

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-172
District Docket No. XIV-2023-0488E

In the Matter of Robert William Evans
An Attorney at Law

Argued
September 19, 2024

Decided
January 14, 2025

Samuel M. Silver appeared on behalf of the
Office of Attorney Ethics.

Respondent appeared pro se.

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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, in the Superior Court of New Jersey, for third-degree aggravated assault, in violation of N.J.S.A. 2C:12-1(b)(12). The OAE asserted that this offense constitutes a violation of RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer).

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

Ethics History

Respondent earned admission to the New Jersey bar in 2019 and has no prior discipline. During the relevant timeframe, he maintained a practice of law in Newark, New Jersey.

Facts

On March 14, 2024, in the Superior Court of New Jersey, Sussex County, Criminal Division, respondent appeared before the Honorable Robert M. Hanna, J.S.C., and entered a guilty plea to third-degree aggravated assault, in violation of N.J.S.A. 2C:12-1(b)(12).¹ In exchange for his guilty plea, the prosecution agreed to recommend that respondent be admitted to the pretrial intervention (PTI) program² for a term of eighteen months. The facts underlying the criminal offense, which stem from an act of domestic violence, are addressed below.

According to the affidavit of probable cause, on October 18, 2023, patrol officers of the Byram Township police department arrived at respondent's home following the report of a domestic violence incident. The officers, upon arrival, spoke to respondent's wife, K.E.,³ who stated that respondent was under the influence of Klonopin and was taking more than his prescribed dosage. K.E. alleged that, when she confronted respondent about the Klonopin, he pushed her

¹ N.J.S.A. 2C:12-1(b)(12) provides that a person is guilty of the crime of aggravated assault if the person "[a]ttempts to cause significant bodily injury or causes significant bodily injury purposely or knowingly or, under circumstances manifesting extreme indifference to the value of human life, recklessly causes significant bodily injury to a person who, with respect to the actor, meets the definition of a victim of domestic violence."

² PTI is a diversionary program that provides an opportunity for first time offenders with opportunities for alternatives to the traditional criminal justice process of ordinary prosecution. If the defendant completes all the conditions set by the court, the charges will be dismissed.

³ Due to the nature of charges, we refer to the victim by her initials.

onto the bed, covering her nose and mouth.

According to the affidavit, K.E. stated that she grabbed at respondent's face and hair in an attempt to get him off her and to escape. Respondent then wrapped his arm around the front of K.E.'s neck from behind, and "restrict[ed] her ability to breathe where she got scared but did not completely obstruct her ability to breathe." K.E. eventually was able to escape into the living room while her daughter called the police. The reporting officer observed K.E. to have "a red mark consistent with one arm restricting breathing and blood flow extending all the way around the front of her neck from left to right."

Consequently, respondent was charged with second-degree aggravated assault, contrary to N.J.S.A. 2C:12-1(b)(13), and third-degree criminal restraint, contrary to N.J.S.A. 2C:13-2(a).

On March 14, 2024, respondent appeared before Judge Hanna, waived his right to indictment by a grand jury, and entered a guilty plea to third-degree aggravated assault. In support of his plea, respondent admitted being in Byram Township, Sussex County on October 18, 2023. He admitted there was a domestic violence incident that involved K.E. calling the Byram Township police department that same date. Moreover, respondent admitted that those officers reported to his home and that the incident involved him having an argument with his wife, during which he put his arm around her neck and

“applied some pressure.” Further, he admitted that, by engaging in the conduct, he had attempted to cause serious bodily injury to K.E.

Respondent did not, however, admit to pushing K.E. onto their bed or to pressing her face into the mattress and restricting her breathing, as had been alleged in the criminal complaint filed against him. Neither the prosecution nor the court required respondent to address those allegations during his plea allocution.

Respondent’s counsel, when offered an opportunity to speak, emphasized that respondent’s behavior was “truly aberrational” and that the prosecution’s offer of PTI was a “gift.” He also stressed that respondent had the support of his wife and, with proper treatment, he would not be back before the court. Further, his counsel argued that respondent’s behavior “was unfortunately a result of the Klonopin, which he, of his own volition . . . recognized and immediately terminated it.”

Judge Hanna stated that he was troubled deeply by the domestic violence, particularly from an attorney, but noted that K.E. was present in the courtroom. The judge further inferred that K.E.’s presence was “supportive of [respondent], which [was] important.”

In accordance with the plea agreement, Judge Hannah admitted respondent to the PTI program for a period of eighteen months. Additionally, he

was required to comply with both the standard and special conditions of PTI supervision. The special conditions required him to continue with substance abuse treatment and therapy, and to allow probation to conduct prescription drug counts, if necessary. Additionally, he was required to pay a \$125 fine.

