

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-133
District Docket No. XIV-2023-0188E

In the Matter of John Edward Toczydlowski
An Attorney at Law

Argued
September 21, 2023

Decided
December 4, 2023

Corsica D. Smith appeared on behalf of the
Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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Introduction

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 Municipal Court for the First Judicial District of Philadelphia, Pennsylvania, for second-degree misdemeanor unlawful dissemination of intimate images, in violation of 18 Pa. C.S. § 3131, and third-degree misdemeanor harassment, in violation of 18 Pa. C.S. § 2709(a)(4). The OAE asserted that these offenses constitute violations of RPC 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects).

For the reasons set forth below, we determine to grant the motion for final discipline and recommend to the Court that respondent permanently be barred from future pro hac vice or plenary admission to the New Jersey bar.

Respondent was admitted in New Jersey, pro hac vice, from March 4, 2019 through October 4, 2020, and, again, from December 9, 2021 through June 26, 2022. He earned admission to the Pennsylvania bar in 1996.

On June 23, 2022, the Supreme Court of Pennsylvania suspended respondent, on consent, for three years, retroactive to March 13, 2022, the effective date of his temporary suspension in that jurisdiction, in connection with his criminal conduct underlying the instant matter. Office of Disciplinary Counsel v. Toczydlowski, 2022 Pa. LEXIS 902 (2022).

As detailed below, respondent’s misconduct occurred from September 25, 2017 through April 13, 2020. Therefore, the Supreme Court of New Jersey has jurisdiction to discipline respondent for his misconduct, pursuant to R. 1:20-1(a), which provides that “[e]very attorney . . . authorized to practice law in the State of New Jersey, including those attorneys specially authorized for a limited purpose or in connection with a particular proceeding . . . shall be subject to the disciplinary jurisdiction” of the Court.

We now turn to the facts of this matter.

Facts

On July 1, 2021, in the Municipal Court for the First Judicial District of Pennsylvania, Criminal Division, respondent entered a plea of nolo

contendere¹ to second-degree misdemeanor unlawful dissemination of intimate images, in violation of 18 Pa. C.S. § 3131(a),² and third-degree misdemeanor harassment, in violation of 18 Pa. C.S. § 2709(a)(4).³

On September 1, 2021, the Honorable Lydia Y. Kirkland sentenced respondent to a two-year period of probation and ordered him to pay \$999.75 in costs and assessments.

The facts underlying respondent's criminal conviction are as follows. On February 18, 2016, respondent and J.D.⁴ were married. On September 25, 2017, respondent registered an account on the Angel's Wife Lovers website,

¹ A plea of nolo contendere is "a plea by which a defendant does not expressly admit his guilt, but nonetheless waives his right to a trial and authorizes the court for purposes of the case to treat him as if he were guilty." N.C. v. Alford, 400 U.S. 25, 35 (1970).

² 18 Pa. C.S. § 3131(a) provides, in relevant part, "a person commits the offense of unlawful dissemination of intimate image if, with intent to harass, annoy or alarm a current or former sexual or intimate partner, the person disseminates a visual depiction of the current or former sexual or intimate partner in a state of nudity or engaged in sexual conduct."

³ 18 Pa. C.S. § 2709(a)(4) provides, in relevant part, a person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person "communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures."

⁴ To preserve the victim's anonymity, she is referred to by the initials J.D. for "Jane Doe." See In re Seaman, 133 N.J. 67, 75 (1993) (directing that "judicial disciplinary cases involving ... activities that humiliate or degrade those with whom a judge comes into contact, should preserve the anonymity of the alleged victim.").

www.wifelovers.com, with the username treeman0703 and the e-mail address tozlockski@gmail.com. Between September 29, 2017 and June 25, 2019, respondent posted forty-four items to the website under the username “treeman0703,” including twenty-four posts containing photographs of J.D.

