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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-279

IN THE MATTER OF	:
DANIEL B. JACOBS	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 16, 1997

Decided: September 28, 1998

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

Respondent appeared pro se.

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 guilty plea to the second count of a two-count indictment charging him with the fourth degree crime of false public alarm, in violation of N.J.S.A. 2C:33-3(a).

Respondent was admitted to the New Jersey bar in 1976. In November 1988, he was privately reprimanded for gross neglect, lack of diligence, failure to expedite litigation and

pattern of neglect. In February 1998, he was suspended for three months for gross neglect, pattern of neglect, lack of diligence, failure to communicate, failure to promptly deliver funds to a client, failure to cooperate with the disciplinary authorities and various recordkeeping violations. In re Jacobs, 152 N.J. 463 (1998). Respondent has not applied for reinstatement. In addition, twelve formal complaints have been filed against respondent at the district level; hearings are pending in eleven, and an investigator/auditor was assigned in the other. The complaints encompass a variety of allegations, including gross neglect (nine allegations), failure to communicate (four), misrepresentation (two), failure to promptly deliver funds (two), failure to turn over a file (one) and lack of diligence (one).

Respondent's indictment stemmed from a telephone call that he made to the Elizabeth General Hospital, psychiatric emergency room hot line, on May 11, 1994. During that call, respondent told a hot line counselor that he was a child molester who lived in an apartment above a day care center and that for the past two years he had been molesting about eight or nine boys under two years of age. In addition, he told the counselor that he occasionally took care of the children at the day care center for the owner, that he provided child care for a living and that he would continue to molest young boys. The hot line counselor found respondent's telephone number through a caller identification system and immediately notified the police.

An investigation by the Fort Lee police revealed that respondent did, in fact, live above a day care center. The director of the center, however, informed the police that the center had very good security and that no one could enter it without first obtaining proper authorization. The investigation also revealed that, between December 1, 1993 and May 31, 1994, respondent had placed six calls to various help agencies, making similar confessions. In addition, police learned that respondent had been investigated in 1989 for a telephone call to a Somerville help line, in which he told a social worker that he "babysat" several children and molested them while "babysitting." During that call, respondent also told the social worker that he would confess if captured. In fact, the Fort Lee Police Department interviewed respondent as a result of the 1989 call. At the time, respondent denied having molested children, but admitted having made that call as well as numerous similar calls. No charges were brought against respondent for that incident.

Finally, in 1993, the Fort Lee Police Department learned from the Boystown, Nebraska Police Department that respondent had also made false public alarms to the Boystown hot line. Apparently, respondent had called that hot line on at least two separate occasions. In one call, he told the hot line counselor that he had sexually abused two- and three-year old children and wanted to report his behavior to someone in the community; the second call was similar in nature, except that respondent indicated that he did not know whether he wanted to report the abuse.

On May 31, 1994, respondent was arrested by the Fort Lee police. On that day, he gave a statement to the Bergen County Prosecutor's Office, in which he indicated that, since his teenage years, he had been calling help hot lines for his sexual gratification. He claimed that he had never touched or been interested in a child, but that he simply used child molestation as the subject of his calls. Respondent stated that he received sexual gratification from the reaction generated by his calls.

At the time of his arrest, respondent was being treated by a therapist. Respondent had been treated by two other therapists in the past, having discussed with both of them his behavior and motivation for such behavior. Respondent stated that, since 1992, he had been taking several different prescribed medications; he claimed that the medication had suppressed his sexual interest, thereby reducing the number of phone calls. After giving his statement to police on May 31, 1994, respondent voluntarily went to Bergen Pines Hospital in Paramus for evaluation.

On October 7, 1994, respondent was indicted for two incidents, including the one discussed above. On October 3, 1995, he pleaded guilty to the second count of the indictment, charging him with the fourth degree crime of false public alarm. Respondent reserved his right to appeal the denial of his entry into the Bergen County Pretrial Intervention Program. The denial was later affirmed. At sentencing on December 15, 1995, respondent received two years of probation with the following conditions: 1) that he continue treatment with his current therapist; 2) that his therapist send a report to probation every two

months; 3) that he continue taking medication at his therapist's discretion; and 4) that he complete 100 hours of community service, if accepted into the community service program.

Respondent failed to notify the Office of Attorney Ethics ("OAE") of his indictment and conviction, as required by R. 1:20-13(a)(1). Although the OAE made a motion for respondent's temporary suspension, the Court denied the motion on April 23, 1997.

* * *

Following a de novo review of the record, the Board determined to grant the OAE's Motion for Final Discipline.

Respondent's conviction for making a false public alarm by falsely reporting to a help hotline that he was a child molester and would continue to molest two-year old boys clearly and convincingly demonstrates that he has committed "a criminal act that reflects adversely on [his] honesty, trustworthiness or fitness as a lawyer in other aspects." RPC 8.4(b). The existence of a criminal conviction, whether by conviction or by plea, is conclusive evidence of a respondent's guilt. R. 1:20-13(c)(1). The sole issue to be determined is the extent of discipline to be imposed. R. 1:20-13(c)(2).

There is no legal precedent for this matter. Other cases dealing with analogous subject matter involved physical contact with the young victims. See, e.g., In re Addonizio, 95 N.J. 121 (1984) (three-month suspension for attorney who pleaded guilty to the fourth degree crime of criminal sexual contact; in mitigation, the Court considered that the conviction represented an isolated instance not likely to recur); In re Herman, 108 N.J. 66

(1987) (three-year suspension following guilty plea to one count of second degree assault upon a ten-year old boy by touching the boy's buttocks for his own self-gratification); and In re Gilligan, 147 N.J. 268 (1997) (attorney reprimanded for the disorderly persons' offense of lewdness after exposing and fondling his genitals in front of three individuals, two of whom were children under the age of thirteen).

Here, respondent exploited others for his own self-gratification. Despite the fact that his criminal conduct did not involve physical contact, it was nonetheless very disturbing. Help lines are an invaluable resource for people in need of immediate assistance. Respondent's conduct was, thus, all the more troubling because, for his own pleasure, he diverted the limited resources of those help lines and made statements that he should have known would cause alarm.

In assessing the appropriate level of discipline, the Board noted the absence of mitigating factors and considered as significant aggravating factors respondent's prior private reprimand and three-month suspension. Also, the Board was concerned that both therapy and medication have failed to deter respondent from continuing his improper conduct. Accordingly, the Board unanimously determined to impose a six-month suspension. As a condition of reinstatement, respondent must submit proof of his fitness to practice law and proof of compliance with the requirements of his probation. In addition, respondent shall continue psychological treatment with a therapist and, prior to reinstatement, must show that he is either undergoing treatment or has been discharged by the therapist.

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

Dated: 9/28/50

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Daniel B. Jacobs
Docket No. DRB 97-279

Argued: October 16, 1997

Decided: September 28, 1998

Disposition: Six-Month Suspension

Members	Disbar	Six-Month 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					
Total:		9					

Robyn M. Hill 9/29/98
Robyn M. Hill
Chief Counsel