Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-012
District Docket No. XIV-2021-0384E

In the Matter of	:
David R. Waldman	:
An Attorney at Law	:

Decision

Argued: March 17, 2022

Decided: July 18, 2022

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

Respondent waived appearance for 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 (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea and conviction, in the United States District Court, Southern District of New York, to one count of cyberstalking, contrary to 18

U.S.C. § 2261A(2)(B).[1] The OAE asserted that respondent's misconduct constitutes a violation 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).

For the reasons set forth below, we determine to grant the motion for final discipline, and conclude that a three-year suspension, with conditions, is the appropriate quantum of discipline for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 2005. He has no prior discipline in New Jersey.

The facts underlying respondent's guilty plea and conviction for cyberstalking are derived from the May 31, 2018 sealed complaint and the June 28, 2018 superseding indictment, which charged respondent with one count of cyberstalking and six counts of interstate threats. In our view, although the information contained in those documents involves disturbing and graphic language, it is critical to understanding the nature of respondent's misconduct and the harm it caused his victim.

---

[1] 18 U.S.C. § 2261A(2)(B) provides that it is illegal to engage in conduct "with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that [. . .] causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a [person or intimate partner of that person]."

Respondent and Jane Doe (Doe) dated for approximately four months, from November 2013 through March 2014. Shortly after they broke up, respondent commenced a four-year-long course of criminal conduct that caused Doe substantial emotional distress, including sending hundreds of harassing and threatening e-mails to Doe, Doe's family, and Doe's employer. Respondent also created various blogs and posted complaints about the breakup, described the psychotropic medications he took, and repeatedly threatened violence against Doe. Respondent threatened to kidnap Doe, to hold her bound and gagged in his apartment, and to rape her with a knife. He also demanded she have sexual intercourse with him and threatened to commit other acts of violence against her.

Specifically, on April 8, 2014, respondent sent Doe an e-mail informing her that his psychiatrist ordered him not to contact her, and that the e-mail would be the last time she would hear from respondent. Later that day, using a different e-mail address, respondent sent Doe another e-mail with the subject line "fuck faced fucker," wherein he asked Doe when she would re-enter his life because he was:

> not a patient man. . . . i have tried every tact i know of to get you to have contact with me. i am running out of options. i am not too proud to show the fuck up at your apartment unannounced. . . . i am crazy enough to do it, too. you should know that. I am not playing around anymore. [. . .] what i won't deal with, and will not

> accept, is you out of my life . . . you are the devil. . . . not sure how much more of this i can take before i go haywire and bananas and show up at your apartment in the middle of the night or at your new job if you have one. trust me – i will do it. ill give you another week or so of this shit. then my limit will be reached [. . .] women like you come around once, twice. maybe three times in a lifetime. that means you are rare. and valuable. and something to be kept and cherished. and cherished can mean held hostage and bound and gagged inside my apartment [. . .] just get in touch with me. like i said, i have about another week left in me. after that, its bound and gagged time. [. . .] bitch ass ho.[2]
>
> [Ex.A,pp3-4.][3]

Also on April 8, 2014, respondent sent Doe a third e-mail, informing her that he was going to contact her father to tell him that he was "forced to get [a sexually transmitted disease] test because his daughter apparently cant keep her pants on. Ill forward him your lingerie too. Im nuts enough to do it. Noone ignores me and treats me as if i am nothing who doesnt matter or mean anything."

The next day, on April 9, 2014, respondent sent Doe a text-message demanding she stop ignoring him and informing her that he was about to leave work to drive to her apartment. The same date, respondent sent Doe an e-mail

---

[2] All typographical errors contained in the quoted text messages, e-mails, and blog posts cited in this decision are contained in respondent's original communication.

[3] "Ex." refers to the exhibits to the OAE's January 27, 2022 brief in support of its motion for final discipline.

that demanded she tell him why she did not want his friendship and again informed her that he was going to go to her home after he left work for the day because he "deserve[d] proper closure." The same night, respondent again sent Doe a series of text messages informing her that he was going to go to her home for "a hug and some free sodas." Also in those text messages, respondent informed Doe he was at her home and asked her "are you really not home? Did you really make me come here for nothing? Why are you doing this to me? . . . Why are you trying to make me want to die? [. . .] Th8nking if taking 100 xanax." Using a different cellular telephone number, the same night, respondent sent Doe a text message stating that he was going to go to her home for proper closure and that he needed to have sexual intercourse with her one last time.

