Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-104
District Docket No. XIV-2020-0428E

In the Matter of	:
Nicholas James Dotoli	:
An Attorney at Law	:

Decision

Argued: September 23, 2021

Decided: November 30, 2021

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

Marc D. Garfinkle 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 (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea and adjudication, in the Superior Court of New Jersey, Law Division, Criminal Part, Morris County, to criminal mischief, a disorderly

persons offense, in violation of N.J.S.A. 2C:17-3(b)(2). In particular, respondent pled guilty to damaging a door in the apartment he shared with a domestic partner, which door was replaced at a cost of about $80.

For the reasons set forth below, we determine to grant the motion for final discipline and to impose an admonition, with conditions.

Respondent earned admission to the New Jersey and New York bars in 2007. He has no prior discipline in New Jersey. At all relevant times, he maintained a practice of law office in Boonton, New Jersey.

The incident leading to respondent's guilty plea arose out of a domestic dispute with his partner, P.M. However, the competing accounts of the disturbance between the two starkly conflicted as to who initiated the aggressive interaction. Respondent identified P.M. as the aggressor. In turn, P.M. initially identified respondent as the aggressor, albeit while making inconsistent statements to police responding to the scene. P.M. later recanted his claim that respondent acted as the aggressor. He did not testify at either the court adjudication of the disorderly persons offense, or in any later ethics proceeding.

On August 7, 2020, at 2:27 a.m., police officers responded to the residence that respondent rented with P.M. Upon their arrival, the police separately

questioned P.M. and respondent.[1] P.M. told the police that, the previous morning, he and respondent had an argument about the status of their relationship, had agreed to discuss the matter further after respondent returned home from work, and had further agreed that P.M. would spend the night at a hotel after their evening discussion. P.M. claimed that, when respondent returned home from work, another argument ensued and, therefore, P.M. left the residence. However, despite their agreement otherwise, P.M. returned to the residence later that evening, while respondent was asleep, to obtain their dog's leash. Once inside the residence, P.M. began to pack a suitcase and respondent woke up. P.M. stated that the parties again argued; P.M. removed himself from the situation and went into the bedroom; locked the bedroom door and went into a bathroom; and respondent broke down the bedroom door. P.M. told the police that, after respondent broke down the bedroom door, respondent entered the bathroom and there was a physical altercation. P.M. initially claimed that respondent pinned him on the floor, placed his hands around P.M.'s throat, and told P.M. that he would kill him. P.M. also stated that he kicked and punched respondent in an effort to get off of the floor.

[1] The police interviewed P.M. as to matters preceding their arrival, because they did not observe the events described by P.M. Accordingly, the recounting of P.M.'s version of events in the police reports is only admissible under the business records exception to prove that such statements were made by P.M., and not for the truth of P.M.'s account of the incident. Estate of Hanges, 202 N.J. 369 n. 1 (2010).

Respondent gave a different account of the events, wherein he was not the aggressor. He told the police that, the morning before, he and P.M. had argued about the status of their relationship, and that the argument ended when respondent left for work. Respondent stated that, when he returned home from work, he and P.M. had another discussion, that he went to bed around 10:00 p.m., and that P.M. began to drink alcohol. Respondent claimed that the dog woke him up and an argument ensued between the parties, in the living room. He confirmed that P.M. went into the bedroom and locked the door. Respondent admitted that he broke down the bedroom door by kicking it but maintained that he only broke down the door to retrieve his cell phone and bag from the bedroom so that he could leave the shared residence – which would have removed him from the situation. He claimed that P.M. was in the bathroom; that P.M. initiated a physical altercation throwing things at him; that P.M. threw him to the ground three to four times; and that he sustained injuries. As such, respondent asserted that he attempted to remove himself from the situation and that P.M. was the aggressor.

The credibility of P.M.'s account of the events was called into question by the fact that, despite P.M.'s initial claim that respondent strangled him, the police "did not observe any signs of injury or marks around his neck." Indeed, consistent with respondent's account, the police observed "defensive wounds on

[respondent] and injuries to his hand, due to [P.M.] biting him, and small scrapes on his head." The police observed the broken bedroom door, which respondent openly admitted to damaging. The police deemed respondent to be the aggressor. He was arrested and charged with simple assault, aggravated assault, and making terroristic threats.

