SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-419
District Docket No. XIV-2012-0006E

IN THE MATTER OF	
STEVEN H. SALAMI	
AN ATTORNEY AT LAW	

Decision

Argued: May 19, 2016

Decided: September 20, 2016

Jason D. Saunders 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, following respondent's guilty plea to simple assault, in violation of N.J.S.A. 2C:12-1(a)(1).[1] The motion alleges that

[1] "A person is guilty of simple assault if he: (1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another[.]"

respondent's conduct violated RPC 8.4(b) (commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer). For the reasons expressed below, we determine that a censure is warranted.

Respondent was admitted to the New Jersey bar in 2000. He maintains a law practice in Hazlet, New Jersey.

In 2015, respondent was admonished for gross neglect, lack of diligence, and violating the Rules of Professional Conduct. Specifically, while representing a client in a litigation matter, respondent failed to submit the proper filing fee with an answer. He then submitted the fee, but not in a timely fashion, resulting in the rejection of the answer. Respondent failed to seek relief in the matter. In the Matter of Steven H. Salami, DRB 15-106 (May 27, 2015).

On November 17, 2011, respondent entered a guilty plea to a downgraded offense of simple assault, a disorderly persons offense. Specifically, respondent admitted assaulting his former girlfriend, B.W., who, at respondent's sentencing, stated that respondent had bitten her and hit her with a piece of metal, resulting in bruises all over her back and chin.

Respondent, who was represented by counsel, admitted that, by virtue of the guilty plea, he waived his right to trial and understood that the penalties were at the discretion of the

court. He admitted that he "did assault [B.W.] on January 26, 2011 in Hazlet Township," and acknowledged that the other two charges (Simple Assault with a Deadly Weapon and Possession of a Weapon for an Unlawful Purpose) against him were to be dismissed.

At the sentencing, and in support of a non-custodial sentence, respondent's counsel argued that respondent was thirty-six years old, at that time, with no criminal record and was attempting to rectify the situation by voluntarily attending anger management counseling sessions. By that point, he had attended at least eight such sessions.

Counsel characterized the incident as a "boyfriend/girlfriend situation that got a little bit out of hand." Respondent "lost his cool" when B.W. told him that she wanted to see other people. He was "truly sorry that it happened."

The Honorable Thomas F. X. Foley, J.M.C., requested any photographs that had been taken of the victim, which he believed were necessary for sentencing. Respondent's attorney was given the opportunity to object to the submission of the photographs, but specifically declined to do so.

Color photocopies of the pictures of the bruises of various angles of B.W.'s back, wrist, arm, and legs were a part of the record before us. Although not of the best quality, the pictures

show red marks on B.W.'s upper back on both shoulders, scrapes on the front of each ankle and on the left foot, red marks on both calves and what appears to be the lower left arm, red marks near both knees, a significant bruise on the right shin, and distinct teeth marks on B.W.'s wrist.

In imposing sentence, the judge remarked that he had "looked at the obviously horrendous situation as it relates to the beating, essentially, that . . . the victim took."

Focusing on respondent's need to "get himself under control," Judge Foley ordered respondent to pay a $500 fine and other costs; suspended a thirty-day jail term, conditioned on completion of anger management counseling; and required him, within two weeks, to enroll in anger management and to provide the judge with monthly reports from his therapist until the therapist determined that respondent was "under control" and did not require any further sessions.[2]

In his January 28, 2016 brief to us, respondent's counsel pointed out that respondent entered a guilty plea to simple assault for an incident that occurred five years ago; that the disposition took place more than four years ago; and that this

[2] At that time, respondent informed the court that he was living in San Diego, California. The judge, thus, required respondent to provide the court, within two weeks, proof that he had enrolled in a local California program.

was respondent's first and only involvement with the criminal justice system. Counsel further noted that there was no factual basis elicited from respondent about the incident. Rather, he was merely asked whether he assaulted B.W. Thus, counsel maintained, "it is unknown why [respondent] pled as he did or if he had a true understanding of the nature of what he was doing." Counsel accused the OAE of presenting a picture to us of unsworn and unproven facts based on unreliable documentation.

