SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-366
District Docket No. XIV-2008-0503E

IN THE MATTER OF

JOHN O. PARAGANO

AN ATTORNEY AT LAW

Decision

Argued: February 18, 2016

Decided: August 4, 2016

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Gerard E. Hanlon 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 Superior Court, Morris County, to the disorderly persons offense of simple assault, in violation of N.J.S.A. 2C:12-1a(1).[1] The OAE recommended a three-month or six-month

[1] That statute provides that a person is guilty of assault if he attempts "to cause or purposely, knowingly or recklessly causes bodily injury to another."

suspension. For the reasons expressed below, we determine to impose a three-month suspension.

In a February 12, 2016 motion, the OAE sought to supplement the record, which we determined to grant. The motion is discussed below.

Respondent was admitted to the New Jersey bar in 1990. He maintains a law office in Union Township, New Jersey. In 2007, respondent, a former municipal court judge, was censured as a result of charges brought against him by the Advisory Committee on Judicial Conduct (ACJC) for committing an act of domestic violence and causing a motor vehicle accident while driving in an intoxicated condition. In re Paragano, 189 N.J. 208 (2007).

On September 2, 2008, a Morris County grand jury returned an indictment against respondent, charging him with second degree aggravated assault and third degree aggravated assault, in violation of N.J.S.A. 2C:12-1b(1) and (7). Thereafter, on September 29, 2009, before the Honorable John B. Dangler, J.S.C., respondent entered a guilty plea to the amended offense of simple assault, a disorderly persons offense.

During his plea allocution, respondent admitted that, on December 4, 2007, he had an argument with his then wife, D.P., which resulted in his "recklessly" pushing and having physical contact with her, from which she suffered a bruise on her knee.

In sentencing respondent, Judge Dangler considered, as

aggravating factors: the gravity of the harm to and vulnerability of the victim, the risk of respondent "re-offending," and deterrence. He balanced those factors against the mitigating factors: that respondent would be ordered to provide community service, that he had no prior "criminal activity;" and that he would respond "favorably" to probation.

Judge Dangler ordered respondent to serve probation for two years; to submit to TASC,[2] drug, and alcohol evaluations; to follow recommendations from those evaluations; to continue with counseling for his mental health and anger management issues until discharged by his therapist; to perform 200 hours of community service; and to pay applicable fines and penalties. The restraining order, which previously had been entered, was to remain in place. The judge cautioned that a violation of the restraining order could result in respondent's imprisonment and other consequences.

The OAE urged us to impose a three or six-month suspension, citing significantly more troubling details of the altercation than appeared both in the presentence report and in the victim impact statement. The OAE further urged us to consider, in aggravation, respondent's prior history of domestic violence, as

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[2] TASC refers to Treatment Assessment Services for the Court, a court program to evaluate and treat criminal defendants with substance abuse issues.

evidenced by the Court's imposition of a censure following the ACJC's formal complaint.

In his brief to us, respondent challenged the OAE's recitation of the facts and its request for the imposition of a term of suspension, maintaining that the OAE had relied on unsworn and unsubstantiated facts. Rather, respondent argued, the record consists only of respondent's conviction for simple assault, based on pushing his wife during the course of an argument, causing her to bruise her knee. Respondent specifically challenged our ability to consider information contained in the presentence report and in the victim impact statement, contending that the information was unsubstantiated and was not subject to cross-examination. Thus, respondent contended, discipline based on allegations and information "outside of the simple assault plea" would violate his right to due process.

Respondent further argued that the passage of time between the incident and the OAE's prosecution of the case warranted dismissal or, in the alternative, punishment less than a suspension. Respondent pointed out that, in 2008, he had made the OAE aware of the criminal charges pending against him and that, in 2009, he had informed the OAE of the disposition of the case. Finally, in 2010, the OAE had been made aware of the disposition

of the appeal.[3] Respondent argued that the OAE's delay in filing the motion for final discipline abrogated the implicit intent of R. 1:20-13(2) for the timely filing of such motions and far exceeded the time goal for the completion of formal hearings set forth at R. 1:20-8.

Respondent argued that the OAE had waited a full six years to initiate disciplinary proceedings against him. During that time, he acquired a mortgage and invested in his legal practice, believing that, with the passage of time, he was free to move on with his life. He asserted that a suspension at this point could cause him to lose his home and would have a devastating impact on his law practice and, therefore, his ability to earn a living.

In his certification, attached to his brief, respondent stated that his divorce from his wife had cost him $250,000 and required him to live with his parents for two years. After the court "awarded" him money, he was able to buy a house and now has a mortgage payment of approximately $3,000 per month. His only income is derived from his law practice. As a result of the divorce, he has no savings on which to rely and he lives paycheck to paycheck. Respondent maintained that, if the motion for

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[3] On September 22, 2010, the Appellate Division affirmed respondent's sentence, finding that it was "not manifestly excessive or unduly punitive and does not constitute an abuse of discretion."

discipline had been timely filed, he would have continued to live with his parents during a period of suspension.

