

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-433
District Docket No. XIV-03-180E

IN THE MATTER OF :
 :
RONALD M. SIMS :
 :
AN ATTORNEY AT LAW :
 :

Decision

Argued: January 20, 2005

Decided: July 21, 2005

Richard J. Engelhardt appeared on behalf of 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 was before us on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's conviction for the petty disorderly persons' offense of harassment.

Respondent was admitted to the New Jersey bar in 1970 and to the New York bar in 1974. He has no history of discipline.

On January 27, 2003, respondent's now former secretary, Inga Lutz, filed a complaint with the Hackettstown Police Department, alleging that respondent had harassed her. On December 18, 2003, after a trial in municipal court, the Honorable Robert Ellwood, J.M.C., found respondent guilty of the petty disorderly persons' offense of harassment, in violation of N.J.S.A. 2C:33-4b.¹ Judge Ellwood imposed a fine and costs totaling \$455. The municipal court's decision was later confirmed at a trial de novo before the Honorable John H. Pursel, J.S.C., in Warren County Superior Court. Respondent did not pursue the matter in the Appellate Division.

During the trial, the following testimony was elicited from respondent by his defense counsel, George T. Daggett:

- Q. . . . Now you said that she came in with the Hugo Torres note?
- A. Call slip yes.
- Q. Where were you when she came in?
- A. At my desk.
- Q. And what did you do when she came in?
- A. I was on the phone. I put the call on hold. I got up and came

¹ N.J.S.A. 2C:33-4b states, in relevant part, that "a person commits a petty disorderly persons offense if, with purpose to harass another, he subjects another to . . . offensive touching."

around to the desk and met her in front of my desk.

Q. Okay. Did she have the Hugo Torres file or just the note?

A. My recollection is the -- just the note.

Q. Okay. So you came around, what happened next?

A. She showed me the note, handed me the note. There was some initial finger touching. We were standing at my desk again facing the chair of my desk. She put the note on the desk, the edge of the desk. We were looking at it. I was talking to her and then I told her what to do. She got up, or not got up. She took the note and then turned around to leave my office.

Q. What did you mean by finger touching?

A. When she handed me the note there was initial finger touching back and forth. Her hand touched mine, I touched hers and then she proceeded to put the note on the desk in front of me.

Q. All right, and what did she do next?

A. She asked me what, you know, what should she do about the call, about the client.

Q. Right. And was that case on that day, the Hugo Torres case?

A. Yes it was scheduled for a trial or disposition in the Mount Olive Municipal Court at 3:00.

Q. Okay. Now when she -- after you talked about that, what happened after that?

A. Nothing -- it lasted about not even two minutes from the time she came in to the time she left. She picked up the note, she sort of brushed her hand across my pants when she picked up the note and she turned around and started to walk away.

As she was walking away, I -- with my fingers I gave her a two finger pinch on her left buttock as she was walking away.

Q. And did she continue to walk out?

A. She took a step or two, turned around and said to me, don't ever do that again.

Q. Now had you ever done that before?

A. Yes.

[2T27-4 to 2T28-25.]²

Although the basis for the charges against respondent was the above incident, Lutz' testimony at trial revealed that it was but one in a series of actions. Lutz testified about the following events:

² 2T refers to the municipal court proceeding on December 18, 2003.

Q. In the time that you worked for him had he ever touched you in this type of manner or any other manner that was inappropriate?

A. Yes several times it was inappropriate.

Q. Could you tell us about those times.

A. Hmm, well the closest thing to that was on January I guess it was the 21st. I was in taking dictation with him and he was in the middle of dictating a letter and he got up and said, you didn't kiss me Merry Christmas did you?

And he proceeded to come around the desk and tried to kiss me Merry Christmas. He actually asked me for a Merry Christmas kiss a month after Christmas and I put up my hand to stop him and I said, yeah, yeah I did.

And then he got back to his desk and he started dictating like nothing ever happened.

Q. Was there a time previously where you had told him to stop certain of his conduct?

A. Yes.

Q. Do you recall when that was?

A. It was January 21st. I was sitting at my computer typing -

Q. What year?

A. -- 2001, 2001. It was right after Christmas. I was typing, sitting at my desk typing.

At the corner of my eye I saw him come around my desk. I was staring at my computer and he came around my cubicle and attempted to kiss me. I then pushed back my chair and said, what the hell are you doing? And he ran around my desk and he ran back into his office and shut the door.

Q. Did there come a time when you told --

A. Yes --

Q. -- him not --

A. I followed him in. I followed him back in his office and I said to him. I don't know what you're doing. I said, I wanted this to stop. The only person who kisses me is my husband and he snickered and said, I didn't kiss you. I tried to kiss you but you moved your desk. You moved your chair and I couldn't believe he was saying this so I walked out of his office.

