SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 18-132
District Docket No. XIV-2014-0352E

In The Matter of	:
Preston I. Fulford	:
An Attorney At Law	:

Decision

Argued: June 21, 2018

Decided: October 16, 2018

Eugene A. Racz appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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), following respondent's adjudication of guilt, in a New Jersey municipal court, for simple assault, a disorderly persons offense, in violation of N.J.S.A. 2C:12-1(a). The OAE recommended a three-month suspension. Respondent requested that we

conduct a de novo review of the record prior to the imposition of any discipline.

For the reasons set forth below, we determined to grant the motion for final discipline and impose a three-month prospective suspension.

Respondent earned admission to the New Jersey bar in 1998 and to the New York bar in 1999. He is engaged in the practice of law in Newark, Essex County, New Jersey. He has no history of discipline in New Jersey.

On September 15, 2012, the Greenwich Township Police Department (Warren County) charged respondent with simple assault, a disorderly persons offense, in violation of N.J.S.A. 2C: 12-1(a). Respondent was alleged to have assaulted two victims - S.S., his ex-wife, and R.S., his former mother-in-law.

On May 22, 2013, a Warren County grand jury indicted respondent for second-degree aggravated assault on R.S., in violation of N.J.S.A. 2C:12-1(b)(1), having determined that respondent's assault of R.S. had caused her "serious bodily injury." On June 29, 2016, following a jury trial in the Superior Court of New Jersey, Warren County, respondent was acquitted of both the aggravated assault of R.S., and the lesser-included offense of simple assault of R.S. On August 24, 2016, the Warren County Prosecutor's Office remanded the pending simple assault charge against respondent, in respect of S.S., to municipal court.

Following two changes of venue, the simple assault charge was tried to verdict in the Lopatcong Township Municipal Court. During the trial, S.S. testified that respondent had arrived at her residence to pick up their two children, as was their customary practice in connection with his weekend parenting time. Rather than promptly leave, respondent lingered, checking the children's homework in her garage, so that he could leave their book bags at her house. A verbal argument ensued between R.S. and respondent in the garage, which escalated into a physical altercation. S.S. testified that, after her mother, R.S., told respondent to leave, respondent said "f--- you" and punched R.S. in the face. S.S. intervened, picking up a long-handled ice chipper and confronted respondent, in the driveway, in an attempt to persuade him to leave her property. According to S.S., respondent pulled the ice chipper from her hands and hit her in the head with it, causing her to fall to the ground and to temporarily lose consciousness. S.S. testified that she then called the police.

Respondent, representing himself at the municipal court hearing, established, through his cross-examination of S.S., that he had exited the garage before S.S. confronted him, in the driveway, with the ice chipper. He also emphasized that S.S. had prior martial arts training.

During his testimony, respondent admitted that a physical altercation had occurred, in the garage, between him and R.S. He claimed that he then

retreated to the driveway to call the police, when S.S. confronted him with the ice chipper and swung it at him multiple times. He claimed that S.S. landed a blow to his ribs, at which point he hit her in the face, in order to "disarm" her, and she fell to the ground, striking her forehead. R.S. did not testify at the municipal court trial.

In an effort to impugn S.S.'s credibility, respondent admitted into evidence transcripts of her prior sworn testimony from a grand jury proceeding and a final restraining order hearing. The prosecution admitted five photos showing the injuries that S.S. had sustained during the altercation with respondent.

On April 4, 2017, after the trial concluded, the Honorable William G. Mennen, J.M.C., found respondent guilty of the simple assault of both R.S. and S.S., despite respondent's prior acquittal, in respect of R.S., in Superior Court. Judge Mennen rejected respondent's assertion of self-defense in respect of S.S., finding that respondent's use of force against her "was extremely disproportionate to the threat posed as that threat had dissipated," once respondent gained control of the ice chipper. Judge Mennen, thus, ruled that respondent had knowingly caused bodily injury to S.S.

On April 18, 2017, Judge Mennen sentenced respondent to a six-month term of probation, and assessed $508 in fines and costs, including a $100

Domestic Violence surcharge. Judge Mennen emphasized that respondent's crime constituted domestic violence in the presence of minor children. Respondent moved for a new trial, arguing that the charge that he assaulted S.S. raised "constitutional concerns," and that Judge Mennen's finding in respect of R.S. raised "double jeopardy concerns, due process concerns, [and] slack enforcement concerns." Respondent emphasized that Judge Mennen's decision included "considerable reference to R.S." despite the fact that he had been "adjudicated not guilty by a jury" in respect of R.S., at the conclusion of his Superior Court trial. Respondent also raised "discovery concerns" as a second basis for his motion for a new trial. Judge Mennen denied both motions, but stated that respondent's rights, "constitutional, procedural or otherwise," should not be undercut. Judge Mennen concluded, "I made what I thought was the requisite finding based upon the evidence that was presented at trial."

