

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-240
District Docket No. XIV-2019-0333E

In the Matter of
Mark Bae Jander
An Attorney at Law

:
:
:
:
:
:
:
:
:
:

Decision

Argued: February 17, 2022

Decided: May 9, 2022

Michael S. Fogler appeared on behalf of the Office of Attorney Ethics.

A. John Blake 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, in the Superior Court of New Jersey, to second-degree unlawful possession of a handgun, in violation of N.J.S.A. 2C:39-

5(b)(1). The OAE asserted that this offense constitutes a violation of RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer).

For the reasons set forth below, we unanimously determine to grant the motion for final discipline. However, we are unable to reach a consensus on the proper quantum of discipline. As set forth below, four Members voted to impose a censure and four Members voted to impose a three-month suspension.

This matter represents the second instance, in less than one year, in which an attorney unlawfully has brought a loaded firearm to a courthouse. Considering the need to deter such reckless misconduct to protect the safety of judges, judiciary employees, and members of the public, a majority of the Board determines to recommend that the Court consider issuing prospective guidance to the New Jersey bar that, henceforth, a term of suspension will be the presumptive sanction imposed on attorneys who unlawfully bring loaded firearms to a courthouse.

Respondent was admitted to the New Jersey bar in 2016 and to the Pennsylvania bar in 2017. He has no prior discipline in New Jersey. At the relevant times, he was an associate attorney at the Falcon Law Firm, LLC, in Oakhurst, New Jersey.

The facts of this matter are undisputed.

On the evening of June 16, 2019, respondent was at home cleaning his .38 caliber revolver while preparing for his first civil jury trial, which was scheduled for the next day. Because respondent's parents, with whom he resided, disapprove of firearms, respondent hid the cleaned handgun in his trial bag before he moved the bag to another room.

On the morning of June 17, 2019, respondent took his trial bag to the Middlesex County Superior Courthouse, where he was scheduled to appear for trial. He failed to remove the handgun from his trial bag before entering the courthouse, despite having had exclusive control of the bag since the night before. Upon entering the courthouse, respondent placed his trial bag through a scanner, which revealed his handgun. Although respondent agreed to allow a sheriff's officer to search his bag, he first attempted to search the bag himself to demonstrate that it contained no weapons. However, the officer instructed respondent to step away from the bag and then removed the fully-loaded handgun.¹ Because respondent did not have a permit to carry a handgun, he

¹ At oral argument, when asked why he had loaded the weapon after cleaning it, respondent answered that he had intended to place the weapon in a safe, but then failed to do so.

was arrested and charged with second-degree unlawful possession of a handgun, in violation of N.J.S.A. 2C:39-5(b)(1).

On June 19, 2019, the Middlesex County Prosecutor's Office informed the OAE, via letter, of respondent's pending charge and the fact that he had been ordered to surrender "his four other weapons" to the Freehold Township Police Department.

On July 8, 2019, respondent sent the Office of Board Counsel (the OBC) a letter, advising us of his pending charge.² On July 9, 2019, the OBC forwarded respondent's letter to the OAE.

On September 16, 2019, a Middlesex County grand jury issued an indictment charging respondent with one count of second-degree unlawful possession of a handgun, in violation of N.J.S.A. 2C:39-5(b)(1). That statute provides that "[a]ny person who knowingly has in his possession any handgun including any antique handgun, without first having obtained a permit to carry the same [. . .] is guilty of a crime of the second degree."

On June 29, 2021, respondent pleaded guilty to that charge and was admitted to the Pre-Trial Intervention Program (PTI) for thirty-six months,

² R. 1:20-13(a)(1) requires an attorney charged with an indictable offense to "promptly" notify the OAE, in writing, of the charge, as well as any disposition of the matter.

with conditions including fifty hours of community service, permanent forfeiture of his firearms and firearms purchasing permits, and his enrollment in counseling, as appropriate.³ During his plea hearing, respondent admitted to the facts underlying his indictment and noted that he had lawfully purchased the handgun. Additionally, respondent admitted that, on the eve of trial, he knowingly placed the handgun in his trial bag, which he planned to bring to the courthouse the next day. Respondent also conceded that, when he arrived at the courthouse, he was “aware that there was a high probability” that the handgun was still in his trial bag, because he had failed to remove it.

On July 13, 2021, respondent notified us, via letter, of his guilty plea to unlawful possession of a handgun and his admission to PTI. On July 15, 2021, the OBC forwarded respondent’s letter to the OAE.