Respondent’s postings with photos of J.D included multiple in which J.D. was nude or partially nude. Several photographs showed J.D.’s entire face. Respondent surreptitiously took these photographs and posted them to the website without J.D.’s knowledge or consent. Frequently, respondent posted these photographs with sexually graphic, obscene, and vulgar written comments, including invitations for other website users to engage in graphic sexual acts with J.D. For instance, in one post that coincided with his pro hac vice admission in New Jersey, respondent included two photographs of J.D., both showing her full face, one nude and the other non-nude, with the notation, “You can stroke either of these.”⁵

Most of the photographs were taken in the bathroom and bedroom of respondent’s marital homes. Respondent’s posts also included personal

⁵ We decline to repeat in our decision in this matter other instances of respondent’s humiliating and degrading comments regarding the victim. The record is replete with additional examples of respondent’s sexually graphic commentary.

information regarding J.D.'s whereabouts, including the state in which they resided, their telephone area code, and identified the county as "Delco." Respondent also provided his contact information for other social media platforms, such as Skype and Kik,⁶ encouraging other website users to contact him for additional photographs of J.D.⁷

On April 7, 2020, following the commencement of divorce proceedings, respondent created a second account on the Angel's Wife Lover website, with the username Treeman070317 and email address Treeman0703@gmail.com. Using this account, respondent continued to post similar photographs of J.D. that he had taken without her knowledge or permission, including photographs of her nude and partially nude, accompanied by graphic and vulgar commentary. J.D. did not know or consent to respondent's posting of the photographs he had surreptitiously taken of her.

⁶ Skype is a telecommunications application used for videotelephony, videoconferencing, and voice calls. Kik is a free mobile messaging application that can be used to transmit and receive messages, photographs, videos, and other content.

⁷ During respondent's plea allocation, he waived a formal reading of the facts and stipulated that he did not contest the police report or the photographs and postings, admitted into evidence by Judge Kirkland, and included as exhibits to the OAE's brief. The photographs included in the record are redacted to obscure J.D.'s face and body.

On April 8, 2020, respondent posted a photograph of J.D. from the back while she was stepping into the shower, and a nude photograph of her in the bedroom standing in front of her dresser. Her face was visible in the photograph. Respondent commented, “[s]oon to be ex. Travels extensively to FL and CA. Hope you get a crack at her.” Respondent’s April 8 posting elicited several responses from other users on the website, including one who stated, “treeman070317 I live in FL How do I find her. Funfwb53@gmail.com.”

Also on April 8, 2020, while browsing on the family computer in the home she shared with respondent, J.D. discovered respondent’s postings on the website. On April 10, 2020, she filed a criminal complaint with the Philadelphia Police Department. During her subsequent interview with the special victim’s unit, J.D. described her reaction to discovering that respondent had posted nude photographs of her and made such vulgar comments as “embarrassing and scary,” and that she felt unsafe “knowing [respondent] told men that they can find [her] and they could have sex with [her].” She informed the detective that, because of respondent’s criminal conduct, she had changed her locks, installed cameras, and had her son search her home for hidden cameras.

Criminal Proceeding in Pennsylvania

Based on the foregoing, on July 23, 2020, respondent was arrested and charged with unlawful dissemination for intimate images, in violation of 18 Pa. C.S. § 3131(a), a second-degree misdemeanor, and harassment, in violation of 18 Pa. C.S. § 2709(a)(4), a third-degree misdemeanor.

On July 1, 2021, respondent pleaded nolo contendere to both charges. In support of his plea, respondent stated that he understood that his nolo contendere plea would result in his conviction of the charged offenses, he did not contest those charges, and he waived his right to trial. Further, respondent waived a formal reading of the facts and stipulated that he did not contest the evidence compiled in the police reports, including the referenced postings and photographs, which were admitted into evidence. After engaging in a colloquy with respondent, satisfied that his plea was entered knowingly, intelligently, and voluntarily, the court accepted the plea.

