SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-148
District Docket No. XIV-2014-0544E

IN THE MATTER OF	
CHRISTOPHER J. BUCKLEY	
AN ATTORNEY AT LAW	

Decision

Argued: July 16, 2015

Decided: December 15, 2015

Hillary Horton appeared on behalf of the Office of Attorney Ethics.

Leo Hurley 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)(2), following respondent's guilty plea, in the Superior Court of New Jersey, Law Division, Criminal Part, to simple assault, a disorderly persons offense, in violation of N.J.S.A. 2C:12-1(a). The OAE recommended a censure or a three-month suspension. Respondent requested that we impose an

admonition. For the reasons set forth below, we determine to grant the OAE's motion for final discipline and impose a censure.

Respondent was admitted to the New Jersey bar in 2010. He has no history of discipline. During oral argument, respondent's counsel represented that respondent is not currently engaged in the practice of law but, rather, is working for Bank of America as a regulatory compliance officer.

On February 28, 2014, before the Honorable Mitzy Galis-Menendez, J.S.C., respondent entered a guilty plea to simple assault, a disorderly persons offense, in violation of N.J.S.A. 2C:12-1(a). Respondent's plea was the culmination of a negotiated agreement, pursuant to which the prosecutor agreed to amend the original charge of second-degree robbery to simple assault.

During his guilty plea allocution, respondent provided a factual basis to support the reduced charge. Specifically, he admitted that, on June 23, 2013, while in Jersey City, he shoved the victim, Ali Balde, in an attempt to cause bodily injury to him.

As part of the negotiated plea agreement, respondent requested that the court allow him to apply to the conditional discharge dismissal program, which had been recently amended to

allow entry of defendants convicted of simple assault offenses. The State offered no objection and the court granted respondent's application. As part of the plea, respondent agreed to pay $750 in restitution to the victim. The court imposed the minimum mandatory statutory fines for violent offenses.

On May 23, 2014, respondent appeared again before Judge Galis-Menendez after the parties had recognized that respondent's offense had occurred prior to the effective date of the recent amendment to the conditional discharge program. Given the date of respondent's offense, he was ineligible for the program and, thus, required a new sentencing hearing. Both respondent and the State requested that his sentence be limited to the imposition of minimum fines. The court agreed and sentenced respondent accordingly.

Respondent provided a scant factual basis in support of his guilty plea to simple assault. The integrity of our review of this case requires a "complete evaluation of the evidence" beyond respondent's "bare admissions" made for purposes of his guilty plea. See In re Gallo, 178 N.J. 115, 119 (2003). We "cannot ignore relevant information that places an attorney's conduct in its true light." Id. at 120. "Respondent and the [grievant], as well as the public, are entitled to a

disciplinary review process in which a full, undistorted picture is the basis for disciplinary sanctions." Ibid.

Here, to understand the "nature and context of [respondent's] misconduct," we must consider information beyond respondent's "limited admissions" made in court. Id. at 120-21. In this case, police reports were filed that contain additional relevant facts, based not solely on the victim's statement, but also on the independent observations made by the police officers who responded in connection with respondent's assaultive behavior. Additionally, most of the information that follows was acknowledged as fact by respondent's counsel during oral argument.

On the night of the assault, Balde, a taxi driver, was hailed by respondent on the West Side Highway in New York City. He agreed to drive respondent to Jersey City for a $63 fare. Upon arriving in Jersey City, at approximately 10:30 p.m., respondent informed Balde that he had only $9 and asked Balde to drive him to his apartment so that he could obtain additional money. Balde refused to do so and locked the doors in the taxi to prevent respondent from exiting. Respondent, who is approximately 6'5" tall and 280 pounds, began to kick at a door and window of the vehicle.

Balde then unlocked the doors and respondent exited the taxi and began walking away, pursued by Balde. Respondent grabbed Balde's face and then struck him in the face with a closed fist. After the police were called, they interviewed Balde, arrested respondent near the scene of the assault, and charged respondent with robbery. As a result of respondent's assault, Balde sustained lacerations to his forehead and upper lip, his glasses were broken, he had blood on his shirt, and he reported pain in his nose and mouth. He received medical attention at Jersey City Medical Center.

