Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-295
District Docket No. XIV-2018-0471E

In the Matter of	:
Samuel D. Jackson	:
An Attorney at Law	:

Decision

Argued: January 16, 2020

Decided: March 9, 2020

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Samuel D. Jackson 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). On July 20, 2018, respondent entered guilty pleas in the Supreme Court of New York, Nassau County, New York, to two counts of unlawful surveillance in the second

degree, a Class E felony, in violation of § 250.45(4) of the New York Penal Code. Almost two weeks later, on August 2, 2018, respondent entered a guilty plea in the Supreme Court of New York, New York County, New York, to one count of second-degree attempted unlawful surveillance, a Class A misdemeanor, in violation of § 250.45(4) of the New York Penal Code. These offenses constitute violations 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 grant the motion for final discipline and impose a six-month suspension, retroactive to the date of respondent's temporary suspension, with conditions.

Respondent earned admission to the New Jersey bar in 2017 and to the New York bar in 2015. During the relevant time, he was engaged in the practice of law in Purchase, New York. He has no history of discipline in New Jersey, but has been temporarily suspended since February 6, 2019, based on the New York convictions underlying this motion for final discipline. In re Jackson, 236 N.J. 553 (2019).

On December 19, 2018, the Supreme Court of New York, Appellate Division, Second Department, disbarred respondent for his felony convictions. Matter of Jackson, 168 A.D.3d 22 [2d Dept 2018].

We now turn to the facts of this matter.

Respondent's convictions relate to his taking "upskirt" photographs of women, without their knowledge or consent. Specifically, on June 7, 2017, respondent took an upskirt photograph of a woman at Grand Central Station in New York, New York. Three days later, on June 10, 2017, he took fifty-five upskirt photographs of women at Belmont Racetrack.

On November 6, 2017, a grand jury for the Supreme Court of New York, New York County, returned an indictment charging respondent with one count of second-degree unlawful surveillance for his misconduct at Grand Central Station.[1] On December 27, 2017, another grand jury, for the Supreme Court of New York, Nassau County, returned an indictment charging respondent with fifty-five counts of second-degree unlawful surveillance for his misconduct at Belmont Racetrack.

On July 20, 2018, before Judge Robert A. McDonald, acting Supreme Court Justice of the Supreme Court of New York, Nassau County, respondent

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[1] Pursuant to New York Penal Law § 250.45[1], a person is guilty of the crime of unlawful surveillance in the second degree when, for his or her own:

> amusement, entertainment, or profit, or for the purpose of degrading or abusing a person, he or she intentionally uses or installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record a person dressing or undressing or the sexual or other intimate parts of such person at a place and time when such person has a reasonable expectation of privacy, without such person's knowledge or consent.

entered a guilty plea to two counts of unlawful surveillance in the second degree, felony offenses, in connection with his Belmont Racetrack misconduct. Respondent admitted that he intentionally took the photographs and was aware that a felony conviction would lead to his disbarment in New York. At his sentencing hearing, respondent stated to Judge McDonald, "I am very sorry about what I did, I take full responsibility. My actions were disgusting, disrespectful, and wrong." Judge McDonald sentenced respondent to five years of probation, including certain sex offender terms and conditions, but did not require respondent to register as a sex offender, finding it would be "unduly harsh" and "inappropriate," in light of "the nature and circumstances of the crime herein" and "the history and character of the defendant."

On August 2, 2018, before Judge Daniel Conviser, Supreme Court of New York, New York County, respondent entered a guilty plea to one count of second-degree attempted unlawful surveillance, a misdemeanor, for his conduct at Grand Central Station. Respondent admitted that he intentionally took the photographs and stated, in respect of sentencing, "I accept it and I'm very sorry." Judge Conviser issued a conditional discharge, with a one-year monitoring period, including compliance with sex offender treatment, as ordered by the Nassau County Probation Department, but did not require respondent to register as a sex offender.

The OAE recommended that respondent be suspended for six months, and that, prior to reinstatement, he be required to provide proof of psychological counseling and proof of fitness. In respect of the recommended quantum of discipline, the OAE correctly noted that there are no New Jersey disciplinary cases arising from a conviction from a criminal offense similar to the New York offenses to which respondent pleaded guilty. The New Jersey offense most similar to unlawful surveillance is invasion of privacy (N.J.S.A. 2C:14-9(b)(1)).[2]

As the closest corollary, the OAE identified several cases wherein attorneys had been convicted of lewdness, in violation of N.J.S.A. 2C:14-4(a).[3] Specifically, the OAE cited three cases where the attorneys received reprimands – In re Daul, 196 N.J. 533 (2008); In re Gilligan, 147 N.J. 268 (1997); and In re Pierce, 139 N.J. 433 (1995) – and one case where the attorney received a three-month suspension, In re Sicklinger, 228 N.J. 525 (2017). The OAE

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[2] In New Jersey, a defendant who photographs or films "intimate parts" of another, without consent, violates N.J.S.A. 2C:14-9(b)(1) (Invasion of Privacy), a third-degree crime. "'Intimate parts'" means the "sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person." N.J.S.A. 2C:14-1(e).

