

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 04-021

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IN THE MATTER OF  
SCOTT F. SAIDEL  
AN ATTORNEY AT LAW

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Decision

Argued: March 18, 2004

Decided: May 4, 2004

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

Respondent waived appearance for oral argument.

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

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, following respondent's six-month retroactive suspension in Arizona.

Respondent was admitted to the New Jersey bar in 1993 and the Arizona bar in 1995. The New Jersey Lawyers' Fund for Client

Protection lists him as "retired" since August 8, 2003. He has no history of discipline.

On October 29, 2003, the Supreme Court of Arizona suspended respondent for six months, retroactive to March 12, 2001, the date he was placed on administrative suspension for failure to comply with Arizona's continuing legal education requirements. The suspension was imposed because of respondent's conviction of two counts of endangerment, a class 6 felony. Under Ariz. Rev. Stat. Ann. §13-1201, "[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 Ariz. Rev. Stat. Ann. §13-701(c)(5), a conviction for a first offense Class 6 felony calls for a maximum one-year term of imprisonment.

The Tender of Admissions and Agreement for Discipline by Consent, filed May 27, 2003, with the Disciplinary Commission of the Supreme Court of Arizona, sets forth the circumstances underlying respondent's conduct:

The parties conditionally admit the following facts:

1. Respondent is an attorney licensed to practice law in the State of Arizona, having been admitted to practice in Arizona on May 20, 1995.

2. Respondent was placed on administrative suspension from the practice of law on March 12, 2001 for failure to comply with the Mandatory Continuing Legal Education requirement. As of the date of filing this agreement, Respondent has not been reinstated for this suspension.

3. On or about October 20, 2000, Respondent was indicted for one count of Aggravated Assault, a Class 3 dangerous felony, and one count of Endangerment, a Class 6 dangerous felony, in Maricopa County Superior Court case number CR2000 - 095942.

4. On October 9, 2001, in accordance with a plea agreement, Respondent pled guilty to two counts of Endangerment, Class 6 non-dangerous felonies.

5. On November 19, 2001, the court entered judgment of guilt against Respondent for the crimes to which he pled guilty, and sentenced him to three years of probation. The probation included a six-month term of deferred jail. The court set the matter for a restitution hearing.

6. As of the date of this agreement, the restitution hearing has not yet been conducted, and the court has not yet ordered any restitution.

7. During the change of plea proceedings, Respondent agreed that the following facts supported his criminal conviction:

a. On or about May 29, 1999, Respondent was driving a car northbound on Scottsdale Road in the vicinity of Lincoln Avenue.

b. There were two passengers in Respondent's car.

c. Respondent was traveling at least 30 miles an hour in excess of the speed limit.

d. As Respondent traveled through the intersection of Scottsdale Road and Lincoln Avenue, he lost control of his vehicle causing it to flip in the air and land.

e. There were significant and serious injuries to both passengers in Respondent's vehicle.

f. Through a search warrant, Respondent's blood sample was obtained and tested. The test revealed an alcohol concentration of .067 more than two hours after the collision.

[Exhibit B to OAE brief.]

The OAE requested that we impose a six-month suspension, retroactive to March 12, 2001, the effective date of respondent's Arizona suspension.

Upon a review of the full record, we grant the OAE's motion for reciprocal discipline. Pursuant to R.1:20-14(a)(5) (another jurisdiction's finding of misconduct shall establish conclusively the facts on which the Board rests for purposes of disciplinary proceedings), we adopt the findings of the Supreme Court of Arizona.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a)(4), which states as follows:

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 misconduct established warrants substantially different discipline.

We agree with the OAE that a review of the record does not reveal any conditions that would fall within the scope of subparagraphs (A) through (E). Thus, the only issue left for determination is the quantum of discipline.

The level of discipline imposed in disciplinary matters involving the commission of a crime depends on numerous 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 the attorney's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-446 (1989).