I said I got -- I wanted to leave right then and there but five minutes later he calls me back in to do a letter and he said, oh I just want to speak to you about what happened.

He said I just -- I must've gotten carried away over the holidays by kissing you and I promise I will not kiss you or touch you ever

again. I apologize, he said he crossed the line.

So I actually believed that he wouldn't touch me. That's the only reason why I stayed there.

Q. Was there an occasion where he grabbed your hip area?

A. Yes. Every time I was making -- well not every time but I would be --

Q. Hmm, could we give a date to it?

A. -- December 2001 I think was the first time it started. I was making photocopies. The photocopy room is a very small room. I was standing there making photocopies.

All of a sudden I felt his hand grab my hip. I turned around, I jumped. I said what the hell you doin'? And he said he dropped a pencil and he was just leaning on me to get his pencil.

This happened several times. A few times he just didn't even have a pencil in his hand.

Q. Did it occur after March of '02?

A. It started -- yeah, it -- he did the same thing with the pencil, grabbing with the pencil.

Q. Any other instances where he touched you inappropriately?

A. He had kissed good --

. . . .

[A] Okay, yes every time I had a file in my hand I would ask him a question regarding the file, he would hold my hand. He would touch my hand. He would rub back saying good job.

One time he actually brought [another secretary] in his office for dictation, came out of his office when I was sitting there to ask me a question about a will. He's an attorney. He should've known this answer but he asked this to me. It was a stupid question just so he could hold my hand.

He grabbed my hand to hold my hand. I picked up his hand off of my hand and pushed it into his body. He did this three times. He grabbed my hand to hold it. I picked his hand up, pushed it in his body. I then moved my chair back. He then looked at my legs and his eyes bulged out and started smiling, staring down at my legs.

Q. Did you ever tell him that he could touch you?

A. No, absolutely not.

Q. Did you ever do anything to invite his touching?

A. No, I was always very professional. I did nothing. I was there to work.

. . . .

Q. Did there come a time during the course of your employment with him

where you began to dress differently?

- A. Yes. After the -- there was one incident I guess in the summer of 2002 where they changed the lights. Hmm, they put fluorescent lights as opposed -- they changed the lights. There was a lot of debris that fell from the lights when they changed it.

I came in at 9:00 one day and he was vacuuming the floor. He was -- I put my lunch in the refrigerator and he put the vacuum away in the closet in back of me. I assumed he was done cleaning. I turned my computer on and I proceeded to work, to type.

I saw him picking up debris on his hands and knees putting it in his hands. The next thing I knew he was crawling on his hands and knees under my desk, crawling on his hands and knees under my desk.

I jumped up and I just went to the other side of the office as he crawled on his hands and knees under my desk. I had a skirt on that day and after that day I totally changed everything what [sic] I wore.

It got down to wearing long skirts with boots and jeans with clogs and I mean --

- Q. Did you ever tell Mr. Sims verbally, did you ever express to Mr. Sims it was okay to touch you?

- A. No, never.

Q. To kiss you?

A. No.

Q. To grab your butt?

A. No, absolutely not.

[1T17-11 to 1T28-22.]³

Judge Ellwood summarized his findings and announced the verdict:

The issue really is fairly -- just as I see, what issue which is there's no real issue that the defendant admitted that he touched the complainant, pinch or grab in her buttocks.

You know, the issue as I see it is really whether or not it was done with the purpose to harass as required by the statute.

He admitted -- totally didn't deny it when it happened, admitted it to [the police detective] and in his written statement and when he testified. It really is the question is what was the purpose.

As I see it the defendant's basically -
- the defense is that based on the history and the relationship he had for want of a better word, a license, that there was a relationship there that felt this would have been acceptable behavior based upon previous patterns of conduct and that he had in the sense the right to do this.

. . . .

³ 1T refers to the municipal court proceeding on July 16, 2003.

So obviously it comes to a question of credibility. Now in a -- obviously [defense counsel] is right. I mean consistency is one of the things that we look for but you know there are other things as well.

One of which is common sense and observing witnesses when they testify and sometimes just getting a feel for what seems to be, you know, resonates [sic] with credibility and certain things don't.

Miss Lutz's testimony I found to be forthright. I found to be clear. I found that and she was believable and I found that she acted in a way that sort of made sense.

When you look back over the history of things that have happened as [the prosecutor] indicated that, you know, this is a job. I mean jobs are not always easy to come by and sometimes we have to do and put up with things that just to keep her job. She talked about having to change her clothes at some point and that she needed the work and basically in this particular day it just came to the point, the breaking point and those things happen, somewhat impulsively and make those decisions.

