

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-043
District Docket No. XIV-2011-0339E

IN THE MATTER OF
YANA CHECHELNITSKY
AN ATTORNEY AT LAW

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Decision

Argued: April 20, 2017

Decided: July 24, 2017

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Lawrence H. Kleiner 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), following respondent's guilty pleas to various charges over a period of years, which constitute a violation of RPC 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects). The OAE recommended a six-month suspension. For the reasons expressed below, we determine that a suspended six-

month suspension and conditions on respondent's practice are warranted.

Respondent was admitted to the New Jersey and New York bars in 2005. She has no history of discipline.

Respondent's appreciable criminal history was fueled by her alcohol problems.

On April 20, 2011, respondent was admitted into the pretrial intervention program (PTI). She had been charged with N.J.S.A. 2C:12-1B(5)(A), aggravated assault on a police officer; N.J.S.A. 2C:12-3A, threatening violence against another (her former husband), and N.J.S.A. 2C:39-5D, unlawful possession of a weapon. Respondent was sentenced to serve thirty-six months of probation; was ordered to pay fines and assessments; and was directed to undergo drug and alcohol evaluation and testing, to attend counseling, to continue in Alcoholics Anonymous (AA), and to participate in Alternative to Domestic Violence counseling (ADV).

On January 23, 2012, respondent entered a guilty plea to an amended charge of creating a dangerous condition, a disorderly persons offense, a violation of N.J.S.A. 2C:33-2A(2). In return for her guilty plea, the court dismissed three complaints, two for assault, and one for cruelty and neglect of a child. On February 1, 2012, the court entered a judgment of conviction and ordered respondent to serve one year of probation to run

concurrently with Pre-trial Intervention (PTI) and to continue treatment.

Thereafter, respondent's PTI was revoked. On April 26, 2012, a Bergen County grand jury returned an eight-count indictment charging respondent with violations of N.J.S.A. 2C:12-3, third degree terroristic threats - threatening to stab or assault her former husband; N.J.S.A. 2C:12-1b(2), third-degree aggravated assault - attempting to cause bodily injury to her former husband with a deadly weapon; N.J.S.A. 2C:39-4d, third-degree possession of a weapon - a knife, for the purpose of using it unlawfully against another; N.J.S.A. 2C:39-5d, fourth-degree possession of a knife for unlawful purposes; N.J.S.A. 2C:24-4a, second-degree abusing or neglecting a child for whom she had assumed responsibility; N.J.S.A. 2C:24-4a, second-degree causing harm to a juvenile by making the juvenile an abused or neglected child; and two counts of N.J.S.A. 2C:12-1b(5)(a), attempting to cause and/or purposely, knowingly, or recklessly causing bodily injury to two police officers while in the performance of their duties.

On August 27, 2012, respondent appeared before the Honorable Patrick J. Roma, J.S.C., Superior Court, Bergen County, and entered a guilty plea to count three, N.J.S.A. 2C:39-4(d), possession of a weapon for an unlawful purpose (third degree) and

count eight N.J.S.A. 2C:12-1(b)5(a), aggravated assault on a police officer (fourth degree).

Respondent admitted that, on December 30, 2010, while under the influence of alcohol, she had an argument with her former husband, grabbed a butcher knife, and threatened him with it. Because she had consumed alcohol, when the police arrived, she "end[ed] up scuffling" with them, and kicked one of the police officers.

At the sentencing hearing before Judge Roma, respondent's attorney pointed out that she had an alcohol problem, but continued to receive counseling. Respondent revealed that she had been married and divorced twice and had two children from two different fathers. She asserted that she had "a horrible second marriage," and chose to remain in a violent relationship, "destroying" herself with alcohol. Respondent maintained that she had paid for her mistakes, including losing custody of her children "for a long period of time." Her participation in various programs helped her to regain joint custody of them.

The prosecutor contended that the revocation of respondent's participation in the PTI program after the additional charges surfaced against her was a significant aggravating factor. The prosecutor added that the plea agreement for the reduced charges in the instant matter had been the result of extensive

negotiations. Considerable efforts were undertaken to ascertain the consequences of respondent's conviction on her law license. The plea was negotiated "specifically with the intention of allowing [respondent] to keep her law license by dismissing the second degree charges" with the understanding that the State would recommend a sentence of 364 days in the county jail.

