SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-124
District Docket No. XIV-2016-0321E

IN THE MATTER OF	
NICHOLAS ANTHONY PAGLIARA	
AN ATTORNEY AT LAW	

Decision

Argued: June 15, 2017

Decided: October 10, 2017

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

Respondent waived appearance for oral argument.

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 in Hudson County, New Jersey, to third-degree aggravated assault, contrary to N.J.S.A. 2C:12-1 (b)(7). For the reasons stated below, we determined to grant the motion and impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 2014 and the Florida bar in 2013. He has no history of discipline in New Jersey.

On October 6, 2015, a Hudson County Grand Jury returned an indictment charging respondent with third-degree aggravated assault, in violation of N.J.S.A. 2C:12-1(b)(7);[1] third-degree criminal restraint, in violation of N.J.S.A. 2C:13-2(a); and fourth-degree tampering with physical evidence, in violation of N.J.S.A. 2C:28-6(1).

On March 29, 2016, respondent appeared before the Honorable Mitzy Galis-Menendez, J.S.C., Superior Court of New Jersey, Hudson County, and pleaded guilty to third-degree aggravated assault, admitting that, on April 5, 2015, he attempted to cause significant bodily injury to his wife by punching her and causing her nose to bleed. Respondent was admitted to the pretrial intervention program (PTI). As a condition of the PTI agreement, respondent was ordered to pay restitution of $311.02

[1] N.J.S.A. 2C:12-1(b)(7) provides that a person is guilty of aggravated assault if he "[a]ttempts to cause significant bodily injury to another or causes significant bodily injury purposely or knowingly or, under circumstances manifesting extreme indifference to the value of human life recklessly causes such significant bodily injury."

and to complete anger management training. Although the PTI postponement period was two years, respondent was provided the opportunity to file a motion to terminate PTI after one year of successful compliance with its conditions. Therefore, as of March 29, 2017, respondent became eligible to file a motion to terminate PTI. His probation officer informed respondent that he would recommend that respondent's PTI be terminated. In his brief submitted to us, respondent asserted that he is waiting for the judge to sign the order discharging him from PTI.

The OAE's brief relies on the Weehawken Police Department Report regarding the April 5, 2015 events. Because this report is inadmissible as evidence, we did not rely on it in making our determination. Likewise, respondent's brief in opposition to the OAE's motion, which opposes the factual basis the OAE derived from the police report, too, was excluded from consideration. The remainder of the parties' arguments are included below.

Relying on In re Park, 225 N.J. 609 (2016) and In re Predham, 136 N.J. 276 (1993), the OAE sought a suspension of three or six months.

In Park, supra, a recent domestic violence case resulting in a three-month suspension, the attorney pleaded guilty to third-degree aggravated assault, admitting that he attempted to cause significant bodily injury to his mother by forcing her to

take a quantity of prescription pills. During the violent assault, Park punched his mother and threatened to kill her with a knife. She suffered two broken ribs in the incident. The OAE recommended a six-month suspension, but we determined to impose a three-month suspension. The Court agreed, and required respondent to undergo a mental health screening, and to provide proof of psychological and substance abuse counseling for two years and until further Order of the Court.

In Predham, supra, the attorney was convicted of aggravated assault. He entered his ex-wife's house armed with a baseball bat and told her she was going to die. After making this declaration, he swung the baseball bat at her mother and announced he was going to kill her as well. Finding that such an act showed a pattern of misconduct, we determined to suspend Predham for six months. The Court adopted our recommendation and imposed a six-month suspension.

The OAE argues that in the case at hand, respondent's act of domestic violence was senseless and similar to the conduct in Park and in Predham. Respondent caused injury to a victim who was physically incapable of defending herself.

The OAE posited that respondent's conduct should, likewise, result in a suspension that reflects the seriousness of domestic violence. The OAE suggested that respondent's clean disciplinary

record is the sole mitigating factor, but observed that he was only recently admitted to the bar. Conversely, the OAE advanced the following aggravating factors: respondent caused an injury; he used force; the victim was his wife; and he failed to notify the OAE of his indictment in Hudson County, as required by R. 1:20-13(a)(1).

The OAE maintained that domestic violence is a serious crime and that an aggravated assault conviction should result in a term of suspension. The length of the suspension is dependent on the circumstances of the case, the disciplinary history of the attorney, and a review of the aggravating and mitigating factors. Because respondent's conduct was severe in nature with only slight mitigation, the OAE recommended a three-month or six-month suspension.

Respondent conceded that he should receive discipline, but urged us to impose only a censure. In support, respondent sought to distinguish the cases on which the OAE relied, and cited several cases to support his position that discipline in assault cases should be determined on a case-by-case basis and that the instant matter is akin to cases resulting in a censure.

First, according to respondent, the facts in Predham, supra, are not analogous to the facts here. Predham made terroristic threats, and then committed aggravated assault with

a deadly weapon when he entered his ex-wife's house armed with a baseball bat and said he was going to kill her and her mother. Here, respondent did not use a deadly weapon or make terroristic threats and did not display a pattern of misconduct. Rather, his conduct was situational and aberrational.