The Parties' Positions Before the Board

In its motion for final discipline, the OAE argued that respondent's guilty plea constituted a violation of RPC 8.4(b) and warranted the imposition of a three-month suspension. In support of its recommendation, the OAE analogized respondent's conduct to that of attorneys found guilty of criminal acts of domestic violence, who received a term of suspension. Specifically, the OAE cited In re Fulford, 237 N.J. 252 (2019), In re Pagliara, 232 N.J. 327 (2018), and In re Park, 225 N.J. 609 (2016), discussed below, in which the Court imposed three-month suspensions. The OAE also cited In re Tobias, 249 NJ 2 (2021), in which the Court imposed a six-month suspension.

In mitigation, the OAE asserted that respondent readily admitted his conduct and entered into the PTI program. Additionally, the OAE emphasized his lack of prior discipline and the fact that he notified the OAE of his criminal charges, as R. 1:20-13(a)(1) requires.

Respondent, in his brief and during oral argument before us, urged the imposition of a three-month suspended suspension. In support of this position, respondent cited In re Schaffer, 140 N.J. 148 (1995), In re Filomeno, 190 N.J. 579 (2007), and In the Matter of Alexander Ralph De Sevo, DRB 16-041 (November 4, 2016). Specifically, he argued that the Court had imposed a suspended three-month suspension in each of those matters because of “the conduct in seeking and completing recovery from substance abuse after the commission of the offense of possession of a controlled dangerous substance.” Respondent, in that same vein, requested that we consider “that if it were not for the abuse of [his] own prescription medication, the offense would never have occurred.”

In mitigation, respondent emphasized, and attached supporting documentation, that he voluntarily entered treatment to address the prescription drug abuse. Specifically, he stated that he checked himself into a twenty-one-day inpatient rehabilitation facility, and completely stopped practicing law. Upon his discharge from that program, he began attending Alcohol Anonymous (AA) and Lawyers Concerned for Lawyers (LCL) meetings, which allowed him to be present at home to help his family. Further, he began a partial hospitalization program, which he attended daily and was drug tested multiple times weekly. Respondent also attended an Intensive Outpatient Program IOP,

which he successfully completed, and continued biweekly therapy sessions and continued AA/LCL meetings.

Respondent maintained that he spent approximately \$10,000 on treatment to rehabilitate himself after the offense and had lost a significant amount of income while being out of work. He further stated that he was terminated from his law firm position on January 11, 2024. However, he obtained a new position, with a new firm, on February 14, 2024.

Respondent reiterated that he immediately notified the OAE of his offense and accepted responsibility. Additionally, he emphasized that, to date, he is in full compliance with the PTI program.

Last, respondent argued that a term of suspension would engender a financial hardship, as he is the sole financial provider of his household. He emphasized that he recently had welcomed a third child into his family, in July 2024. Respondent additionally noted that he and K.E. are still together, despite his offense, and constantly are working on their relationship.

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). Pursuant to that Rule, a “transcript of a guilty plea to a crime or disorderly persons offense, whether the plea results either in a judgment of conviction or admission to a diversionary program,” is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1). See also In re Magid, 139 N.J. 449, 451 (1995), and In re Principato, 139 N.J. 456, 460 (1995).

Thus, respondent’s guilty plea, in the Superior Court of New Jersey, to third-degree aggravated assault, establishes his violation of RPC 8.4(b), which provides that it is misconduct for an attorney to “commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer.” Hence, the sole issue 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, . . . 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.

The fact 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).

With few exceptions, as the Court announced in In re Margrabia, 150 N.J. 198, 201 (1997),⁴ attorneys convicted of an act of domestic violence receive a three-month suspension, depending on the presence of aggravating and mitigating factors. See, e.g., In re Fulford, 237 N.J. 252 (three-month suspension for an attorney who was convicted of simple assault, a disorderly persons offense, of his former spouse; the attorney and his former spouse engaged in a verbal argument when he arrived at her residence to pick up their two children in connection with his parenting time; he did not promptly leave, but lingered, and his former spouse confronted him with a long-handled ice chipper in an attempt to convince him to vacate the property; the attorney then pulled the chipper from her hands and hit her in the head with it, in front of their children, causing her to fall and temporarily lose consciousness; in aggravation, we considered that the attorney committed the assault in front of his children; no prior discipline); In re Hyderally, 233 N.J. 596 (2018) (three-month suspension imposed on attorney who pleaded guilty to simple assault; the attorney grabbed his girlfriend by the throat and slammed her into a wall, causing injuries to her neck, jaw, and left arm; in aggravation, we considered the attorney's prior

⁴ In Margrabia, the Court determined that a three-month suspension was appropriate, finding that the attorney had committed his misconduct seven months after the Court's pronouncements in Magid, 139 N.J. 449, and Principato, 139 N.J. 456, in which the Court recognized both society's and the New Jersey Legislature's growing intolerance of domestic violence and warned that future incidents of domestic violence would result in harsher disciplinary sanctions.

