15, 2007

Decided: December 20, 2007

Disposition: Six-month suspension

Members	Disbar	Six-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy		X				
Pashman		X				
Baugh		X				
Boylan						X
Frost		X				
Lolla						X
Neuwirth		X				
Stanton		X				
Wissinger		X				
Total:		7				2


Julianne K. DeCore
Chief Counsel