

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1077 Disciplinary Docket No. 3
Petitioner :
v. : No. 10 DB 2006
: Attorney Registration No. 27600
CHARLES P. MIRARCHI, III, :
Respondent : (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 7th day of September, 2007, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 1, 2007, the Petitions for Review and responses thereto, the request for oral argument is denied and it is hereby

ORDERED that Charles P. Mirarchi, III, is suspended from the Bar of this Commonwealth for a period of five years retroactive to February 23, 2006, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola

As of: September 7, 2007

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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| OFFICE OF DISCIPLINARY COUNSEL | : | No. 1077 Disciplinary Docket |
| Petitioner | : | No. 3 |
| | : | |
| v. | : | No. 10 DB 2006 |
| | : | |
| CHARLES P. MIRARCHI, III | : | Attorney Registration No. 27600 |
| Respondent | : | (Philadelphia) |

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Order dated January 24, 2006, the Supreme Court of Pennsylvania placed Charles P. Mirarchi, III, on temporary suspension and referred the matter to the Disciplinary Board pursuant to Rule 214(f)(1).

Office of Disciplinary Counsel filed a Petition for Discipline against Respondent on February 28, 2006. The Petition charged Respondent with professional misconduct based on his criminal conviction for mail fraud. Respondent filed an Answer to Petition for Discipline on March 29, 2006.

A disciplinary hearing was held on June 21 and June 27, 2006, before a District I Hearing Committee comprised of Chair Paul J. Gontarek, Esquire, and Members David M. Laigaie, Esquire, and Nicholas M. Centrella, Esquire. Respondent was represented by John Rogers Carroll, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on December 20, 2006, finding that Respondent committed professional misconduct and recommending that he be suspended for five years retroactive to February 23, 2006.

Respondent filed a Brief on Exceptions and request for oral argument on January 29, 2007.

Petitioner filed a Brief on Exceptions on January 29, 2007, and a Brief Opposing Exceptions on March 6, 2007.

Respondent filed a Brief Opposing Exceptions on March 8, 2007.

Oral argument was held on March 20, 2007 before a three-member panel of the Disciplinary Board comprised of Chair Robert E.J. Curran Esquire, and Members Jonathan Newman, Esquire, and Robert Storey.

This matter was adjudicated by the Disciplinary Board at the meeting on March 20, 2007.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania, is invested pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Charles P. Mirarchi, III, was born in 1950 and was admitted to practice law in the Commonwealth in 1978. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Since 1979 Respondent has been employed by the City of Philadelphia as a deputy commissioner of elections. This position entails legal research, voter registration and handling of election bureau issues.

4. Respondent also maintained an active criminal defense practice until his temporary suspension. Approximately half of his cases consisted of court appointments.

5. On November 10, 2005, the Supreme Court of Pennsylvania issued a Rule directing Respondent to show cause why he should not be placed on temporary suspension.

6. By Order dated January 24, 2006, the Supreme Court of Pennsylvania ordered that the Rule be made absolute, placed Respondent on temporary suspension, and referred Respondent's conviction to the Disciplinary Board.

7. On June 9, 2004, the United States Attorney's Office filed a nine-count indictment in the United States District Court for the Eastern District of Pennsylvania charging Respondent with one count of mail fraud, in violation of 18 U.S.C. §§ 1341 and 1346.

8. On October 7, 2004, the government filed a Guilty Plea Agreement signed by Respondent and his counsel. Pursuant to the plea agreement, Respondent agreed to plead guilty to violating 18 U.S.C. §§ 1341 and 1346 by participating "in a scheme to defraud the City of Philadelphia by having Joseph F. Hoffman, Jr., an official of the City of Philadelphia, dismiss over \$47,000 of parking violations in exchange for payment of bribes and anticipated political favors."

9. On October 6, 2004, Respondent appeared before the Honorable Bruce W. Kauffman, of the United States District Court for the Eastern District of Pennsylvania, and entered a guilty plea to two types of mail fraud, depriving the City of Philadelphia of money and honest services.