The following day, respondent sent Doe an e-mail message stating that he could not believe that Doe had changed the locks to her apartment and that she was frightened of him.

Later, on April 21, 2014, respondent sent Doe an e-mail stating:

> Cops are as worthless as you. Doing nada. Trust me . . . you want to get my keys and mp3 player back to me. I know where you live and I got nothing to lose. I am so tired of this. Give it up you worthless disgusting skank. You will not surivive this. I swear it.
>
> [Ex.A,pp5-6.]

A few hours later, respondent sent Doe another e-mail, stating that he wanted his belongings returned "before things get ugly. Why are you even alive ?" Also in April 2014, respondent sent a letter to Doe's parents, the contents of which are unknown.

On April 30, 2014, as a result of his conduct toward Doe, the Manhattan District Attorney's Office charged respondent with aggravated harassment in the second degree. Respondent voluntarily surrendered and the Criminal Court of the City of New York issued an order of protection prohibiting respondent from contacting Doe through any means, including e-mail and social media.

On July 15, 2014, the New York court issued a one-year, temporary order of protection against respondent, which prohibited him from stalking, harassing, or contacting Doe through any means. The order of protection also prohibited respondent from contacting Doe through any third parties.

Eight days later, on July 23, 2014, respondent, using the pseudonym "Robert Roma," sent Doe a lengthy e-mail message that complained that Doe had respondent arrested for stalking; referred to her as a "sociopath;" questioned who else Doe was dating; and informed her that he missed her "sexually." Also in the e-mail, respondent informed Doe that "the law should never be invited into personal shit. never. nothing good would ever come of it. you must know that." Respondent also told Doe that he already had forgotten about law

enforcement.

In addition to the e-mail and text messages respondent sent to Doe, he created a series of "Blogspot" webpages featuring lengthy posts devoted to harassing Doe.[4] On June 6, 2014, respondent posted on his "nycitysux" blog, using the pseudonym "Anton Phillipe Wolfgang Van Sertima," and claimed that Doe had threatened his life and accused him of molesting children. Therefore, respondent wrote on the blog that to ensure his:

> Constitutional Rights are never again violated, and to: protect [his] life against [Doe], born [month and date of her birth] (won't print the year . . . a gentleman doesn't mess with a woman's age . . . especially when they are [Doe's age]), who threatened my life, I will soon be applying to the State of New York for a handgun permit.
>
> [Ex.A,pp7-8.]

Later, on July 20, 2014, on his "eurotrashroyalty" blog, respondent, again using the Van Sertima pseudonym, posted that, if Doe died that day, he would smile. Respondent further stated:

> i dig on vendettas and dig on revenge. . . . i will ruin you. i will fuck up your shit to the point that your life will be unrecognizable. you must have seen some inklings of what i might be capable of during our three months together. no kyke civil attorneys, no car load of your pals, or anything else you have in your arsenal will

[4] Blogspot is a free blogging service, operated by Google, Inc., which enables users to create a blog, or web log, from a template.

> cause me to even blink. . . . [W]hen i am wronged, i stop giving a shit about the consequences. i stop feeling fear or trepidation. i only feel what I need. . . revenge. to see suffering.[5]
>
> [Ex.A,p8.]

Respondent further stated that he did not enjoy wishing Doe dead, but nonetheless did. Moreover, respondent warned Doe that:

> i have only begun. you evil, maniacal, sociopathic evil cunt. . . . i am going to change your life for the worse. and I am going to enjoy it. and fuck the collateral damage to your family . . . i swear it. . . . I may end up going down with you, but make no mistake, your a doomed cunt. [. . .] i only hope you don't die of cervical cancer before i can fuck up your shit. [. . .] i will impact your life greatly and negatively. mark my words. . . i am obsessed with fucking up your shit. and i always achieve the things i put my mind to.
>
> [Ibid.]

