IF

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 88-40

IN THE MATTER OF	:
	:
RICHARD M. STEINHOFF	:
	:
AN ATTORNEY-AT-LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: May 18, 1988.

Decided: November 1, 1988

William R. Wood, Esquire appeared on behalf of the District V-B Ethics Committee.

Patrick Collins, Esquire, appeared on behalf of Respondent.

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

This matter is before the Board based on a presentment in the form of the report of the Honorable Samuel A. Larner serving as a Special Ethics Master on behalf of the District V Ethics Committee. The underlying Complaint alleges misappropriation of trust funds. Respondent admits his conduct but denies that his actions were knowing asserting that his cocaine addiction should

mitigate the sanction to be imposed for his misconduct. While Judge Larner found that respondent had "'knowingly' diverted the trust funds as charged...", Judge Larner voiced concern and indicated that he was troubled by "the automatic sanction of disbarment as an appropriate discipline in this case." We disagree. We recommend that the respondent be disbarred.

FINDINGS OF FACT

As found by the Special Master, the Complaint herein was initiated by the Office of Attorney Ethics as a result of information presented by attorneys associated with the Attorney General's Office and the Office of the Public Advocate relating to aberrant behavior on the part of respondent in the handling of matters before the Office of Administrative Law. We accept the following findings made by the Special Master:

> Investigation thereafter established the following facts to support the allegations of the First Count of the Complaint:
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> (1) Diversion of client funds from respondent's trust account without appropriate authority.
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> (a) On April 29, 1983, Respondent received an attorney's check in the sum of $7,300 as the deposit on the purchase of property by Nidzielski from Joost, Steinhoff's client. Instead of depositing the full amount in his trust account on April 29, 1983, Steinhoff simultaneously withdrew $500 and deposited only $6,800.
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> (b) On May 26, 1983, Steinhoff received and deposited in his trust account a check of $5,000 from his client James Freeman to be held in trust toward the purchase price of property from Robert Bailey. On June 10, 1983, without permission, he issued a check payable to "cash" in the sum of $2,800 thereby diverting these funds from the trust account to his own use.

(c) The trust account records also reveal a series of diversions by withdrawals from the trust account to Respondent in the following sums:

10/18/83	$ 500.00
10/24/83	$ 500.00
11/10/83	$ 450.00
11/18/83	$ 250.00
	$2,100.00

(2) The inevitable result of the foregoing diversions was that Respondent's trust account balance was always out of balance showing a deficit on each monthly statement from June through November 1983. And by November 25, 1983 the account was overdrawn.

The Board also accepts the Special Master's findings concerning the history of respondent's legal career. Following his graduation from the University of Rochester in 1976, respondent matriculated at the Law School of Gonzaga University in Spokane, Washington, graduating therefrom in 1980. After admission to the Bar of the State of Washington, respondent returned to New Jersey and was admitted to practice in this state in 1981. Prior to that time, he was employed as a legal clerk in the Rate Counsel Office of the New Jersey Public Advocate assigned to the Board of Public Utilities where he apparently served with distinction. Notwithstanding what the Special Master found to have been an "extraordinary effort" for that agency, respondent was let go from the agency on June 30, 1982 and then began his private practice, mainly representing solid waste haulers in applications for rate increases before the Board of Public Utilities. He opened his law office in South Orange, which he shared with another attorney who had been a classmate at Rochester.

Respondent's tragic involvement with cocaine began in 1980, the very year of his graduation from law school, when he embarked on what he termed recreational use. His use continued during his service with the Board of Public Utility Commissioners. As found by the Special Master, "the cocaine was administered by snorting through the nose." Following respondent's commencing his own law practice, his use of the drug effected a profound change in his behavior. There is no question in the Board's mind that that change impacted upon his functioning as a lawyer. Thus, we concur with the Special Master who found as fact the following:

> ...He started to neglect clients and was not responsive to their needs or calls. He came to the office at odd hours and his office was a mess. Although he and his associate had engaged in discussions of various legal problems in the first six months of their association, by the end of 1982, he was unable to enter into a conversation with him on any legal matter; and he demonstrated hostility in any conversation.

As his work and appearance degenerated, the attorney with whom he shared space no longer found it possible to continue the association and locked him out of the office in November, 1983. Former associate Skolnick testified that "Steinhoff was not rational, not responsive, his letters made no sense and could not even coordinate numbers for the purpose of computing the share of office expenses. His checks were bouncing and he did not honor his obligation for office expenses." The Special Master's Report continues by citing other instances of the effect that cocaine apparently had upon respondent's conduct, both in practice and in his private life.

