SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-218
District Docket No. XIV-2011-0413E

IN THE MATTER OF	
JAE HOON PARK	
AN ATTORNEY AT LAW	

Decision

Argued: October 15, 2015

Decided: April 15, 2016

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

Gerald D. Miller 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, Middlesex County, to aggravated assault, a third-degree crime, in violation of N.J.S.A. 2C:12-1(b)(7). The OAE recommends a six-month suspension. Respondent

requests that we impose a censure, or, in the alternative, impose a retroactive suspension.[1]

For the reasons set forth below, we determine to grant the OAE's motion for final discipline and impose a three-month suspension on respondent, with conditions.

Respondent was admitted to the New Jersey bar in 1997 and the New York bar in 2000. He has no history of discipline and was not temporarily suspended in connection with this matter. In a brief and certification, submitted to us on July 21, 2015, respondent represented that he has not engaged in the practice of law since 2010, but, rather, has been gainfully employed in a family business. During oral argument, respondent's counsel confirmed these representations.

On October 19, 2010, before the Honorable Frederick DeVesa, J.S.C., respondent entered a guilty plea to aggravated assault, a third-degree crime, in violation of N.J.S.A. 2C:12-1(b)(7). Respondent had made application to the Middlesex County pre-trial intervention program and was rejected.[2] Thus, he opted to enter into a negotiated plea agreement, whereby the prosecutor reduced the original charge of second-degree aggravated assault

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[1] Respondent suggests neither the length nor the commencement date of the requested retroactive suspension.

[2] Respondent's counsel filed an appeal from that determination, which Judge DeVesa ultimately denied.

to the third-degree crime to which respondent pleaded guilty and dismissed three companion indictable charges.

During his allocution before the court, on October 19, 2010, respondent offered a sparse factual basis in support of his guilty plea. Specifically, he admitted that, on May 12, 2010, while in Edison, he attempted to cause significant bodily injury to his mother, Keung Jae Park (Mrs. Park), by forcing her to take a quantity of prescription pills, knowing that he was harming her by doing so. As part of the plea negotiation, respondent agreed to immediately enter a long-term, inpatient drug treatment program pending his sentencing date.

Subsequently, on January 6, 2011, Judge DeVesa held a sentencing hearing. Prior to imposing sentence, Judge DeVesa noted that respondent had committed a very serious and violent assault against his mother, which included a threat to kill her.[3] Thus, the judge denied respondent's appeal from the State's adverse PTI determination. In determining the appropriate sentence to be imposed, Judge DeVesa recited a specific need to deter respondent. Nevertheless, he found that respondent's crime had been "triggered by a use of Controlled Dangerous Substances

[3] The judge based these comments on information he had reviewed, which appeared in the presentence report and in a report issued by a court-appointed psychologist. Counsel was given the specific opportunity to take exception to any information contained in the reports. He declined to do so.

as well as a failure to really have proper treatment for some mental health issues." Moreover, the judge acknowledged, as a mitigating factor, the absence of any criminal history. Thus, in accordance with the terms of the plea agreement, Judge DeVesa sentenced respondent to five years of non-custodial probation and ordered him to submit to an updated mental health evaluation, to complete the inpatient drug treatment program, and to take any medication prescribed for him.

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Accordingly, respondent's guilty plea to aggravated assault, in violation of N.J.S.A. 2C:12-1(b)(7), establishes a violation of RPC 8.4(b). Pursuant to that 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 Magid, 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.

As previously noted, the OAE urges a six-month suspension, citing various cases involving domestic violence. The OAE first cited In re Margrabia, 150 N.J. 198, 201 (1997), in which the Court announced that, ordinarily, a three-month suspension is the appropriate measure of discipline for an attorney who engages in an act of domestic violence. Prior to Margrabia, attorneys who had been convicted of acts of domestic violence generally had been reprimanded. See, e.g., In re Magid, supra, 139 N.J. 449, and In re Principato, supra, 139 N.J. 456. In Magid, however, the Court recognized both society's and the New Jersey Legislature's growing intolerance of domestic violence

and warned that future incidents of domestic violence would result in harsher disciplinary sanctions. In re Magid, supra, 139 N.J. at 453. Specifically, the Court stated that discipline greater than a reprimand was appropriate in such cases, announcing that "the Court in the future [would] ordinarily suspend an attorney who is convicted of an act of domestic violence." Id. at 455. Nevertheless, the Court was constrained to reprimand the attorney in Magid because it had "not previously addressed the appropriate discipline to be imposed on an attorney who is convicted of an act of domestic violence." Ibid. In Magid's companion case, the Court repeated its warning to future perpetrators of domestic violence. In re Principato, supra, 139 N.J. at 463.

