SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-228
District Docket No. XIV-2016-0555E

IN THE MATTER OF

TY HYDERALLY

AN ATTORNEY AT LAW

Decision

Argued: October 19, 2017

Decided: December 20, 2017

Joseph A. Glyn 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(c), following respondent's conviction for simple assault (N.J.S.A. 2C:12-1a(1)), in violation of RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects). For the reasons set forth below, we determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1994 and the New York bar in 2004. He maintains a law office in Montclair, New Jersey.

In 1999, respondent was reprimanded, on a motion for reciprocal discipline, based on a two-year suspension imposed by the Judge Advocate General (JAG). The JAG suspended respondent for committing a criminal act that reflected adversely on his honesty, trustworthiness, or fitness to practice as a judge advocate. Specifically, the JAG found that, while in the Navy, respondent had made sexual advances to at least two women who were his legal aid clients, conduct comparable to RPC 8.4(d) (conduct prejudicial to the administration of justice). In re Hyderallly, 162 N.J. 95 (1999).

On June 27, 2015, the Montclair Township Municipal Court issued a complaint-warrant against respondent, charging him with a violation of N.J.S.A. 2C:12-1a(1), which states that a person is guilty of simple assault if he "[a]ttempts to cause or purposely, knowingly or recklessly causes bodily injury to another." The complaint-warrant accused respondent of

committing such an assault on M.C.[1] by "grabbing her by the throat and slamming her into the wall, causing [visible] injury to her neck," and using his hands to push her into the wall.

The Honorable Nicholas S. Brindisi, J.M.C., Montclair Municipal Court, held hearings on the charges on September 19, 2016 and on October 13, 2016. On September 19, 2016, the judge determined to "suspend" the proceedings, based on M.C.'s testimony from which he inferred that respondent may have been guilty of "suborning" a violation of the law, a fourth degree offense. Specifically, respondent had obtained a temporary restraining order (TRO) against M.C. and then spent the night before the hearing at her home.

As to the TRO, Judge Brindisi found that he did not have jurisdiction over the issue and, therefore, referred it to the Essex County Prosecutor's office to investigate whether cohabitation had occurred. The judge was concerned that respondent, as the protected party under the TRO, induced M.C. to cohabit with him, thereby violating the TRO. Rather than declare a mistrial, the judge suspended the testimony, to avoid double jeopardy attaching. At the hearing's continuation, the municipal prosecutor informed the judge that the Essex County

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[1] Pursuant to R. 1:38-3(c)(12), we have not disclosed the identity of the victim.

Prosecutor's Office took "no position" on the violation of the TRO.

In addition to the foregoing, during the first hearing, it became obvious that M.C. did not wish to testify against respondent. At one point, the hearing was paused so that M.C. could take a break; she did not feel well and was reluctant to continue. According to M.C., she was testifying to the best of her ability under "an enormous amount of stress and fear." She was "scared to death." She had not realized that her appearance that day was to participate in a trial. She understood that her appearance was "to drop the charges."

At one point during the hearing, based on the prosecutor's comments, Judge Brindisi directed M.C. to step out of the courtroom. The prosecutor then informed the judge that M.C. had told him that she had been "threatened and pressured not to proceed" with the case.[2]

Despite these issues, the facts established at the September 2016 hearing, supplemented at the October hearing, were that M.C. and respondent were involved in an "on again/off again" dating relationship. On June 26, 2015, M.C. was at

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[2] Based on M.C.'s testimony in the criminal proceedings, we draw the conclusion that respondent's visit the night before was to persuade her to refrain from pursuing the charge against respondent.

respondent's condominium, but had trouble recalling the incident from that night because there had been "a few different incidents." She recalled, however, that they had gotten into an "altercation" because respondent had taken her phone and began calling people from it. There was "physical contact" between the two of them and she tried to "escape" from the condominium. She was at the door when respondent tried to stop her. He threw her against the wall and had his hands around her neck. At one point, she claimed that bruises on her arms were the result "probably" of an accident. She "slipped" while trying to leave. Later, M.C. testified, "[h]e physically pushed – pushed me and tried to choke me and, I guess push[ed] me again." When he pushed her, she fell and hit her arm. She testified that she was very close to the door and almost had a grasp on the handle, but respondent tried to physically restrain her from leaving. According to M.C., respondent was very violent.[3]

Eventually, M.C. escaped from the condominium and called a friend to help her because she was terrified and upset. Her friend encouraged her to contact the police.

