

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-249

IN THE MATTER OF :
BRUCE E. FOX, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 21, 1994

Decided: February 1, 1995

William R. Wood appeared on behalf of the Office of Attorney Ethics.

Robert S. Eisenberg appeared on behalf of respondent.

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

This matter was before the Board on a recommendation for public discipline made by Special Master Michael L. Kingman. The complaint charged respondent with violations of RPC 1.1(a) (gross neglect in seven cases); RPC 1.1(b) (pattern of neglect); RPC 8.4(b) (commission of a criminal act in two cases); RPC 8.4(c) (conduct involving dishonesty); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The misconduct in two matters involved bribing a court clerk to backdate the filing of two personal injury complaints for which the statute of limitations had recently expired. Respondent completed a pre-trial intervention ("PTI") program for his violations of N.J.S.A. 2C:5-2 (conspiracy to commit official

misconduct) and N.J.S.A. 2C:27-2 (bribery of a public servant). The misconduct in the remaining matters involved missing the statute of limitations in five instances. While respondent does not deny the alleged misconduct, he has argued that his conduct is excused or mitigated by severe alcoholism and the circumstances of this case.

Respondent was admitted to practice law in New Jersey in 1974. He has no history of prior discipline. He has not engaged in the practice of law since December 1990, when he entered an in-patient program for alcoholism. He was placed on disability inactive status by consent order dated January 23, 1991 and that status continues. In 1993, respondent became licensed as a hypnotherapist and practices in that field in Florida.

A. Mango and Bauso backdated complaints

Respondent was retained by Philip Mango in August 1988 and by Lisa Bauso in November 1988, in each case to file a lawsuit for personal injury. He missed the two-year statute of limitations in the Mango matter on August 20, 1990. Shortly thereafter, he asked a clerk at the Hudson County courthouse to backdate the filing of the complaint to August 20, 1990. Respondent paid the clerk \$50 or \$60 for the "favor."

Respondent missed the two-year statute of limitations in the Bauso matter on November 14, 1990. On December 5, 1990, he asked the same clerk to backdate the filing of the complaint. She dated it October 25, 1990.

When the clerk's supervisor observed that the docket number in Bauso corresponded to the sequential numbering for December 5, 1990, not for October 25, 1990, she questioned the clerk about the date. Investigators from the Prosecutor's Office took a statement from the clerk on December 6, 1990 at the Prosecutor's Office. Exhibit OAE-2. (Although page 1 of that exhibit stated the date as "12/5/90," the Prosecutor's Office investigator corrected, at pages 10 and 11, the date to December 6, the day after the Bauso backdating and the day before the bribe was paid).

On December 7, 1990, the Hudson County Prosecutor's Office recorded a telephone conversation from a pay phone between the clerk, with her consent, and respondent, during which they discussed the backdating. Specifically, the clerk told respondent that her supervisor had questioned her about the filing date. The clerk asked respondent for money. He said he had \$200 and suggested that she come over to his office in Bayonne in about two hours. Exhibits OAE-5 at 5 and OAE-6. About two hours later, the investigators provided the clerk with a transmitter and drove her to respondent's office. Respondent paid the clerk \$220 for the "favor." Respondent was arrested. Exhibit OAE-5 at 13-14.

Investigators from the Prosecutor's Office took a statement from respondent at a hospital on December 11, 1990. Exhibit OAE-1. A criminal complaint had been filed on December 7, charging respondent with conspiracy to commit official misconduct and bribery. He entered PTI in April 1991 and was discharged in November 1991. His criminal record was expunged in September 1993.

B. Romeo and other matters: neglect of cases

Between October 28 and December 3, 1990, respondent missed the two-year statute of limitations on five other personal injury cases listed in the formal complaint (Romeo, Sheppard, Anderson, Lawrence and Phillips). Complaints were never filed on these matters, which were referred to respondent's malpractice insurance carrier. Exhibits J-1 and J-2; 1T34.¹ Respondent did not dispute the allegations of the formal ethics complaint. Time ran out on these matters during respondent's heaviest drinking period and within a five-week interval.

* * *

Respondent did not deny that his conduct was unethical. To the contrary, he confessed that he used a blank temporary check to pay the filing fee in the first case (Mango) in August 1990, typing the attorney business account title and number himself, knowing his actions were wrong. OAE-1 at pages 7-13 in evidence. He acknowledged that he knew, in 1990, that backdating the complaints was wrong and unethical. According to respondent, had he been sober at the time, those acts "never would have occurred." 1T45-56. He conceded that he carried out a plan, albeit in an intoxicated, robotic state he described as "blackout." 1T71-72.

