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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 97-050

IN THE MATTER OF :
:
:
BRUCE A. WALLACE, III :
:
:
AN ATTORNEY AT LAW :
:

Decision

Argued: April 17, 1997

Decided: February 17, 1998

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

Saul J. Steinberg appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before the Board on a Motion for Final Discipline Based Upon a Criminal Conviction, filed by the Office of Attorney Ethics ("OAE"). R.1:20-13(c)(2).

Respondent was admitted to the New Jersey bar in 1985. On January 24, 1994 he pleaded guilty to the third-degree crime of unlawful possession of a handgun without a permit, in violation of N.J.S.A.2C:39-5b, which provides as follows: "Any person who knowingly has in his possession any handgun, including any antique

handgun, without first having obtained a permit to carry the same as provided in Section 2C:58-4, is guilty of a crime of the third degree." Respondent's application to the Pre-Trial Intervention Program (PTI) was denied. On March 25, 1994 respondent was sentenced to three years' probation and ordered to perform one hundred hours of community service, to pay a \$1,000 fine, to undergo a psychiatric evaluation and, if necessary, treatment, to forfeit all weapons seized, to refrain from applying for a permit for the purchase of any other firearms and to forfeit his seat on the Cherry Hill Council. In addition, respondent was prohibited from having any contact, direct or indirect, with Paula Stewart, respondent's former girlfriend, toward whom his criminal act was directed.

The facts that led to respondent's guilty plea were set forth in the pre-sentence report, the New Jersey Supreme Court's opinion dated November 13, 1996 and other relevant parts of the record below. They are as follows:

For approximately six years respondent and Stewart had a relationship. That relationship had ended some ten months before June 5, 1993, the date of the events that gave rise to respondent's guilty plea. Nevertheless, respondent and Stewart had contact from time to time following the breakup of their relationship. Stewart

was also seeing another individual, an optometrist. At respondent's instance, however, respondent and Stewart had had no contact for five weeks before the date of this incident, as respondent could not bear to see her only on a casual basis and to know that she was seeing another man.

On Saturday, June 5, 1993, at approximately 10:20 A.M., Stewart was preparing to leave for an appointment when respondent knocked on her apartment door. She let him in. Respondent sat down and, according to Stewart, after some casual conversation, told Stewart that he was there because he missed her. At that point, respondent got teary-eyed. When Stewart asked him what the problem was, respondent replied that he had gone to her apartment to kill her and then kill himself. Respondent then took a gun from the back pocket of his jeans and placed it on Stewart's microwave. At no time did he point the loaded gun at Stewart or threaten her. When Stewart got scared and walked away from him shaking, respondent went over to her and assured her that he would never hurt her, that he had realized, when Stewart had opened the door and he had looked at her, that he could not have gone through with his intended acts. Respondent then removed the bullets from his gun, hid it under his shirt and left the apartment in Stewart's company. As they were walking down the stairs, respondent asked

Stewart if she intended to tell anyone about the incident. She replied that she did not. She did report the incident to the police, however. Her intent was not to file a complaint against respondent, but to protect herself and to insure that respondent seek psychological or psychiatric counseling. See Stewart affidavit, paragraphs 4 and 7, exhibit B to respondent's brief. According to Stewart, on June 8, 1993, she was called to the police station to give a reported statement. She explained that that action had been initiated by the police department and not at her suggestion or instance.

In her statement to the police, Stewart claimed that she became scared when respondent produced the gun. When the police asked her, "Are you in fear of [sic] your life?", she replied, "Yeah." Exhibit B to pre-sentence report at 2-3. In the affidavit submitted to the Board, however, Stewart explained that she did not interpret any of respondent's actions as a threat and that she saw his actions "as a manifestation that he was not acting as he normally would, that he was not himself. I knew that he needed help."

There is some indication in the record that the June 5, 1993 incident was not an isolated event and that respondent had previously told Stewart that he wanted to harm her new boyfriend.

