

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2054 Disciplinary Docket No. 3
: :
Petitioner : No. 49 DB 2014
: :
v. : Attorney Registration No. 64598
: :
LYNN MARIETTA NICHOLS, : (Philadelphia)
: :
Respondent : :
: :

ORDER

PER CURIAM

AND NOW, this 19th day of December, 2016, upon consideration of the Report and Recommendations of the Disciplinary Board, Lynn Marietta Nichols is suspended from the Bar of this Commonwealth for a period of thirty months, retroactive to July 17, 2014, and she shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 12/19/2016

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 49 DB 2014
Petitioner	:	
	:	
v.	:	Attorney Registration No. 64598
	:	
LYNN MARIETTA NICHOLS	:	
Respondent	:	(Philadelphia)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Order dated July 17, 2014, the Supreme Court placed Lynn Marietta Nichols, Respondent, on temporary suspension pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 214(d)(2). On December 10, 2014, Office of Disciplinary Counsel filed a Petition for Discipline against Respondent, charging her with professional misconduct arising from her criminal conviction for criminal mischief, a

misdemeanor of the second degree. Respondent filed an Answer to Petition for Discipline on January 28, 2015.

A prehearing conference was held on April 1, 2015, and a disciplinary hearing was held on June 28, 2015, September 17, 2015, and November 5, 2015, before a District I Hearing Committee comprised of Chair A. Elizabeth Balakhani, Esquire and Members Thomas H. Chiacchio, Jr., Esquire and Karen S. Kelly, Esquire. Petitioner presented the testimony of three witnesses. Respondent presented the testimony of seven witnesses and testified on her own behalf. Both parties submitted exhibits.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on May 3, 2016, concluding that Respondent violated the Rules as charged in the Petition for Discipline and recommending that she be suspended for a period of four years, retroactive to July 17, 2014, the date of the temporary suspension. Further, the Committee recommended that Respondent serve a two year period of probation following her reinstatement to the practice of law.

On May 23, 2016, Respondent filed a Brief on Exceptions and requested oral argument before the Disciplinary Board.

On June 8, 2016, Petitioner filed a Brief Opposing Exceptions.

Oral argument was held before a three-member panel of the Disciplinary Board on July 11, 2016.

The Board adjudicated this matter at the meeting on July 23, 2016.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E"), with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Lynn Marietta Nichols, was admitted to practice law in the Commonwealth of Pennsylvania in 1992. Upon graduation from law school in 1991, Respondent was hired by the Philadelphia District Attorney's Office, where she was employed for twenty-two years. At all times relevant, Respondent was the Assistant Chief of Homicide and maintained an office address at the Philadelphia District Attorney's Office, Three Penn Square, Philadelphia, Pennsylvania 18107.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

4. Respondent has no record of prior discipline in Pennsylvania.

5. By Order dated July 17, 2014, the Pennsylvania Supreme Court placed Respondent on temporary suspension.

6. In April 2012, Respondent met Joselyn Herron ("Herron") when he began performing landscape work for her. N.T. 6/18/15 at 263.

7. Between October and November 2012, Respondent and Herron began a romantic relationship. Office of Disciplinary Counsel ("ODC") -3.

8. In October 2012, Herron informed Respondent that his former girlfriend, Nicole Chandler ("Chandler") had reported to the Philadelphia Police Department a 2005 Ford F-150 ("Ford"), which was titled in Chandler's name only, as having been stolen in August 2011. Herron informed Respondent that he was in possession of the Ford. Petition for Discipline ("PRD") - 8, Answer ("Ans.") - 8.

9. In or about October 2012, Respondent contacted Detective Nicholas Via ("Via") of the Philadelphia Police Department, whom she had known professionally for approximately fourteen years. Respondent inquired about the procedure for removing a truck from stolen status, and requested that Via meet with Herron to discuss the Ford. N.T. 9/17/15 at 77.

10. Respondent's purpose in making the call to Via was to have him remove the Ford from stolen status. N.T. 6/18/15 at 71.

11. Respondent told Via that Herron was a friend of the family and her landscaper and that Herron needed the Ford taken out of stolen status to have his name put on the title. N.T. 6/18/15 at 72, 81.

