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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 93-053

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IN THE MATTER OF :  
: J. WARD GUILDAY, :  
: :  
AN ATTORNEY AT LAW :  
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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: March 24, 1993  
Decided: April 19, 1993

John J. Janasie appeared on behalf of the Committee on Character.  
Respondent appeared pro se.

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

This matter was before the Board based upon a Supreme Court  
Order, dated July 7, 1992, directing that the Committee on  
Character conduct a hearing to develop a record to be reviewed by  
the Board in order to determine whether respondent's license to  
practice law in New Jersey should be revoked. Following a hearing  
on September 9, 1992, the Committee on Character filed a report  
recommending the revocation of respondent's license.

\* \* \*

Between 1978 and 1987, respondent, who is now in his early  
thirties, was arrested five times, charged with reckless driving on  
one occasion, and charged with disorderly conduct in another.  
Specifically, respondent was arrested for the first time in August  
1978, in Sea Isle City, New Jersey, when he was seventeen years of

age, for driving under the influence of alcohol (DWI). That charge was ultimately dismissed and expunged from his record. In 1980, while a college student, respondent was again arrested in Rehoboth, Delaware, for unlawfully taking and defacing a Rehoboth police shirt (respondent was caught wearing a discarded police shirt that he had found on the beach when he was sixteen years old). These charges were dropped after respondent was required to pay court costs of \$19.50. That same year, respondent was again arrested on a DWI violation in Newark, Delaware. This arrest subsequently led to a conviction, a fine and mandatory attendance at DWI classes. Barely two years later, in September 1982, respondent was arrested for a DWI violation in Rehoboth, Delaware. This arrest led to a fine and suspension of his driving privileges in Delaware for one year. One year later, in September 1983, respondent was again arrested for a DWI violation in Media, Pennsylvania. This charge was eventually dismissed. In 1985, one year before he applied to law school, respondent was charged with reckless driving in Massachusetts, a charge that was later dismissed. Finally, in 1987, after he had completed his first year of law school, respondent was charged with disorderly conduct in Norfolk, Virginia. Respondent paid a fine for this violation.

In April 1986, respondent applied to the Delaware Law School of Widener University. Although the application called for the disclosure of his arrests, respondent concealed that information from the law school (Exhibit C-4).

On February 20, 1989, respondent applied for admission to the bar of the Commonwealth of Pennsylvania. Question 14(b) of the application asked whether respondent had ever been arrested or prosecuted for any crime, other than a summary motor vehicle violation. Respondent answered "no" (Exhibit C-5). Approximately one month later, on March 24, 1989, respondent submitted an application to the Committee on Character of the Supreme Court of New Jersey. Respondent failed to disclose the suspension of his driving privileges or his arrest record, even though Questions X(B), and XIII(A) and (C) requested that information. Additionally, he answered "no" to the question of whether he had applied for a license to practice law in any other state. That was untrue inasmuch as respondent had filed an application for admission to the Pennsylvania bar approximately one month earlier. After completing the New Jersey application form, respondent signed the following certification:

I understand that the full and correct completion of this Statement of Candidate is a prerequisite for the Committee on Character's consideration of me as an applicant for admission to the practice of law. I understand further that I have a continuing duty to disclose relevant information to the Committee and that that duty continues up to the date of my admission to the Bar of New Jersey. In meeting that obligation, I will submit all supplemental information in the form of an affidavit or certification, together with such supplemental documentation as the Committee may deem necessary for its review.

I hereby certify that I have read all of the questions in this Statement of Candidate and

that all of my answers are true and complete. I am aware that if any answers are willfully omitted or false, I may prejudice my admission to the Bar of the State of New Jersey, my subsequent good standing as a member of the Bar, and may subject me to such penalties as are provided for by law.

[Exhibit C-3 at 16]

Fingerprint checks conducted by the FBI and the New Jersey State Police were negative. Thereafter, respondent was certified for admission without further inquiry. He was admitted to practice in New Jersey in December 1989, after he passed the bar exam. At the same time, he was admitted to the Pennsylvania bar.