[3] A person commits disorderly persons lewdness if "he does any flagrantly lewd and offensive act which he knows or reasonably expects is likely to be observed by other nonconsenting persons who would be affronted or alarmed." N.J.S.A. 2C:14-4(a); see also, State v. Nicholson, 451 N.J. Super. 534 (App. Div. 2017). The statute defines a "lewd act" as "exposing . . . the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person." N.J.S.A. 2C:14-4(c).

recommended a six-month suspension, rather than a three-month suspension, emphasizing that respondent's misconduct appeared to be part of a pattern, occurred in public places, and reflected poorly on the reputation of the New Jersey bar. In respect of mitigation, the OAE notes that respondent does not have an ethics history and reported his criminal charges.

In his brief to us, respondent did not oppose the OAE's factual or legal arguments; accepted the recommended discipline; asserted that he continues to comply with R. 1:20-20 and the Court's Order of temporary suspension; and stated that he regrets his actions, has made efforts to address the issues underlying his offenses, and continues to work toward turning his life around. Respondent admittedly entered his guilty pleas, "because, to [his] great regret, [he] was guilty." He asserted that, since June 2018, he has not practiced as an attorney in any jurisdiction, and, thus, had ceased all contact with clients.

In a section of his brief entitled, "Respondent's Actions Were Reprehensible," respondent characterized his actions as "absolutely wrong in every way and completely inappropriate," as well as "invasive and utterly disrespectful" to his victims. He stressed that he has "felt immense shame and regret every single day of the two years since [he] committed these acts." He described his actions as "disgusting and indefensible," and stated that he "ruined" his own reputation, as well as "harmed the reputation of the legal

profession and the New Jersey and New York bars, as well as the reputations of [his] law school and [his] employer." He stated that he was "truly sorry," including for the "embarrassment that [he] caused [his] victims." Respondent acknowledged that, as an attorney, he "should have held [himself] to a much higher standard and scrupulously upheld the law."

Since his conviction, respondent has been diligently pursuing psychological treatment and attending weekly sessions with a licensed psychologist and a certified substance abuse evaluator. He provided a letter from his psychologist confirming his treatment and reporting that he has made considerable progress and has an excellent prognosis. As part of his court-imposed probation, respondent also has taken part in weekly group therapy sessions. Further, respondent acknowledged that he has a "drinking problem," but, with the help of his psychologist, and the support of others in his life, he has ceased drinking entirely, and claims that he has not consumed alcohol since June 10, 2017, and that he "will abstain from drinking for the rest of" his life. He asserts that he has informed us of this fact not as an excuse, but, rather, to express that he has worked to identify his issues and to resolve them. Respondent further submitted a report from the probation department detailing his compliance with all aspects of probation and his progress in group therapy. Respondent concluded his brief by acknowledging that he will "willingly accept

any punishment the Disciplinary Review Board and the Supreme Court see fit to impose."

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 convictions of two counts of unlawful surveillance in the second degree, and one count of attempted unlawful surveillance in the second degree, in violation of New York Penal Law § 250.45(4), establish violations 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 quantum 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 Magid, 139 N.J. at 452 (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).

In sum, we find that respondent committed multiple violations of RPC 8.4(b). The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Discipline for sexual misconduct has ranged from a reprimand to disbarment. See In re Gilligan, 147 N.J. 268 (reprimand for attorney convicted of lewdness after he exposed and fondled his genitals for sexual gratification in front of three individuals, two of whom were children under the age of thirteen);

