SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-412
District Docket No. XIV-2008-0345E

IN THE MATTER OF	:
ALFIO S. LANUTO	:
AN ATTORNEY AT LAW	:

Decision

Argued: April 21, 2016

Decided: September 9, 2016

Christina Blunda Kennedy appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance.

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, following respondent's conviction for obstruction of the administration of law, in violation of N.J.S.A. 2C:29-1, and resisting arrest, in violation of N.J.S.A. 2C:29-2, both disorderly persons offenses. For the reasons set forth below, we determined that a reprimand is the appropriate form of

in this case.

Respondent was admitted to the New Jersey bar in 1989. He has no disciplinary history.

As the result of an altercation with Ramsey Township police officers, on July 1, 2008, respondent was arrested and charged with aggravated assault, N.J.S.A. 2C:12-1(b)(5)(a), a fourth-degree crime; obstruction of the administration of law, N.J.S.A. 2C:29-1, and resisting arrest, N.J.S.A. 2C:29-2a(3)(a), a third-degree crime.[1] On February 4, 2010, after three days of trial in Ramsey Township Municipal Court, he was found not guilty of simple assault, but was convicted of obstruction of the administration of law and resisting arrest, both disorderly persons offenses. He was sentenced to pay a $500 fine, plus $33 court costs, a $50 Victims of Crimes Compensation assessment, and a $75 Safe Neighborhood Service Fund assessment. Respondent appealed to both the Law Division and the Appellate Division, both of which affirmed his conviction. State v. Lanuto, 2012 N.J. Super. Unpub. LEXIS 397. The Court then denied his petition for certification. State v. Lanuto, 212 N.J. 288 (2012).

---

[1] Before the trial, the aggravated assault and resisting arrest charges were downgraded to disorderly persons offenses.

The facts underlying respondent's conviction are as follows:

On July 1, 2008, the Ramsey Police Department received an anonymous phone call reporting a "disturbance" and a need for police "intervention" at respondent's home address. The call had been received on the police department's direct line, rather than through its 9-1-1 system. The dispatcher had no reason to believe it was a crank call or false report and dispatched Officers Anthony J. Fiore and Brett Rothenburger, who treated the matter as urgent, and proceeded to the house with their sirens on and lights flashing on each of their patrol cars. The officers were not informed that the call had been received outside of the 9-1-1 system.

When Fiore turned on his car's flashing lights, the video and audio recording system in his patrol car was activated. Due to the configuration of the street, he was unable to park his patrol vehicle in a position so that the video could record events occurring in front of respondent's house. The microphone attached to Fiore's uniform, however, was active and created an audio recording of the subsequent events. According to Fiore, as soon as the officers approached the house, respondent emerged and started "yelling and screaming" at the officers that they had "no right to be here." They tried to explain that they were responding to a "9-1-1" call of a disturbance and they had a

"duty to investigate to make sure that no one is injured or needs our assistance from that residence".

Despite attempts to convince respondent to let them look inside the house to make sure that all of the occupants were safe, respondent continued to act in a belligerent manner. In addition to his wife, the police were concerned for respondent's young son, who had hurried into the house just as Officer Rothenburger arrived. Further, due to respondent's confrontational and agitated behavior, Fiore was concerned that domestic violence may have occurred inside the house. He explained to respondent that the police could not leave the scene without first speaking to respondent's wife to be sure that she was safe.

Eventually, three additional officers arrived on the scene. Two of them, Officers Huth and Rork, approached the house. Having already entered the house, respondent briefly reopened the front door to show the officers that his wife was "fine." As Officer Rork attempted to enter the house, respondent slammed the door on his foot. According to Rork, respondent continued to push forcefully on the door, even after Rork's foot was caught between the door and the jamb. Several officers pushed the door open, freeing Rork's foot, and tried to place respondent under arrest. He resisted by "bending his arms," trying to keep the officers

from "putting his hands behind his back," and trying to "grab" the handcuffs.

At trial before Municipal Court Judge Roy F. McGready, respondent presented no eyewitness testimony, but offered an expert witness who had analyzed the police audiotape. Although he had never visited the premises, the expert testified that, based on the interior configuration of respondent's house and the expert's analysis of the audiotape, the police were inside the house at a point in time when, according to the police witnesses, they were still outside the front door.