. . . .

She testified that -- as I say her credibility I think is supported by not only from what I saw on the stand but the support from other witnesses who were able to confirm her behavior on the day in questions [sic] and also the fact that they never saw anything that appeared to be flirtatious behavior.

So in the light of common experience I think that her testimony was believable. Mr. Sims [sic] testimony I think really can best be characterized as a fantasy to some extent. I think there was this history. I suspect an infatuation that he saw things that he wanted to see but that doesn't mean they were grounded in reality.

. . . .

The fact that this happened in a workplace. The fact that Miss Lutz did and I do find objected on several occasions and that there was no evidence at all that he had any kind of license to act this way. I find that he could have not done this but for any reason other than the purpose of an employer to harass his employee and consequently I'm entering a finding of guilty.

[2T73-10 to 2T78-5.]

The OAE urged that we impose a reprimand.

Upon a de novo review of the record, we determine to grant the OAE's motion for final discipline.

Respondent was found guilty of the disorderly persons' offense of harassment. His conviction clearly and convincingly demonstrates that he has committed "a criminal act that reflects adversely on (his) honesty, trustworthiness or fitness as a lawyer." RPC 8.4(b).

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). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The level of discipline imposed in disciplinary matters based on the commission of a crime depends on a number of 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." Id. at 445-46. Discipline is imposed even though an attorney's offense was not related to the practice of law. In re Kinnear, 105 N.J. 391, 395 (1987).

In cases involving analogous sexual misconduct by attorneys, with or without actual touching, the discipline has generally been a reprimand. See In re Tucker, 174 N.J. 347 (2002) (attorney pulled aside a client's sweater slightly and asked for a "peek" of her breasts); In re Pinto, 168 N.J. 111 (2001) (attorney made inappropriate comments of a sexual nature to his client and improperly touched her); and In re Hyderally, 162 N.J. 95 (1999) (sexual advances to two legal aid clients); In re Pearson, 139 N.J. 230 (1995) (where, in a less recent case, the attorney improperly touched his client's buttocks,

placed his head on her chest, and made inappropriate comments to her).

When Lutz was asked during the trial how she felt when respondent grabbed her, she replied "I felt violated. I was very upset. I didn't - I was humiliated." That the victim here was a secretary and not a client does not make the misconduct any less egregious. Either way, the victim might not be able to extricate herself from the situation, based on the need for legal services or the need for a paycheck. Indeed, in some instances, a secretary may be more vulnerable than a client. Respondent took advantage of his position as Lutz' employer.

Our decision as to the appropriate sanction is also a recognition that society's attitude toward sexual harassment has changed and that "much conduct that would have been considered acceptable twenty or thirty years ago would be considered sexual harassment today. As community standards evolve, the standard of what a reasonable woman would consider harassment will also evolve." Lehman v. Toys 'R' US, Inc., 132 N.J. 587, 612 (1993). See also In re Seaman, 133 N.J. at 67, 99 (1993) ("sexual harassment of women by men is among the most pervasive, serious, and debilitating forms of gender discrimination.")

That is not to say that a suspension is necessarily mandated here. In a more serious case, In re Wolfson, 178 N.J.

457 (2004), the attorney received a six-month suspension after his conviction of fourth degree criminal sexual contact for touching the breast of a nurse during a medical examination. The attorney gave a statement to the county prosecutor's office, in which he admitted that, over a period of three to four years, he had touched six female employees at his doctor's office between ten and fifteen times. In our view, the prolonged and repeated nature of Wolfson's conduct warranted a three-month period of suspension. The Court disagreed and imposed a six-month suspension. Wolfson's conduct, however, was more pervasive than respondent's.

After oral argument on this matter, we requested that respondent be submitted to a psycho-sexual evaluation by a licensed medical professional. The psychiatrist was satisfied that it is highly unlikely that similar behavior to that described above will reoccur. Still, respondent's behavior was inappropriate and merits discipline stronger than a reprimand. Respondent had no right to touch his secretary in a way that was unwelcome, offensive, and demeaning. We, therefore, determine to impose a censure. Members Matthew Boylan, Esq., Ruth Jean Lolla, and Lee Neuwirth did not participate.

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

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

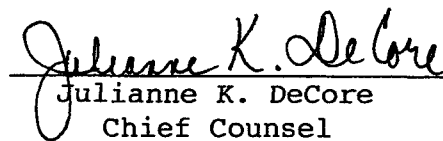
In the Matter of Ronald M. Sims
Docket No. DRB 04-433

Argued: January 20, 2005

Decided: July 21, 2005

Disposition: Censure

Members	Disbar	Censure	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:		6				3


Julianne K. DeCore
Chief Counsel