

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-272

IN THE MATTER OF
JAMES A. BRESLIN, JR.
AN ATTORNEY AT LAW

Decision

Argued: October 19, 2000

Decided: May 7, 2001

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Michael P. Ambrosio 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 reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-14(c), following the New Jersey Supreme Court's January 14, 2000 order accepting respondent's resignation, with prejudice, as the judge of the Lyndhurst municipal court and barring him from holding judicial office.

Respondent was admitted to the New Jersey bar in 1968. He maintains an office for

the practice of law in Lyndhurst, New Jersey. Respondent has no disciplinary history.

This matter began as a referral from the Office of the Bergen County Prosecutor to the Advisory Committee on Judicial Conduct ("ACJC"). Following its investigation, the ACJC held a formal hearing in accordance with R. 2:15-2(b). In its June 1999 report, the ACJC found that there was clear and convincing evidence that "by failing to make a timely report to a law-enforcement, prosecutorial, or other appropriate authority about [a former client's] giving him \$10,000 for him to deliver to [the Lyndhurst Director of Public Safety] as a bribe and by failing to take other appropriate action to uphold the law," respondent violated Canons 1 and 2A of the Code of Judicial Conduct. The ACJC recommended that the Court institute proceedings to remove respondent from his position as the municipal judge for Lyndhurst.

Thereafter, the Court issued a complaint and an order that respondent show cause why he should not be removed from office. The Court also appointed a panel of three judges to conduct a hearing and report their findings to the Court.

The panel found, beyond a reasonable doubt, that respondent's conduct violated Canons 1 and 2A, and was "so prejudicial to the administration of justice that it brought the Lyndhurst municipal judgeship into disrepute" and that the "violations were so significant that Respondent's removal from office is warranted." After the panel issued its report, respondent waived his right to a hearing before the Court and resigned from his judicial office. In its January 14, 2000 order, the Court accepted respondent's resignation with

prejudice, stated that respondent had "tendered his resignation from judicial office with the understanding that its acceptance by the Court is tantamount to his removal" and permanently barred him from holding judicial office in New Jersey.

The Court also referred the matter to the OAE.

* * *

In mid-October 1996, Joseph Ciardella, a former client of respondent, met with respondent to "enlist" him in "Ciardella's plan to bribe Paul Haggerty so the latter would appoint Ciardella's son to the Lyndhurst Police Department."¹ At that time, Haggerty was the Director of Public Safety for Lyndhurst and had the authority to appoint the municipal judge and to hire police department employees. Haggerty was also a close personal friend of respondent as well as his stock broker.

During Ciardella's visit to respondent's office, he handed respondent an unaddressed, unsealed nine-inch by twelve-inch manila envelope containing Ciardella's son's twenty-two page employment application and \$10,000 in cash. The cash consisted of one hundred \$100 bills that were divided into two smaller envelopes in the manila envelope. The application and the cash made the envelope "bulky and reasonably heavy."

¹ The facts are taken from the report of the panel appointed by the Court to hear the removal matter.

The panel rejected respondent's testimony that his conversation with Ciardella lasted no more than one and one-half minutes and entailed only a request that respondent give the application to Haggerty. Instead, the panel found that Ciardella must have given respondent some explanation of the contents of the envelope, "an explanation that made Respondent at least generally aware, at that time, of the bribery and its goal."²

Within two days of Ciardella's visit, respondent reviewed the contents of the envelope and "then knew the exact extent of his former client's effort to bribe Haggerty." However, respondent did not report Ciardella's bribery plan to the Lyndhurst police, the Bergen County prosecutor or any other law enforcement or judicial officer.

On October 21 or 22, 1996, respondent met Haggerty at a restaurant where they frequently socialized after work. At that meeting, respondent posed a "hypothetical question to Haggerty to get Haggerty's reaction to what he would do if a client of [respondent] offered Haggerty money to do a favor." Haggerty reacted angrily to the hypothetical question and "terminated the conversation."

At the panel hearing, respondent explained that he did not report the details of the bribery plan to Haggerty, at that time, because he did not want to speak of it in front of other people in the restaurant. The panel rejected the explanation as "incredible" because (1) respondent did not explain why he could not have spoken privately with Haggerty and (2)

² Ciardella did not testify at the hearing because he had suffered a mental impairment caused by a stroke. Therefore, the panel did not rely on statements made by Ciardella in taped conversations with Haggerty and to the police.

it was inconsistent with his deposition testimony before the ACJC. At his deposition, respondent had testified that he doubted that anyone was present to overhear his conversation with Haggerty.

