Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-071
District Docket No. XIV-2018-0143E

In the Matter of	:
Annmarie P. Smits	:
An Attorney at Law	:

Decision

Argued: September 17, 2020

Decided: February 10, 2021

Ryan J. Moriarty appeared on behalf of the Office of Attorney Ethics.

Robert E. Ramsey waived appearance for oral argument 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 disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent. Respondent stipulated to having

violated RPC 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer).

For the reasons set forth below, we determine to impose a three-month suspension.

Respondent earned admission to the New Jersey bar in 1994 and to the New York bar in 1995. At the relevant times, she maintained an office for the practice of law in Wayne, New Jersey. Respondent has no disciplinary history in New Jersey.

Respondent and the OAE entered into a disciplinary stipulation, dated February 21, 2020, which sets forth the following facts in support of respondent's admitted ethics violations.

On February 2, 2018, at approximately 2:50 p.m., respondent was packing her personal belongings to move to a new home. Her friend, M.C., who was assisting her, picked up a black bag containing respondent's 9-millimeter semiautomatic handgun, which respondent lawfully owned and had registered. Respondent took the bag, checked to see whether the gun was loaded, and attempted to secure it for proper transport. While respondent was attempting to secure the gun, it fired, and a bullet traveled through a wall, striking a minor in

the home, in the area of the minor's right thigh and buttock.[1] After the minor screamed that the minor had been shot, respondent and M.C. examined the minor's bleeding wound, cleaned it with betadine and peroxide, and wrapped it with a sweatshirt that had been on the floor. They failed to summon medical or emergency assistance.

At approximately 2:55 p.m., respondent telephoned Wouter Smits, her former husband, who is a part-time emergency medical technician (EMT) and surgical technician, to ask him to examine the minor's wound. Because Wouter did not answer the telephone, respondent left a voice message requesting a return call, but did not reveal that the minor had been shot.

When Wouter returned respondent's call at approximately 3:30 p.m., respondent informed him of the discharge of the gun and the injury to the minor. Wouter replied that he would examine the wound after he went to Home Depot to purchase painting supplies for respondent's new home. At approximately 4:15 p.m., Wouter arrived, examined the minor, and stated that the wound likely required stitches.

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[1] Pursuant to R. 1:20-9(h), we issued a protective order for the purpose of protecting the identity of the minor.

Respondent instructed Wouter to take the minor to the hospital, but Wouter replied that respondent should do so, because she had caused his injury. Wouter then left the residence to perform work at respondent's new home; yet, respondent still did not take the minor to the hospital. During an interview with the Passaic County Prosecutor's Office, respondent claimed that she "was in shock and not thinking rationally after the firearm discharged." She further stated, "I made a mistake by not calling 9-1-1 . . . in hindsight I wish I had."

At approximately 4:00 p.m., the minor's friend observed a social media post wherein the minor revealed that respondent had shot him. The friend contacted the police and reported the minor's gunshot wound. At about 5:00 p.m., M.C. departed the residence and, at approximately 5:13 p.m., more than two hours after the discharge of the firearm, the Wayne police arrived at the residence to perform a welfare check. Respondent admitted to the police that she accidently had shot the minor, and claimed that she had been preparing to take the minor to the hospital. The police examined the wound, observed that it was still bleeding, and called an ambulance, which arrived at approximately 5:30 p.m., almost two-and-a-half hours after the gunshot, to transport the minor and respondent to Chilton Hospital.

The staff at Chilton Hospital then transferred the minor to Morristown Hospital's Trauma Center (MHTC), because the bullet remained embedded in the minor's leg. The staff at MHTC examined the wound, cleaned it, bandaged it without stitches, and determined not to remove the bullet. The minor remained in the hospital overnight for observation.

The treating trauma physician, Dr. John A. Adams, opined that, although there was no permanent damage to the minor, when a bullet travels through materials, as it did in this case, there is a risk that embedded material on the bullet could enter the body and cause infection. Dr. Adams stated that a gunshot wound victim immediately should be taken to the hospital for proper diagnosis and medical treatment.

During the criminal investigation, respondent, M.C., Wouter, and the minor confirmed that the gun had discharged accidentally, but that none of them had contacted emergency services personnel. Respondent and Wouter were both charged with second-degree endangering the welfare of a child, contrary to N.J.S.A. 2C:24-4(a), and fourth-degree abuse or neglect, contrary to N.J.S.A. 9:6-1. On July 9, 2018, respondent waived indictment and entered a guilty plea via an accusation charging fourth-degree neglect, contrary to N.J.S.A. 9:6-3. That charge alleged that respondent

> did, while having the care, custody, or control of [the minor], a child under the age of (18) years, abuse, abandon, was cruel to, or neglectful of [the minor], specifically by failing to provide proper medical attendance for [the minor] and or/failing to do an act necessary for his well-being contrary to N.J.S. 9:6-3, a crime of the fourth degree, and against the peace of this State, the Government and dignity of the same
>
> [S¶46.][2]

By letter dated February 13, 2018, respondent's counsel notified the OAE of the charges pending against respondent.[3]

On September 21, 2018, the Passaic County Prosecutor's Office consented to respondent's entry into the Pretrial Intervention Program (PTI), and she was admitted into the program for a period of two years.[4]

The parties stipulated that respondent violated RPC 8.4(b) by failing to immediately obtain medical attention after she accidently shot the minor with a handgun.