According to the prosecutor, many of respondent's problems stemmed from her alcohol abuse. The present indictment involved multiple victims, six or seven, "half of which were police officers." One of the officers wrote in the police report that "this was the hardest defendant -- this was the worst situation with a defendant in terms of her inability to cooperate with them and her unwillingness to heed to their authority they've ever experienced."

Judge Roma observed that respondent had received a "very generous plea offer," incarceration in the county jail rather than in a State prison. He noted that the case had been delayed repeatedly to permit the attorneys to research the ethics implications of the plea. The judge remarked, however, that he had little patience for respondent's conduct, which included seven victims, among them police officers, whom she had kicked. He pointed out that there was a limit to blaming her conduct on alcohol and drugs, and problems with her former husband, all of

which did not account for the fact that she had assaulted innocent people.

The judge sentenced respondent to 364 days in the Bergen County jail, three years' probation, fines, continuation in a substance abuse program and, as a condition of probation, participation in ADV or its equivalent.

Respondent and her counsel claimed that they misunderstood the sentence offered under the plea agreement, believing that respondent would receive three years' probation, rather than incarceration. Counsel, thus, asked the judge to delay sentencing, which he refused to do, based on the numerous postponements that had already been granted. The judgment of conviction, thus, was entered on January 29, 2013.

Respondent retained new counsel, who filed a motion for reconsideration of the sentence. On March 1, 2013, among other things, counsel noted that respondent had already served thirty-six days in the county jail. On that day, the judge resentenced respondent to incarceration for an additional twenty-four days, drug and alcohol testing on a weekly basis, continued psychotherapy, and probation until March 2017.

Two years later, on May 29, 2015, respondent was charged in an accusation, with violating N.J.S.A. 2C:12-1b(5)(a), third-

degree aggravated assault on a police officer. According to the accusation:

[O]n or about August 30, 2014, respondent did attempt to cause and/or purposely, knowingly or recklessly did cause bodily injury to [a police officer] and/or did attempt by physical menace to put [the officer] in fear of imminent serious bodily injury, while [the officer] was acting in the performance of his duties while in uniform, or exhibiting evidence of his authority

[Ex.J.]

On May 29, 2015, before the Honorable James J. Guida, J.S.C., Superior Court, Bergen County, respondent entered a guilty plea to the accusation and to a violation of probation. She admitted that, on August 30, 2014, while in Ramsey, New Jersey, she consumed sufficient amounts of alcohol to become intoxicated. Therefore, the police were summoned to the Ramsey Liquors parking lot. While one of the police officers tried to speak to her and to remove her from the scene, she attempted to hit him. As a result of her arrest, respondent violated her probation.

In imposing a sentence, Judge Guida considered that respondent did not cause any serious harm to the officer, did not contemplate causing serious harm to him, and would respond well to probation. The judge found that the mitigating circumstances outweighed the aggravating circumstances and placed her on

eighteen months' probation to run concurrently with the existing probation, imposed fines and penalties, and sentenced her to ten days in the Sheriff's Labor Assistance Program (SLAP), as a condition of the probation.¹

The OAE noted that there are no known cases directly on point that involve elements of domestic violence, assault, threats and intimidation, and public drunkenness. The OAE relied on the following cases in recommending a suspension: In re Korpita, 197 N.J. 496 (2009) (three-month suspension for an inebriated attorney who was pulled over by a police officer for operating his vehicle in a dangerous manner; the attorney identified himself as a judge, and threatened that, if the officer did not issue a ticket for careless or reckless driving, rather than driving while intoxicated, he would no longer support police officers in his courtroom); In re Viggiano, 153 N.J. 40 (1997) (three-month suspension for attorney who was involved in a minor car accident and punched the driver of the other vehicle; when the police tried to restrain him, he pushed and kicked the officers); and In re Gibson, 185 N.J. 235 (2005) (one-year

¹ Under N.J.S.A. 2B:19-5, the SLAP program is a labor assistance program established by the governing body of each county, as a sentencing alternative to incarceration. Violators are able to maintain their jobs and remain with their families while performing supervised work for the county.

suspension for attorney convicted of aggravated and simple assault, disorderly conduct, public drunkenness, and aggravated harassment by a prisoner; following his arrest after a barroom brawl and while being transported to a hospital for treatment, he spat on and hit a police officer).

