SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-249

IN THE MATTER OF

FRANCIS A. BOCK,

AN ATTORNEY AT LAW

Decision and Recommendation
of the
Disciplinary Review Board

Argued: October 23, 1991

Decided: December 9, 1991

Edward D. McKirdy appeared on behalf of the District X Ethics Committee.

Martin Newmark appeared on behalf of respondent.

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

This matter is before the Board based upon a presentment filed by the District X Ethics Committee (DEC). By letter dated April 3, 1990, to David E. Johnson, Jr., Director, Office of Attorney Ethics, the Honorable Reginald Stanton, Assignment Judge of Morris County, requested that disciplinary proceedings be instituted against respondent.

Respondent was admitted to the practice of law in New Jersey in 1959 and has been engaged in private practice in Morristown, Morris County. In addition to being a practicing attorney at the time of his unethical acts, respondent served as a municipal court judge, an office which he had held for twenty-four years and eleven

months (T15).[1] On December 7, 1989, Judge Stanton signed an order declaring that respondent had abandoned his judicial post and that it was, as of that time, vacant. On December 19, 1989, shortly after respondent returned to New Jersey, Judge Stanton became aware that respondent served as Chairperson of the Morris County Juvenile Conference Committee. By order entered on December 20, 1989, Judge Stanton removed respondent from that position. In August 1990, the New Jersey Supreme Court issued an order permanently removing respondent from his judicial post.

Respondent stipulated to the underlying facts of this matter, as set forth in the investigative report (Exhibit C-1 in evidence).

On November 7, 1989, respondent engaged in an elaborate scheme to create the impression that he had drowned. Respondent left a previously written note to his wife setting forth the amount of money that was owed to him in legal fees, approximately $150,000. Respondent intended the money to be used for his wife's benefit after he left.[2] He then drove to Long Beach Township, where he met with a real estate broker to discuss buying real estate. Respondent indicated to the broker, more than once, that he had to return to Morristown for a 5:00 p.m. meeting. After leaving the broker at approximately 2:15 p.m., respondent changed into jogging clothes and abandoned his car, leaving jewelry, eye glasses, his wallet and $125 in cash. Respondent left spare jogging clothes and

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[1]T refers to the transcript of the hearing before the DEC on January 14, 1991.

[2]Respondent was unable to recall the exact day that the note was written.

car keys on the beach. Respondent's intent was to create the impression that he had drowned in the sea.

Consistent with this plan, respondent was joined on that day by Martha Heath (Heath), a widow who had worked for respondent as a secretary. Respondent and Heath had had an extra-marital relationship, of which respondent's wife became aware in October 1987. Respondent at that time ended the relationship with Heath and, according to his testimony, had virtually no contact with her until he decided to leave his marital home. After rendezvousing with respondent on November 7, Heath drove him to the New Brunswick, New Jersey, train station, where respondent boarded a train for Baltimore and then traveled to the eastern shore of Maryland.[3] Respondent remained in Maryland for approximately five weeks, during which time he was visited by Heath on five occasions. Respondent returned to New Jersey on December 12, 1989, after he was located by the Morris Plains Police Department and the Morris County Prosecutor's office.[4] On December 13, 1989, respondent returned to his law practice.

During Heath's visits to respondent she brought him money, clothing and other supplies. She also provided him with New Jersey newspapers, one of which contained a story on his disappearance.

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[3]Respondent rented an apartment on a month-to-month basis while in Maryland, signing the lease under the name of Loehner (T83).

[4]Apparently, Heath was seen meeting respondent on the beach, becoming infamous as the "lady in red", a fact which led to respondent's being located by the authorities. When describing Heath's actions in standing on the beach that day, respondent stated: "Anyway, that's how things get unraveled in this world. The best laid plans of mice and men" (T26).

Respondent testified that he was aware that the police had questioned Heath and that he had asked Heath about the status of the investigation (T52-53). Respondent admitted that he was aware that the police had launched an investigation about his disappearance (T94). He denied however, that he had any knowledge of either the publicity surrounding his disappearance or of the manhunt that was underway (T34, 50).

