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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-319

IN THE MATTER OF :
: GEORGE W. NASH, :
: AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 20, 1991

Decided: February 25, 1992

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

Respondent waived his appearance for oral argument.

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

This matter is before the Board on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics pursuant to R. 1:20-7(b), based upon respondent's suspension from the practice of law in the State of New York for a period of one year, effective May 30, 1991, for violations of DR 7-102(A)(4), (5), (6) and (7) of the Code of Professional Responsibility [corresponding to New Jersey Rules of Professional Conduct 1.2(d), 3.3(a)(1) and (4) and 3.4(b) and (d)] and DR 1-102(A)(4), (5) and (6) [corresponding to New Jersey Rules of Professional Conduct 8.4(c) and (d)].

Respondent was admitted to the practice of law in the State of New York on April 3, 1968. He has been a member of the New Jersey bar since 1972. The facts underlying this disciplinary matter were

summarized in the October 10, 1990 New York Departmental Disciplinary Committee's Hearing Panel Report:

During December 1984 or January 1985, Aurica Foca-Rodi retained Respondent to initiate a divorce action against her husband, George Foca-Rodi. Ms. Foca-Rodi and her husband agreed to the divorce and she told respondent it would be essentially uncontested. She told respondent that her husband would speak to him shortly about the terms of the separation agreement.

During January 1985, Mr. Foca-Rodi, who was not represented by counsel, met with Respondent to discuss the divorce and the terms of the separation agreement to which the couple had agreed. Both Mr. and Mrs. Foca-Rodi wanted an immediate divorce. To this end, Respondent agreed to back-date a separation agreement prepared with the Foca-Rodis' consent on or about March 1, 1985 to March 1, 1984. So dated, the agreement also falsely stated that Mr. and Ms. Foca-Rodi had lived apart for one year. Respondent notarized the separation agreement even though it incorrectly stated that both Mr. and Mrs. Foca-Rodi had appeared before him to execute the agreement on March 1, 1984.

Both Mr. and Mrs. Foca-Rodi wanted the divorce to proceed quietly in order to avoid scandal in their New Jersey community. In addition, Respondent was motivated in part by his concern for Ms. Foca-Rodi's emotional and physical well-being. Mr. Foca-Rodi was at times physically violent. He had an open relationship with a woman who was herself married and the mother of three children. The couple quarreled and their relationship was a tense one. For these reasons, Respondent tried to obtain a divorce for the Foca-Rodis as quickly as possible. Respondent agreed to commence the divorce action in New York where the Foca-Rodis would not have to appear. Neither Mr. or [sic] Ms. Foca-Rodi, however, had any jurisdictional basis for an action in New York because both resided in New Jersey.

In an affidavit, Respondent listed his own New York address, 55 Park Avenue, as Mr. Foca-

Rodi's domicile. Respondent notarized and filed this affidavit along with the other divorce papers on or about March 22, 1985. A divorce was granted based on the back-dated separation agreement on April 22, 1985.

Neither Mr. nor Ms. Foca-Rodi contested the filing of the divorce based on the separation agreement. Respondent's conduct came to the Committee's attention as a result of Mr. Foca-Rodi's attempt to upset the terms of the divorce. Two years after the divorce was filed, Mr. Foca-Rodi stopped paying maintenance and refused to transfer the marital residence to his ex-wife and he tried to vacate the divorce decree. Ms. Foca-Rodi was forced to commence litigation to enforce the separation agreement and divorce decree. Respondent did not represent either party in this litigation. Nevertheless, Mr. Foca-Rodi asked Respondent to pay him \$20,000 or \$30,000, which he would then pay to his wife. Otherwise, Mr. Foca-Rodi threatened to complain to the Committee about Respondent's conduct in obtaining the divorce decree. Respondent refused to help Mr. Foca-Rodi. Eventually, the litigation between the Foca-Rodi was settled and Mr. Foca-Rodi did transfer the marital residence to his ex-wife.

[Hearing Panel Report, at 5-8].

CONCLUSION AND RECOMMENDATION

Upon a review of the full record, the Board recommends that the OAE's motion be granted and that respondent be reciprocally disciplined for a period equal to the period of his suspension in New York.

Respondent did not dispute the findings of the New York hearing panel. Hence, the Board adopts those findings. In re Pavilonis, 98 N.J. 36,40 (1984); In re Tumini, 95 N.J. 18,21 (1983); In re Kaufman, 81 N.J. 300,302 (1979).

Reciprocal disciplinary proceedings in New Jersey are governed

by R.1:20-7(d), which directs that:

...The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated, that it clearly appears that:

- (1) the disciplinary order of the foreign jurisdiction was not entered;
- (2) the disciplinary order of the foreign jurisdiction does not apply to the respondent;
- (3) the disciplinary order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (4) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (5) the misconduct established warrants substantially different discipline.

The Board's review of the record does not disclose any circumstances that would fall within the ambit of sub-paragraphs one through five. Accordingly, respondent's unethical conduct in New York merits the imposition of identical discipline in this state.

In New Jersey, matters involving similar misconduct have resulted in suspensions from the practice of law. In In re Labendz, 95 N.J. 273 (1984), an attorney was suspended for a period of one year after he knowingly participated in an attempt to commit a fraud upon a bank to obtain a mortgage for a client. The Court considered that, with the exception of that incident, the attorney's record was unblemished and his reputation untarnished.

In addition, the attorney's actions had not been motivated by personal gain and no party suffered any financial injury from the transaction. Similarly, in In re Mocco, 75 N.J. 313 (1978), the Court imposed a one-year suspension on an attorney who misrepresented to Mobil Oil and to the Internal Revenue Service that he was a stockholder in a company owned by one of his clients, in order to induce Mobil to believe that he was an equal owner of the business. In addition, the attorney advised Mobil that a corporation owned by his brother would execute a mortgage note and mortgage on its property in favor of Mobil to secure certain debts. Respondent signed the names of two individuals on the mortgage note, as president and secretary, respectively. Yet, neither one was an officer of that company. Respondent also filled out an acknowledgement on the mortgage note and signed his brother's name as notary public. In imposing only a one-year suspension, the Court took into consideration respondent's inexperience as a young attorney, his bona fide intentions and the lack of harm to anyone.

Here, too, respondent was not motivated by personal gain, but by a desire to assist a client. Nevertheless, his conduct was serious and designed to impede the administration of justice. The Board, therefore, agrees with the Office of Attorney Ethics' position that respondent should receive a one-year suspension in New Jersey. In light of respondent's voluntary suspension from the practice of law in the State of New Jersey since May 30, 1991, the date of his suspension in New York, and his full cooperation with the ethics authorities, the Board recommends that respondent's

suspension be retroactive to May 30, 1991. The Board's recommendation was reached by an unanimous vote.

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

Dated:

2/25/92

By:



Raymond R. Trombadore
Chair
Disciplinary Review Board