In support of its position that respondent receive discipline ranging from a censure to a six-month suspension for his guilty plea to unlawful possession of a handgun, the OAE analogized respondent’s conduct to the attorney in In re Daley, __ N.J. __ (2021), who received a censure, and the attorney in In re Wallace, 153 N.J. 31 (1998), who received a three-month suspension.

³ The record does not include any psychological report in this regard.

In Wallace, the attorney arrived at the home of his former girlfriend, with a loaded handgun, approximately ten months after their six-year relationship had ended. He warned her that he had intended to kill her and then himself, but upon seeing her, decided he could not go through with his plan. Wallace then removed the bullets from the gun and left the apartment. Although the OAE sought a six-month suspension, we imposed a three-month suspension, finding that the attorney placed his former girlfriend in fear for her life and that his conduct was serious, but was mitigated by the attorney's mental health issues; loss of employment; forfeiture of his public office; and the passage of almost five years since the event.

Like Wallace, whose sole conviction for unlawful possession of a handgun did not, by itself, require "an actual threat to [his victim]" to establish the essential elements of that offense, In the Matter of Bruce A. Wallace, III, DRB 97-050 (February 17, 1998) at 11, the OAE noted that respondent, who pleaded guilty to the same crime, committed no actual threats of violence. Hence, because Wallace received a three-month suspension for what the OAE characterized as a "non-violent" weapons offense, the OAE asserted that we may, likewise, impose a short-term of suspension for respondent's non-violent behavior. In support of its argument, the OAE

emphasized our reasoning in Wallace that, had the attorney “threatened [the victim] with the gun, obviously a longer term of suspension would have been required.” Wallace, DRB 97-050 at 14.

As described in greater detail below, in Daley, the Court censured an attorney who possessed a concealed, .22 caliber handgun loaded with hollow point bullets as he entered the Ocean County Courthouse, where he was scheduled to appear before a judge. Sheriff’s officers discovered the handgun in the attorney’s backpack as it passed through a metal detector. The attorney informed the officers that he had placed the handgun in his backpack to show it to someone, but then forgot that the handgun was in the bag. The attorney pleaded guilty to one count of second-degree unlawful possession of a handgun and was admitted to PTI for thirty-six months.

Although Daley stressed that his misconduct was an “inadvertent mistake and an isolated incident,” a majority of the Board found his explanation to be neither reasonable nor compelling given that his position did not comport with the knowing element of the crime to which he pleaded guilty. In the Matter of Charles Canning Daley, Jr., DRB 20-037 (February 3, 2021) at 19. Moreover, the majority was not persuaded that Daley’s conduct amounted to an isolated incident because he admitted he

previously had entered other courthouses, undetected, with the same loaded handgun.

A four-Member dissent disagreed, finding that whether Mr. Daley was conscious that the handgun was in his backpack as he entered the courthouse was not an element of the offense and not part of his guilty plea and allocution. The dissent noted that the statute to which he pleaded guilty does not include the location in which possession was found as an element of the offense, and that Mr. Daley admitted that the firearm was his, was and had been in his possession, and that he did not possess a carry permit. In recommending a censure rather than a three-month suspension, the dissent argued that nothing in the record supported an admission by Mr. Daley that he knew the gun was in the backpack when he brought it into the courthouse.

In this case, the OAE argued that respondent, like Daley, cannot claim that his offense was an inadvertent mistake given his allocution to the “knowing” element of second-degree unlawful possession of a handgun, the crime to which he pleaded guilty. Additionally, the OAE urged, as aggravation, the fact that, like Daley, respondent brought a fully-loaded handgun to a courthouse, where he was scheduled to appear before a judge. This conduct, the OAE alleged, “clearly undermine[d] the legal profession.” In mitigation, however, the OAE conceded that respondent’s behavior was an

isolated incident; that he promptly reported his criminal charge; that he has no prior discipline; and that he has taken responsibility for his misconduct.

Finally, the OAE noted that the crime of unlawful possession of a handgun was enhanced, in 2013, to a second-degree crime, reflecting the public sentiment that harsher punishment is necessary to protect the public from firearms offenses. See L. 2013, c.113 § 1 (effective August 8, 2013). Based on society's evolving recognition of the severity of gun-related offenses, the OAE, thus, recommended that we impose a short-term of suspension in lieu of a censure. Additionally, the OAE suggested that, going forward, attorneys should be on clear notice that more stringent discipline should result for lawyers who commit weapons offenses.