¹ 1T denotes the transcript of the hearing before the Special Master in the morning of April 11, 1994, in Hackensack; 2T denotes the transcript of the hearing in the afternoon of April 11, 1994, in Jersey City; 3T denotes the transcript of the hearing on April 12, 1994, in Hackensack.

Respondent testified that he was often in a "blackout state which is another term for an altered state of consciousness," including the two times he was in contact with the clerk who filed the Mango and Bauso complaints. 1T31. On one of those two occasions, he panicked when he left the courthouse because he completely forgot where he had parked the car. 1T64. As a further example of a "blackout state", he claimed he had no recollection of his car accident in October 1990. 1T67-68. In a "blackout state", he functioned on an entirely different level and could not "think clearly, logically, rationally."

Respondent provided no other testimony or evidence to corroborate his claims of "blackout state" during the two bribery incidents.

The record shows that respondent was capable of functioning appropriately despite his heavy drinking in late 1990. Respondent offered character testimony from several attorneys who noted respondent's excellent reputation for the past twenty years, yet also observed changes in 1990: in attention span, appearance, and grooming; occasional sick days in 1990; and apparent intoxication at a 9:00 a.m. appointment. 2T4-17, 3T33-36. The OAE countered by offering testimony of two attorneys who had cases with respondent and who noted respondent's ability to handle those cases competently and in a professional manner. 3T7-21, 21-33. Indeed, on September 18 and October 16, 1990, the period immediately preceding the expiration of the statute of limitations in Romeo and the other four matters, respondent was sufficiently competent

to timely and properly file personal injury complaints in four matters. OAE-9, 10, 11, 12 in evidence; 1T48-54.

Respondent testified that he started drinking heavily in the mid-1980s. He started a rehabilitation program in the late 1980s at the insistence of his wife and colleagues, but was unsuccessful. He had rented an office from another attorney until that attorney asked him to leave due to his drinking. At his worst time in 1990, he went to a corner bar near his office at 7:00 a.m. for drinks, and drank about two quarts of vodka in the course of a day. In late 1990, he sometimes fell down drunk on the floor. 1T25-27, 60-61. His primary secretarial help was his wife, who was employed in Bayonne and worked in the office after her regular job and sometimes during lunch. 1T24, 46-47.

In June 1990, respondent was in an outpatient program at Genesis, in Union, New Jersey. He entered (but did not complete) a one-month inpatient program at Keystone Center in Pennsylvania, from July 28 to August 6, then participated in Alliance at St. Barnabas Hospital, in Livingston. On October 15, 1990, he was charged with DWI after crashing into the rear of a neighbor's house. He was extricated by the Jaws of Life, unconscious, with a BAC of .347 and hospitalized in New York. 1T28-29. He was an inpatient at St. Barnabas Hospital for detoxification from December 7 through December 12, 1990, immediately followed by one month at Silver Hill, a rehabilitation center in Connecticut. 1T38-39. Medical reports from these various programs were offered into evidence by respondent. The Silver Hill reports indicate that

respondent initially tied his drinking problems to stress caused by his law practice.

On January 23, 1991, respondent was placed on disability inactive status by consent order. He was in therapy, between December 1992 and September 1993, with psychologist Steven Knoblauch, Ph.D., of Hoboken. Knoblauch recommended respondent's reinstatement as an attorney in his report dated January 23, 1994. Exhibit R-2.

Respondent relocated to Florida in September 1993, primarily to help care for his eighty-six-year-old father. 1T40,41. He received training to become a clinical hypnotherapist. Since late 1993, he has had a practice in that field in North Miami Beach. 1T21,44. Respondent still attends AA meetings frequently.

In addition to extensive information provided by respondent concerning his alcoholism and attempts at sobriety, respondent testified, by way of mitigation, about his difficult relationships with his parents, which also caused him considerable stress. His parents were "extremely strict disciplinarians." His father treated him like he was "never good enough. If I got A's and one B, I got smacked around for not getting all A's . . . If I was working for a municipal agency or a county agency, how come I wasn't working for the United States Government." His mother abused him as a child. 1T15-17. His parents refused to attend his first marriage ceremony; after one and one-half years that marriage was annulled. 1T17.

Respondent had been active in his community. He served as assistant prosecutor in Hudson County and later as Hudson County Assistant Counsel; he served on a district ethics committee in the 1980s; he was active in the county bar association; and he was a member of the ABA, NJSBA and American Arbitration Association. 1T16-20.

