SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-157

IN THE MATTER OF

JAMES P. BRENNAN

AN ATTORNEY AT LAW

Decision
Default [R. 1:20-4(f)(1)]

Decided: February 17, 1998

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

Pursuant to R. 1:20-4(f)(1), the District VI Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint. On December 24, 1996 the DEC mailed a copy of the complaint to respondent by certified and regular mail. The return receipt card indicated delivery on December 27, 1996 at his last known office address: 4614 Kennedy Boulevard, Union City, New Jersey 07087. The signature of the accepting party is illegible. When respondent did not answer the complaint, the DEC forwarded a second letter, on February 12, 1997, by regular mail. The letter notified respondent that,

unless he filed an answer within five days, the allegations of the complaint would be deemed admitted and the record would be certified directly to the Disciplinary Review Board for imposition of discipline. That letter was not returned.

Respondent was admitted to the New Jersey bar in 1986. He has no prior disciplinary history.

The formal complaint charged respondent with a violation of RPC 7.1(a)(2) (false or misleading communications). According to the complaint, respondent was retained to represent John M. Wilson in connection with a driving while intoxicated (DWI) charge, to be heard in Weehawken Municipal Court. Although respondent was the public defender in Weehawken, he was permitted by the municipal court judge to represent private clients for fees in Weehawken Municipal Court. Wilson informed respondent that he had a prior DWI conviction in 1990 in Mountain Lakes Municipal Court and that, if convicted, he would be subject to enhanced penalties, as a second offender. Respondent stated that for a fee of $1,500 he would make arrangements so that neither the judge nor the municipal prosecutor would be aware of the prior conviction; accordingly, Wilson would be sentenced as a first offender. It also appears that respondent represented that, even if Wilson were sentenced as a second offender, for a fee of $300 respondent would arrange for Wilson to avoid a mandatory forty-eight hour period of incarceration.

Respondent requested that he be paid his fee in cash. Moreover, respondent did not open or maintain a file in connection with his representation of Wilson.

Apparently, it was respondent's intention to remove Wilson's driving abstract from the municipal court file. The driving abstract would have revealed that Wilson had previously been convicted of DWI, thus subjecting him to more severe penalties. Ultimately, according to the DEC's investigative report, respondent was unable to convince the Municipal Court Judge or the Municipal Prosecutor that this was Wilson's first offense. Respondent later admitted that, when he was challenged on this contention by the Municipal Prosecutor, he gave up his efforts to lose the abstract of the first conviction and took it out of the Municipal Court file. Nonetheless, respondent admitted that he proposed the scheme to Wilson. According to Wilson, respondent also told him that he had lost abstracts of prior convictions on three occasions. The Prosecutor's Office investigation produced no evidence of any repeated practice by respondent.

* * *

Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. The record contains sufficient evidence that respondent told his client that he would attempt to mislead the court and the prosecutor that his client had no prior DWI convictions, by removing the client's abstract from the file. His conduct in this regard violated RPC 7.1(a)(2).

This leaves only the issue of appropriate discipline. Similar misconduct would normally result in a three-month suspension. In In the Matter of Palombi, DRB Docket No.

97-146 (1997), the Board voted to suspend for three months an attorney that suggested to his client that he could achieve results by means violative of the Rules of Professional Conduct. Specifically, the attorney told his client that he could obtain a more lenient sentence in a criminal matter if the client agreed to pay a settlement in a civil action brought against him by the victim in the criminal matter, who was the police chief of Bordentown, New Jersey. That matter is still pending before the Supreme Court. Here, if respondent had cooperated with the disciplinary system by participating in the proceedings, it is likely that he would have faced only a three-month suspension. Because, however, respondent ignored the ethics authorities and defaulted on this matter, the appropriate level of discipline must be enhanced.

In light of the foregoing, the Board unanimously determined that a six-month suspension is the appropriate discipline for respondent's misconduct.

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

Dated: 8/17/98

LEE M. HYMERLING
Chair
Disciplinary Review Board