P.M. subsequently modified his version of the events. At the police department, P.M. both denied that respondent had strangled him and refused to include that accusation in his affidavit. Notably, there were no signs of injury to P.M.'s neck and he refused the medical treatment offered by the police. He also initially stated that respondent threatened him during the altercation, but later claimed that, following the altercation, the parties were together on the couch when respondent threatened him. P.M. then relayed that he "at no time felt his life was being threatened." Later, on September 23, 2020, P.M. sought to further correct the police investigation report and stated that respondent "never" placed his hands on his neck or strangled him. P.M. stated that there was a misunderstanding of the facts by the police, and he noted that English is not his first language. He also reported to the prosecutor that he "only called the police to intimate [sic][2] [respondent] and did not want the police to show up to his residence."

[2] Based on the context of the statement, it is likely that P.M. said "intimidate" not "intimate."

The record contains the account of a prior report of a domestic disturbance between the parties, sixteen months earlier. On April 28, 2019, at 1:38 a.m., the police responded to find P.M. standing outside of the residence with his luggage and personal belongings. P.M. told the police that he and respondent had a verbal dispute, that he hid in the closet to get away and to sleep, and that respondent grabbed him by the legs and dragged him out of the closet. The police noted that P.M. had visible signs of injury, including redness to his right cheek, a small scratch on the outside of his left hand, and opened stiches from a prior, unrelated injury.

As in the instant matter, respondent provided the police with a different account of the April 28, 2019 events. He stated that he had a party; that P.M. refused to leave his apartment; that P.M. was intoxicated; that P.M. hid in the closet as a ploy to get his attention; that P.M., when found, walked out of the closet on his own; and that he never touched P.M. or dragged him from the closet. The police observed that respondent had visible signs of injury, including "a scratch on his right forearm (near his elbow), a scratch on his left ankle and a small blood stain on his T-shirt." The police were unable to determine who was the aggressor in the situation, as both respondent and P.M. were "mutually combative with each other." Therefore, both parties were placed under arrest for simple assault, and both obtained temporary restraining orders against the other.

On October 5, 2020, respondent's counsel reported respondent's August 7, 2020 arrest and criminal charges to the OAE, as R. 1:20-13(a)(1) requires.

On November 30, 2020, respondent appeared before the Honorable Stephen J. Taylor, J.S.C. Respondent waived indictment and pleaded guilty to the amended charge of disorderly persons criminal mischief, in violation of N.J.S.A. 2C:17-3(b)(2), and the balance of the charges were dismissed as part of the plea agreement. During his allocution before the court, as a factual basis for his guilty plea, respondent admitted that, on August 7, 2020, while in Boonton, New Jersey, he damaged a door in the rented residence that he shared with P.M. by kicking it. He further stated that he replaced the door, which was valued at $80. Respondent was ordered to pay $50 to the Victims of Crime Compensation Fund and $75 to the Safe Neighborhoods Fund, and to complete the Abuse Ceases Today program.[3] He applied and was admitted to the Pre-Trial Intervention program (PTI), and the court ordered that the PTI supervision period last for one year.[4] Accordingly, sentencing did not and will not take place unless respondent fails to successfully complete the conditions set forth for his acceptance into PTI.

[3] Abuse Ceases Today is the domestic violence batterers intervention program.

[4] Presumably, respondent remains under PTI supervision through November 2021.

On April 28, 2021, based on respondent's guilty plea and adjudication, the OAE submitted the motion for final discipline to us, pursuant to R. 1:20-13(c)(2). The OAE asserted that this offense constituted a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects).

Following a review of the record, we determine to grant the OAE's motion for final discipline. In New Jersey, R. 1:20-13(c) governs final discipline proceedings. Under that Rule, respondent's guilty plea is conclusive evidence of his guilt in this 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 adjudication to the disorderly persons criminal mischief, in violation of N.J.S.A. 2C:17-3(b)(2), thus, establishes a violation of RPC 8.4(b). Pursuant to that Rule, 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." Hence, the sole issue before us 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).

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it 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).

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

This matter comes to us as a motion for final discipline pursuant to 1:20-13(c)(2) for criminal mischief associated with the damage to an apartment door valued at $80.

Reprimands and censures have been imposed on attorneys convicted of criminal mischief. See, e.g., In re Fattell, 242 N.J. 145 (2020) (attorney reprimanded after pleading guilty to a single count of disorderly persons criminal mischief, as amended from an allegation of a third-degree crime; the attorney purposefully smashed the taillights on a motor vehicle owned by another, causing more than $3,000 in damage); In re Press, 200 N.J. 437 (2009) (attorney reprimanded, where he stipulated to having committed a fourth-degree crime of criminal mischief; the attorney purposely damaged personal property of others by damaging windshield wipers on vehicles; prior private reprimand); and In re Osei, 185 N.J. 249 (2005) (attorney censured, where he caused $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).

