SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 92-035

IN THE MATTER OF	:
MATTHEW E. SEGAL,	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: March 18, 1992

Decided: April 29, 1992

James F. Hammill appeared on behalf of the District IV Ethics Committee (DEC).

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 recommendation for public discipline filed by the District IV Ethics Committee (DEC). Respondent was admitted to the New Jersey bar in 1978 and has been engaged in practice in Cherry Hill, Camden County. During the time relevant to this matter, respondent served as the Cherry Hill municipal prosecutor. He has since resigned from that position.

This matter stems from respondent's prosecution of a motor vehicle charge against a Superior Court judge. The judges' son, while driving a vehicle owned by the judge, killed a pedestrian.[1]

[1] The judge's son was ultimately the subject of a prosecution for death by auto undertaken by the Attorney General's office (T6/7/91 33). As of the date of the hearing before the Board other

The facts, as set forth by the DEC, are as follows:

A. That on or about February 21, 1989, an automobile accident took the life of the son of Lieutenant George K. Stein, an employee of the Cherry Hill Police Department, and as a result of this accident, motor vehicle charges in the nature of allowing an unsafe vehicle to be operated were filed against Superior Court Judge Barry M. Weinberg, said charges originally to be heard in Cherry Hill Municipal Court.

B. At all times relevant to this matter, respondent was the Municipal Prosecutor for the Township of Cherry Hill.

C. The original motor vehicle summons issued required that the matter be heard in Cherry Hill Municipal Court on May 3, 1989, at noon. In late March, 1989, an attorney for Judge Weinberg wrote to the Assignment Judge of Camden County inquiring as to where the case would be heard. A copy of that letter was sent to the Cherry Hill Township Municipal Court along with routine discovery requests concerning the defense of Judge Weinberg. The case was not in fact heard on May 3, 1989, and on May 12, 1989, the Supreme Court of New Jersey ordered that the case be transferred for trial to the Superior Court Law Division, Burlington County.

D. On May 24, 1989, the Assignment Judge of Camden County informed the Clerk of the Cherry Hill Municipal Court that the matter involving Judge Weinberg had been transferred to the Honorable Martin L. Haines, Assignment Judge of the Superior Court in Burlington County. By a letter dated June 21, 1989 (Exhibit D-1), Judge Haines informed Judge Weinberg's attorney and respondent that the trial of State v. Weinberg would take place before him on Wednesday, July 19, 1989, at 9:00 a.m. This letter was sent by Judge Haines to respondent at respondent's law offices, 61 Kresson Road, Cherry Hill, New Jersey. In this letter, Judge Haines advised the addressees, including respondent, that they should contact him "promptly if this presents any problems".

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charges against him were still pending (BT3/18/92 18).

E. Respondent took no action upon receipt of this letter to either prepare the case or seek an adjournment of the July 19, 1989 trial date. On June 27, 1989, Judge Weinberg's attorney wrote to Judge Haines, (Exhibit D-2) confirming his and Judge Weinberg's availability for trial on July 19, 1989, with a copy of this letter going to respondent. Again, in response to this letter, respondent took no action to prepare the matter for trial or seek an adjournment from Judge Haines.

F. In response to these allegations, respondent has advanced the proposition that at least until July 14, 1989, a few days before the hearing, respondent thought that someone from the New Jersey Attorney General's Office would be handling the prosecution of the matter. However, respondent admittedly did not try to confirm this either verbally or in writing until sometime during the week of July 10, 1989, when he placed a call to Deputy Attorney General Wynne, who was on vacation for a couple of days. This call was returned by Mr. Wynne to respondent on Friday, July 14, 1989, at which time Mr. Wynne unequivocally advised respondent that respondent would be prosecutor in Judge Weinberg's case and that no one from the Attorney General's Office or the Burlington County Prosecutor's Office would be involved. Nevertheless, respondent failed to contact Judge Haines prior to the hearing date even though he knew he would be handling the case personally and had not yet engaged in any preparation.