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[2] "S" refers to the February 21, 2020 stipulation of facts.

[3] The complaint and Passaic County Prosecutor's Investigative Report identified the charges as N.J.S.A. 2C:24-4A and N.J.S.A. 9:6-1.

[4] Although the stipulation referred to the Bergen County Prosecutor's Office, the actual Consent Order stated that the Passaic County Prosecutor consented to the PTI. Presumably, this was a typographical error in the stipulation.

The stipulation cited no aggravating factors and, in mitigation, asserted that respondent has no prior discipline in twenty-six years at the bar; she promptly and readily admitted her misconduct, both criminally and to the OAE; and that her misconduct was an isolated incident unlikely to reoccur.

The OAE asserted that no case is directly on point with the facts of the instant matter, but recommended the imposition of a reprimand or a censure, or such lesser discipline as we deem appropriate, emphasizing respondent's inadequate response to the minor's injury, which resulted in the risk of further injury to him.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent violated RPC 8.4(b). Specifically, respondent committed the crime of fourth-degree neglect of a child, in contravention of N.J.S.A. 9:6-3, by failing to promptly seek proper medical attention for the minor after the minor had been accidentally shot. Respondent's delay could have caused the minor even greater harm. It was the police, not respondent, who ultimately sought medical attention for the minor, and only because the minor's friend had alerted them to the incident.

In sum, we find that respondent violated RPC 8.4(b). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Respondent's criminal conduct presents us with a case of first impression. The Court has never disciplined a New Jersey attorney for such misconduct – failing to seek medical attention for a minor after inflicting the minor with a gunshot wound. The following cases provide some direction for the appropriate quantum of discipline.

In two prior, but dissimilar, child neglect cases, reprimands were imposed. In In re Costill, 174 N.J. 563 (2002), an attorney was convicted of the fourth-degree crime of child abuse and neglect, in violation of N.J.S.A. 9:6-1 and 9:6-3. In that case, he left his sleeping, two-year-old twin sons in his car, for almost an hour, on a cold winter night, while he drank alcohol in a nearby bar. The attorney was sentenced to a one-year term of probation and directed to complete an evaluation and any necessary treatment for alcohol addiction. In the Matter of Keith A. Costill, DRB 02-195 (October 15, 2002) (slip op. at 3). In our decision, we recognized the seriousness of the attorney's misconduct, but, in mitigation, noted his remorse and lack of disciplinary history. Id. at 5.

In In re Sierzega, 229 N.J. 517 (2017), the attorney was convicted of the fourth-degree crime of cruelty and neglect of a child, in violation of N.J.S.A. 9:6-3. After consuming alcohol, the attorney drove his motor vehicle 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). Like the attorney in Costill, Sierzega had no disciplinary history, was sentenced to a one-year term of probation, and underwent treatment for alcohol addiction. Id. at 6. Sierzega also voluntarily installed an interlock device on his vehicle and regularly attended Alcoholics Anonymous meetings. Ibid. Citing our decision in Costill, and noting Sierzega's rehabilitation efforts, we imposed a reprimand. Id. at 7.

Conduct involving less serious criminal acts generally has resulted in the imposition of an admonition or a reprimand. See, e.g., In the Matter of Shauna Marie Fuggi, DRB 11-399 (February 17, 2012) (admonition for attorney who set fire to some of her estranged husband's belongings in the driveway of the marital home after he left for the evening to be with his long-term girlfriend; the attorney then sent him a text message informing him that his possessions were aflame; she was charged with third-degree arson, in violation of N.J.S.A. 2C:17-1(b), and successfully completed PTI; in mitigation, her action was impulsive, due to

the context of the marital difficulties; she unsuccessfully attempted to extinguish the fire; only personal property was damaged; she admitted the misconduct; and she cooperated with law enforcement); In the Matter of Michael E. Wilbert, DRB 08-308 (November 11, 2009) (admonition for possession of eight rounds of hollow-point bullet ammunition, a violation of N.J.S.A. 2C:39-3(f), and possession of an over-capacity ammunition magazine, a violation of N.J.S.A. 2C:39-3(j), fourth-degree crimes for which the attorney was admitted into PTI); In re Murphy, 188 N.J. 584 (2006) (reprimand for attorney who twice presented his brother's driver's license to police in order to avoid prosecution for driving under the influence charges, in violation of RPC 8.4(b), (c), and (d); in addition, the attorney failed to cooperate with the OAE's investigation of the matter (RPC 8.1(b)); and In re Thakker, 177 N.J. 228 (2003) (reprimand for an attorney who pleaded guilty to harassment, in violation of N.J.S.A. 2C:33-4(a), a petty disorderly persons offense; the attorney harassed a former client, telephoning her repeatedly, after she told him to stop; additionally, the attorney was abusive to the police officer who responded in the matter; despite that police officer's warning, the attorney continued to call the former client and the police officer).