Respondent blamed his wife's incessant questioning regarding his infidelity as a critical factor in his decision to take these unusual steps. He testified that, although he never asked his wife to stop questioning him, he found himself unable to live with it any longer and had to leave the relationship. He testified further that, due to his background and values, and for the sake of his children, he was unable to consider asking his wife for a divorce. He also explained that he believed it would be easier on his family to accept the fact that he was dead, rather than divorced.

At the time that he left his office, respondent was responsible for sixty to seventy files. He left without contacting his partner, Edwin W. Orr, Jr., his associate, Michael Carrol, his staff, or the courts. He also failed to contact any of these parties during the time of his absence. During the hearing before the DEC, respondent was asked if he had given any consideration to the clients he was abandoning. Respondent testified that he knew that Orr and Carrol would be able to handle his cases and that nothing was "overly difficult" (T60). In fact, respondent admitted that he did not give "two second's [sic] thought" to the impact his

sudden departure would have on his clients (T31). Fortuitously, it appears that Orr and Carrol were able to cover respondent's cases, as a result of which no client was harmed. Indeed, according to Orr's testimony, no client left the firm as a result of respondent's misconduct (T159).

At the DEC hearing, respondent was questioned about his life insurance policy and whether he had considered the possibility that his wife would attempt to collect on the policy, believing his charade that he was dead. On this issue, the following exchange took place:

> Q. Did you give any thought at all to some of the legal ramifications of your disappearance, such as, sir, your life insurance policies?
>
> Mr. Newmark: Is the question, sir, has he now or did he then?
>
> Q. Did you during the five weeks you were away?
>
> A. Did I think of my life insurance policies? I guess I did.
>
> Q. The legal ramifications.
>
> A. I guess I did think of that.
>
> Q. What were those thoughts, sir?
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> A. Well, that I understand that you wait seven years and a person has a presumption of death unless there's an indication that they're alive or something to that effect. I left it at that point in my mind. Well, we'll have to see what happens over the next seven years because I don't now what's going to happen over the next seven years.

What could happen is, I could die in two years and my wife would continue to pay the policy for seven years, and she'd be overpaying the company by four or five years.

Q. Did that thought occur to you?

A. That was out of my mind. I was past worrying about insurance policies. I wasn't going to say, Oh, my God, I've got to recant this whole thing because of some insurance policy.

If you ask me did it pass through my mind, yeah, it passed through my mind. A lot of things passed through my mind.

I've got five weeks to let things pass through my mind. That passed through my mind. Maybe I'd live ten more years and she'd collect in seven and the insurance company would be defrauded of those three years, where they paid out three years earlier.

Sooner or later they were going to pay it because I'd be dead sooner or later, and then could I return before that seven years expired.

[T76-78]

Later in the hearing, another telling exchange on this issue took place:

Q. Did you anticipate that your wife would eventually collect life insurance as a result of your death?

A. I didn't really care. I honestly did not care.

[T88]

Respondent was questioned about the pension that his wife would receive from the Borough of Morris Plains due to his service

as a municipal court judge. Specifically, he was asked if he believed that it was wrong for his wife to collect the pension under these circumstances. Respondent replied that it made no difference because he could have retired and collected the pension, and that he would collect no more or less in this situation (T84).

Respondent was questioned as to whether he gave any consideration to the public resources that would be expended in the search for him. He answered: "[a]nother miscalculation. No, I didn't. I didn't think of that at all. . . . I didn't quite take myself that seriously, I guess, or the position that seriously." (emphasis added) (T31).

No criminal charges were brought against respondent. However, charges were brought against Heath, which resulted in her pleading guilty to obstruction of justice. Heath was fined $500 and ordered to perform fifty hours of community service.

Although respondent testified that he would not repeat his previous actions, he did leave his home a second time to be with Heath, after his December 1989 return to New Jersey. Respondent left in September 1990 and returned to his marital home after approximately four to five weeks. As of the date of his appearance before the Board, respondent was still living with his wife.

Within three weeks after his return, respondent began treatment with a therapist. In February 1990, at his wife's suggestion, he began seeing Dr. Henry Schreitmueller, a priest and licensed psychologist, who was still treating respondent as of the date of the DEC hearing. In approximately October 1990, Dr.