J.D. did not testify at the plea hearing. However, the court accepted into evidence her victim impact statement, in which she repeatedly referred to respondent as a “dangerous sexual predator.” She emphasized that respondent had committed these criminal acts against her as they began their married life, blending their families, taking vacations and celebrating holidays, and while

working to build a life together. J.D. claimed that respondent, as an attorney, held himself out to be a person of the highest moral caliber, advertising on his law firm's website that he brings "the highest of ethical standards, a passion for the law, empathy for his clients." Yet, in reality, J.D. stated that it was nothing but a "veil of morality and high ethical standards that he hides behind," allowing "him to lure woman in, gain their trust and then ultimately exploit them." J.D. expressed her frustration that the legal system "does not view these type of crimes against women more seriously and allow for strong penalties." She added that she hoped that the system would soon evolve.

On September 1, 2021, respondent appeared before Judge Kirkland for sentencing. For each charge, Judge Kirkland imposed a two-year term of probation, to run concurrently. As conditions to probation, Judge Kirkland required regular psychological evaluations and an order that respondent stay away from the victim.

Respondent failed to notify the OAE of his criminal charges and subsequent conviction, as R. 1:20-13(a)(1) requires.

Disciplinary Proceeding in Pennsylvania

In Pennsylvania, respondent admitted that his criminal conduct violated

the following Pennsylvania Rules of Professional Conduct and Rule of Disciplinary Enforcement: Pa RPC 8.4(a); Pa. RPC 8.4(b); Pa. RPC 8.4(c); and Pa. R.D.E. 203(b)(1). Specifically, in support of the Joint Petition for Discipline on Consent filed by the Pennsylvania Office of Disciplinary Counsel, (the ODC), respondent admitted that he had pleaded nolo contendere to second-degree misdemeanor unlawful dissemination of intimate images, in violation of 18 Pa. C.S. § 3131(a), and third-degree misdemeanor harassment, in violation of 18 Pa. C.S. § 2709(a)(4). The Joint Petition described, in detail, the facts upon which his criminal conviction was based and, in his supporting affidavit, respondent acknowledged that the “material facts set forth in the Joint Petition are true,” and that he could not successfully defend himself against the charges of professional misconduct that the ODC had brought against him.

The Joint Petition asserted that respondent acknowledged the “great fear and anxiety” his actions caused his then-wife. Further, he asserted that he entered into a plea, in part, because he wanted to avoid causing her any further hurt or embarrassment. The Joint Petition was supported by a report from Katherine M. Schneider, LCSW, a clinical psychotherapist with whom respondent had been treating since January 2019. Schneider opined that

respondent's mental diagnosis impacted his behaviors and functioning throughout his life. Her March 14, 2022 report also described the improvements respondent made to mitigate and control his behaviors resulting from these disorders.

For respondent's misconduct, the ODC recommended a three-year suspension of his Pennsylvania license. In mitigation, the ODC emphasized respondent's cooperation with disciplinary counsel; his remorse and acceptance of responsibility; and the lack of prior discipline in his twenty-six years at the bar. On June 22, 2023, the Supreme Court of Pennsylvania suspended respondent for three years, retroactive to March 13, 2022, the effective date of his temporary suspension.

The Parties' Positions

The OAE asserted, both in its brief to us and during oral argument, that a two-year bar on pro hac vice or plenary admission, deferred until his readmission to good standing in Pennsylvania, was the appropriate quantum of discipline for respondent's misconduct. The OAE acknowledged that

respondent currently is precluded by R. 1:21-2(b)(1)(A)⁸ and RPC 5.5(c)(1) from applying for pro hac vice admission in New Jersey due to his Pennsylvania suspension and resulting lack of a law license in good standing. Nevertheless, the OAE argued that, because respondent's misconduct occurred during his pro hac vice admission in New Jersey, the Court has jurisdiction to discipline respondent, pursuant to R. 1:20-1(a), and should do so in this matter.