reprimand for making inappropriate sexual advances to at least two women who were his legal aid clients); In re Pagliara, 232 N.J. 327 (three-month suspension for an attorney who pleaded guilty to third-degree aggravated assault after he punched his wife, which caused her nose to bleed; the attorney was admitted to the PTI program, and ordered to attend an anger management program and to pay restitution); In re Park, 225 N.J. 609 (three-month suspension for an attorney who pleaded guilty to third-degree aggravated assault, admitting that he had attempted to cause significant bodily injury to his mother by forcing her to take a quantity of prescription medication; in imposing only a three-month suspension, we emphasized that the attorney’s misconduct was “directly linked to, although not excused by, both mental health issues and contemporaneous abuse of his prescription medication”).

Greater discipline has been imposed where there is an overwhelming presence of aggravating factors. See In re Tobias, 249 N.J. 2 (2021) (six-month suspension for an attorney who pleaded guilty to third-degree aggravated assault; the attorney, after consuming a significant amount of alcohol at a restaurant, grabbed his girlfriend’s head and smashed it into his car frame twice, resulting in severe head injuries to his girlfriend; the attorney then fled the scene in his vehicle; he failed to report his criminal charges to the OAE), and In re Jacoby, 206 N.J. 105 (2011) (one-year suspension for an attorney who assaulted

his wife a second time; in the second incident, he repeatedly slapped his wife in the face, causing her nose to bleed, and pinned her to the floor, where he held her against her will and threatened to kill her; he was convicted of a felony offense, in Virginia, and served one year of a three-year prison sentence).

Here, respondent's misconduct is most like the attorneys in Park and Pagliara, who both received three-month suspensions. Specifically, similar to both matters, respondent pleaded guilty to third-degree aggravated assault. Additionally, like Park, respondent's misconduct is directly linked to his contemporaneous abuse of prescription medication, Klonopin. Further, respondent, like the attorney in Pagliara, was admitted into PTI and ordered to attend therapy. Accordingly, we determine that a three-month suspension is the baseline discipline for respondent's misconduct.

However, to craft the appropriate discipline in this matter, we also must consider aggravating and mitigating factors.

In aggravation, respondent committed the assault in the presence of his stepdaughter, which we consider as an aggravating factor, as in In the Matter of Preston I. Fulford, DRB 18-132 (October 16, 2018).

In mitigation, respondent has no disciplinary history in his four years at the bar, albeit a short term.

In further mitigation, as we considered in In re Chechelnitsky, 232 N.J.

331 (2018), we accord significant weight to the fact that respondent's misconduct was directly linked to his abuse of Klonopin, for which he has taken considerable and successful efforts toward rehabilitation, including his continued attendance at therapy.

In Chechelnitsky, the Court imposed a six-month suspended suspension for an attorney, on a motion for final discipline, following the attorney's multiple arrests and convictions, during a four-year period, for alcohol-fueled misconduct. During the disciplinary proceedings, the attorney provided proof that she had successfully completed inpatient treatment but offered no assurances, from a mental health professional, that she would not reoffend. In the Matter of Yana Chechelnitsky, DRB 17-043 (July 24, 2017) at 19-20. Although the OAE had recommended a suspension, the attorney argued for lesser discipline, emphasizing (among other mitigating factors) that her alcohol abuse was precipitated by her spouse's physical, psychological, and emotional abuse of her. Id. at 12. She further emphasized her recent treatment; contended that her domestic discord had been abated by divorcing her abusive spouse; and argued that a suspension would "have a 'disastrous affect' [sic] on her life, which she has been slowly piecing together." Id. at 11-12. Taking account of the attorney's "considerable efforts toward rehabilitation and the hardships that a suspension may cause at this juncture," we determined to impose a six-month

suspended term of suspension, “conditioned on [the attorney’s] continued sobriety and good behavior.” Id. at 19. The Court agreed.

Conclusion

On balance, we determine that the compelling mitigating factors outweigh the aggravating factors and conclude that a three-month suspension is the appropriate quantum of discipline necessary to protect the public and to preserve confidence in the bar.

Additionally, we recommend that the term of suspension be suspended, conditioned on respondent’s compliance with PTI during the period of his suspended suspension. As a condition to the discipline, we recommend that respondent be required to report to the OAE his compliance with PTI, on a quarterly basis, until his PTI term is completed. If, during the period of suspension, respondent fails to comply with his PTI, we recommend that, upon the OAE’s filing of a certification with the Court, the court impose a three-month suspension, without further notice.

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. 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 Robert William Evans
Docket No. DRB 24-172

Argued: September 19, 2024

Decided: January 14, 2025

Disposition: Three-Month Suspension

<i>Members</i>	Three-Month Suspension	Absent
Cuff	X	
Boyer	X	
Campelo		X
Hoberman	X	
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez	X	
Spencer	X	
Total:	8	1

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