SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-160
District Docket No. XIV-07-0006E

IN THE MATTER OF	:
BERNARD MEITERMAN	:
AN ATTORNEY AT LAW	:

Decision

Argued: September 17, 2009

Decided: November 20, 2009

Christina Blunda Kennedy appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter came before us on a motion for final discipline, filed by the Office of Attorney Ethics ("OAE"), seeking respondent's disbarment. The motion is based on respondent's criminal conviction, following his guilty plea to using the United States mail to promote and facilitate a racketeering enterprise, a violation of 18 U.S.C.A. §1952(a)(3) and (2). Specifically, respondent bribed a public official to expedite sewer connection approvals for land developments and

and/or a federal grand jury. For respondent's egregious transgressions, we recommend his disbarment.

Respondent was admitted to the New Jersey bar in 1990. At the relevant time, he maintained a law office in Manalapan, New Jersey. He has no ethics history, other than his temporary suspension, following his guilty plea to the federal crime. In re Meiterman, 193 N.J. 29 (2007).

On October 29, 2007, respondent entered a guilty plea to count ten of a superseding indictment filed in the United States District Court, District of New Jersey, charging him with violating 18 U.S.C.A. § 1952 (a) and (2), use of the United States mail in the aid of racketeering enterprises.

The indictment described the scheme. Respondent and his co-defendant brother, Steven, were developers in Marlboro Township, New Jersey, who operated through various entities.[1] The defendants constructed numerous large and smaller-scale developments and some commercial buildings in and around Marlboro. A Monmouth County architect worked on several of the defendants' development projects by consulting and preparing architectural plans for single-family and two-family units. The Western Monmouth Utilities Authority ("WMUA") was the sewer

[1] A third co-defendant, Edward Kay, was a business partner and investor with defendants Bernard and Steven Meiterman.

utility for several municipalities in the western part of Monmouth County. Developers needed WMUA approval to obtain municipal sewer service for their development properties in those areas. Obtaining such services often greatly increased the value of the projects.

From about January 28, 2002 to September 21, 2006, Frank Abate served as the Executive Director of the WMUA and was responsible for, among other things, dealing with developers and contractors. His responsibilities included facilitating developers' efforts to obtain sewer extensions. Abate was responsible for setting the agendas for the WMUA's monthly public meetings and controlling which developers' applications would be considered. Therefore, Abate's role affected the timing, progress, and ultimate success of development projects that required WMUA sewer approvals.

The defendants devised a scheme "to defraud the WMUA and the citizens in its jurisdiction of the right to [Abate's] honest services in the affairs of the WMUA." The object of the scheme was to "attempt to coax, influence and reward [Abate's] official action by giving, arranging for and funding corrupt personal financial benefits to [Abate], including free and discounted home improvements and surveys, and to intentionally

conceal from the WMUA and the public material information regarding [Abate's] receipt of these benefits."

From about 2002 to 2005, Abate made significant improvements to his Marlboro home, including two additions. Respondent and his co-defendants, at their expense, arranged for the architectural services for improvements to Abate's home.

On April 13, 2005, respondent forwarded, via United States mail, a $500 invoice from a Holmdel architect to Frank Abate's house, in Marlboro, New Jersey. The defendants paid the architect $1,800 for services performed for Abate. In furtherance of the scheme, in 2005 and 2006, respondent counseled the architect to conceal the fact that respondent and his co-defendants had paid him for services conferred on Abate. Respondent told the architect to "falsely inform law enforcement and/or a federal grand jury" that he had forgotten to bill Abate and that the payments respondent had made to the architect were unrelated to the architect's work for Abate.

Count ten of the superseding indictment, to which respondent entered a guilty plea, charged that he, his brother, and Edward Kay

> concealed and attempted to conceal the giving and receipt of these corrupt benefits and other material information from the WMUA and the citizens within its jurisdiction by, among other things:

a. intentionally failing to disclose to the WMUA [Abate's] acceptance of, and agreement to accept, these corrupt benefits;

b. instructing others not to disclose these corrupt benefits;

c. deleting language from billing records and other documents to conceal [Abate] as the true recipient of the corrupt benefits;

d. instructing others to bill [Abate] a partial amount for work done to create the pretext that [Abate] was paying in full for the job;

e. attempting to cover-up the corrupt benefits by [Abate] requesting invoices, after the law-enforcement investigation became known, for work completed long before; and

f. attempting to cover-up the corrupt benefits by [Abate] attempting to pay for benefits received only after the law enforcement investigation became known.

