Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-380
District Docket No. XIV-2017-0483E

In the Matter of	:
Stephen P. Dempsey	:
An Attorney At Law	:

Decision

Argued: February 21, 2019

Decided: June 25, 2019

Amanda W. Figland 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), following respondent's guilty plea to the fourth-degree crime of operation of a motor vehicle during a period of a driver's license suspension (second or subsequent violation), in violation of N.J.S.A. 2C:40-26b, and driving under the influence,

in violation of N.J.S.A. 39:4-50. The OAE recommends that we impose a reprimand and conditions. For the reasons set forth below, we agree with the OAE's recommendation.

Respondent was admitted to the New Jersey and New York bars in 2001. At the relevant time, he maintained a law office in Summit, New Jersey. He has no history of discipline.

The Union County Prosecutor filed an indictment charging respondent with the fourth-degree crime of unlawfully operating a motor vehicle during a period of license suspension, second violation, contrary to N.J.S.A. 2C:40-26b. The Summit City Police Department also charged respondent with violations of N.J.S.A. 39:4-96, reckless driving; N.J.S.A. 39:4-50, driving while intoxicated (DWI);[1] and N.J.S.A. 39:3-40, driving while driver's license was suspended or revoked (second violation). According to the OAE's motion, respondent's operation of the vehicle on July 17, 2017, while under the influence, resulted in "a crash."

On February 26, 2018, respondent appeared before the Honorable John M. Deitch, J.S.C., Superior Court of New Jersey, Union County, Law Division, Criminal Part, and entered a guilty plea to the indictment. Respondent

[1] The record also refers to this violation as "DUI," driving under the influence of liquor or drugs.

admitted that, on July 17, 2017, while his license was suspended, he operated a motor vehicle in Summit, New Jersey, and that his license had been suspended previously for a prior "DWI" conviction. Respondent admitted that he had been convicted of "DUI on more than two occasions." As part of the plea agreement, the State dismissed the driving while suspended charge, N.J.S.A. 39:3-40.

Prior to the April 13, 2018 sentencing before Judge Deitch, respondent and the Union County Prosecutor entered into a plea agreement on the outstanding charges. At the sentencing hearing, respondent entered a guilty plea to driving under the influence. In return, the reckless driving charge was dismissed.

During the sentencing hearing, respondent admitted that, on July 17, 2017, he operated a vehicle after consuming approximately four to five glasses of wine and an "old-fashioned." He acknowledged that, at the time, he was under the influence of the alcohol, which impaired his ability to operate the vehicle. Respondent's submission to an Alcotest breath-testing device resulted in a reading of 0.18 percent.[2]

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[2] N.J.S.A. 39:4-50 provides that a blood alcohol content of 0.08 percent or higher establishes a driving while intoxicated violation.

At that hearing, respondent's counsel noted that respondent was very fortunate that the accident had not resulted in any injuries. Respondent acknowledged that he was aware of the consequences of his actions, and that they were "reckless and showed a disregard for . . . the law and people's safety." He was ashamed and regretted his conduct. Respondent hoped to avoid similar situations, adding that he was in a program that helped him with stress and other difficulties.

The judge found, as aggravating factors, respondent's prior alcohol use and the need to deter him from engaging in future similar conduct. The judge found, as a mitigating factor, that respondent was likely to respond affirmatively to treatment and counseling to deal with stress and alcohol problems. Further, the judge found that respondent was "solemn and appropriately apologetic," as well as remorseful, and understood that, eventually, his behavior may cause injury to himself or others.

For respondent's second violation of operating a vehicle while his driver's license was suspended, the judge sentenced respondent to 180 days in jail, or, if room were available, at a residential treatment facility. The judge also imposed penalties and fines. For respondent's fourth DWI conviction, the judge imposed a $1,000 fine, costs, and surcharges; suspended respondent's license for two years, but ordered the suspension to run concurrently with any

existing suspension, followed by one year of "ignition interlock;" and imposed an additional 180 days' incarceration, to be served concurrently in the county jail or residential treatment facility.

Respondent reported this incident to the OAE, on August 17, 2017.