Respondent recognized that all attorneys facing suspensions can make similar arguments about the devastating effects of a suspension, but the OAE's delay in filing the motion placed him in a different position. Specifically, he noted that it has been eight years since the incident and six years since the plea. In the interim, he believed that the filing of a motion was optional and surmised that the matter had been closed. He detrimentally relied on that assumption by buying a house. Thus, citing both In re Verdiramo, 96 N.J. 183 (1984) and In re Stier, 108 N.J. 455, 462 (1987), respondent argued that imposing a suspension at this juncture would be "more vindictive than just."

As previously noted, the OAE filed a motion to supplement the record, which we granted. The OAE's motion included a deed, filed with the Monmouth County Clerk, showing that respondent had purchased the home on December 5, 2009 – approximately two weeks after his attorney's November 19, 2009 letter to the OAE reporting respondent's November 13, 2009 sentencing. The OAE further pointed out that, by letter dated April 1, 2010, respondent reported the results of his motion for reconsideration and that he had filed an appeal of his sentence. Thus, the OAE argued, at the time respondent purchased the property, he could not have known whether the OAE intended to file a motion for final discipline because the

Appellate process had not yet concluded. Therefore, the OAE maintained, respondent's affidavit had been created to mislead us "into considering non-existent mitigating evidence," which should be considered "an extreme aggravating factor."

In reply, respondent submitted a February 15, 2016 certification that did not address the misleading language in his prior affidavit. Instead, respondent blamed the OAE for not giving him any indication that it would proceed to seek the imposition of discipline or his temporary suspension.

Relying on In re Breslin, 171 N.J. 235 (2002), respondent also argued that his 2004 censure was not properly before us because he was never convicted of domestic violence in that incident. Rather, respondent maintained, the Court in Breslin "refused to treat" the findings of the ACJC as conclusive in the subsequent attorney disciplinary proceeding because the Canons governing judicial behavior are more generalized than the RPCs and do not require "precise and specific findings of fact."

Respondent further asserted that there are no aggravating factors and urged us to consider, in addition to the passage of time and the impact that a prospective suspension will have on his life, the following mitigating factors: (1) his good reputation and character;[4] (2) his (alleged) lack of a disciplinary history;

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[4]Respondent submitted eleven character letters from attorneys attesting to his good character, and characterizing him as a

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(3) his service to the community on an early settlement panel; (4) his occasional service to the Central Legal Services; (5) his status as a law-abiding citizen who is well-regarded by his peers; (6) his compliance with the terms of the temporary restraining order; (7) his prompt notification to the authorities of the incident; and (8) his subsequent remedial measures by participating in counseling, fulfilling his obligations of alcohol and drug evaluation, and completing the requirements of his probation.[5]

Respondent maintained that the totality of the circumstances warranted the imposition of a reprimand. However, at argument before us, he contended that, because of the passage of time, he should receive discipline no greater than a censure.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c). In re Gipson, 103 N.J. 75, 77 (1986). Respondent's guilty plea to the disorderly persons offense of simple assault, in violation of N.J.S.A. 2C:12-1a(1),

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(Footnote cont'd)

good man of the highest moral character and ethical standards and someone who is capable, efficient, conscientious, intelligent, compassionate, courteous, professional, reasonable, and candid.

[5] Respondent submitted a May 4, 2010 letter from Nick Carter, LCSW, SAP, to respondent's probation officer, stating that he had provided "psychotherapeutic treatment" to respondent from December 11, 2007 to January 25, 2010 on "a near-weekly basis," which included anger management and alcohol counseling. Respondent was compliant with the treatment recommendations made and successfully completed the course of treatment.

constitutes 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 sanction 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 . . . prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46.

In gauging the suitable measure of discipline in this matter, and contrary to respondent's argument, the presentence report and sentencing transcript are properly before us. See In re Spina, 121 N.J. 378 (1990). In that case, the Court remanded the matter to us "for a statement of any facts, in addition to the conviction itself, that the DRB concluded were relevant on the question of appropriate discipline, based on the written record, the transcript of the plea proceedings, the plea agreement, and 'any documents that the Board finds respondent to have conceded as accurate, including the pre-sentence report and governmental sentencing memorandum . . . .'" Id. at 385.

Thus, although we properly have considered the presentence report, Judge Dangler's sentence, and the factors he weighed in imposing that sentence, we do not recite them here, for various reasons. Notably, however, respondent's conviction of simple

assault (and the very limited facts elicited on the record in support of his guilty plea) provide ample evidence of the nature of his criminal conduct on which to base our recommendation for discipline.

