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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-068
District Docket No. XIV-05-435E

IN THE MATTER OF
PETER H. JACOBY
AN ATTORNEY AT LAW

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Decision

Argued: April 20, 2006

Decided: June 6, 2006

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

Alan Zegas 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 to simple assault (N.J.S.A. 2C:12-1(a))

in the Superior Court of New Jersey, Law Division, Somerset County.

Respondent was admitted to the New Jersey bar in 1987. He has no disciplinary history.

On March 5, 2005, respondent and his wife were involved in an altercation at their Bedminster home, which resulted in the dislocation of her shoulder. A supplement to the police report describes the incident as follows:

On Saturday, March, 5, 2005 at approximately 2124 Hrs. I responded to 8 Calgery La. To back up Sgt. Cummins on a domestic violence call. Upon my arrival, Sgt. Cummins was inside the residence, speaking with Peter (defendant). I observed Laurann¹ (victim) outside, lying on her back on the front walkway. Another male (Benjamin) was holding Laurann's hand.

Laurann advised her left back and shoulder area was injured during the incident and she felt pain. Laurann was crying and shaking. I requested Benjamin (Laurann's step son) to retrieve some blankets. Laurann grabbed my hand and clutched it tightly when Benjamin left. She stated, "I'm so scared. Thank you". I asked Laurann if she had any other injuries. She advised her neck felt sore. I attempted to make her feel as comfortable as possible before the squad arrived, without moving her. Benjamin returned with the blankets.

¹ The correct spelling of respondent's wife's first name apparently is Laura Ann.

I asked Laurann to tell me what happened. She advised that she and her husband Peter were discussing their children's future. Their children, Benjamin and Heather, were both adopted by Peter and his previous wife (Laurann's step children). Laurann advised during the discussion Peter became angry for no observable reason (possibly because Peter is Bi-Polar). She asked him to come into the living room where the children were so they could have a family discussion. Laurann advised Peter became more angry and yelled at her for telling him what to do with his children.

Peter then grabbed her by the throat with both his hands and began choking her. He then threw her into the wall. Laurann asked Peter to go outside so he can calm down and talk in an area away from the children. Upon attempting to exit the residence, Peter grabbed Laurann by the throat again and threw her into the wall. Laurann's left shoulder struck the corner of the wall, and then she fell to the ground. Benjamin confirmed the above account of the incident.

[OAEaEx.D.]²

Respondent's wife suffered a dislocated shoulder as a result of the assault. She underwent six months of physical therapy before she could return to work, and then only on a part-time basis.

² "OAEa" refers to the appendix to the OAE's February 28, 2006 brief. "OAEaEx.D" refers to the police report.

Respondent was arrested at the scene and charged with one count of simple assault and released on \$250 bail. According to the police report, respondent's wife did not want to file a criminal complaint against him on the evening of the incident. However, during the summer of 2005, two summonses were issued to respondent, charging him with one count of third degree aggravated assault (N.J.S.A. 2C:12-1(b)(7)) and one count of simple assault (N.J.S.A. 2C:12-1(a)(1)).

On August 25, 2005, respondent appeared before Judge Edward M. Coleman and pleaded guilty to the simple assault charge in exchange for the dismissal of the aggravated assault charge. At the appearance, respondent described the incident:

Well, on March fifth of this year I knew a person at our residence and [at] approximately nine p.m. in the evening we were on the front steps of the premises, our condo, and engaged in discussion. And at the conclusion of that there was a disagreement, and the conclusion of that [sic] started to step back into the premises and my wife was standing in front of me at that time. I pushed her against the, well, first the front door and then the side, against the wall. And after that we grappled and she fell to the ground and she was injured.

[OAEaEx.C7.]³

On December 16, 2005, respondent appeared again before Judge Coleman for sentencing. He told the judge:

Obviously, I am deeply ashamed to be appearing in court as a defendant under any circumstances but particularly these. The abuse which I inflicted on Laura Ann has disgraced me both in the eyes of my family and even more has caused her a great deal of physical and emotional harm and nothing that - saying I am sorry, of course, is clearly inadequate.

All I can say is I have been taking all the steps that I know how to do to assure that something like this will never happen again caused by me either to Laura Ann or to anyone else. I love my wife and, remarkably, after all that she has been through in regard to this incident, she still loves me and I hope that whatever comes out of these proceedings today will allow us to continue to work to repair our marriage and to continue together as a couple in the future.

[OAEaEx.E10.]⁴

In sentencing respondent, Judge Coleman found the following facts:

³ "OAEaEx.C" refers to the August 25, 2005 transcript of plea.

⁴ "OAEaEx.E" refers to the December 16, 2005 sentencing transcript.

You have now pled guilty to that simple assault charge. You are 56 years-of-age. This is your first conviction for any criminal type matter. Reports indicate you are working as an attorney. You are married. Were separated. I guess now back together. And three children by a prior marriage.

The reports also indicate you have been diagnosed with bipolar disorder and [sic] in treatment for that condition.

On the aggravating factors, I need to deter you and others from violating the law.