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[3] During the October 13, 2016 hearing, M.C. maintained that, previously, when respondent had beaten her, she suffered a concussion, which caused her memory to be "not 100 percent clear."

Several pictures taken by a Montclair Police Officer, the day after the incident, showed the injuries M.C. sustained at respondent's hand. The color photocopies, admitted in evidence, confirm bruising on the left side of M.C.'s neck and jaw and significant bruising on her left arm from the tip of her elbow and part way down her arm.

M.C. testified about another criminal complaint that she had filed against respondent in West Orange but had dismissed "under threat." She further accused respondent of having inappropriate contact with her minor daughter by plying her with alcohol in his home and having inappropriate contact with another underage minor. She was concerned for her daughter's safety.[4]

At the October hearing, M.C. attributed any inconsistencies in her earlier testimony to the fact that she was threatened and fearful. She stated:

> [Respondent] threatened me. And he showed me that he is very powerful and he can make do on his threats. He filed a false police report, had me arrested. I lost my job and my health insurance as a result of it. So I do know that he can make good on his threats.

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[4] Respondent's counsel did not object or ask that these comments be stricken from the record.

> He also offered us $5,000 to -- to just tell everybody I want this dismissed. . . . And so at this point while I am afraid and I realize that my whole life is in his hands it -- it's just -- his manipulation and his behavior is not acceptable.
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> [OAEb,Ex.C338 to 33-21.][5]

Officer Justin Schaub, the Montclair Township police officer who investigated the incident, corroborated M.C.'s version of events in his report. The day after the incident, he observed her injuries and arranged to have them photographed. He stated that M.C. told him that she and respondent had an argument about text messages on her phone. It escalated from a verbal to a physical altercation. After she tried to explain to respondent the content of the text messages, to no avail, she attempted to leave the condominium. Respondent then grabbed her by the neck and pushed her with both hands into the wall, causing her injuries.

Respondent's version of events differed greatly from M.C.'s. He asserted that M.C. became enraged over text messages on his phone from other women. He accused M.C. of taking his phone and using it to call the women and swear at them. He requested that she return his phone and asked her to

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[5] OAEb refers to the OAE's May 22, 2017 brief and appendix in support of the motion for final discipline.

leave. Respondent denied grabbing M.C. by the neck, throwing her against the wall, or assaulting her. Rather, he testified, he was simply trying to fend off her karate kicks. He claimed that he chased M.C. around his apartment. According to respondent, while he was trying to get his phone back from M.C., she was able to make two phone calls: one to his ex-wife, the other to his client. She was "walking or running with the phone in my apartment . . . She was kind of walking around the kitchen as I was walking after her saying '[g]ive me my phone, give me my phone.'" After she finished the first call she made a second call. At that point, she was on the couch in his living room. He was on the couch and "just said, [g]ive me my phone. Give me my phone. What are you doing" . . . I was kind of on my knees."

Respondent admitted that, with respect to a different incident, he went with M.C. to the West Orange Municipal Court where a TRO had been entered against him, in order to get the criminal charges filed against him dismissed. According to respondent, she told the judge in that matter that the assault never happened. He denied threatening M.C. or her daughter, or promising her anything to get the charges dismissed. As to this incident, respondent accused M.C. of self-inflicting wounds to her neck; but conceded that the injuries to her arms

may have occurred when he was trying to block her kicks. He did not recall seeing her fall.

Respondent denied offering M.C. $5,000 to drop the charges, but admitted that he had a "close relationship" with M.C.'s daughters.

Judge Brindisi found that M.C.'s testimony was "very precise and convincing," and, therefore, that the State established, beyond a reasonable doubt, that respondent caused bodily injury to M.C. by grabbing her by the throat, leaving the bruises to her neck depicted in the photographs. The judge further considered the corroborating testimony of the officer who took M.C.'s statement. Judge Brindisi imposed fines and assessments of $414.

On October 27, 2016, respondent appealed Judge Brindisi's ruling to the Superior Court of New Jersey, Essex County, Law Division, seeking reversal of the conviction and the return of the fines and assessments he had paid. A hearing on the appeal took place before the Honorable Martin G. Cronin, J.S.C.

On January 24, 2017, Judge Cronin found that the State had sustained its burden of proof, beyond a reasonable doubt, that respondent committed the offense of simple assault and that his account of self-defense was not credible. On the same day, the judge issued an order finding respondent guilty of

simple assault and ordered him to pay the fines and assessments previously imposed.