"Sometime during the next three weeks," respondent and Haggerty again discussed the bribe. At that time, respondent disclosed to Haggerty the name of the client and "other details of the bribe plan." Haggerty told respondent that he believed the plan was a conspiracy by certain people in Lyndhurst to harm Haggerty's reputation. When Haggerty asked respondent what was to be done about the contents of the manila envelope, respondent replied that he was waiting for a call from Ciardella.

On November 25 or 26, 1996, Haggerty reported the bribery attempt to James Tobin, the acting chief of police for Lyndhurst. A captain in the Bergen County prosecutor's office, Tobin had been appointed acting police chief in July 1996 because of a dispute concerning a successor to the former police chief.

The panel rejected respondent's testimony that he did not immediately report the bribery plan to Tobin because he did not know, at the time, who was in charge of the Lyndhurst police department. The panel found respondent's testimony "totally implausible" for several reasons. First, Tobin had previously been introduced as the acting chief to respondent. Second, from time to time, Tobin had observed respondent in the municipal court while court was in session. Third, Tobin's office in the municipal building was in close proximity to the municipal courtroom. Fourth, respondent's son was a Lyndhurst police

officer. Based on the foregoing, the panel found that respondent knew, at the time, that Tobin was "an available law enforcement official to whom he could report the bribe plan."

When Haggerty told Tobin about the bribery plan, Tobin immediately contacted the Bergen county prosecutor's office. The prosecutor's office undertook an investigation. On December 26, 1996, respondent voluntarily appeared at the prosecutor's office, with his attorney, and gave an oral unsworn statement. At that time, he gave the manila envelope and its contents to the prosecutor's investigator.

Haggerty provided a sworn statement to the prosecutor's investigator and agreed to assist in the investigation of Ciardella. At the investigator's request, Haggerty arranged to meet with Ciardella wearing a hidden recording device. The meeting was also observed by the prosecutor's investigators.

Immediately after the meeting, Ciardella was arrested and charged with a violation of N.J.S.A. 2C:27-2 (second-degree offense of bribery of a public official). Thereafter, he gave a sworn statement to the investigators about the details of the bribery plan. He ultimately pled guilty to an accusation charging him with a violation of N.J.S.A. 2C:27-6b (third-degree offense of a gift to a public servant). Ciardella was fined \$10,000.

Respondent was not charged with any criminal conduct.

With respect to whether respondent's conduct was governed by the Code of Judicial Conduct, the panel determined that, although Ciardella relied on the former attorney-client relationship to gain access to respondent, he approached respondent because of respondent's

position as the Lyndhurst municipal judge. Furthermore, according to the panel, even if Ciardella approached respondent as a lawyer, respondent was still governed by the Code of Judicial Conduct.

The panel found, beyond a reasonable doubt, that respondent's failure to report Ciardella's bribery plan to law enforcement officials violated Canons 1 and 2A of the Code of Judicial Conduct. The panel further found that respondent's hypothetical question to Haggerty violated Canon 2A because it "created a circumstance whereby a reasonably objective member of the public could conclude Respondent was testing the waters to determine whether Ciardella's plan could come to fruition, a testing that either implicated a hope of being able to share in one of the two small envelopes of money, or at the very least, a willingness to act as intermediary in the transmission of the bribe money to Haggerty." Under either scenario, "a reasonably objective member of the public could conclude that Respondent became an accomplice in Ciardella's plan." The panel also found that respondent violated the "standards governing judicial conduct" when he "elected to leave it to Haggerty to report the matter to Tobin...particularly when the report to the law enforcement official...occurred more than a month after Respondent's total awareness of the bribe plans."

Finally, the panel found that respondent's "intelligence and ability countervails any finding that his conduct in this matter can be characterized as simply unintelligent or dilatory in nature."

* * *

The OAE contended that respondent's conduct violated RPC 8.4(c),(d) and (e) and urged us to recommend that he be disbarred.

* * *

Upon a de novo review of the full record, we determined to grant the OAE's motion for reciprocal discipline. Where a motion for reciprocal discipline is based on "a final determination of judicial misconduct" by the Court, "that determination shall conclusively establish the facts on which it rests for purposes of an attorney disciplinary proceeding...The sole issue to be determined...shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3); In re Yaccarino, 117 N.J. 175, 183 (1989) ("[T]he determinations made in judicial-removal proceedings are conclusive and binding in subsequent attorney-disciplinary proceedings.")