The OAE added that a single act of domestic violence often results in a three-month suspension, citing In re Margrabia, 150 N.J. 198, 201 (1997) and In re Principato, 139 N.J. 456 (1995), in which the Court underscored the decreasing tolerance for domestic violence. The OAE also highlighted the case of In re Jacoby (II), 206 N.J. 105 (2011), where the attorney received a one-year suspension following an extremely violent encounter with his wife, for which he was convicted of a felony in Virginia.²

Although the OAE initially contended that either a three-month or six-month suspension would reflect the serious and repeated contacts respondent has had with the criminal justice system, at argument before us, the OAE urged us to impose a six-month suspension, citing, as an aggravating factor, respondent's lack of success with alcohol treatment programs. The OAE

² It was the attorney's second offense. In In re Jacoby (I), 188 N.J. 384 (2006), the Court imposed a censure on the attorney for domestic violence.

maintained that the only mitigating factor was respondent's lack of an ethics history, and further argued that

[t]he fact that she did not complete PTI, had multiple criminal charges and contacts, and has a history of assaulting police officers indicates that she lacks the appropriate respect for the administration of justice and that the protection of the public requires that she be suspended from the practice of law and perhaps have some practice controls implemented prior to reinstatement," [alcohol treatment and monitoring]

[OAEb9.]³

Respondent submitted a brief and certification, urging us to impose discipline short of a suspension and advancing several mitigating factors: (1) respondent has an unblemished ethics history; (2) the conduct did not involve the practice of law; (3) she admitted her guilt to both ethics and criminal court officials; (4) she was contrite, as her certification demonstrated; (5) despite the multiple acts, her criminal conduct was aberrational, and resulted from domestic discord and alcohol abuse; (6) the catalyst for her behavior was abated by divorce from her second husband; (7) she was currently sober and had taken her rehabilitation "extremely seriously;" (8) as long as she continued to maintain sobriety, it was "extremely unlikely"

³ OAEb refers to the OAE's January 31, 2017 brief in support of its motion for final discipline.

that she would repeat the conduct; (9) she had "met her disease head-on and is working diligently on a daily basis to assure her sobriety;" and (10) she successfully completed an intensive outpatient program which she voluntarily undertook, and successfully completed her term of probation.

Although respondent admitted her guilt, she contended that a suspension would not serve the public interest and would have a "disastrous" impact on her life, which she has been slowly piecing together.

In her certification, respondent outlined her emigration from Russia, to Israel, and then to the United States at the age of seventeen. She married in 1998, at the end of her freshman year of college, became pregnant her junior year, and divorced her husband the same year. Respondent was employed by the law firm of Nowell, Amoroso, Klein, Bierman, P.C., until 2010 and the Schneck Law Group, LLC (Schneck) until October 2015.

Respondent remarried in 2007 and gave birth to her second child the same year. In 2009, during their second year of marriage, her husband became physically and emotionally abusive. She turned to alcohol.

Respondent's encounters with the law were fueled by alcohol. Her employer, Schneck, continued to support her, but laid her off

in 2015 for financial reasons.⁴ At that point, respondent became sober and attended "meetings." In March 2016, she opened a solo practice in Elizabeth, New Jersey. During the past holiday season, she realized that she could not maintain sobriety on her own and voluntarily enrolled in an intensive outpatient program at Summit Oaks Hospital, which she completed on March 13, 2017.

