

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 94-210

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IN THE MATTER OF :  
EDWARD C. CURCIO, :  
AN ATTORNEY AT LAW :

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Decision  
of the  
Disciplinary Review Board

Argued: September 21, 1994

Decided: May 11, 1995

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

Respondent did not appear.<sup>1</sup>

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

This matter was before the Board on a Motion for Final Discipline filed by the Office of Attorney Ethics (OAE). That motion resulted from respondent's conviction in federal court, on May 21, 1992, of conspiracy and racketeering under the Racketeer Influence and Corrupt Organization Act (RICO), 18 U.S.C.A. 1962, as well as four counts of mail fraud, in violation of 18 U.S.C.A. 1341. The OAE urges that disbarment is the only appropriate

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<sup>1</sup> Respondent, who is currently incarcerated, did file a brief in opposition to the motion for final discipline.

penalty. The Board agrees, and has unanimously voted to disbar respondent.

Respondent was admitted to the New Jersey bar in 1978. Thereafter, he practiced law with a firm in Berlin, Camden County, New Jersey. He was temporarily suspended shortly after his criminal conviction on May 27, 1992. That suspension remains in effect to date. Respondent is currently serving a six-year prison term in Lewisburg, Pennsylvania.

Respondent, together with another member of his law firm, an osteopathic surgeon and three staff members, were charged in a 1990 indictment with conducting an enterprise to submit falsified reports to over more than twenty insurance companies in order to obtain over sixty checks, all between 1977 and 1990. The scheme typically involved falsifying patient records to increase substantially the number of doctor visits for each patient/client involved. The surgeon was the treating physician for about six hundred of the law firm's clients, ten percent of the firm's total caseload. Respondent and his partner, Richard Console, were found guilty of mail fraud and RICO charges, following a trial by jury, and were both sentenced to lengthy prison terms. The judgments of conviction and sentencing were affirmed by the United States Court of Appeals for the Third Circuit on December 22, 1993. Respondent's petition for certiorari was denied by the United States Supreme Court on May 2, 1994.

In his brief, respondent contended that the criminal matter was replete with instances of prosecutorial misconduct,

vindictiveness and overzealousness in pursuit of the criminal matter. He was, however, as previously noted, unsuccessful on the appeal of the conviction and sentence, both to the Third Circuit and to the Supreme Court.

At sentencing on September 25, 1992, the judge made the following comments:

THE COURT: Mr. Curcio, your case is the saddest one of the four here today, in this Court's judgment. It is the saddest because I watched you testify. I listened to your background. And you were a bright and brilliant lawyer. You had everything to gain in the profession. It is truly a tragedy. But you let greed overcome you. That is the problem. That is the problem.

You took the wrong road. The money that you would have made had you gone on the right road -- there is no question in this court's mind, that had you gone the straight and narrow, had you done it correctly, you would have been a successful lawyer and a well respected lawyer. You would have been a credit to the profession.

Unfortunately you just didn't do it. Unfortunately, you just didn't do it. You got involved in this thing. There is no question in my mind as to your involvement in it. There is no question in my mind as to what you did. I think the evidence is resounding, in my judgment. While you did not profit to the extent that the other two gentlemen did, who I sentenced before, Doctor Markoff and Mr. Console, you did profit. You did continue. You had the freedom to leave and the freedom to stay, as these, and you didn't do it.

I feel sorry for your family, for your dear wife who is here today. I feel sorry for your children. But, again, I cannot let that overcome that which I have to do. Society's values must be

vindicated. Society's values must be employed. The public must know that the system, itself, is vigilant (sic) and will not permit greed to interfere with ethics and morality.

Greed has no place in our profession. . . .

[Exhibit B to Appendix, OAE brief, at 97-98]

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A criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1) (formerly R. 1:20-6(c)(1)). An independent examination of the underlying facts is not necessary to ascertain guilt in this matter. In re Leahey, 118 N.J. 578 (1990). The sole issue to be determined is the extent of final discipline to be imposed. R. 1:20-13(c)(2) (formerly R. 1:20-6(c)(2)(ii)). Pursuant to the rule, a "serious crime" disciplinary action includes any federal felony or any crime involving misrepresentation, fraud or deceit. R. 1:20-13(b)(2) (formerly R. 1:20-6(b)(2)). Conviction of a serious crime as presented herein generally warrants disbarment. In re Lunetta, 118 N.J. 443 (1989) (disbarment for "protracted criminal conspiracy" that spanned eight months); In re Zauber, 122 N.J. 87 (1991) (continuing an sophisticated scheme with conviction of RICO conspiracy and kickbacks resulted in disbarment); In re Messinger, 133 N.J. 173 (1993) (disbarment even when the attorney was not the "mastermind" behind conspiracy and fraudulent securities transactions). But see In re Giordano, 123 N.J. 362 (1991) (suspension for three years, despite use of lawyer's skills in a conspiracy, when there was only one incident and no indication that attorney was motivated by greed).

In this matter, the courts have determined that respondent was involved in numerous fraudulent claims filed over a period spanning more than a decade. The Board has, therefore, unanimously determined that disbarment is mandated.

Respondent is also required to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated:

May 11<sup>th</sup>, 1995

By:



Raymond R. Trombadore  
Chair  
Disciplinary Review Board