SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-216
District Docket No. XIV-06-01E

IN THE MATTER OF	
DONALD P. FEDDERLY	
AN ATTORNEY AT LAW	

Decision

Argued: October 19, 2006

Decided: November 20, 2006

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Gerard Hanlon appeared on behalf of respondent.

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), following respondent's guilty plea in the Superior Court of New Jersey, Law Division, Morris County, to third degree assault by auto

(N.J.S.A. 2C:12-1C(2)) and driving while intoxicated (N.J.S.A. 39:4-50). For the reasons expressed below, we determine to impose a reprimand for respondent's commission of a criminal act that reflects adversely on his fitness as a lawyer, a violation of RPC 8.4(b).

Respondent was admitted to the New Jersey bar in 1986. He maintains an office for the practice of law in Flanders. Respondent has no disciplinary history.

On September 7, 2005, respondent was involved in an automobile accident. At the time, respondent's blood alcohol level was .247. As a result of the accident, someone identified as "M.F." sustained a broken ankle.

Respondent was cited for reckless driving (N.J.S.A. 39:4-96) and driving while intoxicated (DWI) (N.J.S.A. 39:4-50). Later, in an undated accusation, the Morris County Prosecutor charged respondent with third degree assault by auto (N.J.S.A. 2C:12-1C(2)).

On March 21, 2006, respondent appeared before Judge Salem V. Ahto, in the Superior Court of New Jersey, Morris County, Law Division – Criminal Part, and entered a guilty plea to the DWI and third degree assault by auto charges. The reckless driving charge was eventually dismissed.

At the plea, the prosecutor reported that M.F. had suffered complications from the broken ankle, including "problems walking," and that she still was undergoing treatment.

On April 27, 2006, respondent appeared for sentencing before Judge Ahto. With respect to the assault by auto conviction, respondent was sentenced to three years' probation and ordered to perform 180 hours of community service. In addition, he was required to undergo a TASC evaluation and to follow all its recommendations.[1] Respondent was assessed $205 in fines and penalties, as well as a $5 per month probationary supervision fee and a $2 transaction fee. Finally, respondent's New Jersey driving privileges were suspended for seven months.

On the DWI conviction, respondent was assessed $858 in fines, penalties, costs, and surcharges, and required to undergo twelve hours IDRC.[2] His driving privileges were suspended for seven months, to run concurrently with the suspension imposed for the assault by auto conviction.

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[1] "TASC" is the acronym for Treatment Assessment Services for the Court, as provided for in N.J.A.C. 10:90-8.6.

[2] "IDRC" is the acronym for the Intoxicated Driver Resource Centers, which were created by N.J.S.A. 39:4-50(f).

At the sentencing hearing, respondent's attorney read into the record a pre-sentence statement written by his client:

> I make this pre-sentencing statement in connection with the automobile accident I caused on September 7, 2005 when I was driving while intoxicated. The people in the other car were a married couple, Mr. and Mrs. Foster.
>
> This accident took place at a difficult time in my life. My father was in the process of dying and, in fact, he did die on October 2, 2005. He and I were very close and I spent all my time with him during his last days. His illness and his death had a profound effect on me.
>
> After the accident I immediately stopped drinking. I also enrolled in an outpatient program for alcohol treatment. After completing the program in December 2005, I continued attending AA meetings. I also met with the director of the Lawyers' Assistance Program, Mr. William Kane. I continue to attend AA meetings on a weekly basis as well as weekly L.A.P. meetings in Morristown.
>
> I want Mr. and Mrs. Foster to know because of the accident I have significantly changed the direction of my life and am now addressing issues including my alcoholism which have proven to be positive and beneficial for nearly everyone I am in contact with, including friends and family.
>
> Again, I want to convey to the Court my sincerest and deepest apologies, both to the

> Fosters and to our legal system, of which I am a member.[3]

Prior to offering respondent the opportunity to make a statement, Judge Ahto summarized the character letters that had been submitted on respondent's behalf:

> I read all of the communications that have been furnished. I even read the communication from your mother that indicated you moved into the house to spend the last two weeks with your father before he passed away.
>
> I've also read of the other things that you've done professionally and as a citizen. There are a number of good things that have been stated about you. And I'll hear what you have to say.
>
> [Ex.E12-14 to 22.]