On April 18, 2017, Judge Mennen signed a Judgment of Conviction, memorializing the conviction and probationary sentence. Respondent did not appeal the municipal court adjudication, but the OAE agrees that the municipal court determination in respect of the simple assault of R.S. should not be considered here, due to the prohibitions against double jeopardy in both the United States and New Jersey constitutions, and the New Jersey criminal code.

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). 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 adjudication for the simple assault of S.S. 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, 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 an 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).

As previously noted, the OAE urged the imposition of a three-month suspension, citing various cases involving domestic violence. In In re Margrabia, 150 N.J. 198, 201 (1997), the Court announced that, ordinarily, a three-month suspension is the appropriate measure of discipline for an attorney who engages in an act of domestic violence. Prior to Margrabia, attorneys convicted of acts of domestic violence generally had been reprimanded. See, e.g., In re Magid, 139 N.J. 449, and In re Principato, 139 N.J. 456. In Magid, however, the Court recognized both society's and the New Jersey Legislature's growing intolerance of domestic violence and warned that future incidents of domestic violence would result in harsher disciplinary sanctions. In re Magid, 139 N.J. at 453. Specifically, the Court stated that discipline greater than a

reprimand was appropriate in such cases, announcing that "the Court in the future [would] ordinarily suspend an attorney who is convicted of an act of domestic violence." Id. at 455. Nevertheless, the Court was constrained to reprimand the attorney in Magid because it had "not previously addressed the appropriate discipline to be imposed on an attorney who is convicted of an act of domestic violence." Ibid. In Magid's companion case, the Court repeated its warning to future perpetrators of domestic violence. In re Principato, 139 N.J. at 463.

The attorney in Margrabia was convicted of simple assault. In re Margrabia, 150 N.J. at 200. He received a thirty-day suspended sentence and a two-year term of probation, was ordered to perform 200 hours of community service, and was required to pay $160 in costs and penalties. Ibid. He was also required to attend AA meetings and to complete the People Against Abuse program. Ibid.

We determined that Margrabia should be reprimanded because he had "acknowledged that his conduct was wrong and improper; he ha[d] already fulfilled the conditions attached to his criminal conviction; and he did not display a pattern of abusive behavior." Id. at 201. The Court disagreed, finding instead that Margrabia had committed his misconduct seven months after the Court's pronouncements in Magid and Principato, and that he was, therefore,

on notice of the potential consequences. Accordingly, the Court suspended Margrabia for three months. Id. at 203.

The OAE acknowledged that, in 2006, following its decisions in Magid, Principato, and Margrabia, the Court imposed only a censure on an attorney who pleaded guilty to a simple assault of his wife. In re Jacoby, 188 N.J. 384 (2006) (Jacoby I). Although the Court did not issue an opinion in Jacoby I, the facts were somewhat unusual. Specifically, in that case, the attorney's assault appeared to be an aberration. Moreover, he took immediate responsibility for the assault, returning home the next day to care for his wife, driving her to doctor appointments, and paying for her unreimbursed medical expenses; he paid all of her personal bills, which she had previously paid from her earnings, and continued to pay these personal expenses after she returned to her employment. Immediately following the incident, the attorney sought professional help for his mental illness, including voluntarily entering an anger management program, and exhibited extreme remorse for his behavior. In addition, Jacoby had been the single parent of three children following his first wife's death more than twenty years earlier and had changed course in his career, becoming in-house counsel to AT&T, so that he could devote sufficient time to the emotional needs of his children, who continued to be dependent on him. Moreover, since the incident of domestic violence, Jacoby and his wife

had been in marriage counseling and moved to Washington, D.C. together so that he could continue his employment with AT&T. Finally, Jacoby's reputation, character, and prior good conduct were stellar.

Following Jacoby I, cases involving domestic violence have resulted in the imposition of terms of suspension. In 2008, the Court imposed a three-month suspension on an attorney who punched his girlfriend in the face and then attempted to strangle her. Hours later, he left two voicemail messages on her cell phone, threatening to kill her children and her parents. In re Edley, 196 N.J. 443 (2008). The attorney entered a guilty plea to third-degree criminal restraint.

In 2011, the Court imposed a one-year suspension on the same attorney it had censured in Jacoby I, after he assaulted his wife a second time. In re Jacoby, 206 N.J. 105 (2011) (Jacoby II). In the second incident, Jacoby 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 offense, in Virginia, and served one year of a three-year prison sentence.

In 2016, the Court imposed a three-month suspension on an attorney who entered a guilty plea to third-degree aggravated assault, admitting that he had attempted to cause significant bodily injury to his mother by forcing her to

take a quantity of prescription medication. In re Park, 225 N.J. 609 (2016). In imposing only a three-month suspension, we emphasized that respondent's misconduct was "directly linked to, although not excused by, both mental health issues and contemporaneous abuse of his prescription medication." In the Matter of Jae Hoon Park, DRB 15-218 (April 15, 2016) (slip op. at 18).

