

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-339
District Docket No. XIV-2018-0227E

In the Matter of :
:
Ania Marcinkiewicz :
:
An Attorney At Law :
:
:

Decision

Argued: February 21, 2019

Decided: April 25, 2019

Amanda Figland appeared on behalf of the Office of Attorney Ethics.

Kevin G. Roe 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), following respondent's guilty plea to third-degree aggravated assault causing significant

bodily injury, in violation of N.J.S.A. 2C:12-1(b)(7), and third-degree endangering the welfare of a child, in violation of N.J.S.A. 2C:24-4(a)(2).

The OAE seeks a one-year suspension for respondent's criminal conduct, with the following conditions: that she (1) maintain her sobriety and remain "clean;" (2) submit to a ten-panel drug and alcohol hair follicle test, demonstrating that she has been alcohol- and drug-free for the past three months; (3) provide the OAE, prior to reinstatement, with proof of fitness to practice law as attested by a medical professional approved by the OAE; and (4) provide the OAE with reports demonstrating successful alcohol monitoring for the two-year period following her reinstatement.

For the reasons set forth below, we determine to impose a one-year suspension on respondent, subject to the conditions recommended by the OAE.

Respondent was admitted to the New Jersey bar in 2004. It is not clear from the record whether she ever established a law office. She has no history of discipline. Since August 24, 2015, she has been ineligible to practice law due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection.

Sometime between March 22 and 23, 2012, during an alcohol-induced blackout, respondent, who described herself as an "angry drunk," inflicted the

following injuries on her eight-week-old daughter: a fractured skull, bleeding in her brain, a palm print on her face, an unidentified injury to her leg, and bruises. As a result, the Essex County Prosecutor's Office charged respondent with one count of second-degree aggravated assault causing serious bodily injury, in violation of N.J.S.A. 2C:12-1(b)(1), and two counts of second-degree endangering the welfare of a child, in violation of N.J.S.A. 2C:24-4(a).

On November 29, 2012, respondent appeared before the Honorable Michael L. Ravin, J.S.C., and pleaded guilty to one count each of third-degree aggravated assault, in violation of N.J.S.A. 2C:12-1(b)(7), and third-degree endangering the welfare of a child, in violation of N.J.S.A. 2C:24-4(a)(2). In exchange, the Prosecutor's Office agreed to dismiss the second count of child endangerment and recommend probation, plus anger management classes, parenting classes, and "continued Drug/Alcohol abuse evaluation and treatment."

In addition to the facts underlying respondent's assault on her infant daughter, respondent testified that, prior to that incident, she had blacked out on more than one occasion. According to respondent, when she was either intoxicated or experiencing a blackout, or both, she would "break stuff" and "go into the [sic] rage."

At respondent's January 11, 2013 sentencing, she testified before Judge Ravin that she had not consumed alcohol or taken drugs since March 22, 2012, the date of the incident, seven months earlier; she had successfully completed a six-month residential treatment program, which included anger management and parenting classes; she had just begun intensive out-patient treatment the day before; and her daughter was "healthy" and she was "optimistic about the future with her."

In mitigation, Judge Ravin noted that the criminal conduct was committed during a period of addiction to alcohol or drugs, which was in remission, and that respondent was likely to respond affirmatively to probationary treatment. In aggravation, he cited the vulnerability of the victim because of her "extreme youth."

Judge Ravin sentenced respondent to three years' probation on both counts, to run concurrently. In addition, as reflected in the January 11, 2013 judgment of conviction, respondent was required to remain drug- and alcohol-free during the period of probation; to continue her drug and mental health treatment; to cooperate in any psychiatric examinations, as recommended by her probation officer; and to refrain from possessing a firearm or other

dangerous weapon. Finally, respondent was assessed \$280 in fees and penalties.

At oral argument before us, respondent's counsel represented that his client did not report her 2012 conviction to the OAE until 2018 because, prior to that time, she was not certain that she wanted to practice law. Counsel also informed us that, since the incident, respondent has completed a long-term inpatient treatment program, regained custody of her child, and is drug- and alcohol-free. He also represented that she is prepared to accept such form of discipline as we deem appropriate.

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); and In re Principato, 139 N.J. 456, 460 (1995). Respondent's guilty plea to third-degree aggravated assault and third-degree endangering the welfare of a child, 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; and 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." In re Principato, 139 N.J. at 460. 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).

In support of its motion for final discipline, the OAE cited two cases involving the non-sexual assault of children: In re Costill, 174 N.J. 563 (2002) and In re Sierzega, 229 N.J. 517 (2017). Costill "left his two infant children unattended and sleeping in a locked car for almost an hour, after dark, in the dead of winter, while he drank beer in a nearby bar." In the Matter of Keith A. Costill, DRB 02-195 (October 15, 2002) (slip op. at 3, 5). After consuming alcohol, Sierzega drove his car, with his seven-year-old daughter in the back seat, and was involved in a motor vehicle accident. In the Matter of Ronald P. Sierzega, DRB 16-227 (January 31, 2017) (slip op. at 2-3).

Costill and Sierzega pleaded guilty to fourth-degree child neglect and abuse crimes. Costill, DRB 02-195 (slip op. at 1-3); Sierzega, DRB 16-227 (slip op. at 2-3). They were placed on one year of probation and ordered to undergo alcohol and/or substance abuse evaluation and treatment, if necessary. Costill, DRB 02-195 (slip op. at 3); Sierzega, DRB 16-227 (slip op. at 3). Neither attorney had a history of discipline. Costill, DRB 02-195 (slip op. at 1); Sierzega, DRB 16-227 (slip op. at 2). Both received a reprimand. Sierzega, 229 N.J. 517, and Costill, 174 N.J. 563.

