SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-038
District Docket No. XIV-2010-0580E

IN THE MATTER OF	
TODD CLIFFORD SICKLINGER	
AN ATTORNEY AT LAW	

Decision

Argued: May 19, 2016

Decided: November 2, 2016

Jason Douglas Saunders appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper service.

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), following respondent's two guilty pleas to lewdness, in violation of N.J.S.A. 2C:14-4(a), and two guilty pleas to local ordinance violations. We determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1998 and the New York bar in 1999. He has no prior discipline in New Jersey. On September 30, 2013, pursuant to R. 1:28-2(c), his license to practice law was revoked in New Jersey, based on his administrative ineligibility for seven consecutive years.

I. The Point Pleasant Beach Incident

On June 26, 2007, respondent pleaded guilty in Point Pleasant Beach Municipal Court to municipal ordinance 3-21, prohibiting "Nudity, Indecent or Lewd Dress and Exposure," for which he was fined a total of $339 with costs. The only account of respondent's June 1, 2007 actions is contained in the police report of even date by Point Pleasant Beach police officer Matthew Duffy:

> This officer observed a white male subject sitting at the corner of the bar in front of the dance area of the bar with his hand down his shorts and appeared to be masturbating. This officer observed him staring at a group of woman [sic] dancing on the dance floor as he did this. This officer also observed a couple of male bar patrons look at what this subject was doing and appeared alarmed, moving away from him. This officer also observed this subject take his hand out of his shorts when someone appeared to notice what he was doing, then put his hand back when the person moved away.
>
> This officer approached this subject and requested to speak to him outside the main bar area. This officer spoke to this

> subject, who identified himself as Todd C. Sicklinger, in the walkway from the boardwalk to the Tiki Bar. This officer asked Sicklinger if he knew why I wanted to speak with him. He nodded his head stating that he knows that he shouldn't have been masturbating in public like he was. He stated that he is going through a divorce and wanted to relieve some tension. Sicklinger apologized for his actions and asked if he could be given a warning.
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> [OAEbEx.2).[1]

II. The Belmar Borough Incident

On May 24, 2008, respondent was charged in Belmar Borough Municipal Court with lewdness, a disorderly persons offense, in violation of N.J.S.A 2C:14-4a. On July 16, 2008, respondent pleaded guilty in Belmar Municipal Court to an amended violation of Belmar Borough municipal ordinance 16-15, involving fighting and disorderly conduct. He was fined a total of $1,033, including costs.

At sentencing, respondent admitted that, on May 24, 2008, while at a Belmar restaurant and bar known as Connolly Station, he drank "a lot of vodka and a lot of beer" before acting "in an inappropriate manner which offended the people" around him. Respondent's defense counsel characterized respondent's actions

[1] "OAEb" refers to the December 29, 2015 OAE brief in support of the motion for final discipline.

as "terribly inappropriate." The sentencing judge declined to "go into specifics but . . . [respondent has] represented . . . it won't happen again."

The only other account of the events underlying the charge is contained in the May 24, 2008 municipal complaint:

> Within the jurisdiction of this court, perform a flagrantly lewd and offensive act by gratifying the sexual desire of defendant or any other person, knowing or reasonably expecting that the act was likely to be observed by a nonconsenting person who would be affronted or alarmed, specifically by grabbing his penis through his pants and starting to masturbate while on the dance floor at Connolly Station in violation of N.J.S.A. 2C:14-4a.
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> [OAEbEx.3.]

III. The Bradley Beach Borough Incident

On November 16, 2010, respondent appeared in Bradley Beach Municipal Court and pleaded guilty to the disorderly persons charge of lewdness, in violation of N.J.S.A. 2C:14-4a. He was sentenced to one year of probation and a total of $666 in fines and costs. At sentencing, the following colloquy took place:

> [THE COURT]: -- and as we discussed in chambers, there was Officer [William] Major who was outside who observed this situation.
>
> He observed the defendant outside a Quick Chek. He then observed the defendant walk in the Quick Chek. There are no observations of Officer Major of the defendant's actions inside Quick Chek. However, the defendant

quickly exited Quick Chek and, upon exiting the Quick Chek, it was observed again by Officer Major and those observations were that it was apparent that the defendant, although not exposed by way of his penis to the general public, that there was an erection and that he was attempting to masturbate with regards to this.