In his November 16, 2021 brief to us and during oral argument, respondent stipulated to the facts underlying his misconduct. However, he asserted that an admonition may be appropriate because, in his view, his crime neither amounted to a violation of trust nor had a detrimental effect on the legal profession or his ability to practice law. Moreover, respondent expressed his belief that, although he unlawfully had brought a fully-loaded handgun to a courthouse, his crime was unrelated to his law practice.

Additionally, respondent asserted that his conduct was distinguishable from the attorney in Wallace, who placed his former girlfriend in fear for her

life, because respondent neither intended to cause fear nor commit a violent act. In that vein, respondent argued that the presence of his handgun in the courthouse was “irrelevant” because, unlike the attorney in Wallace, he had no “evil” intent to use his handgun to commit violent acts.

Moreover, respondent asserted that his conduct was not as severe as the attorney in Daley because respondent previously had never brought a gun to court nor loaded his handgun with illegal, hollow point bullets. Also unlike the attorney in Daley, respondent did not attempt to negate the knowing element of his crime; instead, he explained that he placed his handgun in his trial bag out of “deference to [his] parents[,]” who disapproved of firearms. Finally, respondent expressed remorse and admitted his wrongdoing, represented that he completed his court-ordered community service, and noted that he will continue to follow the terms of his PTI.

Following a de novo review of the record, we determine to grant the OAE’s motion for final discipline. We are starkly divided, however, on how to treat the Court’s censure Order in Daley and, consequently, also are divided on the appropriate quantum of discipline to be imposed. We are unanimous in our findings of misconduct and will begin our analysis on that common ground.

Unanimous Findings of Misconduct

Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that Rule, a “transcript of a plea of guilty to a crime or disorderly persons offense, whether the plea results either in a judgment of conviction or admission to a diversionary program,” 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 second-degree unlawful possession of a handgun, in violation of N.J.S.A. 2C:39-5(b)(1), thus, establishes a violation 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 before us is the extent of discipline to be imposed on respondent for his violation of RPC 8.4(b). 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.” In re Principato, 139 N.J. at 460 (citations omitted). Overall, in fashioning the appropriate penalty, we consider 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.

As a preliminary matter, we find that Wallace, on which the OAE partly relied, is clearly distinguishable from respondent's case. Wallace involved a potential murder-suicide, where the attorney intended to use a handgun to a kill his former girlfriend, who was placed in fear for her life. Although the OAE argued that Wallace paved the way for us to impose short terms of suspension for attorneys convicted only of "non-violent violations of" unlawful possession of a handgun (N.J.S.A. 2C:39-5(b)(1)), Wallace's conduct was anything but "non-violent." Rather, Wallace arrived at his former

girlfriend's home with the intent to murder her, but upon seeing her, decided that he could not go through with his plan. Unlike Wallace, respondent's conduct neither involved an intended murder victim nor any violent intent. The facts of Wallace, thus, are not analogous to respondent's weapons offense.

Respondent's conduct, however, is strikingly similar to that of the censured attorney in Daley. As described above, in September 2018, courthouse sheriff's officers discovered Daley in possession of a concealed handgun, loaded with illegal, hollow point bullets, as he passed through a metal detector. When queried by sheriff's officers, Daley claimed that he had placed the handgun in his backpack to show it to someone, but then forgot that the handgun was in the bag. Two days after his arrest, he reported to the OAE his charges for second-degree unlawful possession of a handgun and fourth-degree possession of hollow point bullets.

In June 2019, Daley waived indictment and pleaded guilty to one count of second-degree unlawful possession of a handgun. During his guilty plea, Daley allocuted, under oath, that he had knowingly possessed his lawfully purchased handgun that was found in his backpack and that he did not have a carry permit for the firearm. The majority concluded that, as a matter of law, this plea allocution constituted an admission that Daley knew he had the

firearm in his possession as he entered the Courthouse⁴. In connection with his guilty plea, Daley was admitted to PTI for thirty-six months, with conditions including his continued psychotherapy and periodic psychiatric risk evaluations.

