Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-169
District Docket No. XIV-2018-0568E

In the Matter of

Paul Dougherty

An Attorney at Law

Decision

Argued: July 18, 2019

Decided: December 12, 2019

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Robert E. Ramsey appeared on behalf of respondent.

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 (OAE), pursuant to R. 1:20-13(c), following respondent's guilty plea to one count of third-degree conspiracy to confer an unlawful benefit to a public servant, contrary to N.J.S.A. 2C:5-2(a)(1) and N.J.S.A. 2C:27-11(b).

We determined to grant the motion and impose a reprimand.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1994. At the relevant times, he maintained an office for the practice of law in Haddon Heights, New Jersey.

On October 17, 2018, respondent, a commissioner of the Township of Haddon (Township), appeared before the Honorable Edward J. McBride, Jr., J.S.C., in the Superior Court of New Jersey, Law Division, Criminal Part, Camden County, and pleaded guilty to third-degree conspiracy to confer an unlawful benefit to a public servant, contrary to N.J.S.A. 2C:5-2 and N.J.S.A. 2C:27(11)(b). Specifically, he admitted that he had received a $7,106 referral fee from a certified civil trial attorney to whom respondent had referred a Township employee, for the purpose of pursuing a claim against the Township.[1] The next day, Judge McBride signed an order of forfeiture of employment, which forever disqualified respondent from "holding any office or position of honor, trust or profit under the State or any of its administrative or political subdivisions."

On February 15, 2019, Judge McBride sentenced respondent to two years' probation, and ordered him to pay $155 in assessments, surrender his firearms

[1] The accusation neither identified nor charged the certified civil trial attorney.

purchaser identification card within five days, provide a DNA sample, and submit to mandatory drug monitoring and substance abuse evaluation and treatment at the discretion of the Office of Probation Services. In determining the appropriate sentence, Judge McBride considered, in aggravation, the need to deter respondent and others from violating the law. In mitigation, he found that respondent had no criminal history and that he was likely to respond affirmatively to probation. Judge McBride concluded that the mitigating factors outweighed the aggravating factors.

The facts underlying respondent's crime are straightforward. From May 2013 to July 2018, respondent served as a Township commissioner. In May 2013, a Township employee spoke to respondent about issues that the employee claimed to be having with certain Township police officers. Respondent referred the employee to a certified civil trial attorney. Eventually, the attorney filed a claim against the Township and its police department and obtained a settlement for the employee. The attorney paid a $7,106 referral fee to respondent, who conceded that the receipt of the referral fee constituted a criminal, improper benefit to a public official.

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). Under that Rule, a criminal conviction is conclusive evidence of

guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); and In re Principato, 139 N.J. 456, 460 (1995). Respondent's guilty plea to third-degree conspiracy to confer an unlawful benefit to a public servant, contrary to N.J.S.A. 2C:5-2(a)(1) and N.J.S.A. 2C:27-11(b), establishes a violation of RPC 8.4(b). Pursuant to that Rule, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Respondent also violated RPC 8.4(c), which prohibits conduct involving dishonesty, fraud, deceit or misrepresentation. Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, 139 N.J. at 451-52; and In re Principato, 139 N.J. at 460.

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and the respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." In re 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, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

That an attorney's conduct 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 the 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).

Pursuant to N.J.S.A. 2C:27-11(b), "[a] person commits a crime if the person, directly or indirectly, confers or agrees to confer any benefit not allowed by law to a public servant." Under N.J.S.A. 2C:5-2(a)(1) a person is "guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission he . . . [a]grees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime."

Respondent's guilty plea in the Superior Court of New Jersey establishes that he conspired to confer a benefit not allowed by law to a public servant – in this case, himself. Specifically, while serving in his public capacity, as a Township commissioner, respondent referred a Township employee to a

certified civil trial attorney for the purpose of pursuing a claim against members of the Township's police department. The employee retained the attorney, who obtained a settlement on the employee's behalf and then paid respondent a $7,106 referral fee.

Respondent's guilty plea, thus, establishes violations of RPC 8.4(b) and RPC 8.4(c). In its brief, the OAE recommends either a one-year or eighteen-month suspension, by analogizing this matter to cases involving attorneys who procured clients through the use of runners and attorneys who accepted bribes while serving as public officials. Respondent correctly points out that there are no comparable disciplinary cases, but analogizes this matter to what he characterizes as "the public defender cases" and cases involving violations of RPC 1.7(a)(2) (concurrent conflict of interest). Respondent is willing to accept a three-month suspension.