In a separate blog post that day, respondent added that Doe was "going to pay" for breaking his heart, referenced a letter he sent to Doe's father, and stated that things were going to get worse for Doe.

On September 8, 2014, respondent sent an e-mail to the human resources (HR) department of Doe's employer. In the e-mail, respondent accused Doe of using marijuana, cocaine, and narcotics. Respondent urged the HR department

---

[5] "Kyke" is a typographical error for a word that is a slur targeting Jewish people.

to administer a drug test on Doe. The same day, respondent sent another e-mail, this time to a specific representative within the HR department, in which he referenced his earlier e-mail; however, in the second e-mail, respondent informed the HR representative that he was an attorney and could be disbarred if he made a dishonest statement. Therefore, respondent urged the HR representative to hold Doe accountable for her alleged illegal drug use by administering a drug test. The next day, respondent sent a third e-mail to Doe's HR department and accused her of violating his rights under the Health Insurance Portability and Accountability Act.

On December 9, 2014, the Manhattan District Attorney charged respondent with misdemeanor contempt in the fourth degree, based upon the e-mail messages and blog posts that respondent sent and created following the entry of the July 2014 temporary order of protection. On December 12, 2014, respondent pled guilty to the contempt charge and the New York court entered a new order of protection, in effect through December 11, 2019. The December 11, 2019 order of protection prohibited respondent from communicating with Doe through electronic means.

Notwithstanding the entry of the second order of protection, throughout 2015, 2016, and 2017, respondent continued to harass Doe,[6] using at least four different Blogspot pages, including pages that specifically referenced Doe's first and last name, along with the first and last name of Doe's then-boyfriend. Respondent's posts on the various Blogspot pages consisted of "long, rambling tirades" about Doe and reiterated the threats contained in his prior communications. The posts also contained photographs of Doe, other personal identifiers, and information regarding her place of employment.

On November 9, 2017, respondent, using the "Robert Roma" pseudonym, posted on his Blogspot page information about Doe, her place of employment, and accused both her and her employer of being "criminal." The post informed readers that he "slept" with Doe for four months and that "this was [his] story." The post referenced many of the same themes that were present in his earlier communications, but also included an accusation that Doe suffered from bipolar and narcissistic personality disorder. Furthermore, respondent wrote "i certainly am not capable of wishing she were dead. that is beyond my abilities. or so I had

[6] Although the OAE did not charge respondent with having violated RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice), his repeated and prolonged violation of the two orders of protection Doe obtained, his subsequent contempt charge and his attempts to dissuade Doe from reporting his criminal conduct to law enforcement were clearly prejudicial to the administration of justice. Additionally, respondent's failure to abide by the two orders of protection Doe obtained from the court in New York clearly violated RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal).

thought. i now know differently."

The same date, using a different Blogspot page, respondent falsely accused a member of Doe's family of sexually abusing a child and falsely accused Doe's ex-boyfriend of domestic violence.

On November 19, 2017, on a third Blogspot page containing Doe's first and last names in the title, respondent wrote that Doe mistreated him, gets away with everything, and included e-mail exchanges between him and Doe, along with photographs of her.

Continuing throughout the year 2017, in continued defiance of the December 2014 order of protection, respondent used one of his "Robert Roma" Blogspot pages to post ongoing, threatening communications targeting Doe.

Beginning in February 2017 and continuing until he was arrested in May 2018, respondent used anonymous e-mail services to send Doe additional harassing e-mails. For example, on February 26, 2017, respondent wrote to Doe that "chicks that play the victim card should die. [I] think women who accuse men of abuse should be tortured. [Y]ou should have a butcher knife fuck your pussy. . . [I] hate jews. [Y]ou and your jew family should die. [D]irty jews."[7]

---

[7] Although respondent unquestionably disseminated antisemitic and misogynistic information as a part of his harassment of Doe, his hateful speech, while discriminatory and anathema to participation in the bar, was not conduct in which respondent "engage[d], in a professional capacity," which would have been a violation of RPC 8.4(g).

