SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-145
District Docket No. XIV-03-0003E

IN THE MATTER OF	:
	:
JAMES W. TREFFINGER	:
	:
AN ATTORNEY AT LAW	:

Decision

Argued: June 17, 2004

Decided: July 26, 2004

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

Robert J. DeGroot appeared on behalf of respondent.

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

This matter was before us based on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's guilty plea to conspiracy to obstruct justice and mail fraud.

Respondent was admitted to the New Jersey bar in 1976 and to the New York bar in 1977. On June 4, 2003, he was temporarily suspended, in accordance with R.1:20-13(b)(1)

(temporary suspension after conviction of a serious crime). In re Treffinger, 176 N.J. 423 (2003). His suspension remains in effect.

In October 2002, respondent was the subject of a twenty-count indictment filed in United States District Court for the District of New Jersey charging him with, among other things, extortion, fraud, obstructing a federal investigation, and conspiracy, committed while he was serving as the Essex County Executive.[1] On May 30, 2003, four days before respondent's trial was to begin, he pleaded guilty to two counts of the indictment: conspiracy to obstruct justice, in violation of 18 U.S.C.A. 371, and mail fraud, in violation of 18 U.S.C.A. 1341, 1346 and 2.

The factual basis for the plea was elicited by Assistant United States Attorney Perry A. Carbone:

> Q. On or about May 9th of 2000, did you learn that Jerry Free and United Gunite Construction, Inc. may be the subject of a federal investigation involving the award of no-bid contracts to that company by the City of Paterson, New Jersey?
>
> A. Yes, sir.

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[1] The government's examination of respondent emanated from its investigation of UGC (United Gunite Construction, Inc.), which was under suspicion of engaging in bribery and public corruption in order to influence the award to it of no-bid government contracts. On an intercepted wiretap, Essex County Engineer Rajashekar Ravilla was overheard in a conversation with Jerry Free, an executive with UGC, attempting to extort money from UGC for respondent's Senate campaign fund.

Q. On or about May 10th of 2000, did you summon Michael DeMiro, Irene Almeida, Rajashekar Ravilla and Matthew Kirnan[2] to a meeting at a County-owned residence in Cedar Grove, New Jersey to discuss the rumored federal investigation of Jerry Free and Gunite?

A. Yes, sir.

Q. During this May 10th, 2000 meeting, did you counsel the County Engineer to create a misleading and backdated memo to be placed in the Essex County Government files that was calculated to look like it was generated at the time that contracts were awarded to Gunite, to justify the selection of Gunite and to declare the contracts emergencies?

A. Yes, sir.

Q. To have the memo look authentic, did you also suggest that the memo falsely indicate that it was sent to the Director of Public Works?

A. Yes, sir.

Q. During that meeting, did the County Engineer advise you that 'he' meaning Jerry Free, '. . . made it very clear on the phone that, you know, he wanted this job, and then he would give us 10,000'?

A. Yes, sir.

Q. Did you then pose the following question to the County Engineer, 'Let's pretend

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[2] This is the same Matthew Kirnan whose matter (motion for final discipline) we considered on May 20, 2004. We determined to impose an eighteen-month suspension. Michael DeMiro, too, is currently the subject of a motion for final discipline filed by the OAE.

I'm a prosecutor now. Mr. Ravilla, did you ever discuss with Mr. Free the possibility of his getting work in exchange for making a political contribution'?

A. Yes, sir.

Q. Before he answered the question, did you say to him, 'You didn't do that'?

A. Yes, sir.

Q. Did the County Engineer then answer, 'No'?

A. Yes, sir.

Q. Did you then say the following to the County Engineer, 'I'm sure you didn't. Did he ever bring it up to you? I don't think you'd even remember such a thing. You don't pay attention to those things?'

A. Yes, sir.

Q. Did the County Engineer then answer, 'No'?

A. Yes, sir.

Q. From on or about May 12 through on or about May 16, 2000, did you draft a memorandum dated May 12, 2000, to the Essex County Counsel, directing him to investigate whether Gunite did business with Essex County when you already knew that they did?