In our view, the facts of this matter are not akin to any of the cases relied on by either the OAE or respondent. Respondent's conduct was similar to neither that of a runner nor of a public defender who attempted to obtain legal fees from indigent clients. Although respondent clearly acted contrary to the interests of the Township and the public, his conduct was criminal and, therefore, the cases addressing conflicts of interest are not applicable.

Broadly speaking, in exchange for compensation, a runner solicits personal injury clients for an attorney, who will seek to obtain benefits for the client under a contract of insurance or assert a claim against the insured of an insurance carrier. See In re Pajerowski, 156 N.J. 509, 518 (1998). In New Jersey, an attorney who uses a runner, within the meaning of N.J.S.A. 2C:21-22.1(a), commits a third-degree crime. N.J.S.A. 2C:21-22.1(b).

The fact that respondent had referred the Township employee to the certified civil trial attorney did not render him the attorney's runner. A certified civil trial attorney is permitted to divide his fee with a referring attorney. R. 1:39-6(d). In the absence of any evidence that respondent and the attorney had an arrangement whereby respondent would refer cases to the attorney in exchange for referral fees, the runner cases are not relevant.

The "public defender cases" also are unhelpful. In In re Persiano, 233 N.J. 78 (2018), the attorney pleaded guilty to the disorderly persons offense of obstructing the administration of law or other governmental function (N.J.S.A. 1C:29-1). In the Matter of Mario J. Persiano, III, DRB 17-169 (November 9, 2017) (slip op. at 1-2). In short, Persiano, a public defender with the Pennsauken Township Municipal Court, had offered to provide eight indigent clients with "better representation" if they paid him additional fees in cash. Id. at 2-3. He received a three-month suspension. Persiano, 233 N.J. 78. See also

In re Del Tufo, 216 N.J. 332 (2013) (three-month suspension imposed on a public defender who accepted fees from two clients) and In re Muckelroy, 118 N.J. 451 (1990) (reprimand imposed on a municipal public defender who attempted, unsuccessfully, to collect a fee from a client). In this case, there is no evidence that respondent had suggested to Township employees that, if they were contemplating suing the Township, he could refer them to a particular attorney, with the expectation that he would be compensated for the referral.

Likewise, the precedent addressing conflicts of interest cases is not applicable. If respondent's actions had taken place within a law firm, instead of within the context of public office, he would not be guilty of any RPC violation. As a representative of a firm, had he referred an employee to a certified civil trial attorney, who then recovered money from the firm and paid him a referral fee, respondent's action would have been disloyal and likely would have resulted in his involuntary separation from the firm. He would not have committed an ethics infraction, however, because neither the employee nor the firm would have been his clients. He also would have been entitled to the fee, pursuant to R. 1:39-6(d).

What makes this case different is the fact that respondent was a public servant, who pleaded guilty to third-degree conspiracy to confer an unlawful benefit to himself, by accepting the referral fee in a matter both adverse to the

Township and at odds with the ethical obligations of his public office.

Public corruption cases, based on violations of New Jersey state statutes, typically call for suspensions or disbarment. See, e.g., In re Molina, 216 N.J. 551 (2014) (six-month suspension imposed on attorney who pleaded guilty to third-degree tampering with public records or information, N.J.S.A. 2C:28-7(a)(1), and fourth-degree falsifying records, N.J.S.A. 2C:21-4(a); while serving as the Chief Judge of the Jersey City Municipal Court, the attorney "fixed" nine parking tickets, valued at more than $200, which had been issued to her "significant other," by either dismissing the tickets or writing "emergency" on them, so that the significant other avoided paying the fines; the attorney was sentenced to three years' probation and 500 hours of community service; she forfeited the right to hold public employment; and was ordered to pay restitution and penalties; we noted compelling mitigating factors, including the attorney's sincere contrition, unblemished disciplinary record, good character and reputation in the community, extensive civic efforts in the community, and the forfeiture of her position and the right to hold future public employment); In re Pariser, 162 N.J. 574 (2000) (six-month suspension imposed on Deputy Attorney General who pleaded guilty to one count of third-degree official misconduct, after having engaged in a series of petty thefts from his co-workers, occurring over a period of time; he was sentenced to three years' probation,

