
IN THE MATTER OF :
FRANCIS A. BOCK :
AN ATTORNEY AT LAW :

DISSENT

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

I respectfully dissent from the sanction portion of the majority's decision. I find myself unable to recommend that respondent should be suspended, opting instead in favor of a public reprimand.

In reaching the conclusion that a public reprimand constitutes sufficient discipline, I am not unmindful of the gravity of respondent's conduct. Respondent's carefully planned disappearance was inexcusable. As an experienced attorney and long-time municipal judge, respondent should have known better. By his conduct, respondent left his court, his partner, his clients and his family in the lurch. In a most direct way, respondent's conduct involved deceit and misrepresentation, in contravention of RPC 8.4(c), and was prejudicial to the administration of justice due to the expenditure of time, manpower and the taxpayer's money in locating him and securing his return.

I am cognizant that marital life may create stress, but it is simply inexcusable for an experienced lawyer to run away from his marriage by feigning his death. I do not accept his explanation that he believed it would be easier on his family to accept the fact that he was dead, rather than divorced.

In making my recommendation, I am fully mindful that no criminal charges have been brought against respondent. The decision made by the county prosecutor, however, in no way controls the disciplinary process. Nor does the fact that respondent has been removed as a municipal court judge control the quantum of discipline that should be imposed. It is, however, a factor that I take into account in reaching my conclusion.

Respondent's conduct must be evaluated in light of the primary purpose of discipline proceedings, which, as has been often stated, is not punishment of the offender, but "protection of the public against the attorney who cannot or will not measure up to the high standards of responsibility required of every member of the profession." In re Stout, 75 N.J. 321, 325 (1978); Accord, In re Gillespie, 124 N.J. 81, 86-7 (1991); In re Nedick, 122 N.J. 96, 99 (1991); In re Ashley, 122 N.J. 52, 65 (1991); In re Getchius, 88 N.J. 269, 276 (1982).

Although I reject respondent's argument that his conduct was unrelated to the practice of law, I concur that it represented a one-time aberration. Just as it is unlikely that respondent will ever again repeat his misconduct, so too, I find, it is unlikely that other members of the bar would feign death to escape marital problems, when confronted with a similar situation. This is not a case where I deem it necessary to impose a suspension in order to send a clarion signal to other members of the bar that such conduct will not be tolerated.

In determining the extent of discipline, it is necessary to balance the need to preserve the public confidence in the integrity and trustworthiness of lawyers with the individual facts of each particular matter. In that balance, mitigating factors must be considered, as should be the effect that particular discipline is likely to produce.

This record clearly and convincingly demonstrates that, at the time of his conduct, respondent was suffering from a psychological disorder. He could not cope with the stress of his situation. Dr. Schreitmueller candidly acknowledged that, although respondent should have been able to distinguish right from wrong, his depression clouded his judgment. He became so preoccupied with his own problems that he could not weigh the impact of his actions upon others (T137-139).¹

The aberrational nature of this incident should be considered as a mitigating factor. See In re Giordano, 123 N.J. 362, 368-69 (1991) (where the Court considered the episodic nature of the attorney's act as a mitigating factor), In re Farr, 115 N.J. 231, 236 (1989); In re Addonizio, 95 N.J. 121, 123 (1984). Additionally, respondent has committed no prior disciplinary infractions. A lawyer for thirty-two years, he has been neither publicly nor privately sanctioned. Respondent's act was entirely out of character for him.

¹ T refers to the transcript of the hearing before the DEC on January 14, 1991.

I also find, as mitigation, the fact that respondent has acknowledged his own shortcomings by having sought and pursued therapy. Respondent obviously recognized that he needed help and, apparently, he has continued with that therapy. As will be seen in my recommendation for discipline, I feel that continued therapy is required.

Additionally, I cannot ignore the fact that respondent has already been severely disciplined. Although respondent was not criminally prosecuted, quite properly, he has been removed from his position as Municipal Judge of the Borough of Morris Plains, a position that he evidently had held for almost a quarter century. He was originally removed by the entry of an Order by Assignment Judge Stanton, declaring that respondent had abandoned his judicial post and that it was, accordingly, vacant. Subsequently, Judge Stanton publicly removed respondent from his judicial office, an action that was made permanent by an August 1990 order from the Supreme Court.

Also, respondent's original disappearance and all of the subsequent proceedings attracted substantial attention in the press. Respondent's disappearance, reappearance, and judicial removal have all been in the public domain. The public knows what respondent did and that he has been punished for his acts. Is it really necessary to further punish him by depriving him, albeit temporarily, of his livelihood? I think not.

Instead, I am concerned that those who would be most affected by a suspension would be the very individuals who originally

suffered by respondent's disappearance. His clients would be deprived of his counsel. His partner would be deprived of his assistance. His wife would be deprived of his companionship and her financial source of support. This record suggests that his clients have apparently forgiven respondent for his temporary lapse. Obviously, respondent's partner has done so, given his testimony below. Mrs. Bock's fine sense of forgiveness and love are amply demonstrated by her willingness to accept her husband, despite what he has done.

Yes, respondent should be disciplined. He committed a serious ethics infraction. The question, however, is what should constitute the measure of that discipline. In this unique and unlikely to recur factual pattern, a public reprimand should suffice.

As previously stated, the primary purpose of the disciplinary process is to protect the public. It is because of that important role that I find it necessary to recommend a further condition. When Dr. Schreitmueller testified below, he was asked how respondent might react if another difficult situation arose. The following exchange resulted:

Q. Are you, as his treating doctor, confident that if another difficult situation occurred in the future, that he would be able to handle it without reacting in a bizarre fashion.

A. Yes. As recently as -- well I don't have a crystal ball to tell the future.

I feel confident that is the road he is on now and he is moving in that direction, yes.

[T139]

The doctor's response was equivocal. Subsequently, the following additional exchange occurred:

Q. Do you think that in your opinion, that a recurrence of an affair either with Mrs. Heap or anyone else would operate to recreate the circumstances of the stress that led to the bizarre behavior of Election Day 1989?

A. Well, I see that now he's -- you know, he's acting and thinking very differently since he's using the Prozac. I feel he's in, you know, much better control of choosing what he wants to do with his life and living with his choices.

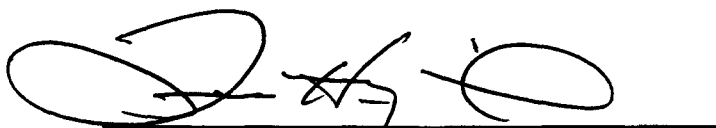
Q. Is the Prozac the only thing that's between Mr. Bock and a repeat of the behavior that occurred in 1989?

A. I don't know sir. I couldn't say that.

I mean, he seems like he's in better control of himself than he was.

[T144-145]

In light of this testimony, I feel constrained to recommend that respondent be required to continue his therapy for a period of two years and that his therapist periodically report to the Office of Attorney Ethics as to the progress of his treatment. I would further recommend that, two years hence, respondent be required to submit to an examination by a psychiatrist designated by the Office of Attorney Ethics, with the approval of this Board, so that a determination might be made whether further treatment is still necessary.



Lee M. Hymerling
Dissenting Member

Vice-Chair Elizabeth L. Buff and
the Honorable Paul R. Huot join in this dissent.