

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 95-304

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IN THE MATTER OF :  
CHRISTOPHER K. BARBER :  
AN ATTORNEY AT LAW :

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Decision

Argued: October 26, 1995

Decided: November 18, 1996

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

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 on a Motion for Final Discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13(c)(2), based upon respondent's criminal conviction on two counts of homicide by vehicle, in violation of 75 Pa.C.S.A. 3732.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1990. On November 16, 1992, respondent was involved in an automobile accident that killed David Burghen, an attorney riding in the passenger seat of the vehicle driven by respondent. It appears that respondent and Burghen had been drinking at the Doylestown Inn and Finney's Bar. They left the bars together, with respondent driving Burghen's car at Burghen's request. Respondent drove the car at an excessive rate

of speed, involving the vehicle in a one-car accident. Burghen died as a result of the accident, while respondent sustained extensive injuries. Exhibit A to OAE's brief.

On November 16, 1993, a seven-count criminal action was filed in the Criminal Court of Bucks County, charging respondent with one count of driving under the influence, in violation of 75 Pa.C.S.A. 3731; one count of homicide by vehicle while under the influence, in violation of 75 Pa.C.S.A. 3735; one count of involuntary manslaughter, in violation of 18 Pa.C.S.A. 2504 and four counts of homicide by vehicle, in violation of 75 Pa.C.S.A. 3732, including violations of driving vehicle at safe speed, 75 Pa.C.S.A. 3361; maximum speed limits, 75 Pa.C.S.A. 3362; reckless driving, 75 Pa.C.S.A. 3736 and driving on roadways laned for traffic, 75 Pa.C.S.A. 3309. Exhibit B to OAE's brief. Respondent was also charged with five summary offenses, *i.e.*, careless driving, 75 Pa.C.S.A. 3714; driving vehicle at safe speed, 75 Pa.C.S.A. 3361; maximum speed limits, 75 Pa.C.S.A. 3362; reckless driving, 75 Pa.C.S.A. 3736 and driving on roadways laned for traffic, 75 Pa.C.S.A. 3309.

On August 30, 1993, after a lengthy jury trial, respondent was found guilty of two counts of homicide by vehicle, 75 Pa.C.S.A. 3732, which were based upon violations of driving vehicle at safe speed, 75 Pa.C.S.A. 3361 and maximum speed limits, 75 Pa.C.S.A. 3362. Exhibit C to OAE's brief. On the summary charges, the court found respondent guilty of careless driving, driving vehicle at safe speed, maximum speed limits and reckless driving. Exhibit C to OAE's brief. On January 17, 1995, he was sentenced to six months' imprisonment, to be followed by fifty-three months of probation. Exhibit A to OAE's brief.

After his conviction, respondent consented to be placed on temporary suspension. A consent order was entered by the Court on April 5, 1995. In re Barber, 139 N.J. 563 (1995). Respondent

was also placed on temporary suspension in Pennsylvania on May 31, 1995. Exhibit D to OAE's brief. On April 23, 1996, the Court issued an order vacating respondent's temporary suspension and reinstating him to the practice of law, effective immediately.

The OAE urged that respondent be suspended from the practice of law.

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Respondent was convicted of two counts of homicide by vehicle, in violation of 75 Pa.C.S.A. 3732. The jury found, beyond a reasonable doubt, that respondent committed an act of criminal homicide by acting in a grossly negligent manner. Respondent's criminal conviction clearly and convincingly demonstrates that he has "committed a criminal act that reflects adversely on ... [his] trustworthiness or fitness as a lawyer." RPC 8.4(b). Furthermore, his conviction serves as conclusive evidence of his guilt in disciplinary proceedings. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Therefore, the only remaining issue is the quantum of discipline to be imposed. R. 1:20-13(c)(2); In re Tusso, 104 N.J. 59, 62 (1986).

Although respondent's conduct does not directly relate to the practice of law, the need for public discipline is still present. The Court has clearly described its reasons for disciplining attorneys whose illegal conduct is not related to the legal profession. "An attorney is bound even in the absence of the attorney-client relation to a more rigid standard of conduct than required of laymen. To the public he is a lawyer whether he acts in a representative capacity or otherwise." In re Katz, 109 N.J. 17, 22-3 (1987); In re Gavel, 22 N.J. 248, 265 (1956). "Any misbehavior, private or professional,

that reveals lack of the good character and integrity essential for an attorney constitutes a basis for discipline." In re Peia, 111 N.J. 318, 322 (1988), citing In re La Duca, 62 N.J. 133, 140 (1973).

Similar misconduct has resulted in a three-month suspension. In In re Howard, 143 N.J. 526, an attorney was convicted of vehicular homicide, arising when she struck and killed her husband with her automobile. The conviction was based on the jury's finding that she disregarded a substantial and unjustifiable risk that her conduct would kill her husband. In imposing the three-month suspension, however, the Court warned that future misconduct involving alcohol would result in harsher discipline: "Longer suspensions will be called for when alcohol plays an aggravating role in a vehicular homicide case." Id. at 533.

Here, respondent's conduct involved alcohol consumption, an aggravating circumstance. In light of the Court's pronouncement in Howard, the Board unanimously determined that a suspension of six months, retroactive to the date of his temporary suspension in New Jersey, April 5, 1995, was the appropriate discipline here. Inasmuch as respondent was reinstated on April 23, 1996, no further suspension is required.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: \_\_\_\_\_

11/18/96

By: \_\_\_\_\_



Lee M. Hymerling  
Chair  
Disciplinary Review Board