

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 99-100

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IN THE MATTER OF :  
SAMUEL V. CONVERY, JR. :  
AN ATTORNEY AT LAW :

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Dissent

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

Placing unwarranted emphasis on the federal classification of respondent's offense as a class A misdemeanor,<sup>1</sup> the majority would impose only a reprimand for conduct that has usually resulted in disbarment. Respondent bribed two members of a zoning board, a quasi-

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<sup>1</sup> A class A misdemeanor carries a maximum penalty of one-year imprisonment, a \$100,000 fine or both.

judicial tribunal, to vote for granting a variance in a pending matter in which respondent's client was the applicant.

As appears in the pre-sentence report, the following evidence was uncovered in a federal investigation. Respondent had been the mayor of the Township of Edison from 1991 to 1993 and had been counsel to the Zoning Board. In February 1996 he filed an application with the Zoning Board for zoning variances and site plan approval on behalf of his client, Shobhna Pooja. Considerable public opposition was expressed at the first public hearing held April 16, 1996. A newspaper reported that one of the Board members, Gerry Kenny, stated that he intended to vote against granting the variance. The pre-sentence report continues:

...Kenny then worked as an ironworker out of Ironworkers' Local Union 373 in Perth Amboy, New Jersey. John Wade was the business manager of Kenny's union local. As business manager, Wade determined which union members to send out on union jobs. In April 1996, shortly after Kenny was quoted in the newspaper criticizing the Pooja application, [respondent] caused a telefax of a copy of the article to be sent to Wade. [Respondent] also spoke to Wade by telephone about the article in which Kenny was quoted. After speaking to [respondent], Wade visited Kenny at a union job site. Wade showed Kenny a copy of the article that [respondent] had faxed to him and told Kenny that he should reconsider his opposition to the Pooja project. Wade also told Kenny that he was biting the hand that feeds him.

In the summer of 1996, [respondent] met with Robert F. Engel and Robert J. Engel to discuss Pooja's application before the Zoning Board. Robert F. Engel was married to Sylvia Engel, who was Chairperson of the Township of Edison Republican Party. Robert F. Engel was himself influential in local Republican Party circles. Zoning Board member Kenny was a Republican who had been appointed to the Zoning board upon recommendation of

Robert F. and Sylvia Engel. Robert J. Engel is the son of Robert F. and Sylvia Engel. Robert J.[sic] Engel had been a councilman in Edison and was a potential mayoral candidate in the summer of 1996. During the summer of 1996, Robert J. Engel worked as an at-will employee for the County of Middlesex as the head of the County public property division.

...During discussions in the summer of 1996, [respondent] asked the Engels for assistance in obtaining the vote of Kenny and another Republican Zoning Board member on the Pooja project. [Respondent] suggested to the Engels that Robert J. Engel's at-will job with the County of Middlesex could be vulnerable to political pressures. [Respondent] told the Engels, however, that he would assist Robert J. Engel in obtaining a permanent position with the County if the Engels helped [respondent] obtain two favorable votes on the Pooja project before the Zoning Board. The benefit to Robert J. Engel of the permanent position would be in the form of job security....

[Respondent] also agreed with the Engels that the Engels would offer on [respondent's] behalf a job or assistance in obtaining a job to Kenny in order to influence Kenny to change his mind and vote for the Pooja project. Kenny had been enduring severe financial problems due to a lack of construction work.... On August 20, 1996, Kenny voted to approve the Pooja project....

In his statement of the factual basis for his guilty plea, as it appears in the transcript, respondent acknowledged that he was retained to represent a client "in seeking approval of a zoning variance by the Township of Edison Zoning Board." He thereafter "became aware that a member of the Edison Zoning Board had been quoted in a local newspaper making remarks that were critical of the ... project and expressing an intention to vote against the project." That member was Gerard Kenny. Respondent admitted that he then "cause[d] a telefax copy of the newspaper article ... to be sent to John Wade, the business agent of Kenny's union local." He also admitted that he thereafter spoke "with Mr. Wade by

telephone about the newspaper article in which Mr. Kenny was quoted." Finally he admitted that at about the same time he agreed "with Robert F. Engels and his son Robert J. Engels to assist Robert J. Engels in obtaining a permanent position with the County of Middlesex ... in exchange for the Engels' assistance in obtaining the favorable votes of two zoning board members on the project."