In 1990, respondent completed an application for admission to the bar of the State of Delaware. As with the Pennsylvania and New Jersey applications, respondent failed to disclose any of his arrests or other violations of law, notwithstanding that question 21 called for such information. Following a routine character and fitness investigation in 1990, the Delaware Board of Bar Examiners learned that respondent had failed to disclose, on his bar application, his 1980 arrest in Rehoboth, Delaware, for unlawfully taking and defacing a Rehoboth police shirt. When William Wade, Esq., the Board member assigned to investigate respondent's application, inquired about this omission, respondent replied that

(a)t the time of filling out the bar application I did not recall this event and/or if I did register it, I did not think it significant for application purposes and therefore failed to place it therein. I apologize for my misunderstanding and oversight.

Even when presented with the opportunity to disclose his other arrests, respondent concealed that information from Mr. Wade.

Thereafter, the Delaware Board of Bar Examiners allowed respondent to take the bar exam, which he passed. In early 1992, respondent requested the Delaware Board of Bar Examiners to certify his qualification for his admission to the bar. Performing a final review of respondent's application, according to its normal procedures, the Delaware Board stumbled upon respondent's 1983 DWI arrest in Media, Pennsylvania. On February 12, 1992, Mr. Wade, on behalf of the Board, requested that respondent provide the reasons for his failure to reveal the 1983 arrest. By letter dated February 25, 1992, respondent once again apologized for his omission, contending that he had repressed the incident:

You have also brought to my attention a long repressed memory of an instance where I was charged with driving under the influence on or about September 8, 1983. I am sorry to have to be reminded of such a negative instance in my life, especially under the circumstances of a delay in my admission to the Bar.

Once again, respondent disclosed only the specific violation identified by Mr. Wade and continued his pattern of concealing his other arrests. Based on respondent's failure to disclose his 1982 and 1983 arrests, the Delaware Board concluded that respondent had failed to produce evidence satisfying the requirements of good moral character essential to the admission to the practice of law. Respondent then requested a hearing, whereupon, for the first time, he disclosed his other arrests and violations of law. At the hearing, respondent acknowledged his obligation to disclose his prior criminal record on his law school application and on his

applications to the Delaware, Pennsylvania and New Jersey bars. He explained that he had not disclosed those events because he was "ashamed" and "embarrassed." Finding, however, that respondent was under an "unremitting duty to be candid with the Board throughout every stage of the admissions process" and that he had "disregarded his obligations throughout the law school and bar application process. . . for a period of more than five years," the Delaware Board denied respondent's application for certification on April 15, 1992 (Exhibit C-8).

Shortly before that hearing, on March 24, 1992, respondent directed a letter to the New Jersey Board of Bar Examiners, disclosing his prior arrests and two other violations. The letter also stated that

I am forwarding the disclosure to you at this time in the hope of making my Bar records complete and in maintaining the good standing with the Bar that I have had the privilege of holding over the past two and a half years.

I apologize for not providing this information sooner. Please contact me if there is any other information and/or explanation I may give in order to satisfy Board requirements.

[Exhibit C-9]

As noted above, following a hearing, the Committee on Character recommended that respondent's license to practice law in New Jersey be revoked, reasoning that respondent had engaged in a practice of deception from 1986 until 1992. Refraining from making a specific finding as to whether respondent would have been certified in 1989, had he disclosed the relevant information on his

original application, the Committee concluded that "his continuing failure to disclose and his certification of false information demonstrate[d] his lack of fitness to be admitted to practice." (Report and Recommendation at 11). The Committee rejected respondent's following explanation for his non-disclosure:

Well, I have always, I use [sic] to sail as a Merchant Marine Officer and I led a pretty reckless life obviously from the record, but I wanted to change the course of my life about 1986 when I entered law school and I tried to block out what I considered non-professional conduct, but I didn't do it intentionally, like I didn't think when I answered the questions, I didn't read the questions and say, Oh, I'm going to lie on this, I just always blocked it out. Immediately if I saw a question like that, I wrote 'no' and did not make a conscious decision that, O well, that's not a true answer, I just wrote 'no'. As a matter of fact it's not only on these applications, I mean my friends and my wife, nobody knew about that, that I had been in trouble in the past and I just -- it wasn't something that I bragged about, because I didn't think it was very admirable, and I was extremely embarrassed and humiliated that I would allow myself to get involved like that. So, when I was confronted with generic questions about instances in general, I would write 'no' or 'not applicable' just off the top of my head.

I just wrote 'no' all the time, I was trying to change the course of my life and I was trying to leave that all in the past. But I can also assure you it is an isolated incident and only in this case, other than that I've been the most forward and honest person, it's true. I was an honest person, but for these particular applications where I tried to subconsciously, really just bury it. And now I've had to face the fact again, and it's very, very difficult. The past six months

have probably been the worse [sic] months in my life since I had to start dealing with this problem and face it. But I hope by telling everybody the truth now that everything will work out.

[T9/9/1992 10-13]

The Committee also declined to accept the explanation by David E. Raskin, M.D., a psychiatrist whom respondent consulted, that respondent was "traumatized about reporting past offenses" because of a strict Catholic upbringing and high school education, because of his relationship with his father, "a punitive and critical parent," and because of his college's military authoritarian approach to education (Exhibit C-10).<sup>1</sup>

#### CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board agrees with the Committee on Character that respondent knowingly omitted material information on his law school application and on the Delaware, Pennsylvania and New Jersey bar applications.

Like the Committee on Character, the Board rejects respondent's explanation that he was guided not by the intent to conceal his arrests from the bar authorities but, instead, by his repression of those incidents, which had brought him considerable

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<sup>1</sup> At the Committee's urging, respondent submitted to a psychological examination by Arthur H. Schwartz, the Chairman of the Department of Psychiatry at the Robert Wood Johnson Medical School. Dr. Schwartz concluded that a psychiatric diagnosis was not indicated and that it was "up to the Committee to determine whether or not Attorney Guilday's ethical transgressions are sufficient to warrant the revocation of his license." See Letter-Report of October 6, 1992.



embarrassment and humiliation. While the Board understands respondent's desire to turn over a new leaf, the Board finds that his failure to reveal his criminal record under circumstances that unequivocally called for the utmost candor was conscious and deliberate. The record - which includes the medical reports - leaves no doubt that respondent did not repress those unpleasant incidents to the extent that he completely excluded them from consciousness. Rather, he exercised selective self-restraint in not disclosing them because he was ashamed. Moreover, respondent's misdeeds were not confined to one occasion. He engaged in a pattern of deception and, when given the opportunity to rectify his wrongdoing, he chose to perpetuate it. As the Court remarked in a similar case,

[c]andor and honesty are a lawyer's stock and trade. Truth is not a matter of convenience. Sometimes lawyers may find it inconvenient, embarrassing or even painful to tell the truth. Nowhere is this more important than when an applicant applies for admission to the bar.


[In re Scavone, 106 N.J. 542, 553 (1987)]

In light of the foregoing, the Board unanimously recommends that respondent's license to practice law be immediately revoked, without prejudice. The Board is not persuaded that this case warrants a recommendation for a suspended revocation, see In re Gouiran, N.J. (1993) and In re Scavone, supra, 106 N.J. 542 (1987), because of insufficient evidence of rehabilitation. As properly noted by the Committee on Character, although it is true that

respondent was a young man of seventeen years of age when he was first arrested, he was twenty-seven at the time of his last arrest and over thirty when presented with the opportunity to correct his misrepresentations on the several applications; as late as March 1982, respondent was still attempting to conceal the truth from the Delaware authorities. One member did not participate.

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

Dated: 4/19/1993

By:   
Raymond R. Trombadore  
Chair  
Disciplinary Review Board