Like the attorneys in Fattell, Press, and Osei, respondent admitted having committed an act of criminal mischief, in violation of RPC 8.4(b). Standing alone, respondent's misconduct arguably warrants a reprimand. But the fact that respondent damaged a door in which he had a possessory interest, causing damage of relatively minor value, would also support an admonition. In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors.

The OAE argued that respondent's conduct was more akin to that of the attorney in In re Osei, 185 N.J. 249 (2005), who caused $72,000 worth of property damage to his own house, rather than the aforementioned cases where attorneys received suspensions for the physical injury of another. Based on its likeness of the instant criminal mischief matter to Osei, the OAE recommended a censure, rather than a term of suspension.

In turn, in his brief, respondent argued that, although a censure was not inappropriate, a reprimand was the more appropriate discipline. In mitigation, respondent requested that consideration be given to the following: he was no longer in a relationship with P.M.; he accepted responsibility for his

misconduct; he attended counseling; he expressed remorse; and he engaged in community service and outreach programs with the LGBTQ community, as well as charitable activities. At oral argument, respondent stated that he was agreeable to ongoing anger management counseling if we were inclined to recommend it.

In mitigation, respondent has no prior discipline; expressed remorse for his misconduct; engaged in counseling; and expressed a willingness to continue counseling. Respondent also made restitution by replacing the damaged door. The instant case is further distinguishable from other cases where discipline has been imposed upon attorneys who committed acts of criminal mischief. Specifically, respondent pleaded guilty to a disorderly persons offense, as opposed to a third or fourth-degree crime, because the value of the damage was $80 - substantially less than the $3,000 or $72,000 damage caused in the cases detailed above, which warranted a reprimand or censure.

On balance, based upon the unique facts of this case and the substantial mitigating factors, we determine that an admonition is the appropriate measure of discipline to impose for respondent's guilty plea to disorderly persons criminal mischief, in violation of N.J.S.A. 2C:17-3, for causing $80 worth of damage to his shared residence.

We further determine to impose the conditions that (1) respondent continue to attend counseling; (2) he commence and continue to attend anger management counseling; and (3) for two years from the date of the Court's disciplinary Order in this matter, he provide proof of same, on a quarterly basis, to the OAE.

We are mindful that respondent initially faced serious charges of domestic violence. Domestic violence is a serious societal issue which we and the Court do not take lightly. With few exceptions, as the Court announced in In re Margrabia, 150 N.J. 198, 201 (1997), a three-month suspension is the baseline measure of discipline imposed on an attorney who has been convicted of an act of domestic violence. See e.g., In re Fulford, 237 N.J. 252 (2019) (attorney suspended for three months, where he was found guilty of simple assault, a disorderly persons offense, in violation of N.J.S.A. 2C:12-1(a), after the Judge found that his use of force against the victim was "extremely disproportionate to the threat posed"); In re Pagliara, 232 N.J. 327 (2018) (attorney suspended for three months, where he pleaded guilty to aggravated assault, a third-degree crime, in violation of N.J.S.A. 2C:12-1(b)(7), when he attempted to cause significant bodily injury to his wife when he punched her and caused her nose to bleed); and In re Park, 225 N.J. 609 (2016) (attorney suspended for three months, where he pleaded guilty to aggravated assault, a third-degree crime, in

violation of N.J.S.A. 2C:12-1(b)(7), when he attempted to cause bodily injury to his mother by forcing her to take a quantity of prescription pills).

In this instance, however, we determine that the record before us fails to establish, by clear and convincing evidence, that respondent engaged in acts of domestic violence, which would warrant enhanced discipline.

The admissions by respondent in the police report clearly identified P.M. as the aggressor in both incidences requiring police intervention. The allocution by respondent did not establish otherwise as it focused solely on the resulting property damage.

Moreover, even the hearsay statements of P.M. within the record, if accepted as evidence of domestic violence, would fail to support a charge of domestic violence by clear and convincing evidence. Specifically, P.M. changed his version of the events multiple times and refused to include the allegation that respondent had strangled him in his affidavit. Moreover, the police observed no visible signs of injury to P.M.'s neck, despite his initial allegation that respondent had choked him, and, rather, they observed defensive wounds on respondent. P.M. also told law enforcement authorities that he called the police only to intimidate respondent.