Schreitmueller, noting that respondent was becoming more depressed, referred him to Dr. Thomas A. Angelo, who prescribed Prozac, which respondent was still taking as of the January DEC hearing.[5]

According to Dr. Schreitmueller's testimony before the DEC, respondent was, at the time of his conduct, suffering from DSM 3, a psychological disorder. Dr. Schreitmueller described the condition as an adjustment disorder, brought about by a "stressor," the onset of stress in one's life. Dr. Schreitmueller stated that the stress in respondent's life was the interpersonal conflict he was experiencing between his desire to be with Heath and his responsibilities to his marriage, even though the relationship with Heath had been terminated two years earlier. In addition, respondent suffered from "empty nest syndrome," brought about by his youngest child's leaving his home. Dr. Schreitmueller also cited the pressure brought about by Mrs. Bock's constant discussion of the earlier events involving Heath, as well as by the fact that Mrs. Bock suffers from multiple sclerosis. Dr. Schreitmueller stated that he believes that respondent's actions in November 1989 were related to his psychiatric disorder (T116). Dr. Schreitmueller testified that, although respondent should have been able to distinguish right from wrong at the time of his misconduct, he still would not have seen the options open to him to enable him to make a correct moral judgment (T138). Dr. Schreitmueller

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[5]This time period apparently coordinates with the time that respondent returned to his wife for the second time.

testified that respondent is sincere in his desire to proceed with his treatment (T148) and that he and Dr. Angelo agree that, had respondent been in treatment in November 1989, he would not have taken the steps he did (T117).

The panel concluded that respondent had violated RPC 8.4(c), in that his conduct involved dishonesty, fraud, deceit and misrepresentation. The panel made a further finding of a violation of RPC 8.4(d), in that respondent's actions were prejudicial to the administration of justice due to the expenditure of time, manpower and taxpayers' money spent searching for him.

The panel also determined that respondent was aware of the efforts of local and county authorities, as well as of the Coast Guard, to investigate his disappearance, and that he was not credible when he testified that he did not know the extent of the manhunt for him. The panel found further that respondent had given no thought to the impact his actions would have on the ensuing expenditure of public resources or on his partner or his clients. The panel concluded that the fact that no client had been placed in jeopardy was due solely to the efforts of Orr and Carrol.

In addition, the panel found that respondent had not been forthright with respect to his relationship with Heath. The fact that he had resumed his relationship with her was revealed not by respondent, but by Dr. Schreitmueller. In addition, the panel did not find credible respondent's testimony that he had staged his

death because divorce or separation was impossible because of his children. Mrs. Bock's questioning of respondent about his extra-marital relationship was found not to be an excuse for his behavior.

Most importantly, the panel concluded that respondent showed "a remarkable lack of remorse for his actions" (panel report at 5), finding that any regrets were for the way he handled his relationship with his wife, and "not directed to his obligations to clients, bench, bar and society" (Id. at 6). Ultimately, the panel found that respondent's actions and his inability to understand their impact revealed a lack of the character and integrity essential for an attorney.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the DEC's conclusions that respondent was guilty of unethical conduct are fully supported by clear and convincing evidence.

There is no doubt that respondent abandoned his law practice. He left between sixty and seventy cases pending, taking no precautions to safeguard his clients' well-being. Respondent's action in simply walking away from his responsibilities constitutes gross neglect. However, the Board has considered that respondent apparently believed that the other attorneys in his law firm would

be able to assume responsibility for his cases. The Board has noted that respondent was correct in this belief and that no harm befell any of his clients.

The few cases dealing with abandonment of clients have been accompanied by other serious violations of the disciplinary rules. (See e.g., In re Cassidy, 122 N.J. 1 (1990), and In re Nechert, 78 N.J. 445 (1979)). The case now before the Board is distinguishable from those. Here, respondent's conduct is not as serious as that of Cassidy and Nechert in both the nature of the offenses and in the number of different infractions. Respondent's transgressions consisted of the abandonment of his clients and his deceitful conduct. Also noted was respondent's cavalier attitude toward the possible insurance and pension irregularities that might have occurred, had he not returned home. Although the Board views this behavior as reprehensible, it does not nearly approach the disturbing violations seen in Cassidy and Nechert.

