SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-225

IN THE MATTER OF	:
PASCAL P. GALLERANO,	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 8, 1993

Decided: April 20, 1994

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

Respondent waived his appearance for oral argument.

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

This matter was before the Board based on a Motion for Final Discipline based upon a criminal conviction, filed by the Office of Attorney Ethics (OAE). R.1:20-6(c)(2)(i).

Respondent was admitted to the New Jersey bar in 1972. He was indicted by the State Grand Jury on January 30, 1990. The indictment charged him with the solicitation and acceptance of a gift while a public servant, in violation of N.J.S.A. 2C:27-6. That section provides that "(a) public servant commits a crime if he, 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." The

indictment charged that respondent, as Deputy Director of Compliance, Division of Alcoholic Beverage Control (ABC),

> knowingly and under color of his office, directly and indirectly did solicit, accept and agree to accept a benefit not allowed by law, that is, $2,500, to influence the performance of his official duties regarding a matter then pending before the Division of Alcohol Beverage Control relating to William V. Gadek, III and Sports Cafe, Incorporated, the said matter involving an investigation to determine the nature and extent of any enforcement action to be taken against the Alcohol Beverage Control license held by the Sports Cafe, Incorporated due to an alleged undisclosed ownership interest in that license, the said money to assist said PASCAL P. GALLERANO in the purchase of a new automobile, contrary to the provisions of N.J.S.A. 2C:27-6, and against the peace of this State, the government and dignity of the same.
>
> [Exhibit A to the OAE's Brief]

This event spanned the period from January 10, 1990 to January 19, 1990. A detailed recitation of the events leading to respondent's arrest is contained in Exhibit C to the OAE's brief in support of its Motion for Final Discipline. In fact, as reflected in that exhibit, respondent's conversations regarding this matter were, unbeknownst to him, recorded by the attorney with whom he was dealing, who represented Sports Cafe, Inc. Respondent, who was represented by an attorney throughout the criminal proceedings, pleaded guilty to the charge of violation of N.J.S.A. 2C:27-6, on March 20, 1992, pursuant to a plea bargaining agreement. At the time of his guilty plea, respondent admitted that, while Deputy Director of Compliance, Division of Alcoholic Beverage Control, he contacted Kenneth Weiner, Esq. to ascertain whether "he could get my son a better deal on an automobile that my son was contemplating purchasing and at /SEUS zone dealership. My understanding was Mr.

Weiner was the attorney for that organization." At that time, respondent "thought he was representing both licensee and the party which was unknown, undisclosed interest." Exhibit B to the OAE's brief at 7. Respondent denied any "real" role in that ABC matter. Respondent described his subsequent involvement as follows:

> MR. GALLERANO: When, in my office, was around 11:30 and Mr. Weiner calls, said he was in Trenton, that every time he is in Trenton he usually has a bite either at a place called Riverside Restaurant. He asked if I wouldn't join him. I told him I'm sorry but I was busy, I said, at the time. I tried to beg off, but he kept insisting. He said can only be a short time.
>
> So it was around time for me go to for a cup of coffee. All right, I will meet you. So I asked my secretary if she knew where Riverside Diner was. She didn't, but I was on highway 27, she pointed me to 27, I drove for 15 minutes on highway 27. I couldn't locate the place. I was returning to my office when I spotted the Riverside Diner Restaurant on Route 9 and Mr. Weiner was waving me in and as I was parking in front of the place, he said no, don't park there, says is a parking lot at the -- for the restaurant, he says follow me. I followed him to this parking lot and I parked next to him.
>
> He says, you know, before we go into the restaurant, he says, come in here in the car for a minute.
>
> MR. D'ALESSANDRO: What happened when you were in the car?
>
> MR. GALLERANO: When he got in the car he reached into his pocket and pulled out a white envelope and says here, this is for you, and at that moment I accepted the envelope.
>
> MR. D'ALLESANDRO: What was in the envelope?
>
> MR. GALLERANO: I discovered later that it was $2,500 and that's when the State Police opened

the envelope in my presence and it was $2,500 cash.

MR. D'ALLESANDRO: At any time did you have several conversations that you had with Mr. Weiner, did you tell him you could help him in any way?

MR. GALLERANO: Only insofar as with the corrective action we spoke of by the director that the licensee had to take in correcting the violation.

MR. D'ALLESANDRO: Did you ever suggest to him if you became director, you will assist assist [sic] him in any way?

MR. GALLERANO: Was some conversation to that if I became the director, certainly I would probably approve the settlement that the -- go along with the settlement that the director had initiated.

MR. D'ALLESANDRO: That's it.

THE COURT: Okay. Satisfied?

MR. LEVY: Mr. Gallerano?

MR. GALLERANO: Yes.

MR. LEVY: At the time he gave you the envelope, you understood that there was money in that envelope; didn't you.

MR. D'ALLESANDRO: Would you like to review transcripts of that answer to -- Speak louder.

MR. GALLERANO: Yes, all the substance of the money in an envelope.

