

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-409

IN THE MATTER OF :
:
WILLIAM R. PEARSON, :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: February 10, 1994

Decided: June 14, 1994

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Angelo J. Falciani, Jr. 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 based upon a recommendation for public discipline filed by the District IV Ethics Committee (DEC). The complaint alleged that respondent violated RPC 1.7(b) (conflict of interest), RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as an attorney) and RPC 8.4(d) (conduct prejudicial to the administration of justice). Immediately prior to the DEC hearing, the parties submitted a disciplinary stipulation as to the facts in this matter. In addition, the stipulation contained an admission by respondent that his conduct had violated RPC 8.4(d). The DEC hearing consisted of counsel's opening and closing statements and of the entry of the stipulation and supporting documents. The

issues remaining before the DEC were the two additional alleged violations and the appropriate quantum of discipline.

Respondent was admitted to the practice of law in New Jersey in 1967. He has been in private practice in Woodbury, Gloucester County. He has no history of discipline.

As the stipulation states, respondent represented Deborah T. Kelsall in a divorce proceeding. On November 17, 1988, the two met in respondent's office at 6:00 P.M., at Kelsall's convenience, to discuss her case. Respondent's secretary was in the office when the meeting began, but left shortly thereafter. After the secretary announced that she was leaving, respondent closed the window blinds in his office and turned off some of the lights. Respondent contended that he had glaucoma and turned off the lights for that reason.

Upon returning to his desk, respondent removed his shoes and placed his feet on his desk. He then began discussing another divorce case that he had handled, involving video-tapes of the couple's bedroom activities, used by respondent during the proceedings. Respondent then asked Kelsall about her marital sex life, stating that he needed the information because her husband might claim "lack of marital rights/warmth in court" (Stipulation, paragraph 9).

Respondent got up a second time, stating that he needed an aspirin. Upon returning to his office, he appeared to set the burglar alarm. Respondent explained that the alarm is a computerized motion detector, set off by any movement, including

the opening of the door. The alarm automatically summoned the police. Respondent stated that the door was not locked and that other building tenants were constantly coming and going. Respondent then began to make comments about Kelsall's sexual behavior. Kelsall answered jokingly at first, but respondent persisted in his comments.

Kelsall had obtained the information she needed from respondent within the first ten minutes of their meeting and attempted to excuse herself, stating that she had to get home. Respondent then made a comment that Kelsall "could not recall verbatim -- something about cold hands, warm other things" (Stipulation, paragraph 12). Thereafter, as set forth in the Stipulation:

13. As a [sic] grievant began to leave, respondent asked if she would give him a fatherly hug. Grievant agreed to the hug, however respondent put his hands on her buttocks as she went to hug him. Grievant stated that she began to protest telling respondent that he was married. Respondent answered by saying she was married too. Grievant stated she was finally able to free herself and headed toward the door. She then recalled that respondent had appeared to set the alarm.

14. Respondent went over and sat on the arm of the couch. He called her over to him saying that he wanted to show her a painting he had acquired. As she got near the couch, respondent took her purse, placed the purse on the sofa then put his arms around her again. He held her close to him -- pushing his head into her chest. Respondent made a comment to the effect of 'quality not quantity' regarding the size of her chest. Grievant stated that her hands were on his shoulders at this point trying to push him away.

15. When grievant was able to pull away again, she stated that she had to go. Respondent then began a discussion regarding grievant's recent loss of weight. She stated that respondent did not apologize for his behavior.

After that evening, Kelsall did not meet with respondent regarding her divorce and hired another attorney to represent her. Respondent was charged with a violation of N.J.S.A. 2C:14-3b (criminal sexual contact). Respondent was admitted into the Pre-Trial Intervention Program (PTI) and the charges against him were dismissed.

Respondent stipulated that his conduct violated RPC 8.4(d) (conduct prejudicial to the administration of justice).

The hearing panel found that respondent had violated RPC 8.4(d), as stipulated. The panel further determined that respondent had not violated the other charged provisions, RPC 1.7 and RPC 8.4(b). With regard to RPC 1.7, the panel stated that the rule was not violated because it contemplates a conflict between the attorney's interests and those of his client. Because respondent's representation of Kelsall ended shortly after the incident in question and because Kelsall retained another attorney and never consulted respondent again regarding the matrimonial matter, the panel determined that RPC 1.7 was not applicable. More simply stated, the panel found that the rule was not controlling because the representation had not continued after the incident and because the rule speaks to conduct in the course of the lawyer's representation.