[RESPONDENT'S COUNSEL]: Underneath his clothing.

THE COURT: Underneath his clothing.

[RESPONDENT'S COUNSEL]: That is correct, your Honor.

THE COURT: There was no per se victim that was calling the police. This was an observation by Officer Major. So, I think that that's important to at least put on the record with regards to this. We don't have a female or any child that is, in fact, indicated that they were affronted by this. No phone calls to the police department, strictly an observation. Not that it excuses the defendant's actions. I don't mean that on the record to show any inference that this Court is accepting the defendant's behavior as an excuse, but I do believe that it is a mitigating factor as it calls into play ethics with regards to this matter; that there was no so-called victim that called and alerted police to this incident.

[RESPONDENT'S COUNSEL]: Thank you, your Honor. We would stipulate to that.

[OAEbEx.8 at 7.]

The account of Officer Major is contained in his official report of the July 22, 2010 incident:

> This officer observed a male subject later identified as Todd Sicklinger walking south through the Quick Check lot. This officer observed Sicklinger's right hand to be down the front of his pants and his hand to be

> stroking his penis as he was walking through the lot. Sicklinger then entered Quick Chek while masturbating. Sicklinger quickly exited the store and began walking east on Park Place Avenue. This officer then stopped Sicklinger at the 500 block of Park Place, for the observed violation. This officer asked for his identification and asked Mr. Sicklinger to have a seat on the curb. Mr. Sicklinger then yelled "[F***] You I will fight you now." This officer advised Mr. Sicklinger to relax and to keep his voice down. This Officer then observed that Mr. Sicklinger's penis was still erect.
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> [OAEbEx.7.]

When two additional policemen arrived as backup, respondent began yelling "[F***] you guys, you are all fat" and, after removing his shirt, "squared off" against them. He continued to challenge them to fight, yelling "Let's go all three of you, I will [f***] you up." Respondent was then placed under arrest for disorderly conduct and escorted to the patrol vehicle. The officers had difficulty securing respondent in the rear of the vehicle, as he refused to sit and attempted to kick them.

Pursuant to a plea agreement, the disorderly conduct charge was dismissed. The sentencing judge, however, placed several conditions on respondent's probationary term, the first of which was total sobriety, as the following colloquy demonstrates:

> So, Counsel, you're an intelligent young man. You presently hold a law degree. So, obviously, you're going to be able to comprehend what I'm telling you. Sobriety means, according to the doctor, any type of

> ingestion of any type of mind-altering substance, alcohol and otherwise. So, I'm not delving into whatever issues you're facing, but I'm telling you right now you'll be now sober and clean of all substances whatsoever other than those prescribed in form and in fact dosages by a treating physician. Do you understand that?
>
> [RESPONDENT]: Yes.
>
> THE COURT: And then, secondly, we need A.A. as mandated by [a] doctor and then, thirdly, continued psychiatric care. I don't know if you'll be able to read my writing. And I need monthly written updates from [a] doctor indicating compliance with all three of these elements. Do you understand that, sir?
>
> [RESPONDENT]: Yes.
>
> THE COURT: If we do not have that, I'll consider this a violation and you're going to be looking at six months in the County Jail. Do you understand that, sir?
>
> [RESPONDENT]: I understand.
>
> [OAEbEx.8 at 13.]

The conditions imposed on respondent were the result of concerns raised by respondent's treating psychologist at the time, Howard D. Silverman, Ph.D. Respondent's defense counsel introduced in evidence Dr. Silverman's November 10, 2010 written report. The sentencing judge was familiar with Dr. Silverman as an expert witness in prior matters, and called him "a trained expert with regards to sexual issues that confront individuals."

Dr. Silverman's report stated that respondent had an alcohol substance abuse problem that only exacerbated his sexual urges, and that respondent needed to "obtain sobriety from all

mood altering chemicals." He suggested that respondent might also benefit from psychotropic medication and should continue psychotherapy.

IV. The Lake Como Incident

On November 24, 2015, respondent pleaded guilty in Lake Como Municipal Court to "doing a lewd/offensive act," in violation of N.J.S.A. 2C:14-4a and was sentenced to two years of probation. He was required to undergo a psychiatric evaluation, was ordered never to return to a business known as Bar Anticipation or its parking lot, and was fined a total of $1,158 with costs. Officer James Woolley's account of the July 28, 2015 incident is contained in the Lake Como complaint:

> Within the jurisdiction of this court, perform [sic] a flagrantly lewd and offensive act by exposing his genitals for the purpose of arousing or gratifying the sexual desire of defendant or any other person, knowing or reasonably expecting that the act was likely to be observed by a nonconsenting person who would be affronted or alarmed, specifically by masturbating in front of 3 female subjects in the parking lot of Bar Anticipation.
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> [OAEbEx.10.]