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Maqid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Respondent's guilty plea to simple assault, in violation of N.J.S.A. 2C:12-1(a), establishes a violation of RPC 8.4(b). Pursuant to the rule, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Hence, the sole issue to be determined is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Maqid, supra, 139 N.J. at 451-52; In re Principato, supra, 139 N.J. at 460.

In determining the appropriate measure of discipline, the interests of the public, the bar, and the respondent must be

considered. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." In re Principato, supra, 139 N.J. at 460. Thus, we must take into consideration 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).

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). "It is well-established that private conduct of attorneys may be the subject of public discipline." In re Magid, supra, 139 N.J. at 454.

The OAE relied on multiple cases to support its recommendation that either a censure or a three-month suspension be imposed on respondent. First, the OAE cited In re Viggiano, 153 N.J. 40 (1997), as the "appropriate 'baseline' discipline for a simple assault conviction." In Viggiano, the attorney was involved in a minor traffic accident. In the Matter of Thomas J. Viggiano, DRB 97-112 (November 18, 1997) (slip op. at 1). He exited his vehicle, walked to the other vehicle, where the female driver was still seated, and began striking her with a closed fist. Ibid. Police officers arrived at the scene and

attempted to physically restrain the attorney and end his assault on the victim, at which point the attorney began to push and kick the police officers. Id. at 1-2. After pleading guilty to assaulting the victim and one of the officers, the attorney was sentenced to a one-year period of probation and was required to pay statutory fines. Ibid.

Citing Magid and Principato for the proposition that "[a]cts of violence are condemned in our society," we imposed a three-month suspension and required the attorney to submit proof of fitness to practice law, prior to reinstatement. Viggiano slip op. at 3. In our decision, we cautioned that "any act of violence committed by an attorney will not be tolerated." Ibid. Condemning the attorney's physical assault of the other motorist and the police, we determined that "[n]othing less than a suspension would be appropriate for this kind of violent behavior." Ibid. The attorney had no disciplinary history. Id. at 1. The Court agreed with our determination.

The OAE also cited In re Bornstein, 187 N.J. 87 (2006), in support of its recommended range of discipline. In Bornstein, the attorney fell backward while walking up the stairs at a Boston train station. In the Matter of Eric H. Bornstein, DRB 06-073 (May 24, 2006) (slip op. at 4). A doctor broke his fall and tried to assist him. Ibid. Inexplicably, the attorney began

to choke the doctor and slam his head, several times, against a plexiglass window. Id. at 4-5. The attorney was charged with assault and battery and a weapons offense, but was able to enter a diversionary program in Massachusetts. Id. at 5. Although the attorney admitted, in court, the facts set forth above, he was never actually convicted of an offense. Ibid. He was placed on probation for three months and paid fines. Ibid.

We described Bornstein's violent actions as "unprovoked, vicious, and outrageous" and found his conduct to be most factually similar to Viggiano. Id. at 10. We determined to impose a three-month suspension but, due solely to the default status of the matter, the discipline was enhanced to six months. Id. at 10-11. The attorney had no disciplinary history. Id. at 1. The Court agreed with our determination.

The OAE further cited In re Gibson, 185 N.J. 235 (2005), as precedent supporting its recommended discipline. In Gibson, the attorney was involved in a bar fight in Pennsylvania. In the Matter of Robert Thomas Gibson, DRB 05-050 (June 23, 2005) (slip op. at 2). Police responded and the attorney was arrested for the summary offenses[1] of public drunkenness and disorderly conduct. Ibid. At the police station, an officer attempted to

[1] A Pennsylvania summary offense is the equivalent of a non-indictable offense in New Jersey, the type of offense adjudicated in municipal court.

handcuff the attorney. Ibid. Still intoxicated, the attorney spat on and hit the officer. Ibid. The case proceeded to trial and the jury found the attorney guilty of aggravated assault, simple assault, aggravated harassment by a prisoner, and the summary offenses of public drunkenness and disorderly conduct. Ibid. The attorney was sentenced to one month of incarceration (with work release), four months of electronic home confinement, 300 hours of community service, and was ordered to pay statutory fines. Id. at 2-3. After multiple appeals within the disciplinary system, the matter reached the Pennsylvania Supreme Court, which suspended the attorney for one year, retroactive to the date of his temporary suspension for the underlying criminal misconduct. Id. at 3-4.