The OAE urged us to impose a three-month suspension, based on New Jersey precedent. Further, the OAE noted the absence of mitigating factors, and the presence of aggravating factors. Specifically, the OAE argued that respondent failed to demonstrate remorse or contrition and, previously, had been reprimanded for making sexual advances to two female legal aid clients.

In his letter-brief to us, counsel offered that respondent is remorseful for "the incident" and the injuries that M.C. suffered as the result of his conduct, which was "seemingly" aberrational.

However, counsel maintained, respondent has an explanation for his behavior on the night of the incident – his capacity to think and act appropriately was diminished by his use of Adderall. Respondent's conduct, he argued, did not represent his true character, a factor that counsel asked us to consider in meting out discipline. Counsel urged us to impose discipline less than a suspension. In support, he attached several reports from clinicians, including one from the victim, describing the possible side effects on those patients who take Adderall.

In the alternative, counsel requested that, if respondent is suspended, his law firm be permitted to continue functioning so that his ten employees (five attorneys and five support staff) do not become unemployed. Respondent's law firm, solely owned by him, is known as "Ty Hyderally and Associates." Respondent posits that the experienced, long-term attorneys he currently employs can undertake the responsibilities of the firm and the requirements under R. 1:20-20(e) (notification to the clients of respondent's inability to represent them and the firm's continued representation of them unless they request otherwise, in writing). However, respondent argues, if he is required to remove his name from the firm, the firm could suffer irreparable damage. Counsel, therefore, requested that, if respondent is suspended, his firm be permitted to function under its current name.[6]

Counsel maintained that respondent is well thought of by his peers, family, women, and colleagues, as demonstrated by twelve character letters he submitted. As noted, counsel relied on the letters of M.C., the victim, who is a psychiatric nurse, as well as three clinicians, to conclude that "it is likely that the prescription process and taking of Adderall . . . led to the

[6] We defer to the Court on this issue, as only the Court has the authority to alter the requirements under R. 1:20-20.

behavior at issue," and that the behavior abated since he stopped taking Adderall. For reasons addressed hereinafter, we reject this proffered "explanation."

In addition to attaching the above reports, counsel attached twelve letters from attorneys, respondent's ex-wives, an ex-girlfriend, and business associates either attesting to respondent's good character or thanking him for his legal contributions.

Respondent's counsel submitted a supplemental letter-brief in which he argued that we have the discretion to impose discipline less than a suspension in domestic violence cases. To support this position, he cited three cases, two of which are non-domestic violence cases. In one of the cases, the attorney was provoked by his adversary who "verbally assault[ed] him with obscenities and insults." The attorney was concerned that his adversary would physically assault him and feared for his safety. The attorney, thus, "bull rush[ed]" his adversary and hit him in the face. The Court dismissed the matter. In re Rausch, 224 N.J. 444 (2016).

In In re Buckley, 226 N.J. 478 (2016), the Court suspended the attorney for three months for his guilty plea to simple assault, a disorderly persons' offense. The attorney punched a

taxi driver in the face after the driver pursued him when he failed to pay his fee. We had determined to impose a censure.

Finally, counsel cited In re Salami, 228 N.J. 277 (2017), a domestic violence case. The Court agreed with our determination that a censure was appropriate discipline based on mitigating factors: the significant passage of time between the attorney's guilty plea and the OAE's filing of a motion for final discipline; the absence of subsequent acts of domestic violence incidents by the attorney; and his successful completion of anger management training. None of these mitigating factors are present here.

Finally, counsel included all of the character letters he previously submitted, and two additional letters written by respondent's female employees.

* * *

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

A criminal conviction is conclusive evidence of guilty in a disciplinary proceeding. R. 1:20-3(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Respondent's conviction of simple assult 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 an 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).

Respondent's criminal conviction is binding, cannot be collaterally attacked, and was well-supported by the photographs of M.C.'s injuries, the police officer's testimony and report, and M.C.'s testimony. The transcript of the criminal proceedings revealed that respondent assaulted M.C. on more than one occasion. Yet, his influence over her was ever-present, as is evident by M.C.'s reluctance to testify against respondent in the criminal proceedings. Although M.C., the victim of the assault, wrote an e-mail on his behalf, claiming that Adderall caused his irritability and manic behavior on the night of the incident, the record contained no facts to support that conclusion.

Indeed, respondent made no attempt to present this "explanation" below. Rather, he vigorously defended the charges, and appealed his conviction, on the basis that it was M.C. who was the aggressor, and that she had self-inflicted her injuries — not that he had assaulted her while under the influence of a poorly-prescribed drug. Thus, respondent's

proffered explanation was not tested by cross-examination or otherwise.