In her affidavit, Stewart explained the extent and nature of respondent's actions in this regard:

4. There is further reference or suggestion in the OAE Brief that this was not an isolated event; it was a pattern of domestic violence***. I am also aware that these assertions were also made in the prosecutor's letter rejecting Bruce's application for PTI. [Footnote omitted]. There was no domestic violence. Bruce never threatened me. He never pushed, shoved or slapped me. I saw his conduct as being indicative of an illness and not of offers of violence or threats. There is further reference at page 3 of the OAE Brief that:

Stewart reported that respondent had been threatening her as well as other individuals that had been involved in her life. Specifically, in April 1993, Stewart was warned by the respondent's psychiatrist that the respondent might harm her or do damage to her car because she had not let respondent into her apartment.

There was an incident in April 1993 when Bruce dropped by my apartment. I had company at that time and did not want Bruce to come in. I later received calls on my answering machine from Dr. Pargot, Bruce's then psychiatrist, stating that she was concerned that Bruce had sounded upset and that he might do something to my car. Nothing happened. Bruce did not, and would not, do something violent. He was not pounding on the door or shouting. He did not threaten me. He did nothing other than leave my apartment when I asked him to. I do not doubt that he was upset and that he called his psychiatrist for help. I felt then, and still feel, that calling Dr. Pargot was a responsible thing for Bruce to do. He was upset and needed help. He called Dr. Pargot to express feelings and seek help, not to convey threats. He should not be punished for seeking help from Dr. Pargot. I knew, when I received the phone messages, that Bruce was seeking the doctor's help. I did not mean for my recitation of the facts of that event to be construed

by the Camden County Prosecutor's Office as evidence of a threat against me.

* * *

7. When I went to the police department on June 8, 1993, I was concerned about Bruce getting treatment. I did not go to initiate a criminal prosecution. I endorsed him getting PTI but that did not happen. I am disappointed that he received a criminal conviction and was required to forfeit his seat as a Cherry Hill Councilman. Now I understand that OAE seeks a six month suspension from the practice of law. I do not want this to happen. Bruce has gone through very much. He has a criminal record. He lost his council seat. His employment at Capehart & Scatchard was terminated. He has now opened a solo practice. I know that he did not have a purpose to harm me on June 5, 1993 or any other time. If I had felt that he had threatened me or could have harmed me, I would not have wanted to continue our relationship as friends. I was disturbed as a result of the June 5 incident, so on reflection I went to the police on June 8. I did not contemplate or ever desire that his career would be threatened. Having been a legal secretary (and now a paralegal), I know of Bruce's fine reputation in the legal community. I also know that discipline will tarnish that reputation and that any suspension will be devastating to his attempts to build a solo practice.

[Exhibit B to respondent's brief]

Shortly after respondent's arrest, he entered Hampton Hospital for immediate inpatient psychiatric treatment. He was diagnosed as suffering from major depression with certain biochemical deficiencies. He remained in the hospital for three weeks following his arrest. He was released to the aftercare of Dr. Jeffrey Greenbarg, the Associate Director of the Adult Psychiatric

Unit at Hampton Hospital. In a report dated October 12, 1993, Dr.

Greenberg opined that

[t]he behavior with which [respondent] is charged appears to be linked to his depression. I feel that with the benefit of the antidepressant medication and ongoing psychotherapy there would be no future criminal behavior. There did appear to be a causal connection as I stated before between the depressed mood, the impaired judgement and the criminal charges. If he were not in a major depression, his judgement would not have been so impaired.

[Exhibit A to respondent's brief]

In the discharge summary from Hampton Hospital, dated June 30, 1993, Dr. Greenberg provided some background for respondent's depression:

[Respondent] states he has been feeling very depressed and despondent since at least December [1992]. He has had numerous depressive symptoms, including low self-esteem, decreased ability to enjoy himself, sleep disturbance, low energy, and suicidal ideations. In addition his appetite has diminished, and his concentration is problematic, although he has been able to function as a litigator throughout this time. He sought psychiatric care from Dr. Terri Pargot who placed him on Pamelor in January [1993], and he took this medicine until April [1993] at about 100 mg daily. However, he complained of side effects from the Pamelor and discontinued the medicine on his own. He also terminated treatment with Dr. Pargot at that time. He states he never received blood levels for Pamelor, and did not feel he benefited from this medicine.

