

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 98-045

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IN THE MATTER OF  
GERALD P. CANTINI  
AN ATTORNEY AT LAW

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(CORRECTED DECISION)

Decision

Argued: March 19, 1998

Decided: September 28, 1998

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

Respondent did not appear for oral argument, despite proper notice of the hearing.

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

This matter was before the Board on a motion for reciprocal discipline filed by the  
Office of Attorney Ethics ("OAE"), based upon respondent's consent to disbarment in  
Vermont for conduct that included poor recordkeeping and misrepresentations to a tribunal.  
In Vermont, disbarment is equivalent to a five-year suspension.

Notice of the Board hearing was sent to respondent by certified mail, return receipt requested and regular mail. Although the transcript of the Board hearing indicates that neither the certified mail nor the regular mail was returned, a certified receipt was eventually returned to the Board indicating delivery on February 3, 1998. The signature is that of respondent. Additionally, the OAE served respondent by certified mail, return receipt requested. The certified receipt was returned, also signed by respondent and indicating delivery on February 3, 1998.

Respondent was admitted to the New Jersey bar in 1963. He has no prior disciplinary history. Although the New Jersey Lawyers' Fund for Client Protection ("The Fund") informed the Board that respondent has been ineligible to practice law since October 26, 1989, the Fund reported to the OAE that respondent has been ineligible to practice since at least December 30, 1980.

The Vermont Supreme Court Professional Conduct Board ("The Vermont Board") notified the OAE on September 23, 1997 that respondent had been disbarred by the Vermont Supreme Court on September 5, 1997. The events underlying respondent's disbarment in Vermont are unclear. When an attorney consents to disbarment in Vermont, as did respondent, everything in the file is confidential with the exception of the order of disbarment. Vt. R. of Professional Conduct Board Rule 16-D. However, General Counsel for the Vermont Board agreed to provide respondent's affidavit, which is not a public document, on the condition that it remain confidential.

The facts underlying respondent's ethics troubles are as follows:

Respondent's wife brought a contempt motion against him in the Bennington Superior Court for nonpayment of alimony. When respondent testified about a medical condition, he claimed that he had undergone chemotherapy treatment. That was untrue. Additionally, respondent misrepresented to the court the extent of his income.

In his affidavit, respondent admitted to "sloppy" recordkeeping. He conceded that he had not accurately accounted for fee receipts and that failed to properly record expenses incurred on behalf of his clients.

The OAE contacted Robert D. Rachlin, an attorney appointed to investigate and prosecute the disciplinary actions against respondent in Vermont. Due to Vermont's rule regarding the confidentiality of disbarments by consent, Rachlin could not respond in writing to the OAE's inquiry. He was, however, willing to discuss certain aspects of the case with the OAE by telephone. He advised the OAE that respondent's actions did not, in his personal judgment, amount to misappropriation. Rachlin offered no further information beyond that contained in respondent's affidavit.

The OAE urged the Board to suspend respondent indefinitely, with the condition that he not be allowed to apply for reinstatement in New Jersey until he is reinstated in Vermont.

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Following a de novo review of the full record, the Board determined to grant the OAE's motion for reciprocal discipline. Although R. 1:20-14(a)(5) allows the Board to adopt the facts of Vermont's findings, the only record reviewed by the Board was respondent's affidavit provided by the Vermont Board. Thus, the Board was unable to examine the basis for respondent's discipline in Vermont.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides as follows:

[t]he 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 on which the discipline in another jurisdiction was predicated that it clearly appears that:

- (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
- (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
- (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (D) 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;
- (E) the misconduct established warrants substantially different discipline.


A review of the record does not reveal any condition that falls within the ambit of subparagraphs (A) through (D). As to subparagraph (E), however, disbarment in Vermont is, in reality, a five-year suspension, rather than permanent, as in New Jersey.

Depending upon the actual facts in respondent's disciplinary action, a substantially different discipline from that issued by Vermont could be warranted. Indeed, if disciplined in New Jersey on the facts admitted in his affidavit, respondent could receive discipline as little as a reprimand. See, e.g. In re Goore, 140 N.J. 72 (1995), where the attorney was reprimanded for making a false statement of material fact to a bankruptcy court, failing to properly maintain trust and business account records, exhibiting lack of diligence, failing to communicate with his client, charging unreasonable fees and failing to disclose a fee to a trustee. Goore presented substantial mitigating factors, including successful performance under a proctor and a gap of seven to ten years between the occurrence of the events and the Board's decision.

As noted earlier, because of the confidentiality of the Vermont proceedings, the Board was unable to determine "on the face of the record on which the discipline [in Vermont] was predicated," that the conduct in New Jersey would warrant substantially different discipline. R.1:20-14(a)(4)(E). Accordingly, the Board unanimously voted to suspend respondent indefinitely and until such time as he is reinstated in Vermont. In addition, however, the Board determined to give respondent an opportunity to present to the Board, six months from the date of the New Jersey Supreme Court Order disciplining him, details surrounding his discipline in Vermont, sufficient to convince the Board that lesser discipline would result in New Jersey for his ethics transgressions.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 9/28/98

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of Gerald P. Cantini** (CORRECTED VOTING SHEET)  
**Docket No. DRB 98-045**

**Argued: March 19, 1998**

**Decided: September 28, 1998**

**Disposition: Indefinite Suspension**

Members	Disbar	Indefinite Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Zazzali		x					
Brody		x					
Cole		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz		x					
Thompson		x					
<b>Total:</b>		9					

*Robyn M. Hill 10/27/98*  
Robyn M. Hill  
Chief Counsel