The OAE acknowledged the lack of disciplinary precedent on all fours with the instant matter, citing, instead, to disciplinary precedent for analogous misconduct, discussed in detail below, including unlawful surveillance, invasion of privacy, harassment, and stalking. See, e.g., In re Lynch, 253 N.J. 3 (2023) (stalking); In re Waldman, 253 N.J. 4 (2023) (cyberstalking); In re Weinstein, ___ N.J. ___ (2023), 2023 N.J. LEXIS 595 (unlawful surveillance and invasion of privacy); In re Mladenovich, 2022 N.J. LEXIS 1109 (2022) (terroristic threats and stalking); In re Regan, 249 N.J. 17 (2021) (sexual harassment); In re Jackson, 244 N.J. 193 (2020) (unlawful surveillance); In re Garofalo, 229 N.J. 245 (2017) (harassment); In re Wachtel, 194 N.J. 509 (2008) (stalking).

⁸ R. 1:21-2(b)(1)(A) requires that an attorney applying for pro hac vice admission in New Jersey must be a “member in good standing of the bar of the highest court of the state in which the attorney is domiciled or principally practices law [. . .].”

In aggravation, the OAE emphasized the recurring pattern of respondent's criminal conduct, which occurred for nearly three years. The OAE also emphasized the psychological harm to J.D., recounting her statements to the police; the steps she had taken to secure her home and install cameras for fear for her safety; and her fear that the people who had viewed respondent's website posting would find her and harm her. Citing In re Cohen, 220 N.J. 7, 12 (2014), the OAE likened J.D.'s psychological harm to the harm suffered by victims of child pornography who are revictimized each time their image is viewed on the internet.

Also in aggravation, the OAE maintained that respondent's conduct involved domestic violence, albeit not in the context of a physical assault, noting that the Court has signaled that such misconduct warrants enhanced discipline. In re Magid, 139 N.J. 449, 453 (1995). Last, respondent failed to report his criminal charges or conviction to the OAE, as R. 1:20-13 requires.

In mitigation, the OAE highlighted respondent's lack of prior discipline. Further, although it acknowledged that respondent's mental illness could be accorded some weight, the OAE noted that respondent did not assert, nor did his therapist's report satisfy, the Braun standard for mitigation in Pennsylvania. Braun is akin to our own stringent Jacob standard (a

demonstration by competent medical proofs that the attorney “suffered a loss of competency or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional and purposeful”). In re Jacob, 195 N.J. 132 (1984). Further, the OAE pointed out that respondent continued to engage in misconduct while in treatment.

Respondent admitted, in his July 5, 2023 submission to us, that his conduct was “reprehensible and concerning.” Respondent argued, however, that the OAE’s brief, with its references to child pornography and domestic violence cases not predicated on any facts of record, were “irresponsible, unwarranted, and punitive,” and would have a detrimental impact on his reputation because of the horrific connotations associated with those offenses. Thus, in exchange for his “agreement that he will not apply pro hac vice for at least two years following his reinstatement to the Pennsylvania Bar,” respondent urged us to dismiss the OAE’s motion.

Specifically, respondent maintained that, in the event the OAE’s brief becomes a public record, an internet search for respondent’s name could yield results associating him with “child pornography” which, according to respondent, would be unfair since he was neither accused of, nor charged with, such crime. Further, in the criminal proceeding and subsequent Pennsylvania

disciplinary proceeding, no such analogy was ever made and, thus, the OAE's citation to disciplinary precedent involving child pornography is not only irrelevant to the matter before us but is unduly prejudicial. Specifically, respondent argued:

Unfortunately, however, should [the OAE's] petition become public record, each time someone enters Respondent's name in a search engine, "child pornography" will be associated with it in the search terms despite never being accused of and never participating in this heinous crime. The harm of this association with Respondent's name far outweighs any value it may bring to the disciplinary proceedings, particularly in a case where the Respondent is not objecting to discipline. In the end, it can only be assumed that these irresponsible references are intended to cause irreparable harm to Respondent's reputation, in addition to those harms Respondent brought upon himself.