12. Via met with Herron and reviewed the paperwork involving the Ford. The paperwork presented by Herron lacked a court order to transfer the Ford's title to Herron. N.T. 6/18/15 at 72-73, 93-94.

13. Via contacted Respondent, who informed Via that Herron had an agreement with Chandler and had a court order to have the title changed and Respondent could verify that the court order existed. N.T. 6/18/15 at 72, 73, 81.

14. Subsequently, Via removed the Ford from stolen status. He did so based on Respondent's position in the District Attorney's Office and his long-standing relationship with Respondent. N.T. 6/18/15 at 106-107.

15. In early August 2013, Respondent discovered that Herron was involved in a romantic relationship with another woman while he was involved with Respondent. N.T. 6/18/15 at 273-275.

16. In early August 2013, Respondent called Via and asked him to put the Ford back into stolen status. Via refused. N.T. 6/18/15 at 74-75.

17. In early August 2013, Respondent obtained Chandler's telephone number. N.T. 6/18/15 at 273-275.

18. On August 27, 2013, Respondent contacted Chandler and told her that Respondent knew where the Ford was located. N.T. 9/17/15 at 157-158.

19. Respondent told Chandler that she knew the Ford was stolen because Respondent had taken the Ford out of stolen status the previous year. N.T. 9/17/15 at 158.

20. Respondent told Chandler that Respondent tried to have the Ford put back into stolen status but the detective who had taken it out of that status said that he could not put it back in because it would raise questions, and a new report would have to be made. N.T. 9/17/15 at 67-69, 159.

21. Respondent told Chandler that she would come to Chandler's house and make a new stolen vehicle report. N.T. 9/17/15 at 159.

22. Respondent met with Chandler at Chandler's house on August 27, 2013, and the two women shared their personal, negative experiences about Herron. Chandler revealed that Herron had been physically and emotionally abusive to her. Respondent and Chandler shared the emotional experience of having been manipulated and lied to by Herron. N.T. 6/18/15 at 277; N.T. 9/17/15 at 70-71.

23. Respondent credibly testified that when she heard Chandler describe the abuse Chandler suffered at Herron's hands, Respondent's childhood of sexual abuse, violence and seeing her mother being beaten was activated and Respondent became psychologically distraught. N.T. 6/18/15 at 277; N.T. 9/17/15 at 70, 192.

24. On August 27, 2013, at Chandler's house and with Chandler's approval, Respondent called 911 and reported that "her truck" had been stolen. N.T. 9/17/15 at 160.

25. Later that day, Respondent witnessed first-hand two Philadelphia Police officers take a report from Chandler about the Ford. N.T. 6/18/15 at 281-282; N.T. 9/17/15 at 203-207, 208-209.

26. Respondent knew that Chandler was making a false report but did not intervene. N.T. 6/18/15 at 281-282;

27. At the time Chandler made the report to the police, Chandler misrepresented that Respondent was her sister and was in law enforcement. Respondent was present and did not correct Chandler's false statements. N.T. 6/18/15 at 281-282.

28. After the Philadelphia Police took the stolen vehicle report on August 27, 2013, later that day, Respondent called the Chesilhurst, New Jersey Police Department ("Chesilhurst"), impersonated Chandler, told Chesilhurst that "her truck" had been stolen that morning, and provided the location of the Ford in New Jersey. N.T. 9/17/15 at 163-164. Respondent knew that the truck was in Chesilhurst, New Jersey because Herron had told her at some point between November 2012 and May 2013. N.T. 9/17/15 at 62; ODC-3, p.3.

29. Respondent offered to reimburse Chandler for the expense to tow the Ford, but Respondent later rescinded the offer. N.T. 9/17/15 at 169-171. Chandler then reported Respondent to the Philadelphia District Attorney's Office and to Office of Disciplinary Counsel. N.T. 9/17/15 at 171-172.

30. The criminal matter was referred from the Philadelphia District Attorney's office to the Pennsylvania Office of Attorney General, where special agent James Elo ("Elo") was assigned to the investigation. N.T. 6/18/15 at 108-109.

31. Elo interviewed Chandler and took steps to verify the accuracy of Chandler's statements, including applying for and obtaining a warrant for the August 27, 2013 911 recording and Respondent's telephone billing records. N.T. 6/18/15 at 111-113.