Moreover, nowhere in the various medical submissions is there any indication as to who prescribed the medication, when it was prescribed, and whether respondent had been taking Adderall and/or was under its influence at the time of his assault on M.C.

In our view, respondent's submissions fall far short of the requisite standard – that the Adderall caused his violent actions, to a reasonable degree of medical probability – to establish either a defense or mitigation. Again, such proofs should have been submitted at the criminal hearing. Even at this time, respondent could file a petition for post-conviction relief to address this issue. He has not. In this context, we determined to accord no weight to respondent's after-the-fact "explanation." Thus, we may consider only "relevant evidence in mitigation that is not inconsistent with the essential elements of the criminal matter for which the attorney was convicted." R. 1:20-13(c)(2).

Respondent has presented no mitigating factors. Indeed, he did not accept responsibility for his conduct, or express any remorse for the injuries he caused M.C. until these ethics

proceedings arose. Thus, we afford little weight to his expression of remorse.

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 expressed 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, supra, at 200. 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. Ibid.

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. 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), the Court censured the attorney, without issuing an opinion. 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).

The sentencing judge considered that Jacoby had no criminal record, he was likely to respond to probationary treatment, he and his wife were attending marriage counseling, he had gone through an anger management program, and was "in" psychiatric counseling. The judge, thus, imposed a one-year period of probation, fines, and penalties. Id. at 6.

Sadly, however, Jacoby once again, was convicted of seriously assaulting his wife. In 2011, the Court imposed a one-year suspension on Jacoby for the subsequent attack on his wife. In In re Jacoby, 206 N.J. 105 (2011), 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, 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, thus, a three-month suspension is the starting point for domestic violence offenses. In re Magid, 139 N.J. at 455.

More recently, however, in In re Salami, 228 N.J. 277 (2017), the Court departed from the presumptive three-month suspension in domestic violence cases and imposed a censure on the attorney. Salami pleaded guilty to simple assault of his former girlfriend by biting her and hitting her with a piece of metal, which resulted in bruises over her back and chin. In the

Matter of Steven H. Salami, DRB 15-419 (September 20, 2016) (slip op. at 2). Although we recognized that a three-month suspension was generally imposed for one instance of domestic violence, we were persuaded that the significant passage of time, more than four years from the date of the incident to the OAE's filing of a motion for final discipline, warranted a departure. We also gave great weight to the facts that Salami had not been involved in any further acts of domestic violence, and he had engaged in and successfully completed anger management treatment. In consideration of these mitigating factors, we voted to impose only a censure. Id. at 16.

Unlike the Salami case, here, respondent did not proffer any compelling mitigation: the passage of time here is not a factor, the number of times respondent assaulted M.C. is not clear, and he did not engage in anger management therapy. Moreover, during the criminal proceedings, respondent did not accept responsibility for his conduct, maintaining that M.C. sustained the injuries while he was attempting to defend himself against her kicks and, alternatively, that they were self-inflicted. Nor did respondent present any mitigation during those proceedings. Now, before us, more than a year later, respondent presents only a speculative claim of an adverse reaction to Adderall, which he may or may not have been

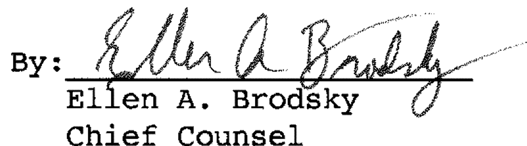
taking at the time in question. Finally, we consider, in aggravation, respondent's prior discipline for making inappropriate sexual advances to, at least, two women who were his legal aid clients. Based on the foregoing, we determine that a three-month suspension is warranted.

We further determine to require respondent, prior to his reinstatement, to submit proof to the OAE of successful completion of anger management counseling, as attested to by an OAE-approved mental health professional.

Members Gallipoli and Zmirich voted to impose a six-month suspension, along with the same conditions for reinstatement. Vice-Chair Baugh and Member Boyer 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

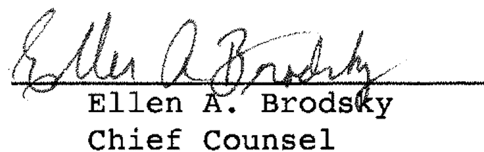
In the Matter of Ty Hyderally
Docket No. DRB 17-228

Argued: October 19, 2017

Decided: December 20, 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:	5	2	2



Ellen A. Brodsky
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