

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-073
District Docket No. XIV-05-607E

IN THE MATTER OF
ERIC H. BORNSTEIN
AN ATTORNEY AT LAW

Decision
Default [R. 1:20-4(f)]

Decided: May 24, 2006

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

This matter was before us on a certification of default
filed by the Office of Attorney Ethics ("OAE") pursuant to R.
1:20-4(f).

Respondent was admitted to the New Jersey bar in 1994. He
has no disciplinary history. Since September 25, 2000,
respondent has been on the Supreme Court's list of ineligible

attorneys for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. Accordingly, on September 25, 2006, respondent will face administrative revocation of his license for having been on the ineligible list for the seventh consecutive year. R. 1:28(c).

In July 2005, this matter came before us on the OAE's motion for final discipline, following respondent's admission in a Boston, Massachusetts criminal court to "facts sufficient for a finding of guilty" on the charges of assault and battery and assault and battery with a dangerous weapon. We denied the OAE's motion because respondent's "admission" was not a plea of guilt, no contest, or nolo contendere and, therefore, the motion failed to satisfy the criteria set forth in R. 1:20-13(c). The matter was remanded to the OAE for processing as an ordinary disciplinary case, as permitted by R. 1:20-13(c)(2).

On December 5, 2005, the OAE sent a copy of the complaint to respondent at 40 Salem Street, Winchester, Massachusetts 01890, via certified mail, return receipt requested. The letter was returned unclaimed.

Although the certification does not state that the December 5, 2005 letter and complaint also were sent to respondent via regular mail, he did receive a copy. On January 4, 2006,

respondent wrote a letter to the OAE, to which he had attached the second page of the December 5, 2005 letter, which contained the form language for the required verification of answer. Respondent crossed out the second paragraph of the form, but signed the "verification," which he had dated January 2, 2006.

On January 5, 2006, the OAE sent a letter to respondent at the same address via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the OAE would certify the record directly to us for the imposition of sanction. A copy of an undated green card shows that respondent signed for the letter. The letter sent via regular mail was not returned.

On January 27, 2006, the OAE sent another letter to respondent via regular and certified mail, return receipt requested. The letter informed respondent that his January 4, 2006 letter did not comply with R. 1:20-4. Accordingly, the OAE's letter directed respondent to provide "an appropriate answer" on or before February 10, 2006, and informed him that failure to do so would be deemed an admission that the allegations of the complaint are true. The letter further informed respondent that, if he failed to file an answer by

February 16, 2006, the OAE would certify the record directly to us for the imposition of sanction. The certified letter was returned unclaimed. The letter sent via regular mail was not returned.

As of March 1, 2006, respondent had not filed an answer to the complaint. Consequently, on that date, the OAE certified this matter to us as a default.

The one-count ethics complaint charged respondent with violating RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects) as a result of the 2003 incident that gave rise to the OAE's 2005 motion for final discipline. Specifically, the complaint alleges that, on May 13, 2003, respondent fell backward while walking up the stairs at a Boston train station. David Yu, M.D., broke respondent's fall and tried to assist him. Respondent began to choke Yu and slammed his head several times against a Plexiglas® window, "causing the window to open."

The Massachusetts Bay Transportation Authority Police arrested respondent and charged him with one count of battery and one count of assault and battery by means of a dangerous weapon (the Plexiglas® window).

On October 6, 2004, respondent, represented by counsel, appeared before a Boston Municipal Court and "received a continuance without a finding of guilt after he admitted to sufficient facts underlying the criminal offense." Respondent was placed on supervised probation "for the three months [sic] period of the continuance." In addition, he was required to pay \$65 per month for the term of his probation and a \$50 victim witness fee.

Although it is not clear how respondent received the ethics complaint, he obviously did, inasmuch as he sent a letter to the OAE on January 4, 2006, which included page two from the December 5, 2005 letter. Thus, service of process was properly made. Because respondent failed to file a verified answer to the complaint within the time prescribed, the allegations are deemed admitted. R. 1:20-4(f). Moreover, the allegations in the complaint support a finding that respondent has engaged in unethical conduct.

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).