The Board is of the opinion that a term of suspension is required in this matter, albeit not lengthy due to the mitigating factors present in this matter, particularly the lack of harm to respondent's clients, the aberrational nature of his conduct and respondent's psychological difficulties.

Respondent's treating psychologist testified that respondent suffers from a mental condition that would have caused him to act as he did. The Board is aware that psychological difficulties are not an excuse for misconduct. However, such difficulties, if proven to be causally connected to an attorney's actions, have in

the past been considered in mitigation. In In re Templeton, 99 N.J. 365 (1985) the Court held:

> In all disciplinary cases, we have felt constrained as a matter of fairness to the public, to the charged attorney, and to the justice system, to search diligently for some credible reason other than professional and personal immorality that could serve to explain, and perhaps extenuate, egregious misconduct. We have always permitted a charged attorney to show, if at all possible, that the root of transgressions is not intractable dishonesty, venality, immorality, or incompetence. We generally acknowledge the possibility that the determinative cause of wrongdoing might be some mental, emotional, or psychological state or medical condition that is not obvious and, if present, could be corrected through treatment.
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> [Id. at 373-374]

But see In re Tuso, 104 N.J. 59 (1986) (where causation was not demonstrated).

It is interesting to note that, during his testimony, Dr. Schreitmueller did not mention the pressure of the day-to-day practice of law as a "stressor" in respondent's life. In fact, he was specifically asked about that topic and stated that respondent's practice was not a factor contributing to his misconduct. The Board has noted that respondent is currently continuing his psychiatric treatment and no longer needs to take medication for his condition.

In In re Blake, ____ N.J. ____ (1991), the Court, imposed a public reprimand on an attorney and transferred him to disability inactive status until the attorney is able to prove his fitness to practice law. In that matter, the Court had before it the grievance of one client and clear and convincing evidence of the

attorney's alcoholism and his pursuit of treatment, as well as the fact that he had not practiced law since 1985. The attorney in that matter began representation of his client in a matrimonial matter and then, without notice to his client or the courts, closed his law practice and could not be located.

In the matter now before the Board, respondent's counsel argued in his letter-brief that "the Presentment represents an unsupportable [sic] attempt to include within the scope of attorney discipline conduct which is so personal and so unrelated to the practice of law as to not properly be within the scope of the attorney discipline" (Respondent's letter-brief at 3). In In re Mattera, 34 N.J. 259, (1961),[6] the Court addressed the scope of the disciplinary power:

> Hence the disciplinary power is not confined to the area covered by the canons. It has long been settled here and elsewhere that any misbehavior, private or professional, which reveals lack of the character and integrity essential for the attorney's franchise constitutes a basis for discipline. (Citations omitted).
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> The reason for this rule is not a desire to supervise the private lives of attorneys but rather that the character of a man is single and hence misconduct revealing a deficiency is not less compelling because the attorney was not wearing his professional mantle at the time. Private misconduct and professional misconduct differ only in the intensity with which they reflect upon fitness at the bar. This is not to say that a court should view in some prissy way the personal affairs of its

[6]In Mattera, a municipal court magistrate was charged with irregularities in the handling of traffic tickets. The Court determined that the charges against the attorney had not been sustained.

> officers, but rather that if misbehavior persuades a man of normal sensibilities that the attorney lacks capacity to discharge his professional duties with honor and integrity, the public must be protected from him. [Id. at 264].

See also In re Franklin, 71 N.J. 425 (1976), (where an attorney received a one-year suspension for conduct outside of his role as an attorney).

The function of the disciplinary system is not only the protection of the public from attorneys who cannot or will not live up to their professional responsibilities, but also the preservation of the public's confidence in the profession. See In re Wilson, 81 N.J 451 (1979). The Board has also considered the fact that, at the time of his misconduct, respondent was not only a practicing attorney, but also held a position of public trust as a municipal court judge. The Board is of the opinion that, given the mitigating factors in this matter, a three-month suspension is the appropriate discipline for this respondent. By a requisite majority, the Board so recommends. Three members dissented from the recommendation, believing that a public reprimand was the appropriate discipline.

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

Dated: 12/9/1991 By: Raymond R. Trombadore

Raymond R. Trombadore
Chair
Disciplinary Review Board