His depression has been complicated by a problematic relationship with his girlfriend. The difficulties in this six year relationship began last summer when she began to date another man. She has subsequently become increasingly interested in this other man, and this has

been a source of great anguish to the patient. In fact between January and the present he was having thoughts of killing his girlfriend's lover, however he states he never got close to acting on these impulses. He also indicated today that he does not truly want to kill his girlfriend or himself. He denies any substance abuse problem, although there is a reference in the chart that his sister thought he was drinking excessively over recent weeks. There is no drug addiction history.

* * *

The patient is the oldest of three children born to his parents of German, Scotch, and Irish ethnicity. His father was a stock broker, and is currently retired. His mother was a housewife who died of cancer eleven years ago, at the age of 46 years***. Patient and his mother were very close, and sister indicates that he was 'mother's boy.'

* * *

Patient's mother was ill with cancer for two years during which time the illness was never discussed. Mother wanted 'life as normal', sister reports. Mother couldn't make patient's graduation from college, and died two days later. Sister reports that patient never got over his mother's death, and never grieved openly. He kept pictures of his mother all over his apartment, and carried her picture in his car.

* * *

***prior to discharge the patient started to turn around, and he started to verbalize in individual therapy his feelings of anger and distress. He received a phone call through the social worker, a message that his girlfriend would never want to see him again, and started to process this, and finally mourned his losses. He became less depressed on Wellbutrin, and by the time of discharge he was not suicidal, homicidal, or psychotic and he demonstrated safety outside the hospital by having a pass which went well.

[Exhibit G to respondent's brief]

* * *

The OAE asked that respondent be suspended for six months. The OAE noted that, although respondent's offense was committed before the Court's decisions in In re Magid, 139 N.J. 449 (1995), and in In re Principato, 139 N.J. 456 (1995),

respondent's offense was not an isolated incident. His offense was part of a pattern of abusive conduct towards his former girlfriend. Moreover, respondent's offense involved an illegal weapon and clearly served to put the victim in fear for her life. Respondent acted contrary to the law and public policy when he threatened his former girlfriend with a gun. Since we view this matter significantly more serious than either Magid or Principato, we do not believe that a reprimand would suffice. We submit that a six month suspension is in order.

[OAE's brief at 6]

Respondent, in turn, argued that a reprimand is sufficient discipline for his offense. In his brief to the Board, respondent proposed that the interests of the public have been appropriately safeguarded by the significant psychological or psychiatric treatment that he received. He urged the Board to consider that his actions were the direct result of an emotional disorder and a biochemical imbalance, as attested by Dr. Greenbarg. Respondent contended that there is substantial mitigating evidence in this case, including his demonstrated psychiatric and biochemical

disorder; the humiliation and losses that he has suffered; his community career as a Cherry Hill councilman and the forfeiture of his seat on the Council; the loss of his position with the law firm with which he had been associated for nine years; his prior unblemished professional career; his excellent reputation in the legal community; and the devastating effect that a suspension would have on his attempt to build a sole practice.

* * *

The existence of a criminal conviction is conclusive evidence of an attorney's guilt. R.1:20-13(c)(1); In re Gibson, 103 N.J. 75, 77 (1986). Respondent's conviction clearly and convincingly demonstrates that he committed a criminal act that adversely reflects on his honesty, trustworthiness or fitness as a lawyer. RPC 8.4(b).

Commission of a criminal act by an attorney is also a violation of that attorney's professional duty to uphold and honor the law. In re Bricker, 90 N.J. 6, 11 (1982). That respondent's offense does not relate directly to the practice of law does not negate the need for discipline. Whether or not related to the practice of law, even a minor violation tends to lessen public confidence in the legal profession as a whole. In re Addonizio, 94

N.J. 121, 124 (1984). "An attorney is bound even in the absence of the attorney-client relationship 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 Katz, 109 N.J. 17, 22-23 (1987).

Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2)(ii); In re Goldberg, 105 N.J. 278, 280 (1987). In determining the appropriate measure of discipline, the interests of the public, the bar and respondent must be considered. In re Litwin, 104 N.J. 362, 305 (1986). The primary purpose of discipline is not to punish the attorney, but to preserve the confidence of the public in the bar. The appropriate discipline depends on 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).