A. Yes, sir.

Q. Did your May 12, 2000 memorandum falsely reflect that you did not know Jerry Free or United Gunite?

A. Yes, sir.

Q. On or about May 16 of 2000, did you cause Hal DeMiro to meet with the County Engineer and counsel him on the creation of a memorandum you referred to during the May 10th, 2000 meeting?

A. Yes, sir.

Q. Did Michael DeMiro agree to do so?

A. Yes, sir.

Q. On or about October 11 of 2000, were the Federal Grand Jury subpoenas served on Essex County seeking, among other things, documents relating to the award of contracts to the [sic] United Gunite?

A. Yes, sir.

Q. Did you summon the former County Counsel to a meeting in your office that day in which Rajashekar Ravilla and Michael DeMiro were also present?

A. Yes, sir.

Q. During that meeting, did Rajashekar Ravilla state County contracts had been awarded to United Gunite in exchange for campaign contributions?

A. Yes.

Q. During that meeting, did Rajashekar Ravilla also state that documents had been backdated and created to justify the award of contracts to the [sic] United Gunite?

A. Yes.

Q. Shortly after the meeting, did you then rehire the County Counsel?

A. Yes, sir.

Q. After you rehired the County Counsel, did he provide little meaningful services to the County?

A. Yes, sir.

Q. On March 22nd, 2001, did you have a meeting with Michael DeMiro?

A. Yes, sir.

Q. During that meeting, did you tell Michael DeMiro that the County Counsel, 'was involved that day, and therefore you could not "get rid of him"'?

A. Yes, sir.

Q. In or about September of 1999, were you declared candidate for the Republican nomination to the United States Senate?

A. Yes.

Q. Between on or about September 20, 1999 and October 4, 1999, did you cause two individuals, referred to as 'Individuals Numbers 1 and 2' be awarded jobs with Essex County for the purpose of primarily working on your Senate campaign?

A. Yes, sir.

Q. From between October of 1999 through June of 2000, did you cause Individuals known as '1 and 2,' to complete campaign related tasks during Essex County business hours to assist your Senate campaign and another's campaign for County Freeholder?

A. Yes, sir.

Q. From between October of 1999 through June of 2000, did you cause Individuals Numbers 1 and 2 to receive salaries from Essex County while providing little meaningful services to the County in return?

A. Yes, sir.

Q. In or about June of 2000, did you cause Individuals Numbers 1 and 2 to receive raises in their County salaries based on the work that they did on your Senate campaign?

A. Yes, sir.

Q. On or about January 31st, April 15th, and July 31st of 2000, to further the scheme, did you cause reports to be forwarded through the United States mails in New Jersey to the Federal Election Commission in Washington, D.C., which failed to disclose the value of the services provided by Individuals Numbers 1 and 2 to your Senate campaign?

A. Yes, sir.

Q. During this time period, did Individuals Numbers 1 and 2 receive the combined net salary from Essex County in the amount of approximately $29,471?

A. Yes, sir.

Q. Did you do these things knowingly and willfully, with the intent to defraud Essex County?

A. Yes, sir.

MR. CARBONE: Your Honor, at trial the government will also prove the use of the mails was reasonably foreseeable as specified in the Indictment.

> Based on that representation and Mr. Treffinger's responses to those questions, we believe that there is an adequate factual basis for the plea.
>
> THE COURT: Mr. Klingeman, does the defendant take issue with the item of the government's proffer and the forseeability of the use of the mails?
>
> MR. KLINGEMAN: No.
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> [OAEbEx.B30 to 36.][3]

On October 17, 2003, respondent appeared for sentencing before the Honorable John W. Bissell, Chief Judge, U.S.D.C, at which time his application for a downward departure at sentencing was denied (OAEbEx.C46). Prior to imposing sentence, Judge Bissell offered the following observations:

> THE COURT: I'm not going to belabor the record at this time because it's unnecessary. The facts as established in the presentence report which, by the way, this Court accepts and adopts as its own and incorporates herein by reference as if more fully stated at this time, are ample in terms of a description of the underlying offenses in this matter. To the extent those facts have been abridged or amended in any way in the course of the discussions, I had arguments before me today and I accept those as well.
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> In any event, of course, particularly considering Mr. Treffinger's own allocution at the time of his plea of guilty, there is an ample basis in fact for the crimes which he has admitted and no one disputes that. The seriousness of these offenses are [sic] not

[3] OAEb refers to the brief submitted by the OAE.

argued either. They fall into two distinct but regreatably [sic], in any case, related groups.