The prosecutor elicited the following facts from respondent at the plea hearing:

Q. Okay, did you have part of your penis exposed outside of -- you had gym shorts on that day?

A. They were shorts, I'm not sure that they were gym shorts, but they were --

Q. Okay, and there were, you had no underwear under that?

A. Correct.

Q. And with your erect penis, was part of your erect penis exposed outside of your gym shorts?

A. It was visible, but I wouldn't --

Q. But was it out, some part of it outside of the band of the gym shorts or the shorts that you had on?

A. I guess I have to admit to this if I want to go ahead with the --

THE COURT: Look, I mean nobody is forcing you to do anything. I'm not going to force you, Mr. Sicklinger.

[PROSECUTOR]: Just looking for the truth.

THE COURT: But all's I'm looking for is the truth. If you're, the Prosecutor is cutting a deal with you where he's not going to put you in jail. You know as an attorney if you have three prior convictions, --

[RESPONDENT]: I'll admit that, I'll admit that some --

THE COURT: The presumption of non-incarceration is not there.

[RESPONDENT]: -- that some part of it may have been exposed. I can't remember precisely. But I'll admit that may have been the case.

Q. And were you also taking your hand and rubbing your penis while you were walking around in the parking lot of Bar A, your erect penis?

A. Yes.

Q. And were you stimulated by doing that? That felt good to you?

A. Yes.

THE COURT: Well, that, that's masturbation. That's masturbation, Mr. Sicklinger.

Q. And I'll ask one other question. Were there other people around the immediate area, meaning within five to ten feet of you while you were doing this walking around the parking lot, and the Bar A outside area?

A. Yes.

THE COURT: Were that [sic] the three girls you were talking about, Mr. Sicklinger?

[RESPONDENT]: I believe so.

THE COURT: Okay. And you said they were upset. How did you know they were upset?

[RESPONDENT]: I guess someone must have complained.

THE COURT: And then did you see Officer Woodley [sic] respond to you?

[RESPONDENT]: Yes, Officer Woodley [sic] arrested me some time later.

Q. And did you make some statements to Officer Woodley [sic] concerning what you had done that evening?

A. I believe so.

Q And did you also indicate to him that you were bipolar?

A. Yes.

Q. And did you also indicate to him that you can't resist the urge when it comes to you to do these type [sic] of things? Words to that effect?

A. Yes.

[OAEbEx.11 at 15-21 to 17-13.]

In its brief, the OAE described respondent's conduct as "part of a demonstrable ongoing pattern of inappropriate sexual behavior." The OAE cited a number of sex crime cases of varying types and severity before settling on a recommendation for a three-month suspension. The OAE concluded that respondent's pattern of conduct made this case more serious than In re Daul, 196 N.J. 533 (2008), In re Gilligan, 147 N.J. 268 (1997), and In re Pierce, 139 N.J. 433 (1995), three reprimand cases discussed below.

The OAE urged us to base our decision on respondent's two disorderly persons convictions, Bradley Beach and Lake Como. The OAE suggested that the remaining Point Pleasant Beach and Belmar Borough incidents be considered in aggravation, because they involved violations of local ordinances, not criminal convictions. R. 1:20-13(c)(2) provides that motions for final discipline may be filed in criminal and quasi-criminal matters. Although the rule encompasses disorderly persons matters, it does not apply to violations of municipal ordinances.

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). Specifically, the

conviction 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 before us 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 the 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).

In In re Daul, 196 N.J. 533 (2008), a factually similar case, the attorney received a reprimand after being found guilty of a sole violation of N.J.S.A. 2C:14-4a, the lewdness statute at issue here. An adult female reported to Flemington police that a male was masturbating in public. The responding officer was dispatched to a commuter parking lot. There, the victim told the officer that the man had already left the scene in a minivan. The victim, who had been waiting in the commuter parking lot, observed an individual naked but for his socks and a hands-free headset for a cell phone. She observed him masturbating for approximately one minute while looking at her vehicle, after which he entered the minivan and drove away. The victim noted his license plate number. Daul was arrested later

that day at his residence. In the Matter of Christopher L. Daul, DRB 08-171 (September 3, 2008) (slip op. at 10). When considering Daul, we compared it to two reprimand cases, In re Gilligan, 147 N.J. 268 (1997), and In re Pierce, 139 N.J. 433 (1995).