On the mitigating factors, no prior criminal history. You have taken steps to demonstrate that you are likely to respond to probationary treatment. You and your wife are in counseling. You have gone through the anger management program. You have demonstrated your remorse. And you are in psychiatric counseling. All positive steps that you have taken since this event. Sometimes in life there are certain events that occur that change the course and apparently this is one for you and we are all glad to hear it.

[OAEaEx.E,11-12.]

Judge Coleman sentenced defendant to probation for a period of one year, continued psychiatric treatment, and the payment of \$25 per month for supervision, \$75 for the Secure Communities Program Assessment, and \$50 for the Violent Crimes Compensation Board assessment. Respondent also was required to provide and pay for a DNA sample.

The OAE requests the imposition of a three-month suspension. 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 simple assault 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 convictions do 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).

Thus, 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).

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 expressed both society's and the New Jersey Legislature's growing intolerance of domestic violence and cautioned that, in the future, discipline greater than a reprimand would be imposed. In re Magid, supra, 139 N.J. at 455. In Magid's companion case, the Court warned that henceforth a suspension ordinarily will be in order. In re Principato, supra, 139 N.J. at 463.

Like respondent, the attorney in Margrabia was convicted of simple assault. Id. at 200. He received a thirty-day suspended sentence and two years' probation, was ordered to perform 200 hours of community service, and was required to attend AA meetings and the People Against Abuse program. Ibid.

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

In his brief, respondent argues for a "private censure." He notes his twenty-three-year career with AT&T and the sudden death of his first wife in 1996 and the attendant need to care for their three children, ages twelve, seventeen, and eighteen at the time. The oldest child had experienced two psychotic episodes in the months preceding and following his first wife's death; although he has since received a college degree, he is completely dependent upon respondent. The youngest child, a daughter, was greatly affected emotionally by her mother's death, which manifested itself primarily in decreased academic

performance; she will finish college in nine semesters instead of eight. Respondent supports her financially as well.

Respondent's relationship with his second wife, the victim of his assault, began in 2000. They were married in November 2004. Prior to this incident, respondent "had never been accused of domestic violence." This was "his first contact with law enforcement in a criminal setting."

Respondent argues that he should not be suspended for the following reasons: (1) his stellar reputation, character, and good conduct; (2) the aberrational nature of the incident; (3) his remorse and efforts to avoid a recurrence; (4) his devotion to his children, particularly after the sudden death of his first wife; (5) his voluntary entry into an anger management program following the incident and before his sentencing, and his continued attendance at additional sessions after he had completed the program; (6) his mental illness, which consists of bipolar disorder and intermittent explosive disorder, and as to which his doctors are optimistic about his chances for success in therapy; and (7) his and his wife's efforts to reconcile and repair their relationship. At oral argument before us, respondent's counsel reiterated these factors, particularly respondent's mental illness.

Respondent argues, in his brief, that all of these factors distinguish his actions from those of the attorneys in the three cases relevant to this matter: In re Margrabia, 150 N.J. 198 (1997); In re Magid, 139 N.J. 449 (1995); and In re Principato, 139 N.J. 456 (1995). For example, he claims, the attorney in Margrabia had hit both his wife and child in the incident giving rise to the disciplinary matter; had attempted to justify his behavior by claiming that his wife's comments had caused the violence; and had hit his wife twelve times previously. In addition, unlike the attorney in Margrabia, who had been a member of the bar for only one year at the time of the incident, respondent has practiced law for thirty years with a solid reputation.

Moreover, in Principato, according to respondent, a battered woman's shelter had referred the victim to the attorney for advice on seeking a divorce from her husband. The attorney went on to represent her in a divorce proceeding, became sexually involved with her, and assaulted her when she attempted to end their relationship. These facts, according to respondent, "make[] that case particularly egregious and thus distinguishable." Moreover, respondent asserts that, unlike the

attorney in Principato, "his incident was in no way [sic] related to the practice of law."

Finally, respondent distinguishes Magid on the ground that the attorney in that case was a county prosecutor. According to respondent, "the Court found that such attorney's [sic] are held to the highest of standards. Again, [respondent]'s case is distinguishable, for he does not hold a public office and is not a representative of the State."

Respondent recognizes that, although the attorneys in Magid and Principato were reprimanded, the Supreme Court warned that, in the future, domestic violence cases would result in a suspension. However, he makes the claim that, in issuing this warning, the Court "clearly . . . had . . . in mind" the "more extreme circumstances" involved in these two cases, that is, the assault of a client and the assault of a "high-ranking officer of the State." Because respondent's case "cannot be properly compared to" these cases, he claims, he should not be suspended.

We are not persuaded by respondent's attempts to distinguish Magid and Principato. We do not believe that the Court's stated intention was confined to the specific facts mentioned by respondent, namely that the attorney in Magid was a county prosecutor or that the attorney in Principato had

maintained a sexual relationship with his client. Rather, it is clear that the future imposition of suspensions was based upon the very nature of the act of domestic violence.

