

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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HECTOR D. LASALLE, P.J.
MARK C. DILLON
COLLEEN D. DUFFY
BETSY BARROS
LILLIAN WAN, JJ.

2020-06164

OPINION & ORDER

In the Matter of Brian M. Troy,
an attorney and counselor-at-law.

Grievance Committee for the Tenth Judicial
District, petitioner; Brian M. Troy, respondent.

(Attorney Registration No. 4143129)

The respondent was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on July 23, 2003. By order to show cause dated April 14, 2022, this Court, pursuant to 22 NYCRR 1240.12(c)(3)(iii), directed the respondent to show cause at a hearing before a Special Referee why a final order of suspension, censure, or disbarment should not be made based on his conviction on June 6, 2019, of aggravated harassment in the second degree, in violation of Penal Law § 240.30, a class A misdemeanor.

Catherine A. Sheridan, Hauppauge, NY (Stacey J. Sharpelletti of counsel), for
petitioner.

PER CURIAM By affirmation dated August 12, 2020, on notice to the respondent, the Grievance Committee for the Tenth Judicial District advised the Court that on June 6, 2019, the respondent pleaded guilty in the Civil Court of Gardiner Town, Ulster County, to aggravated harassment in the second degree, in violation of Penal Law § 240.30, a class A misdemeanor. The

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respondent was sentenced to a conditional discharge, and was directed to complete an anger management program within 90 days of sentencing, and to pay a \$500 fine, a \$205 surcharge, and a \$50 DNA collection fee. An order of protection was also issued against the respondent to stay away from the complaining witness, SC, and her two children for a period of one year.

By order to show cause dated April 14, 2022, this Court, pursuant to 22 NYCRR 1240.12(c)(3)(iii), directed the respondent to show cause at a hearing before the Honorable Joseph Covello, as Special Referee, why a final order of suspension, censure, or disbarment should not be made based on his criminal conviction of aggravated harassment in the second degree. After a prehearing conference and a hearing conducted on May 27, 2022, and June 27, 2022, respectively, the Special Referee filed a report dated May 24, 2023, setting forth his findings. The Grievance Committee now moves to confirm the Special Referee's report to the extent that it reported on mitigation and did not identify any impediments to the imposition of discipline, and to impose such discipline as the Court may deem just and proper.

The record shows that on August 8, 2018, the respondent was arrested and charged with aggravated harassment in the second degree, in violation of Penal Law § 240.30, a class A misdemeanor. According to the criminal information, the respondent and SC had then recently ended a two-year romantic relationship but had continued to communicate through email and Instagram. On April 27, 2018, the respondent sent SC an email which stated, "[T]here is no way this ends with yoh [sic] surviving." On May 5, 2018, the respondent sent an email to SC, stating "[SC] you should be dragged in a barn and shot in the fucking head." On July 2, 2018, the respondent sent SC a message on Instagram stating that he had contacted a man named Ray who was waiting in a hotel for instructions and that "[I]f I find out that you devote any of this to [individual B] I will kill you and I will do it as quickly as possible." The respondent then wrote and sent SC a fake press release, which stated, "[T]he partially decomposed body of a 51-year-old woman was found today in the brush along rt. 25 in center Moriches. The police have identified the victim as [SC] and released a statement saying only that [SC] lived a transient lifestyle." The criminal information stated that these were only a few of many threatening and harassing messages received by SC.

Upon the Grievance Committee's investigation, the respondent submitted a letter to the Grievance Committee stating that his Instagram messages were "taken completely out of context, or outright fabrications," which a full transcript of the respondent's Instagram correspondence would establish. The respondent stated that after the relationship ended, SC tried to re-establish their

relationship, and that SC could have blocked the respondent on Instagram if she did not want to have any contact with him. Nevertheless, the prosecutor pursued the charges and “chose to substitute his judgement for that of the rule of law.” The respondent stated that he pleaded guilty because “[t]rial was out of the question for reasons that I omit for brevity and relevance.”