The attorney in Margrabia was convicted of simple assault. In re Margrabia, supra, 150 N.J. at 200. He received a thirty-day suspended sentence and a two-year term of probation, was ordered to perform 200 hours of community service, and was required to pay $160 in costs and penalties. Ibid. He was also required to attend AA meetings and to complete the People Against Abuse program. Ibid.

We determined that Margrabia should be reprimanded because he had "acknowledged that his conduct was wrong and improper; he ha[d] already fulfilled the conditions attached to his criminal

conviction; and he did not display a pattern of abusive behavior." Id. at 201. The Court disagreed, finding instead that Margrabia had committed his misconduct seven months after the Court's pronouncements in Magid and Principato, and that he was, therefore, on notice of the potential consequences. Accordingly, the Court suspended Margrabia for three months. Id. at 203.

The OAE acknowledged that in 2006, following its decisions in Magid, Principato, and Margrabia, the Court imposed only a censure on an attorney who pleaded guilty to a simple assault of his wife. In re Jacoby, 188 N.J. 384 (2006) (Jacoby I). Although the Court did not issue an opinion in Jacoby I, its facts were somewhat unusual, noted the OAE. Specifically, in that case, the attorney's assault appeared to be an aberration. Moreover, he took immediate responsibility for the assault, returning home the next day to care for his wife, driving her to doctor appointments, and paying for her unreimbursed medical expenses; he paid all of her personal bills, which she had previously paid from her earnings, and continued to pay these personal expenses after she returned to her employment. Immediately following the incident, the attorney sought professional help for his mental illness, including voluntarily entering an anger management program, and exhibited extreme remorse for his behavior. In

addition, Jacoby had been the single parent of three children following his first wife's death more than twenty years earlier and had changed course in his career, becoming in-house counsel to AT&T, so that he could devote sufficient time to the emotional needs of his children, who continued to be dependent on him. Moreover, since the incident of domestic violence, Jacoby and his wife had been in marriage counseling and moved to Washington, D.C. together so that he could continue his employment with AT&T. Finally, Jacoby's reputation, character, and prior good conduct were stellar.

Following Jacoby I, the OAE maintains, other more recent cases involving domestic violence have resulted in suspension. Specifically, in 2008, the Court imposed a three-month suspension on an attorney who punched his girlfriend in the face and then attempted to strangle her. Hours later, he left two voicemail messages on her cell phone, threatening to kill her children and her parents. In re Edley, 196 N.J. 443 (2008). The attorney entered a guilty plea to third-degree criminal restraint.

In 2011, the Court imposed a one-year suspension on the same attorney it had censured in Jacoby I, after he assaulted his wife a second time. In re Jacoby, 206 N.J. 105 (2011) (Jacoby II). Specifically, in the second incident, Jacoby

repeatedly slapped his wife in the face, causing her nose to bleed, and pinned her to the floor, where he held her against her will and threatened to kill her. He was convicted of a felony offense in Virginia and served one year of a three-year prison sentence.

As noted, the OAE also cited cases involving non-domestic assaultive behavior in support of its argument for the imposition of a six-month suspension. First, the OAE cited In re Viggiano, 153 N.J. 40 (1997), for the proposition that discipline from a term of suspension to disbarment is appropriate for attorneys convicted of violent crimes. 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, approached 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. Id. at 1-2. Rather than submit, the attorney began to push and kick the police officers. Id. at 2.

Citing Magid and Principato and noting 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, prior to reinstatement. Id. 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 and issued an order imposing that discipline. In re Viggiano, 153 N.J. 40 (1998).

Next, the OAE cited In re Bornstein, 187 N.J. 87 (2006). In that case, 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 into 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 ordered to pay various fines. Ibid.

We described Bornstein's violent actions as "unprovoked, vicious, and outrageous" and found his conduct to be factually similar to that of the attorney in Viggiano. Id. at 10. We determined to impose a three-month suspension but, due solely to the default status of the matter, enhanced the discipline to six months. Id. at 10-11. The attorney had no disciplinary history. Id. at 1. The Court agreed with our determination and issued an order imposing that discipline. In re Bornstein, 187 N.J. 87 (2006).