Second, respondent argued that Park, supra, also is distinguishable because, unlike the attorney in that case, respondent did not threaten to kill his victim, did not attempt to kill her with any weapons or pills, and did not cause her to suffer any broken bones or lacerations.

Conversely, respondent relied on several cases in support of a censure. He argued that, although the facts here are similar to those of In re Jacoby, 188 N.J. 384 (2006) ("Jacoby I"), the victim in that case suffered a dislocated shoulder, and the attorney still received only a censure.[2] In Jacoby I, the attorney grabbed his wife around the neck, choked her, and threw her into a wall. In the Matter of Peter H. Jacoby, DRB 06-068 (June 6, 2006) (slip op. at 3).

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[2] As discussed below, the attorney in Jacoby later committed another act of domestic violence, resulting in a suspension. In re Jacoby, 206 N.J. 105 (2011) ("Jacoby II").

Next, respondent cites In the Matter of Christopher J. Buckley, DRB 15-148 (December 15, 2015), where we determined that a censure was appropriate for an attorney, who exited a taxi cab without paying for the ride. When the driver followed him, Buckley punched him in the face, breaking his glasses and causing lacerations. We determined that cases involving violent behavior by attorneys require fact-sensitive considerations and that no baseline measure of discipline should exist for such cases.[3]

Respondent further relied on our decision in In the Matter of Michael P. Rausch, DRB 15-176 (December 15, 2015). There, an opposing attorney berated Rausch, following a hearing. Rausch lost his temper in the stairwell of the courthouse and physically forced the other attorney against the wall, punching him several times in the head. In determining to impose only a censure, we considered the low risk of reoccurrence of similar conduct, again noting the need for a case-by-case approach.[4]

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[3] As seen below, however, the Court imposed a three-month suspension on Buckley. In re Buckley, 226 N.J. 478 (2016).

[4] On subsequent review, the Court dismissed the ethics complaint against Rausch. In re Rausch, 224 N.J. 444 (2016).

Respondent further argued that, in In re Goiran, 224 N.J. 446 (2016), a consent matter, the attorney pleaded guilty to one count of third-degree assault when he struck and bit his father-in-law. He, too, received a censure, in part, because of the unlikelihood of reoccurrence. In the Matter of Philip A. Goiran, DRB 15-215 (December 18, 2015).

Finally, respondent argued, in In re Magid, 139 N.J. 449, 452 (1995), an attorney who was convicted of assault when he punched, kicked, and knocked down his girlfriend, received only a reprimand. Considered in mitigation was that the assault was an isolated incident; there was no pattern of abusive behavior; at the time of the assault, the attorney's son was critically ill; Magid's relationship with his girlfriend was a troubled one; and Magid had an otherwise unblemished professional record.

In summary, respondent contended that his guilty plea "did not have a factual basis amounting to attempted significant bodily injury." His ex-wife's injuries did not amount to significant bodily injury or an attempt to cause significant bodily injury because she suffered neither loss of any of her five senses, nor temporary loss of organ or bodily function. See N.J.S.A. 2C:11-1(d). Hence, respondent posited that his ex-wife had injuries that would "at best, amount to the prerequisites

under simple assault (bodily injury), as opposed to aggravated assault (significant bodily injury)."

Respondent argued that his conduct is analogous to that of the attorneys in Rausch and Maqid. As in Rausch, there is a low risk of recurrence, because his divorce has been finalized, and, as in Maqid, this was an isolated incident; there was no pattern of abusive behavior; at the time of the assault, respondent's mother had just been diagnosed with Stage-4 cancer, and his relationship with his then wife was a troubled one.

Finally, respondent advanced several mitigating factors, which, he contends, tip the scales in favor of a censure. Specifically, he asserts that (1) he has an unblemished record; (2) he completed anger management and all other PTI requirements one year early; (3) there is no chance of reoccurrence due to the divorce; (4) there was no pattern of abuse; (5) there was no weapon used and no significant injury to the victim; and (6) the injuries sustained supported only a simple assault. Respondent also offered evidence to support his belief that his wife married him only for her own immigration purposes and that his resistance to assist her in making misrepresentations on her citizenship application led to the altercation.

* * *

Following a review of the record, we determine to grant the OAE's motion. 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 Maqid, supra, 139 N.J. 449, 451; In re Principato, 139 N.J. 456, 460 (1995). Specifically, respondent's 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. R. 1:20-13(c)(2); In re Maqid, 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). Rather, 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).

Ordinarily, and consistent with the Court's pronouncement in In re Magid, 139 N.J. 449 (1995) and In re Principato, 139 N.J. 456 (1995), a three-month suspension is the appropriate measure of discipline for an act of domestic violence. Although the Court imposed only a reprimand on those attorneys, both of whom had pleaded guilty to assault upon their girlfriends, it acknowledged both society's and the Legislature's growing intolerance of domestic violence, and cautioned that "the Court in the future will ordinarily suspend an attorney who is convicted of an act of domestic violence." In re Magid, supra,

139 N.J. at 455 and In re Principato, supra, 139 N.J. at 463. Since then, the Court has almost uniformly done so.

In In re Margrabia, 150 N.J. 198 (1997) the attorney was convicted of simple assault. The attorney admitted that he had struck his wife with a piece of bread and punched her in the arm. He 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. The 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 Jacoby II, supra, the Court imposed a one-year suspension on an attorney who previously had been censured for similar misconduct — assaulting his wife. 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. In the Matter of Peter H. Jacoby, DRB 10-445 (April 28, 2011) (slip op. at 24).