As noted, respondent has relied on Breslin to dissuade us from considering respondent's prior discipline before the ACJC as an aggravating factor. Respondent's reliance on Breslin, however, is misplaced. In Breslin, which was before us on a motion for reciprocal discipline, based on an ACJC determination, the Court determined to conduct a de novo review of the underlying record. It made independent findings and imposed discipline different from the discipline we recommended. The Court remarked in Breslin that "the difference in the standards governing judicial discipline from those governing attorney discipline requires the Court to go beyond the findings of the three-judge Panel that recommended Respondent's removal from the bench and focus comprehensively on the actual evidentiary record." In re Breslin, supra, 171 N.J. at 237.

Here, however, the Court already has reviewed the ACJC's determination and, in a reported and public order, imposed a censure for "engaging in conduct prejudicial to the administration of justice . . . by committing acts of domestic violence and by causing a motor vehicle accident while driving in an intoxicated condition." In re Paragano, supra, 189 N.J. at 208. We are not

imposing discipline on respondent for his conduct in that prior matter. Rather, we are relying on that discipline, already imposed by the Court, as respondent's reported disciplinary history. Thus, respondent's position that he has no disciplinary history is simply inaccurate.

Respondent's conduct in that earlier matter is relevant to our discipline determination here as an aggravating factor. In that matter, respondent's wife, D.P., his then fiancée, had contacted 911 to request the dispatch of police officers to their house. Respondent had been drinking and was very upset. By the time the police officers arrived at their house, respondent had left. The officers observed smashed glassware, tables turned upside down, and various other items smashed and strewn about the residence, as well as a significant amount of respondent's blood in the basement, blood splatter on the doorway, and drops of blood leading to the front door.

D.P. informed the officers that, during and after an evening out, respondent had consumed a significant amount of alcohol and was out of control, frightening her and her daughter. Later that evening, when D.P. got into bed with respondent, whom she believed was asleep, he tried to choke her with his legs, then lifted her and threw her across the room onto the floor.

Although D.P. was injured, she refused medical attention and ultimately declined both to give the officers a statement and to

cooperate with the ACJC because she did not want to jeopardize respondent's position. Respondent was charged with simple assault and criminal mischief.

Before the police arrived at the residence, respondent had driven away while under the influence of alcohol. He was subsequently involved in a motor vehicle accident. When an officer arrived at the scene, respondent was visibly intoxicated and bleeding from his hand, and his chest was covered in blood. Respondent was taken to an emergency room for treatment. A blood sample reading showed that he had a blood alcohol content of 0.165%. Respondent was arrested and charged with N.J.S.A. 39:4-50 for driving while intoxicated and N.J.S.A. 39:4-97 for careless driving.

Under a plea agreement, respondent pleaded guilty to driving while under the influence of alcohol, and the prosecutor recommended the dismissal of the charges of simple assault, criminal mischief, and careless driving.

The ACJC found that respondent's conduct toward D.P. sounded in domestic violence and that it was "inconsequential that the assault charges against Respondent were dropped. By his own admission, he behaved in an egregious and violent manner toward his then-fiancée. The decision not to prosecute him for that conduct does not absolve him."

The ACJC considered respondent's unblemished record, his

contrition, and his willingness to accept responsibility for his actions as mitigating factors, but found that the "particularly egregious nature of his acts of domestic violence and the circumstances of his driving while intoxicated" outweighed the mitigation. The ACJC recommended the imposition of a censure. Respondent ultimately admitted the allegations of the complaint and waived a hearing before the Court. Thus, the Court accepted his waiver and imposed the discipline recommended by the ACJC.

The only issue remaining for determination is the proper quantum of discipline for respondent's misconduct.

Until In re Margrabia, 150 N.J. 198 (1997), attorneys who had been convicted of acts of domestic violence were reprimanded. See, e.g., In re Magid, 139 N.J. 449 (1995), and In re Principato, 139 N.J. 456 (1995). However, in Magid, the Court expressed both society's and the Legislature's growing intolerance of domestic violence and cautioned that, in the future, discipline greater than a reprimand would be imposed. In re Magid, supra, 139 N.J. at 455. Similarly, in Magid's companion case, the Court warned that, henceforth, a suspension ordinarily will be in order. In re Principato, supra, 139 N.J. at 463.

Like respondent, the attorney in Margrabia was convicted of simple assault. Margrabia received a thirty-day suspended sentence and two years' probation, was ordered to perform 200 hours of community service, and was required to attend AA meetings and the

People Against Abuse program.

The Supreme Court found that Margrabia's misconduct had occurred seven months after the decisions in Magid and Principato and that, therefore, he was on notice of the potential discipline. As the Court had warned in those decisions, Margrabia was suspended for three months.