In both cases, the Court observed that it had "not yet addressed the appropriate discipline to be imposed on an attorney convicted of an act of domestic violence." Id. at 454. Thus, it accepted our determination that a reprimand be imposed. Id. at 451. Nevertheless, notwithstanding the Court's reluctant imposition of a reprimand for these single acts of abuse, if the attorneys in either case had engaged in a pattern, then the Court would have suspended them. Id. at 455. Thus, a suspension is the presumptive discipline in domestic violence cases.

Moreover, many of the mitigating factors that respondent contends are present here were also present and rejected in Magid and Principato. In Magid, for example, the attorney had a twenty-four-year unblemished record. Magid, supra, 139 N.J. at 451. Like respondent, he was involved in one incident, with no pattern of abusive behavior. Id. at 454. The assault itself "lasted for a very short period of time." Ibid. Moreover, at the time, the attorney's son was in the midst of a critical illness. Ibid. Nevertheless, the Court stated: "[T]hose

mitigating factors neither excuse the attack nor obviate the necessity for public discipline." Ibid. Finally, the Court expressly stated that it was "of little moment" that the attorney's conduct did not directly involve the practice of law. Id. at 452.

In Principato, the attorney had a spotless nine-year-career at the time of the incident. Principato, supra, 139 N.J. at 920. The incident, too, was isolated. Id. at 462. In addition, his character was such that it was unlikely that he would repeat the behavior. Ibid.

Because the Court did not accept the mitigating factors in either Magid or Principato as sufficient to reduce the discipline, the similar mitigating factors asserted by respondent here cannot serve to reduce the discipline that the Supreme Court has said should "ordinarily" be imposed for his assault upon his wife. Thus, it matters not that his attack upon his wife was not related to the practice of law; that the attack was an isolated incident; that he is unlikely to assault her again; that one of his children has problems; or that his thirty-year career had been untarnished. In short, respondent's circumstances are not so different from those of the attorneys

in these prior cases to the degree that the appropriate measure of discipline should be downgraded.

In Margrabia, the Court expressly found that a pattern of abusive conduct had existed. However, this does not mean that a three-month suspension requires a pattern of abusive conduct and cannot be imposed for a single act. The Court noted that the act of domestic violence there was an "isolated incident" but stressed that, in the future, such an act would "ordinarily" result in a suspension." Magid, supra, 139 N.J. at 455.

The only mitigating factor that could possibly render this matter extraordinary is respondent's claimed bipolar and intermittent explosive disorders. However, respondent never relates these disorders to this particular incident. He states only the following in his brief:

Mr. Jacoby's mental illness must also be considered when determining what discipline is appropriate. Mr. Jacoby suffers from bipolar disorder and has been diagnosed with intermittent explosive disorder. [See Exhibits F & G.] Prior to just recently moving to Washington, D.C., Mr. Jacoby was regularly seeing Dr. Stuart Eisenberg, a licensed psychiatrist, and Dr. Mina Thomas, a licensed psychologist, on a regular basis to help overcome these afflictions. Importantly, both of his therapists have stated that, while he was seeing them regularly, Mr. Jacoby had been working diligently and intensively in

therapy to alleviate his problem. Furthermore, both doctors are optimistic about Mr. Jacoby's chances for success in therapy.

[Rb8.]⁵

Respondent's condition does not take this case out of the ordinary, however. First, respondent's two doctors have diagnosed him with different maladies. Dr. Eisenberg's diagnosis is one of "intermittent explosive disorder," causing persons affected to "respond to too much stress or provocation with a loss of verbal and physical control." Dr. Thomas's diagnosis is limited to bipolar disorder - hypomanic and bipolar disorder - mixed. While Dr. Eisenberg explains how someone with intermittent explosive disorder acts under certain conditions, Dr. Thomas offers no explanation as to how people with hypomanic or mixed bipolar disorder generally act, under any conditions.

Second, and more significantly, neither doctor opines that either of respondent's conditions caused him to assault his wife in March 2005, or even that they played any role in the attack. Thus, these conditions do not overcome the general presumption of suspension.

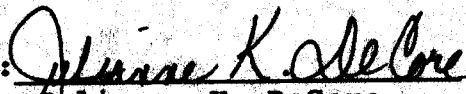
⁵ "Rb" refers to respondent's brief.

Accordingly, we conclude that a prospective three-month suspension is the appropriate measure of discipline for respondent's misconduct.

Members Boylan, Neuwirth, and Wissinger voted to impose a censure. Vice-Chair Pashman 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

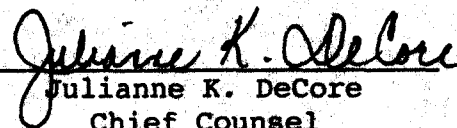
In the Matter of Peter H. Jacoby
Docket No. DRB 06-068

Argued: April 20, 2006

Decided: June 6, 2006

Disposition: Three-month suspension

Members	Three-month Suspension	Censure	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy	X					
Pashman	X					
Baugh	X					X
Boylan		X				
Frost	X					
Lolla	X					
Neuwirth		X				
Stanton	X					
Wissinger		X				
Total:	5	3				1


Julianne K. DeCore
Chief Counsel