

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-135
District Docket No. XIV-2016-0646E

IN THE MATTER OF :
 :
LESZEK DOWGIER :
 :
AN ATTORNEY AT LAW :
 :
:

Decision

Argued: June 15, 2017

Decided: October 13, 2017

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

Scott B. Piekarsky 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)(2). On November 14, 2016, in the Superior Court of New Jersey, Middlesex County, respondent entered guilty pleas to eluding a police officer, a third-degree crime, in violation of N.J.S.A. 2C:29-2(b), and driving under the influence (DUI), a motor vehicle offense, in violation of N.J.S.A. 39:4-50(a),

constituting violations of RPC 8.4(b) (commission of criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects).

The OAE and respondent proposed that he should receive a reprimand and be required to provide quarterly reports regarding his continuing treatment for alcoholism. For the reasons set forth below, we determined to grant the motion for final discipline and impose a reprimand, with conditions.

Respondent earned admission to the New Jersey bar in 2011 and the New York bar in 2014. He has no prior discipline.

On November 14, 2016, before the Honorable Dennis V. Nieves, J.S.C., respondent entered guilty pleas to eluding a police officer, a third-degree crime, and DUI, a motor vehicle offense (his second DUI offense). Respondent entered his guilty pleas via an Accusation, thus, voluntarily waiving his right to an indictment by a grand jury. His guilty plea to the crime of eluding was conditional, entered as part of a negotiated plea agreement, whereby the prosecutor agreed to postpone sentencing for that crime to allow respondent to participate in the Pretrial Intervention Program (PTI). Pursuant to the negotiated plea, if respondent successfully completes a three-year term of PTI supervision, which will expire on or about November 13,

2019, the third-degree eluding conviction will be vacated, and the underlying charge will be dismissed.

During his plea allocution before the court, respondent admitted that, on February 10, 2016, he drove a motor vehicle, in Edison, while under the influence of alcohol. At some point, an Edison police officer in a patrol car signaled for respondent to stop, using overhead lights and sirens, but respondent failed to stop his vehicle. In aggravation, the State emphasized that respondent's blood-alcohol level was "exceptionally high" and that he had a prior DUI adjudication.

Respondent informed the court that he suffered from alcoholism; had recently completed a twelve-week treatment program at "High Focus;" was seeing a psychologist; and would continue attending Alcoholics Anonymous meetings. He had been jailed for two days following his arrest. He promised to follow all conditions and recommendations of the PTI program, assuring the court that he was willing to do "everything in [his] power to make sure nothing like this ever happens again." Judge Nieves imposed a sentence of fines and community service on respondent in respect of the DUI charge, but granted his entry into PTI for the eluding charge.

In mitigation, both the OAE and respondent cited his lack of prior discipline. Additionally, respondent offered his self-

reporting of this matter to the OAE and his claimed good reputation and trustworthiness, as set forth in character letters provided as exhibits to his brief to us.

* * *

Following a review of the record, we determine to grant the OAE's motion for final discipline. 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, 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 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 the ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 167, 173 (1997) (citation omitted). 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).

Attorneys who have been convicted of offenses similar to respondent's have received either an admonition or a reprimand. In In re Healy, 202 N.J. 131 (2010), the attorney received an admonition for his conviction for obstruction of justice and resisting arrest. Healy, then the mayor of Jersey City, had been visiting a tavern in Bradley Beach with his family. Upon leaving the tavern, he came upon an intoxicated young man causing a disturbance while standing on the hood of a parked car. According to witnesses, Healy was trying to diffuse the

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

At some point, the officer reached for, and grabbed, Healy's hand, but Healy violently jerked it away. Healy then accused the officer of knocking over his wife and squared off into a boxing stance against him. Id. at 5. A struggle ensued, lasting several minutes, which concluded when Healy was handcuffed and arrested. Although the officer warned Healy to stop resisting, he would not cooperate and continued to repeat "[Y]ou're not arresting me." Ibid. Throughout Healy's criminal court case and before us, he expressed a contradictory version of the facts. Id. at 6. Nonetheless, he was adjudicated guilty and that determination was upheld on appeal. Id. at 7.

We determined that, although Healy's actions would normally merit a reprimand, an admonition was appropriate, based on

considerable mitigating factors. Id. at 24. Specifically, we concluded that Healy's initial motive was to calm a situation that, otherwise, would have brought serious consequences for the young man on the hood of the car. Further, Healy had an unblemished professional record of thirty-two years. Id. at 23.

In In re Lanuto, 227 N.J. 568 (2017), the attorney was reprimanded following his adjudication for both obstructing the administration of law and resisting arrest, disorderly persons offenses. In the Matter of Alfio S. Lanuto, DRB 15-412 (September 9, 2016) (slip op. at 2). Lanuto engaged in an altercation with police officers at his home, following an anonymous call reporting a disturbance and a need for police intervention there. Id. at 3. When police arrived at his residence, he emerged, yelling and screaming that the officers "had no right" to be there. Ibid. Despite the police explanation that they were duty-bound to investigate, pursuant to domestic violence statutes, and could not leave without speaking to his wife and son, Lanuto slammed his front door on an officer's foot. Id. at 3-4.

Several police officers then pushed the door open, freeing the officer's foot, and attempted to arrest Lanuto. Id. at 4. Rather than comply with their instructions, he resisted arrest and grabbed at an officer's handcuffs. Id. at 4-5. Lanuto took

the matter to trial, and, with the benefit of an audio recording of the incident, the municipal court judge found him guilty of obstruction and resisting arrest; that determination was upheld on appeal. Id. at 5-6. Comparing his "hostile and combative" behavior to that of the attorney in Angelucci (examined below), we determined to impose a reprimand.

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

In In re Magee, 180 N.J. 302 (2004), a reprimand was imposed on an attorney who attempted to evade a police officer's efforts to stop his car after the officer observed the

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

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

Ultimately, a police officer had to escort Lekas out of the courtroom. She struggled against the officer, grabbing onto the

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


In our view, respondent's conduct is most analogous to that of the attorney in Magee. Like Magee, respondent temporarily eluded a police officer who had initiated a traffic stop, an indictable crime. Moreover, he, too, was intoxicated during the commission of his crime.

In aggravation, respondent's reckless behavior in this case constituted his second adjudication for DUI. In mitigation, respondent has no history of discipline in six years at the bar, his misconduct stems from alcoholism, and he has offered evidence of his good reputation and trustworthiness. That mitigation, however, is not so compelling as to warrant lesser discipline than that imposed in Magee. We determine, therefore, to impose a reprimand for respondent's misconduct.

As an additional protective measure, and given respondent's admitted battle with alcoholism, we require respondent to submit to the OAE, on a quarterly basis, reports documenting his continued psychological and substance abuse counseling for a period of two years.

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 Leszek Dowgier
Docket No. DRB 17-135

Argued: June 15, 2017

Decided: October 13, 2017

Disposition: Reprimand

| <i>Members</i> | Reprimand | Recused | Did not participate |
|----------------|-----------|---------|---------------------|
| Frost | X | | |
| Baugh | X | | |
| Boyer | X | | |
| Clark | X | | |
| Gallipoli | X | | |
| Hoberman | X | | |
| Rivera | X | | |
| Singer | X | | |
| Zmirich | X | | |
| Total: | 9 | | |


Ellen A. Brodsky
Chief Counsel