Here, although respondent's criminal offense was not related to his practice, it undermined the confidence of the public in the legal profession and placed Stewart in great fear. The Board is mindful that the offense did not involve an actual threat to Stewart; respondent pleaded guilty to unlawful possession of a handgun without a permit. Nevertheless, when an ethics proceeding

is initiated by a motion for final discipline based on a criminal conviction,

the ethics authorities and [the] Court may be required to review any transcripts of a trial or plea and sentencing proceeding, pre-sentence report, and any other relevant documents in order to obtain the 'full picture.'***[I]t is appropriate as well to examine the totality of circumstances, including the details of the offense, the background of respondent, and the pre-sentence report in reaching an appropriate decision***.

[In re Spina, 121 N.J. 378, 389 (1990).]

Undeniably, respondent's conduct, at least initially, put Stewart in fear of death or bodily harm; Stewart told the police that she feared for her life. Although her affidavit shows that, four years later, she was able to assess the events of January 1993 with cool reflection, her 1993 statements to the police unambiguously reveal that then she was still afraid of respondent, believing that he might be capable of causing her physical harm. And even though the record does not conclusively establish that respondent engaged in a pattern of abusive or threatening conduct, as argued by the OAE, the fact remains that respondent's statements to Stewart that he wanted to harm her boyfriend contained elements of serious danger. Whether respondent meant business or was merely expressing thoughts without any intent to carry them out is irrelevant in the eyes of the members of the public. Their confidence in the profession would undoubtedly be weakened if respondent's conduct were not appropriately addressed by the

disciplinary system.

Serious as respondent's conduct was, however, it was mitigated by numerous compelling circumstances. According to respondent's treating physician, Dr. Greenberg, there appeared to be a causal connection between respondent's conduct and his then-existing psychological problems. In other words, Dr. Greenberg's examination indicated that respondent is not an evil, ordinarily violent individual, but a person who temporarily lost his judgment and senses because of traumatic events in his life; indeed, there is nothing in the record showing that with evaluation and treatment respondent's mental health and good judgment have not been fully restored. Other mitigating factors include (1) the victim's acknowledgment that respondent is essentially a decent, upstanding man whose good judgment was overcome by psychological illness; (2) the humiliation that respondent suffered because of the exposure and publicity generated by his conduct; (3) the loss of his long-term employment with Capehart & Scatchard; (4) the forfeiture of his public office as a councilman; (5) his recognition that he was in need of psychological treatment and the quick action that he took to seek such treatment; and (6) the passage of almost five years since the event, with no further incidents.

After balancing the seriousness of respondent's conduct with the above mitigating circumstances and the need to maintain the

public confidence in the bar, the Board determined that a short period of suspension is warranted for respondent's misconduct. Although the Board is aware that respondent's offense predated In re Principato, supra, 139 N.J. 456 (1995), and In re Magid, supra, 139 N.J. 449 (1995), it is still deserving of a suspension because it involved the use of a handgun and it put the victim in great fear for her safety. Moreover, the handgun had been obtained without a permit.

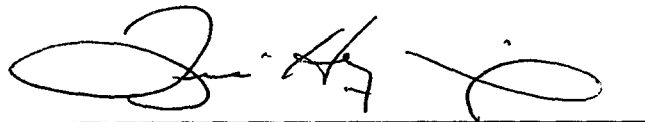
The Board unanimously voted to suspend respondent for three months. Had respondent threatened Stewart with the gun, obviously a longer term of suspension would have been required.

The Board further determined to require respondent to submit, prior to reinstatement, proof of psychological fitness to practice law.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated:

2/17/98



LEE M. HYMERLING
Chair,
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

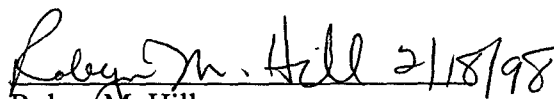
In the Matter of Bruce A. Wallace, III
Docket No. DRB 97-050

Argued: April 17, 1997

Decided: February 17, 1998

Disposition: Three-Month Suspension

Members	Disbar	Three-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Zazzali		x					
Brody		x					
Cole		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz		x					
Thompson		x					
Total:		9					


Robyn M. Hill
Chief Counsel