SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-076
District Docket No. XIV-2021-0296E

In the Matter of Devin Kennedy Kenney
An Attorney at Law

Argued
June 20, 2024

Decided
September 18, 2024

Darrell M. Felsenstein 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 convictions, in the Superior Court of New Jersey, for fourth-degree contempt, in violation of N.J.S.A. 2C:29-9(a)(1), disorderly persons contempt, in violation of N.J.S.A. 2C:29-9(a)(2) (two counts), and petty disorderly persons harassment, in violation of N.J.S.A. 2C:33-4(a) (two counts). The OAE asserted that these offenses constitute violations of RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

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

Ethics History

Respondent earned admission to the New Jersey bar in 2002. She has no prior discipline. During the relevant timeframe, she worked as a legal content writer.

Effective July 22, 2019, the Court declared respondent administratively ineligible to practice law in New Jersey for failing to pay the required annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF), as R. 1:28-2 requires.

Effective November 16, 2020, the Court declared respondent administratively ineligible to practice law for failing to comply with continuing legal education (CLE) requirements.

To date, respondent has not cured her CPF or CLE deficiencies and, thus, remains ineligible to practice law on both bases.

Facts

On October 2, 2023, in the Superior Court of New Jersey, Morris County, Criminal Division, respondent appeared before the Honorable Stephen Taylor, J.S.C., and entered a guilty plea to the following charges: fourth-degree contempt, in violation of N.J.S.A. 2C:29-9(a)(1), disorderly persons contempt, in violation of N.J.S.A. 2C:29-9(a)(2) (two counts), and petty disorderly persons

harassment, in violation of N.J.S.A. 2C:33-4(a) (two counts).[1] In exchange for her guilty plea, the prosecution agreed to recommend that respondent be sentenced to five years of non-custodial probation.

On November 16, 2023, Judge Taylor sentenced respondent to a four-year term of non-custodial probation. Judge Taylor also ordered her to continue mental health treatment and attend alcoholic anonymous (AA) meetings and to provide proof of compliance to probation.

The facts underlying respondent's conviction, which stem from four separate events involving two victims, are addressed below.

The K.W. Matter

Pursuant to an active final restraining order (the FRO), respondent was prohibited from having any contact or communication with K.W.,[2] with the

[1] N.J.S.A. 2C:29-9(a)(1) provides, in relevant part, that "a person is guilty of a crime of the fourth degree if the person purposely or knowingly disobeys a judicial order or protective order."

N.J.S.A. 2C:29-9(a)(2) provides, in relevant part, that "a person is guilty of a disorderly persons offense if that person purposely or knowingly violates a condition to avoid contact with an alleged victim."

N.J.S.A. 2C:33-4(a) provides, in relevant part, that "a person commits a petty disorderly persons offense if, with purpose to harass another, he makes, or causes to be made, one or more communications . . . [in a] manner likely to cause annoyance or alarm."

[2] We have anonymized the victims' names in this matter.

limited exception of a once-per-day communication to check on their child or to arrange parenting time.

On March 19, 2021, respondent, who was then incarcerated in the Morris County Correctional Facility on charges related to the FRO, but not related to the instant matter, appeared before the Honorable Michael Carlucci, J.M.C. As a condition to her release from jail, Judge Carlucci ordered respondent to have no contact with K.W., in accordance with the terms of the FRO. On March 23, 2021, despite Judge Carlucci's no-contact order, respondent contacted K.W. via text messages and telephone calls.[3]

As a result, on February 1, 2023, respondent was indicted for fourth-degree contempt, in violation of N.J.S.A. 2C:29-9(a)(1), for disobeying Judge Carlucci's March 19, 2021 no-contact order.

The B.K. Matters

Pursuant to another active FRO, respondent was prohibited from having any contact or communication with B.K.

On October 1, 2021, respondent sent several e-mails to B.K., in which she called B.K. "disparaging names." Despite B.K.'s specific request that she stop sending him such e-mails, respondent continued to do so.

[3] The record does not include the referenced e-mails or text messages related to either victim.

As a result, respondent was charged with harassment, a petty disorderly persons offense, in violation of N.J.S.A. 2C:33-4(a), and contempt, a disorderly persons offense, in violation of N.J.S.A. 2C:29-9(b)(2).