10. On February 2 and 3, 2005, Respondent testified as a witness on behalf of the government. Respondent testified about his involvement in two schemes with co-defendant Joseph Hoffman, Supervisor, Bureau of Administrative Adjudication, Parking Authority of the City of Philadelphia, to "fix" (reduce or eliminate) parking tickets in exchange for political favors and money.

11. On September 8, 2005, Respondent was sentenced to probation for three years, with home detention for six months, a fine of \$5,000, and an assessment.

12. Respondent originally became involved in ticket-fixing at the request of Joseph Hoffman, a friend, who asked him in 2001 to handle a ticket, as a favor for an 85 year old woman who could not attend the hearing. Respondent represented and stood in for her at the hearing.

13. Before 2001, Respondent appeared in ticket matters only where legitimate hearings were held.

14. From the fall of 2001 through mid-February 2003, Respondent knowingly signed Entry of Appearance Slips at the Bureau stating that he was authorized to represent individuals, when, in fact, Respondent knew that the individuals never authorized him to represent them. Respondent received no payment for signing the blank Entry of Appearance Slips.

15. The Entry of Appearance Slips signed by Respondent certified that he was a member in good standing of the bar and he was authorized to represent the named ticket holder at a hearing before a hearing examiner concerning any and all parking tickets.

16. When Respondent was not in trial, he would sometimes go to the Bureau as often as two or three times a week and would sign stacks of Entry of Appearance Slips.

17. Respondent knowingly signed blank Entry of Appearance Slips, which Joseph Hoffman duplicated with Respondent's knowledge and consent.

18. Respondent's signature appeared on approximately 1500 false Entry of Appearance Slips.

19. Respondent knew that Mr. Hoffman was using Respondent's false Entry of Appearance Slips to conceal the fact that Mr. Hoffman was reducing or eliminating the parking tickets for the individuals.

20. Respondent's participation was necessary to effectuate the scheme, because under Bureau rules, a ticket could not be dismissed without a hearing. Having an attorney enter an appearance would provide an explanation as to why there was no taped record of the hearing if the legitimacy of the dismissal was ever questioned in the future.

21. Respondent knew that many of the parking tickets were sent by persons on the Democratic City Committee and the Republican City Committee.

22. As a result of the false Entry of Appearance Slips signed by Respondent, over 2000 parking tickets were fraudulently reduced or eliminated and, as a result the Parking Authority reduced \$123,033.50 worth of parking tickets to \$1,013.

Bribery and Corruption

23. Michael Etemad, owner and operator of Alexa Cab Co., owed the Parking Authority more than \$47,000 for unpaid parking tickets.

24. Respondent, Mr. Hoffman and Mr. Etemad entered into an agreement to reduce or dismiss Alexa Cab's parking tickets in exchange for payment of money to Mr. Hoffman.

25. Mr. Hoffman, claiming he needed the money for medical expenses for his son, enlisted Respondent to act as his intermediary in receiving the payments.

26. On three occasions in 2002, Respondent knowingly went to Mr Etemad's office for the purpose of receiving bribes for Respondent to deliver to Mr. Hoffman, in exchange for Mr. Hoffman reducing Mr Etemad's parking tickets.

27. On July 23, 2002, Respondent received \$2,000 from Mr. Etemad; on August 5, 2002, Respondent received \$3,000 from Mr Etemad; on September 17, 2002, Respondent received \$2,000 from Mr. Etemad.

28. Respondent knew that after he delivered Mr. Etemad's money to Mr. Hoffman, Mr. Hoffman would reduce Mr Etemad's parking tickets.

29. Pursuant to an agreement between Mr. Hoffman and Respondent, Mr. Hoffman gave Respondent approximately 40% of the money Respondent delivered to Mr. Hoffman.

