

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-354

IN THE MATTER OF :
JEFFREY W. BURNS :
AN ATTORNEY AT LAW :

Decision of the
Disciplinary Review Board

Argued: December 21, 1994

Decided: May 23, 1995

John McGill, III appeared on behalf of the Office of Attorney Ethics.

Ralph M. Fava, Jr. appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before the Board based on a disciplinary stipulation executed by respondent and the Office of Attorney Ethics ("OAE").

Respondent was admitted to the New Jersey bar in 1991. He previously practiced law with the firm of Bathgate, Wegerner, Dugan and Wolf, in Lakewood, New Jersey.

Respondent has no prior ethics history. He indicated on his 1994 billing statement filed with the Lawyers' Fund for Client Protection that he had retired from the practice of law on May 27, 1994.

According to the stipulation, on January 31, 1993, respondent was arrested for burglary, theft and possession of burglary tools at Lincoln Crossing in Wayne, New Jersey.

The events that led to respondent's arrest unfolded as follows:

A number of vehicles had been broken into at Lincoln Crossing. As a result, the police began an investigation, which included the installation of a video surveillance system and microphones in the garage of the building. On January 23, 1993, respondent was observed breaking into a vehicle. Only three dollars in change and tokens were reported stolen from the vehicle.

On January 31, 1993, respondent was again observed breaking and entering into three vehicles that had been "baited" with Garden State Parkway tokens, some change and two one-dollar bills. As part of the investigation, these items were marked with ultra-violet chemicals. While respondent was inside the third vehicle, he was placed under arrest.

A search of respondent revealed that he was in possession of a flashlight, a pair of needle-nose pliers, a pair of gloves, coins, two one-dollar bills, Garden State Parkway tokens and car wash tokens. The gloves and dollar bills tested positive for the ultra-violet chemicals.

Respondent was charged with three counts of burglary of an automobile (a third-degree offense); two counts of theft by unlawful taking (a disorderly person's offense); and one count of possession of burglary tools (a disorderly person's offense), in violation of N.J.S.A. 2C:18-2, N.J.S.A. 2C:20-3 and N.J.S.A. 2C:5-5, respectively.

In accordance with R.1:20-6, by letter of February 11, 1993 respondent's attorney notified the OAE of the indictable charges filed against respondent.

Because the Passaic County Prosecutor was the brother of respondent's attorney, the matter was taken over by the Office of the Attorney General, Division of Criminal Justice.

Respondent applied for and was accepted into the Passaic County Pre-Trial Intervention Program ("PTI"). As part of the application process, respondent submitted to a forensic psychiatric examination. The psychiatric evaluation found that respondent was a candidate for rehabilitation through supervisory treatment.

By court order dated November 15, 1993, respondent was released into the custody of the Passaic county PTI program, whereupon criminal proceedings against him were postponed for a six-month period. The record is silent as to whether respondent successfully completed the PTI program.

Respondent had been under the psychiatric care of Dr. Richard A. Dickes since February 1993. As mitigation and explanation for respondent's conduct, Dr. Dickes opined that respondent's "illegal behavior was an aberration which is not likely to occur again. His mood shifting was probably in response to a combination of medication side effects, plus a reaction to some life stresses".

Respondent admitted to three incidents of knowing and unlawful burglary of an automobile, two incidents of theft by unlawful taking and one incident of unlawful possession of burglary tools. At the time of these incidents, in January 1993, he was taking

Wellbutrin and Xanax for treatment of depression. He had previously used Prozac, from October 1992 to December 1992, for the same condition. Respondent conceded that, although he believed that his depression and the medication had contributed to his involvement in the illegal behavior, he was "well aware of what he was doing and knew he was fully responsible for his misconduct." Respondent, therefore, agreed that his conduct was a violation of RPC 8.4(b).

The OAE's position is that respondent's conduct warrants a "short-term" period of suspension.