On October 14, 2021, respondent was placed on pretrial release by the Honorable John Paparazzo, J.M.C. As a condition of her pretrial release, Judge Paparazzo ordered her to have no contact with the victim, B.K.

On May 11, 2023, despite Judge Paparazzo's order that she have no contact with B.K., respondent sent several harassing e-mails to him. Consequently, on the same date, respondent was charged with criminal contempt, a fourth-degree crime, contrary to N.J.S.A. 2C:29-9(a)(1), and contempt, a disorderly persons offense, contrary to N.J.S.A. 2C:29-9(a)(2). Two days later, on May 13, 2023, respondent sent ten e-mails to B.K. within a three-hour period. As a result, she was charged with harassment, a petty disorderly persons offense, contrary to N.J.S.A. 2C:33-4(a), and contempt, a disorderly persons offense, contrary to N.J.S.A. 2C:29-9(a)(2).

The Plea Hearing

On October 2, 2023, respondent appeared before Judge Taylor and entered guilty pleas to the aforementioned charges. Specifically, respondent pleaded guilty to having violated N.J.S.A. 2C:29-9(a)(1) in connection with her unlawful

contact with K.W. In support of her plea, respondent admitted that, on March 19, 2021, she had appeared before Judge Carlucci, who ordered her released from jail, conditioned on her having no contact with K.W. Despite that order, respondent admitted that, on March 23, 2021, she contacted K.W., via telephone calls and text messages. Moreover, she admitted to knowing that her contacts with K.W. violated Judge Carlucci's release order.

Next, respondent pleaded guilty to harassment, in violation of N.J.S.A. 2C:33-4(a), a petty disorderly persons offense, in connection with her October 1, 2021 contact with B.K. Specifically, during her plea colloquy, respondent admitted that she sent annoying e-mails to B.K. with the intent to harass him. Moreover, she conceded that despite B.K.'s request that she refrain from sending him e-mails, she continued to do so.

Additionally, respondent pleaded guilty to contempt, in violation of N.J.S.A. 2C:29-9(a)(2), a disorderly persons offense, with respect to her unlawful contact with B.K. on May 11, 2023. Respondent also pleaded guilty to harassment, a petty disorderly persons offense, in violation of N.J.S.A. 2C:33-4(a) and contempt, a disorderly persons offense, in violation of N.J.S.A. 29-9(a)(2), in connection with her May 13, 2023 e-mails to B.K. In support of her plea, respondent admitted that she was prohibited from contacting B.K. pursuant to Judge Paparazzo's October 14, 2021 pretrial release order. Despite her

knowledge that she was prohibited from contacting B.K., she admitted that she sent multiple e-mails to him, including ten within a three-hour timeframe.

Pursuant to the plea agreement, the remaining charges against respondent were dismissed.

The November 16, 2023 Sentencing

On November 16, 2023, respondent appeared for sentencing before Judge Taylor. Respondent addressed the court to express her remorse. She admitted that she was ashamed for not doing the best she could for her children, or the best she could as an attorney.

Respondent, through counsel, urged the imposition of a term of probation of less than five years. She stressed, through her counsel, that she had struggled with mental health issues, alcoholism, and failed relationships. Additionally, respondent's counsel emphasized that respondent voluntarily had entered treatment and was under the care of a psychiatrist. Further, she noted that the conduct did not involve physical contact or violence.

In turn, the prosecution argued that respondent should be sentenced to a five-year term of probation, based on her repeated arrests for the same misconduct. The prosecution emphasized that, despite pleading guilty to only five charges, respondent had engaged in eight separate incidents involving the

two victims. Further, the prosecution, at the request of the victims, implored the judge to reiterate that respondent abide by the terms of the FROs that were in place. Moreover, the prosecution stressed that a custodial sentence was not recommended because the victims agreed that respondent needed treatment.

Last, the prosecution read victim statements from K.W. and B.K. Both victims emphasized that respondent's conduct had an emotional impact on the children they each have with respondent. Additionally, both victims reiterated that they were in agreement with the government's recommendation for a term of probation and, further, believed such a sentence would be a strong incentive for respondent's future compliance with the restraining orders.