[OAEb Ex.A14.][2]

At the June 5, 2008 sentencing hearing, the U.S. Attorney noted that respondent's conduct was part of the pervasive corruption that had plagued Monmouth County and that respondent had played an important role in fostering and continuing the corruption. However, the U.S. Attorney also pointed out that respondent had admitted his guilt and had fully cooperated with

[2] OAEb denotes the OAE's brief in support of its motion.

the government. Respondent provided substantial assistance to the government in its continuing investigation of others. The U.S. Attorney, therefore, moved for a downward departure from the sentencing guidelines, relying on the nature and extent of respondent's assistance; the usefulness of his assistance; his truthfulness; the completeness and reliability of the information he provided; the danger or risk of injury to himself and his family, resulting from his cooperation; and the timeliness of his assistance.

In light of the above factors and the fact that respondent had self-reported his misconduct to the OAE, the court granted the government's motion for a downward departure. The court sentenced respondent to twenty-four months' imprisonment, followed by three years of supervised release. Respondent was also fined $7,500 and directed to pay a special assessment of $100.

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

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 guilty plea to use of the United States mail to promote and facilitate a racketeering enterprise constituted a violation of RPC 8.4(b) (commission of a criminal act

that reflects adversely on his honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). 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 sanction 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.

In gauging the suitable measure of discipline for this respondent, we note that, generally, attorneys who have participated in the bribery of public officials have been disbarred. In In re Jones, 131 N.J. 505 (1993), a deputy attorney general "devised a scheme to bribe a public official, himself." Id. at 513. He pled guilty to the third degree crime of soliciting a gift while a public servant. At the time of the offense, Jones represented the Department of Transportation, but had previously served as counsel to the Professional Boards. While representing the Professional Boards, Jones solicited a payment, in the form of a loan, from a doctor who had filed a complaint seeking the revocation of a psychologist's license. At the time, Jones was

under severe emotional and financial stress. His father had passed away, leaving behind excessive debts that threatened the loss of his mother's house. In addition, Jones' car had been stolen; the insurance company reimbursed only a small portion of the loss. Jones' recent discharge from personal bankruptcy prevented him from borrowing money from more conventional sources.

The Court found that "[b]ribery of a public official 'is a blight that destroys the very fabric of government'" (citation omitted). Citing In re Hughes, 90 N.J. 32, 37 (1982), the Court stated:

> Certain acts by attorneys so impugn the integrity of the legal system that disbarment is the only appropriate means to restore public confidence in it. Bribery of a public official is surely one of those cases. It has devastating consequences to the bar, the bench, and the public, and especially the public's confidence in the legal system.
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> [In re Jones, supra, 131 N.J. at 37.]

The Court underscored that bribery of a public official has invariably resulted in disbarment, citing, among other cases, In re Rigolosi, 107 N.J. 192 (1987), In re Conway, 107 N.J. 168 (1987), and In re Sabatino, 65 N.J. 548 (1974). The Court did not find that Jones' financial needs, emotional stress, inexperience at the bar, remorse, or letters of support from his mother and several members of the community in which he lived

were mitigating factors sufficient to affect the severity of Jones' discipline. The Court found that Jones committed the crime for his personal gain, that his conduct seriously damaged the public's confidence in the Office of the Attorney General, the chief law-enforcement agency in the State, and that it impugned the "integrity of the legal system" (citation omitted). Jones was disbarred.

In In re Tuso, 104 N.J. 59 (1986), the attorney was disbarred for attempting to bribe a school board member to obtain a building contract for a client. Mitigating factors were that the attorney, who was admitted to the bar in 1960, had no disciplinary history, rendered community service, and served as a municipal court judge. The Court determined, however, that the mitigating factors did not outweigh the attorney's crime. It was not a single, aberrational act. Over a period of months, the attorney participated in a calculated scheme to corrupt a public official and subvert government standards for fair and competitive bidding.

In In re Hughes, supra, 90 N.J. 32, the attorney was disbarred for bribing an Internal Revenue Service ("IRS") agent to remain silent about the fact that the attorney had altered and falsified federal tax lien releases to indicate that federal tax liens on the attorney's parents' property had been released.

The Hughes Court announced that, in a bribery case, mitigating circumstances might sometimes cause it to impose a less drastic sanction than disbarment. The Court, however, did not find that Hughes' situation warranted anything less. As mentioned above, Hughes pled guilty to bribing an IRS agent and forging public documents. Upon the death of Hughes' father, with whom he had practiced law, Hughes discovered that, instead of paying transfer inheritance taxes in a client's estate matter, his father had converted the funds. Although Hughes had no legal obligation to do so, he made installment payments of almost $40,000 to discharge the estate's tax liability. While making those payments, Hughes learned that federal tax liens on real estate owned by his mother had resulted from his father's failure to pay federal taxes. To protect his mother from learning of his father's wrongdoing, Hughes wanted to satisfy the tax liens but, because he was continuing to pay the estate taxes, he did not have sufficient resources. When his efforts to arrange either a settlement or a payment schedule with the IRS were not successful, he forged the tax lien releases. Hughes then offered to, and subsequently paid, $1,000 to an investigating IRS agent so that the agent would ignore the forgeries.