The OAE also cited cases involving non-domestic assaultive behavior in support of its argument for the imposition of a three-month suspension. See, e.g., In re Viggiano, 153 N.J. 40 (1997) (three-month suspension for attorney, who, after a minor traffic accident, exited his vehicle and assaulted the driver of the other vehicle, striking her in the face with his fist; when the police responded and attempted to restrain the attorney, he began to push and kick the officers); In re Bornstein, 187 N.J. 87 (2006) (six-month suspension imposed on attorney, in a default matter; the attorney fell backward while walking up the stairs at a Boston train station; when a doctor broke his fall and tried to assist him, the attorney inexplicably began to choke the doctor and slam his head, several times, against a plexiglass window; we determined to impose a three-month suspension but, due solely to the default status of the matter, enhanced the discipline to six months); and In re Gibson, 185 N.J. 235 (2005) (one-year suspension for attorney who was involved in a bar fight in Pennsylvania; police responded and arrested the attorney for the summary

offenses of public drunkenness and disorderly conduct; later, at the police station, when an officer attempted to handcuff him, the attorney, who was still intoxicated, spat on and hit the officer; we made clear that our decision to impose a one-year suspension was not necessarily based on a comparison of Gibson's conduct to that of other attorneys who had been disciplined for assaultive criminal conduct, but rather was grounded largely in our conclusion that there was "no reason to deviate from Pennsylvania's determination inasmuch as the record before us is incomplete . . . and Pennsylvania – which had the opportunity to review the entire record and, therefore, better assess the facts - was convinced that a one-year suspension was appropriate"). But see, In re Nealy, 205 N.J. 264 (2011), also acknowledged by the OAE (censure imposed on attorney who assaulted a federal officer; special agents from the United States Department of State, Diplomatic Security Service, went to the attorney's office to interview him and his wife in connection with a federal investigation; when the attorney became increasingly agitated and aggressive, the agents began to leave and instructed the attorney to contact them to arrange for an appointment for the interview; the attorney followed them to the exit and, when his wife came out of her office and stood between him and the agents, the attorney pushed her out of the way, and then pushed one of the agents against a wall and struck him with his hands and arms; after he was

arrested and charged, the attorney was accepted into a federal court diversionary program, which he successfully completed, and the charges were dismissed; the parties entered into a stipulation that recited the fact that no one was seriously injured as a result of the attorney's actions).

In summary, the OAE contends that here, given respondent's act of domestic violence, a three-month suspension is the appropriate sanction. The OAE compares respondent's behavior to that of the attorneys in Edley and Park, and urges us to find, as aggravating factors, the fact that the victim was injured by respondent's use of "brutal force," and, further, that respondent failed to report his indictment to the OAE, as R. 1:20-13(a)(1) requires. The OAE submits that the only mitigation is that respondent has no prior discipline.

In turn, in his submissions and before us, at oral argument, respondent requested that we undertake a de novo review of the underlying record prior to the imposition of discipline. Notably, he cites no precedent in support of his request that we deviate from the clear bounds of R. 1:20-13(c) and the disciplinary case law promulgated thereunder. We decline to ignore the application of the Rule to respondent's adjudication of guilt for the simple assault of his ex-wife, which establishes a violation of RPC 8.4(b). R. 1:20-13(c)(1).

Since the Magid decision in 1995, the New Jersey bar has been on notice that "the Court in the future [would] ordinarily suspend an attorney who is convicted of an act of domestic violence." In re Magid, 139 N.J. at 455. A review of the case law since Magid, Principato, and Margrabia leads us to conclude that a term of suspension is the proper quantum of discipline in this matter. In Edley (2008), Jacoby II (2011), and Park (2016), the Magid warning was enforced, and terms of suspension were imposed on attorneys who committed acts of domestic violence.

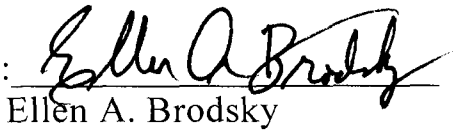
In crafting the appropriate term of suspension, we also consider aggravating and mitigating factors. In aggravation, respondent committed the criminal act against his ex-wife, in front of their children. Then, he failed to report his indictment, as R. 1:20-13(a)(1) requires. In mitigation, respondent has no disciplinary history. On balance, we see no reason to deviate from the three-month prospective suspension generally imposed on attorneys who commit acts of domestic violence. Such a sanction protects the public and preserves confidence in the bar.

Member Joseph voted to impose a reprimand.

Member Hoberman 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 Preston I. Fulford
Docket No. DRB 18-132

Argued: June 21, 2018

Decided: October 16, 2018

Disposition: Three-month Suspension

Members	Three-month Suspension	Reprimand	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer	X			
Gallipoli	X			
Hoberman				X
Joseph		X		
Rivera	X			
Singer	X			
Zmirich	X			
Total:	7	1	0	1

Ellen A. Brodsky
Chief Counsel