30. On July 23, 2002, Respondent received \$800 from Mr. Hoffman; on August 5, 2002, Respondent received \$1,200 from Mr. Hoffman; on September 17, 2002, Respondent received \$800 from Mr. Hoffman.

31. In exchange for the \$7,000 in bribes that Mr. Etemad gave to Respondent, Mr. Hoffman dismissed approximately \$17,000 worth of Alexa Cab's parking tickets.

32. In sum, Mr Hoffman dismissed 53 tickets and reduced 27 tickets so that Mr. Etemad owed only \$3,500 to the Parking Authority.

Miscellaneous Findings

33. Respondent's crimes, guilty plea, conviction and sentence generated substantial negative publicity in the Philadelphia area.

34. Richard F. Limoges, M.D., a board-certified psychiatrist specializing in addictions since 1978, testified on Respondent's behalf.

35. Dr. Limoges concluded that Respondent was suffering from a recurrence of his gambling addiction during the time of the criminal conduct and there was a direct causal link between the gambling addiction and Respondent's criminal misconduct.

36. In making his diagnosis, Dr. Limoges met with Respondent 31 times between March 3, 2003 and May 1, 2006.

37. Gambling addiction is a recognized medical illness; it is an incurable, chronic condition which can be treated and managed by psychotherapy and participation in a twelve step program.

38. Respondent started gambling when he was young. In college he regularly bet in card games and progressed to sports betting during law school in the 1970's.

39. In 1980 Respondent received \$500,000 in the settlement of his medical malpractice suit and lost most of the settlement money in sports betting in Atlantic City.

40. In November 1984 Respondent entered inpatient treatment at the Philadelphia Psychiatric Center.

41. During 30 days of inpatient treatment, Respondent began his involvement with the Twelve Step program of Gamblers Anonymous(GA).

42. Respondent was active in GA for numerous years, but stopped going sometime in the late 1990's.

43. In 1999 Respondent began buying Lotto tickets twice a week and spending \$20 to \$30.

44. Dr. Limoges testified that Respondent's purchase of lottery tickets fueled his gambling fantasies and he began to think like a gambler again.

45. Since March 2003 Respondent has made substantial progress in therapy and has been faithful to his treatment program. He is once again involved with GA.

46. According to Dr. Limoges, as a result of the recurrence of Respondent's gambling addiction, his judgment became blurred. Due to the distorted fantasies of the gambling addiction, combined with his outgoing personality, his moral compass became

destroyed so that he thought of his bribery and ticket-fixing more in terms of helping a friend than breaking the law.

47. Dr. Limoges testified that Respondent's actions in the criminal conduct were fueled by classic pathological gambling symptoms of grandiosity and the urge to be a "big shot."

48. At the time of the criminal conduct, Respondent was not engaged in gambling activities other than lottery tickets.

49. Respondent's criminal activity was not intended to generate income to repay any gambling debts or otherwise further gambling activity.

50. Dr. Limoges admitted that Respondent's need to be a "big shot" existed independent of a gambling addiction.

51. While Respondent initially lied to FBI investigators concerning his misconduct, within minutes of being confronted by the FBI on February 13, 2003, he told the agents about his role in the scheme and began to cooperate.

52. On the following day he met with an Assistant United States Attorney for debriefing and to assist in the investigation. At the meeting Respondent answered all questions without any promise of reward or any assurances about a guilty plea agreement.

53. Respondent presented character witnesses on his behalf.

54. Jules Epstein, Esquire, has practiced law in Pennsylvania for 28 years. He is currently an associate professor at Widener Law School. He has known Respondent for 15 to 20 years both professionally and personally.

55. Professor Epstein described Respondent as a hard worker, and a competent and dedicated lawyer despite his criminal conviction.

56. Martin Krimsky, Esquire, has been a member of the bar for more than 50 years. He described Respondent as very devoted to his clients.

57. Respondent submitted 14 character letters from a variety of lawyers and community members.

58. Throughout his legal career Respondent made a commitment to handling court appointed criminal cases and representing others at reduced fees.