Granting the OAE's motion for reciprocal discipline, we imposed a one-year suspension on the attorney, retroactive to the date of his temporary suspension in New Jersey. Id. at 13. Additionally, he was required to continue treatment with a drug and alcohol counselor and submit proof of fitness to practice law, prior to reinstatement. Ibid. However, our decision made clear that the imposition of a one-year suspension was not necessarily based on a comparison of Gibson's conduct to that of other attorneys who had been disciplined in New Jersey for assaultive criminal conduct. Id. at 12. Rather, the sanction was

grounded largely in our determination that there was "no reason to deviate from Pennsylvania's determination inasmuch as the record before us is incomplete . . . and Pennsylvania — which had the opportunity to review the entire record and, therefore, better assess the facts - was convinced that a one-year suspension was appropriate." Ibid. The attorney had no prior discipline. Id. at 1-2. The Court agreed with our determination.

In its brief, the OAE acknowledged In re Jacoby, 188 N.J. 384 (2006), where a censure, rather than a term of suspension, was imposed for violent and assaultive behavior. In Jacoby, during a domestic violence assault, the attorney choked his wife and threw her into two walls. In the Matter of Peter H. Jacoby, DRB 06-068 (June 6, 2006) (slip op. at 3). As a result of his actions, his wife suffered a dislocated shoulder. Ibid. The attorney was charged with both an indictable-level aggravated assault and simple assault. Id. at 4.

The attorney eventually pleaded guilty to the simple assault charge and was sentenced to a one-year period of probation, continued psychiatric treatment, and the imposition of statutory fines. Id. at 6. We determined that a suspension was the presumptive discipline in cases involving domestic violence. Id. at 13. Thus, despite respondent's claimed diagnosis of bi-polar and intermittent explosive disorders, we

voted to impose a three-month suspension. Id. at 15-17. The attorney had no disciplinary history. Id. at 2. The Court, however, imposed a censure.

Finally, the OAE cited In re Milita, 217 N.J. 19 (2014), in an effort to distinguish the misconduct and resulting sanction in that case from respondent's actions in the instant matter. In Milita, the attorney became involved in a "road rage" altercation after he felt he was being improperly "tailgated" by a vehicle behind him. In the Matter of Martin J. Milita, Jr., DRB 13-159 (December 3, 2013) (slip op. at 2). The incident began with an exchange of hand gestures between the occupants of the vehicles, but soon escalated when the attorney pulled over, partially emerged from his vehicle, and brandished a knife at the two young men in the other vehicle. Ibid. When the other vehicle drove by, respondent followed it through several towns, for approximately nine to twelve miles. Id. at 2-3. While following the young men, the attorney continued to brandish the knife. Id. at 3.

During the attorney's pursuit of the victims, they called the police, who instructed them to drive to a local hospital, where officers were waiting. Ibid. When questioned, the attorney initially lied to the police, denying he had brandished a knife. Ibid. Later, he admitted having a knife, but claimed that his

mechanic had given him the knife to use to fix a problem with his vehicle. Ibid. The attorney ultimately entered a guilty plea to hindering apprehension, a disorderly persons offense, and two counts of harassment, petty disorderly persons offenses. Id. at 3, 6. The court sentenced the attorney to serve three concurrent one-year periods of probation, to perform 100 hours of community service, and to pay mandatory statutory fines. Id. at 6.

Although the OAE recommended a three-month suspension, we instead imposed a censure and required the attorney to continue treatment with a mental health professional until medically discharged. Id. at 7-8, 14. In determining a censure to be the proper discipline, we emphasized the following factors: the attorney's behavior was menacing, but he had no physical contact with the occupants of the other vehicle; he was receiving treatment for psychological and medical issues that contributed to his behavior; and he was not a practicing lawyer and, thus, the concern for protection of the public was reduced. Id. at 14. The attorney had no disciplinary history. Id. at 2. The Court agreed with our determination.

In summary, the OAE contends that Viggiano essentially established that a three-month suspension is the "baseline" discipline for violent behavior by attorneys and that, given the Court's ever-decreasing tolerance for violent conduct by members

of the bar, either a censure or a three-month suspension is the appropriate sanction in this case. Although not expressly stated, it appears that the OAE would offer the following factors as mitigation, thus placing a censure in the range of the recommended sanction: respondent has an unblemished disciplinary record; the sentencing judge imposed minimum fines and the parties originally agreed that a conditional discharge would have been an appropriate disposition; respondent self-reported his conviction; and respondent provided much of the documentation used by the OAE to file the motion for final discipline.