[Rbp3.]⁹

Respondent raised a similar argument with respect to the OAE's citation to disciplinary precedent involving domestic violence which, again, he asserted was prejudicial to him and not predicated on the facts of record. He proffered that, if necessary, he would testify to off-the-record discussions prior to his sentencing, whereby Judge Kirkland "specifically excluded domestic

⁹ "Rb" refers to respondent's July 5, 2023 brief to the Board.

violence as a consideration in this matter, particularly regarding probation assignment and supervision.”

Respondent stated that he is “truly remorseful for his conduct,” and that one of the primary reasons he pleaded guilty to the charges was to spare J.D. and himself, along with their families, the emotional pain and embarrassment of a trial. Further, the restraining order prevents respondent from offering his apology to J.D., though he would welcome the opportunity to do so. Respondent emphasized that the ODC considered his remorse as a mitigating factor in its joint petition, as supported by his therapist’s report. Respondent, thus, urged that we consider his mental health issues and treatment.

Respondent acknowledged his failure to report the charges or conviction to the OAE but offered, by way of explanation and not excuse, that he had a misunderstanding regarding the continuing nature of his pro hac vice status which, along with the stressors accompanying his criminal charges, his Pennsylvania discipline, and notification of his employer, resulted in his failure to inform the OAE. Once the OAE contacted him, respondent immediately contacted his attorney who, in turn, immediately replied to the OAE. Respondent stated that he has spent the past fourteen months finding new employment, continuing his treatment, and trying to rebuild his life.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a review of the record, we determine to grant the OAE's motion for final discipline. Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that Rule, a criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995).

Pursuant to RPC 8.4(b), it is misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Thus, respondent's nolo contendere plea and convictions for second-degree misdemeanor unlawful dissemination of intimate images, in violation of 18 Pa. C.S. § 3131, and third-degree misdemeanor harassment, in violation of 18 Pa. C.S. § 2709(a)(4), establish his violation of RPC 8.4(b).

In sum, we find that respondent violated RPC 8.4(b). The sole issue left for our determination is the proper quantum of discipline for his misconduct. R. 1:20-13(c)(2); Magid, 139 N.J. at 451-52; and Principato, 139 N.J. at 460.

Quantum of Discipline

As a preliminary matter, there is no question the Court has jurisdiction to discipline respondent pursuant to R. 1:20-1(a), which provides that “[e]very attorney . . . authorized to practice law in the State of New Jersey, including those attorneys specially authorized for a limited purpose or in connection with a particular proceeding, shall be subject to the disciplinary jurisdiction” of the Court.

Further, RPC 8.5(a) provides that:

a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction regardless of where the lawyer’s conduct occurs. **A lawyer not admitted in this jurisdiction is subject also to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction.** A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

[emphasis added.]

When RPC 8.5(a) is read in concert with R. 1:20-1(a), regardless of the type of admission an attorney has to practice in New Jersey, even if it is for a limited purpose, such as pro hac vice admission, the attorney is subject to the disciplinary authority of New Jersey. Here, there is no dispute that respondent’s criminal conduct occurred, in part, while he was providing legal

services in this jurisdiction, by virtue of his pro hac vice admission, and thus, he is subject to discipline in this state. See In re Weinstein, __ N.J. __ (2023), 2023 N.J. LEXIS 595 (the attorney, who was admitted pro hac vice to the New Jersey bar at the time of misconduct in Pennsylvania, was subject to reciprocal discipline in this state).

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and 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 Magid, 139 N.J. at 452. Fashioning the appropriate penalty involves the 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

the 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 misconduct 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 an 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).

Precedent Involving Criminal Invasion of Privacy

As the OAE observed, there is no disciplinary precedent in New Jersey directly addressing an attorney’s misconduct for the nonconsensual dissemination of nude photographs of a victim on the internet. In the criminal context, however, this type of behavior typically is treated as an invasion of

privacy, a crime of the third degree, pursuant to N.J.S.A. 2C:14-9.¹⁰ We have twice disciplined attorneys convicted of invasion of privacy.