59. Respondent has sponsored many recovering gambling addicts, including Joseph Sapienza. Mr. Sapienza testified that Respondent called him daily for the first two and a half months that Sapienza was in GA and "literally saved [his] life."

60. Joseph Pappas is the Executive Director of the Council on Compulsive Gambling of Pennsylvania. He testified that since coming back to Gamblers Anonymous meetings in 2003, Respondent has been an active participant and a caring member of the fellowship. Mr. Pappas confirmed that Respondent was a valuable resource for persons suffering from gambling and other addictive disorders. Mr. Pappas described Respondent as remorseful and guilt ridden when he told Pappas about his misconduct.

61. Respondent has lectured at bar associations, CLE and law school programs on gambling addiction.

62. Respondent has no prior history of discipline.

63. Respondent expressed sincere remorse for his criminal conduct.

64. Respondent testified that at the time of the misconduct he knew what he was doing was wrong and criminal.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct and Rules of Disciplinary Enforcement:

1. RPC 8.4(b) - It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

2. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

3. Pa.R.D.E. 203(b)(1) - Conviction of a crime, which under Enforcement Rule 214 may result in suspension, shall be grounds for discipline.

4. Respondent failed to establish by clear and convincing evidence that his gambling addiction was a substantial causal factor in his misconduct. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989)

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of Respondent's criminal conviction and the appropriate sanction to address such conviction. Respondent was convicted of the crime of mail fraud, which is punishable by imprisonment for up to five

years. Respondent stipulated that his criminal conviction constitutes a per se ground for discipline under Pa.R.D.E. 203(b)(1). In addition, Respondent stipulated that he violated RPC 8.4(b) and RPC 8.4(c).

In attorney discipline matters involving a criminal conviction for a “serious crime” (one punishable by more than one year imprisonment), the sole issue to be determined is the extent of final discipline to be imposed. The appropriate discipline is that which is necessary to meet the disciplinary system’s goals. The Supreme Court has stated that “[t]he primary purpose of our system of lawyer discipline is to protect the public from unfit attorneys and to maintain the integrity of the legal system.” Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986)

In assessing the level of discipline, the Board examines the circumstances surrounding the criminal acts and case precedent for the purpose of measuring Respondent’s conduct against other similar transgressions. In re Anonymous No. 56 DB 1994 28 Pa. D. & C. 4th 398 (1995). The Board also weighs any aggravating and mitigating factors.

Respondent engaged in egregious conduct. From July 23, 2002 to September 17, 2002, he conspired with others to effectuate a scheme wherein parking tickets owed were reduced or eliminated. Respondent did not initiate the scheme, but he did receive economic benefit. Respondent delivered the bribes paid by Michael Etemad to Joseph Hoffman, a supervisor in the Parking Authority, in exchange for Mr Hoffman reducing \$47,000 in unpaid parking tickets for Etemad’s cab company. Respondent

personally received 40% of the bribes he delivered to Hoffman. Respondent also signed hundreds of false Entry of Appearance Slips over a one and a half year period, wherein he certified that he was authorized to represent the ticket holders at a hearing before a hearing examiner. Respondent's certifications were false because he did not know the ticket holders and was not authorized to represent them. Respondent realized no economic benefit from the false Entry of Appearance slips.

Respondent presented expert testimony to demonstrate that his conduct was substantially caused by a gambling addiction. Dr. Richard F. Limoges testified that Respondent was a gambling addict and had been for some time. In 1984 Respondent gambled away a significant sum of money. After his wife threatened to leave him, he admitted himself for treatment to Philadelphia Psychiatric Center. He stopped gambling and diligently attended Gamblers Anonymous meetings. Approximately 15 to 20 years after his release from the Psychiatric Center, Respondent began to attend fewer GA meetings and eventually stopped going. He did not begin sports betting again, but regularly bought lottery tickets. This was the state of Respondent's addiction at the time of the misconduct. Dr. Limoges opined that Respondent's purchase of several weekly lottery tickets "fueled" Respondent's "fantasy" and "grandiosity" and that his judgment became blurred so that he was not able to distinguish between right and wrong, thus his addiction played a causal role in his misconduct.