On October 7, 2017, respondent used a different proxy e-mail address to send Doe a message, stating that he thought "the best thing when it comes to [Doe] is that you be killed." The next day, respondent sent Doe another e-mail informing her that he had watched her run and that she would be dead.

On February 4, 2018, using the pseudonym "Jim Bottis," respondent sent Doe an e-mail stating "I have learned that you are a nasty cunt and a whore. [. . .] Chicks like you should get beaten."

Three months later, on May 7, 2018, using the pseudonym "Steve Wexler," respondent sent Doe an e-mail stating that she should be "put down like a dog."

On May 31, 2018, the United States Government filed a sealed complaint against respondent. He was arrested the next day. During respondent's initial appearance, on June 1, 2018, before the Honorable Sarah Netburn, U.S.M.J., United States District Court for the Southern District of New York, the Government sought respondent's pretrial detention, arguing that he was a danger to Doe and that no condition of release would reasonably assure her safety. The same date, the court preliminarily ordered that respondent be detained, and issued a June 12, 2018 written opinion granting the Government's application.

The District Court found that, even after Doe had obtained two orders of protection against respondent, he continued to publish harassing blog posts and

employed "increasingly sophisticated means of disguising his identity" in order to keep harassing Doe.

The court further found that the numerous threats respondent made against Doe, over the course of four years, his defiance of prior court orders, and his attempts to conceal his identity from law enforcement, weighed heavily in favor of finding that there was a "serious risk" respondent would "attempt to threaten, injure, or intimidate" Doe if he were released pending trial. The court found that these threats and intimidation "may discourage" Doe from assisting the prosecution or testifying at trial. Furthermore, respondent's criminal conduct led the court to conclude that there could be no conditions of release that would assure the safety of Doe or the community. Specifically, the court found that respondent's increasingly sophisticated means of concealing his identity, combined with his demonstrated refusal to abide by orders prohibiting contact with Doe, made it likely that he would disregard any condition of release, such as a ban on internet use or electronic monitoring.

Moreover, the court noted that, when federal agents arrested respondent at his home and searched the premises, "they found a large knife in his bedroom (either a pocket knife or a switchblade), a large hunting knife in his kitchen, a lock-picking kit, and several diaries that purportedly include instructions on concealing IP addresses and posting blogs that are not traceable." The court

found that these items raised "red flags," because respondent had threatened to rape Doe with a butcher knife, referenced showing up at Doe's apartment only to find the locks had been changed, and had disguised his identity in order to send Doe anonymous electronic communications. The court found that respondent's possession of "materials that were directly tied to the specific threats he allegedly made toward [Doe] suggests that he may have been planning to act on his threats." Consequently, the court ordered that respondent remain detained pending trial.

Based upon the records the Government obtained during its investigation into respondent's criminal conduct, it learned that respondent had used eight unique accounts to harass Doe over the four years between his breakup with Doe and his arrest.

By letter dated August 1, 2018, the Government confirmed respondent's intention to plead guilty to one count of cyberstalking, in violation of 18 U.S.C. § 2261A(2)(B). During his guilty plea allocution, respondent admitted that, from March 2014 through May 2018, he had harassed Doe using electronic means. Moreover, respondent explained that he had:

> engaged in a course of conduct that would reasonably be expected to cause substantial emotional distress to another person. Specifically, [he] sent emails and made blog posts with an intent to harass this person. [He] made these electronic communications solely while a resident of Manhattan and [he] deeply regret[ed] those

actions.

[Ex.E,p17.]

Respondent added that he knew his actions were "wrong and illegal." Additionally, respondent testified that, although his psychiatrist had prescribed him two medications, he was taking only one of them. However, respondent did not offer what his diagnosis was, nor did he specify the types of medication.

Pursuant to the plea agreement, the Government agreed to dismiss the charges that respondent made interstate threats against Doe. Moreover, respondent agreed to make his "best effort" to remove from the internet all information he posted concerning Doe, including all blog posts he had authored, regardless of whether the blog posts directly or indirectly referenced Doe. Finally, respondent agreed to pay $54,599.13 in restitution to Doe, for attorney's fees and medical expenses, among other expenses.