MR. D'ALLESANDRO: Thank you.
[Exhibit B at OAE's brief at 8-10]

On October 23, 1992, respondent was sentenced to probation for a period of one year and a fine of $3,000. Full payment of the fine was to conclude the probation. Moreover, in accordance with N.J.S.A. 2C:51-2c, respondent's conviction forever barred him from

future government employment. His conviction further subjected him to loss of his state pension.

Respondent was temporarily suspended from the practice of law on April 6, 1992, pursuant to R.1:20-6(b)(1). He remains under suspension at this time.

* * *

Although respondent waived his appearance before the Board, he submitted a letter-memorandum in lieu of appearance. In it, respondent seemingly contended that he was entrapped by the State Police during the meeting of January 19, 1990. He denied any "criminal purpose of intent on [his] part. Acceptance of the $2,500 did not influence me in the performance of any duty nor was it for any personal gain." Respondent's letter-memorandum at 3. Respondent further contended that his record as a disabled veteran of World War II should be considered, as should the fact that he never previously compromised the integrity of his office as a public official and attorney. Respondent argued that, under the circumstances, disbarment would be inappropriate, particularly since he is currently "retired completely from the practice of law."

In its brief, the OAE noted the similarity between this case and a recent matter involving a former deputy attorney general, which resulted in disbarment. In re Jones, 131 N.J. 505 (1993). In the OAE's view, disbarment is also required in this matter.

CONCLUSION AND RECOMMENDATION

A criminal conviction is conclusive evidence of an attorney's guilt in a disciplinary proceeding. In re Goldberg, 105 N.J. 278, 280 (1987), In re Rosen, 88 N.J. 1, 3 (1991); R.1:20-6(c)(1). No independent examination of the underlying facts is, therefore, necessary to ascertain guilt. In re Bricker, 90 N.J. 6, 10 (1982). The only issue to be resolved is the quantum of discipline to be imposed. In re Goldberg, supra, 105 N.J. at 280; In re Kushner, 101 N.J. 397, 400 (1986). Respondent's guilty plea established that he engaged in criminal conduct that was prejudicial to the administration of justice, in violation of RPC 8.4(b) and (d). Respondent's criminal offense met the definition of "serious crime", as contemplated by R.1:20-6(b)(2), and was also directly related to the practice of law and to respondent's position as Deputy Director of Compliance, Division of Alcohol Beverage Control. Moreover, his action was designed to bring personal financial gain. His criminal offense was particularly egregious because of the level of his public position. When a member of the bar acts corruptly in the exercise of his or her official service, the public injury is intensified. In re Gordon, 58 N.J. 386, 387 (1971). Attorneys in public positions are charged with the public trust. Their high visibility to the public subjects their conduct to closer scrutiny. Similarly, in the event of misconduct, the degree of discipline imposed must be higher in order to ensure the public that any transgressions will be harshly sanctioned and,

thus, restore the public's confidence in the integrity of the system.

There remains the issue of the appropriate level of discipline for this respondent's serious criminal offense. Where a crime of dishonesty touches on the administration of justice, the offense is deserving of severe sanctions, and ordinarily requires disbarment. In re Verdiramo, 96 N.J. 183, 186 (1984) (citing In re Hughes, 90 N.J. 32 (1982)). In cases involving solicitation or acceptance of personal financial gain through the commission of a crime or in cases where an attorney has played a continuing role in a criminal conspiracy, the Court has ordered disbarment. In re Lunetta, 118 N.J. 443 (1989) (attorney disbarred for involvement in protracted criminal conspiracy to receive stolen securities); In re Goldberg, 105 N.J. 278 (1987) (attorney disbarred for continuous participation in crime motivated by personal greed, which involved the use of the lawyer's skills to assist in the engineering of a criminal scheme); and In re Tuso, 104 N.J. 59 (1986) (attorney disbarred for conspiring to commit bribery, soliciting misconduct and offering a bribe to a public official, a school board member, to serve his own financial needs).

Here, respondent's responsibilities to the public were greatly compromised when he consciously placed his personal interest above the duties required of him as an attorney and as a public official. He forsook his client, the public, for his own interest. Respondent's disclaimers are simply "too little, too late". He was properly investigated at the time of his plea and sentencing.

It is clear that respondent was well aware of his options at the time of these events. It is also clear that respondent has admitted to the crime charged, and must face the consequences flowing from his conduct. It is further clear that financial gain was at the root of respondent's actions, although they directly benefitted a member of his family, rather than himself. That does not, however, excuse or in any way mitigate his misconduct.

The Board sees no distinction between Jones and the case at hand. If anything, Jones presented a more compelling case for discipline less than disbarment in light of the attorney's youth and inexperience. The Board is convinced that respondent's "character and fitness have been permanently and irretrievably lost." In re Templeton, 99 N.J. 365, 376-377 (1985). Accordingly, the Board unanimously recommends that respondent be disbarred.

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

Dated: 4/20/94

By: Raymond R. Trombadore
Chair
Disciplinary Review Board