32. After verifying that Chandler's statements were accurate, Elo interviewed Via and Respondent. N.T. 6/18/15 at 116.

33. Elo verified that Via had removed the Ford from stolen status. N.T. 6/18/15 at 117-118.

34. Elo and another agent met with Respondent on September 19, 2013, at which time Respondent told Elo that Herron was her landscaper and that they became good friends. N.T. 6/18/15 at 143-144; ODC-2 at 1. Respondent did not tell Elo at that time that her relationship with Herron was of a romantic nature.

35. On September 19, 2013, Respondent initially told Elo that Chandler placed the 911 call on August 27, 2013. Later in the interview, Respondent recanted her statement and admitted that she, not Chandler, had placed the 911 telephone call. N.T. 6/18/15 at 122-123.

36. On October 4, 2013, the Attorney General's Office arrested Respondent and charged her with Obstruction of Law and Other Governmental Function, in violation of 18 Pa.C.S. §5101(a)(1), a misdemeanor of the second degree, and False Reports to Law Enforcement Authorities – Fictitious Report, in violation of 18 Pa.C.S. §4906, a misdemeanor of the third degree.

37. Respondent resigned from the District Attorney's Office on October 4, 2013, the same day she was arrested.

38. On February 21, 2014, Respondent entered into a negotiated guilty plea to Criminal Mischief, in violation of 18 Pa.C.S. §3304(3), a misdemeanor of the second degree. She was sentenced to twelve months of non-reporting probation, restitution in the amount of \$884.05 to Chandler for the costs of towing the Ford, to be paid within ninety days, and court costs. ODC-1; ODC-17; N.T. 6/18/15 at 296-297.

39. In her guilty plea, Respondent admitted that: she placed a call to 911 to report the Ford stolen from Chandler's home; she allowed Philadelphia police officers to take a report from Chandler about the Ford being stolen that day; and, she called the Chesilhurst, New Jersey Police Department and advised them of the location of the stolen Ford. ODC-17 at 9-10.

40. Respondent paid full restitution to Chandler. ODC-17 at 10-24; N.T. 6/18/15 at 298.

41. Respondent met all of the terms of her probation, which was terminated early on December 18, 2014. Ans. ¶24.

42. Respondent notified Office of Disciplinary Counsel of her conviction within 20 days of the date of her conviction, as required by Rule 214(a), Pa.R.D.E. N.T. 6/18/15 at 299.

43. Respondent offered credible testimony at the disciplinary hearing.

44. Respondent overcame numerous personal challenges to reach the position of Assistant Chief of the Homicide Division at the District Attorney's office including poverty, neglect, sexual abuse, violence, and witnessing the beating of her mother when she was nine years old. Respondent's Exhibit ("R") - 1; N.T. 6/18/15 at 241, 242, 258-259.

45. At the disciplinary hearing, Respondent offered the testimony of Dr. Clara Whaley Perkins ("Dr. Perkins") and submitted the expert report of Dr. Perkins, which was admitted into evidence. (R-1). Dr. Perkins has a Ph.D in clinical psychology and maintains a private practice. N.T. 6/18/15 at 25, 27. Dr. Perkins was qualified as an expert in psychology and trauma, without objection from Petitioner.

46. Respondent treated with Dr. Perkins for depression and anxiety from June 5, 1999 through November 5, 2002. ODC-19; N.T. 6/18/15 at 35-36, 53-55, 256-258. Dr. Perkins' treatment focused on issues of unresolved childhood trauma experienced by Respondent. N.T. 6/18/15 at 31-32, 54.

47. Between 2002 and 2013, although Dr. Perkins may have seen Respondent for check-ins, Dr. Perkins did not record any notes of visits if Respondent had no active symptoms that required management. Further, Dr. Perkins indicated that she was not required to keep notes from her sessions with Respondent because Respondent paid for those sessions out of pocket. N.T. at 38, 39.

48. Dr. Perkins had no independent recollection of her treatment of Respondent and based her May 16, 2014, report on her review of existing office notes. N.T. 6/18/15 at 39.

49. Based on her filing system, Dr. Perkins may have had additional notes that were either lost or misplaced. N.T. 6/18/15 at 52.