Judge McGready acquitted respondent of assault, reasoning that he did not intend to injure Officer Rork. Crediting the testimony of the police witnesses, however, the judge convicted respondent of obstruction and resisting arrest. Respondent filed an appeal from that conviction with the Superior Court, Law Division, Bergen County. On January 24, 2011 after conducting a de novo review of the record from the municipal trial and hearing oral argument, the Honorable Edward A. Jerejian, J.S.C., found respondent guilty of the same charges.

Judge Jerejian found that, from the moment the officers arrived at respondent's home, he was hostile and combative, and began screaming and yelling, and had positioned his body to prevent the officers from entering his home. The officers calmly

tried to explain that they were there in order to ensure everyone was safe. Nonetheless, respondent repeatedly refused to let them in, and continued yelling and screaming at them. The judge also rejected all of respondent's constitutional arguments. On February 28, 2012, the Appellate Division affirmed the conviction following appeal. Subsequently, on October 5, 2012, the Court denied respondent's petition for certification.

On March 21, 2016, respondent sent a letter to the Office of Board Counsel (OBC) requesting that this matter be held in abeyance pending the outcome of a petition for post-conviction relief (PCR) he had not yet filed.[2] Alternatively, respondent asked for a full hearing with the testimony of fact witnesses.

By letter dated March 22, 2016, Chief Counsel informed respondent that, because R. 1:20-13 required the OAE to await the outcome only of direct appeals, we could not grant his request to stay our consideration of the OAE's motion pending his filing of a PCR. As to respondent's request that the matter proceed by way of a full fact-finding hearing, Chief Counsel informed respondent that, pursuant to the Rule, we may determine to remand a matter

[2] We note that respondent submitted this request on the very day his substantive brief was due, after he already had been granted two extensions.

to a trier of fact for a limited evidentiary hearing and report only on a showing of good cause. Thus, respondent was given until March 28, 2016 to file a brief or other statement of good cause.

On March 29, 2016, respondent sent a letter brief to the OBC, again requesting that the matter be remanded for a hearing with testimony of fact witnesses. In his brief, respondent rehashed much of what had been decided below, claiming, however, that certain records and recordings were missing, which created material gaps in evidence. Respondent also argued factors that had been addressed and rejected by both the municipal court and the appellate courts.

In an April 1, 2016 reply, the OAE argued that, based on the more stringent standard of proof in criminal cases, attorneys found guilty of criminal conduct are not permitted to relitigate the issue of guilt, citing In re Conway, 107 N.J. 168, 170 (1987) and In re Yaccarino, 117 N.J. 175, 183 (1989).

Respondent's request for a hearing offered no new facts, and appeared to be nothing more than an attempt to re-litigate his case. Because respondent has failed to show good cause, we determined to deny the motion.

Following a review of the record, we determine to grant the OAE's motion. Respondent's conviction for the disorderly persons offenses of obstruction of the administration of law and

resisting arrest clearly and convincingly establishes that he has committed "a criminal act that reflects adversely on [his] honesty, trustworthiness or fitness as a lawyer," in violation of RPC 8.4(b).

Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that rule, 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). Hence, the sole issue is the extent of discipline to be imposed on respondent for his violation of RPC 8.4(b). 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 (citations omitted). 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).

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse the ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 167, 173 (1997). The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect the attorney's clients. In re Schaffer, 140 N.J. 148, 156 (1995). "To the public he is a lawyer whether he acts in a representative capacity or otherwise." In re Gavel, 22 N.J. 248, 265 (1956). Thus, offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, will, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995).

The discipline typically imposed on attorneys who have been convicted of similar disorderly persons offenses is either an admonition or a reprimand.

In In re Healy, 202 N.J. 131 (2010), the attorney received an admonition for his conviction of obstruction of justice and resisting arrest. Healy, the Mayor of Jersey City, had been visiting a tavern in Bradley Beach with his family. Upon leaving the tavern, he came upon an intoxicated young man causing a disturbance while standing on the hood of a parked car. According to witnesses, Healy was trying to diffuse the situation when the

police arrived to investigate. In the Matter of Jerramiah T. Healy, DRB 09-345 (April 5, 2010) (slip op. at 3). The police later testified that Healy continued to interrupt them while they interviewed witnesses and that he refused to leave the scene of the incident, despite being asked three times to do so. Id. at 3-4. At some point, Healy even warned the officer that he did not know "who [he was] talking to" and should "watch how [he was] talking [to him]." Id. at 4. The officer also testified that Healy was positioned very close to him and put a finger so close to his face, that the officer put his hand up to avoid being poked in the eye. Ibid.