Counsel argued that respondent's due process rights would be violated if we considered B.W.'s unsworn and unsubstantiated allegations. Specifically, counsel contended that to adopt the police reports and B.W.'s version of events would deny respondent his rights of confrontation and cross-examination. To bolster his position, counsel cited the concurrence/dissent in In re Convery, 166 N.J. 298 (2001), in which Justice Zazzali wrote that "[f]undamental fairness requires that we make a decision upon the record as presented. This was a violation of the Hatch Act. That is what was charged, nothing more, nothing less." Id. at 311 (counsel's emphasis).

Counsel further argued that we should consider the length of time between the incident and the motion for final discipline as a mitigating factor warranting dismissal of the motion or, in the alternative, discipline short of a suspension. In support, counsel

cited In re Verdiramo, 96 N.J. 183, 186 (1984), a case in which the Court found that the passage of time warranted serious consideration in respect of the quantum of discipline to be imposed. The Court limited Verdiramo's punishment to the period of his temporary suspension.

Based on the lengthy passage of time and the absence of a factual basis given or sought relating to respondent's simple assault plea, counsel maintained that one can only surmise the actions that led to respondent's guilty plea. Counsel, thus, urged us to dismiss the matter.

The OAE drew similarities between this case and In re Margrabia, 150 N.J. 198 (1997), because the act of domestic violence in each resulted in a conviction of simple assault with the imposition of similar sentences. The OAE, thus, reasoned that similar discipline should be imposed here – a three-month suspension. The OAE recognized, however, that mitigating factors might justify a lesser sanction. The OAE cited respondent's lack of a prior ethics or criminal history, that he successfully completed anger management, and that he promptly self-reported his conviction through his counsel.[3] The OAE also recognized as significant that more than four years have passed since respondent was convicted and

[3] As noted above, respondent was admonished in 2015. His conduct here, however, pre-dated the conduct that led to his admonition.

five years since he assaulted his girlfriend. Since that time, he has not engaged in any additional acts of domestic violence.

On April 27, 2016, we received a supplemental submission from respondent, which included a handwritten note from his New Jersey licensed clinical alcohol and drug counselor, Barry W. Spence, and three letters from respondent's acquaintances, written on his behalf. Spence's March 31, 2016 note stated that he had treated respondent for approximately four months, July through November 2011, that respondent remained engaged and committed to learning healthier ways to deal with his anger, and that "his attitudes and behaviors demonstrated a positive prognosis."[4]

Respondent's colleague, Andrew M. Zapcic, Sr., Esq., referred clients to respondent and commented on his "ability to develop and nurture client relationships based on trust and passion." Zapcic had referred respondent to an addiction counselor.

C. Sam Vassallo Jr., an accountant respondent has known for more than twenty years, related that respondent had moved in with

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[4] We note, but draw no inferences from the fact that, at respondent's November 17, 2011 sentencing, he had informed Judge Foley that he was living in California at that time, yet he produced a note from Spence indicating that he had treated respondent from July through November 2011.

his parents to help them while his father battled pancreatic cancer. Vassallo described respondent as a caring and good son. Vassallo had referred several clients to respondent, and stated that respondent treated them "kindly and professionally."

Respondent's close friend of more than thirty years, Joseph Latona, Jr., remarked that respondent's father's illness affected respondent personally and professionally. He described respondent as a man of integrity with a good work ethic.

Following a review of the record, we determine to grant the OAE's motion.

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 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 our analysis of this case, we have considered the photographs, which were submitted to Judge Foley, without objection, as well as the sentencing transcript, in gauging the suitable measure of discipline. In In re Spina, 121 N.J. 378, 385 (1990) (attorney disbarred for converting a check for his own use), the Court had 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 proceeding, 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."
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> [Id. at 385.]