50. Respondent met with Dr. Perkins on August 30, 2013 and continued through July 25, 2014. During this period, Respondent experienced severe depression and anxiety. N.T. 6/18/15 at 38-39, 44, 45; 256-257, 258.

51. Until the events of August 27, 2013, Dr. Perkins had not seen Respondent's trauma activated in its full force, but it became clear to Dr. Perkins that the childhood trauma had been activated by the events. N.T. 32, 46. Dr. Perkins opined that Respondent was "fully acting out of her trauma." N.T. 6/18/15 at 32, 33. On May 1, 2014, Dr. Perkins diagnosed Respondent with post-traumatic stress disorder ("PTSD"). N.T. 6/18/15 at 65-66.

52. As explained by Dr. Perkins, PTSD requires a certain amount of stress in order to activate it. N.T. 34.

53. Dr. Perkins credibly testified that the trauma Respondent experienced throughout her life fully informed her behavior in August 2013 and impaired her ability to think critically and rationally and to understand the consequences of her behavior, leading to her misconduct. N.T. 6/18/15 at 30-33.

54. Dr. Perkins opined that Respondent's PTSD was activated by her interaction with Chandler in August 2013 and the women's shared experience of Herron's negative behavior towards them. N.T. 32, 46-47.

55. Dr. Perkins opined that Respondent should undergo a rigorous treatment regimen for her PTSD for a period of at least two years with a reassessment at its completion to determine if Respondent is at further risk. N.T. 6/18/15 at 65-66.

56. Respondent has not been employed full-time since October 4, 2013, the date she resigned from the District Attorney's Office. Respondent has no income or health insurance and cannot afford psychological treatment. N.T. 6/18/15 at 195-196, 251, 253, 311, 319; N.T. 9/17/15 at 114-117, 141, 145.

57. Respondent's ability to support herself and her son, as a single parent, has been impacted significantly by these events. Respondent has been living off of her credit cards, borrowing money from friends and using her savings. N.T. 6/18/15 at 302-303; N.T. 9/17/15 at 142. Respondent started working part-time in July 2014 as a grant writer development consultant for the non-profit We Are Mantua. She also walks dogs as a source of income. N.T. 6/18/15 at 243.

58. Respondent plans to undergo further psychological treatment once she is employed in a position where she can afford such treatment. N.T. 6/18/15 at 311-317; N.T. 9/17/15 at 115, 130-133.

59. Respondent admitted she should not have engaged in the acts of misconduct. N.T. 6/18/15 at 280-282. She "felt like [she] had no power at that point over anything, over myself, over anything." N.T. 9/17/15 at 11-112.

60. Following her resignation from the District Attorney's office on October 4, 2013, Respondent was devastated and felt ashamed. She didn't leave her house for several months, except for necessities. N.T. 6/18/15 at 300, 301.

61. Respondent is extremely remorseful for her misconduct. N.T. 6/18/15 at 320-321. She is committed to ensuring that the misconduct does not occur in the future in order to show her community that her acts do not define the person she is. N.T. 9/17/15 at 127-128.

62. Respondent's conduct resulted in significant media coverage and consequently, she experienced public humiliation. N.T. 9/17/15 at 101-104.

63. Respondent admitted that her misconduct hurt the bar and negatively impacted the public perception of the legal profession. N.T. 9/17/15 at 146, 152.

64. During her twenty-two years in the District Attorney's Office, Respondent was respected and admired by her colleagues. N.T. 6/18/15 at 175-238, 323-335; R-1 at Exhibit A.

65. Respondent offered the testimony of five character witnesses who attested to her strong work ethic, professionalism, trustworthiness and remorse. These character witnesses were: Richard Harris, Esquire; Tom McGill, Esquire; Carol Sweeney, Esquire; Deborah Watson-Stokes; Esquire; and, George Mosey, Esquire. N.T. 6/18/15 at 175-238, 323-335.

66. Respondent produced four letters of support attesting to her good character and high degree of professionalism. The letters of support came from: JoAnn A. Epps, Dean of Temple Law School; Renee Cardwell Hughes, Retired Judge, Philadelphia Court of Common Pleas; Bobby Hoof, Esquire; and, Carmen M. Lineberger, Esquire. R-1 at Exhibit A.