In Jackson, the attorney took more than fifty-five “upskirt” photographs of women in public without their knowledge or consent. Jackson was convicted in New York of three counts of second-degree unlawful surveillance, which we found similar to N.J.S.A. 2C:14-9(b)(1),¹¹ invasion of privacy. In the Matter of Samuel D. Jackson, DRB 19-295 (March 9, 2020) at 12. We acknowledged that Jackson was a case of first impression, as the Court had not yet disciplined an attorney for the invasion of privacy under similar circumstances. Further, we acknowledged the broad spectrum of discipline imposed on attorneys who engage in sexual misconduct. Id. at 12.

¹⁰ State v. Chow, 2019 N.J. Super. Unpub. LEXIS 983 (App. Div. 2019) (defendant convicted of third-degree invasion of privacy for posting nude photographs of a woman, without her consent, on a website that permitted users to submit anonymous naked pictures); State v. Nicholson, 451 N.J. Super. 534 (App. Div. 2017) (defendant charged with third-degree invasion of privacy for posting a photograph of a woman’s intimate parts on the internet without her consent).

¹¹ N.J.S.A. 2C:14-9(b)(1) provides that “an actor commits a crime of the third degree if, knowing that he is not licensed or privileged to do so, he photographs, films, videotapes, records, or otherwise reproduces in any manner, the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, without that person’s consent and under circumstances in which a reasonable person would not expect to be observed.”

We concluded that Jackson's misconduct was more serious than, but most closely resembled, attorneys who had been convicted of lewdness, and had received discipline ranging from a reprimand to a three-month suspension. Id. at 9-12, 14. By contrast, we reasoned that Jackson's conduct, though reprehensible, was not as severe as attorneys convicted of offenses involving offensive touching, forceful sexual contact, or sexual misconduct with children, which often results in long-term suspensions or disbarment. Id. at 14-15. We, thus, concluded that the reasonable range of discipline for Jackson's criminal conduct, which was analogous to the criminal invasion of privacy, warranted a term of suspension ranging from three months to one year. Id. at 15.

After weighing, in aggravation, that Jackson's misconduct was part of a pattern, encompassing dozens of invasive photographs of unsuspecting victims, as well as the disrepute his conduct brought to the bar, we determined that a six-month suspension was the appropriate quantum of discipline for Jackson's misconduct. Ibid. We concluded that these aggravating factors outweighed the mitigating factors, including the attorney's lack of prior discipline, his contrition, and remorse. Ibid. The Court disagreed and, instead, suspended Jackson for one year. In re Jackson, 244 N.J. 193.

More recently, in In re Weinstein, we considered another invasion of privacy matter in connection with a Pennsylvania attorney who, like respondent, had been admitted pro hac vice in New Jersey. In the Matter of Lawrence J. Weinstein, DRB 22-099 (October 17, 2022). In Weinstein, the attorney was convicted of multiple crimes in Pennsylvania, including invasion of privacy; possession of a device for intercepting communications; false imprisonment; and reckless endangerment of another person. Id. at 2. The attorney admitted that he, along with another woman (K.D.), had intoxicated their victim to the point the victim lost consciousness so that he could photograph and record her by installing a secret camera in a toilet. The attorney also gave K.D. spy glasses to wear while she disrobed the victim so the attorney could surreptitiously view pictures of the victim in the nude. Id. at 27. Thereafter, the victim, who was unconscious, was moved to the bed so that she could lay next to respondent and K.D. while they had sexual intercourse. Id. at 27.

In determining the appropriate quantum of discipline, we noted that the matter represented our third case in recent months where a male respondent had either egregiously victimized a woman or had relegated the woman to serve as his sexual object, citing In re Lynch, 253 N.J. 3, and In re Waldman,

253 N.J. 4 (both discussed below). Though Lynch and Waldman had engaged in egregious misconduct, they had pleaded guilty to stalking and cyberstalking, respectively, which did not involve the constellation of crimes that Weinstein had committed, also an issue of first impression for us. Id. at 32.