For more serious crimes, censures have been imposed. See, e.g., In re Milita, 217 N.J. 19 (2014) (censure for attorney who pleaded guilty to one count

of hindering apprehension by providing false information to a law enforcement officer, a disorderly persons offense (N.J.S.A. 2C:29-3b(4)), and two counts of harassment, petty disorderly persons offenses (N.J.S.A. 2C:33-4(c)); the attorney became angry when two teenagers in a car tailgated him; he made an obscene hand gesture, pulled over, brandished a knife, and then followed the teens for several miles, still brandishing the knife, before being apprehended by police; the attorney first denied that he had a knife, but later admitted to its possession, claiming that it had been given to him by a mechanic to fix his car); and In re Osei, 185 N.J. 249 (2005) (attorney was censured for causing $72,000 worth of damage to his own house, which was the subject of a foreclosure; aggravating factors included the deliberate nature of the attorney's actions and the extent of the damage to the property, which demonstrated that his actions had occurred over a significant period of time; no prior discipline).

Terms of suspension generally have been imposed when the attorney commits or threatens acts of violence. See, e.g., In re Gonzalez, 229 N.J. 170 (2017) (three-month suspension for attorney who violated RPC 8.4(b) and RPC 8.4(d) and was indicted on one count of third-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(d), and one count of fourth-degree criminal mischief, N.J.S.A. 2C:17-3(a)(1), when he he initiated a "road rage"

incident and, after the victim stopped her vehicle at an intersection, the attorney exited his vehicle, retrieved a golf club, swung the club at the victim's vehicle, and threw it at her car as she attempted to drive away, at which time the club struck her vehicle multiple times, causing damage; the attorney left the scene without contacting the police; the attorney successfully completed the PTI program with conditions of restitution for the damage to the victim's car and completion of an anger management course; the victim stated that she was unable to sleep for fear of another attack; prior reprimand and admonition); In re Marcinkiewicz, 240 N.J. 207 (2019) (one-year suspension, with conditions, for attorney who pleaded guilty to one count of aggravated assault and one count of endangering the welfare of a child, third-degree crimes; during an alcoholic blackout, the attorney inflicted severe injuries on her eight-week-old daughter); and In re Guzzino, 165 N.J. 24 (2000) (two-year suspension for attorney convicted of second-degree manslaughter and driving while intoxicated).

Here, respondent's discharge of her handgun, which resulted in the gunshot wound to the minor, was reckless, albeit unintentional. The gravamen of her misconduct was her failure to seek immediate medical attention for the wounded minor. Her actions, therefore, clearly were more serious than those of the attorneys in Fuggi and Wilbert (admonitions), who did not cause physical

injury to a victim. Unlike the attorneys in Costill and Sierzega (reprimands), who exercised poor judgment fueled by alcohol consumption and addiction issues, respondent made the sober, intentional, and callous decision to refrain from calling for medical assistance, despite having shot the minor. Accordingly, we determine that respondent's misconduct was more akin to the attorneys' actions in Gonzalez (road rage, three-month suspension) and Marcinkiewicz (assault of infant child, one-year suspension), both of which involved violence and an innocent, vulnerable victim. A one-year or two-year suspension is not warranted, however, because the attorneys in Marcinkiewicz and Guzzino caused severe injuries and death, respectively. Respondent's failure to seek medical treatment, although certainly a terrible decision that put a vulnerable minor at risk of more serious medical consequences, fortunately did not cause further injury to the minor.

Finally, we considered the aggravating and mitigating factors set forth in the stipulation. This case presents no aggravating factors independent of the underlying misconduct. In mitigation, respondent has no ethics history in twenty-six years at the bar; she admitted her misconduct; she entered into the stipulation; and the misconduct was the result of one isolated incident with a low risk of recurrence.

On balance, we determine that a three-month suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Singer voted to impose a reprimand and filed a dissent. Members Joseph and Rivera did not participate.

Chair Clark, Vice-Chair Gallipoli, and Members Boyer and Zmirich note their disagreement with the dissent's position that the age of the minor victim is relevant to either respondent's culpability or the principles of mitigation.

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: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Annmarie P. Smits
Docket No. DRB 20-071

Argued: September 17, 2020

Decided: February 10, 2021

Disposition: Three-Month Suspension

Members	Three-Month Suspension	Reprimand	Recused	Did Not Participate
Clark	X			
Gallipoli	X			
Boyer	X			
Hoberman	X			
Joseph				X
Petrou	X			
Rivera				X
Singer		X		
Zmirich	X			
Total:	6	1	0	2

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel