

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-481

IN THE MATTER OF :
RICHARD D. MORRIS :
AN ATTORNEY AT LAW :

Decision

Argued: January 23, 1997
Decided: February 17, 1998

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

Carl D. Poplar appeared on behalf of respondent.

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 final discipline filed by the Office of Attorney Ethics (OAE), based upon respondent's criminal conviction for official misconduct, in violation of N.J.S.A. 2C:30-2a, and conspiracy to obtain cocaine, in violation of N.J.S.A. 2C:5-2 and N.J.S.A. 2C:35-10a(1). R. 1:20-13(c)(2).

Respondent was admitted to the New Jersey bar in 1987. On June 7, 1996 he was temporarily suspended from the practice of law. In re Morris, 144 N.J. 255 (1996). That suspension remains in effect to date.

On May 23, 1996, pursuant to a plea bargain agreement, respondent pleaded guilty to the offenses of official misconduct and conspiracy to obtain cocaine. On June 28, 1996, he was sentenced to probation for a period of two years. He was also ordered to forfeit all public offices and to pay a \$100 Violent Crimes Compensation Board penalty and a \$150 Safe and Secure Neighborhood penalty.

The misconduct that gave rise to this disciplinary action is described in the pre-sentence report as follows:

Respondent was the appointed Public Defender for the Municipal Court of Glassboro, New Jersey. During his term, respondent represented Jamie Orcutt in connection with charges of driving without insurance. Respondent offered to provide Orcutt with a fictitious insurance card, in return for \$750. Based on information from Orcutt, the Prosecutor's Office began an investigation of respondent. The investigation included recording telephone conversations and monitoring scheduled meetings between respondent and Orcutt. The investigators provided Orcutt with \$750 and a wireless transmitter for their final meeting. On or about April 19, 1996 Orcutt gave respondent \$750, while investigators monitored the transaction. Although respondent was unable to obtain the false insurance card, on April 22, 1996 he misrepresented to the court that the insurance card was at his residence. It was later determined that Orcutt's insurance had been canceled on April 8, 1996 for non-payment of the premium.

Armed with a warrant, police officers searched respondent's home. During the search, respondent directed the officers to a metal box that contained the money given to him by Orcutt, as well as other currency and narcotics. Respondent was subsequently arrested.

The OAE alleged that there is no distinction between this case and In re Jones, 131 N.J. 505 (1993), and In re Gallerano, 138 N.J. 44 (1994). The OAE urged the Board to recommend respondent's disbarment from the practice of law.

* * *

Upon a de novo review of the record, the Board determined to grant the OAE's motion for final discipline, but to deny the OAE's request for a recommendation of disbarment.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gibson, 103 N.J. 75, 77 (1986). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2)(ii); In re Goldberg, 105 N.J. 278, 280 (1987).

In one of the cases cited by the OAE, Jones, the attorney was disbarred for soliciting and accepting a bribe. While a Deputy Attorney General, Jones solicited and accepted \$5,000 from a psychologist, Dr. Olesh, in exchange for assistance and information in a pending matter against another psychologist. Dr. Olesh filed a complaint with the New Jersey Board of Psychological Examiners, with whom Jones had been assigned, seeking the revocation of another psychologist's license. Jones was later reassigned to the Department of Transportation. During this period, Jones contacted Dr. Olesh and solicited \$5,000, in exchange for information Jones claimed to be able to obtain from members of the Board of Psychological Examiners, with whom he had established a relationship during his assignment there. Jones pleaded guilty to knowingly soliciting, accepting and agreeing to accept a benefit not allowed by law. He was sentenced to probation for a period of three years and ordered to pay fines.

In the other case, Gallerano, the attorney was disbarred for soliciting a \$2,500 bribe, in exchange for unauthorized assistance in a matter pending before the Division of Alcoholic Beverage Control, where he was then Deputy Director of Compliance. Gallerano contacted the attorney of a restaurant whose license was under review and solicited \$2,500 in exchange for acceptance of a settlement in the restaurant's favor. Gallerano pleaded guilty to knowingly soliciting a benefit not allowed by law to influence the performance of his official duties. He was sentenced to probation for a period of one year and ordered to pay fines.

Unlike Jones and Gallerano, nothing in this record indicates that respondent's offer and acceptance of \$750 from his client was for his own benefit. The record does not establish that respondent intended to keep any portion of the funds given to him. In fact, the OAE admitted that respondent was found to be in possession of the money at the time of the search of his residence because he was unable to obtain the fabricated insurance card before his client's court date. Consequently, there is no clear and convincing proof that respondent's actions, however deplorable, were motivated by greed and not purely by his desire to help his client.

In addition, the results of respondent's misconduct, although abhorrent, would have been beneficial to his client, unlike the actions of attorneys Jones and Gallerano, which were detrimental to their clients. In those cases, the attorneys' actions constituted a betrayal of their clients' trust and directly conflicted with their duties to act in their clients' best interest. Although this respondent was clearly misguided, his motivation was to assist his client, a single parent in danger of losing her driver's license.

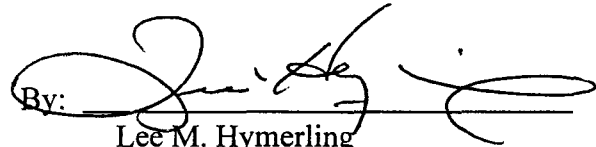
Respondent's misconduct is more akin to that of In re Giordano, 123 N.J. 362 (1991). In Giordano, the attorney received a three-year suspension for his criminal conviction of tampering with public records or information, in violation of N.J.S.A. 2C:28-7, N.J.S.A. 2C:2-6 and N.J.S.A. 2C:5-1. There, motivated by his desire to win the affections of a woman, the attorney participated in a scheme to procure an illegal license for a client whose driving privileges had been revoked. The attorney put his client into contact with the woman, with whom he was romantically involved, who in turn contacted the feeder of the operation and set the scheme into motion. Later, when almost all parties involved became police informants, respondent's involvement came to light. He was arrested. In imposing only a three-year suspension, the Court considered that the attorney's misconduct was aberrational and episodic, not motivated by greed and entirely out of character. The Court stated that "even in proceedings involving crimes of dishonesty, mitigating factors may justify imposition of sanctions less severe than disbarment." In re Giordano, supra, 123 N.J. at 369.

Although this respondent's misconduct was extremely serious, there are numerous mitigating factors that militate against disbarment. As recognized by the prosecutor in the criminal case, respondent's life is an example of a "success story." Prior to this offense, respondent enjoyed a successful career, unblemished by any other infractions. His practice involves assisting clients who otherwise may not be able to afford legal assistance. He also has an impeccable reputation among family members, neighbors, clergymen, clients and others, as evidenced by 117 letters submitted to the Board. Additionally, his charitable work in his community is exemplary. Finally, respondent has expressed deep contrition for his actions.

In light of the foregoing, the Board unanimously determined to suspend respondent for three years. The Board is obliged, however, to echo the Court's warning in Giordano that "lawyers do not get two chances to commit an offense like this." In re Giordano, supra, 123 N.J. at 369.

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

Dated: 2/17/98

By: 
Lee M. Hymerling
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

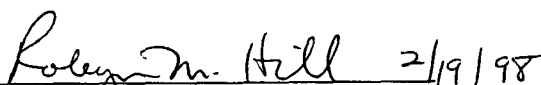
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Disposition: Three-Year Suspension

Members	Disbar	Three-Year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Zazzali		x					
Huot		x					
Cole		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz		x					
Thompson		x					
Total:		9					


Robyn M. Hill 2/19/98
Chief Counsel