The panel also determined that respondent had not violated RPC 8.4(b). That finding was based upon its conclusion that the elements of N.J.S.A. 2C:14-3b had not been proven beyond a reasonable doubt. The panel noted that, although the record

reveals that sexual contact, as defined by the statute, had occurred, none of the necessary circumstances under the statute had been demonstrated.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent is guilty of unethical conduct is supported by clear and convincing evidence.

As to the disciplinary rules involved, it is unquestionable that respondent violated RPC 8.4(d), as stipulated. With regard to the alleged violation of RPC 8.4(b), the hearing panel noted that, "[t]hough the standard of proof in disciplinary proceedings is by clear and convincing evidence, commission of a crime must be proven beyond a reasonable doubt. All of the elements of criminal sexual contact have not been proven to that standard." The Board is not necessarily held to the conclusion of the DEC. See In re Rigolosi, 107 N.J. 192, 206 (1987). Nonetheless, because the Board does not deem itself to be the appropriate tribunal to make criminal findings, the Board determined to refrain from making such a determination in this case.

The panel also failed to find a violation of RPC 1.7, apparently based on the fact that respondent's representation of Kelsall terminated after the evening in question. The problem with

this conclusion is that, as the OAE correctly noted, the assault took place during a meeting with Kelsall to discuss her case. Clearly, respondent was Kelsall's attorney on the evening that he assaulted her. RPC 1.7 has not generally been found to apply to situations such as the one at hand, even though the rule addresses conflicts with the "lawyer's own interests," instead of with merely the lawyer's financial interests. Because, however, the record clearly and convincingly establishes that respondent's conduct violated RPC 8.4(d), as stipulated, the Board does not believe it is necessary to reach the issue of whether respondent's actions also violated RPC 1.7. Furthermore, as conceded by the OAE, a finding of a violation of RPC 1.7 - and RPC 8.4(c) - would not warrant a higher level of discipline in this matter.

As to the appropriate measure of discipline, public reprimand has generally been imposed in similar circumstances. In In re Liebowitz, 104 N.J. 175 (1985), the attorney was publicly reprimanded for sexual misconduct with an assigned client of his law firm after he had been tried and found not guilty of the disorderly persons' offense of lewdness. The Court agreed with the finding of the Board that respondent was guilty of conduct prejudicial to the administration of justice. Similarly, in In re Rea, 128 N.J. 544 (1992), the Court imposed a public reprimand for sexual misconduct with an assigned client, resulting in a violation of RPC 8.4(d) and RPC 1.16(a)(1) and (2) (failure to withdraw from representation). But see In re Addonizio, 95 N.J. 121 (1984) (three-month suspension after conviction of fourth degree criminal

sexual contact arising indirectly from an attorney-client relationship, but not related to the practice of law. The Court considered that the conduct was aberrational and unlikely to recur). Here, although Kelsall was not an assigned client, she was going through a divorce and was vulnerable to the advances of an individual who, she trusted, would help her. Respondent took advantage of a client who, because of respondent's status as an attorney, reposed trust and confidence in him. His actions were unacceptable.

In determining the appropriate quantum of discipline, the Board has taken into consideration that respondent has been a member of the bar since 1967 and has not previously been the subject of discipline. In addition, respondent has paid dearly - emotionally and financially - for his misconduct. Although the stipulation is silent in this regard, respondent paid Kelsall \$75,000 in settlement of anticipated litigation arising from this incident. This type of conduct by an attorney, however, should not be tolerated. Accordingly, a six-member majority of the Board recommends a public reprimand, based solely on respondent's violation of RPC 8.4(d). One member dissented from the majority's opinion. That member deemed a private reprimand to be sufficient discipline because the conduct at issue was remote in time, respondent has paid financially for his misconduct and he has been

the subject of earlier publicity arising from this incident. One member recused himself. One member did not participate.

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

Dated:

6/14/94

BY:



Raymond R. Trombadore
Chair

Disciplinary Review Board