* * *

The Special Master found clear and convincing evidence that respondent's actions in the Mango and Bauso matters were undertaken in a knowing and planned manner. He rejected respondent's alcoholism, both as a defense and as a mitigating factor. Citing the statements in the medical reports that respondent perceived the stress of his law practice as a factor in his alcoholism, the Special Master found no evidence that respondent "would be unlikely to again succumb to the pressures which ultimately resulted in the commission of the illegal acts referred to in the complaint."

The Special Master determined that respondent's conduct violated RPC 8.4(b), (c) and (d) and that his neglectful conduct violated RPC 1.1(a) and (b). The Special Master recommended public discipline.

CONCLUSION AND RECOMMENDATION

Following a de novo review of the record, the Board is satisfied that the Special Master's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence. Respondent violated RPC 8.4(b), (c) and (d) in Mango and Bauso, and RPC 1.1(a) and (b) in five additional matters.

Bribery of a public official is among the more serious offenses an attorney can commit, and generally results in disbarment. It strikes "at the heart of the attorney's honesty and trustworthiness as an officer of the court. . . . It has devastating consequences to the bar, the bench and the public, and especially the public's confidence in the legal system. No sanction short of disbarment will suffice to repair the damages." In re Hughes, 90 N.J. 32, 36-37 (1982) (disbarment for bribery of IRS agent to remain silent about altered and falsified federal tax lien releases in the attorney's father's estate, which attorney intended to pay off himself). The majority opinion there noted that such bribery "has invariably resulted in disbarment." It distinguished bribery from forgery, for which "no attorneys have been disbarred . . . when the act was committed for reasons other than personal gain." The Court recognized that

. . . the mitigating factors in this case appear to be substantial. Hughes did not commit these illegal acts for personal gain. . . under the facts of this case, these considerations are not sufficient to overcome the presumption that attorneys who bribe public officials are a threat to the public and the legal system. . . The combination of these two offenses compels us to conclude

that the public will not be adequately protected by any disposition short of disbarment. (emphasis added).
[Id. at 38-39]

Adherence to the strict general rule of disbarment in Hughes mandates disbarment here. The Board does not find that respondent's misconduct was clearly a product of his severe alcohol addiction, i.e., that his alcoholism constituted a defense to his actions. The OAE conceded that respondent is a recovering alcoholic and that the unethical conduct occurred during the alcoholic addiction. However, the OAE argued that the underlying cause is irrelevant because respondent's actions were knowing and deliberate, as the record shows and respondent acknowledges, at least in hindsight.

At the most severe stage of alcoholism - commonly called "hitting bottom" - both a person's judgment and actual awareness could be impaired, causing a person to act in a manner inconsistent with normal, sober behavior. On that basis, it is possible for the circumstances in some cases to be equivalent to those "in which an attorney's loss of competency, comprehension or will" are "of such magnitude that it would excuse or mitigate conduct that was otherwise knowing and purposeful." In re Hein, 104 N.J. 297, 303 (1986) (disbarment for misappropriation of \$1,400 in mortgage proceeds), citing In re Jacob, 95 N.J. 138 (1984) (disbarment for misappropriation of \$30,000 in trust funds not excused or mitigated by thyrotoxicosis). The Court observed in Hein that the attorney did not appear to be "continually in a dependent state, since he was able to attend to his practice. . . . We do not purport here to

determine definitively the effect alcohol dependency can have upon the volitional state of an individual. . . . We wish that we knew more. . . .[U]ntil we [do], perhaps until science and society know more, we shall continue to disbar in these [misappropriation] cases." Ibid.

The question here is whether this respondent's alcoholism was so severe as to impair his cognitive ability, that is, to prevent him from knowing the difference between right and wrong at the time of the unethical conduct. The Board has concluded that it was not. Here, the record does not strongly indicate that respondent was unable to form the requisite intent for bribery. Accordingly, disbarment is the only appropriate sanction under Hughes, supra.

In conclusion, although the Board is sympathetic to the circumstances of this case, the proofs do not rise to the level necessary to avoid a recommendation for disbarment. A six-member majority of the Board so recommends. Three members would have imposed a three-year suspension, based on respondent's rehabilitation and efforts in the past four years to overcome his alcoholism.

The Board further recommends that respondent be required to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 2/1/95

By: Raymond R. Trombadore
Raymond R. Trombadore
Chair
Disciplinary Review Board