In In re Edley, 196 N.J. 443 (2008), an attorney who entered a guilty plea to third-degree criminal restraint also received a three-month suspension. The attorney had punched and then attempted to strangle his girlfriend in her home following a party, and afterward, left messages on her cell phone threatening to kill her children and her parents.

In 2011, the Court imposed a one-year suspension on an attorney who previously had been censured for similar misconduct — assaulting his wife. In In re Jacoby (II), 206 N.J. 105 (2011), the attorney 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 in Virginia and served one year of a three-year prison sentence. In imposing discipline, we considered the brutality of Jacoby's offense, including his threat to kill his wife, the lengthy prison sentence imposed on him for the attack, and the absence of compelling mitigating factors.

Previously, in Jacoby's first case, the Court censured him,

without issuing an opinion. In that case, the attorney grabbed his wife around the neck, choked her, and threw her into a wall, dislocating her shoulder. In re Jacoby I, 188 N.J. 384 (2006).

There are no compelling mitigating circumstances in this case. Respondent is before disciplinary authorities for a second time, having assaulted the same woman. Unlike Jacoby (II), however, respondent was not convicted of a felony and was not required to serve time in prison. Thus, discipline short of the one-year suspension imposed on Jacoby (II) is warranted.

Although respondent makes a compelling argument about the passage of time, his reliance on In re Verdiramo, supra, 96 N.J. 183, is somewhat misplaced. Verdiramo, who pled guilty to obstruction of justice by influencing a witness, was before the Court on events that occurred more than eight years earlier. The Court remarked that the public interest in proper and prompt discipline was "necessarily and irretrievably diluted by the passage of time" and that disbarment would have been more vindictive than just. Under the "special circumstances" of the case, (Verdiramo already had been temporarily suspended for approximately seven years, an amount of time that greatly exceeded the maximum period of suspension reserved for the most serious offenses that do not warrant disbarment) the Court did not impose additional discipline. Unlike Verdiramo, respondent has not yet suffered any disciplinary consequences from his guilty plea.

Here, respondent incorrectly and improperly assumed that no disciplinary action would result because of the passage of time following his criminal acts. From his faulty assumption, he maintained that, if he is suspended, he will suffer dire financial consequences (inability to pay his mortgage and loss of the investment in his law practice). We note that many attorneys who are suspended from the practice of law face similar adverse financial consequences. Although the OAE's filing of this motion was not timely, respondent received no assurances that he would not be held accountable for his conduct. Thus, we do not factor in our determination of discipline respondent's erroneous assumption that no disciplinary proceedings would be filed.

As noted above, the OAE's supplemental motion urged us to consider respondent's statement in his earlier certification (that he detrimentally relied on the OAE's failure to file a disciplinary action against him) to be an extreme aggravating factor. We agree with the OAE that respondent's statement amounted to a misrepresentation of his alleged reliance on the OAE's delay in seeking discipline. Indeed, at the time respondent purchased his house, the appeal had not yet been resolved.[6] Thus, his argument is, at best, disingenuous.

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[6] It is not the OAE's practice to seek the temporary suspension of an attorney based on his conviction of a crime, which is the subject of a direct appeal. See R. 1:20-13(c)(2).

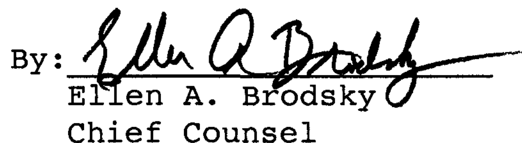
We have weighed the other mitigating (Court ordered community service, glowing character references, participation in anger management) and aggravating factors (the nature of respondent's misconduct in this matter, as well as his disciplinary history for similar conduct, and his misrepresentation to us regarding his alleged reliance on the OAE's delay in seeking discipline in the purchase of his home). We also have considered that, in contrast to Jacoby (II), respondent was not incarcerated for a felony and that a significant amount of time, indeed, has passed since respondent's misconduct.

Under the totality of the circumstances, we determine that a three-month suspension is warranted.

Members Boyer, Clark, and Hoberman voted to impose a six-month suspension, retroactive to the disposition of respondent's direct appeal, September 22, 2010. Member Singer voted to impose a three-month suspension retroactive to the same date.

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

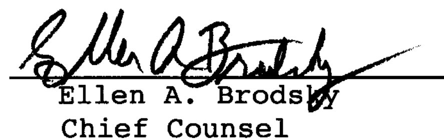
In the Matter of John O. Paragano
Docket No. DRB 15-366

Argued: February 18, 2016

Decided: August 4, 2016

Disposition: Three-month suspension

Members	Six-month retroactive Suspension	Three-month suspension	Three-month retroactive Suspension	Disqualified	Did not participate
Frost		X			
Baugh		X			
Boyer	X				
Clark	X				
Gallipoli		X			
Hoberman	X				
Rivera		X			
Singer			X		
Zmirich		X			
Total:	3	5	1		



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