During the ensuing ethics proceedings, Daley claimed that he took the handgun from a locked safe because he planned to go to a shooting range with a friend, but, when his plans changed, he forgot that his handgun remained in his backpack, which he also used to carry legal files to court. Additionally, Daley requested that we remand his matter for an evidentiary hearing to establish that his possession of the handgun was “unknowing and a mistake.” Daley, DRB 20-037 at 9. However, because Daley pleaded guilty to unlawful possession of a handgun, for which knowing possession was an essential element, we denied his motion for lack of “good cause” and because there existed no “unanswered questions” that could have altered our evaluation of his misconduct. Id. at 9-10; See also In re Gallo, 178 N.J. 115, 118, 122 (2003) (in a motion for final discipline, the Court determined to remand the matter for an evidentiary hearing because the attorney’s “scant admissions” at his plea

⁴ As noted above, a key point of disagreement between the majority and the dissent in Daley was whether Daley admitted knowing that the gun was in his backpack at the moment he entered the Courthouse. The dissent found the evidence of record to demonstrate no conscious awareness by Mr. Daley that the gun was in his backpack as he entered the courthouse.

hearing did not provide a full context for evaluating the gravity of his misconduct, and “because the victim’s allegations raise[d] unanswered questions that [bore] on [the attorney’s] professional conduct”), and R. 1:20-13(c)(2) (in motions for final discipline, we “may consider any relevant evidence in mitigation that is not inconsistent with the essential elements of the criminal matter for which the attorney was convicted [. . .]. Either [we] or the Court, on the showing of good cause therefore or on its [or our] own motion, may remand a case to a trier of fact for a limited evidentiary hearing [. . .].”).

In urging us to impose a sanction short of a term of suspension, Daley reiterated that the facts underlying his guilty plea could “only be described as an inadvertent mistake.” Daley, DRB 20-037 at 10. He also stressed, as mitigation, his good reputation and character, which he supported with twenty-five persuasive character reference letters; his prompt reporting to the OAE of his criminal charges; his lack of prior discipline in more than thirty-five years at the bar; his community service; and the fact that he acknowledged responsibility and expressed remorse. Finally, Daley contended that his misconduct was an isolated incident, no one was harmed, and his actions were unrelated to his law practice.

In our decision, in which five Members voted to impose a six-month suspension and four Members, in a dissenting opinion, voted to impose a censure,⁵ we recognized that Daley’s criminal conduct was a case of first impression because the Court had never disciplined an attorney for the unlawful possession of a handgun under such circumstances.

The majority Members weighed, in aggravation, the fact that Daley brought a gun loaded with illegal, hollow point bullets to a courthouse, where he was scheduled to appear before a judge, a scenario which was not only related to Daley’s law practice, but also created an egregious potential for danger to the public, judiciary employees, and judges. Additionally, the majority Members were troubled by Daley’s attempts to refute his guilty plea by claiming that the knowing criminal charge to which he pleaded guilty was merely an “inadvertent mistake.” *Id.* at 20. Daley’s claims that he truly did not know that his handgun was in his bag, and that it was a mistake, were inapposite to the knowing element of unlawful possession of a handgun, the crime to which he pleaded guilty. Daley’s inconsistent assertions caused the majority Members to question whether he perjured himself, when he had

⁵ Our five-Member majority consisted of then Vice-Chair Gallipoli and Members Joseph, Petrou, Rivera, and Zmirich. Our four-Member minority consisted of then Chair Clark and Members Boyer, Hoberman, and Singer.

pleaded guilty, in order to secure admission to PTI. Finally, the majority Members found unpersuasive Daley's position that his misconduct amounted to an isolated incident because he previously had entered other courthouses, undetected, with the same loaded handgun.

In mitigation, however, the majority Members weighed Daley's prompt reporting of his criminal charges; his lack of prior discipline in thirty-five years at the bar; his good reputation and character supported by numerous reference letters; and the fact that he expressed remorse and took responsibility for his misconduct.

In a dissenting opinion, the minority block of Members stressed that Daley, who had no prior discipline in his long and distinguished legal career, deserved a censure for his non-violent conduct. The dissenting Members argued that the majority's imposition of a six-month suspension was not supported by precedent, given that, in their view, other attorneys previously had been censured for more serious misconduct. Daley, DRB 20-037 (Dissenting Opinion at 4) (citing In re Milita, 217 N.J. 19 (2014) (censure imposed on attorney who perceived he was being tailgated and initially exchanged hand gestures with the occupants of the other vehicle; the attorney's conduct escalated when he pulled over to the side of the road, partially emerged from his vehicle, and brandished a knife at the two young

men in the other vehicle; the attorney then proceeded to follow the other vehicle through several towns and continued to brandish the knife; in imposing a censure, we stressed that, although the attorney's behavior was menacing, he had no physical contact with the occupants of the other vehicle; he was receiving treatment for psychological and medical issues that contributed to his behavior; and he was not actively practicing law and, thus, the concern for protection of the public was reduced) and In re Osei, 185 N.J. 249 (2005) (censure imposed on attorney who caused \$72,000 worth of damage over a period of time to his own house, which was in foreclosure)).