In turn, in his brief, respondent examined Viggiano in support of his argument that an admonition is the appropriate discipline in this matter. He attempted to distinguish his conduct from the actions of the attorney in that case, stressing that Viggiano pleaded to two counts of simple assault, including on a police officer, and had a prior incident of assaultive behavior in his criminal history. Respondent also argued that the nature of the offense he pleaded to – simple assault – should be considered "minimal in nature" because it does not require self-reporting, pursuant to R. 1:20-13(a)(1), and is now eligible for a conditional discharge in New Jersey. Citing his unblemished disciplinary history, in mitigation, respondent

contends that an admonition is the appropriate sanction for his conduct. Respondent's argument regarding eligibility for a conditional discharge is misplaced, however, as the quantum of discipline to be imposed is based on the conduct of the attorney, not on the statutory level of the offense under scrutiny.

Following a review of the full record, we determine to grant the OAE's motion for final discipline. Here, respondent's disorderly persons conviction conclusively establishes a violation of RPC 8.4(b). R. 1:20-13(c)(1). Since the Viggiano decision, in 1997, the New Jersey bar has been on notice that "any act of violence committed by an attorney will not be tolerated" and that "[n]othing less than a suspension" would likely be imposed in cases involving violent behavior.

Accordingly, the nature of respondent's violent conduct is the touchstone of our analysis. After agreeing to a $63 cab fare and being driven from New York City to Jersey City, respondent informed the driver that he had only $9. When the driver locked him in the vehicle, he began kicking at the door and window of the cab. The driver unlocked the doors and respondent began to walk away. When the driver pursued him, presumably seeking his cab fare, respondent punched the driver in the face, breaking his glasses and causing two lacerations. Although arguably not

as egregious, respondent's conduct is most akin to that of the attorneys in Viggiano and Bornstein. He engaged in an act of violence involving physical contact, which left the victim bloodied and in pain.

A final component in crafting the appropriate discipline in this matter is an analysis of aggravating and mitigating factors. There are no aggravating factors to consider in this case. As established in Lunetta, we may consider "mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In mitigation, respondent entered a guilty plea, has openly acknowledged his criminal conduct and exhibited remorse, and agreed to pay a total of $750 in restitution in an effort to make the victim whole. Next, he has no disciplinary history and was a recently-admitted attorney at the time of his misconduct. Finally, as we considered in mitigation in Milita, respondent is not an attorney from whom the public must be protected, given that he is not currently engaged in the practice of law.

The OAE asserts that respondent's efforts to report his conviction and cooperate with the OAE should also be considered in mitigation. R. 1:20-13(a)(1) requires attorneys to report to the OAE, in writing, when they have been charged with an indictable offense. As a result of his assault on the victim,

respondent was originally charged with second-degree robbery, an indictable offense. Also, attorneys in New Jersey have an affirmative obligation to cooperate with disciplinary authorities. Respondent, thus, should not receive "credit" for fulfilling these professional duties.

The case law examined above illustrates that disciplinary cases involving violent behavior by attorneys requires fact-sensitive considerations. Simply put, there has been no typical or "baseline" measure of discipline for these cases and we decline to declare such an inflexible approach. In 1997, Viggiano warned the bar that "any act of violence committed by an attorney will not be tolerated" and that "[n]othing less than a suspension" would likely be imposed for violent behavior. But for the mitigation addressed above, the violent behavior under scrutiny in this case – the assault of a taxi driver who was seeking the fare for his services – would result in the imposition of a three-month suspension to protect the public and to preserve confidence in the bar. For the reasons expressed above, however, we determine to impose only a censure in this case.

Members Baugh, Gallipoli, and Zmirich voted for a three-month suspension. Member Clark did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Christopher Buckley
Docket No. DRB 15-148

Argued: July 16, 2015

Decided: December 15, 2015

Disposition:

Members	Disbar	Three-Month Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh		X				
Clark						X
Gallipoli		X				
Hoberman			X			
Rivera			X			
Singer			X			
Zmirich		X				
Total:		3	4			1

Ellen A. Brodsky
Chief Counsel