

B

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-352

IN THE MATTER OF :
 :
JAMES F. BOYLAN :
 :
AN ATTORNEY AT LAW :
 :
 :

Decision

Argued: October 15, 1998
Decided: August 18, 1999

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

Albert B. Jeffers appeared on behalf of respondent.

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"), based upon respondent's guilty plea to one count of mail fraud, in violation of 18 U.S.C.A. § 1343. Respondent filed a cross-motion to adjourn the return

date of the motion until he was released from prison and to remand the matter for a hearing on the issue of mitigation. The Board denied the cross-motion.

Respondent was admitted to the New Jersey bar in 1988. On February 2, 1998, the Supreme Court temporarily suspended him, pending the final resolution of this matter. In re Boylan, 152 N.J. 379 (1998). Respondent has no prior disciplinary history.

From 1994 to October 1997 respondent served as a Jersey City municipal court judge. His duties included presiding over cases involving motor vehicle violations. In his capacity as a municipal court judge, he reduced traffic violation fines and penalties for female municipal court defendants in return for sexual favors from them. Respondent coached the defendants to lie about the circumstances of their traffic tickets and then used their perjured testimony as a factual basis for reducing their fines and penalties.

Respondent admitted that his criminal conduct resulted in the loss of revenue to Jersey City of more than \$10,000, but less than \$20,000.

On January 23, 1998, respondent pleaded guilty to mail fraud. He was sentenced to thirty months' imprisonment and three years' probation. He was also ordered to make restitution to Jersey City in the amount of \$12,500.

The OAE urged that respondent be disbarred for his criminal conduct.

* * *

As noted earlier, respondent filed a cross-motion to adjourn the return date of the OAE's Motion for Final Discipline and to remand the matter for a hearing so that he could present, in mitigation of his misconduct, evidence that he was suffering from alcoholism at the time of the criminal behavior. Although respondent could have submitted documentation of his alcoholism prior to the return date of the Board hearing, he did not do so. The only "evidence" he advanced was that the probation office had, as a condition of probation, ordered that he refrain from the use of alcohol and submit to evaluation and treatment, if so directed.

Respondent had not argued to the sentencing court that he had been suffering from alcoholism or from diminished mental capacity. At the time of his guilty plea, respondent stated that he had recently received treatment for alcoholism and was attending meetings of Alcoholics Anonymous. However, he did not state that he was an alcoholic at the time of the misconduct or advance alcoholism as a mitigating factor. Furthermore, in his guilty plea, he admitted that, at the time he committed the criminal acts, he knew they were wrong and had committed them "knowingly and willfully."

Therefore, the Board denied respondent's cross-motion to adjourn the return date of the Motion for Final Discipline and to remand the matter for a hearing.

* * *

Upon a review of the full record, the Board determined to grant the OAE's Motion for Final Discipline.

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's conviction of mail fraud established a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). His corruption of the judicial process and his subornation of perjury constituted violations of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice). The sole issue to be determined is the quantum of discipline to be imposed. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The level of discipline imposed in disciplinary matters involving the commission of a crime depends on numerous factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46.

The Court has recognized that "certain types of ethical violations are, by their very nature, so patently offensive to the elementary standards of a lawyer's professional duty that they per se warrant disbarment." In re Conway, 107 N.J. 168, 180 (1987). The types of conduct that require disbarment include attempts to "corrupt the judicial process" by "suborning perjury or tampering with witnesses to fix a case," and "a judge accepting a bribe

and not sentencing a defendant according to the law." In re Yaccarino, 117 N.J. 175, 197 (1989). See In re Verdirama, 96 N.J. 183, 186 (1984) ("We believe that ethical misconduct of this kind - involving the commission of crimes that directly poison the well of justice - is deserving of severe sanctions and would ordinarily require disbarment").

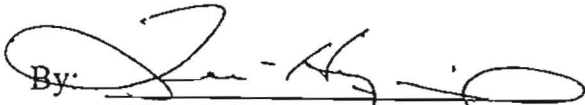
Although respondent was convicted of mail fraud, it is appropriate, on motions for final discipline based on criminal convictions, "to examine the totality of circumstances" in reaching a decision as to the sanction to be imposed. In re Spina, 121 N.J. 378, 389 (1990). As noted by the sentencing court, the essence of respondent's misconduct was the "perversion of justice." He deprived the citizens of Jersey City of their right to his honest services and he deprived the municipal court defendants of their right to a fair trial before an impartial judge. He generally chose poor, single, minority women as his victims because they were more vulnerable. His motivation was his own sexual gratification. The factual basis underlying respondent's conviction established that his misconduct was of the type that per se requires disbarment. See In re Fox, 140 N.J. 613 (1995) (attorney disbarred for bribing a court clerk to backdate the filing of two complaints for which the statute of limitations had expired, gross neglect and pattern of neglect); In re Yaccarino, supra, 117 N.J. at 197-98 (former superior court judge disbarred for having attempted to use his judicial office to influence the prosecution against his daughter, having failed to disclose a personal interest in liquor licenses he issued and having conspired to acquire property that was the subject of a dispute before him) and In re Coruzzi, 98 N.J. 77 (1984) (former superior court

judge disbarred for having solicited and received bribes in criminal matters).

Therefore, the Board unanimously determined to recommend respondent's disbarment.

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

Dated: 8/18/89

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board