

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-451
District Docket No. XIV-2016-0569E

IN THE MATTER OF
NEIL S. BHATIA
AN ATTORNEY AT LAW

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Decision

Argued: March 15, 2018

Decided: June 22, 2018

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 the Superior Court of California, to having violated California Penal Code § 242, misdemeanor battery. The OAE recommends either a censure or a three-month suspension. For the reasons stated below, we determined to impose a six-month suspension.

Respondent was admitted to the New Jersey bar in 2003 and the New York bar in 2004. He has no history of discipline.

Respondent has been ineligible to practice law since August 28, 2017, due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund). He is also ineligible due to non-compliance with continuing legal education requirements.

On August 23, 2016, respondent pleaded no contest in the Superior Court of California, before the Honorable Philip J. Moscone, to a violation of California Penal Code § 242, misdemeanor battery. His attorney, Maximilian John Mizono, waived respondent's appearance and entered the plea of no contest on respondent's behalf. Judge Moscone confirmed that Mizono had explained to respondent that a plea of no contest was the functional equivalent of a guilty plea, and that a "finding of guilt" would be rendered.

Mizono stipulated to the facts as articulated in Police Report Number 160-208-744.1. Judge Moscone determined that the police report contained a sufficient factual basis for him to accept respondent's plea, and found that respondent had been properly advised of his rights, voluntarily and intelligently waived his rights, and assented to permitting Mizono to enter his guilty plea in absentia.

The police report filed in the incident, which was included in the record before us, served as the sole source of the factual basis for respondent's plea. The report itself, however, is deemed confidential by virtue of California Government Code Section 6254. Indeed, even the sentencing court made no specific reference to the facts contained therein. Although we have relied on those facts to reach our determination, we have similarly refrained from any such specific reference. We note only that, as set forth in the OAE's brief, and as indicated by the caption of the criminal complaint filed against respondent by the San Francisco District Attorney, respondent's conviction was based on an incident of domestic violence.¹

On the same day as his plea, the court sentenced respondent to three years of "informal probation" with fifty-two weeks of assigned anger management to be monitored by the pretrial division. Respondent was also required, as a condition of probation, to serve one day in the county jail, and to pay both a \$40 operation fee and a \$30 criminal conviction assessment. A "no harass" order was served on respondent through counsel.

The OAE argues that the instant matter is similar to In re Margrabia, 150 N.J. 190 (1997), both in respect of the act of

¹ We are submitting the report to the Court under separate confidential cover.

domestic violence that formed the basis of the conviction and the sentence imposed. Margrabia assaulted his wife by striking her in the face with a half-loaf of bread and then punching her in the arm. Margrabia pleaded guilty to simple assault and was sentenced to thirty days in jail, suspended, and a two-year term of probation, conditioned on community service and attendance of Alcoholics Anonymous and People Against Abuse programs.

In Margrabia, we recommended a reprimand, instead of a suspension, given that Margrabia acknowledged that his conduct was wrong, had already fulfilled the conditions of his sentence, and did not display a pattern of abusive behavior. The Court, however, suspended Margrabia for three months, confirming that, ordinarily, a suspension is the appropriate measure of discipline for an attorney who engages in an act of domestic violence. Id. at 203.

Despite its reliance on that case, the OAE posits that, here, a three-month suspension would otherwise be the appropriate discipline; however, it offers a number of mitigating factors that arguably support a less severe sanction. Specifically, respondent has no ethics or criminal history, promptly reported his conviction, and provided documents in connection with the ethics investigation. However, because the OAE timely filed the instant motion, it argued, the passage of

time was not a mitigating factor in this case, as it had been in In re Salami, 228 N.J. 277 (2017).

Nevertheless, the OAE argued that any act of domestic violence is inexcusable and troubling, and urged us to impose either a censure or a three-month suspension.

* * *

Following a review of the record, we determined to grant the OAE's motion for final discipline. 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). Respondent's conviction of misdemeanor battery 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, 139 N.J. at 451-52; In re Principato, 139 N.J. at 460.

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and the respondent. "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. 165, 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). "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).

Ordinarily, and consistent with the Court's pronouncement in In re Maqid, 139 N.J. 449 and In re Principato, 139 N.J. 456, 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, 139 N.J. at 455 and In re Principato, 139 N.J. at 463. Since then, the Court has almost uniformly done so.

In In re Margrabia, 150 N.J. 198, the attorney was convicted of simple assault. As noted above, the attorney admitted that he had struck his wife with a half-loaf of bread and punched her in the arm. 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 In re Jacoby, 206 N.J. 105 (2011) (Jacoby II), 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, 225 N.J. 609 (2016), 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 mental health screening, and to provide proof of psychological and substance abuse counseling for two years and until further Order of the Court.

More recently, 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 incident 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) (attorney who pleaded guilty to, and was convicted of, simple assault received a censure; although, during his allocution, the attorney admitted simply that he had assaulted his former girlfriend, other evidence in the record established that the victim had sustained significant injuries as a result of the assault; we recommended, and the Court imposed, only a censure, based on the significant passage of time (four years between the incident and the OAE's filing of its motion for final discipline); during that time, the attorney had committed no additional acts of domestic violence and had successfully completed anger management treatment). In the Matter of Steven H. Salami, DRB 15-419 (September 20, 2016). (slip op. at 16).

Based on the foregoing, the otherwise appropriate quantum of discipline for respondent's conviction for misdemeanor battery is a three-month suspension. We considered facts, in aggravation, which are salient in the confidential police

report. In our view, those facts warrant enhancement of the otherwise appropriate discipline to a six-month suspension.

In mitigation, prior to this incident, respondent had no ethics or criminal history, promptly reported his conviction, and cooperated with the ethics investigation. Nonetheless, the mitigating factors are insufficient to offset the enhancement based on the aggravating factor addressed above. Therefore, we determine to impose a six-month suspension on respondent for his misconduct.

Members Boyer and Singer voted for a three-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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Neil S. Bhatia
Docket No. DRB 17-451

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Decided: June 22, 2018

Disposition: Six-month Suspension

Members	Six-month Suspension	Three-month Suspension
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