Judge Taylor sentenced respondent to a four-year term of probation.[4] In imposing sentence, Judge Taylor found that respondent's conduct was likely to recur based upon the multiple offenses for which she was being sentenced, in conjunction with her mental health struggles and her alcohol addiction. Judge Taylor also expressed his concern that "if [respondent is] on her medications and she's not drinking, she functions fine. But it's when she's off the medications and drinking . . . that causes issues."

[4] Specifically, respondent was sentenced to a four-year term of probation for her violation of N.J.S.A. 2C:29-9(a)(1), a concurrent four-year term of probation for her violations of N.J.SA. 2C:29-9(a)(2) (two counts), and a concurrent four-year term of probation for her violations of N.J.S.A. 2C:4-33(a) (two counts).

In mitigation, Judge Taylor considered that respondent did not contemplate or threaten causing harm to either victim. He also concluded that respondent would respond affirmatively to probation because she was in treatment with a psychiatrist.

The Parties' Positions Before the Board

The OAE, both in its brief and during oral argument before us, argued that respondent's convictions constituted violations of RPC 8.4(b) and RPC 8.4(d) and recommended the imposition of either a reprimand or a censure. In support of its recommendation, the OAE analogized respondent's conduct to that of attorneys found guilty of harassment or stalking, who received discipline ranging from a reprimand to a term of suspension. The OAE stressed, however, that respondent's non-violent misconduct did not rise to the level of the menacing behavior committed by attorneys who had been suspended.

The OAE analogized respondent's conduct to that of the attorney in In re Thakker, 177 N.J. 228 (2003), who was reprimanded, following his guilty plea to petty disorderly persons harassment, for repeatedly contacting, via telephone, a former client despite her specific requests that he stop. The OAE stressed the fact that, during her sentencing, Judge Taylor had emphasized the lack of violence or intent to cause violence while acknowledging, however, that

respondent's conduct inflicted emotional trauma on the victims. The OAE emphasized, however, that, unlike the attorney in Thakker, respondent's actions occurred over a prolonged period, violated two court orders, and involved two separate victims.

In mitigation, the OAE noted that respondent's conduct was due, in part, to her mental health and alcohol dependency issues, for which she was receiving treatment. Additionally, the OAE emphasized respondent's lack of prior discipline and the fact she had notified the bar association of her criminal charges (which notification the OAE eventually received). In response to our questioning, the OAE acknowledged that, based upon disciplinary precedent, respondent's misconduct fell somewhere between a reprimand and a censure, but stated that it leaned toward a reprimand based upon respondent's rehabilitative efforts.

In her written submission to us, respondent expressed her agreement with the OAE's recommendation. Further, she informed us that she was in an intensive outpatient program (IOP), attending individual therapy, and regularly attending AA meetings. Respondent also provided us with an e-mail from her IOP counselor, who stated that she was doing well in treatment and, since starting the program, had tested negative for illicit substances.

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

Respondent's guilty plea and convictions for fourth-degree contempt, in violation of N.J.S.A. 2C:29-9(a)(1), disorderly persons contempt (two counts), in violation of N.J.S.A. 2C:29-9(a)(2), and petty disorderly persons harassment (two counts), in violation of N.J.S.A. 2C:33-4(a), thus, establish her 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." Moreover, respondent's repeated violation of the FROs and the court's subsequent no-contact orders were prejudicial to the administration of justice, in violation of RPC 8.4(d).

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

Quantum of Discipline

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." Principato, 139 N.J. at 460. Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them relevant to the nature and extent of discipline to be imposed." Magid, 139 N.J. at 452. In motions for final discipline, it is acceptable to "examine the totality of the circumstances" including the "details of the offense, the background of respondent, and the pre-sentence report" before reaching a decision as to the sanction to be imposed. In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

That an attorney's 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).

