Supreme Court of New Jersey
Disciplinary Review Board
Docket No. 20-126
District Docket No. XIV-2019-0205E

In the Matter of	:
Gerard William Traynor	:
An Attorney at Law	:

Decision

Decided: March 23, 2021

Lauren Martinez, Deputy Ethics Counsel for the Office of Attorney Ethics, waived oral argument.

Robert Ramsey, counsel for respondent, waived oral argument.

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 conviction in the Superior Court of New Jersey, Law Division, Ocean County, of computer criminal activity, in violation of N.J.S.A. 2C:20-25(c), a third-degree crime. The OAE asserted that this offense constitutes

violations of RPC 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects) and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons set forth below, we determine to grant the motion for final discipline and to impose a reprimand.

Respondent was admitted to the New Jersey bar in 2001. He has no disciplinary history. At the time of the misconduct underlying this matter, he was employed as a police officer in Long Beach Township, New Jersey, a position he held for more than twenty years. He also maintains a solo law practice with offices in Galloway and Surf City, New Jersey.

We now turn to the facts of this matter.

The Ocean County Prosecutor's Office conducted an internal affairs investigation which revealed that, on April 7 and 16, 2018, respondent, while on duty as a Long Beach Township police officer, used the mobile data terminal in his police vehicle to obtain confidential information about his daughter and about a former legal client. In each instance, respondent had neither authorization nor a legitimate law enforcement purpose for accessing that information.

On April 1, 2019, approximately one year after respondent's unlawful access of the information, the Ocean County Prosecutor's Office charged him, with two counts of third-degree computer criminal activity, in violation of N.J.S.A. 2C:20-25(c).[1]

On July 11, 2019, respondent appeared in the Superior Court of New Jersey, Law Division, Ocean County, before the Honorable Wendel E. Daniels, P.J.Cr., and entered a guilty plea to an Accusation charging one count of third-degree computer criminal activity. As part of that plea, respondent allocuted that, on April 16, 2018, he had purposely, without authorization or a legitimate police purpose, accessed the computer system to obtain personal identifying information concerning his daughter. Specifically, the record reveals that respondent "ran" the plates and license of his daughter through his mobile data terminal. In exchange for the guilty plea to the Accusation, the State agreed to dismiss the remaining count of the complaint and to recommend that respondent be sentenced to a non-custodial term of probation and forfeiture of

[1] N.J.S.A. 2C:20-25(c) states: "[a] person is guilty of computer criminal activity if the person purposely or knowingly and without authorization, or in excess of authorization: accesses or attempts to access any data, data base, computer, computer storage medium, computer program, computer software, computer equipment, computer system or computer network for the purpose of executing a scheme to defraud, or obtain services, property, personal identifying information, or money, from the owner of a computer or any third party."

public office. Respondent's daughter was in the courtroom during his guilty plea.

On September 5, 2019, Judge Daniels sentenced respondent, in accordance with the plea agreement, to a one-year period of non-custodial probation. Respondent also was ordered to forfeit current and future public employment, in accordance with N.J.S.A. 2C:51-2.[2] Judge Daniels remarked during the sentencing hearing that he considered, in mitigation, a letter from respondent's daughter that she had suffered no harm and was supportive of respondent. Further, the prosecutor noted that, on April 16, 2018, respondent separated from his employment with the Long Beach Township Police Department.

Throughout the proceedings, respondent's counsel communicated with the OAE, first to report respondent's criminal charges, and then to keep the OAE informed of the outcome of his criminal case.

In its brief, the OAE urged the imposition of a censure. Noting that criminal conduct has resulted in a wide range of discipline, the OAE argued

[2] N.J.S.A. 2C:51-2(a) states, in relevant part, "[a] person holding any public office, position, or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof, who is convicted of an offense shall forfeit such office, position or employment if: (1) He is convicted under the laws of this State of an offense involving dishonesty or of a crime of the third degree or above . . . (2) He is convicted of an offense involving or touching such office, position or employment."

that a censure is appropriate for respondent's conduct. Although there has been only one attorney disciplinary case concerning third-degree computer criminal activity, which resulted in a reprimand, the OAE argued that respondent's position as a police officer should be considered an aggravating factor that serves to enhance the quantum of discipline to a censure.

Further, the OAE suggested that lack of injury to another and respondent's unblemished disciplinary history could be considered as mitigating factors.

Respondent, through counsel, waived his right to reply to the motion for final discipline and to appear at oral argument, and relied on the OAE's factual and legal conclusions, as well as its recommended discipline.

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 and conviction of computer criminal activity, in violation of N.J.S.A. 2C:20-25(c), a third-degree crime, thus, establishes violations of RPC 8.4(b) and RPC 8.4(c). Pursuant to RPC 8.4(b), it is misconduct for an attorney to "commit a criminal act that reflects adversely on

the lawyer's honesty, trustworthiness or fitness as a lawyer." Moreover, pursuant to RPC 8.4(c), it is misconduct for an attorney to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." 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." 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).

We have noted that, although we do not conduct "an independent examination of the underlying facts to ascertain guilt," we will "consider them relevant to the nature and extent of discipline to be imposed." Magid, 139 N.J. at 452. In motions for final discipline it is acceptable to "examine the totality of the circumstances" including the "details of the offense, the background of respondent, and the pre-sentence report" before "reaching a decision as to [the]

sanction to be imposed." In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

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).

Here, respondent was convicted of one count of computer criminal activity, in violation of N.J.S.A. 2C:20-25(c), a third-degree crime. Although the facts are sparse, respondent admitted that he knowingly used his police database to access confidential information about two people, without any legitimate law enforcement purpose to do so. Based on respondent's conviction, we find that he violated RPC 8.4(b) and RPC 8.4(c).

The OAE urged the imposition of a censure. Respondent, through counsel, waived his right to reply to the motion and adopted the OAE's

recitation of facts and recommended quantum of discipline. The OAE relied primarily on In re Alper, 242 N.J. 143 (2020), to support its recommendation that respondent be censured. In Alper, the Court imposed a reprimand on an attorney who had been employed as the Director of Operations by Marine Transport Logistics (MTL), a shipping company owned by his parents-in-law. In the Matter of Vadim Alper, DRB 19-194 (January 14, 2020) (slip op. at 2). After a falling out, the in-laws stopped paying Alper his earned commissions. Ibid.

Alper formed a competitor company and left MTL. Id. at 2-3. He then used the information that he had acquired at MTL to improperly access an MTL database and to calculate the commissions owed to him. Id. at 4.

Alper stipulated to having violated RPC 8.4(b) and (c). Id. at 5. Although there was no case law directly on point, we examined cases involving thefts by attorneys and conduct involving less serious criminal acts. Id. at 6-7. Alper had been charged with second-degree and third-degree computer criminal activity, in violation of N.J.S.A. 2C:20-25(c) and (e). The OAE compared Alper's misconduct to cases of identity theft, which usually result in suspension. However, we found that Alper's conduct was not as egregious as that of the attorneys in theft cases and recommended that the

Court impose a reprimand. No aggravating factors were present, and like respondent, Alper had no disciplinary history.

Conduct involving less serious criminal acts generally results in the imposition of an admonition or a reprimand. See, e.g., In the Matter of Michael E. Wilbert, DRB 08-308 (February 11, 2009) (admonition for possession of eight rounds of hollow-point bullet ammunition and possession of an over-capacity ammunition magazine, fourth-degree crimes for which the attorney was admitted into PTI); In re Murphy, 188 N.J. 584 (2006) (reprimand imposed on 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), RPC 8.4(c), and RPC 8.4(d); in addition, the attorney failed to cooperate with the OAE's investigation of the matter, in violation of RPC 8.1(b)); and In re LaVergne, 168 N.J. 409 (2001) (reprimand for attorney found guilty in municipal court of theft by failure to make required disposition of property received, a disorderly persons offense; the attorney entered into an agreement to purchase an automobile, never made payment, and instead took possession of the vehicle and allowed it to be registered to a new owner).

In this matter, respondent's conduct is similar to Alper's and, at a minimum, warrants a reprimand. The OAE seeks a censure, however, because respondent's conduct occurred while he was on duty as a police officer, unlike

Alper's conduct, which affected a commercial database and private company. In this regard, the OAE relied on In re Asbell, 135 N.J. 446 (1994), and In re Pariser, 162 N.J. 574 (2000).

Asbell and Pariser, however, are distinguishable from this matter. In Asbell, the attorney, while serving as a county prosecutor, repeatedly discharged a firearm into his county-owned vehicle and then staged a false assassination attempt on his life. In re Asbell, 135 N.J. at 449. His account of what had occurred resulted in a three-day investigation, until law enforcement officials determined it to be a hoax. Id. at 450-51. Asbell was charged and pleaded guilty to filing a false police report. Id. at 453. Regarding the disciplinary matter, we found that Asbell's conduct "reflect[ed] adversely on all prosecutors." Id. at 458. Further, we found that, "[i]n the face of mounting evidence, he constantly misrepresented facts during the investigation," and we noted his "continued deception of the public and law-enforcement authorities." Id. at 458-59.

Similarly, in Pariser, the attorney was a Deputy Attorney General who committed a series of petty thefts over a period of time, was charged, and pleaded guilty to third-degree official misconduct. We considered, as an aggravating factor, respondent's status as a Deputy Attorney General at the

time he committed the criminal acts. In the Matter of Michael Pariser, DRB 99-016 (December 17, 1999) (slip op. at 5).

Clearly, respondent's actions in the matter before us are not as egregious as those committed by the prosecutors in Asbell and Pariser. Although respondent committed the unlawful conduct while on duty as a police officer, his actions reflected poorly on himself, rather than on the police department. Respondent's actions were targeted and personal and did not serve to undermine the police department or public trust in law enforcement. Therefore, this case differs from Asbell, which involved much more serious misconduct and was much more likely to diminish public confidence in law enforcement. The OAE did not assert any other aggravating factors.

In mitigation, respondent has an unblemished history in nineteen years at the bar, and the victim was not injured by respondent's misconduct.

On balance, we determine that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

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 Gerard William Traynor
Docket No. DRB 20-126

Decided: March 23, 2021

Disposition: Reprimand

Members	Reprimand	Recused	Did Not Participate
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman	X		
Joseph	X		
Petrou	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9	0	0

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