On the other hand, the record also demonstrates that at times relevant to the specific allegations of misappropriation charged in the Complaint, respondent was able to effectively function in his capacity as an attorney. Thus, from the spring to the fall of 1983, the exact time during which trust monies were invaded, respondent handled two significant solid waste rate cases, presumably adequately representing his clients. Another example of respondent functioning perfectly well as an attorney was, as found by the Special Master, respondent's "presentation of a lucid and articulate performance..." in June, 1983 while representing a client before the Village Board of Trustees of South Orange in opposition to a proposed ordinance.

Thus, at times, respondent's behavior revealed full control of his faculties, while at other times, he exhibited, as what the Special Master found, "profound, abnormal behavior".

Respondent was temporarily suspended from the practice of law in January, 1984. Shortly thereafter, he checked himself into a detoxification center and, with the assistance of his brother, made arrangements to enter the Center for Addictive Illness in Morristown on January 23, 1984. Respondent remained at the Center from January 23 until February 20, 1984 and, during that time, participated in the full program that was offered. Continuing his efforts while in the New York hotel, respondent detoxed himself by abstention. Following his discharge from the Center, he continued outpatient treatment for approximately a year and also met with the lawyers' group, "Lawyers' Concern for

Lawyers". He followed up with attendance at sessions of Narcotics Anonymous and Alcoholics Anonymous. From the record below and from the representations made before the Board, the Board has no reason to believe that respondent is now either addicted to or experiments with drugs. Indeed, respondent, through counsel, represented to the Board that he had served as a salesman for a personal computer service company in New York City, had then been promoted to the position of Sales Manager, recently having accepted a new job in the same field as a computer salesperson in New Jersey.

Both the Office of Attorney Ethics and respondent presented expert testimony before the Special Master. Testifying on behalf of the Office of Attorney Ethics was Stanley L. Portnow, M.D. Testifying on behalf of the respondent were Richard A. Contini, a psychologist and Associate Clinical Director of the Center for Addictive Illness as well as Richard A. Irlando, M.D.

Mr. Contini's testimony focused upon respondent's course of treatment at the Center for Addictive Illness. As found by the Special Master, Mr. Contini concluded that as the result of respondent's treatment at the Center, the "...programs were successful in eliminating the desire or need for drugs." Indeed, one urine screening two years after the initial treatment at the Center proved negative for all drugs.

The testimony of Drs. Portnow and Irlando, both of whom specialize in substantive drug abuse, focused upon what we perceive to be the crux of the present issue--whether

respondent's condition was serious enough to have prevented him from knowing that he was using clients' money or that such use was wrong.

Summarizing that portion of Dr. Irlando's testimony, which focused on this ultimate question, the Special Ethics Master observed:

> Dr. Irlando offered the conclusion that Steinhoff 'did not intend to steal money from his client' and did not appreciate the full impact of his action as a result of 'markedly impaired' judgment.
>
> He summed up as follows:
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> Q. Do you believe that he would have been aware of what he was doing but here merely--that he did not intend to defraud these people or keep their funds on a permanent basis?
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> A. In all honesty, several scenarios could have been present. That could have been one of them. Governed by the fact that the need to get money to satisfy that habit could have been the governing factor with the intention of perhaps if he reconstituted to pay it back or he could have been completely out of touch with reality that he didn't know what he was doing whatsoever or to the fact that he just didn't understand what would happen if he did such a thing, so any one of those scenarios is possible.
>
> Ultimately, he conceded that since he was not there during the relevant period, he could not say which of the scenarios applied to this particular individual several years before.

The Special Ethics Master summarized Dr. Portnow's testimony as follows:

> Dr. Portnow was retained by OAE and had the opportunity to examine Respondent on two occasions, December 10 and 17, 1986, after which he submitted a comprehensive report. (C 18). He has a long and distinguished career in forensic psychiatry.

He also agreed that cocaine abuse is a mental illness and if it is severe enough it falls into the category of psychosis -- i.e., a state of being in which an individual is so detached from reality that he has no appreciation of reality: However, cocaine abuse, per se, does not necessarily lead to a psychotic state.

From his review of the history of Steinhoff's involvement, he concluded that Respondent's illness had not reached the stage of a psychosis. His technical diagnosis was a "personality disorder with drug abuse," and he concluded that it was not serious enough to have prevented him from knowing that he was using clients' money or that such use was wrong.

He explained that a person with a severe degree of mental illness constituting a psychosis would be unable to carry on the simple tasks of writing checks, get into a car and drive to the bank or select a trust account check book and distinguish it from a business account check book, etc.

Apparently, people in a psychotic state are likely to fall down from time to time and are disoriented as to place and person. The outer manifestations are such that other persons cannot help but recognize the symptoms. As Dr. Portnow stated: "If they are able to perform routine things such as driving a car, meet daily professional responsibilities to some degree, maintain social and sexual relationships I would not call these people psychotic in the sense of not comprehending."