Additionally, the dissenting Members did not consider the fact that Daley brought a handgun to a courthouse to be an aggravating factor because they accepted his assertion that he was not conscious of the firearm's presence in his bag. The dissenting Members further emphasized that, according to Daley, his gun had not been detected when he previously had entered other courthouses with the same bag and the same gun, leaving him unaware of his oversight until the incident in Ocean County.

Moreover, the dissenting Members found no basis to penalize Daley for characterizing his misconduct "as an inadvertent mistake" because, in their view, his guilty plea did not equate to an admission that he was aware of the handgun's presence in his bag as he entered the courthouse. Id. 6-7. Rather, the

dissenting Members asserted that all that was required to sustain the charge of unlawful possession of a handgun was for Daley to be in possession of the handgun that he knew to be his, with no permit to carry, when he entered the courthouse.

Finally, the dissenting Members emphasized, as compelling mitigation, Daley's unblemished thirty-five-year career at the bar; the isolated, aberrant nature of the incident; his prompt reporting of his criminal charges; his sincere remorse; his full cooperation with disciplinary authorities; his well-documented good character and reputation; and the lack of harm which resulted from his offense.

On May 20, 2021, the Court issued an Order imposing a censure on Daley. In re Daley, __ N.J. __ (2021). The Court, however, provided no rationale for that quantum of discipline.

Here, we unanimously find that respondent's guilty plea to unlawful possession of a handgun closely resembles the circumstances in Daley. Like Daley, respondent brought a fully-loaded handgun to a courthouse, where he was scheduled to appear, at trial, before a judge. However, many of the significant aggravating factors that the majority Members in Daley considered are not present here. Namely, respondent previously had never entered other courthouses, undetected, with his loaded handgun, nor was his handgun loaded

with illegal, hollow point bullets. Hence, unlike Daley, respondent's misconduct was, in fact, an isolated incident. Moreover, in contrast to Daley, respondent has not sought to refute the knowing element of the crime to which he pleaded guilty by claiming that he committed an unknowing, inadvertent mistake. Respondent acknowledged that he "cannot, and should not, overlook [his] plea in court[,]” where he admitted that he had placed his loaded handgun in his trial bag to conceal it from his parents, who disapproved of firearms. Finally, unlike Daley, based on this record, respondent was not required, as a condition of PTI, to undergo psychiatric treatment and periodic risk evaluations.

In mitigation, like Daley, respondent has no prior discipline, he reported his criminal charge to the OAE, and he has accepted responsibility for his misconduct. However, unlike Daley, who notified the OAE of his charges two days after his arrest, respondent's reporting was not as prompt, occurring three weeks after his arrest. Additionally, in contrast to Daley, respondent does not have the benefit of numerous, persuasive character reference letters,⁶ and his

⁶ Respondent, however, submitted a certification from his supervising attorney attesting to his professionalism.

lack of prior discipline in his six years at the bar is not as compelling as Daley's thirty-five-year unblemished legal career.

We struggled, however, with how to treat the Court's censure Order in Daley, and recommend that the Court provide prospective guidance to the Bar that, henceforth, terms of suspension may be imposed for attorneys who unlawfully bring loaded firearms to a courthouse, as the Court has done when addressing other fact patterns requiring express guidance to the Bar. See In the Matter of Yuexin Li, DRB 17-356 (January 24, 2018) (censure for attorney who systematically, and without authorization, retained excess recording fees from 738 clients; we noted that such misconduct had been increasingly common in real estate matters and, thus, recommended that the Court consider the announcement of more stringent discipline for such behavior), so ordered, 239 N.J. 141 (2019) (noting that, "in the future, attorneys who engage in the purposeful, systematic, and unauthorized charging and retention of excess recording fees, or the implementation of other deceptive, income-generating practices, may be subject to a higher level of discipline"); In the Matter of Robert C. Masessa, DRB 18-142 (October 22, 2018) (censure for attorney who, for seven years, systematically retained excess recording fees from parties to real estate transactions; we noted our recommendation, as in Li, that the Court consider more stringent treatment of such misconduct), so ordered,