Here, the actions of respondent were far more egregious than those of Costill and Sierzega. They neglected their children and subjected them to the possibility of harm. Respondent not only caused actual, serious harm to her two-month-old baby, she did so by violently assaulting her. Thus, in our view, a reprimand would be insufficient discipline in this case.

In support of its recommended one-year suspension, the OAE relied on cases involving different types of assaults, some committed by attorneys who were under the influence and some who were not, and which resulted in a range of discipline. In re Bornstein, 187 N.J. 87 (2006) (six-month suspension imposed on attorney who inexplicably engaged in an unprovoked, vicious attack on a stranger by repeatedly slamming his head against a non-glass window; the stranger had tried to assist the attorney, who fell backward while walking up the stairs at a train station); In re Barber, 148 N.J. 74 (1997) (six-month suspension imposed on attorney who, while driving under the influence, crashed his car, killing his adult passenger); In re Toland, ___ N.J. ___ (2007) (2007 N.J. Lexis 1064) (one-year suspension imposed on attorney who, while driving drunk, caused an accident on the New Jersey Turnpike, which injured three occupants in another vehicle, including a five-year-old boy, whose nasal bone and right orbit were fractured); In re Guzzino, 165 N.J. 24 (2000) (two-

year suspension imposed on attorney who pleaded guilty to second degree manslaughter and driving while intoxicated; while driving at a high rate of speed, under the influence of alcohol, he lost control and struck another vehicle, causing the death of an adult passenger in that car); and In re Rasheed, 134 N.J. 532 (1994) (disbarment for attorney who pleaded guilty to aggravated manslaughter, aggravated assault, and making terroristic threats; among other violent attacks, he pushed a teenager from the ninth floor of a building, causing his death).

In our view, the facts of this case are more closely aligned with those involving domestic violence and, thus, we look to those decisions in determining the quantum of discipline to impose on respondent.

With few exceptions, a three-month suspension is the ordinary measure of discipline imposed on an attorney who has been convicted of an act of domestic violence. In re Margrabia, 150 N.J. 198, 201 (1997). See also In re Hyderally, 233 N.J. 596 (2018) (three-month suspension imposed on attorney who pleaded guilty to simple assault by grabbing his girlfriend by the throat and slamming her into a wall, causing injuries to her neck, jaw, and left arm; in aggravation, we noted the attorney's prior reprimand for making inappropriate sexual advances to at least two women who were his legal aid

clients); In re Pagliara, 232 N.J. 327 (2018) (three-month suspension imposed on attorney who pleaded guilty to third-degree aggravated assault after he punched his wife, which caused her nose to bleed; the attorney was admitted to the pre-trial intervention program, and ordered to attend an anger management program and pay \$311.02 in restitution); and In re Paragano, 227 N.J. 136 (2016) (three-month suspension imposed on attorney who pleaded guilty to simple assault; during an argument with his wife, the attorney "recklessly" pushed and had physical contact with her, bruising her knee; he was sentenced to two years' probation and ordered to submit to drug and alcohol evaluations and to seek counseling for his mental health and anger management issues; prior censure for trying to choke his wife, throwing her across the room, driving away from the scene, while under the influence of alcohol, and causing a motor vehicle accident; he pleaded guilty to driving under the influence of alcohol). But see In re Jacoby, 188 N.J. 384 (2006) (Jacoby I) (censure imposed on attorney who pushed, shoved, and grabbed the throat of his wife, causing a dislocated shoulder; the attorney took responsibility for his actions and exhibited remorse),¹ and In re Salami, 228 N.J. 277 (2017) (censure

¹ In 2011, the Court imposed a one-year suspension on Jacoby, who, after
(Footnote cont'd on next page)

imposed on attorney who pleaded guilty to simple assault on his former girlfriend by biting her and hitting her with a piece of metal, causing bruises over her back and chin; in departing from a three-month suspension, we cited the passage of time between the incident and the filing of the motion for final discipline, the attorney's completion of anger management treatment, and the lack of further incidents since his conviction).

In our view, respondent clearly committed a brutal act of domestic violence against her daughter, which resulted in severe injuries. Under the circumstances, a three-month suspension would be insufficient. Respondent's victim was not only her own child, but a helpless infant for whom there existed no possibility of de-escalation, self-protection, escape, or even calling for help.

To be sure, respondent was under the influence of alcohol at the time, but the above cases show that the quantum of discipline does not depend on whether the attacker was intoxicated. The horror of a mother, intoxicated or not, brutally attacking her newborn baby cannot be met with a short-term

(Footnote cont'd)

having been censured, served one year of a three-year prison sentence for a felony conviction in Virginia based on a subsequent attack in which he repeatedly slapped his wife in the face, causing her nose to bleed, pinned her to the floor and held her there against her will, and threatened to kill her. In re Jacoby, 206 N.J. 105 (2011).

suspension. We, thus, determine to impose a one-year suspension on respondent, with the following conditions, as recommended by the OAE:

- (1) maintain her sobriety and remain clean;
- (2) submit to a ten-panel drug and alcohol hair follicle test, demonstrating that she has been alcohol- and drug-free for the past three months;
- (3) provide the OAE, prior to reinstatement, with proof of fitness to practice law as attested by a medical professional approved by the OAE; and
- (4) provide the OAE with reports demonstrating successful alcohol monitoring for the two-year period following her reinstatement.

Members Gallipoli and Joseph 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 Ania Marcinkiewicz
Docket No. DRB 18-339

Argued: February 21, 2019

Decided: April 25, 2019

Disposition: One-Year Suspension

<i>Members</i>	One-Year Suspension	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli			X
Hoberman	X		
Joseph			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	0	2


Ellen A. Brodsky
Chief Counsel