Although respondent conceded that the facts found by the judicial panel must be accepted as true on a motion for reciprocal discipline, he argued that the facts are "susceptible of different interpretations." Respondent contended that the facts show that he

"exercised bad judgment" and failed to "comprehend the need to act quickly and decisively" but they do not establish, by clear and convincing evidence, that his conduct was "knowingly and intentionally wrongful," that he "had improper motives," that he "entertained hopes of sharing the money in the envelopes he had been given" or that he acted as an intermediary for Ciardella.

However, we are bound by the panel's finding, beyond a reasonable doubt, that respondent's "intelligence and ability countervails any finding that his conduct...can be characterized as simply unintelligent or dilatory in nature."

Therefore, we reject respondent's contention that his misconduct was attributable to negligence or bad judgment.

Although respondent's actions did not directly involve the exercise of his judicial duties, respondent was approached by Ciardella because of his judicial position. As found by the panel, respondent's misconduct brought the Lyndhurst municipal judgeship into disrepute. "Municipal courts are critical to our judicial system. More cases are processed annually through those courts than any other branch of the judicial system." In re Samay, 166 N.J. 25, 41 (2001). When respondent brought his own judgeship into disrepute, he "compromise[d] the judiciary as an institution." In re Pepe, 140 N.J. 561, 570 (1995).

Furthermore, respondent's actions directly involved his status as an attorney. Ciardella had been a client of respondent and relied on the former attorney-client relationship to gain access to respondent.

Therefore, we find that respondent's conduct violated RPC 8.4(c) and (d). There remains the question of the appropriate discipline.

The Court has "consistently subjected attorneys who commit acts of serious misconduct while serving in public office to stringent discipline, normally disbarment." In re Boylan, 162 N.J. 289, 293 (2000). In In re Coruzzi, 98 N.J. 77 (1984), the court disbarred a superior court judge for accepting or agreeing to accept bribes in three separate criminal matters. The court stated that "[b]ribery is so reprehensible as almost invariably to call for disbarment....It must evoke particular consternation when committed by a sitting judge, for then it strikes directly at the heart of the administration of justice." Id. at 81.

Even if respondent's conduct did not involve his judicial position, his actions would nevertheless warrant disbarment. In In re Rigolosi, 107N.J. 192 (1987), the attorney was disbarred despite his acquittal on all criminal bribery charges arising out of an attempt to bribe a state police officer into filing a false police report. The Court found that there was not sufficient evidence to prove that Rigolosi knew of, assisted in, encouraged or profited from the initial bribery scheme. However, after Rigolosi became aware of the scheme, he provided advice to the participants as to how to use the altered police report to secure a dismissal of the criminal charges that were the subject of the report. The Court concluded that respondent's conduct "reveals a flaw running so deep that he can never again be permitted to practice law." See, also, In re Fox, 140 N.J. 613 (1995) (disbarment where the attorney bribed a court clerk to backdate the filing of two personal injury complaints for

which the statute of limitations had expired); In re Conway, 107 N.J. 168 (1987) (in the companion case to Rigolosi, the attorney was disbarred following his criminal conviction based on his participation in the scheme to bribe the state police officer); In re Hughes, 90 N.J. 32 (1982) (disbarment where the attorney bribed an Internal Revenue Service agent to remain silent about possible criminal violations and falsified certificates of release of federal tax liens).

Furthermore, respondent exacerbated his misconduct by lying to the panel. The panel described various testimony by respondent as "implausible," "totally implausible," "inconsistent" with prior testimony and "incredible."

In light of the foregoing, a four-member majority of the Board determined to recommend that respondent be disbarred. Three members voted to suspend respondent for three years. One member voted to reprimand respondent. One member did not participate.

We further unanimously determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: May 7 2001

By: 

ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of James A. Breslin
Docket No. DRB 00-272**

Argued: October 19, 2000

Decided: May 7, 2001

Disposition: Disbar

Members	Disbar	Three-year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson		X					
Boylan							X
Brody	X						
Lolla	X						
Maudsley	X						
O'Shaughnessy			X				
Schwartz		X					
Wissinger	X						
Total:	4	3	1				1

Robyn M. Hill 7/18/01
Robyn M. Hill
Chief Counsel