On January 25, 2019, the Honorable Katherine Polk Failla, U.S.D.J., sentenced respondent to a fifty-month term of imprisonment, followed by three years of supervised release. Additionally, on July 26, 2019, Judge Polk Failla entered an order requiring respondent to pay $64,115.38 in restitution to Doe.

Respondent was released from prison on December 17, 2021.

In its brief to us, the OAE argued that respondent should receive a six-month suspension for his criminal conduct. The OAE contended that it was

unable to identify any prior cases in which we had considered a conviction for cyberstalking in violation of 18 U.S.C. § 2261A(2)(B), but equated respondent's criminal conduct to cases in which we had confronted stalking, in violation of N.J.S.A. 2C:12-10(b).

Relying on In re Beatty, 196 N.J. 153 (2008); In re Wachtel, 194 N.J. 509 (2008); In re Thakker, 177 N.J. 228 (2003); and In re Predham, 132 N.J. 276 (1993), the OAE contended that the discipline imposed on attorneys guilty of stalking "turns on the seriousness of the attorney's conduct."

In this matter, the OAE asserted that respondent's actions were "continuous and severe," and that he repeatedly "demonstrated a total disregard for the law, even though he is a lawyer." The OAE argued that it viewed respondent's "multiple prior stalking charges" as an aggravating factor.[8] In mitigation, the OAE claimed it was "evident" that respondent was "battling mental illness and his conduct was, in part, the product of his severe mental problems."

Therefore, the OAE contended that a six-month suspension was appropriate for respondent's misconduct. Additionally, the OAE asserted that, prior to reinstatement, respondent should be required to provide proof of fitness

[8] There is no evidence in the record that respondent has any stalking charges independent of the New York state criminal charges involving Doe. We infer that the OAE was referring to the criminal charges the Manhattan District Attorney's Office brought against him for harassing Doe.

to practice law, as attested to by an OAE-approved mental health professional.

During oral argument before us, the OAE reiterated the arguments set forth in its brief.

Respondent did not file a brief for our consideration and waived his appearance for oral argument.

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); and In re Principato, 139 N.J. 456, 460 (1995). 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.

Pursuant to RPC 8.4(b), it is unethical for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer." Respondent's conviction for cyberstalking, contrary to 18 U.S.C. § 2261A(2)(B), thus, establishes a violation of RPC 8.4(b).

We have never had occasion to consider the quantum of discipline to be imposed upon an attorney found guilty of cyberstalking. Thus, in order to assess the appropriate sanction for respondent's cyberstalking conviction, we here considered general principles of discipline; discrete and related categories of

misconduct we previously have addressed; other states' treatment of cyberstalking; and the unique aggravating and mitigating factors applicable to this case.

Generally, in determining the appropriate measure of discipline, we consider the interests of the public, the bar, and respondent. "[T]he primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." In re Witherspoon, 203 N.J. 343, 358 (2010). 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." In re 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).

Prior New Jersey disciplinary cases involving stalking provide considerable guidance. In In re Frankfurt, 159 N.J. 521 (1999), the Court suspended an attorney for three months, on a motion for final discipline, following the attorney's guilty plea to a charge of fourth-degree stalking, in contravention of N.J.S.A. 2C:12-10(b). The victim was a Passaic County judge. During a one-month period, the attorney visited the judge's chambers on numerous occasions and asked to speak to her, although he had no matters pending before her. Even after the attorney was told that the judge would not speak to him, he repeatedly returned to her chambers and asked to speak with

her. The attorney also was found guilty of contempt for failing to appear at a trial, after having been directed by a judge to appear.

Four years later, in In re Thakker, 177 N.J. 228 (2003), we imposed a reprimand on an attorney who pleaded guilty to one count of harassment. In that case, the attorney made repeated telephone calls, in the span of a few hours, to his former client and asked to speak with her husband. Respondent knew, and the client repeatedly reminded him during his first several calls, that her husband had been committed to a correctional facility that same day for an assault upon her. After the client called the police, the responding officer warned respondent over the telephone to cease harassing the client or he would be charged with harassment. The attorney then challenged the officer to come to his house and fight him.

