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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-034

IN THE MATTER OF :
FRANK J. HOERST, III :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: March 24, 1993

Decided: August 3, 1993

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

Edward N. Fitzpatrick 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 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 1974. In 1983, he was appointed Prosecutor of Salem County. On June 11, 1991, respondent pleaded guilty to the third degree crime of theft by failure to make required disposition of property received, in violation of N.J.S.A. 2C:20-9. Specifically, respondent withdrew approximately \$7,500 from the Salem County Forfeiture Fund to pay for a trip to California, in August 1988, for himself, his female companion (now his wife), Salem County First Assistant Prosecutor Francis A. Paladino, Jr., and Paladino's wife. The purpose of the

trip was to attend a Capital Litigation Conference in San Francisco sponsored by the National College of District Attorneys. The expenses included air fare, lodging and meals for all four individuals while in San Francisco, as well as in Monterey, California, where they spent approximately three days prior to proceeding to San Francisco.

According to Paladino (who was not the subject of any criminal or disciplinary charges), the purpose of the trip to Monterey was to discuss structural changes in the Prosecutor's Office. He testified that, although there was no "set agenda" to discuss office matters, he and respondent had had numerous discussions about pending cases, including a capital case, during their stay in Monterey. In his own words, it was a "rather casual meeting, casual retreat." Paladino added that he did not question the propriety of paying for his wife's and respondent's female companion's expenses inasmuch as, at least under the two past administrations, the Prosecutor's Office routinely paid for Prosecutors and Assistant Prosecutors and their spouses to attend conventions.

Respondent's plea agreement provided that he would give \$7,500 in restitution and immediately resign as the Salem County Prosecutor. Ultimately, respondent was admitted into the Camden County Pre-Trial Intervention Program, over the State's objections on the basis that respondent, as the chief law enforcement officer in Salem County, had breached the public trust and that admission into the program would deprecate the seriousness of the offense.

After counseling for one year and the performance of one hundred hours of community service, as provided by the program, the court issued an order granting expungement on January 4, 1993. Respondent is currently a sole practitioner in Salem County.

The OAE requested that the Board recommend to the Court the imposition of public discipline. The OAE declined to recommend the appropriate measure of discipline warranted for respondent's offense.

CONCLUSION AND RECOMMENDATION

Although this matter did not, technically speaking, result in a "criminal conviction," the OAE and counsel for respondent agreed to process this case as a Motion for Final Discipline in accordance with R. 1:20-6. Accordingly, the only issue to be determined is the quantum of discipline to be imposed. In re Goldberg, 105 N.J. 278, 280 (1987).

Respondent's guilty plea established that he engaged in criminal conduct that adversely reflects on his fitness to practice law, in violation of RPC 8.4(b). Respondent's conduct harmed not only himself, but also the entire governmental system inasmuch as the public perceives any misdeeds by a government attorney as that of the government itself. Respondent also harmed the public, to whom he owed his undivided loyalty and zeal. The injury to the public was greater because respondent was a public official. 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). Nevertheless, there is no hard and fast rule that requires the imposition of a certain penalty following the commission of a certain criminal offense. Every disciplinary matter is factually different and must be judged on its own merits. In re Infinito, 94 N.J. 50, 57 (1983).

One of the central goals of attorney discipline is to maintain public confidence in the bar and professionalism of its members, In re Aniz, 126 N.J. 448, 457 (1992), rather than punish the érrant attorney, In re Silverman, 118 N.J. 193, 224 (1988). Mitigating factors are relevant and may be considered. In re Hughes, 90 N.J. 32, 36 (1982).

These proceedings are the only blot in respondent's otherwise stainless professional career. Respondent has served the public's interests with distinction and has enjoyed an unblemished reputation among his peers and public members alike. Approximately seventy letters were filed with the Board attesting to respondent's impeccable reputation as an attorney and as an individual, to the invaluable service he has rendered to the public, to the numerous civic and community activities to which he committed himself, and to the great esteem and respect in which his clients, friends, other attorneys, and law enforcement officials still hold him.

It is undeniable that respondent committed a serious offense. Nevertheless, the Board considered, not by way of excuse, but by way of mitigation, that there were no guidelines prior to this unfortunate incident governing the spending of public funds in

connection with official trips taken by the members of the Prosecutor's Office and their spouses. In addition, respondent was found to be eligible for PTI, which he successfully completed. "This is evidence that there was no serious culpability and that respondent was fully amenable to rehabilitation and self-correction." In re Whitmore, 117 N.J. 472, 479-480 (1990).

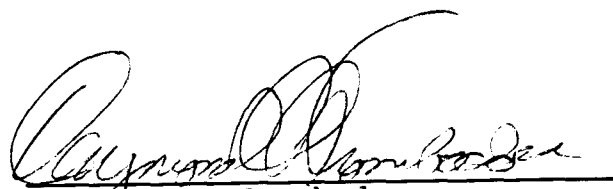
In light of the foregoing mitigating circumstances, to which the Board accorded great weight, the Board unanimously recommends that respondent receive a public reprimand.

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

Dated: _____

8/3/93

By: _____



Raymond R. Trombadore
Chair
Disciplinary Review Board