Ultimately, the simple assault charge was downgraded to criminal mischief and the balance of the charges were dismissed, as part of respondent's

plea agreement. The allocution by respondent admitted only the destruction of an $80 door. The absence of a separate ethics hearing provides us with no additional evidence by which we may consider the imposition of discipline based upon the more serious offense of a domestic violence assault.

Our decision is consistent with those Supreme Court authorities requiring the Board to consider evidence beyond a convicted attorney's plea agreement and allocution in fashioning appropriate discipline to protect the public's interest.

In In re Spina, 121 N.J. 378 (1990), the respondent had engaged in long-term theft from his employer, for which he ultimately pled guilty to the less serious offense of "unauthorized borrowing." Respondent argued, and the Court rejected, the respondent's contention that we had exceeded our authority by imposing discipline based upon evidence providing factual details beyond the four corners of the plea agreement.

In Spina, the Court affirmed our authority to go beyond a plea agreement to consider trial or plea transcripts, pre-sentence report or any other relevant documents. In rejecting the notion that our consideration of these documents violated due process, the Court noted that the respondent had repeatedly acknowledged the underlying facts establishing his repeated misuse and theft of the employer's funds. Spina, 121 N.J. at 389. Indeed, the incidences giving rise

to the enhanced discipline were based upon the respondent's own summary of his misdeeds. Id. at 382. Further, the sentencing report and related sentencing memorandum met with no objection from the respondent, who had already admitted to the basic facts of his misconduct as part of his plea agreement. Id. at 385-86. Our consideration of these factors beyond the plea agreement was therefore deemed akin to additional information a respondent may provide in mitigation of the potential discipline imposed, when considering the discipline necessary to promote the public interest. Id. at 389.

The Court's decision in In re Gallo, 178 N.J. 115 (2003), however, established firm limits to reliance on information outside the plea agreement and allocution in circumstances where the respondent did not have a fair opportunity to challenge the validity of the evidence. In such circumstances, where a more complete record is warranted due to the apparent seriousness of the attorney's conduct, in lieu of acting solely on a motion for final discipline we are permitted to remand the matter for an evidentiary hearing when necessary to address unanswered questions that bear on a respondent's professional conduct. Id. at 122.

In Gallo, the respondent was convicted of sexually fondling four clients. The plea agreement and resulting allocution resulting in four concurrent five-year probationary terms did not require that respondent provide detail

surrounding his conduct. In addressing the necessity for a full factual hearing, the Court observed,

> The imposition of discipline based on a record other than respondent's plea admissions would not be fair unless he has had the opportunity to confront his accusers and present testimony on his behalf.
>
> [Id. at 120.]

The seriousness of the victim's allegations evinced such a betrayal of trust to warrant the development of a more complete record to ensure appropriate discipline was imposed. Id. Nevertheless, the Court concluded that it was not "in position . . . to determine the veracity of those specific allegations and no such undertaking occurred before the DRB." Id.

In this matter, the specific allegations by P.M. implicating domestic violence were disputed by the respondent, who pointed to P.M. as the aggressor. The police report indicated that P.M. provided inconsistent stories in his initial interview, and later recanted. Although we could remand for an evidentiary hearing before a Special Ethics Master, as in Gallo, the subsequent lack of cooperation of P.M. in the criminal proceeding and the fact that this incident arose from a mutually toxic relationship militates against requiring a full evidentiary hearing.

Based on the entirety of the record before us, we find no clear evidence that respondent assaulted P.M. Therefore, this case is distinguishable from the

line of cases that warrant a term of suspension – the ordinary measure of discipline imposed on attorneys who have been convicted of one-sided acts of physical domestic violence.

Members Hoberman and Rivera voted to censure respondent, with the same conditions.

Chair Gallipoli and Member Joseph voted to suspend respondent for three months, with the same conditions.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
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 Nicholas James Dotoli
Docket No. DRB 21-104

Argued: September 23, 2021

Decided: November 30, 2021

Disposition: Admonition

Members	Admonition	Censure	Three-month suspension
Gallipoli			X
Singer	X		
Boyer	X		
Campelo	X		
Hoberman		X	
Joseph			X
Menaker	X		
Petrou	X		
Rivera		X	
Total:	5	2	2

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