The Court added

> [w]hen as here, the proceedings are initiated by a motion for final discipline based on a criminal conviction, the ethics authorities and this Court may be required to review any transcripts of a trial or plea and sentencing proceeding, pre-sentence report, and any other relevant documents in order to obtain the "full picture."
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> [Id. at 389.]

Thus, we have considered the gravity of the attack on B.W., as established by the photographs of her injuries, and as corroborated by Judge Foley's remarks and findings.

Counsel's suggestion that respondent did not have "a true understanding of the nature of what he was doing" when he entered

his guilty plea is not supported by the record. At the plea and sentencing, respondent was represented by counsel, and the judge questioned respondent regarding his understanding of the plea. During the plea colloquy, respondent also acknowledged that other serious charges against him were being dismissed. These circumstances do not suggest a lack of awareness or understanding. Indeed, at no time did respondent or anyone in his behalf assert any such impediment to acceptance of the plea. Rather, counsel has offered nothing beyond mere speculation in this respect.

Counsel further argued that, under Convery, respondent's due process rights will be violated if we consider the police reports attached to the OAE's motion. Citing In re Spina, 121 N.J. 378, 389-90 (1990), the Court in Convery determined that, in assessing the measure of discipline to impose, "the background facts and circumstances of the case drawn from pre-sentence reports, plea agreements, and other reliable documentation, are relevant." In re Convery, supra, 166 N.J. 298 at 305.

In Convery, the attorney had entered a guilty plea to a federal misdemeanor of promising employment or other benefits for political activity, in violation of 18 U.S.C. § 600 (The Hatch Act). Id. at 303. Finding that there were compelling mitigating factors, we determined that a reprimand was sufficient discipline for Convery's guilty plea. Ibid. Two Board members dissented from

the majority opinion, stressing that respondent's misconduct, although a misdemeanor under federal law, would support a conviction of bribery under New Jersey law, a second-degree offense. Id. at 304.

Disagreeing with the Board's dissenters, Justice Zazzali noted, in a concurrence/dissent, that there was no verdict or plea to support a finding that Convery had engaged in bribery and, without a complete record on that issue, the Court could not surmise whether Convery's conduct amounted to bribery, as found by the DRB dissenter. Id. 313.

Here, the OAE is not asking us to impose discipline against unproven charges, but rather on the charge of simple assault, to which respondent pleaded guilty. The plea/sentencing transcript and the evidentiary photographs corroborate respondent's plea and constitute the other "reliable documentation" relevant to a determination of discipline, as contemplated under Spina and its progeny. Without these documents, our ability to assess the seriousness of respondent's assault on B.W. would be seriously compromised. In addition, Judge Foley's remarks at sentencing, that he had "looked at the obviously horrendous situation as it relates to the beating, essentially, that . . . the victim took," and the court's direction that respondent seek anger management counseling establish that the conduct was

significantly more than a "boyfriend/girlfriend situation that got a little bit out of hand."

Counsel also argued that the passage of time warrants lesser or no discipline for respondent, relying, in part, on In re Verdiramo, supra, 96 N.J. 183. Verdiramo, however, is not directly apposite. 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 found that the public interest in proper and prompt discipline was "necessarily and irretrievably diluted by the passage of time," and that disbarment at that point would have been more vindictive than just. Verdiramo had already been temporarily suspended for approximately seven years, an amount of time that the Court found greatly exceeded the maximum period of suspension reserved for the most serious offenses that do not warrant disbarment. The Court, therefore, did not impose an additional period of suspension. Id. at 187.

Unlike Verdiramo, respondent has not yet suffered any disciplinary consequences as a result of his guilty plea. Nevertheless, we have considered the passage of time since respondent's conduct in determining a proper sanction. We find the following cases instructive.

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 recognized both society's and the New Jersey 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. 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 Alcoholics Anonymous meetings and the People Against Abuse program. Margrabia, supra, 150 N.J. at 200.