III. CONCLUSIONS OF LAW

By her conduct as set forth above, Respondent violated the following Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement:

1. RPC 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as lawyer in other respects.
2. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
3. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.
4. Pa.R.D.E. 203(b)(1) – Conviction of a crime shall be grounds for discipline.
5. Respondent met her burden of proving mitigation pursuant to ***Office of Disciplinary Counsel v. Seymour Braun***, 553 A.2d 894 (Pa. 1989).

IV. DISCUSSION

Respondent’s criminal conviction of criminal mischief is conclusive evidence of the commission of a crime, and incontrovertible evidence of her professional misconduct. ***Office of Disciplinary Counsel v. Harold E. Casety, Jr.***, 512 A.2d 607, 609 (Pa. 1986). The Board’s task is to determine the appropriate level of discipline for an attorney who marred her unblemished disciplinary record by engaging in criminal conduct. Pa.R.D.E. Rule 214(f)(1). The Board’s recommended discipline must reflect facts and circumstances unique to the case, including circumstances that are aggravating or mitigating. ***Office of Disciplinary Counsel v. Joshua Eilberg***, 441 A.2d 1193, 1195 (Pa. 1982). The final discipline imposed is determined on a case-by-case basis on the totality of the facts presented. Nevertheless, despite the fact–

intensive nature of the endeavor, consistency is required so that similar misconduct "is not punished in radically different ways." *Office of Disciplinary Counsel v. Robert S. Lucarini*, 472 A.2d 186, 190 (Pa. 1983).

The Hearing Committee recommended suspension for a period of four years, retroactive to the date of the temporary suspension, followed by a period of probation for two years, subject to mental health counseling. Respondent filed a Brief on Exceptions and requested oral argument before the Board. Respondent argues that the facts and circumstances surrounding her offense warrant the imposition of a discipline somewhere in the range of public censure up to a one year period of suspension, retroactive to the temporary suspension. Alternatively, Respondent requests that the Board recommend a probationary period in lieu of a suspension or with a stay of any suspension. Petitioner filed a Brief Opposing Exceptions and contends that the Board should accept and adopt the Hearing Committee Report and recommendations

For the reasons that follow, we recommend that Respondent be suspended for a period of thirty months, retroactive to the date of her temporary suspension on July 17, 2014.

The evidence adduced at the hearing on June 18, 2015, September 17, 2015, and November 5, 2015, indicates the following facts which resulted in Respondent's conviction. On October 4, 2013, Respondent, an assistant chief in the Homicide Division of the Philadelphia District Attorney's Office, was arrested after an investigation by the Pennsylvania Office of Attorney General for a claim of wrongdoing by Nicole Chandler, the former girlfriend of Respondent's boyfriend at the time. The

claim involved, *inter alia*, Respondent: impersonating Chandler when Respondent placed a 911 call reporting "her truck" as being stolen; failing to prevent or rectify the filing by Chandler of a false stolen vehicle report to the Philadelphia Police; and, impersonating Chandler when Respondent called the Chesilhurst, New Jersey Police Department to inform them that "her truck" had been stolen and the location of the truck. These events took place on August 27, 2013. In the course of their investigation, the agents for the Office of Attorney General learned that Respondent had used her long-term, professional relationship with a Philadelphia Police Detective to improperly remove the truck from stolen status and that Respondent had made incomplete statements to the agents regarding the investigation.

Respondent resigned from the District Attorney's Office on the same day she was arrested. Subsequently, on February 21, 2014, Respondent entered a negotiated guilty plea to a charge of criminal mischief and was sentenced to twelve months of non-reporting probation and restitution. Respondent made restitution and complied with all terms of her probation. On July 17, 2014, the Supreme Court of Pennsylvania temporarily suspended Respondent's law license.

