

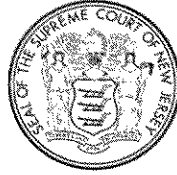
# DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

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December 18, 2015

Mark Neary, Clerk  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625-0962

Re: In the Matter of Philip Alexander Goiran  
Docket No. DRB 15-215  
District Docket No. XIV-2012-0226E

Dear Mr. Neary:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board may deem warranted) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a censure is the appropriate discipline for respondent's violations of 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).

Specifically, on October 25, 2010, in Boulder County District Court, Boulder City, Colorado, respondent pleaded guilty to one count of third-degree assault (knowingly or recklessly causing bodily injury to another person), a Class I misdemeanor. The underlying conduct occurred on September 29, 2010, outside of the home of respondent's in-laws. At that time, respondent and his wife were separated after approximately twenty years of marriage. Respondent's wife resided with her parents along with the couple's dog and cat.

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Respondent believed that an informal agreement between the parties granted him possession of the pets. On the night of the incident, respondent telephoned his father-in-law and informed him of his intention to pick up the dog. His father-in-law replied that he would not give respondent the dog until he had a chance to speak with his daughter, who had gone out for the evening. Nevertheless, shortly after nine o'clock that evening, respondent went to his in-laws' home to pick up the dog. Upon his arrival, he engaged in a verbal confrontation with his father-in-law, which escalated to a physical altercation. Respondent struck and bit his father-in-law as they wrestled to the ground.

On October 25, 2010, respondent was sentenced to probation, was required to attend an alcohol evaluation and treatment program, and was ordered to receive domestic violence treatment. On September 2, 2011, the Presiding Disciplinary Judge approved the Conditional Admission of Misconduct submitted by the Colorado disciplinary authorities and suspended respondent from the practice of law in Colorado for sixty days, which was stayed upon the successful completion of a two-year probation term.

Respondent self-reported to the OAE his guilty plea and resultant Colorado discipline, cooperated with disciplinary authorities in both jurisdictions, and engaged in substantial rehabilitation efforts. He attended ethics courses and domestic violence prevention classes, apologized to his in-laws and his now former wife, and worked to repair his relationship with them.

Clearly, respondent violated RPC 8.4(b). He admitted assaulting his father-in-law, including punching and biting him. Any conduct, private or professional, that reveals a lack of good character and integrity essential for an attorney constitutes a basis for discipline. In re LaDuca, 62 N.J. 133, 140 (1973). Whether the activity arises from a lawyer-client relationship or is wholly unrelated to the practice of law is immaterial. In re Suchanoff, 93 N.J. 226, 230 (1983); In re Franklin, 71 N.J. 425, 429 (1976). Moreover, a criminal conviction is conclusive evidence of an attorney's guilt in disciplinary proceedings. In re Kinnear, 105 N.J. 391, 395 (1987). A criminal conviction or even an indictment for a crime, however, is not a requirement for discipline to be imposed. In re Housbrouck, 140 N.J. 162, 166-67 (1995). Even an acquittal

will not bar discipline arising from the same allegations. In re Rigolosi, 107 N.J. 192 (1987).

In several recent matters involving attorneys committing assault, the Board has taken the opportunity to review the precedent that informs as to the appropriate quantum of discipline in such cases. In these recent matters, the case law has been interchangeably used to argue both for, and against, a bright-line rule in disciplinary cases involving violence committed by an attorney. In some cases, proponents argue that a three-month suspension is required in all cases, while in others, arguments were made for a case-by-case approach.

In a matter sometimes cited to support a bright-line rule for suspension, an attorney received a three-month suspension for his violent actions. In re Viggiano, 153 N.J. 40 (1997). Viggiano 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. Id. at 1-2. Rather than submit, the attorney began to push and kick the police officers. Id. at 2.

The Board imposed a three-month suspension on Viggiano and required that he submit proof of fitness to practice law, prior to reinstatement. Id. at 3. In its decision, the Board 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, the Board 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 the Board's determination.