The Court recognized substantial mitigating factors, in that Hughes did not personally gain from his wrongdoing and that he repaid estate taxes without any legal obligation to do so. Nonetheless, the Court stated that

> these considerations are not sufficient to overcome the presumption that attorneys who bribe public officials are a threat to the public and the legal system. Hughes not only bribed an IRS official but deliberately falsified public documents. These acts severely damage public confidence in the legal system. Moreover, a person willing to resort to such means to accomplish his goals, no matter how beneficent the goals may be, is a danger to the legal system. The combination of these two offenses compels us to conclude that the public will not be adequately protected by any disposition short of disbarment.
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> [Id. at 39.]

We note that, in the three disbarment cases above, the attorneys either orchestrated the bribery or derived a financial benefit from it.

In In re Caruso, 172 N.J.350 (2002), we found that the attorney had demonstrated sufficient mitigating circumstances to warrant a sanction short of disbarment. Caruso pled guilty to one count of conspiracy to travel in interstate commerce to promote and facilitate bribery. His role in the conspiracy, however, was relatively minor. Caruso, the municipal prosecutor for the City of Camden, traveled to Pennsylvania with the mayor

of Camden. During the trip, the mayor told Caruso that he intended to reappoint the Camden municipal public defender, contingent on the public defender making a $5,000 political contribution. Caruso agreed to act as the mayor's intermediary and solicited and received the $5,000.

We found that Caruso's mitigating circumstances were sufficiently compelling to warrant a sanction less than disbarment: his role in the matter was relatively minor; he acted as an intermediary for the mayor, who instigated and benefited from the bribery; he gave substantial assistance to the U.S. Attorney's Office, including providing information and testifying at the mayor's corruption trial; and he expressed remorse and regret for his actions.

In voting for a three-year suspension, which the Court imposed, we considered that Caruso's conduct was not as serious as that in Hughes. Hughes had not only committed bribery, but had also pled guilty to altering and falsifying county register records and to uttering and publishing as true to the Essex County Register two false and forged certificates of release of federal tax liens. Furthermore, as the Court noted in the Hughes matter, that attorney, had created a victim, that is, the purchaser of his mother's property, who believed that the title was free and clear of all encumbrances when, due to the fraud

and forgery, there was a $12,000 tax lien. Although Hughes ultimately satisfied the lien, he jeopardized another's financial position in order to prevent his mother from learning of his father's tax evasion. In contrast, the documents from the criminal proceeding in Caruso indicated that there were no identifiable victims of the offense, even though the general public was victimized by the bribery of public officials.

In In re Mirabelli, 79 N.J. 597 (1979), the Court also imposed a sanction short of disbarment (three-year suspension, retroactive to the attorney's temporary suspension) for Mirabelli's conviction for bribery. There, however, the attorney never actually intended to pay the bribe. Instead, concerned that his client would not pay his fee, Mirabelli misrepresented to the client that a $2,500 payment to the assistant prosecutor would be required to obtain a non-custodial sentence. Although the Court questioned whether the attorney's conduct fell within the four corners of the bribery statute, it noted that, because the attorney admitted the findings of the district ethics committee, the sole issue for determination was the measure of discipline to be imposed.

As indicated above, in Hughes the Court held that mitigation may justify a sanction short of disbarment for the crime of bribing a public official. The Court imposed a three-

year suspension in Caruso. We find that the mitigating circumstances present here, however, are not as compelling as those found in Caruso. While respondent eventually cooperated with the U.S. Attorney's Office and assisted that office in the investigation of others, respondent, unlike Caruso, benefited from his crime. In addition, like Hughes, respondent's conduct involved more than bribing a public official. Respondent counseled another to lie to law enforcement officials and/or a grand jury.

As the Court found in Hughes, bribery of a public official is the type of case that "has devastating consequences to the bar, the bench, and the public, and especially the public's confidence in the legal system. No sanction short of disbarment will suffice to repair the damage." In re Hughes, supra, 90 N.J. at 37.

In order to protect the public from such pernicious corruption, we recommend respondent's disbarment.

Member Baugh did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Bernard Meiterman
Docket No. DRB 09-160

Argued: September 17, 2009

Decided: November 20, 2009

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh						X
Clark	X					
Doremus	X					
Stanton	X					
Wissinger	X					
Yamner	X					
Zmirich	X					
Total:	8					1

Julianne K. DeCore
Chief Counsel