

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-050
District Docket No. XIV-2002-
322E

_____ :
IN THE MATTER OF :
 :
ROBERT THOMAS GIBSON :
 :
AN ATTORNEY AT LAW :
_____ :

Decision

Argued: April 21, 2005

Decided: June 23, 2005

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.

Following the imposition of discipline on respondent in Pennsylvania, this matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-14(a)(4).

Respondent was admitted to the Pennsylvania and New Jersey bars in 1995 and 1996, respectively. Respondent's New Jersey disciplinary history is limited to an August 16, 2002 temporary

suspension, which was imposed following his April 26, 2002 conviction in Pennsylvania of aggravated assault, simple assault, aggravated harassment by prisoner, and the summary offenses of disorderly conduct and public drunkenness. Respondent remains suspended.

On December 16, 2000, respondent was involved in an altercation in a West Chester, Pennsylvania bar. During the fight, respondent was punched in the nose. The police were called to the scene and arrested respondent for the summary offenses of public drunkenness and disorderly conduct.

After his arrest, respondent was taken to the West Chester Police Department and placed in a holding cell where he was to remain until he sobered up. At some point, the police decided to handcuff respondent to a gurney for the purpose of transporting him to the hospital for treatment. While respondent was being handcuffed, he spat upon and then hit a police officer. Respondent was still intoxicated at the time. He was charged with aggravated assault, simple assault, and aggravated harassment by prisoner, as well as with the summary offenses of disorderly conduct and public drunkenness.

On April 26, 2002, a jury found respondent guilty of all charges. On June 21, 2002, he was sentenced to one month's incarceration with immediate work release, four months of

electronic home confinement, and 300 hours of community service. Respondent also was ordered to pay a \$200 fine and costs and to complete alcohol counseling. The Superior Court of Pennsylvania affirmed the conviction, and the Supreme Court denied respondent's motion for allowance of appeal.

On December 9, 2002, the Supreme Court of Pennsylvania temporarily suspended respondent based on his conviction of a serious crime. One year later, disciplinary proceedings were instituted against him.

On February 20, 2004, a hearing was held before Hearing Committee 2.01. On June 2, 2004, the committee recommended to the Disciplinary Board of the Supreme Court of Pennsylvania (Disciplinary Board) that a two-year suspension be imposed on respondent, as he was convicted of a "'serious crime'" in violation of RPC 8.4(b). The committee further recommended that the suspension be retroactive to December 9, 2002, which was the date that the Pennsylvania Supreme Court had temporarily suspended respondent.

On June 18, 2004, respondent filed exceptions with the Disciplinary Board, which held oral argument on July 12, 2004. On August 25, 2004, the Disciplinary Board issued a report and recommendations. The report made findings of facts based upon the testimony before the hearing committee.

According to the Disciplinary Board's report, respondent is an admitted alcoholic whose alcohol use began in college and continued up through the time of the incident. Respondent testified that he binged on the weekends but did not drink during the week. He expressed remorse for his behavior.

After respondent's arrest, he sought treatment with a licensed psychologist, who diagnosed him with alcoholism and opined that it had been "a substantial causal factor in his misconduct." When respondent sought treatment, he also started attending, and continued to attend, AA meetings. He has been sober since December 2000. The psychologist opined that respondent's sobriety was sincere and that he was unlikely to suffer a recurrence of the behavior that led to his arrest so long as he continued going to AA meetings, received psychological treatment on an as-needed basis, and maintained his support network.

On August 25, 2004, the Disciplinary Board recommended that respondent receive a private reprimand, that the temporary suspension be dissolved immediately, and that respondent be reinstated to the practice of law in Pennsylvania. On November 4, 2004, the Supreme Court suspended respondent for one year, retroactive to December 9, 2002. He was reinstated on November 23, 2004.