In another case from 2006, however, the Court censured an attorney following a guilty plea to one count of simple assault. In re Jacoby, 188 N.J. 384 (2006). In that case, during a domestic violence incident, the attorney attacked his wife, dislocating her shoulder. Ibid.

Nonetheless, two recently decided cases clarify any ambiguity as to the appropriate analysis in these matters. The Board recently decided In the Matter of Christopher J. Buckley,

DRB 15-148 (December 15, 2015). There, the attorney negotiated a fee for a taxi ride from the Westside Highway in New York, to his apartment in Jersey City, New Jersey, for \$63. Upon arrival, he told the driver he did not have the money and needed to go to his apartment to get his ATM card. The driver locked the doors, keeping Buckley trapped in the back. Buckley eventually got out of the cab and started to walk away, but the taxi driver followed. Buckley then spun around, punching the driver in the face, breaking his glasses, and causing lacerations.

The Board determined that disciplinary cases involving violent behavior by attorneys require fact-sensitive considerations. Simply put, there is no typical or "baseline" measure of discipline for these cases and the Board declined to declare such a "one size fits all" approach as the one implied in Viggiano. Although in 1997, Viggiano warned the bar that "[n]othing less than a suspension" would likely be imposed for violent behavior, at that time, a censure was not an available quantum of discipline.<sup>1</sup> Nonetheless, the Board voted to impose a censure on Buckley.

Additionally, the Board recently decided In the Matter of Michael P. Rausch, DRB 15-176 (December 15, 2015). After another attorney relentlessly berated Rausch, following the hearing on a motion in a case where the two attorneys were adversaries, Rausch lost his composure in the stairwell of a Pennsylvania courthouse and simultaneously physically forced the other attorney against a wall, and threw several punches to his face. The conduct had occurred more than five years prior to the Board's review of the matter. Rausch had received no discipline in Pennsylvania and successfully completed that State's version of Pre-Trial Intervention, resulting in an expungement of the assault charge against him. Based on the passage of time, Rausch's remorse throughout the process, and the low risk of recurrence of similar conduct, the Board determined to issue a censure. The Board also noted that the discipline in these types of cases should be determined on a case-by-case basis, and that Viggiano does not stand for a bright-line rule, especially in light of the fact that it was decided in 1997, before censure was an available form of discipline.

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<sup>1</sup> R. 1:20-15A, which modified the levels of discipline, including censure, was not adopted until 2004.

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The instant matter, again, illustrates the need for a case-by-case determination. The conduct here, while egregious, is far less serious than the behavior in most assault cases and more in line with that in Buckley and Rausch. Nonetheless, significant discipline is warranted to protect the public, while reminding the bar that violence by attorneys will not be tolerated, whether or not it arises in connection with the practice of law.

In its motion, and in mitigation, the OAE notes that the stress of respondent's marital separation and impending divorce was clearly a factor in the assault, that he has taken considerable steps to reform his conduct, that there has been a significant passage of time since the incident, and that an incident of this nature is highly unlikely to reoccur. Further, respondent has made amends with his former wife and in-laws, has cooperated with disciplinary authorities, self-reported the incident, and has successfully completed all of the conditions of his probation. It appears unlikely that respondent will repeat this behavior. Therefore, based on the foregoing, the Board determined that respondent should be censured.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated June 17, 2015;
2. Stipulation of discipline by consent, dated June 17, 2015;
3. Affidavit of consent, dated June 8, 2015;
4. OAE letter, dated August 4, 2015;
5. Ethics history, dated December 18, 2015.

Very truly yours,

  
Ellen A. Brodsky  
Chief Counsel

Enclosures

EAB/lg

c: See attached list

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Bonnie C. Frost, Chair

Disciplinary Review Board (w/o enclosures)

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Philip A. Goiran, Esq., Respondent