Respondent stated, in pertinent part:

> I just want to underscore to you Judge Ahto there — there's no excuse for what I did, there's no justification for it, there's no right reason at all, or any kind of explanation for it. I was deeply wrong, and I'm deeply sorry.
>
> I've taken — as best I can taken advantage of this to change the direction of my life in certain ways that I hope and seem

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[3] A copy of this letter is contained within the supplemental materials that were forward to Office of Board Counsel after the OAE's submission of its motion.

> to be beneficial. I'm deeply sorry. Thank you, Your Honor.
>
> [Ex.E12-25 to Ex.E13-8.]

In imposing the sentence, Judge Ahto identified one aggravating factor – the need to deter, although he noted, too, that respondent was fifty-three years old and that this was his first conviction. The mitigating factors, which the judge believed outweighed the aggravating factor, were that respondent (1) did not contemplate harm, (2) would perform community service, (3) had no prior criminal record, and (4) was not likely to commit the crime again. Moreover, the judge continued, "these circumstances are not likely to reoccur."

The OAE recommends that respondent receive a censure for his misconduct.

Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under the rule, criminal or quasi-criminal conduct is deemed conclusively established by any of the following:

> a certified copy of a judgment of conviction, the transcript of a plea of guilty to a crime or disorderly persons offense, whether the plea results either in a judgment of conviction or admission to a diversionary program, a plea of no contest, or nolo contendere, or the transcript of the plea.

The rule authorizes the OAE to file a motion for final discipline at the conclusion of a criminal matter (up through the appellate level) "involving findings or admissions of guilt." R. 1:20-13(c)(2). In this case, respondent was sentenced based upon a guilty plea. The OAE has provided us with a copy of the judgment of conviction. Therefore, pursuant to R. 1:20-13(c), respondent's criminal conduct is conclusively established. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986).

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 convictions do not relate directly to the practice of law does not negate the need for discipline. The primary purpose of imposing discipline on an attorney is not to punish him or her. In re Gallo, 178 N.J. 115, 122 (2003). Rather, "the purpose of the disciplinary review process is to protect the public from unfit lawyers and promote public confidence in our legal system." Ibid. Even a minor violation of the law may lessen public confidence in the legal profession.

In re Addonizio, 95 N.J. 121, 124 (1984). As the Supreme Court has stated:

> 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).

Respondent's guilty plea to third degree assault by auto is sufficient to establish a violation of RPC 8.4(b). Thus, the only remaining determination is the quantum of discipline to be imposed for the violation. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

There is only one disciplinary case that addresses the quantum of discipline to be imposed on an attorney for a conviction of assault by auto. In re Cardullo, 175 N.J. 107 (2003). There, an attorney who entered a guilty plea to fourth degree assault by auto received a reprimand.

In Cardullo, the attorney rear-ended an automobile and left the scene of the accident. When the police stopped her shortly

thereafter, the attorney denied that she had been in an accident. In response to the officer's statement that there were witnesses to the accident, the attorney admitted to having been at the scene but continued to deny having hit the vehicle. Eventually, the attorney admitted that she hit the woman's car but blamed it on the woman for having stopped suddenly.

The police officer suspected that the attorney was under the influence of alcohol and conducted sobriety tests. The breathalyzer tests yielded readings of 0.17% and 0.16%.

The attorney pled guilty to third degree assault by auto, DWI, and leaving the scene of the accident. This was her third DWI conviction.

Although we granted the OAE's motion for final discipline, we cautioned that our decision "should not be construed to mean that we would impose discipline solely on the basis of a conviction of driving while intoxicated." Rather, we determined that only the assault-by-auto conviction required disciplinary action.

In imposing only a reprimand in Cardullo, we considered, along with other mitigating factors, that the attorney had taken measures to combat her alcohol addiction. Like the attorney in Cardullo, respondent has undertaken a serious effort at recovery

from his alcoholism. However, unlike the attorney in Cardullo, who was convicted of fourth degree assault by auto, respondent was convicted of third degree assault by auto.