In Gilligan, the attorney, while in his car, requested directions from two girls. While trying to explain the directions, one of the girls noticed that Gilligan had exposed himself and was fondling his "private part." In re Gilligan, DRB 95-320 (July 15, 1996) (slip op. at 2). In Pierce, a twelve-year-old girl was walking alone in her neighborhood on the Sunday of Labor Day weekend, collecting donations for the Pop Warner Cheerleaders. Pierce, who also lived in the area, beckoned the girl from his car, telling her that he had money for her. She approached the passenger door of the car and held out the donation can. Pierce stared at her before dropping in the donation. The girl noticed that Pierce was wearing no clothes and she saw his genitals, specifically his penis. A few minutes later, Pierce returned, stopping his car in front of a house where the girl had just received a donation, and repeated his conduct. In the Matter of James J. Pierce, DRB 94-158 (October 29, 1994) (slip op. at 1-2).

Here, we determine to assess the sanction for respondent's misconduct solely on the 2010 Bradley Beach lewdness conviction for masturbating in a Quick Chek parking lot. We considered the remaining three matters as aggravating factors, as follows.

The Lake Como lewdness conviction occurred in 2015, long after respondent's New Jersey license to practice law already had been revoked.[2] The Point Pleasant Beach and Belmar Borough incidents did not constitute criminal convictions. Because these matters involved violations of local ordinances, they cannot serve as a basis for imposing a sanction in a motion for final discipline.

We consider, however, in aggravation, that respondent has engaged in a pattern of inappropriate sexual behavior, as demonstrated by the Lake Como, Point Pleasant Beach, and Belmar Borough matters.

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[2] R. 1:28-2(c) allows for the exercise of disciplinary jurisdiction only in respect of misconduct that occurred prior to the Order's effective date. RPC 8.5(a) provides that a lawyer not admitted in New Jersey is subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. Here, respondent is also admitted in New York, and, therefore jurisdiction may have been conferred under RPC 8.5(a). The record, however, does not indicate that respondent provided or offered to provide legal services in New Jersey at the time of the Lake Como conviction. We, thus, determine to consider the Lake Como conviction as an aggravating factor.

In Gilligan and Pierce, supra, the complainants were young girls, a factor that, thankfully, is not present here. That minors were not present in these matters was coincidental. After all, respondent had no control over which members of the public might have been present to see his reckless acts. Respondent's case is most analogous to Daul, where the attorney masturbated in full view of a woman waiting for a train, while he stood in a parking lot wearing nothing but a cell phone earpiece and socks. Respondent's misconduct, however, is even more serious than that of the attorneys in Daul, Gilligan, and Pierce, because respondent has been engaging in this reckless behavior for years, despite stern warnings in various municipal courts that his conduct is unacceptable and that it could result in his incarceration.

The four incidents here span a period of eight years, the last one occurring as recently as last summer. For respondent's years-long pattern of inappropriate sexual conduct, and based on respondent's seeming indifference to the seriousness of his actions, we determine that a three-month suspension is warranted.

Finally, we are mindful that the sanction imposed on respondent will not become effective unless and until he is reinstated to practice law in New Jersey. Nevertheless, should

respondent ever seek reinstatement, we require him to provide proof of both sobriety and fitness to practice law, as attested by a mental health professional approved by the OAE.

Member Gallipoli voted for a one-year suspension with the above conditions. Member Singer voted to censure respondent, with the above conditions. 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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Todd C. Sicklinger
Docket No. DRB 16-038

Argued: May 19, 2016

Decided: November 2, 2016

Disposition: Three-month suspension

Members	Three-month Suspension	One-year Suspension	Censure	Did not participate
Frost	X			
Baugh				X
Boyer	X			
Clark	X			
Gallipoli		X		
Hoberman	X			
Rivera	X			
Singer			X	
Zmirich				X
Total:	5	1	1	2

Ellen A. Brodsky
Chief Counsel