The OAE also relied on In re Gibson, 185 N.J. 235 (2011), a case in which 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 arrested the attorney for the summary offenses of public drunkenness and disorderly conduct. Ibid. At the police station, when an officer attempted to handcuff him, the attorney, who was still intoxicated, spat on and hit the officer. Ibid. A 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 the imposition of statutory fines. Id. at

2-3. After multiple appeals of the disciplinary case, the Pennsylvania Supreme Court 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. We made clear in our decision, however, 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 for assaultive criminal conduct, but rather 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." Id. at 12. The attorney had no disciplinary history. Id. at 1-2. The Court agreed with our determination and issued its order imposing that discipline. In re Gibson, 185 N.J. 235 (2005).

In its brief in the instant matter, the OAE also acknowledged In re Nealy, 205 N.J. 264 (2011), as precedent, where only a censure was imposed for violent and assaultive behavior. In Nealy, the attorney was charged with assaulting a federal officer. In the Matter of Walter D. Nealy, DRB 10-224 (November 9, 2010) (slip op. at 4). The charge arose from an incident that occurred when special agents from the United States Department of State, Diplomatic Security Service, went to the attorney's office to interview him and his wife in connection with a federal investigation. Ibid.

On arrival, the agents identified themselves and told the attorney that they wanted to interview him and his wife. Ibid. The attorney became increasingly agitated and aggressive. Ibid. One of the agents informed the attorney that they were leaving and that he should contact them to arrange an appointment for the interview. Ibid.

When the agents began to leave, the attorney followed them to the exit. Id. at 5. His wife then came out of her office and stood between him and the agents. Ibid. The attorney pushed his wife out of the way, at which point one of the agents interceded. Ibid. The attorney then pushed one of the agents against a wall and struck him with his hands and arms. Ibid.

The agents then subdued and restrained the attorney until local police officers arrived and took him into custody. Ibid.

The attorney was accepted into a federal court diversionary program, which he successfully completed. Ibid. The charge was then dismissed, without prejudice. Ibid. The stipulation cited, as mitigation, the fact that no one was seriously injured as a result of the attorney's actions. Ibid. We found the attorney's disciplinary history (a private reprimand, two reprimands, and a three-month suspension) to be an aggravating factor. Id. at 5, 11. Accordingly, we imposed a censure rather than a reprimand. Id. at 11. The Court agreed with our determination. In re Nealy, 205 N.J. 264 (2011).

In summary, the OAE contends that here, given the Court's ever-decreasing tolerance for violent conduct by members of the bar, especially in crimes of domestic violence, a six-month suspension is the appropriate sanction. The OAE urges that we find, as aggravating factors, the fact that the victim was respondent's mother and that he forced her to ingest the prescription pills with the knowledge that she would be harmed by doing so. The OAE submits that we should consider, in mitigation, that respondent was not properly taking his prescribed medication at the time of the incident; his mother and brother recommended treatment rather than a term of

incarceration; he has no prior discipline; he has had no additional contact with law enforcement in the five years since the incident; he timely reported his conviction; and he cooperated with the OAE's investigation.

In turn, in his brief, respondent examines Margrabia, Edley, and Jacoby I, and asserts that a censure is the appropriate discipline in this matter. He attempts to distinguish his conduct from Margrabia's and Edley's, arguing that his violent conduct was aberrant, and further offers the following mitigating factors: that there has been a significant passage of time – more than five years – since his criminal conduct occurred and there have been no additional allegations of unethical or criminal conduct; that he currently resides with his mother (evidencing forgiveness and harmonious co-existence); that as part of his sentence, he completed an intensive, residential drug-treatment program; that, since 2012, he has received and continues to participate in weekly psychiatric treatment; that, although he was never suspended by the Court, he voluntarily ceased the practice of law for the past five years; and that he has no prior discipline. Citing his offered mitigation, respondent contends that his case is most akin to Jacoby I and, therefore, a censure is the appropriate sanction for his conduct.