To determine whether the difference in degree is sufficient to warrant an increase in the discipline from a reprimand to a censure, we looked to the statute for guidance. N.J.S.A. 2C:12-1c(2) (emphasis supplied) provides:

> Assault by auto or vessel is a crime of the third degree if the person drives the vehicle while in violation of R.S. 39:4-50 . . . and serious bodily injury results and is a crime of the fourth degree if the person drives the vehicle while in violation of R.S. 39:4-50 . . . and bodily injury results.

Thus, the difference in degree turns on the extent of the injury caused by the assault. M.F.'s broken ankle was considered "serious bodily injury." The injuries suffered by Cardullo's victim – unspecified neck and back injuries – were considered mere "bodily injur[ies]." The imposition of a censure for respondent's conviction would reflect the higher degree and the seriousness of M.F.'s injuries. However, as discussed below, there is substantial mitigation here, which justifies the imposition of a reprimand.

In its brief, the OAE relies on other disciplinary cases involving injuries and death caused by attorneys who cause car accidents while combining driving and drinking. We did not consider the death cases beyond the proposition that, in New Jersey, death by auto will result in a three-month suspension, In re Howard, 143 N.J. 526 (1996), and death by auto where alcohol is involved will result in at least a six-month suspension. In re Barber, 149 N.J. 74 (1997) (six months); and In re Guzzino, 165 N.J. 24 (2000) (two years).

The final case cited by the OAE is In re Saidel, 180 N.J. 359 (2004), a reciprocal discipline matter. There, an attorney was convicted of two counts of "endangerment" in Arizona, where he was suspended from the practice of law for six months. The charges were brought against the attorney after he had caused "significant and serious injuries" to the two passengers in his car when, while driving intoxicated and at least thirty miles per hour in excess of the speed limit, he lost control of the car, causing it to flip in the air and crash.

The statute violated by the attorney in Saidel, A.R.S. § 13-1201, states that "[a] person commits endangerment by recklessly endangering another person with a substantial risk of imminent death or physical injury. Endangerment involving a

substantial risk of imminent death is a Class 6 felony." Under Arizona law, the maximum term of imprisonment for a first offense conviction of a Class 6 felony is one year.

In granting the motion for reciprocal discipline in Saidel, we cited Cardullo, Howard, Barber, and Guzzino. On the one hand, we noted that the attorney's conduct in Saidel was more egregious than that of the attorney in Cardullo. Specifically, Saidel's victims sustained injuries that were more serious than those of Cardullo's. In addition, Cardullo had taken measures to combat her alcohol addiction. (There was no such evidence in Saidel.) On the other hand, we noted that Saidel's conduct was not as serious as that of the attorney in Guzzino, who had killed someone in a drunk driving accident. Thus, we determined that the misconduct did not warrant different discipline.

Saidel is not particularly instructive here because it was a motion for reciprocal discipline, there was no mitigation evident in the record, and there were two victims. Thus, we are only left with Cardullo as the benchmark against which to assess the appropriate measure of discipline for respondent's misconduct. As stated previously, the difference in degree between the crime committed by Cardullo and the crime committed by respondent could call for a censure. However, there are a

number of differences in this case, as well as substantial mitigation, which we believe justify a reprimand.

At the time of the accident, respondent was under severe stress as a result of his father's looming death. After the accident, respondent immediately stopped drinking and enrolled in an outpatient alcohol treatment program. He attended AA meetings and continues to attend AA on a weekly basis. Respondent also met with the director of the Lawyers' Assistance Program, and he continues to attend weekly meetings. Respondent has expressed remorse to the court, the victims, and to us. He appears to be sincere in his quest to change the direction of his life.

We contrast these facts with those in Cardullo. There, the attorney left the scene of the accident and, when the police caught up with her, she initially lied and denied that she had been in an accident. When she was forced to admit involvement, the attorney's version of what had happened changed a number of times. Most significant to us, it was the attorney's third DWI conviction, and she expressed little, if any, remorse. Accordingly, in this case, we believe that a reprimand adequately reflects the gravity of respondent's offense, as counterbalanced by the mitigating circumstances noted above.

Member Neuwirth did not participate.

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

Disciplinary Review Board
William J. O'Shaughnessy
Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Donald P. Fedderly
Docket No. DRB 06-216

Argued: October 19, 2006

Decided: November 20, 2006

Disposition: Reprimand

Members	Disbar	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:			8			1

Julianne K. DeCore
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Chief Counsel