

Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-112

IN THE MATTER OF :
:
JOHN J. SCOTTO, :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: June 19, 1991 and
September 25, 1991

Decided: November 12, 1991

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

Respondent did not appear.¹

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 (OAE), based upon respondent's resignation from the California bar.

An eight-count felony information was filed against respondent in the Superior Court of California, County of Los Angeles, charging him with extortion, attempted extortion, forgery of an endorsement, possession of a forged instrument and grand theft of money.

On June 28, 1990, pursuant to a plea agreement, respondent

¹ Respondent was served with notice of the Board hearing by publication in the New Jersey Law Journal, the New York Law Journal and the Los Angeles Daily Journal.

entered a plea of nolo contendere to the fifth count of the information, charging him with possession of a forged instrument, a \$6,000 check, in violation of California Penal Code §475. As a result of his plea, respondent was sentenced to a sixteen-month prison term, for which he received credit for time already served. In addition, as part of the plea agreement, respondent resigned from the California bar on August 31, 1990. The resignation provided that, in the event that respondent should subsequently petition for reinstatement, the California bar would be permitted to consider all disciplinary matters and proceedings against him at the time of the acceptance of his resignation. On January 30, 1991, the California Supreme Court accepted respondent's resignation from the bar.

Respondent had been suspended in New Jersey since December 18, 1990, as a result of his criminal conviction. R. 1:20-6(b)(1).

The OAE requested that the Board recommend to the Court that respondent be reciprocally disciplined in New Jersey by way of an indefinite suspension from the practice of law. In the OAE's view, resignation in California may not be likened to disbarment in New Jersey, inasmuch as, in California, attorneys who resign from the bar may later petition for reinstatement. Furthermore, disbarment in California is not permanent, as in New Jersey. There, a disbarred attorney may seek reinstatement after five years.

The OAE also requested that respondent not be permitted to apply for reinstatement in New Jersey unless and until he is reinstated in California.

Upon a de novo review of the full record, the Board recommends

that the OAE's motion be granted and that respondent be reciprocally disciplined by means of an indefinite suspension from the practice of law, until such time as he shall submit proof that he has been restored to practice in California. The Board's recommendation is made without prejudice to the OAE's option to file additional disciplinary proceedings on the allegations contained in the remaining counts of the information.

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-7(d), which provides 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 agrees with the OAE's contention that none of the exceptions contemplated in R. 1:20-7(g) (1) through (5) applies. The discipline accorded in New Jersey should, therefore, correspond to that imposed in California. In re Kaufman, 81 N.J. 300 (1979). It

is the OAE's contention that respondent's resignation in California is comparable to an indefinite suspension. In that state, an attorney who resigns from the bar may not petition for reinstatement within five years of the effective date of resignation. For good cause shown, this time may be shortened to fewer than five years, but not fewer than three years. Rule 960, California Rules of Court (Exhibit H to the OAE's brief). By ordering that respondent be indefinitely suspended in New Jersey, the Court will be ensuring that that suspension will not be lifted within three to five years, a period of suspension commensurate with the nature of respondent's criminal offense.²

The Board unanimously so recommends, with the above noted conditions.

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

Dated: 11/12/1991

By: 

Raymond R. Trombadore
Chair
Disciplinary Review Board

² Following its June 19, 1991 meeting, the Board requested that the OAE obtain from the Los Angeles District Attorney's Office a copy of the transcript of a preliminary felony hearing in which, purportedly, the factual basis for respondent's offense had been set forth. The purpose of obtaining the transcript was to enable the Board to make a better determination of the specific measure of discipline warranted for respondent's criminal and unethical conduct. A closer review of the relevant portion of the transcript, however, was not sufficient to obtain a more detailed picture of the factual basis for respondent's offense. All that could be gleaned is that respondent pleaded "no contest" to a felony charge of possession of a check in the amount of \$6,000, knowing that the endorsement thereon was forged.