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 guilty plea to violating N.J.S.A. 2C:40-26b and N.J.S.A. 39:4-50 constitutes a violation of RPC 8.4(b). Pursuant to this 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 for determination 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).

Citing In re Terrell, 203 N.J. 428 (2010) and In re Cardullo, 175 N.J. 107 (2003), the OAE contended that the "attorney disciplinary system does not address driving-while-intoxicated violations, standing alone." The OAE argued, however, that attorneys have been disciplined for offenses arising out of alcohol-related automobile accidents: In re Murphy, Jr., 200 N.J. 427 (2009) (motion for reciprocal discipline, suspended six-month suspension following

convictions for aggravated assault, DWI, and reckless endangerment);[3] In re Dowgier, 233 N.J. 291 (2018) (reprimand for third-degree eluding arrest; second conviction for DWI); In re Fedderly, 189 N.J. 127 (2007) (reprimand following convictions for third-degree assault by auto and DWI); Cardullo, 175 N.J. 107 (reprimand following convictions for fourth-degree assault by auto and leaving the scene of the accident; it was the attorney's third DWI); and Terrell, 203 N.J. 428 (admonition following convictions for fourth-degree assault by auto, DWI, and leaving the scene of an accident).

The OAE found this case to be most similar to the Cardullo matter: Cardullo had three DWI convictions, respondent had four; Cardullo had blood alcohol readings of 0.16 percent and 0.17 percent, respondent's was 0.18 percent; no injuries resulted from either accident; both were sentenced to 180 days in jail, but were permitted to serve the time in a treatment facility; both had their driver's licenses suspended; and both made efforts to address their alcohol problems. Cardullo, however, left the scene of the accident, knowing that the other driver was in distress, and initially denied that she had been involved in an accident. Respondent remained at the scene and cooperated with

[3] The Supreme Court of Pennsylvania stayed the six-month suspension it had imposed and ordered the attorney to complete a four-year period of probation, along with conditions.

the police. The OAE opined that respondent's conduct was more serious than Cardullo's because respondent had borrowed and driven his sister's automobile while his license was suspended pursuant to his third DWI conviction.

The OAE noted that attorneys have been disciplined for first-time alcohol related offenses when they have caused accidents that resulted in serious harm to third parties. However, the cases that the OAE cited in this regard are inapplicable here because respondent was not charged with causing injuries to others. According to the OAE, respondent, nevertheless, chose to operate a motor vehicle while his license was suspended for his third DWI offense.

In mitigation, the OAE considered that respondent reported the criminal charges to the OAE, has no history of discipline, and has paid a high price for his relapse, including his inability to practice law while serving his criminal sentence. Based on these factors, the OAE recommended that we impose a reprimand and require him to submit to the OAE quarterly reports of his ongoing alcohol addiction treatment for a period of two years.

We find that the following cases are helpful in fashioning the proper measure of discipline for this respondent.

In In re McLaughlin, 223 N.J. 243 (2015) (reprimand), a case of first impression, the attorney pleaded guilty to a one-count accusation charging him

with the fourth-degree crime of operating a motor vehicle while his driver's license was suspended or revoked, as a result of a "second or subsequent" driving while intoxicated conviction, in violation of N.J.S.A. 2C:40-26b. In the Matter of Michael A. McLaughlin, Sr., DRB 14-382 (June 16, 2015) (slip op. at 2). The attorney admitted that, on August 8, 2012, he had operated a motor vehicle at a time when he knew his license had been suspended, as the result of his third DWI conviction. Ibid. The attorney received a sentence of 180 days' imprisonment, with a 180-day period of parole ineligibility. The jail term was to be served concurrently with the term he was serving for the prior DWI. Ibid.

The court noted that, effective August 2011, legislation rendered the operation of a motor vehicle, during a period of license suspension, a fourth-degree crime, rather than a motor vehicle violation. The elevation of the infraction from a motor vehicle violation to a crime was based, in part, on the reports of fatal or serious accidents caused by recidivist offenders, with multiple or prior DWI violations, who continued to drive while suspended. Id. at 5, citing State v. Carrigan, 428 N.J. Super. 609, 614 (App. Div. 2012). Until McLaughlin, no attorney disciplinary cases had addressed a conviction for violating N.J.S.A. 2C:40-26.