In re Pierce, 139 N.J. 433 (reprimand for attorney convicted of lewdness after he exposed his genitals to a twelve-year-old girl); In re Ferraiolo, 170 N.J. 600 (2002) (one-year suspension for attorney convicted of the third-degree offense of attempting to endanger the welfare of a child; the attorney, who had communicated in an internet chat room with someone whom he believed to be a fourteen-year-old boy, was arrested after he arranged to meet the "boy" for the purpose of engaging in sexual acts; the "boy" was a law enforcement officer); In re Gernert, 147 N.J. 289 (1997) (one-year suspension for attorney guilty of the petty disorderly offense of harassment by offensive touching; the victim was the attorney's teenage client); In re Ruddy, 130 N.J. 85 (1992) (two-year suspension for attorney convicted of endangering the welfare of a child; the attorney fondled several young boys); In re Herman, 108 N.J. 66 (1987) (three-year retroactive suspension for attorney convicted of second-degree sexual assault after he touched the buttocks of a ten-year-old boy); In re Legato, 229 N.J. 173, 186 (2017) (decision encompassed disciplinary matters in respect of three attorneys (Legato, Kenyon, and Walter); in sum, the Court ordered an indeterminate suspension for Legato and Kenyon, and disbarred Walter; Legato and Kenyon targeted persons online whom they believed to be underage children, but who were undercover police officers, those attorneys never met with the "children" or caused any actual harm; Walter, however, was disbarred

because his misconduct involved more direct contact with a nine-year-old girl who was under his care, and he exhibited a lack of remorse and failed to accept responsibility for his conduct); In re Nilsen, 229 N.J. 333 (2017) and In re Gillen, 230 N.J. 382 (2017) (attorneys disbarred for targeting minors online; attorneys actually were engaging undercover officers, and were arrested when they appeared for a meeting with their putative victims); In re Frye, 217 N.J. 438 (2014) (disbarment for attorney convicted of third-degree endangering the welfare of a child who failed, for fifteen years, to report his conviction to ethics authorities; attorney admitted having been entrusted with the care of a minor girl whom he inappropriately touched; the attorney violated his probation six times over the course of fifteen years by failing to attend mandatory outpatient sexual offender therapy sessions); In re Cunningham, 192 N.J. 219 (2007) (disbarment for attorney who, on three occasions, communicated with an individual, through the internet, whom he believed to be a twelve-year-old boy and described, in explicit detail, acts that he hoped to engage in with the boy and to teach the boy; a psychological report concluded that the attorney was a compulsive and repetitive sex offender; and In re Wright, 152 N.J. 35 (1997) (attorney disbarred for committing sexual acts on a family member; the behavior occurred over a three-year period and involved at least forty instances of assault).

The OAE correctly concluded that the Court has yet to consider a disciplinary matter involving an attorney's conviction for invasion of privacy.[4] In the cases cited by the OAE, wherein the attorneys were convicted of lewdness, the quantum of discipline imposed has ranged from a reprimand to a three-month suspension.

In Daul, the attorney received a reprimand after being found guilty of lewdness. An adult female reported to police that a male was masturbating in public. The responding officer was dispatched to a commuter parking lot, where the victim told the officer that the man had already left the scene in a minivan. The victim, who had been waiting in the commuter parking lot, saw an individual naked, but for his socks and a hands-free headset for a cell phone. She saw him masturbating for approximately one minute while looking at her vehicle, after which he entered the minivan and drove away. Later that day, the

[4] Although the Court has not directly addressed this issue, the Supreme Court of South Carolina imposed a nine-month suspension on an attorney for taking an "upskirt" picture. In re Parrott, 419 S.C. 1 (2016). The attorney was arrested and charged with voyeurism, per S.C.C.A. § 16-17-47(B) (2015), and the case was remanded to the lower court, because the attorney agreed to plead guilty to assault and battery, a lesser offense. Id. at 2-3. In aggravation, the attorney had been previously disciplined, in 1997, for two similar incidents. In re Parrot, 325 S.C. 162 (1997). Specifically, in 1994, the attorney pleaded guilty to simple assault and battery for pulling down a woman's bathing suit while she was sunbathing at the beach; in 1989, he had been involved in a similar incident, but was not prosecuted. Ibid. For this prior conduct, the Supreme Court of South Carolina imposed a four-month suspension. Ibid. In mitigation, the attorney asserted that he was an alcoholic in active recovery, had been continuously sober for 235 days as of the date of the affidavit, and was attending a follow-up care program where he was completing intensive outpatient treatment. Id. at 3.

police arrested Daul at his residence. In the Matter of Christopher L. Daul, DRB 08-171 (September 3, 2008) (slip op. at 10).

In Gilligan, the attorney, while in his car, requested directions from two girls. While trying to explain the directions, one of the girls noticed that Gilligan had exposed himself and was fondling his "private part." In the Matter of Gerard Joseph Gilligan, DRB 95-320 (July 15, 1996) (slip op. at 2).