Respondent apologized for her past conduct, and expressed her embarrassment. She pointed out, however, that she is now facing discipline for actions that occurred prior to her sobriety. Respondent, thus, urged us to impose discipline short of a suspension, because a suspension would be disastrous to her as a sole practitioner in the early stages of building her practice and would prevent her from paying child support and her mortgage. She contended that she is no longer the same person who committed the acts that brought her before us and offered to submit to random testing and monitoring, and to provide proof of her continued sobriety.

⁴ Michael I. Schneck of the firm provided a character letter on respondent's behalf, which was attached to her submission as Exhibit A. Schneck confirmed that respondent was employed by the firm for more than five years, provided meaningful and valuable legal services to the firm's clients, and was a "well-regarded professional who maintains the highest standards of excellence and would be a welcome asset to any law firm."

In addition to Schneck's character letter, and in further support of proof of her rehabilitative efforts, respondent appended to her submission several documents: a March 13, 2017 letter corroborating her successful completion of the Chemical Dependency Intensive Outpatient Program (CDIOP) at Summit Oaks Hospital; a February 6, 2017 letter from the Bergen County Probation Services Division, confirming that respondent met all of the conditions of her three-year probation and that "the case successfully expired on January 24, 2017;" and a March 22, 2017 character letter from Tony Catanzaro, Vice President of Pizzarotti, IBC.

* * *

Following a review of the record, we determine to grant the OAE's motion for final discipline. Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). 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, supra, 139 N.J. 456, 460. Respondent's guilty pleas establish 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 is the extent of discipline to be imposed. 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." Ibid. (citations omitted). Fashioning the appropriate penalty involves a consideration of 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 an ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 167, 173 (1997). Offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995). 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 his or her clients. In re Schaffer, 140 N.J. 148, 156 (1995).

Here, during a four-year period, respondent had four separate encounters with the criminal justice system. Her misconduct, fueled by alcohol, resulted in her attempt to assault her former husband by threatening him with a knife; assault upon police officers; and charges of endangering the welfare of her children, causing her to temporarily lose custody of them. Respondent was given every opportunity to conform her behavior but failed to do so. Her PTI was revoked when she violated probation. Each encounter with the criminal justice system resulted in a requirement of drug and alcohol testing and counseling, and ADV counseling. Clearly, until very recently, respondent remained sober only for brief intervals. The consequences of respondent's inability to remain sober were serious and the discipline for her conduct should reflect the seriousness of her repeated offenses.

In In re Gibson, supra, 185 N.J. 235 (one-year retroactive suspension on a motion for reciprocal discipline), the attorney was an admitted alcoholic. After his arrest, he sought treatment from a licensed psychologist, who opined that Gibson's alcoholism was a substantial causal factor in his misconduct. Gibson sought treatment and continued to attend AA meetings. He remained sober

from December 2000, until at least the ethics proceedings, approximately five years. According to the psychologist, Gibson was "unlikely to suffer a recurrence of the behavior that led to his arrest" so long as he continued to attend AA meetings, received psychological treatment on an as-needed basis, and maintained his support network. In the Matter of Robert Thomas Gibson, DRB 05-050 (June 23, 2005) (slip op. at 4).

Other attorneys who committed violent acts against persons have received varying levels of discipline. See, e.g., In re Viggiano, supra, 153 N.J. 40 (three-month suspension for attorney who punched a driver with whom he was involved in a minor traffic accident; when two police officers arrived, they physically restrained the attorney to keep him from continuing the assault; the attorney then assaulted the police officers by pushing and kicking them; he pleaded guilty to two counts of simple assault; he had been charged with a similar incident the year prior, but had not physically assaulted that driver; the attorney was placed on probation for one year); In re Margrabia, supra, 150 N.J. at 201 (three-month suspension for attorney convicted of simple assault in a domestic violence matter for punching his wife and hitting their three-year-old child during an argument); In re Predham, 132 N.J. 276 (1993) (six-month suspension imposed on attorney who pleaded guilty to contempt of court, terroristic

threats, aggravated assault with a deadly weapon, and possession of a weapon for unlawful purposes in a domestic violence matter; the attorney entered his estranged wife's home, threatened to kill her and her mother, grabbed his wife, ripped a telephone from her hands, and tore her shirt before she escaped, and hit his wife's mother twice with a baseball bat while she tried to escape); and In re Howell, 10 N.J. 139 (1952) (six-month suspension for attorney who pleaded non vult to assault and battery after he had beaten a local newspaper editor with a rubber hose and riding crop).