Finally, respondent cites In re Herman, 108 N.J. 66, 70 (1987) for the proposition that, should we determine that a suspension is the necessary quantum of discipline, his self-imposed suspension from the practice of law justifies a retroactive suspension. However, respondent's reliance on Herman is misplaced, as the Court later held that a respondent's voluntary suspension from the practice of law will not be credited toward a term of suspension. See In re Asbell, 135 N.J. 466 (1994), where the Court stated:

> Respondent further argues that he has already been disciplined adequately for his admitted transgressions because of his voluntary withdrawal from the practice of law. We reject this argument. In [In re Farr, 115 N.J. 231, 238 (1989)], we expressly noted that a voluntary suspension would not be considered a mitigating factor unless imposed by order of this Court. [Citation omitted]. Respondent's voluntary suspension was not pursuant to an order by this Court. Therefore, the period of time that respondent voluntarily suspended himself cannot be considered as a form of discipline.
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> [Id. at 459.]

Here, respondent's conviction for a third-degree crime conclusively establishes a violation of RPC 8.4(b). R. 1:20-13(c)(1). Since the Magid decision in 1995, the New Jersey bar has been on notice that "the Court in the future [would]

ordinarily suspend an attorney who is convicted of an act of domestic violence." In re Magid, supra, 139 N.J. at 455.

A review of the case law since Magid, Principato, and Margrabia leads us to the conclusion that a term of suspension is the proper quantum of discipline in this matter. In Edley (2008) and Jacoby II (2011), the Magid warning was enforced and suspensions were imposed on attorneys who committed acts of domestic violence.

Although respondent seeks to align the facts of his case with Jacoby I, such a comparison misses the mark. Respondent's violent conduct was much more egregious than Jacoby's and committed with the knowledge that it would cause harm to his mother. In fact, as noted by Judge DeVesa, respondent threatened to kill his mother during his assault on her. Moreover, respondent's mental health and substance abuse issues are additional factors of concern, exceeding those present in Jacoby I, where the Court found extraordinary circumstances that justified a departure from the presumptive sanction of a suspension.

Standing alone, the nature of respondent's violent behavior in this matter and the terror inflicted on the victim would warrant a lengthy suspension. Although respondent's criminal behavior was undoubtedly linked to his mental health and

substance abuse issues, it was more egregious than the violent behavior in the censure cases cited by respondent and by the OAE in its summary.

Respondent's conduct, however, must be examined in the context of both aggravating and mitigating factors. The aggravating factors here exist simply in the nature of the crime itself, committed against respondent's mother. In mitigation, respondent entered a guilty plea acknowledging his criminal conduct. His misconduct was directly linked to, although not excused by, both mental health issues and contemporaneous abuse of his prescription medication. Both his mother and brother recognized this link and urged the court to impose treatment and probation on respondent, rather than further incarceration. In addition to admitting his criminal conduct in court, respondent agreed to address the root causes of his behavior by successfully completing a long-term, intensive, inpatient drug-treatment program and undergoing psychological treatment. According to respondent, he continues to participate in psychological counseling to address his mental health and deal with emotional triggers. Over five years have passed since respondent assaulted his mother. She has apparently forgiven him, as they share a home. Finally, respondent has no disciplinary history.

The OAE asserts that respondent's efforts to report his conviction and cooperate with the OAE should 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 respondent was. Also, attorneys in New Jersey have an affirmative obligation, under both R. 1:20-3(g)(3) and RPC 8.1(b), to cooperate with disciplinary authorities. Respondent, thus, will not receive "credit" for fulfilling these professional duties.

On balance, in light of the absence of significant external aggravating factors, as well as the existence of mitigating factors, including the passage of time since respondent's unethical conduct, a three-month suspension is sufficient to protect the public and to preserve confidence in the bar. As additional protective measures, and in light of respondent's history of substance abuse and mental illness, we impose two conditions on respondent's return to the practice of law in New Jersey: (1) prior to his reinstatement, respondent must provide proof of fitness to practice law, as attested to by a mental health professional approved by the OAE; and (2) after his reinstatement, respondent must provide the OAE with quarterly reports documenting his continued psychological and substance abuse counseling, for a period of two years.

Vice-Chair Baugh and Members Hoberman and Singer 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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jae Hoon Park
Docket No. DRB 15-218

Argued: October 15, 2015

Decided: April 15, 2016

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh						X
Clark		X				
Gallipoli		X				
Hoberman						X
Rivera		X				
Singer						X
Zmirich		X				
Total:		5				3

Ellen A. Brodsky
Chief Counsel