The OAE requests that we recommend the imposition of a one-year suspension, retroactive to August 16, 2002, the date of respondent's temporary suspension in New Jersey. In the papers that respondent filed with us, he requested the imposition of a three-month suspension. First, respondent claimed that Pennsylvania "specifically ordered a suspension of one year so that [he] would not be required to undergo a lengthy reinstatement hearing process."¹ Obviously mistaken about the procedure for reinstatement in New Jersey, respondent argued that he should be suspended in New Jersey for less than one year because a suspension of one year or longer in New Jersey would require him to undergo a reinstatement proceeding, which he asserted would be inconsistent with the Pennsylvania Supreme Court's intent.² At oral argument, however, respondent conceded that he was mistaken about New Jersey's reinstatement procedure and withdrew his opposition to the one-year suspension that was based on this ground.

Respondent argued in his papers submitted to us that a one-year suspension would be inconsistent with the discipline

¹ Rule 218(a) of the Pennsylvania Rules of Disciplinary Enforcement requires attorneys suspended for more than one year to formally petition the Supreme Court of Pennsylvania for reinstatement.

² R. 1:20-21(a) and R. 1:20-21(b) require an attorney who has been suspended to file a petition for reinstatement.

imposed in New Jersey in matters involving "more outrageous conduct" than his. In support of this proposition, respondent relies upon one case: In re Viggiano, 153 N.J. 40 (1997) (Rb4).

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides, in pertinent part:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). While subparagraph (E) might warrant a suspension of less than one year, respondent has not presented us with a sufficient

reason upon which to deviate from the one-year suspension imposed by the Pennsylvania Supreme Court.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

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." In New Jersey, an attorney who commits a crime violates RPC 8.4(b). In re Margrabia, 150 N.J. 198, 201 (1997). The attorney also violates his or her professional duty to uphold and honor the law. In re Bricker, 90 N.J. 6, 11 (1982).

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 upon 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). The Supreme Court has described its reasons for disciplining attorneys whose illegal conduct is not related to the practice of law:

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).

Although there are several cases where attorneys were disciplined as the result of their commission of violent acts against another person, most of the cases are factually distinguishable from this matter. See, e.g., Margrabia, supra, 150 N.J. at 201 (three-month suspension imposed on attorney convicted of simple assault in a domestic violence matter for punching his wife and hitting their child during an argument); In re Predham, 132 N.J. 276 (1993) (six-month suspension imposed on attorney who pleaded guilty to contempt of court, terroristic

threats, aggravated assault with a deadly weapon, and possession of a weapon for unlawful purposes in a domestic violence matter where attorney entered estranged wife's home, threatened to kill the wife and her mother, grabbed his wife and tore her shirt before she escaped, and hit her mother twice with a baseball bat); In re Howell, 10 N.J. 139, 140, 142 (1952) (six-month suspension imposed on attorney who pleaded non vult to assault and battery after he had beaten a local newspaper editor with a rubber hose and riding crop); In re Herman, 108 N.J. 66, 68-70 (1987) (three-year suspension imposed on attorney who pleaded guilty to second degree sexual assault upon a ten-year-old boy and received three years' probation); In re Rasheed, 134 N.J. 532 (1994) (attorney disbarred after he pleaded guilty to one count of aggravated manslaughter, four counts of aggravated assault, and one count of terroristic threats arising out of an incident where the attorney had pushed a teenager out of the ninth floor window of a YMCA, which resulted in the teen's death, and then, following the attorney's arrest, he assaulted four county corrections officers).

The only case that is factually similar to this matter is Viggiano, supra, 153 N.J. 40. There, the attorney was involved in a minor traffic accident with June Moncalieri. In the Matter of Thomas J. Viggiano, Docket No. 97-112 (DRB November 19, 1997)

(slip op. at 1). After the collision, the attorney exited his vehicle, walked over to Moncalieri's car, reached inside her vehicle, and began to punch her. Ibid. When two police officers arrived, they physically restrained the attorney to keep him from continuing his assault upon Moncalieri. Id. at 1-2. The attorney then assaulted the police officers by pushing and kicking them. Id. at 2.