The Court noted that Margrabia's misconduct had occurred seven months after the decisions in Magid and Principato and, therefore, found that he was on notice of the potential discipline. Id. at 202. Consistent with the Court's pronouncement in those decisions, Margrabia was suspended for three months. Id. at 203.

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 then left messages on her cell phone threatening to kill her children and her parents. In the Matter of Henry D. Edley, DRB 08-115 (July 31, 2008) (slip op. at 3-4).

In In re Jacoby, 188 N.J. 384 (2006) ("Jacoby I"), the Court censured the attorney, who had been convicted of simple assault. The Court did not issue an opinion in the matter. Presumably, however, the Court found that the facts and mitigating circumstances warranted an exception from the general rule in domestic violence cases that "ordinarily" a suspension is warranted. In re Magid, supra, 139 N.J. at 455.

Jacoby had grabbed his wife around the neck, choked her, and threw her into a wall. As a result of his attack, his wife suffered a dislocated shoulder requiring six months of physical therapy before she was able to return to work. In the Matter of Peter H. Jacoby, DRB 06-068 (June 6, 2006).

In sentencing the attorney to a period of probation and other penalties and fines, the judge considered that Jacoby had no criminal record, that he and his wife were attending marriage counseling, that he had completed an anger management program

and was "in" psychiatric counseling, and, finally, that he was likely to respond to probationary treatment. Id. at 6.

The attorney, however, did not respond to probationary treatment, as he was again convicted of seriously assaulting his wife.

In 2011, the Court imposed a one-year suspension on Jacoby for, once again, attacking his wife. In re Jacoby, 206 N.J. 105 (2011) ("Jacoby II"). He was guilty of repeatedly slapping his wife in the face, causing her nose to bleed, and pinning her to the floor, holding her there against her will, and threatening 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. In the Matter of Peter H. Jacoby, DRB 10-445 (April 28, 2011) (slip op. at 24).

Under the above cases, a three-month suspension is the starting point for domestic violence offenses. In re Magid, 139 N.J. at 455. The Court in Magid highlighted findings by the New Jersey Legislature that

> [d]omestic violence is a serious crime against society; that there are thousands of persons in this State who are regularly beaten, tortured and in some cases even

> killed by their spouses or cohabitants; that a significant number of women who are assaulted are pregnant; that victims of domestic violence come from all social and economic backgrounds and ethnic groups; that there is a positive correlation between spousal abuse and child abuse; and that children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence. It is therefore, the intent of the Legislature to assure the victims of domestic violence the maximum protection from abuse the law can provide. [N.J.S.A. 2C:25-18].
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> [Id. at 453.]

While we give deference to the Legislature's findings and the resulting Court's decision in Maqid, the question remains, what weight, if any, should we give to the passage of time? Respondent's beating of B.W. occurred on January 26, 2011. He entered a guilty plea to the downgraded offense of simple assault on November 17, 2011. The OAE filed the instant motion for final discipline on December 23, 2015. Thus, approximately four years passed between the time of respondent's guilty plea and the filing of the motion. Given that respondent has no additional acts of domestic violence incidents on his record and that he has engaged in, and, apparently, successfully completed anger management treatment, we determine that a departure from the presumptive three-month suspension is warranted here. Thus, we determine to impose a censure.

Members Gallipoli, Hoberman, and Rivera did not find the passage of time to warrant a departure from the standard measure of discipline for domestic violence cases and, thus, voted to impose a three-month suspension.

Vice-Chair Baugh and Member Zmirich 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 Steven H. Salami
Docket No. DRB 15-419

Argued: May 19, 2016

Decided: September 20, 2016

Disposition: Censure

Members	Censure	Three-Month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh						X
Boyer	X					
Clark	X					
Gallipoli		X				
Hoberman		X				
Rivera		X				
Singer	X					
Zmirich						X
Total:	4	3				2

Ellen A. Brodsky
Chief Counsel