At some point, the officer reached for, and grabbed, the hand that was pointing at him, but Healy violently jerked it away. Healy then accused the officer of knocking over his wife and squared off into a boxing stance against him. Id. at 5. A struggle ensued, lasting several minutes, until Healy was handcuffed and arrested. The officer warned Healy to stop resisting, but he would not cooperate and continued to repeat "[Y]ou're not arresting me." Ibid. Throughout both the criminal and disciplinary matters, Healy expressed a contradictory version of the facts. Id. at 6. Nonetheless, he was convicted and that conviction was upheld on appeal. Id. at 7.

We determined that, although Healy's actions would merit a reprimand, an admonition was appropriate, based on considerable mitigating factors. Id. at 24. We concluded that Healy's motive at the time was to calm a situation that would have otherwise brought serious consequences for the young man on the hood of the car. Further, Healy had an unblemished professional record of thirty-two years. Id. at 23.

Similarly, In re Angelucci, 183 N.J. 472 (2005), the attorney received a reprimand, following his conviction of obstructing the administration of law or other governmental function, a disorderly persons offense. In the Matter of John Scott Angelucci, DRB 04-456 (March 30, 2005) (slip op. at 2). Specifically, Angelucci, whose van registration had expired and against whom there was an arrest warrant, refused to emerge from his house when an officer attempted to serve him with the warrant, and denied ownership of the van parked outside the house. Id. at 3. Ultimately, when three police officers were at the scene, Angelucci resisted arrest and was wrestled to the floor. Ibid. The judge who convicted Angelucci found him "hostile" and "antagonistic" toward the officers, necessitating the use of force. Id. at 5.

In addition, in In re Magee, 180 N.J. 302 (2004), a reprimand was imposed on an attorney who attempted to evade a

police officer's efforts to stop his car, after the officer observed the attorney's erratic driving. Once the officer activated the overhead lights and siren, Magee accelerated to a speed in excess of sixty miles per hour in a forty-mile-per-hour zone. In the Matter of Mark E. Magee, DRB 03-360 (March 31, 2004) (slip op. at 2). After the officer finally was able to stop the car, he detected an odor of alcohol, and observed that Magee's eyes were watery and his speech was slurred. When the officer attempted to handcuff Magee, he refused to release his hand from the car. Id. at 3. Magee pleaded guilty to eluding a police officer, resisting arrest, and driving while intoxicated. Ibid.

In re Lekas, 136 N.J. 514 (1994), too, led to the imposition of a reprimand. There, the attorney was convicted of obstructing the administration of law, a violation of N.J.S.A. 2C:29-1, for interrupting a trial and refusing to sit down or leave the courtroom, when ordered to do so by the judge numerous times. Lekas' improper conduct also included pacing in front of the judge's bench during a trial unrelated to the case in which she was appearing as attorney for one of the parties. In the Matter of Melissa Lekas, DRB 93-341 (February 28, 1994) (slip op. at 4).

Ultimately, a police officer had to escort Lekas out of the courtroom. She struggled against the officer, grabbing onto the pews as she was being led out of the courtroom. Once out, she

attempted to re-enter the courtroom, forcing the officer to bolt the door. Lekas then pounded on the courtroom door. Id. at 5. We characterized her behavior as "defiant and outrageous." Id. at 15.

Here, respondent's conduct is most analogous to Angelucci's. Respondent, like Angelucci, was hostile toward the police; denied them entry to his home, despite their having a reasonable and legal justification for entering; and resisted arrest once the police entered the home. Although respondent has no history of discipline in twenty-seven years at the bar, we see no other mitigation, such as was present in Healy, that justifies the imposition of lesser discipline. Thus, we determine to impose a reprimand.

Member Singer voted to impose an admonition. Member Gallipoli 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 Alfio S. Lanuto
Docket No. DRB 15-412

Argued: April 21, 2016

Decided: September 9, 2016

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Disqualified	Did not participate
Frost			X			
Baugh			X			
Boyer			X			
Clark			X			
Gallipoli						X
Hoberman			X			
Rivera			X			
Singer				X		
Zmirich			X			
Total:			7	1		1

Ellen A. Brodsky
Chief Counsel