Dr. Portnow also pointed out that cocaine is metabolized out of the system in six to eight hours in an athletic person, and a litter [sic] longer in other individuals.

To Dr. Portnow, based upon the hospital records and report, Respondent's disorder from cocaine abuse was not of psychotic proportions so as to explain substantial cognitive impairment. He presented the following analysis of the scenario of Steinhoff's experience:

> Consciously aware of his drug usage and its pleasurable effects on him he imbibed more and more of the drug which, of course, meant

that he had to have more and more money to pay for his habit. His habit was conscious, and he voluntarily chose not to resist the impulse to take more and more drugs until the pain of malpractice and Ethics Committee proceedings confronted him. Then he stopped. He was able to stop. He did stop because he knew his conduct was unethical and that he could be censured by the Ethics Committee, thereby proving that he was able to control the situation by himself if he chose to do so.

We view as even more significant the following exchange between counsel for the Office of Attorney Ethics and Dr. Portnow:

Q. Now doctor, in your opinion, and I want you to give your opinion to a reasonable degree of medical certainty, did Mr. Steinhoff's cocaine abuse or personality disorder as you would have diagnosed him, did that condition from all you have examined prevent him from knowing or would it have prevented him from knowing that he was using client funds during 1983?

A. From all that I know, I would not say that he was unaware of the fact that he was using client funds during that time in question.

Q. In other words, the condition from all you know is not serious enough to have prevented him from understanding that he was using client money?

A. It was not of psychotic proportions, yes.

Q. Now doctor, the Supreme Court of New Jersey has used the term comprehension in some of its cases talking about mental disability. Let's use that term instead of knowing or able to understand. From all that you know, from your examination of the materials and in your opinion to a reasonable degree of medical certainty, did Mr. Steinhoff's cocaine addiction or personality disorder opt to prevent him from comprehending that he was using client funds during 1983?

A. From all that I know, no.

Q. And would the condition that Mr. Steinhoff had in your opinion to a reasonable degree of medical certainty have prevented him from understanding that using client funds was wrong?

A. No.

We are constrained to accept Dr. Portnow's testimony and conclusions. Reluctantly, we find that respondent had the ability to understand that his conduct was wrong. Thus, we accept the following conclusions contained in Dr. Portnow's written report dated September 1, 1987 marked into evidence below:

> The ability to know or to be aware of one's surroundings is referred to as cognition. Cognition is normally part of one's psyche and can be impaired or enhanced in various degrees depending upon circumstance, e.g. illness, medication, drugs, etc. In the waking conscious state one is never without some degree of cognitive awareness. The seminal issue is what degree of cognitive impairment is necessary to support a claim of not knowing? The answer can be derived from various insanity formulations in use in this country, i.e. M'Naghten test and its derivations and the American Law Institute test. These tests refer to "substantial" impairment of the ability to know and or appreciate. This substantial impairment must flow from a recognized mental disorder of psychotic proportions. Mr. Steinhoff fails this prong of the test, and hence our analysis should properly end at this point. Notwithstanding this fact, however, it must further be pointed out that whatever impairment in cognition he may have had was not substantial even in a non psychotic sense. He knew how to drive a car. He was able to speak with clients. He maintained a social and sex life. He became engaged to marry. Some of his legal work was performed in a satisfactory manner and in timely fashion. He knew where to buy drugs and the fact that he has to pay for them by writing checks drawn on his custodial account. Recognizing that what he was doing would be deemed wrong in the judgment of the Ethics Committee he curbed his own drug habit even before he entered the hospital. This is not indicative of substantial cognitive impairment.

The last threshhold issue concerns Mr. Steinhoff's ability to conform his behavior to the ethical requirements of the New Jersey Bar Association. In 1983 both the American Psychiatric Association and the American Bar Association recommended the abandonment of the volitional prong of the insanity defense on the ground that the volitional test invited fabricated claims. Nowhere has the concept of volitional impairment been more misapplied to excuse those whose behavior controls are aberrant than in the case of defendants who "suffer" from what are variously known as personality or character disorders including substance abuse disorders. Mr. Steinhoff suffers from such a personality disorder. In order to understand the essence of the personality involved in substance abuse one must differentiate between compulsive behavior and impulsive behavior. The patient who exhibits compulsive behavior defends against unacceptable impulses in order to relieve anxiety. The source of the difficulty is unconscious and the psychological pain so intense that the patient cannot resist constant and repetitive efforts to undo the pain. This is the true irresistible impulse which has the power to prevent an individual from conforming his behavior to the requirements of law. On the other hand, the personality disordered individual generally has to be coerced into treatment. This person's impulsive behavior is pleasurable and he frequently gets a "high" from his conscious behavior. There is no irresistible and compelling need to ward off anxiety because this behavior is so pleasurable that the individual consciously and volitionally chooses to engage in the activity. He chooses not to resist the acts at least until they produce anxiety or psychological pain. This is precisely what Steinhoff did. Consciously aware of his drug usage and its pleasurable effects on him he imbibed more and more of the drug which, of course, meant he had to have more and more money to pay for his habit. His habit was conscious, and he voluntarily chose not to resist the impulse to take more and more drugs until the pain of malpractice and Ethics Committee proceedings confronted him. Then he stopped. The need to take drugs was not irresistible. He was able to stop. He did stop because he knew his conduct was unethical and that he could be