Later, in In re Wachtel, 194 N.J. 509 (2008), an attorney was suspended for six months for stalking two individuals. In the first matter, Wachtel left numerous threatening telephone messages for his wife's attorney, and inappropriately sent a box of feminine hygiene products with an obscene note attached, intended for that attorney's pregnant daughter. The note wished for the mother-to-be's death during childbirth.

In a second matter, Wachtel threatened a court-appointed mediator by leaving obscene messages for her with references to "doing certain sexual acts"

to her. In aggravation, Wachtel had previous involvement with the law, including a 2005 guilty plea to disorderly conduct and possession of drug paraphernalia after an arrest for shoplifting, and a 2006 guilty plea to harassment, a disorderly persons offense. In further aggravation, as executor of his late father's estate, Wachtel sent his sister's attorney a harassing letter and left two harassing, obscene messages on the attorney's answering machine.

The same year, in In re Beatty, 196 N.J. 153 (2008), an attorney received a three-month suspension after he pled guilty to fourth-degree stalking, in violation of N.J.S.A. 2C:12-10(b). In that case, the attorney was a security guard at Monmouth Park Racetrack and became fixated on a young woman who was a frequent guest of a horse trainer. When the woman ceased appearing at the racetrack, Beatty convinced himself that something terrible must have happened to her. Therefore, he traveled to the horse trainer's home in South Carolina in an effort to locate the woman.

Additionally, the year before he began employment at the racetrack, Beatty had stalked his neighbor. The neighbor had turned down Beatty's invitation to dinner, so he contacted the police. With no basis in fact, Beatty had imagined that the neighbor had hosted a loud party at her apartment, at which a young man was tortured in preparation for his murder. Eventually, Beatty's conduct deteriorated to the point that he was caught peering into the neighbor's

apartment window while she dressed. After the neighbor moved away, Beatty located her and resumed his stalking by again peering into the neighbor's window. Beatty admitted that he had suffered from mental illness, for which he had been treated for thirty years.

We found that Beatty's misconduct, which occurred over two years, was more serious than the attorney's misconduct in Frankfurt. Furthermore, we were troubled that Beatty stalked the woman at the racetrack while enrolled in Pre-Trial Intervention for having stalked his neighbor. Nevertheless, we declined to suspend Beatty for six months, finding that the conduct in the cases in which an attorney received a six-month suspension for stalking and harassment were more alarming than Beatty's conduct.

We also considered other states' disciplinary treatment of attorneys found guilty of cyberstalking, although we identified no cases in which an attorney was disciplined for violating 18 U.S.C. § 2261A(2)(B), specifically.

On June 11, 2010, the Supreme Court of Oregon suspended an attorney for one year, with ten months stayed, and imposed one year of probation after it found the attorney violated the equivalent of New Jersey RPC 8.4(b) and RPC 8.4(c). In re Antell, 24 DB Rptr 113 (2010). In that case, Antell had been in a romantic relationship with another individual, L. However, in November 2006,

Antell believed that L was being unfaithful and was in an intimate relationship with C.

Thereafter, from approximately November 23, 2006 through January 19, 2007, Antell, using C's name, communicated with L and others. In the communications, Antell asserted that L had sexually harassed C. Additionally, with the intent to harass, intimidate, and embarrass C, Antell made electronic communications to C, L, and third parties using lewd and obscene words and images.

Antell pleaded guilty to violating Oregon state law with respect to cyberstalking and identity theft. Thereafter, she entered into a stipulation with the Oregon State Bar.

In a case from Colorado that is strikingly similar to the instant matter, an attorney was suspended for three years after he violated an order of protection his paramour had obtained against him. People v. Saxon, 470 P.3d 927 (Colo. 2016). Saxon, a married man with children, began an affair with a woman he met using an online escort service. During the course of their relationship, he engaged in domestic violence against her and repeatedly sent her threatening e-mails and text messages. As is common in domestic violence relationships, after Saxon emotionally or physically abused the woman, or sent her threatening communications, he promised to change and to make the woman's life better,

before again engaging in another cycle of either emotional or physical abuse against her. Ultimately, because the woman was "mean" to Saxon, he sent the woman's parents and extended family packages that contained nude photographs of the woman and client reviews of her escort services.