Mr. Treffinger, indeed his coconspirators to some extent or as will be revealed more fully at their sentencing chose a course to enhance and promote his election to the United States Senate without dotting all the I's as [sic] crossing all the T's of propriety. Indeed, far from it. These included the offenses described in Count 14 to wit; the placing of two people on the Essex County payroll even though they were not performing services for Essex County and indeed their work was on the Senate campaign.

They include also in Count 7, the generation of a false paper trail and related activities to side track, divert, derail, whatever curve you want to use, a legitimate federal investigation into, in that particular case, the extortion from United Gunite of support for the campaign in return for favors, status as a contractor with the county. The offenses of that sort, of course, go to the very heart of the integrity or in this case the lack thereof of public servants [sic] not only go to enjoy positions of power and responsibility that permits them to impose actions of that kind upon others but also goes to the heart of our elected [sic] process as well.

On is [sic] that score, of course, I refer to the senate campaign which served as a genesis for these events. The public confidence in government is very necessary if we are to continue as a free and basically self regulated society. But it is a precarious and delicate attribute of our society and one which is fragile and can easily be fractured or undercut when we proceed with actions such as these by elected public officials. I think I would agree with Mr. Klingeman that no one sentence of any one

person may necessarily restore public confidence in government in one fell swoop or one waive [sic] of the magic wand. In all likelihood, the selection of a particular sentence within the guideline range that confronts the Court today will not necessarily achieve that goal, certainly not on its own. But the public has no other way really to speak in a matter such as this other than through the Court. The public has a right to say we were wrong [sic] and an appropriate measure of punishment is in order for those who have wronged us.

Another appropriate and well recognized pennate [tenet?] in terms of the selection of a sentence is that of public deterrence. Indeed it's mentioned specifically in the statute to which Mr. Klingeman referred; 'Public officials and others who commit white collar crimes of one sort or another usually don't consider themselves criminals.' That's for somebody else.

Mr. Treffinger, to his credit, I will give credit where it is due, has acknowledged the criminality of his conduct. Has indicated that he's made some changes. He'd like to put that behind him. I have no reason to doubt his sincerity in that regard. As I've already mentioned, private deterrence for him is not essential here. But for those similarly situated, for those similarly impowered [sic], for those who may feel that power places them above reconning [sic] a sentence in any case and every case, has got to help deliver the message at least in part that such conduct not only will not be tolerated but will be dealt with sternly.

[OAEbEx.C57 to 60].

Judge Bissell sentenced respondent to a term of thirteen months in prison, to be followed by a three-year term of

supervised release. Respondent was also fined $5,000 and ordered to pay a special assessment of $200 and make restitution in the amount of $29,471.

The OAE urged us to disbar respondent.

Upon a de novo review of the record, we determine to grant the OAE's motion for final discipline.

Respondent pleaded guilty to conspiracy to obstruct justice and mail fraud, admitting that he obstructed a federal probe into his dealings with UGC, a sewer-repair firm that was awarded no-bid Essex County contracts. He also admitted that he coached aides to lie to federal investigators and to create spurious documents to conceal thousands of dollars in campaign contributions from UGC. In addition, he pleaded guilty to mail fraud for placing campaign workers on the county payroll and for failing to disclose that circumstance to federal election officials.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's criminal offenses violated RPC 8.4(b) (criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of

justice). Only the quantum of discipline to be imposed remains at issue. 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 445-446. Discipline is imposed even when the attorney's offense was not related to the practice of law. In re Kinnear, 105 N.J. 391 (1987).