In In re Park, supra, 225 N.J. 609, the attorney pleaded guilty to third-degree aggravated assault, admitting that he attempted to cause significant bodily injury to his mother by forcing her to take a quantity of prescription pills. During the violent assault, Park also threatened to kill his mother with a knife and punched her. She suffered two broken ribs in the incident. The Court imposed a three-month suspension and required the attorney to undergo a mental health screening, and to provide proof of psychological and substance abuse counseling for two years and until further Order of the Court.

In In re Paragano, 227 N.J. 136 (2016), the Court also imposed a three-month suspension on an attorney who pleaded guilty to simple assault. There, the attorney admitted that he pushed his then wife, causing her to suffer a bruised knee. The attorney also had a prior incidence of domestic violence.

Thus, as noted, the Court almost uniformly has imposed suspensions on attorneys guilty of domestic violence. But see, In re Salami, 228 N.J. 277 (2017). In that case, the attorney pleaded guilty and was convicted of simple assault. During his allocution, the attorney admitted simply that he had assaulted his former girlfriend. However, other information developed on the record established that the victim had sustained significant injuries as a result of the assault. That notwithstanding, we recommended, and the Court imposed, only a censure, based on the significant passage of time (four years since the incident and the OAE's filing of its motion for final discipline). In the Matter of Steven H. Salami, DRB 15-419 (September 20, 2016). During that time, the attorney had committed no additional acts of domestic violence and successfully completed anger management treatment. Id. at 16.

Certainly, as respondent argues, the Court has imposed discipline short of a suspension where attorneys have engaged in acts of physical violence. It is true, as well, that we have urged a fact-sensitive, case-by-case approach to discipline in those cases, instead of following a baseline approach. However, those cases are not squarely apposite, as they involve physical violence outside of the domestic violence arena, and do not fall

within the Court's pronouncement in Magid and Principato, as well their progeny.

Although respondent has attempted to factually distinguish the cases relied on by the OAE, particularly, Park and Predham, we cannot accept the facts proffered by either party in this case. Both the OAE and respondent present facts derived from a police report containing unsworn testimony. The factual underpinnings of this matter are simply those available in respondent's allocution.

In that allocution, respondent pleaded guilty to third-degree aggravated assault, admitting that he attempted to cause serious bodily injury to his wife by punching her and causing her nose to bleed. Hence, this case is, as the OAE argues, more in line with Park, supra.

Park pleaded guilty to third-degree aggravated assault, admitting that he attempted to cause significant bodily injury to his mother. Here, by his own express admission, respondent attempted to cause significant bodily injury to his then wife. His denial that his conduct did not constitute aggravated assault is unavailing — he cannot now disavow his guilty plea to that crime. Therefore, the starting point in assessing the appropriate quantum of discipline for respondent is a three-month suspension.

Respondent has argued, in mitigation, factors about his relationship with his ex-wife and submitted certain exhibits to support the contention that she married him solely for immigration purposes. Even if true, such circumstances do not excuse an act of domestic violence. Respondent further claims that his ex-wife was not seriously injured and she refused medical treatment. Again, these allegations cannot mitigate the fact that respondent attempted to cause her significant bodily injury. The fact that he failed in that "attempt" cannot inure to his benefit.

We have, however, considered other mitigating factors that respondent has offered. Specifically, respondent notes that this behavior was aberrational and unlikely to reoccur, and that he has completed PTI and is expected to be released a year early. Nothing in the record contradicts these assertions. He also has noted that, at the time of the incident, he had just learned that his mother was diagnosed with Stage-4 cancer, which placed him under significant emotional distress. However, we do not accept respondent's unblemished history as a mitigating factor, given that he was admitted to the bar in 2014 and was indicted only one year later, in 2015.

In aggravation, respondent failed to report his indictment to the OAE.

In sum, respondent admitted that he assaulted his then wife with the intention to inflict significant bodily injury. Even with his proffered mitigation, respondent's conduct was serious and must be met with the appropriate suspension. For these reasons, we determine that a three-month suspension is appropriate. We further determine to require respondent to undergo psychiatric evaluation prior to reinstatement.

Members Gallipoli and Zmirich voted for a six-month suspension.

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 Nicholas Anthony Pagliara
Docket No. DRB 17-124

Argued: June 15, 2017

Decided: October 10, 2017

Disposition: Three-Month Suspension

Members	*Three-month Suspension*	*Six-month Suspension*	*Did not participate*
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich		X	
Total:	7	2	

Ellen A. Brodsky
Chief Counsel