In an extreme case of domestic abuse, an attorney received a one-year suspension. In In re Jacoby (II), supra, 206 N.J. 105, the attorney 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, 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).

Several recent "road-rage" cases are also instructive. In In re Milita, 217 N.J. 19 (2014), an attorney perceived he was being tailgated and initially exchanged hand gestures with the occupants of the other vehicle. The attorney's conduct escalated when he pulled over to the side of the road, partially emerged from his vehicle, and brandished a knife at the two young men in the other vehicle. He then proceeded to follow the other vehicle through several towns and continued to brandish the knife. In the Matter of Martin J. Milita, Jr., DRB 13-159 (December 3, 2013) (slip op. at 2-3).

When the police arrived at the scene, the attorney initially denied brandishing the knife. He ultimately entered a guilty plea to hindering apprehension, a disorderly persons offense, and two counts of harassment, a petty disorderly persons offense. Id. at 3, 6. He was sentenced to three concurrent one-year periods of probation, 100 hours of community service, and the imposition of fines. Id. at 6.

We determined that a censure was appropriate discipline because, even though the attorney's behavior was menacing, he had no physical contact with the occupants of the other vehicle, he was receiving treatment for psychological and medical issues that contributed to his behavior, he was not actively practicing law

(reducing the concern for the public's protection), and he had no disciplinary history. Id. at 2, 14.

The Court imposed a three-month suspension in In re Collins, 226 N.J. 514 (2016), where the attorney, angered by the actions of another driver, retrieved a baseball bat from his trunk and struck the other driver's vehicle multiple times, breaking the windshield and a side mirror and causing the driver and passenger imminent fear of bodily injury. In the Matter of John J. Collins, DRB 15-140 (December 15, 2015) (slip op. at 3). The attorney did not admit striking either of the victims with his fists or attempting to strike them with the bat, as they had alleged. Ibid.

Although the attorney was charged with aggravated assault, possession of a weapon for an unlawful purpose, and criminal mischief, he entered a guilty plea to two counts of simple assault and one count of criminal mischief, disorderly persons offenses. Id. at 1-2.

Clearly, here, respondent's conduct was not as serious as Jacoby's (one-year suspension) or Predham's (six-month suspension) as she is not guilty of the same type of brutality. Respondent's conduct is more serious than the above three-month suspension cases, however, because of her inability to remain sober. Although respondent has presented proof of her successful

completion of the CDIOP at Summit Oaks Hospital, she has offered no assurances from a mental health professional that, with continued treatment, she will not, once again, commit similar offenses. In fact, her track record suggests otherwise. In addition, respondent's misconduct was not limited to one or two isolated incidents. Rather, she has been the subject of multiple arrests and convictions for violent conduct that has included not only threats and attempted assaults upon her former husband, but also numerous assaults upon law enforcement officers. For these reasons, we determine that a six-month suspension is warranted.

We have considered respondent's considerable efforts toward rehabilitation and the hardships that a suspension may cause at this juncture. We, therefore, determine to suspend the suspension, conditioned on respondent's continued sobriety and good behavior. If, during the period of her suspended suspension, respondent engages in similar conduct that results in her arrest, we recommend that, upon the OAE's filing of a certification with the Court, the Court impose a six-month suspension, without further notice.


We further determine to require respondent to submit to random alcohol monitoring and, for a six-month period, to continue with alcohol treatment and therapy.

We also require respondent to provide to the OAE proof of continued treatment for her alcohol addiction, as well as proof of fitness to practice from an OAE-approved mental health professional within sixty days of the Court's Order herein.

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: 
Eileen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Yana Chechelnitsky
Docket No. DRB 17-043

Argued: April 20, 2017

Decided: July 24, 2017

Disposition: Six-month suspended suspension

Members	Six-month Suspended Suspension	Censure	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli			X
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8		1


Ellen A. Brodsky
Chief Counsel