In mitigation, respondent submitted a medical report of Peter S. Mueller, M.D., to attempt to explain the factors that contributed to his conduct. Doctor Mueller concluded the following, in his report of May 29, 1994:

I believe that all of the angry, agitated illegal, impulsive, and frankly irrational behavior of [respondent] was due to the delirium caused by impermissible amounts of psychiatric drugs administered to [respondent] for a minor brief situational anxiety problem related to a transient environmental circumstance, the need to change jobs. These problems are usually handled by talking them out briefly without the need for medications. Clearly, he had no history of panic attacks or phobias which these medications are sometimes given for over a brief period of time — but at substantially lower doses and monitored extremely closely for those side effects noted flagrantly by this patient. It seems clear also that since his arrest on January 29, 1993, he has not had any notable anxiety reactions . . . despite the arrest on four criminal charges, the loss of his job, the threatened loss of his license to practice law, the crippling financial losses he has suffered from the lawyer's fees and other expenses, and the emotional distress to him,

his wife, and his extended family through the prolonged publicity over his arrest.
[Mueller report at 5.]

* * *

Following a de novo review of the record, the Board is satisfied that the evidence clearly and convincingly establishes that respondent's conduct was unethical. The sole issue is, thus, the appropriate measure of discipline. The Board agrees with the OAE that respondent's conduct warrants a period of suspension.

While there are no cases analogous to this situation, In re Birchall, 126 N.J. 344 (1991), provides some guidance on the level of discipline required for respondent's actions. In that matter, the attorney received a public reprimand for twice entering into his former wife's home without her permission. On the first occasion, the attorney removed property valued in excess of \$500. On the second occasion, he claimed that he had entered the premises to recover his own belongings, but also removed silverware and jewelry valued at more than \$8,000. The attorney contended that he had no intention of permanently depriving his former wife of the property, but simply wanted to use the property as a negotiating tool for obtaining more favorable visitation rights with his children. During the time of the attorney's misconduct, he was in the throes of alcoholism. After his second unlawful entry, he was admitted into a detoxification program and, thereafter, attended Alcoholics Anonymous meetings. Later, he was awarded custody of his children.

Here, the circumstances leading to respondent's actions are less susceptible to explanation than those in Birchall. Respondent's conduct, albeit mitigated by side effects from prescribed medication, was indeed grievous. Theft by an attorney must never be tolerated. In re Siegel, 133 N.J. 162 (1993).

Accordingly, a four-member majority of the Board determined to suspend respondent for a period of six months. Two members voted for disbarment, while one member voted for dismissal. Two members did not participate.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 5/23/95

By: 

Raymond R. Trombadore
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
D-21 September Term 1995

IN THE MATTER OF :
JEFFREY W. BURNS, :
AN ATTORNEY AT LAW :

ORDER

FILED

OCT 20 1995

Stephen Wilentz
CLERK

The Disciplinary Review Board having filed a report with the Court on June 8, 1995, concluding that JEFFREY W. BURNS of LAKEWOOD, who was admitted to the bar of this state in 1991, should be suspended from the practice of law for a period of six months for violation of RPC 8.4(b), respondent having admitted the commission of three incidents of knowing and unlawful burglary of an automobile, two incidents of theft by unlawful taking, and one incident of unlawful possession of burglary tools;

And respondent having been ordered to show cause why he should not be disbarred or otherwise disciplined;

And good cause appearing;

It is ORDERED that JEFFREY W. BURNS is hereby suspended from the practice of law for a period of six months, retroactive to May 27, 1994, and until further Order of the Court; and it is further

ORDERED that respondent is immediately eligible to apply for reinstatement to practice; and it is further

ORDERED that JEFFREY W. BURNS be and hereby is restrained and enjoined from practicing law during the period of his suspension; and it is further

ORDERED that respondent comply with Rule 1:20-20 dealing with suspended, disbarred or resigned attorneys; and it is further

ORDERED that JEFFREY W. BURNS reimburse the Disciplinary Oversight Committee for appropriate administrative costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 17th day of October, 1995.

I hereby certify that the foregoing
is a true copy of the original on file
in my office.

Stephen Wilentz

Stephen Wilentz
CLERK OF THE SUPREME COURT