The attorney pleaded guilty to two counts of simple assault and was placed on probation for one year. Ibid. He received a three-month suspension. Viggiano, supra, 153 N.J. at 40. There has been no case similar to Viggiano since 1997. However, a review of the Supreme Court's decisions over the years in disciplinary matters arising out of domestic violence cases demonstrates a clear decrease in the Court's tolerance of violent behavior and a gradual increase in the discipline imposed for the commission of acts of violence. See, e.g., In re Magid, 139 N.J. 449, 451, 455-56 (1995) (where the Court reprimanded a county prosecutor who had punched, knocked to the ground, and kicked a woman whom he had been dating for several months while noting that "[a]cts of violence are condemned in our society"); In re Principato, 139 N.J. 456, 458-59, 463 (1995) (reprimand imposed on attorney convicted of simple assault upon a client with whom he had maintained a sexual

relationship while he represented her in a custody and divorce action but warning that, in the future, a lawyer convicted of an act of domestic violence ordinarily would be suspended); In re Toronto, 150 N.J. 191, 194, 196-97 (1997) (attorney who pleaded guilty to simple assault for his alleged attempt to strangle his former wife with a telephone cord in May 1994 was subject only to a reprimand because he was not on notice that he could be subject to a suspension for his conduct inasmuch as Magid and Principato had been decided ten months after the assault; nevertheless, the Supreme Court imposed a three-month suspension because, while the disciplinary proceeding involving the attorney's assault upon his wife was pending, the attorney had been reprimanded in another matter for having violated RPC 8.4(c) when he lied to the DEC about his sexual and employment relations with the grievant in that case); Margrabia, supra, 150 N.J. at 200, 202 (Supreme Court imposed a three-month suspension upon an attorney who had been convicted of assault for punching his wife and hitting their child during an argument in 1995; suspension imposed because assaults occurred seven months after the Magid and Principato decisions, and the record demonstrated that the attorney struck his wife and their child in the past).

In these domestic violence cases, the Supreme Court noted society's increasing intolerance where acts of violence are

concerned. In Maqid, supra, 139 N.J. at 455, the Court declared: "Acts of violence are condemned in our society." Similarly, in Toronto, supra, 150 N.J. at 196, the Court reiterated its recognition "that domestic violence is a tragedy and reaffirmed society's interest in deterring it."

As with the domestic violence cases, there is a general recognition that community standards as to the degree to which behavior is either acceptable or unacceptable may evolve. Thus, what was once considered acceptable may come to be viewed as either less acceptable or even unacceptable on its face. See, e.g., Lehman v. Toys 'R' Us, Inc., 132 N.J. 587, 612 (1993) (observing that society's attitude toward sexual harassment had changed in the past twenty to thirty years). With this consideration in mind, we conclude that there is no reason to impose less discipline upon respondent than Pennsylvania given the egregious nature of respondent's conduct and the Pennsylvania Supreme Court's determination that a one-year suspension was warranted. There is no reason to deviate from Pennsylvania's determination inasmuch as the record before us is incomplete (consisting only of decisions rendered in that state), and Pennsylvania — which had the opportunity to review the entire record and, therefore, better assess the facts — was convinced that a one-year suspension was appropriate. Moreover,

at the hearing, respondent withdrew his opposition to the proposed one-year suspension.

Nevertheless, inasmuch as Pennsylvania suspended respondent retroactively to the date of his temporary suspension, we determine to do the same in this case. Thus, respondent will be suspended for one year retroactive to August 16, 2002. In addition, we require respondent to continue treatment with a drug and alcohol counselor until discharged and present proof of fitness before he may be reinstated.

We further require respondent to reimburse the Disciplinary Oversight Committee for the costs incurred in connection with the prosecution of this matter.

Disciplinary Review Board
Mary J. Maudsley, Chair

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

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

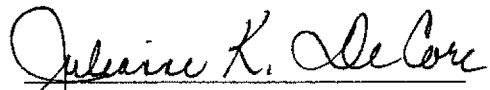
In the Matter of Robert Thomas Gibson
Docket No. DRB 05-050

Argued: April 21, 2005

Decided: June 23, 2005

Disposition: One-year suspension

Members	Disbar	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley		X				
O'Shaughnessy		X				
Boylan		X				
Holmes		X				
Lolla		X				
Neuwirth		X				
Pashman		X				
Stanton		X				
Wissinger		X				
Total:		9				


Julianne K. DeCore
Chief Counsel