Though we acknowledged that Jackson was most analogous, we viewed Weinstein's conduct as significantly more depraved than Jackson's taking of "upskirt" photographs of unsuspecting woman, and more pre-meditated, manipulative, and exploitive than the psychological harm inflicted in Lynch and Waldman. Id. at 32-33. Ultimately, for the totality of Weinstein's for Weinstein's heinous and immoral criminal acts, we concluded that disbarment was required. However, because Weinstein was not a licensed attorney in New Jersey, we recommended that he be permanently barred from future plenary or pro hac vice admission to the New Jersey bar. Id. at 37. The Court agreed. In re Weinstein, __ N.J. __ (2023), 2023 N.J. LEXIS 595.

Precedent Involving Crimes of Stalking and Cyberstalking

Also instructive are disciplinary cases involving stalking and cyberstalking, where the attorneys demonstrated callous disregard for their victims' safety. In Lynch, the attorney pleaded guilty to one count of stalking

after he set his romantic sights on a stranger at a train station. In the Matter of William H. Lynch, Jr., DRB 21-274 (June 21, 2022). Lynch's victim initially welcomed him as a friend and repeatedly told Lynch she wanted nothing more than a friendship. However, Lynch ignored her clear statements and, instead, projected his sexual desires onto her – repeatedly and incessantly sending her thousands of sexual and abusive text messages. Lynch also left a voicemail on his victim's cellular phone, offering to draft a contract to enable him to have unprotected sexual intercourse with her. Id. at 9-10.

In fashioning our discipline, we considered substantial aggravating factors, including that the attorney had threatened the victim with firearms and leveraged his law license with veiled threats regarding the victim's status in the country. In further aggravation, the attorney twice violated a court-imposed no contact order and attempted to file baseless police reports against the victim. Id. at 44-45. We also weighed the considerable harm to the victim, who was so afraid of the attorney's unrelenting advances that she purchased a gun and joined a shooting club. Ibid.

In mitigation, we noted the attorney's unblemished career in thirty-five years at the bar. We also accorded some weight to the role that the attorney's mental health played in his misconduct. Id. at 45. Ultimately, we determined

that an eighteen-month suspension, with conditions, was the appropriate quantum of discipline. The Court agreed. 253 N.J. 3.

In Waldman, the attorney pleaded guilty to one count of cyberstalking following the end of his four-month dating relationship with his victim. In the Matter of David R. Waldman, DRB 22-022 (July 18, 2022) at 1. After the breakup, Waldman, for the next four years, engaged in a course of conduct that threatened his victim's safety and caused her substantial emotional distress. Waldman sent his victim hundreds of harassing and threatening e-mails, created various blogs and posted complaints about the breakup, and repeatedly threatened violence against her. Id. at 25-26. Waldman threatened to kidnap his victim, hold her bound and gagged in his apartment; rape her with a knife; demanded she have sexual intercourse with him; and threatened other acts of violence against her. Id. at 3. Waldman also contacted his victim's employer and made baseless allegations that she abused illegal drugs. Id. at 8.

Waldman's victim obtained two restraining orders against him, both of which he violated. Id. at 9. Additionally, Waldman's violation of the restraining orders included using increasing sophisticated means to continue his violent threats against his victim, including the creation of blogs using pseudonyms. After Waldman was arrested, federal agents found a large knife

in his home, a lock-picking kit, and several diaries that purportedly included instructions on how to conceal internet protocol addresses and post blog pages that were not traceable. Id. at 13-14.

In aggravation, we considered Waldman’s defiance of two protective orders, his escalating threats of violence to his victim, and the harm to the victim. Id. at 28-29. Given the severity of the misconduct, we recommended, and the Court agreed, that Waldman be suspended for three years. 253 N.J. 4.¹²

Considering the above disciplinary precedent, we view respondent’s misconduct as far more egregious than the attorney in Jackson, who was taking “upskirt” photographs of victims in public, on two separate days, which he viewed for his own personal gratification. Likewise, the harassment in Lynch, though serious and threatening, spanned several weeks and was limited to e-mails and text messages sent directly to the victim. Respondent’s misconduct, in our view, is more closely analogous to the attorneys in Waldman, who received a three-year suspension, and Weinstein, who, like respondent, did not hold a plenary license in this state, and was barred from future pro hac vice or plenary admission.