At the disciplinary hearing, Respondent presented the expert testimony of Clara Whaley Perkins, a clinical psychologist with a private practice. Dr. Perkins initially treated Respondent for depression and anxiety from 1999 through 2002. Respondent's significant history of traumatic personal experiences was dealt with throughout these sessions, including sexual abuse, violence and witnessing the beating of her mother when Respondent was nine years old. Between 2002 and 2013, Respondent met with Dr. Perkins, but no notes of these sessions were maintained, as Respondent exhibited

no active symptoms. Between August 2013 and July 2014, Respondent resumed her meetings with Dr. Perkins, who treated her for severe depression and anxiety. Dr. Perkins diagnosed Respondent with PTSD on May 16, 2014. Dr. Perkins explained that PTSD requires a certain amount of stress to activate and Respondent was experiencing high levels of stress during the period in question. N.T. 34. Dr. Perkins credibly testified that Respondent was “fully acting out of her trauma” in August 2013, when the criminal conduct occurred. N.T. 32. Dr. Perkins opined that the trauma experienced by Respondent throughout her life fully informed Respondent’s misconduct in August 2013 and impaired her ability to think critically and rationally.

The Hearing Committee concluded that Respondent is entitled to mitigation under *Office of Disciplinary Counsel v. Braun*, 553 A.2d 894 (Pa. 1989), as Respondent proved by clear and convincing evidence that her PTSD was a causal factor in producing her acts of misconduct.¹ The record supports this conclusion and we agree that Respondent’s discipline must be mitigated under *Braun*. Dr. Perkins’ testimony was credible, established a causal link between Respondent’s mental disorder and her misconduct, and was not refuted by any medical testimony to the contrary.

In addition to the expert’s testimony, Respondent testified on her own behalf, expressing genuine remorse and taking responsibility for her misconduct. Respondent’s conduct caused her shame and humiliation, but importantly, she recognized that her actions hurt the bar and had a negative impact on the public perception of the profession. Respondent is committed to working on her personal

¹ Petitioner conceded this point as it did not take exception to the Hearing Committee’s conclusion that Respondent met the *Braun* standard.

issues to ensure that the misconduct does not occur in the future, and to demonstrate to her community that her acts of misconduct do not define her character. Respondent's criminal conviction involved a single event and not a pattern. Respondent has no history of discipline in her twenty-two years at the bar.

At the disciplinary hearing, five witnesses offered credible testimony as to Respondent's good character and strong work ethic, as well as their observations that Respondent was remorseful and acknowledged her responsibility for the misconduct. Respondent presented four character letters in support of her good reputation in the community as a person of integrity and a competent attorney.

Respondent's mental disorder, pristine disciplinary record and honest admissions of wrongdoing must be weighed against the fact that at the time of the misconduct, Respondent held a position of responsibility and authority and had a high public profile. Consideration must be given to the potentially adverse impact of her actions on the integrity of the legal system.

Respondent's position as an assistant chief of the Homicide Division at the Philadelphia District Attorney's Office, a public office responsible for enforcing the law, "[c]reates a high expectation of integrity because the attorney is entrusted with protecting the public...even though the misconduct did not occur during the exercise of the attorney's public duties." *Office of Disciplinary Counsel v. Anthony C. Cappuccio*, 48 A.3d 1231, 1240. As the Supreme Court stated,

This Court takes this opportunity to make clear what should be self-evident: the fact that a lawyer holds a public office or serves in a public capacity, as here, is a factor that properly may be viewed as aggravating the misconduct in an attorney disciplinary matter. This aggravation arising

from public status is strong where the public position is that of prosecutor and the misconduct involves criminal actions...

Id.

A public official's misconduct speaks directly to the integrity of the legal system by placing the reputation of those tasked with serving and protecting the public at issue. See ***Office of Disciplinary Counsel v. Michael T. Joyce***, No. 47 DB 2009 (D.Bd. Rpt. 2/10/12) (S. Ct. Order 6/14/12) (Judge of Superior Court of Pennsylvania disbarred following convictions in the U.S. District Court for two counts of mail fraud and six counts of engaging in monetary transactions in property derived from unlawful activity); ***Office of Disciplinary Counsel v. John T. Olshock***, No. 28 DB 2002 (D. Bd. Rpt. 7/30/03) (S. Ct. Order 10/24/03) (attorney serving as First Assistant District Attorney for Washington County suspended for three years for mishandling estate funds). Accordingly, Respondent's prominent position in the Philadelphia District Attorney's Office is an aggravating factor to be afforded weight in the assessment of appropriate discipline.