Saxon's conduct lasted less than two years. After the victim obtained an order of protection against Saxon, he sent a total of fifteen text messages, on two different dates, and then ceased all communication.

Finally, in a Florida matter, an attorney was disbarred after she targeted two other attorneys with social media attacks solely due to their representation of clients in litigation against the attorney. Florida Bar v. Krapacs, 2020 Fla. LEXIS 1187, 2020 WL 3869584 (Fla. July 8, 2020). Krapacs's misconduct arose from her own case against her former boyfriend, in which she alleged he engaged in domestic violence against her. Krapacs felt that her boyfriend's attorneys maligned her in court (although that was not supported by the record). Therefore, from approximately March 2018 through January 2019, Krapacs engaged in a "social media barrage," on four separate social media services, against the attorneys and judge hearing her case.

As a result of her conduct, one of Krapacs's victims obtained an order of protection against her. The impetus for the attorney to seek an order of protection was a photograph Krapacs posted in which a shotgun was pointed at

an individual. Krapacs captioned the photograph with "when opposing counsel tries to use the same exact trick you saw in your last case." In a separate post, Krapacs referenced the vehicle the attorney drove, which alarmed her because she had never met Krapacs, had no acquaintances in common, and did not know how Krapacs would have known the type of vehicle she drove.

Krapacs was later reciprocally disbarred in New York and in Washington, D.C. for her misconduct in Florida. In re Krapacs, 189 A.D.3d 1962 (2020), and In re Krapacs, 245 A.3d 959 (2021), respectively.

Here, the severity and duration of respondent's alarming criminal conduct must be met with stern discipline. After dating Doe for only four months, during which time respondent was emotionally and physically abusive, respondent continued his abusive conduct by engaging in a four-year-long campaign to intentionally destroy Doe's life in any way he could.

Almost immediately after Doe ended their relationship, respondent showed up unannounced at her apartment and attempted to gain entry. Thereafter, he sent her a message to let her know that he was aware that she had changed her locks. He then sent Doe hundreds of harassing text messages and e-mails; created numerous blogs devoted solely to defaming Doe on the internet; contacted her family; and made antisemitic and misogynistic remarks toward her. Simply put, respondent did everything he could to ensure that Doe knew he

was thinking about her at all times and intended to cause as much pain, in as many ways, as he could, including by informing her that he was going to apply for a gun permit.

Respondent also contacted Doe's employer multiple times, and falsely alleged that Doe abused drugs. In one of the e-mails respondent sent to Doe's employer, he attempted to legitimize his false accusations by citing his status as an attorney, informing the employer he could be disbarred if he was being untruthful. Therefore, respondent attempted to directly leverage his New Jersey law license in an attempt to achieve his intended harm to Doe.

Even after Doe obtained an order of protection, respondent did not stop. Rather, he continued his threats, and even escalated them. Respondent threatened to rape Doe with a butcher knife; threatened to kidnap her; threatened to hold her in his own apartment bound and gagged; and used slurs against her. He repeatedly expressed to Doe that he wished she was dead, while at the same time demanding that she have sexual intercourse with him and tell him why she no longer wanted his friendship.

Even after respondent pled guilty to a charge of contempt, and Doe obtained a second order of protection, respondent chose not to abide by the orders. Instead, respondent set about a course of conduct intended to allow his harassment and threats to continue but remain untraceable to law enforcement.

Luckily, respondent was not successful because, when he was arrested, he possessed all the materials necessary to act on his specific threats to Doe, including multiple knives and a kit for picking a lock.

Thus, the cases decided in this jurisdiction pale in comparison to the type and duration of the harassment respondent inflicted upon Doe, both privately and publicly. Respondent's strategy, for four years, was to publicly destroy Doe's life and to make her "pay" for ending the relationship. 18 U.S.C. § 2261A(2)(B) requires intent, and the record supports his plea. Thus, the severity of this case exceeds all prior New Jersey disciplinary cases addressing stalking.