The Braun standard requires that the expert testimony unequivocally link the attorney's disorder with the attorney's misconduct. Herein, the Board is not persuaded that

Respondent has met this standard. While the Board finds that Respondent has established his life-long gambling addiction, the evidence is insufficient to establish that it was the causal factor, or even a substantial casual factor, of the misconduct. Respondent's criminal conduct was not intended to generate income to repay gambling debts or otherwise further gambling activity. While Dr. Limoges stated that Respondent was motivated by the need to be a "big shot", he also admitted that such a need exists independent of a gambling addiction. Accordingly, Respondent is not entitled to any Braun mitigation.

The Board's review of comparable cases reveals that the Court has often, but not always, disbarred attorneys convicted of serious crimes. The Court has disbarred attorneys convicted of bribery and corruption, concluding that such attorneys were unfit to practice law. In many of these cases the Court found that any existing mitigating factors did little to impact the egregious nature of the underlying actions.

Disbarment was imposed in the following cases. Office of Disciplinary Counsel v. Stern, 526 A.2d 1180 (Pa. 1987), wherein the attorney, a labor law lawyer, paid \$5,000 to a Teamsters Union official in an attempt to influence the union's position on requested concessions. In the matter of In re Anonymous No. 38 DB 88, 19 Pa. D. & C. 4th 554 (1993), the attorney conspired with his client to bribe a police officer. The money was exchanged while the officer wore a wiretapping device. In Matter of Adam O. Renfroe, Jr., 695 A.2d 401 (Pa. 1997), the attorney was convicted in federal court of bribing a witness. In Matter of Jules Melograne, 888 A.2d 753 (Pa. 2005), the attorney who was

serving as a district justice, conspired with employees of the Court of Common Pleas to corrupt the truth determining process.

The Court has also imposed less serious discipline constituting varying periods of suspension from practice. In mail fraud conviction cases, the sanction is most often a lengthy suspension. For instance, in Office of Disciplinary Counsel v. Michael W. McCarrin, No. 643 Disciplinary Docket No. 3 (Pa. May 25, 2006), the attorney was convicted of nine counts of mail fraud and two counts of money laundering based on an illegal scheme involving customer surveys over a two year period which resulted in his obtaining ill-gotten gains of at least \$212,000. The Court adopted the Board's recommendation of a five year suspension.

In Office of Disciplinary Counsel v. Valentino, 730 A.2d 479 (Pa. 1999), the attorney was convicted of mail fraud for submitting fraudulent medical bills to insurance companies in five personal injury claims. He also suborned perjury by having his mother give false testimony about her treatment to a federal grand jury. The Court imposed a five year suspension.

Office of Disciplinary Counsel v. Chung, 695 A.2d 405 (Pa. 1997) involved an attorney who was convicted of five counts of false statements to a financial institution and agreed for sentencing purposes that he aided in mail fraud. The Court suspended this attorney for five years.

Petitioner urges disbarment in this matter; Respondent contends a three year suspension is appropriate. The Hearing Committee has recommended a five year

suspension. The Board concludes, after carefully considering the Committee's recommendation and the evidence supporting such determination, that a five year suspension is warranted. Respondent's misconduct is not as egregious as that which resulted in disbarment. A five year suspension is not a light sentence; it is a lengthy punishment which will serve to adequately protect the public and redress the harm inflicted upon the integrity of the legal system.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Charles P. Mirarchi, III, be suspended from the practice of law for a period of five (5) years retroactive to February 23, 2006.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Robert E. J. Curran, Board Member

Date: June 1, 2007

Board Member Brown recused himself.