The record establishes that Respondent's actions constitute serious misconduct. While there is no *per se* discipline in Pennsylvania, prior similar cases are instructive and are suggestive of a lengthy sanction when, as here, an attorney holding a high profile public position is convicted of criminal misconduct. ***Lucarini*** at 189-91.

We have reviewed the cases cited in support of the parties' respective recommendations. Petitioner cited to ***Cappuccio*** and ***Office of Disciplinary Counsel v. Thomas Nocella***, No. 152 DB 2013 (D.Bd. Rpt. 6/5/15) (S. Ct. Order 10/20/15), both of which resulted in disbarment. In ***Cappuccio***, the respondent-attorney served as an assistant district attorney and a church youth leader. He took underage youths to a rock

concert, smoked marijuana with them, purchased alcohol for them, and engaged in a sexual relationship with a youth for over five months. The respondent-attorney in **Nocella**, who had a prior informal admonition, engaged in a pattern of misrepresentations related to his qualifications while sitting as an appointed judge to the Philadelphia Municipal Court and while the respondent-attorney was a candidate for the same judicial position

In support of Respondent's position that her misconduct requires a lesser form of public discipline, Respondent cited to several cases that resulted in public censure. In **Office of Disciplinary Counsel v. Charles Aliano**, 25 DB 2003 (D.Bd. Rpt. 8/31/05) (S. Ct. Order 12/1/05), the respondent-attorney, who held the part-time position of District Attorney of Susquehanna County, received a public censure for engaging in a conflict of interest and violating RPC 1.7(a), RPC 1.7(b) and RPC 8.4(d). In **Office of Disciplinary Counsel v. Richard McCague**, 175 DB 2003 (D.Bd. Rpt. 9/9/05) (S. Ct. Order 12/1/05), the respondent-attorney, who was an assistant public defender in Allegheny County, was publicly censured following his conviction of the summary offense of disorderly conduct for attempting to bring contraband into a prison for the benefit of his client. Respondent violated RPC 8.4(b) and 8.4(d). The matter of **Office of Disciplinary Counsel v. Adam Marc Yanoff**, No. 71 DB 2012 (S. Ct. Order 10/4/12) (consent discipline), involved a respondent-attorney who, at the time of his arrest for possession of cocaine and marijuana, had recently been admitted to the bar in Pennsylvania and hired by the Philadelphia District Attorney's Office. As a result of his conviction of a possessory offense following a no-contest plea, the respondent-attorney was publicly censured for violating RPC 8.4(b).

We conclude that these cited cases are readily distinguishable from the instant matter, as the misconduct that occurred in the cited cases is either more egregious or, conversely, less serious than that engaged in by Respondent. As often occurs with attorney disciplinary matters, there is no case precedent that is precisely on all fours; however, these cases provide a reference point for where Respondent's misconduct falls within the range of misconduct engaged in by a public official or one who holds a prominent public position.

Viewing Respondent's misconduct in the spectrum of sanctions meted out in the cited cases, we conclude that the appropriate discipline is a suspension for thirty months, retroactive to the date of Respondent's temporary suspension. This recommendation accounts for the serious nature of the Respondent's misconduct, taking place as it did while she held the prominent position of assistant chief of homicide, balanced against the mitigation of Respondent's mental disorder, expressions of remorse, lack of prior discipline and isolated nature of the misconduct, which did not involve any clients.

The Hearing Committee recommended probation subject to treatment with a qualified mental health professional following Respondent's reinstatement. We decline to adopt this recommendation. Respondent's reinstatement proceeding will be a rigorous inquiry into her fitness to practice law and she will bear the burden of proving by clear and convincing evidence, that she is morally qualified, competent and learned in the law and that her resumption of the practice of law would not have a detrimental effect upon either the integrity and standing of the bar, the administration of justice, or the public interest. *Office of Disciplinary Counsel v. Jerome J. Verlin*, 731 A.2d 600,

601 (Pa. 1999); Pa.R.D.E. 218(c)(3). If Respondent is able to meet this stringent standard, we find no justification for requiring her to undergo a probationary period.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Lynn Marietta Nichols, be Suspended from the practice of law for a period of thirty months, retroactive to July 17, 2014.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 

James C. Haggerty, Board Member

Date: 10/5/16

Board Member Cordisco did not participate.