

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 18-343  
District Docket No. XIV-2013-0697E

---

In the Matter of

Joseph Anthony Ferriero

An Attorney At Law

---

Dissent

Decided: May 1, 2019

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

The majority has voted to disbar respondent on a motion for final discipline arising out of his criminal conviction, in the United States District Court for the District of New Jersey, of racketeering, wire fraud, and violations of the Federal Travel Act. For the reasons expressed below, we disagree with our colleagues that disbarment is warranted, and vote for a three-year, retroactive suspension.

The predicate underlying offense for respondent's convictions was a determination by the jury that respondent violated N.J.S.A. 2C:27-2 (the

bribery statute), by receiving payments in connection with his efforts to assist a client, C3, in securing contracts with local governments. Respondent characterized those payments as "commissions." The Office of Attorney Ethics (OAE) characterized them as "kickbacks."

We recognize that, based on respondent's conviction, we must accept the jury's finding that he violated the statutes with which he was charged, including New Jersey's bribery statute. Respondent's conviction also mandates a finding that he violated the Rules of Professional Conduct. We also agree that the violations are serious and that meaningful discipline is called for as a result.

In enacting the bribery statute, the New Jersey Legislature determined that public officials and party officials are both subject to criminal liability for violations of the statute. That legislative determination does not mean, however, that no distinction should be made between the two for purposes of assessing the quantum of discipline to be imposed, in our view.

In determining whether to impose the ultimate sanction of disbarment, we believe it important to focus on the distinction between public officials and party officials, based on their respective roles, compensation, and responsibilities. Public officials are paid by the state or the local governmental agency that they serve. They owe a fiduciary duty to their employers and to the

public at large. No such fiduciary duty has been imposed on party officials, such as respondent, who are not employed by a governmental agency and who are not paid for their time and efforts as party officials.

Our reading of the case law, including In re Cammarano, 219 N.J. 415 (2014), relied upon by the majority, is that although disbarment is warranted in most cases involving an attorney convicted of bribery, that sanction is not automatic. Rather, a determination of the appropriate sanction to be imposed should consider all of the relevant facts and circumstances.

In the reported decisions imposing discipline upon attorneys convicted of bribery, the circumstances in which the payments were made or accepted by the attorneys are consistent with the knowing commission of a dishonest and wrongful act by a public servant who has breached fiduciary duties arising out of his or her position of public trust. For that kind of breach of the public trust by a New Jersey licensed attorney, the Supreme Court made clear in Cammarano that disbarment is the most likely outcome.

In this case, however, respondent was not a public servant. He was a party official not on the public payroll, who had a separate consulting business pursuant to which he made introductions to municipal officials who might have need for his client's services. There was no direct evidence of disruption

of the normal vetting process once the introductions were made and no cash payments were made to public officials to influence their decision-making.

Moreover, respondent's sentencing judge found it significant that respondent's role was as a party official, not a public official, and the sentence that she imposed was expressly more lenient than it would have been had he committed the same acts as a public official. The majority attributes the more lenient sentence to federal sentencing guidelines. Regardless of the basis for the sentencing judge's determination, the fact remains that in imposing a sentence for conviction under the statute, the sentencing judge considered respondent's role as a party official to warrant a lesser punishment than would have been the case had he been a public official. We believe the same considerations apply here.

In re Cammarano was decided in 2014, well after respondent's 2007 to 2008 conduct giving rise to his criminal convictions. Although this timing is not dispositive of the issue, to the extent that it is argued that the Court imposed a bright-line rule in Cammarano in 2014 mandating disbarment in cases involving criminal conviction for bribery, we believe that the rule should not be retroactively applied to conduct that occurred more than five years before the rule was announced.

Our reading of Cammarano is that the reasoning behind the determination to impose the ultimate sanction of disbarment was the attorney's fundamental breach of a trust as a public official on the public payroll. As the Court observed, "[w]e are charged with ensuring that the public will have confidence in members of the bar and in those attorneys, who are privileged to serve as public officials. In this case, any discipline short of disbarment will not be keeping faith with that charge." Id. at 424.

Moreover, even as it relates to public officials, Cammarano stops short of imposing a bright-line test:

We recognize that in our jurisprudence there have been a few exceptions to the general rule that disbarment is the discipline for an attorney who engages in official bribery (citations omitted). Nevertheless, attorneys taking bribes as public officers and those giving bribes to peddle influence are unlikely to find refuge in such exceptions (emphasis added).

[Cammarano, Id. at 423.]

Respondent neither took a bribe as a public officer nor gave a bribe in an effort to peddle influence. Respondent did not arrange for cash payments to public officials under circumstances that were clearly deceptive or with the intention of having the payments influence the decision to enter into a contract. Rather, respondent was paid commissions by C3 pursuant to a written contract with C3 and he reported the payments as income on his tax return. He did not

believe that he was engaged in unlawful conduct by effectively acting as a consultant at the same time that he was an unpaid party official, a practice that was apparently widespread at the time, based on evidence in the record.

Ignorance of the law did not provide respondent with a defense to the criminal charges on which he was convicted and does not provide a defense to the ethics charges. However, the fact that respondent's conduct is materially different from the type of bribe normally found in cases of this type and that he did not believe his conduct was improper is a factor to be considered, in our view, in deciding the level of discipline to be imposed particularly where, as here, the ultimate sanction of disbarment is being recommended.

We find that the facts in Cammarano to be significantly more egregious than the facts of this case. Cammarano accepted cash payments while running for a mayoral position, in exchange for expressed promises to influence official decision-making after he took office.


In concluding that disbarment is not warranted in this case, we do not suggest that respondent was blameless or that he is not deserving of serious discipline. We have little doubt that his position as a party official carried weight with municipal officials to whom he recommended C3. Respondent's client, C3, benefitted from his recommendation and respondent was compensated, by payment of a commission, as a result.

The New Jersey Legislature presumably recognized the potential harm that can result from such an arrangement, when it included party officials within the scope of persons who can be found to have violated the official bribery statute. Respondent was convicted under that statute and he and his family have paid a heavy price for his conduct. He has served a term in prison, has depleted his personal financial assets in paying legal fees and restitution, and has filed for bankruptcy. Part of the restitution he paid was to return the commission payments. Moreover, he has been temporarily suspended from the practice of law since July 21, 2015, almost four years as of the date of this decision.

Respondent has presented significant mitigating factors, including thirty-six years at the bar with no prior discipline; service to the profession in a variety of ways over the years, including meaningful pro bono activities; and glowing testimonials from a cross-section of members of the public and the legal profession as to his character, his qualifications as an attorney, and his service to the community.

In our view, a three-year suspension, rather than disbarment, is the appropriate sanction to be imposed in this matter. Furthermore, we vote to impose the suspension retroactively, to July 21, 2015, the date of respondent's temporary suspension.

Disciplinary Review Board  
Vice-Chair Bruce W. Clark  
Member Anne C. Singer  
Member Peter J. Boyer

By:   
Ellen A. Brodsky  
Chief Counsel