¹² Chair Gallipoli and Member Joseph voted to recommend to the Court that Waldman be disbarred.

Like the attorney in Waldman, respondent engaged in a prolonged course of conduct, spanning years, against his victim. Whereas Waldman sent his victim hundreds of threatening and harassing e-mails, respondent sexually exploited his own wife when, for nearly three years, he surreptitiously photographed her, often while she was naked, and disseminated those photographs via his postings on the Angel's Wife Lovers website, accompanied by abhorrently graphic comments, to be viewed by others for their (and respondent's own) sexual gratification. Waldman also had created blogs in which he posted complaints about his breakup, with accompanying photographs of the victim. Although Waldman had threatened his victim with acts of violence and, subsequently, violated two restraining orders against him – facts that are not present in the instant matter – respondent callously disregarded J.D.'s safety when, in several of his postings, he included information about where she could be located. Like Waldman's victim, J.D. understandably was concerned for her safety and was forced to take steps to protect herself.

Similarly, the attorney in Weinstein, like respondent, engaged in pre-meditated and exploitative conduct toward his victim and, like respondent, placed his victim in harm's way. Weinstein orchestrated his victim's

involuntary intoxication and, subsequently, disregarded her lack of consciousness, instead proceeding with his plan which included the removal of his victim's clothing, and having sexual intercourse with another individual while the victim lay in the bed next to them. We view respondent's prolonged campaign to sexually exploit his then-wife through his nonconsensual distribution of naked photos of her, on a public website, with invitations to engage in sexual acts with her, to be just as depraved as the heinous misconduct committed by Weinstein.

Aggravating Factors

It is nearly unfathomable to us that respondent would surreptitiously photograph his new wife, while naked, and, unbeknownst to her, disseminate those photographs with such graphic, humiliating, and vulgar commentary – inviting others to live out their sexual fantasies with her. By doing so, respondent demonstrated a complete disregard for J.D.'s safety, placing his own sexual gratification ahead of her well-being. Indeed, respondent's criminal conduct caused serious psychological harm to J.D., who understandably feared that the individuals who had viewed respondent's website postings, which included information as to her whereabouts, would

find and harm her. In the age of technology, by which an individual's private information, including their home address, often can be located with a few keystrokes, J.D. had every reason to be concerned for her safety. Further, the photographs of J.D. will remain in cyberspace, in perpetuity, subjecting J.D. to a lifetime of revictimization, each time the photographs are viewed by others.

In further aggravation, respondent failed to report his criminal charges or conviction to the OAE, as R. 1:20-13(a)(1) requires.

Conclusion

We conclude that no amount of mitigation, including respondent's remorse, cooperation with the Pennsylvania disciplinary authorities, or his admitted struggles with mental health, for which he is in treatment, serve to spare him from the most severe disciplinary sanction. Thus, we determine that disbarment is the only appropriate discipline to impose for the gravity of respondent's offenses. However, respondent is not a licensed New Jersey attorney and, therefore, we recommend to the Court that respondent be permanently barred from future plenary or pro hac vice admission to the New Jersey bar.

Members Joseph and Rivera were 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John Edward Toczydlowski
Docket No. DRB 23-133

Argued: September 21, 2023

Decided: December 4, 2023

Disposition: Permanent Bar from Plenary or Pro Hac Vice Admission

<i>Members</i>	Permanent Bar from Plenary or <u>Pro Hac Vice</u> Admission	Absent
Gallipoli	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph		X
Menaker	X	
Petrou	X	
Rivera		X
Rodriguez	X	
Total:	7	2

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel