

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-094
District Docket No. XIV-00-201E

IN THE MATTER OF :
 :
STEPHEN A. GALLO :
 :
AN ATTORNEY AT LAW :
 :

Decision

Argued: May 20, 2004

Decided: July 6, 2004

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

Justin P. Walder appeared on behalf of respondent.

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"), pursuant to R. 1:20-13(c), following respondent's guilty plea to four counts of criminal sexual contact.

We originally heard oral argument on this matter on October 17, 2002, when the OAE filed a motion for final

discipline based on respondent's September 5, 2001 guilty plea to four counts of criminal sexual contact. Respondent admitted in the criminal proceeding that he had committed acts of nonconsensual sexual contact with four women, three of whom were his matrimonial clients, and one of whom was a pro se litigant seeking a restraining order against one of respondent's clients. At the plea hearing, respondent was not required to explain the circumstances of his conduct, but merely to admit nonconsensual sexual contact. Respondent admitted placing his hand on the breasts of two of his clients without their consent, and to placing the hands of the other client and the pro se litigant on his groin, without their consent. Respondent was sentenced to four concurrent five-year terms of probation, and was required to obtain psychological counseling and to submit himself to random drug and alcohol testing. He was fined \$4,000. Other charges against him were dismissed.

We found that respondent's guilty plea established a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer). Like the OAE, we considered only the undisputed facts in the record, specifically, the factual bases for respondent's guilty plea. The detailed formal

statements of respondent's victims, described by respondent's counsel as "unproven allegations," were not considered.¹

Following our review, six members voted to suspend respondent for three years, retroactively to the date of his temporary suspension. Three members voted for a prospective three-year suspension. The Court ordered respondent to show cause why he should not be disbarred or otherwise disciplined.

On December 5, 2003, the Court remanded the matter to us to convene a hearing before a special ethics master. In re Gallo, 178 N.J. 115 (2003). The Court held that the disciplinary review process is not limited to the attorney's admissions in his criminal matter. Id. at 123. Because, however, the within disciplinary matter had proceeded as a motion for final discipline based on respondent's guilty plea, there had been no hearing to develop the victims' allegations, beyond respondent's admissions. Id. at 120. Furthermore, it would have been unfair to discipline respondent based on a record that went beyond his plea admissions unless he had the opportunity to confront his

¹ Although we were aware that these statements were included in the record, we did not consider them for purposes of evaluating the extent of respondent's unethical conduct and assessing the commensurate level of discipline. Under R. 1:20-13, our review is confined to the facts underlying a criminal conviction or a guilty plea and the sole issue to be determined is the degree of final discipline to be imposed.

accusers, and to present testimony in his own behalf. Id. Thus, the Court concluded that, a hearing should be held "to determine the full nature and extent of respondent's derelictions" and to determine "the veracity of the victims' claims and respondent's answers." Id. at 118, 124.

Foregoing the hearing, respondent entered into a stipulation of facts with the OAE and agreed that the victims' statements to the Bergen County Prosecutor's Office were true and accurate descriptions of his conduct. Respondent agreed that we should consider the victims' statements as part of the record in determining the appropriate quantum of discipline. The OAE and respondent believed that, in light of the stipulation, a hearing was not necessary, and that the matter could proceed before us for the imposition of discipline. The matter is now ripe for our review of the expanded record.

Respondent was admitted to the New Jersey bar in 1993. He has no history of discipline. In March 2001, respondent and the OAE entered into a consent order, whereby he agreed to be temporarily suspended, pending the resolution of this matter. In re Gallo, 167 N.J. 32 (2001).

Respondent's victims provided detailed accounts of respondent's conduct in their lengthy statements to the Bergen County Prosecutor's Office.

Donna Waters (Statement of June 2000)

Waters retained respondent in 1999 to represent her in a matrimonial proceeding. In August 1999, Waters and respondent were in the courthouse for her divorce proceeding. According to Waters, respondent said "you have a nice body," and then stated "look how hard you made me," and put her hand on his crotch. Waters stated that respondent had an erection. She did not comment to him about what he had done because "he had originally given me a break on what the original retainer was going to be and, you know, I needed his services, and I was just afraid that he wouldn't represent me if I just didn't go along with what was going on."

After the proceeding, Waters and respondent were waiting in the courthouse to receive documents. Respondent pulled Waters to him, kissed her, and asked if she was wearing a particular type of underwear.

Waters next saw respondent in April 2000, after further developments in her matrimonial proceeding. She stated that, in

an attempt to avoid further contact with respondent, she had tried to obtain representation by "legal aid" but was not eligible. Waters "didn't want to be put in another uncomfortable situation." Nevertheless, Waters met with respondent in the conference room of his law firm. Respondent began asking her inappropriate questions about her sexual relationships. Respondent's questions made her uncomfortable, but she answered because he was her attorney, and she thought she was supposed to be honest with him. She added "he was representing me. I didn't know what was coming up in future papers." After his questions, respondent stated "look how hard you make me," unzipped his pants, and wanted her to look at his penis. He locked the door to the conference room and started masturbating. Respondent ejaculated into a cloth handkerchief. Neither Waters nor respondent commented on what he had done. They discussed her case for a moment, and then left the conference room together.

At one point during the April 2000 meeting, respondent stated "look at all this work I'm doing for you. You know, I'm not getting a penny for this. I don't even know why I'm doing all this for you." Waters stated that she "had gotten the impression that, because he was doing everything free that, you

know, he thought that payment may be [sic] in terms of sex was expected."

Waters' last meeting with respondent took place on June 12, 2000, in the same conference room. He asked if she had thought about the incident that had occurred during their last meeting. He also asked her to stand up to show him what she was wearing, and he inquired if she was wearing a specific type of hose. Waters hesitated when respondent asked her to stand up, and he stated "well, I'm not charging you anything. I'm doing all this work for free. I'm entitled." When Waters sat down respondent pulled down her shirt and bra and placed his mouth on her breast. He then took out his penis, and asked her to place her mouth on it, at one point putting his hand on the back of her head to push her face toward his penis. Waters pulled away, and respondent masturbated, ultimately ejaculating onto the floor.

Teresa Tumminia (Statement of July 2000)

Respondent represented Tumminia's ex-husband in a matrimonial proceeding. On February 10, 2000, Tumminia was appearing in court pro se, seeking a restraining order against her ex-husband. Respondent asked to speak with her in the hallway. He pulled her close to him, inquired if she was happy

with her current husband, and said that they "would be so good in bed together." Respondent also made comments about her having a "beautiful body."

At one point respondent left to speak to his client. He returned and approached Tumminia. He took both of her hands and placed them on his erect penis, again commenting that they "would be so good in bed together." Tumminia pulled her hands away, pushed respondent, and ran into a telephone booth.

Debbie Butti (Statement of September 2000)

In April 1998, respondent represented Butti in a matrimonial proceeding. Over the course of several meetings, respondent asked Butti for more and more intimate information about her sexual experiences. His questioning made her very uncomfortable. She continued to meet with him, however, because she thought that if she did anything to make him angry or to make him dislike her, he would not represent her to the best of his ability, and she was unable to seek representation elsewhere.

In early 1999, Butti went to respondent's office to sign documents. Respondent asked Butti to have sex with him, to which she replied that she was not interested. Respondent then

kissed her on the lips, and placed his tongue in her mouth. Butti pushed respondent away from her, repeating that she was not interested. He then placed her hand on his erect penis over his pants. She pulled her hand away and said "no." He then exposed himself. Butti told him several times to "put it away," and respondent complied. Butti continued to retain respondent's services after that incident because it was near the end of her divorce process, she had already paid him, and she "just didn't see any other avenue to go."

Also, on one occasion in early 1999, respondent asked Butti for intimate details about her sexual relationships. At the time, they were in a courthouse waiting for her case to be heard.

On another occasion, when Butti and respondent were scheduled to meet with her ex-husband and his counsel in respondent's office, respondent asked Butti about her undergarments, and attempted to pull her dress up.

Debra Iurato (Statement of May 2001)

In 1998 respondent represented Iurato in a matrimonial proceeding. During Iurato's initial meetings with respondent he commented that she was attractive, and on one occasion, asked if

she would ever date him or if she found him attractive. Iurato found the comment unusual and disregarded it. In June 1999, respondent and Iurato were in the courthouse for her divorce proceeding. Respondent again complimented her on her appearance. After the proceeding, Iurato was signing documents and respondent asked, more than one time, if she found him attractive, and if she would go out with him. Iurato replied that she was not interested. The conversation made Iurato "uncomfortable."

Iurato retained respondent again in a bankruptcy proceeding relating to her matrimonial matter. She commented that she did not want to use his services but he had her paperwork, and, given her timetable, it was best to use him. During a meeting at respondent's law firm regarding the bankruptcy, he told her that he had convinced his firm to charge her a lower fee, that she should be grateful, and that she should show her appreciation by going out with him. Later, during the meeting, respondent commented that he thought they should "get together," and, when she declined he stated, "well you are from Lodi, you know the score." His comment made Iurato feel "horrible."

After his comment, respondent began to massage Iurato's shoulders, and then slipped his hand down her blouse and under

her bra, and began to feel her breast. Iurato told him to stop, which he did. Respondent then stood between her and the door and blocked her exit from the room. While only inches from Iurato, he asked if she was sure she did not want "to see it or kiss it before [she] left," referring to his penis. Respondent had previously mentioned that he was of Italian heritage, and was "very well endowed." Iurato left the conference room after respondent's question.

At some point thereafter, respondent called Iurato at her office and offered his apology if he had said or done anything to make her feel uncomfortable.

Approximately one month after their last meeting, respondent and Iurato were in a courthouse for her bankruptcy proceeding. Iurato did not want to meet with respondent that day, but she thought it would be detrimental to her case to obtain another attorney at that point. Respondent behaved in a professional manner on that occasion.

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

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). The conduct that gave rise to

respondent's guilty plea constituted a violation of RPC 8.4(b). 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 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 respondent's reputation, his prior trustworthy conduct and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46 (1989). Discipline is imposed even when the attorney's offense is not related to the practice of law. In re Kinnear, 105 N.J. 391 (1987).

The Court's opinion directed that the veracity of the victims' claims and respondent's answers should be determined at a hearing before a special ethics master. In re Gallo, supra, 178 N.J. 115, 124. In lieu of that proceeding, respondent entered into a stipulation of facts, wherein he admitted that the victims' statements were a true description of his conduct. Respondent's admission relieved us of the duty to assess the credibility of the victims. The issue of the veracity of the victims having been settled, we can focus on the appropriate measure of discipline for respondent's conduct.

In cases involving sexual misconduct by attorneys, the discipline has ranged from a reprimand to disbarment. Reprimand cases include 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); In re Hyderally, 162 N.J. 95 (1999) (sexual advances to two legal aid clients); In re Gilligan, 147 N.J. 268 (1997)(conviction of lewdness for exposing and fondling genitals for sexual gratification in front of three individuals, two of whom were children under the age of thirteen); In re Pierce, 139 N.J. 433 (1995)(conviction of lewdness for exposing genitals to a twelve-year old girl); In re Pearson, 139 N.J. 230 (1995) (attorney improperly touched his client and made inappropriate comments about her chest); In re Rea, 128 N.J. 544 (1992) (attorney had a sexual relationship with a client who, because of her past history and mental health, lacked the capacity to freely consent to the relationship); and In re Liebowitz, 104 N.J. 175 (1985) (sexual misconduct toward an assigned client).

Suspension cases, most of which include offenses toward children, include In re Gernert, 147 N.J. 289 (1997)(one-year

suspension for attorney who pleaded guilty to the petty disorderly persons' offense of harassment by offensive touching; the victim was the attorney's teenage client); In re Seaman, 133 N.J. 67 (1993) (sixty-day suspension without pay; the Court found that Judge Seaman's remarks of a sexual nature to his law clerk, his lifting of her skirt, placing his hand under her skirt and attempting to place her hand on his crotch constituted sexual harassment and violated, among other canons, Canon 3A(4) of the Code of Judicial Conduct); In re Ruddy, 130 N.J. 85 (1992)(two-year suspension for attorney who pleaded guilty to four counts of endangering the welfare of a child, a third-degree offense, for fondling several young boys); In re Herman, 108 N.J. 66 (1987) (three-year suspension for attorney who pleaded guilty to the second degree offense of sexual assault for touching the buttocks of a ten-year old boy); and In re Addonizio, 95 N.J. 121 (1984) (three-month suspension for attorney who pleaded guilty to criminal sexual contact; although the attorney's association with the victim arose from the lawyer-client relationship, the offense was not related to the practice of law).

The most serious sexual misconduct cases have resulted in disbarment and also involved children as victims. In re Wright,

152 N.J. 35 (1997)(attorney was convicted of aggravated sexual assault, after he digitally penetrated his daughter's vaginal area); In re Palmer, 147 N.J. 312 (1997)(attorney pleaded guilty to seven counts of third-degree aggravated criminal sexual contact and one count of fourth-degree criminal sexual contact involving the touching of eight boys employed at a recreation complex owned by the attorney); and In re X, 120 N.J. 459 (1990)(attorney pleaded guilty to three counts of second-degree sexual assault; the victims were his three daughters).