In Pierce, a twelve-year-old girl was walking alone in her neighborhood, collecting donations for the Pop Warner Cheerleaders. Pierce, who also lived in the area, beckoned the girl from his car, telling her that he had money for her. She approached the passenger door of the car and held out the donation can. Pierce stared at her before dropping in the donation. The girl noticed that Pierce was wearing no clothes and she saw his genitals, specifically his penis. A few minutes later, Pierce returned, stopping his car in front of a house where the girl had just received a donation, and repeated his conduct. In the Matter of James J. Pierce, DRB 94-158 (October 29, 1994) (slip op. at 1-2).

In Sicklinger, the attorney pleaded guilty to four instances of lewdness, which occurred over an eight-year period, where multiple victims saw the attorney masturbating in public. After reviewing the precedent of Daul, Gilligan, and Pierce, we determined to impose a three-month suspension, finding the attorney's recurring misconduct exhibited a years-long pattern of inappropriate

sexual conduct, and, because he was an admitted alcoholic, we included a condition that Sicklinger provide proof of his continued sobriety. In the Matter of Todd Clifford Sicklinger, DRB 16-038 (November 2, 2016) (slip op. at 16-17). The Court agreed.

A review of the applicable New Jersey cases involving sexual misconduct leads us to the conclusion that a term of suspension is the appropriate quantum of discipline in this matter. A comparison of respondent's misconduct to that of individuals convicted of New Jersey's lewdness statute is most apt. Respondent's misconduct is most similar to that of the attorneys in Daul, Gilligan, Pierce, and Sicklinger, who were convicted of lewdness, because respondent's misconduct occurred in public places, and was committed to exploit strangers for his own sexual gratification. Like the attorney in Sicklinger, respondent engaged in a pattern of sexual deviance, in two separate, public locations, on two separate dates, albeit over a much shorter period. In contrast to the lewdness cases detailed above, the record in this case does not set forth the age of the victims, or any verbal or physical contact respondent may have had with his victims. Thus, although respondent's conduct was reprehensible, the quantum of discipline imposed should not be as severe as that imposed on attorneys convicted of offenses that included offensive touching, forceful sexual

contact, or sexual misconduct with children, such as the attorneys in Gernert, Ruddy, Herman, Frye, Cunningham, or Wright.

Based on the foregoing precedent, as a case of first impression, the baseline level of discipline for respondent's violations reasonably could range from a suspension of three months to one year. However, to craft the appropriate discipline in this case, we must consider both mitigating and aggravating factors.

In aggravation, respondent's misconduct was a part of a pattern in public places. He took dozens of invasive photographs of unsuspecting victims. In mitigation, he has no disciplinary history and has shown contrition and remorse, as exemplified during his sentencing hearings and in his brief to us. We accord little weight to his lack of prior discipline, however, in light of his short time at the bar. Respondent also readily admitted his wrongdoing, both in pleading guilty to the charged offenses, and in his brief to us.

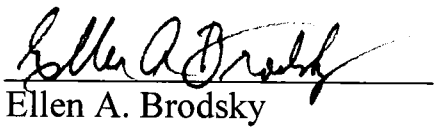
On balance, in light of the serious nature of the misconduct, and after consideration of the mitigation present, we determine that a six-month suspension, retroactive to the date of respondent's temporary suspension, is the appropriate quantum of discipline to protect the public and preserve confidence in the bar. Additionally, due to the nature of respondent's misconduct, his admitted alcoholism, and his continuing therapy, we further determine that proof of psychological counseling and proof of fitness to practice law should be

conditions precedent to respondent's reinstatement. Finally, upon reinstatement, respondent should be required to provide the OAE with proof of continued treatment, for two years.

Vice-Chair Gallipoli and Members Rivera and Hoberman voted for a two-year suspension, retroactive to the date of respondent's temporary suspension, and the same conditions as the majority imposed. Member Joseph voted to recommend respondent's disbarment. 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
Bruce W. Clark, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Samuel D. Jackson
Docket No. DRB 19-295

Argued: January 16, 2020

Decided: March 9, 2020

Disposition: Six-Month Suspension, Retroactive

Members	Six-Month Suspension, Retroactive	Two-Year Suspension, Retroactive	Disbar	Recused	Did Not Participate
Clark	X				
Boyer					X
Gallipoli		X			
Hoberman		X			
Joseph			X		
Petrou	X				
Rivera		X			
Singer	X				
Zmirich	X				
Total:	4	3	1	0	1

Ellen A. Brodsky
Chief Counsel