In short, respondent acknowledged that he had offered a benefit to powerful political intermediaries (the Engels) if they would use their influence to obtain the favorable votes of two members of the Zoning Board in a pending matter. Furthermore, there is additional evidence that, if proven, would establish that respondent used his influence with another intermediary (Wade) to threaten the job security of one of the Board members (Kenny) if that member carried out his threat to vote against the application. Alternatively, respondent extended to that member the prospect of job security if he voted to grant the application.

Even if we disregard the evidence uncovered by the federal authorities that respondent had challenged, he still would be guilty of the New Jersey crime of bribery based on his own admissions. N.J.S.A. 2C:27-2(b) provides in part:

A person is guilty of bribery if he directly or indirectly offers, confers or agrees to confer upon another ... [a]ny benefit as consideration for a decision, vote, recommendation or exercise of official discretion in a judicial or administrative proceeding. ... Any offense proscribed by this section is a crime of the second degree....

A crime of the second degree carries a maximum fine of \$100,000, N.J.S.A. 2C:43-3a, and imprisonment "for a specific term of years which shall be fixed by the court and shall be between five and 10 years." N.J.S.A. 2C:43-6a(2). "The court shall deal with a person who has been convicted of a crime of the first or second degree by imposing a sentence of imprisonment unless, having due regard to the character and condition of the defendant, it is of the opinion that his imprisonment would be a serious injustice which overrides the need to deter such conduct by others." N.J.S.A. 2C:44-1d.

If respondent had been convicted under the New Jersey bribery statute, the Director of the OAE initially could have presented this matter to the Supreme Court as a "serious crime." Had he done so, the Court would have temporarily suspended respondent until final disposition of the present motion as required by R. 1:20-13(b)(1). The Rule defines "serious crime" to "include any crime of the first or second degree ... or any other crime ... of the United States ... a necessary element of which, as determined by the statutory ... definition of such crime in the jurisdiction where the judgment was entered, involves interference with the administration of justice ... [or] ... bribery...."

However, there has been no State prosecution, and the OAE chose not to initiate a plenary disciplinary proceeding. Instead, it has relied solely on the disposition of the matter in the federal court.

The federal bribery crime, defined in 18 U.S.C.A §201(b), provides in part:

Whoever – (1) directly or indirectly, corruptly gives, offers or promises anything of value to any public official or person who has been selected to

be a public official, or offers or promises any public official or any person who has been selected to be a public official to give anything of value to any persons or entity, with the intention – (A) to influence any official act;...

is guilty of the crime of bribery, which carries a fine, maximum imprisonment of 15 years or both.

Respondent's conduct could not be prosecuted as a federal bribe, however, because the ultimate target of the crime was not a "public official" as defined in the federal statute, but a member of a municipal zoning board. 18 U.S.C.A. §201(a) provides in part:

For purposes of this section – (1) the term 'public official' means Member of Congress, Delegate, or Resident Commissioner, either before or after such official has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by the authority of any such department, agency, or branch of government, or a juror;...

Denied the availability of the federal bribery crime, the United States Attorney charged the lesser and somewhat incongruous offense of violating the Hatch Act, 18 U.S.C.A. 600, in an information to which respondent pled guilty. That provision provides in part:

[W]hoever, directly or indirectly, promises any ... benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration ... for any political activity ... shall be fined under this title or imprisoned not more than one year, or both.

The only reported case under the statute suggests that it was not intended to deal with the facts of the present case, but rather with the less serious case of promising a job

or contract, funded by the federal government, in return for political as distinguished from governmental activity. United States v. Pinter, 630 F.2d 1270, 1283 (8<sup>th</sup> Cir. 1980) (person hired as a secretary to a federal official on condition that she engage in "political activity.")

Although it is not in the record, I assume that to satisfy the federal component of the Hatch Act offense the county job respondent offered the younger Engel was funded at least in part by federal funds. The "political activity" in this case was having members of a zoning board of adjustment vote to grant a variance in a pending matter. The information to which respondent pled guilty defined "political activity" to mean "obtaining the favorable votes of one or more Zoning Board members for the application for zoning variances ... [i]n violation of Title 18, United States Code, Section 600." That language awkwardly enlarged the Hatch Act element of engaging in "political activity" to include the bribery element of exercising governmental power.

When he entered his guilty plea, respondent not only acknowledged that his promise to the Engels fell within the prohibition of the federal statute, but expressly stated that he considered "the Engels' assistance in obtaining the favorable votes of two zoning board members ... [and] the zoning board members' votes to be a form of political activity." Respondent thereby stipulated that the statutory element of "political activity" means in this case obtaining votes of members of a quasi-judicial tribunal in a pending matter. By that stipulation, respondent's conduct, which would support a conviction of the New Jersey crime of bribery, became an element of the offense to which respondent pled guilty.

Evaluating that conduct does not require us to look beyond the offense of which respondent was convicted and is therefore properly before us for consideration.

The OAE Director chose to present the matter to us under the provisions of R. 1:20-13 on a motion for imposition of a six-month suspension in lieu of filing a complaint, the usual plenary procedure for determining ethical violations. The Rule authorizes us to base our decision "for final discipline ... on a criminal conviction or admission of guilt...." R. 1:20-13(c)(2). As stated in the Rule, the "conduct" on which the conviction is based "shall be conclusively established by [among other things] ... a certified copy of a judgment of conviction, [or] the transcript of a plea of guilty to a crime or disorderly persons offense, ...." R. 1:20-13(c)(1). The operative word in the Rule is "conduct," not the statutory label attached to the offense. That conduct, which respondent and the Government stipulated satisfied the core element of the offense, was respondent's promise to secure employment for the Engels' son in consideration of "obtaining the favorable votes of two zoning board members...."

In terms of the New Jersey bribery statute, supra, the conduct supporting respondent's federal conviction was that he offered a benefit "upon another ... as consideration for a decision, vote, recommendation or exercise of official discretion in a judicial or administrative proceeding...." The language is quoted not to show that respondent was convicted of bribery, but to show that the conduct necessarily supporting the federal offense of which he was convicted is serious enough to constitute a bribery



under New Jersey criminal law. Such conduct has resulted in disbarment. See e.g. In re Conway, 107 N.J. 168 (1987) (attempt to bribe a police officer to obtain dismissal of charges against a client) and In re Hughes, 90 N.J. 32 (1982) (bribery of IRS official). As the Court said in In re Coruzzi, 98 N.J. 77, 81 (1984), where the respondent was a judge, "Bribery is so reprehensible as to almost invariably call for disbarment."

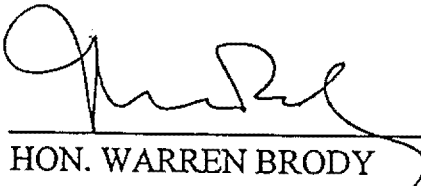
The federal judge at sentencing regretfully noted when referring to respondent's conduct and its political milieu, "... [I]t's in a world where unfortunately, in the scheme of things, much of the activity that has taken place in this situation, is either condoned or determined to be the proper course of conduct or the way of doing business." We should not imply in our disposition of the motion that we condone or in any measure accept such conduct as a proper course of conduct or way of doing business. In my opinion a mere reprimand does just that. Respondent's conduct undermines honest government and reinforces the public's cynical appraisal of government and attorneys.

I recognize that the OAE did not make the foregoing analysis of what is before us and moved for only a six-month suspension. I would therefore withhold the imposition of discipline at this time to allow the OAE and respondent an opportunity to submit supplemental briefs respecting the scope of respondent's unethical conduct that we may consider at this time and the appropriate discipline.

At the very least, I would deny without prejudice the motion for discipline, and direct the OAE to file an ethics complaint, allowing both sides an opportunity to present

evidence of the full scope of respondent's unethical conduct as recited in the federal pre-sentence report.

Dated: 10/20/99

By:   
HON. WARREN BRODY  
Member  
Disciplinary Review Board