Here, respondent preyed on his female clients at what was arguably the most vulnerable time in their lives. One element that stands out when reviewing this record is the detrimental impact that respondent's actions had on the victims. At respondent's sentencing, the prosecutor stated that all of the victims were in counseling at that time. The prosecutor also discussed letters to the court submitted by the victims, and a conversation he had had with one of the victims:

But [Waters] says in her letter when she's talking about going through this experience with the divorce she says, 'To say I was scared and emotionally fragile couldn't begin to explain how I felt. Mr. Gallo knew the weakened state I was in, both emotionally and financially. Knowing all of this he had a choice of either helping me in a professional manner or taking advantage of

my situation. His choice is why we are here today.'

She goes on to say when she's addressing Your Honor, she says, 'Please keep in mind that sometimes in life we find ourselves in unfortunate situations that we feel are hopeless and we can turn to professional people for help. So no - so one should have - no one should have to worry whether or not these trained and educated people are going to act in a criminal and unethical manner.'

Judge, something that Donna Waters said to me two years ago when I first met her when she was explaining the situation to me, she said I was married for 25 years and my husband took everything from me. He took my house. He took my car. He took my furnishings. He took everything. The only thing I was left with was my dignity. By the time I was done with Mr. Gallo I didn't even have that.

And Judge, that stayed in my mind for two years because to me that says it all. He took what shreds of her - her self-respect and dignity she had left after going through a messy divorce and Mr. Gallo took that from her.

Ms. Butti also wrote to the Court. And she says in talking about Mr. Gallo, 'He used his position of trust to prey on women at - women at a vulnerable time in their lives for his own sexual gratification. He is a predator driven by some askew instinct, no remorse, no concept of wrong, only self-gratification. If he expresses sorrow it is sorrow for getting caught, not from his actions.'

And Ms. Iurato in her letter to the Court says, 'I was frozen in fear and denial during certain aspects of my contact with Stephen Gallo. I trusted him. I was

already suffering mental abuse from my ex-husband. To fully accept the same behavior from my attorney, someone I initially trusted, was too much for me to cope with at the time. I am mentioning this now because this behavior has affected the way I live today.'

[Ex.2 at 30 to 32.]

Respondent preyed on women who were already suffering and vulnerable. His statement to Donna Waters that he was entitled to something, presumably sexual favors, because of the lower fee he was charging, is indicative of a flaw in respondent's character that cannot be tolerated from a member of the bar. As we stated in our previous decision in this matter:

Here, respondent's behavior directly involved the practice of law. He used his position as an attorney to gratify himself at the expense of four women who were vulnerable because of their matrimonial and legal problems. These four women were subjected to respondent's inappropriate, lewd, vulgar comments and actions. As the OAE argued, respondent's crimes were not isolated acts. They took place over eighteen months and did not cease until he was arrested. Severe discipline is, therefore, warranted.

As noted above, when this matter originally came before us, we had the statements of respondent's victims in the record as

unproven allegations. As is clear from our decision, we read those statements to enable us to get a sense of the context in which respondent's criminal offenses took place. Bound by the conduct that formed the basis for respondent's guilty plea, however, at that time we considered only that conduct in fashioning the appropriate measure of discipline. When we first considered this matter, we imposed a three-year suspension, based on a much more benign set of facts. Now that the full extent of respondent's misconduct is before us, five members are convinced that disbarment is warranted. Three members would have imposed a three-year suspension. At the time of their first review of this case in October 2002, the dissenting members' determination that a three-year suspension was appropriate included a consideration of the victims' statements, in order to obtain a "full picture" of respondent's misconduct. In re Spina, 121 N.J. 378, 389 (1990) (" . . . [I]t is appropriate as well to examine the totality of circumstances, including the details of the offense. . . in reaching an appropriate decision that gives due consideration to the interests of the attorney involved and to the protection of the public." Ibid.) Moreover, those members were not persuaded that precedent justifies the ultimate sanction of disbarment for

respondent's conduct, egregious as it was. One member 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
Chief Counsel

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

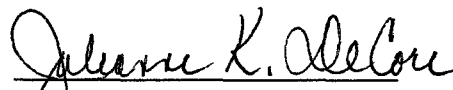
In the Matter of Stephen A. Gallo
Docket No. DRB 04-094

Argued: May 20, 2004

Decided: July 6, 2004

Disposition: Disbar

<i>Members</i>	<i>Disbar</i>	<i>Three-year 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						
Total:	5	3					1


 Julianne K. DeCore
 Chief Counsel