In In re Conway, 107 N.J. 168, 180 (1987), the Court held that "[c]ertain 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. Ethics offenses of this caliber stigmatize a lawyer as unfit to practice." In Conway, the attorney was disbarred after he was convicted of conspiracy and tampering with a witness. Conway participated in a scheme to have a police officer falsify a police report and give false identification testimony.

Similarly, In re Edson, 108 N.J. 464 (1987), the Court held that counseling a client to fabricate a defense involving

material facts that are knowingly false, participating as defense counsel while the client perjures himself in court, and personally lying to the prosecuting attorney warranted disbarment.

In re Verdiramo, 96 N.J. 183 (1984), arose from the attorney's guilty plea to obstruction of justice stemming from his attempt to persuade a prospective witness to testify falsely before a grand jury. Verdiramo was suspended retroactively to the date of his temporary suspension, in light of "the special circumstances" present in the case - the length of time he had been temporarily suspended and the passage of time. He was suspended for seven and a half years.

The OAE argued that the law and facts of this case require that respondent be disbarred. We agree. Respondent ignored basic moral principles required of an attorney. In addition, his deception, which occurred over an extended period of time, eroded the public's faith, not only in lawyers and the legal system, but also in government, because it involved a prominent elected official.

In his brief to us, respondent's counsel argued that a three-year suspension is the appropriate measure of discipline. Counsel sought to distinguish prior disbarment cases from the instant matter because, in those matters, the attorneys were

acting within the scope of their professional duties. We find counsel's argument without merit.

Although respondent was not acting in the capacity of an attorney representing a client or counseling a friend, his conduct struck so deeply at the heart of what it means to be an attorney that he has proven himself unfit to be a member of the bar. His complete disregard for ethical and societal rules was astounding. Respondent coached his aids to lie to federal investigators and to create a sham paper trail to conceal campaign contributions from UGC. He placed campaign workers on the county payroll without disclosing his actions to election officials. His actions were the worst type of self-serving dealings, where he corrupted, and brought down friends or colleagues, in an attempt to cover up his past misconduct and to further his political aspirations. In our view, he is a crook of the worst order.

Furthermore, respondent violated the sacred trust that had been placed in him as a public servant. "Professional misconduct that takes deadly aim at the public-at-large is as grave as the misconduct that victimizes a lawyer's individual clients." In re Verdiramo, supra, 96 N.J. 183, 186. In In re Boylan, 162 N.J. 289 (2000), the Court disbarred an attorney who, while serving as a municipal court judge, engaged in a scheme to defraud the city

of money, by reducing traffic fines for female defendants, from whom he solicited sexual favors. Boylan coached the defendants to lie in court about the circumstances of their tickets and used their false statements as the basis to justify reductions in their fines and penalties. He pled guilty to mail fraud.

A judge was also disbarred in In re Coruzzi, 98 N.J. 77 (1984), after he was convicted of four counts of bribery. In three criminal matters, Coruzzi had accepted or agreed to accept bribes. The consideration for the bribe money in two of the cases was not to impose custodial sentences, and, in the third, to change a custodial sentence to a non-custodial term.

That respondent's actions did not take place in a courtroom, or in the context of an attorney-client relationship, is irrelevant. As an elected public official, he betrayed the very people who elected him and who trusted that he would discharge his public duties with integrity and honor. We, therefore, recommend that he be disbarred. His egregious misconduct evidences a flaw running so deeply in his character that any lesser penalty than disbarment is insufficient to protect the public and to restore its trust in its elected officials and in the legal profession.

Vice-Chair William J. O'Shaughnessy, Esq., did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of James W. Treffinger
Docket No. DRB 04-145

Argued: June 17, 2004

Decided: July 26, 2004

Disposition: Disbar

Members	***Disbar***	***Suspension***	***Reprimand***	***Admonition***	***Dismiss***	***Disqualified***	***Did not participate***
Maudsley	X						
O'Shaughnessy							X
Boylan	X						
Holmes	X						
Lolla	X						
Pashman	X						
Schwartz	X						
Stanton	X						
Wissinger	X						
Total:	8						1

Julianne K. DeCore
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Chief Counsel