As reviewed above, other jurisdictions' treatment of cyberstalking varies from the imposition of a reprimand to disbarment, depending on the facts of the matter. Respondent's misconduct in this matter is most analogous to the misconduct addressed by the Colorado court in Saxon, in which the attorney received a three-year suspension.

Like the attorney in Saxon, respondent wanted to inflict pain on a former romantic partner for ending the relationship. Additionally, like the attorney in Saxon, respondent disseminated harmful information about his victim. The difference is that, here, the information respondent disseminated was untrue, was done in a very public way, and included the use of sophisticated means in order to conceal his identity. Also, unlike the attorney in Saxon, who sent a total

of fifteen messages on two separate days after his victim obtained an order of protection, here, Doe obtained two orders of protection against respondent, and sent her numerous text messages and other communications for four years. Undeterred, for more than three years after the New York court entered the second order of protection – a proceeding in which respondent pled guilty to violating the first order of protection – he continued to harass Doe and escalated his threatening behavior. Therefore, although there are similarities in the misconduct in the Saxon case and the instant case, respondent's misconduct far outweighs the misconduct the Colorado court found in Saxon.

We also reviewed aggravating and mitigating factors. Although the OAE did not charge respondent with violations of RPC 3.4(c) or RPC 8.4(d), we may consider uncharged misconduct in aggravation. See In re Steiert, 201 N.J. 119 (2010) (evidence of unethical conduct contained in the record can be considered in aggravation, even though such unethical conduct was not charged in the formal ethics complaint).

As reviewed above, after Doe obtained an order of protection, and after respondent pleaded guilty to contempt of court, respondent not only continued to harass Doe, but also escalated his criminal conduct by creating pseudonyms from which to continue to send her threatening messages and online posts. Those same posts reference raping Doe with a knife; kidnapping her so that he could

bind and gag her in his apartment; reference her changing her locks; informing her that he watched her go running; and repeatedly wished death upon her.

Respondent, in acknowledging that he violated one of the orders of protection Doe obtained against him, even pleaded guilty to contempt of court, a clear violation of RPC 3.4(c) and RPC 8.4(d). Undeterred, respondent continued his misconduct by attempting to dissuade Doe from reporting his criminal conduct to law enforcement, yet another violation of RPC 8.4(d). We weigh this misconduct heavily in aggravation.

In further aggravation, we weigh the discriminatory character of respondent's antisemitic and misogynistic comments, which we view as irreconcilable with the traits of a member of the New Jersey bar.

We conclude that respondent's unblemished disciplinary record is the only mitigating factor. It does not counterbalance respondent's charged cyberstalking misconduct or the additional aggravating circumstances of his hate speech and disrespect for the administration of justice.

Thus, on balance, considering the totality of respondent's misconduct, we determine that a three-year suspension is the appropriate quantum of discipline necessary to protect the public and to preserve confidence in the Bar.

Furthermore, as conditions precedent to any reinstatement to the practice of law in New Jersey, we determine to require respondent to provide to the OAE

(1) proof of his continued sobriety and treatment for substance abuse; and (2) proof of his fitness to practice law, as attested to by a medical doctor approved by the OAE.

Chair Gallipoli and Member Joseph voted to recommend to the Court that respondent be disbarred.

Member Campelo 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: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

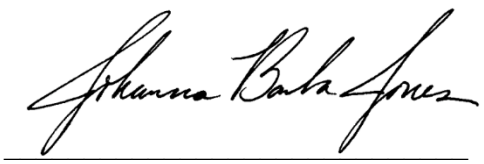
In the Matter of David R. Waldman
Docket No. 22-012

Argued: March 17, 2022

Decided: July 18, 2022

Disposition: Three-Year Suspension

Members	Three-Year Suspension	Disbar	Absent
Gallipoli		X	
Singer	X		
Boyer	X		
Campelo			X
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Total:	6	2	1



Johanna Barba Jones
Chief Counsel