McLaughlin had not been involved in a motor vehicle accident, had not harmed any other individuals, and was not intoxicated at the time of his arrest.

He did, however, commit a fourth-degree crime, when he operated a vehicle, knowing that his license had been suspended as the result of a prior DWI conviction. Id. 7-8. We considered, as an aggravating factor, that McLaughlin had been reprimanded for misrepresenting to the Board of Bar Examiners that he had abstained from the use of alcohol.

We determined that a reprimand was appropriate discipline because McLaughlin's disciplinary history related to his alcohol addiction. We required McLaughlin to provide the OAE with proof of continued alcohol treatment for two years. Id. at 8.

The Terrell case (admonition), 203 N.J. 428, that the OAE cited is also instructive. Terrell rear-ended an automobile after attending his office holiday party, causing minor damage to both vehicles. In the Matter of A. Dennis Terrell, DRB 10-052 (June 21, 2010) (slip op. at 2). He exited his vehicle, examined the damage, and then left the scene of the accident. One of the passengers experienced neck pain from the accident and was taken to a hospital. When the police arrived at the attorney's house, he admitted that he had consumed four glasses of wine. After he was questioned and subjected to the administration of several tests, including the taking of breath samples, the attorney was arrested and charged with reckless driving, leaving the scene of an accident, failure to report an accident, and DWI. Id. 2-3. The attorney was

admitted into the pre-trial intervention program following his guilty plea to an accusation charging him with fourth-degree assault by auto, driving while intoxicated, and leaving the scene of an accident. Id. at 3.

In imposing an admonition in Terrell, we viewed the case to be less serious than the Cardullo case, because we found that Cardullo left the scene of the accident, knowing that the other driver was in distress; she initially denied her involvement in the accident when questioned by the police; and it was her third conviction for DWI. Id. at 5. We considered that the occupants of the vehicle in Terrell had not suffered serious injuries, the attorney had no history of discipline in his forty years at the bar, and he cooperated with the OAE. Id. at 6.

A reprimand was also imposed in In re Shiekman, 235 N.J. 167 (2018), where the attorney pleaded guilty to fourth-degree causing bodily injury to two individuals by driving a vehicle while under the influence. In the Matter of Robert S. Shiekman, DRB 17-277 (January 17, 2018) (slip op. at 3). The attorney admitted that he had been drinking beer and "spirits" before driving, and that he had consumed sufficient quantities of alcohol to make it unsafe for him to drive a motor vehicle. He admitted having a blood alcohol level of 0.19 percent, more than twice the legal limit. As a result of the accident, three individuals from the other vehicle had been transported to the hospital with

non-serious injuries. In imposing a reprimand, we considered that the occupants of the other vehicle were not injured seriously, and that it was the attorney's first brush with ethics authorities in his ten years at the bar. We required, for a two-year period, that the attorney submit to random urine testing on a schedule to be determined by the OAE, and that he continue to participate in substance abuse counseling, conditions with which the Court agreed.

In this case, it was fortuitous that respondent did not injure anyone in the crash. Nevertheless, he was driving on a suspended license, a fourth-degree crime, his fourth DWI conviction, and his blood alcohol level was 0.18 percent, more than twice the legal limit. Under these circumstances, we find that respondent's lack of a disciplinary history is not sufficient mitigation for us to deviate from the typical quantum of discipline, and determine to impose a reprimand.

We also require, for a two-year period, that respondent provide proof of continued participation in a substance abuse program and that he submit to random urine testing on a schedule to be determined by the OAE.

Member Zmirich voted for a censure. 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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Stephen P. Dempsey
Docket No. DRB 18-380

Argued: February 21, 2019

Decided: June 25, 2019

Disposition: Reprimand

Members	Reprimand	Censure	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer	X			
Gallipoli				X
Hoberman	X			
Joseph				X
Rivera	X			
Singer	X			
Zmirich		X		
Total:	6	1	0	2

Ellen A. Brodsky
Chief Counsel