239 N.J. 85 (2019) (noting the same prospective announcement, as in Li, that more stringent discipline may result for attorneys who engage in the systematic and unauthorized retention of excess recording fees); In re McLaughlin, 105 N.J. 457 (1987) (reprimand for three attorneys who, while serving as law clerks to members of the Judiciary, possessed small amounts of cocaine; the Court imposed only a reprimand because it was a case of first impression but cautioned that, in the future, the Court would ordinarily impose terms of suspension for such misconduct).

Here, we recommend that the Court announce that, in future cases, harsher discipline will result for attorneys who commit firearms offenses under circumstances such as these. This matter represents the second instance, within the span of one year, in which we have addressed an attorney's unlawful possession of a loaded handgun in a courthouse. Our recommendation is based on the obvious need to deter such reckless misconduct to protect the safety of judges, judiciary employees, and members of the public, who expect to participate in the judicial process without fear of harm. Our recommendation is also based on the recent, tragic event that led to the November 20, 2020

enactment of “Daniel’s Law[,]” P.L. 2020, c.125.,⁷ which legislation, as publicly noted by Chief Justice Stuart Rabner, had “regrettably [. . .] been necessary.”

Members Voting for a Three-Month Suspension

Chair Gallipoli and Members Joseph, Petrou, and Rivera voted for a three-month suspension. In their view, although respondent’s offense, fortunately, neither involved a victim nor caused any ultimate harm, his misconduct demonstrated a reckless indifference to human life and created a serious potential for violence. Specifically, respondent created a dangerous scenario for the public, court employees, and judges based on the potential for an accidental discharge or a third person finding respondent’s handgun in his unattended trial bag. Respondent’s crime, thus, not only undermined his practice of law, but also jeopardized the safety of all those at the courthouse. Hence, these Members found that a three-month suspension was the minimum sanction for respondent’s extremely reckless and dangerous conduct.

⁷ Daniel’s Law was enacted to protect the safety of judges and prosecutors by prohibiting their home addresses and unpublished telephone numbers from being posted online. See P.L. 2020, c.125.

Members Voting for a Censure

Vice-Chair Singer and Members Boyer, Campelo, and Menaker voted for a censure and expressed their belief that the Court's censure Order in Daley offered the clearest guidance with respect to respondent's substantially similar misconduct. These Members felt it would be unfair to impose a more stringent discipline on Respondent than that imposed on Daley, given that Respondent's conduct was substantially similar. These Members also weighed, in mitigation, respondent's unblemished legal career; the aberrant nature of his misconduct; his acceptance of responsibility for his actions; his remorse and contrition; and his relatively prompt reporting of his criminal charge and conviction to the OBC.

Members Voting for Prospective Guidance from the Court

Chair Gallipoli, and Members Boyer, Joseph, Petrou, Rivera Campelo, and Menaker voted to recommend that the Court provide prospective guidance to attorneys that henceforth, a term of suspension will be the presumptive sanction imposed on attorneys who unlawfully bring loaded firearms into a courthouse.

Vice-Chair Singer did not join in that recommendation, believing that while guidance from the Court is always valuable, in this case such guidance

should not direct a term of suspension because the facts of each of these “gun/courthouse” cases are unique and variable, especially as to intent and knowledge of the attorney. Vice-Chair Singer further believes that these cases differ from other cases in which the Court has issued prospective guidance for a suspension because those cases (such as the cases where attorneys have retained excess recording fees) necessarily involve the attorney’s knowledge and intent, necessarily caused harm, and therefore were cases in which the Court’s warning was likely to have a deterrent value.

Member Hoberman was absent.

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 Mark Bae Jander
Docket No. DRB 21-240

Argued: February 17, 2022

Decided: May 9, 2022

Disposition: Other

<i>Members</i>	Censure	Three-Month Suspension	Absent
Gallipoli		X	
Singer	X		
Boyer	X		
Campelo	X		
Hoberman			X
Joseph		X	
Menaker	X		
Petrou		X	
Rivera		X	
Total:	4	4	1

/s/ Timothy M. Ellis

Timothy M. Ellis
Acting Chief Counsel