fined $5,000, and required to forfeit his public office); In re Hoerst, 135 N.J. 98 (1994) (six-month suspension imposed on attorney who, as a county prosecutor, used $7,500 in forfeiture funds to pay for a trip to California for him and the first assistant prosecutor and their wives to attend a National College of District Attorneys conference, in addition to a three-day side trip; he pleaded guilty to third-degree theft by failure to make required disposition of property received, contrary to N.J.S.A. 2C:20-9; he resigned as the county prosecutor, was admitted to the Pre-Trial Intervention program, completed a one-year counseling program, performed 100 hours of community service, and paid $7,500 in restitution; the attorney had an unblemished disciplinary history, an excellent reputation among the public and his peers, and was active in numerous civic and community activities; he also cooperated with law enforcement in its investigation, and had been rehabilitated); and In re Gallerano, 138 N.J. 44 (1994) (disbarment for attorney who solicited and accepted a gift while a public servant, in violation of the now-repealed N.J.S.A. 2C:27-6, which provided that a public servant commits a crime if he or she "knowingly and under color of his office, directly or indirectly solicits, accepts or agrees to accept any benefit not allowed by law to influence the performance of his official duties;" as the deputy director of compliance for the Division of Alcoholic Beverage Control, the attorney accepted $2,500 on the suggestion that he would assist in the settlement

of a licensing violation; the attorney received a one-year probationary term, paid a $3,000 fine, was barred from future government employment, and lost his state pension).[2]

Although none of the above precedent is directly on point, it presents a useful survey of the discipline imposed on attorneys who, acting as public servants, engaged in conduct that benefited them personally. Here, the referral fee paid to respondent was a benefit that he was prohibited from receiving, as a matter of law. It is not clear, however, whether respondent made the referral to the employee as an attorney who happened to be a commissioner, or whether he made the referral as a commissioner who happened to be an attorney. Simply stated, the record does not establish respondent's motive or mens rea.

Given the absence of facts establishing that respondent's goal was to leverage his position as a public official to seek personal gain, we determine that a term of suspension is unwarranted. For example, Molina interfered directly with the administration of justice by fixing traffic tickets, which she was able to accomplish only because of her official position. Hoerst was able to steal $7,500

---

[2] The OAE's brief further cited In re Braunstein, 210 N.J. 148 (2012) (one-year suspension imposed on attorney who pleaded guilty to third-degree attempted criminal coercion by an official, a violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:13-5(a)(4); the attorney, Assistant Corporation Counsel to the City of Newark, had threatened to file a lawsuit against the Director of Corporation Counsel unless the Director agreed to promote him and pay him $750,000). In our view, respondent's misconduct does not come close to that of Braunstein.

from the county forfeiture fund due to his position, and it was in his official position that he did so. Pariser stole money from colleagues to whom he had access because of his position in the Attorney General's office. Gallerano solicited a $2,500 gift in exchange for a promise to use his position to help with a liquor licensing dispute.

In contrast, we cannot conclude this to be a case in which respondent sought to leverage his public office to seek or obtain a benefit. In light of the absence of clear and convincing evidence that respondent made the referral in his capacity as commissioner, rather than in his capacity as a private practicing lawyer, and the absence of any evidence that he used his position as commissioner to seek or obtain the referral fee, respondent's actions do not rise to the level warranting a suspension. To be sure, he should not have referred the employee to any attorney, and certainly should not have accepted the resulting referral fee. However, the record does not clearly and convincingly establish that he abused his office by doing so.

Respondent's third-degree crime was punishable by imprisonment of between three and five years, and payment of a $15,000 fine, N.J.S.A. 43-3(b)(1); N.J.S.A. 2C:43-6(a)(3), although the court imposed neither. Further, at the time of respondent's misconduct, he had been an attorney for twenty years, without a blemish on his record. Moreover, he forfeited the commissioner

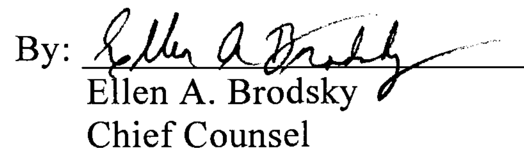
position and is barred from future positions in public office. We, thus, determine that a reprimand is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Vice-Chair Gallipoli voted to impose a censure. Member Zmirich voted to impose a three-month suspension. Member Joseph voted to impose a one-year suspension.

Member Boyer was recused. Member Petrou did not participate.

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
Bruce W. Clark, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

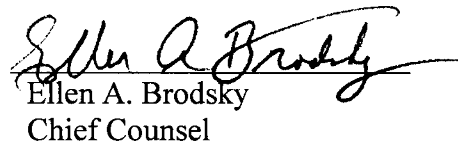
In the Matter of Paul Dougherty
Docket No. DRB 19-169

Argued: July 18, 2019

Decided: December 12, 2019

Disposition: Reprimand

Members	Reprimand	One-Year Suspension	Three-Month Suspension	Censure	Recused	Did Not Participate
Clark	X					
Gallipoli				X		
Boyer					X	
Hoberman	X					
Joseph		X				
Petrou						X
Rivera	X					
Singer	X					
Zmirich			X			
Total:	4	1	1	1	1	1



Ellen A. Brodsky
Chief Counsel