It is well-settled that, in disciplinary proceedings against an attorney, a criminal conviction is conclusive evidence of guilt. R.1:20-13(c); In re Lunetta, supra, 118 N.J. at 445. Respondent entered a guilty plea to two counts of endangerment, admitting that he recklessly endangered other persons, with a substantial risk of imminent death. Respondent's conviction demonstrates that he committed a criminal act that reflects adversely on his trustworthiness or fitness as a lawyer, a violation of RPC 8.4(b).

In In re Cardullo, 175 N.J. 107 (2003), the Court imposed a reprimand where the attorney entered a guilty plea to a charge of assault by auto, a violation of N.J.S.A. 2C:12-1c(2), and a crime of the fourth degree. The attorney rear-ended an automobile that was turning into a parking lot. She left the scene of the accident, but was stopped by a police officer. Cardullo was under the influence of alcohol. The breathalyzer tests yielded results of .17% and .16%. The driver of the other vehicle suffered neck and back injuries. The attorney was sentenced to 180 days in the county jail, but was given credit for her 180-day in-patient

alcohol rehabilitation program and the two days she spent in jail. The factors considered in imposing a reprimand were that, fortunately for the attorney and the victim, the victim did not sustain serious injuries, that the attorney had embarked on the road to recovery from her alcohol addiction, that she spent six months in an in-patient treatment facility, that she was receiving regular counseling for her addiction, and that she complied with the New Jersey Lawyers' Assistance Program plan. But see In re Guzzino, 165 N.J. 24 (2000) (attorney suspended for two years following his guilty plea to second degree manslaughter and driving while intoxicated; while driving at a high rate of speed, the attorney lost control of his vehicle and struck another vehicle, causing the death of a passenger in that vehicle); In re Barber, 148 N.J. 74 (1997) (attorney suspended for six months following his conviction for vehicular homicide for the death of the passenger; although the attorney had not been convicted of driving while intoxicated, his consumption of alcohol prior to the one-car accident was considered to be an aggravating factor); In re Howard, 143 N.J. 526 (1996) (attorney suspended for three months after her conviction for death by auto, a crime of the third degree, for driving her auto recklessly and running over her husband; although there was no evidence that the attorney had been drinking prior to the accident, the Court warned that "[l]onger

suspensions will be called for when alcohol plays an aggravating role in a vehicular homicide case," id. at 533).


Respondent's conduct was serious. He had been drinking and caused an accident that resulted in "significant and serious injuries to both passengers." Respondent's conduct was more egregious than the attorney's conduct in Cardullo. In that case, not only were the victim's injuries less serious, but there was present the mitigating factor that the attorney had taken measures to combat her alcohol addiction. Correspondingly, respondent's conduct was not as serious as in the Guzzino case, where the attorney was suspended for two years for manslaughter, which occurred as a result of his driving while intoxicated.

Under the circumstances of this matter, we find that the same discipline imposed in Arizona - a six-month suspension, retroactive to March 12, 2001 - is appropriate for respondent's criminal offenses. Two members did not participate.

We further determine that respondent's reinstatement in New Jersey be conditioned on his reinstatement in Arizona.

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

Disciplinary Review Board  
Mary J. Maudsley, Chair

By:   
Julianne K. DeCore  
Chief Counsel

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

In the Matter of Scott F. Saidel  
Docket No. DRB 04-021

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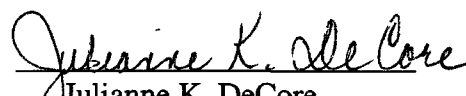
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Argued: March 18, 2004

Decided: May 4, 2004

Disposition: Six-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Six-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Boylan</i>		X					
<i>Holmes</i>							X
<i>Lolla</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>							X
<i>Stanton</i>		X					
<i>Wissinger</i>		X					
<b>Total:</b>		7					2

  
Julianne K. DeCore  
Chief Counsel