Attorneys found guilty of harassment or stalking have received discipline ranging from a reprimand to a term of suspension, depending on the duration of the offending behavior, whether the attorney had a history of stalking or harassment, and whether the attorney was suffering from mental illness. See, e.g., Thakker, 177 N.J. 228 (reprimand for an attorney who pleaded guilty to harassment; the attorney called the home of his former client fifteen to twenty times between 7:00 p.m. and 10:45 p.m., even after she had told him to stop; additionally, the attorney was abusive and belligerent to the police officer who responded to the matter; when the police officer warned the attorney to stop calling his former client, the attorney invited the police officer to engage in a "hand to hand encounter between us men;" despite the police officer's warning, the attorney continued to call his former client until just after midnight; in mitigation, we considered that the attorney's behavior was attributable, at least

in part, to alcohol abuse; no prior discipline); In re Mladenovich, __ N.J. __ (2022), 2022 N.J. LEXIS 1109 (three-month suspension for an attorney convicted of first-degree misdemeanor terroristic threats and first-degree misdemeanor stalking; the attorney, over the span of two months, repeatedly threatened her former psychiatrist by sending at least seventeen voicemail messages and numerous text messages containing threatening and antisemitic language; in mitigation, we considered that the attorney's conduct may partly have been the result of her mental health issues, although not raised as an affirmative defense; no prior discipline); In re Wachtel, 194 N.J. 509 (2008) (six-month suspension for an attorney convicted of two counts of fourth-degree stalking; in the first criminal matter, the attorney, during a four-month period, left several threatening voicemails for his wife's divorce lawyer; in one voicemail, the attorney told his wife's lawyer that "you're going to be dead soon. I know it all, I know where you sleep, where you drive, where you work, one mother-f$#@!er is going to be dead soon;" the attorney also sent his wife's lawyer, whose daughter was expecting a child, a box containing feminine hygiene products with a note that said, "[h]oping the whore mother and child die in childbirth;" in the second criminal matter, the attorney left several obscene voicemail messages threatening to injure a court-appointed mediator; in aggravation, the attorney had engaged in prior harassing behavior toward his

sister's attorney and had a prior conviction for possessing drug paraphernalia; in mitigation, the attorney's conduct was partly the result of his severe mental health and substance abuse issues, both of which he had continued to treat); In re Lynch, 253 N.J. 3 (2023) (eighteen-month suspension for an attorney who pled guilty to one count of stalking; the attorney, during the span of several weeks, sent the victim thousands of sexual and abusive text messages; after the victim demanded that the attorney never contact her again, the attorney left the victim two profane sexually explicit voicemail messages; in aggravation, we considered that the attorney had threatened the victim with firearms and leveraged his law license with veiled threats regarding the her status in the country; further, the attorney twice violated the court-imposed no-contact order; no prior discipline); In re Waldman, 253 N.J. 4 (2023) (three-year suspension for an attorney who pled guilty to one count of cyberstalking, following the end of his four-month dating relationship with the victim; after the breakup, the attorney sent his victim hundreds of harassing and threatening e-mails, created various blogs, and posted complaints about the breakup, and repeatedly threatened violence against his victim; the attorney's victim obtained two restraining orders against him, both of which he violated; significant aggravation; no prior discipline).

Here, respondent's misconduct most resembles that of the reprimanded attorney in Thakker. Specifically, like the attorney in Thakker, respondent contacted her victims on numerous occasions, despite at least one of the victim's express directive that she stop doing so. Unlike the attorney in Thakker, however, respondent was expressly prohibited from contacting her victims, pursuant to active FROs and the subsequent pre-trial release orders. Further, respondent's misconduct was directed toward two victims, whereas the misconduct in Thakker was limited to one victim. In these respects, respondent's misconduct is more severe than that of the attorney in Thakker and, thus, could be met with harsher discipline than the reprimand imposed in Thakker. To craft the appropriate discipline in this case, however, we also consider aggravating and mitigating factors.

There are no aggravating factors to consider.

In mitigation, respondent has no prior discipline in her twenty-two years at the bar, a consideration the Board and the Court accord significant weight. In re Convery, 166 N.J. 298, 308 (2001).

Conclusion

On balance, weighing respondent's otherwise unblemished career against the absence of any aggravating factors, we determine that a reprimand is the

appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar. Further, as a condition to her discipline, we recommend that respondent be required to report to the OAE her compliance with probation, on a quarterly basis, until she completes her probationary term.

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. Mary Catherine Cuff, P.J.A.D.(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 Devin Kennedy Kenney
Docket No. DRB 24-076

Argued: June 20, 2024

Decided: September 18, 2024

Disposition: Reprimand

Members	Reprimand
Cuff	X
Boyer	X
Campelo	X
Hoberman	X
Menaker	X
Petrou	X
Rivera	X
Rodriguez	X
Spencer	X
Total:	9

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