In this case, of course, respondent was not convicted of any crime. Yet, we may, and do, conclude that his conduct violated RPC 8.4(b), notwithstanding the absence of a conviction. See, e.g., In re McEnroe, 172 N.J. 324 (2002).

In McEnroe, the formal ethics complaint charged the attorney with willfully failing to file federal and state income tax returns for the years 1988 through 1994, in violation of 26 U.S.C. § 7203 (willful failure to file federal income tax return), RPC 8.4(b), and RPC 8.4(c). In re McEnroe, Docket No. 01-154 (DRB January 29, 2002) (slip op. at 1-2). There, the attorney openly admitted that he had not filed the returns on April 15th of the year in which they were due or upon the expiration of the six-month extension that he had obtained with respect to each of them. Id. at 3, 9-10. Nevertheless, in 1995, he "finally 'got it straightened out' with the IRS" and paid everything that was due. Id. at 4.

The United States Government never charged respondent with violating 26 U.S.C. § 7203. Although the DEC and we found that respondent's failure to file the returns was willful, we each

concluded that he had violated only RPC 8.4(c). Id. at 9-10. While the DEC made no findings with respect to the RPC 8.4(b) charge, we dismissed it because there was no evidence that the attorney had been charged with a crime. Id. at 8, 13.

Upon the OAE's cross-petition for review, however, the Supreme Court reinstated the RPC 8.4(b) charge and concluded that the attorney had violated that rule, as well as RPC 8.4(c). In re McEnroe, supra, 172 N.J. 324. Thus, in this case, even though respondent was not convicted of, and did not plead guilty to, a crime, the record clearly and convincingly demonstrates that he engaged in criminal behavior, a violation of RPC 8.4(b).

That respondent's criminal act did 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).

In this case, though unprovoked, respondent violently assaulted a Good Samaritan who had broken his fall and, quite possibly, prevented serious injury to him. Such violent conduct should not be tolerated. See, e.g., In re Viggiano, 153 N.J. 40 (1997) (three-month suspension imposed on attorney who pleaded guilty to two counts of simple assault and was placed on probation for one year as a consequence of a "road rage" incident in which he had assaulted the driver of a car and then assaulted two police officers who intervened in the attack); In re Margrabia, supra, 150 N.J. at 201 (three-month suspension imposed on attorney convicted of simple assault in a domestic violence matter, after he had punched his wife and hit 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 had 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); and 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).

The case that is most factually similar to this matter is In re Viggiano, supra, 153 N.J. 40.¹ There, the attorney was involved in a minor traffic accident with June Moncalieri. In re 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

¹ Howell also involved an assault and battery. However, in that case, there was a history of animosity between the attorney and his victim. In re Howell, supra, 193 N.J. at 141. Moreover, there was some provocation, as the victim, a newspaper editor, had attacked the attorney in an editorial. Ibid. Finally, forty minutes had lapsed between the attorney's reading of the editorial and his assault upon the editor. Id. at 143. Thus, the Court believed "there was ample time within which to bring his emotions under control. . . ." Ibid.

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. He pleaded guilty to two counts of simple assault and was placed on probation for one year. Ibid. The attorney was suspended for three months.

In this case, respondent's conduct — which was unprovoked, vicious, and outrageous — merits at least a three-month suspension. However, we also must consider that he has defaulted in this case. In a default matter, the discipline is enhanced to reflect a respondent's failure to cooperate with disciplinary authorities as an aggravating factor. In re Nemshick, 180 N.J. 304 (2004) (conduct meriting reprimand upgraded to three-month suspension due to default; no ethics history). Therefore, we determine to impose a six-month suspension for respondent's attack upon Yu.

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
Julianne K. DeCore
Chief Counsel

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

In the Matter of Eric H. Bornstein
Docket No. DRB 06-073

Decided: May 24, 2006

Disposition: Six-month suspension

Members	Six-month Suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy	X				
Pashman					X
Baugh	X				
Boylan	X				
Frost	X				
Lolla	X				
Neuwirth	X				
Stanton	X				
Wissinger	X				
Total:	8				1


Julianne K. DeCore
Chief Counsel