

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 91-120

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IN THE MATTER OF :  
FRANK FORD, III, :  
AN ATTORNEY AT LAW :

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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: June 19, 1991

Decided: October 18, 1991

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

Respondent waived appearance before the Board.

This matter is before the Board on a Motion for Reciprocal Discipline, filed by the Office of Attorney Ethics, based upon respondent's suspension from the practice of law for two years by the District Court of the Virgin Islands.

Respondent was temporarily suspended by the United States Court of Appeals for the Third Circuit on June 25, 1987. His suspension resulted from his failure to file a petition for certiorari on behalf of Pedro Bennett, respondent's client in a criminal matter. At the time of his suspension by the Third Circuit, respondent was involved in the representation of Patricia Oliver in a civil matter that had proceeded before the Territorial Court of the Virgin Islands and was then pending in the Appellate Division of the District Court, on appeal by Oliver. The Appellate Division entered a judgment affirming the Territorial Court's

decision on October 29, 1987. In spite of his suspension, respondent agreed to represent Oliver on further appeal to the Third Circuit Court of Appeals (Third Circuit) and accepted a \$2,000 retainer for that purpose on November 1, 1987.

Knowing full well that he could not represent Oliver before the Third Circuit because of his temporary suspension, respondent enlisted the assistance of other attorneys as conduits, to sign pleadings on his behalf, in order to continue to practice surreptitiously before the Third Circuit. Despite this circumvention of the Court's order, the Oliver appeal was nonetheless filed out of time and was, thereafter, dismissed as untimely filed.

Respondent failed to advise his client of his suspension and further failed to advise her of his arrangement with "substitute" counsel. Testimony before the Ethics and Grievance Committee of the Virgin Islands Bar Association ("Committee") further indicates that respondent was not responsive to the inquiries of either Oliver or "substitute" counsel.

Respondent failed to appear at the Committee's disciplinary hearing, held on October 19, 1988, although numerous attempts to notify him had been made. The Committee filed a Petition for Disciplinary Action with the District Court for the Virgin Islands on January 11, 1989. The Committee found the following violations:

- a) Disciplinary Rule 6-101 (A) (3) in that he neglected a legal matter entrusted to him in failing to timely file a Notice of Appeal to protect the appeal rights of his client.

- b) Disciplinary Rule 1-102 (A)(5) in that he engaged in conduct prejudicial to the administration of justice in attempting to surreptitiously avoid the sanction of the Third Circuit Court imposed on him by practicing before the Court through other attorneys.
- c) Disciplinary Rule 3-101(B) in that he engaged in the practice of law before a Court in violation of the rules and regulations of the Court of Appeals for the Third Circuit.
- d) Disciplinary Rule 2-106 (A) in that he collected a clearly excessive fee in that he obtained absolutely no results for his client for the fee paid.

[Petition for Disciplinary action, at 3.)]

Following review of this petition, the District Court of the Virgin Islands, Division of St. Croix, suspended respondent for a minimum of two years, effective April 15, 1989.

Contrary to the requirement set forth in R. 1:20-7(a), respondent failed to advise the New Jersey disciplinary authorities of the suspension. Indeed, the Office of Attorney Ethics was not aware of respondent's suspension for more than two years.

#### CONCLUSION AND RECOMMENDATION

Upon a review of the full record, the Board recommends that the Office of Attorney Ethics' Motion for Reciprocal Discipline be granted. Respondent has not disputed the findings in the Virgin Islands disciplinary action. Hence, the Board adopts those findings. Matter of 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 discipline proceedings in New Jersey are governed by R. 1:20-7 (d), which provides that:

- d) 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 disciplinary 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.

None of these factors applies here. Indeed, as to R. 1:20-7 (d) (5), similar cases in New Jersey involving surreptitious fraudulent conduct have resulted in lengthy suspensions. See, e.g., In re Chidiac, 109 N.J. 84 (1987); In re Yacavino, 100 N.J. 50 (1985); In re McNally, 81 N.J. 301 (1979). See, also, In re Goldstein, 97 N.J. 545 (1984) (where attorney was disbarred for eleven instances primarily involving gross negligence, as well as

for continuing to practice law while temporarily suspended by the Court.)

The Board notes the absence of mitigating factors in this case. In contrast, the fact that respondent failed to apprise New Jersey disciplinary authorities of his Virgin Islands suspension, contrary to R. 1:20-7(a), was considered by the Board as a significant aggravating factor.<sup>1</sup>

The Board, therefore, unanimously recommends that respondent be suspended for two years for his misconduct in the Virgin Islands. That two-year suspension should not be made retroactive to the Virgin Islands suspension, but should commence upon order of the Court, for two reasons: first, respondent's failure to report his Virgin Islands suspension; and second, respondent's ability and opportunity to use his New Jersey license during the period of the Virgin Islands suspension.

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

Dated: 10/15/99

By: Raymond R. Trombadore

Raymond R. Trombadore  
Chair  
Disciplinary Review Board

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<sup>1</sup> The Board is aware that findings of serious unethical conduct in five additional disciplinary matters have been filed with the District Court of the Virgin Islands. These matters have not been fully adjudicated in the Virgin Islands and, therefore, have not been considered by the Board in arriving at its recommendation. This will not, however, preclude the Board from reviewing pending matters at the time of a petition for reinstatement.