In his letter, the respondent also stated that he was retired from a nearly 30-year career at Con Edison, and that he was an adjunct professor at Pace Law School teaching environmental law, and was an adjunct professor at City University of New York teaching environmental management. The respondent said that he maintained a small private practice and that he worked as a per diem attorney for Docketly. At the pre-hearing conference, the respondent also informed the Special Referee that he performed pro bono legal work in domestic violence matters and worked with opioid-addicted children on Long Island.

Before the Special Referee, the respondent acknowledged his “wrongdoing,” but reiterated that the Instagram messages he sent to SC were taken out of context or “fabricated completely.” The respondent also alluded that he had pleaded guilty not because he was guilty, but because his attorney had advised him that if SC took the stand and “shed[] a few tears,” the respondent would be convicted. Therefore, the respondent agreed to plead guilty, but refused to allocute, to which the prosecutor agreed. When asked if he had attended therapy or any other programs to address his criminal conduct, the respondent answered, “[T]hat’s not something that I would even consider doing. . . . I haven’t been in any programs.” The respondent was also given the opportunity to provide evidence that he attended an anger management program, which he was directed to complete as part of his sentence, but he failed to do so.

The Grievance Committee reported that the respondent was issued a Letter of Advisement in October 2018 for, inter alia, neglecting a matrimonial matter.

Findings and Conclusion

We find that the respondent failed to meet his burden of establishing why this Court should not issue a final order of suspension, censure, or disbarment based on his conviction on June 6, 2019. In view of the evidence adduced, the Grievance Committee’s motion to confirm the report of the Special Referee is granted.

While the respondent acknowledged his wrongdoing, it is unclear whether he fully took responsibility for his criminal conduct. The respondent maintained consistently that his threats to kill SC were taken out of context from the approximately 1,500 Instagram messages they had

exchanged, but the respondent failed to understand that there is no proper context for threatening to drag SC into a barn and shoot her in the head, or hiring someone to kill her. The respondent also maintained that some of the statements were “fabricated,” but failed to identify which statements. The respondent was specifically asked by the Special Referee to provide a context for these messages, and the respondent failed to do so. Although the respondent was advised that he could provide mitigating evidence, such as character references, he failed to do so.

Under the totality of the circumstances, we find that the respondent's conduct warrants his suspension from the practice of law for a period of three years.

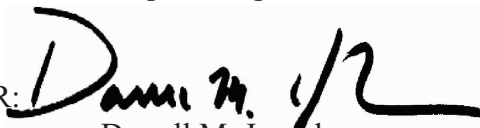
LASALLE, P.J., DILLON, DUFFY, BARROS and WAN, JJ., concur.

ORDERED that the Grievance Committee’s motion to confirm the Special Referee’s report is granted; and it is further,

ORDERED that the respondent, Brian M. Troy, is suspended from the practice of law for a period of three years, commencing June 28, 2024, and continuing until further order of this Court. The respondent shall not apply for reinstatement earlier than December 28, 2026. In such application (*see* 22 NYCRR 1240.16), the respondent shall furnish satisfactory proof that during the period of suspension, he (1) refrained from practicing or attempting to practice law, (2) fully complied with this opinion and order and with the terms and provisions of the rules governing the conduct of disbarred or suspended attorneys (*see id.* § 1240.15), (3) complied with the applicable continuing legal education requirements of 22 NYCRR 691.11(a), and (4) otherwise properly conducted himself; and it is further,

ORDERED that pursuant to Judiciary Law § 90, during the period of suspension and until the further order of this Court, the respondent, Brian M. Troy, shall desist and refrain from (1) practicing law in any form, either as principal or as agent, clerk, or employee of another, (2) appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission, or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding himself out in any way as an attorney and counselor-at-law; and it is further,

ORDERED that if the respondent, Brian M. Troy, has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith to the issuing agency and the respondent shall certify to the same in his affidavit of compliance pursuant to 22 NYCRR 1240.15(f).

ENTER: 
Darrell M. Joseph
Clerk of the Court