> censured by the Ethics Committee, thereby proving that he was able to control the situation by himself if he chose to do so.
>
> It is not and never has been the position of organized psychiatry that people suffering from any mental disorder, no less one that is not of psychotic proportions, which is voluntary and self imposed and does not deprive the individual of substantial awareness of what he is doing and that it is wrong have carte blanche to blame that condition for all human failings. The absurdity of such a position is clear.

CONCLUSIONS AND RECOMMENDATION

Upon review of the full record, the Board is satisfied that the conclusions of the Special Master in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence.

As a misappropriation case, this matter must be judged under the standards set forth in In Re Wilson, 81 N.J. 451 (1979). In Wilson, the Court balanced, "the considerations that must deeply trouble any court which decrees disbarment" including "the pressures on the attorney that forced him to steal and the very real possibility of reformation, which would result in the creation of a new person of true integrity, an outstanding member of the Bar." Id. at 460. The Court continued:

> An attorney, beset by financial problems, may steal to save his family, his children, his wife or his home. After the fact, he may conduct so exemplary a life as to prove beyond doubt that he is as well equipped to serve the public as any judge sitting in any court. To disbar despite the circumstances that led to the misappropriation, and despite the possibility

> that such reformation may occur is so terribly harsh as to require the most compelling reasons to justify it. As far as we are concerned, the only reason that disbarment might be necessary is that any other result risks something even more important, the continued confidence of the public and the integrity of the Bar and the judiciary.

The basic rule enunciated in Wilson and echoed in its progeny is that "knowing" misappropriation of client funds almost invariably results in disbarment. Respondent answers by suggesting that the record in this matter fails to show a "knowing course of conduct" sufficient to invoke the Wilson standard. Respondent relies upon Matter of Hein, 104 N.J. 297 (1986); In Re Romano, 104 N.J. 306 (1986); and In Re Jacob, 95 N.J. 132 (1984). We have carefully reviewed each of the authorities cited but do not believe that, on the facts of this case, they militate against the sanction of disbarment. Sadly, we conclude that respondent had the ability to understand that misappropriating his client's funds was wrong and further had the ability to conform his conduct to legal and ethical standards.

The Supreme Court and this Board has, in recent years, frequently dealt sternly with attorneys involved in drug-related offenses. The Board reaffirms the language of its prior ruling in Matter of Romano as adopted by the Supreme Court. In relevant part, the Board and Court there held:

> ...Addiction to controlled dangerous substances has been rejected as a mitigating factor. See Matter of Stein, 97 N.J. 550, 565-66 (1984). 'Many crimes arise out of drug and alcohol use.' State v. Roth, 95 N.J. 334, 368 (1984). The Board believes that to allow this to be a mitigating factor to outweigh the seriousness of

> the crime of attorney theft 'would be disservice to the Bar, the judiciary and the public." . . .

We are not unmindful of the commendable strides that respondent has made since his discharge from the Center for Addictive Illness. We fully accept the Special Ethics Master's conclusion that, "Respondent has rehabilitated himself by conscientious submission to treatment modalities so that his life at present reflects a normal existence in a stable marriage and responsible job. We have no doubt that respondent is an intelligent, articulate individual who, were he to be permitted to return to practice, could be trusted, to paraphrase In Re Wilson at 460, as a 'new person of true integrity'." Undoubtedly, this is why the Special Ethics Master recommended a sanction short of disbarment. But we are also mindful of the strong public policy expressed in Wilson that any result short of disbarment might jeopardize "the continued confidence of the public and the integrity of the Bar and the judiciary." ". . . That confidence is so important that mitigating factors will rarely override the requirement of disbarment. If public confidence is destroyed, the Bench and Bar will be crippled institutions."

For the reasons set forth herein, the Board unanimously recommends that the respondent be disbarred. One member did not participate. The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for appropriate administrative costs.

DISCIPLINARY REVIEW BOARD

By: Shirley O'Neill
Shirley O'Neill
Vice Chair

Dated: November 1, 1988.