G. From Friday, July 14, 1989, up to the time of the scheduled hearing, respondent made no attempt to have any of the witnesses subpoenaed (Exhibit D-6 appears to list twelve witnesses in addition to the police officers) nor was any attempt made to contact any of the witnesses for interview or preparation.

H. Respondent admits that he made no attempts at preparation during this period, but offers the explanation that he felt the case would be adjourned by Judge Haines when he made application before the court on July 19, 1989, the date of the hearing. It was only on the morning of the hearing that respondent for the first time spoke to one of the police witnesses and looked at the file involving Judge Weinberg's alleged violation.

I. Respondent appeared for the hearing as scheduled on July 19, 1989, and Judge Haines denied his application for adjournment. The matter then proceeded to trial with respondent calling only one witness, Patrolman Lawer, of the Cherry Hill Police Department. At the conclusion of the direct examination of Officer Lawer, and without any cross-examination by Judge Weinberg's attorney, and after argument, Judge Haines dismissed the complaint against Judge Weinberg.

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The DEC determined that respondent was guilty of the charged violations of RPC 1.1(a) and RPC 1.3.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board does not find the evidence clearly and convincingly establishes that respondent's conduct was unethical. Hence, the Board disagrees with the conclusion of the committee and recommends that the recommendation for public discipline be dismissed.

Although respondent did not pursue the prosecution of Judge Weinberg as prudently as he might have, his misconduct in this matter does not rise to the level of gross neglect and lack of diligence found by the DEC. Respondent's stated belief was that the Weinberg case was an ordinary matter and that he would prepare this case as he prepared other municipal court matters: in the hallway just before trial. According to respondent's testimony, it was not until early July, when he spoke to the municipal court clerk and the Burlington County clerk, that he learned of the

surrounding facts in this case (T6/7/91 85-87, 114).[2]

Accordingly, respondent realized prior to the trial date that this case was a "hot potato", in light of the parties involved in the case and the probable media attention that would result. In addition, respondent realized who the defendant was in this case and knew he should have read the file. (T6/7/91 98). Despite this awareness respondent still took no steps to prepare his case because he did not believe that he was responsible for prosecuting this matter. Respondent apparently believed it would be improper for the municipal prosecutor to handle this case. (BT 3/18/92 12).

The Board has determined that respondent's belief was not without a reasonable basis, particularly, in light of the involvement of the Office of Attorney General in the prosecution of Judge Weinberg's son. However, after receiving Judge Haines' June 21 letter, which respondent must have received by the last week in June, rather than early July he should have taken steps forward. Clearly, at the very least, he was obliged immediately to confirm his belief that the Weinberg prosecution was no longer his responsibility. His failure to pursue that issue, after receiving the June 21 letter from Judge Haines setting the trial date, which letter was addressed to respondent and Judge Weinberg's attorney only, was clearly, not prudent. In addition, Judge Weinberg's attorney replied to Judge Haines, with a copy to respondent. This

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[2] Apparently, although respondent claimed not to have known the factors surrounding this matter, he did recognize Weinberg's name when he saw it and knew he was a judge.

letter should have further confirmed for respondent that he continued as Weinberg's adversary and, hence, as prosecutor. Again, respondent took no action. However, this lack of action was not gross neglect.

Respondent testified before the DEC that he did not prepare for trial on July 19 because he was confident that he would be able to obtain an adjournment. He stated:

> I found myself in a position of at the last minute understanding that this case was much more complex and so I knew that when I went to court on the 19th that I had no alternative but to go and be honest with Judge Haines and explain everything to him and I fully anticipated that he would grant me that continuance. As I've said before, I've been prosecuting for 12 years, I haven't been prosecuting for the past couple years but the 10 years prior to that in my 12 years in law, seeking continuances is commonplace and I have not very often but a few times in my career had to go to a judge and explain whatever the circumstances were that we couldn't go on for a particular reason, and I thought that if I went to Judge Haines and explained to him what was involved in this case that he would not go forward with this case, that he would grant me the continuance.
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> I further was of the belief that because in the context of even municipal court cases which move more rapidly than the rest of the judicial system, this wasn't an old case. I believe sometime in March from Officer Lawer's testimony, the charges were preferred or the charge was preferred against Judge Weinberg so the case was less than five months old at the time it was scheduled on July 19. There was one report and answer, that was this one, and there was one witness for the defense and that was Judge Weinberg, the defendant. There were numerous times when both at the request of the State and through the prosecutor, the municipal prosecutor, and defense counsel, that many witnesses are there for both sides and cases are adjourned for one reason or another and while that is an inconvenience to a lot of people, that is something that is routinely done. In this case any inconvenience except to the defendant was born by the police officers who would gladly have continued this case but Judge Haines felt that the motion should be denied. I was shocked and I still am, to me there's no reason why that case had to go

> forward on that date and I believe as strongly today as I did then that the continuance should have been granted. [T6/7/91 89-91]

Although respondent should have requested the adjournment far earlier than he did, his failure to do so was not gross neglect. Further, the Board found reasonable his expectation that the adjournment would be granted by Judge Haines.

A great deal of testimony was taken before the DEC regarding whose responsibility it was to subpoena the witnesses against Judge Weinberg. Respondent stated to the Board that he had never handled a case where he issued a subpoena (BT 3/18/92 13). In support of respondent's testimony, Officer Lawer of the Cherry Hill Police Department, did testify that the court clerk generally sent out subpoenas. Sergeant Harty, also of the Cherry Hill Police Department, further testified that the municipal prosecutor does not issue subpoenas in traffic cases or municipal court cases (T6/7/91 68-69). However, this was clearly not a routine case. After the case was transferred to the Superior Court in Burlington County, a prudent attorney/prosecutor would have prepared the case and ensured that the appropriate witnesses were subpoenaed. But, again, the Board does not deem this inaction gross neglect.

A question was raised before the DEC as to whether respondent was trying to mislead Judge Haines concerning his attempts to reach Deputy Attorney General Wynne before actually speaking with him. During the proceeding before Judge Haines respondent stated that he believed he would have had an opportunity to talk to the attorney general "over the past couple of weeks," but was unable to do so

because Deputy Wynne was on vacation (Exhibit D-3, at 5).[3] Respondent also stated that he did not get a "call back from the Attorney General who had been on vacation." In reality, Wynne was away for only two days. In addition, when respondent and Wynne did speak, on July 14, Wynne, rather than respondent, placed the call (T6/7/91 77). (See also, Exhibit D-9).[4] Although it is questionable whether respondent was as straightforward as he might have been on his issue, it is not clear that he intentionally misled Judge Haines on this point.

Respondent clearly did things incorrectly in this prosecution of this case. However, his initial expectation that he would not prosecute the matter; that the Attorney General's office would handle it, or the Burlington County Prosecutor would do so were reasonable. While his inaction, past a certain time was not reasonable, it was also not a disciplinary violation.

The Board has noted that, although he denied that his actions amounted to a disciplinary violation, respondent did admit that he made mistakes in his prosecution of this matter. It is well known that municipal prosecutors are thrown into the mill. Respondent testified that, there were only a few instances where he reviewed a case before the evening or morning that he was to prosecute it (T 6/7/91 88). While it might be desirous to indict the system that

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[3] Respondent was referring to a time period prior to the scheduled appearance before Judge Haines.

[4] It is also of interest to note that the telephone call between respondent's secretary (respondent was out at the time) and Sergeant Harry, of the Cherry Hill Police Department, was initiated by the latter. (Exhibit D-7).

causes attorneys to function in that manner, it is not possible. Neither is it desirous to indict this respondent for the municipal court system's flaws. While respondent clearly should have handled this prosecution in a different manner, he did not grossly neglect his responsibilities. The Board by a requisite majority recommends that the matter be dismissed. One member dissented, believing a public reprimand to be appropriate. One member did not participate.

Dated: 5/20/92 By: Raymond R. Trombadore

Raymond R. Trombadore
Chair
Disciplinary Review Board