GRIEVANCE ADMINISTRATOR,
Petitioner/Appellee,
v
JAMES N. CANHAM, P-11570,
Respondent/Appellant.

File No. DP 223/86

Decided: July 28, 1987
Issued: September 3, 1987

OPINION OF THE BOARD

The Respondent, a Michigan lawyer since 1954 and a former Chief Judge of the Wayne County Circuit Court, was charged with aiding and abetting in the solicitation of a bribe by a Judge on the Michigan Court of Appeals. Upon review of the record below and the arguments presented by Respondent's counsel and the Grievance Administrator, the Attorney Discipline Board unanimously affirms the findings and conclusions of the Hearing Panel. We agree with the Panel's conclusion that charges of professional misconduct set forth in the Complaint were established by a preponderance of the evidence. We further agree with the Panel that such misconduct "tears at the very fabric of the judicial system" and warrants a revocation of Respondent's license to practice law.

The Formal Complaint filed by the Grievance Administrator in this matter was filed with the Board on December 17, 1986. An Answer was filed on Respondent's behalf on January 7, 1987 and the Hearing Panel to which this case was assigned first convened February 9, 1987 for a pre-hearing conference. The trial commenced on Tuesday, March 10th and proceeded through Friday, March 13th.

On April 3, 1987, the Panel convened to issue its written Report containing its conclusions that Respondent, James N. Canham, provided active encouragement to Judge S. Jerome Bronson, knowing that Bronson intended to solicit a bribe from an attorney representing a party in an appeal and that he therefore knowingly and willfully aided and abetted in the bribe solicitation in violation of MCR 9.104(1-4) and Canon 1 of the Code of Professional Responsibility DR 1-102(1-6). The Panel further found that the Respondent failed to report his knowledge of the solicitation of a bribe in violation of DR 1-103 which they included under the blanket charge of DR 1-102(A)(1) that a lawyer shall not violate a disciplinary rule. The final phase of the Hearing, on aggravation and mitigation, was heard by the Panel on April 13, 1987 and on April 28, 1987 the Panel issued its final Report along with an Order of Revocation.

The Hearing Panel's preliminary Report dated April 3, 1987, contains a ten-page chronology of events constituting a day by day reconstruction of events from October 29, 1986 to Sunday, November 16, 1986. Briefly summarized, the events which triggered this disciplinary proceeding began with an apparently casual meeting between the Respondent and Judge Bronson at a restaurant in Farmington Hills on Wednesday, October 29, 1986. At this meeting, Bronson asking Canham to tell their mutual friend, attorney James Finn, that "Jim Finn's case was in trouble" [Transcript

Volume I pages 29-30]. Later that day, the Respondent did contact attorney Finn on the telephone and arranged a meeting two days later at the Franklin Racquet Club where the Respondent relayed Judge Bronson's message to Finn [Transcript Volume I page 35]. Later that morning, Canham received a phone call from Bronson advising the Respondent that ". . . I am going to send a package; when you get that give it to Jim". On Monday, November 3, 1986, a package was delivered to Respondent's office, a second meeting at the Franklin Racquet Club between Respondent and Finn was arranged and on Tuesday, November 4th, the Respondent passed to Finn for his examination the envelope containing, among other documents, a confidential Pre-Hearing Report prepared by an employee of the Michigan Court of Appeals in the matter of Harrigan v Ford Motor Company, No. 86442, [Transcript Volume I pages 47-68; Volume II pages 15-23].

On the same day, the Respondent had lunch with Bronson at the Farmington Racquet Club during which Bronson stated that an outcome favorable to Finn's client in the Harrigan appeal could be assured by the payment to Bronson of $15,000 to $20,000. At that point, Canham admitted, there was no doubt in his mind that Judge Bronson was soliciting a bribe and was prepared to sell his vote on an appeal then pending before his panel. [Transcript Volume I page 86] Later that same day, Respondent conveyed to Finn Bronson's request that a bribe of $15,000 to $20,000 be given to Bronson in return for his favorable influence in the Harrigan appeal.

Later on November 4, 1986, attorney Finn reported his conversations with the Respondent to Court of Appeals Judge Joseph B. Sullivan who immediately brought the matter to the attention of Judge Robert J. Danhoff, Chief Judge of the Michigan Court of Appeals. An investigation was commenced involving representatives of the Michigan State Police and the Office of the Attorney General. That investigation produced a recording of a telephone conversation on Thursday, November 6, 1986 between Finn and the Respondent. It is the position of the Respondent, although uncorroborated by other evidence, that Bronson was in Canham's office during that telephone conversation and that he prompted Canham's recorded statements to Finn, including Canham's comments to Finn that Bronson wanted Finn to write the decision, that certain arguments should be emphasized and that "you gotta hell of an opportunity to come up with a masterpiece and that should fly, he'll get another vote, and you, you should fly and you'll be home free". [Administrator's Exhibit 7A]

Upon his return from a week long vacation in Florida, the Respondent was arrested by members of the Michigan State Police and interviewed by representatives of the Attorney General's Office who offered the Respondent immunity from criminal prosecution. At 11:00 a.m. on Friday, November 14, 1986, at a meeting in Respondent's office between Canham and Bronson, recorded with Respondent's knowledge, Bronson accepted from the Respondent an envelope containing $20,000 in cash and discussed with Respondent his desire to receive a similar amount when attorney Finn "cashed out" the Harrigan case. As Bronson left Respondent's office, he was arrested. He was transported to Lansing for arraignment. Later that day, he committed suicide at his home.

Review of the Hearing Panel's Findings and Conclusions in this case is sought by the Respondent. The Board's review of the Panel decision must be on the basis of whether, upon the whole record, there is proper evidentiary support, In re Del Rio, 407 Mich 336; 285 NW2d 277

(1979) and whether its findings are supported by competent, material and substantial evidence. In the Matter of Phillip E. Smith, File No. 35166-A, 1981 (Board Opinions Page 115).

In this case, the Respondent does not challenge the Panel's basic factual findings. Indeed, the various meetings and conversations involving Respondent Canham, attorney Finn and Judge Bronson are basically uncontroverted and it is clear that the Panel's findings in that regard are overwhelmingly supported by the testimony and exhibits received into evidence.

Rather, the Respondent seeks review of the proceedings before the Panel on the basis of the following objections:

1) That the Complaint filed by the Grievance Administrator did not charge a violation of DR 1-103 (Failure to report knowledge of improper conduct by a lawyer or judge) and that, as a result, Respondent was denied due process of law;

2) That the Hearing Panel's finding in its Report that Respondent violated DR 1-103 must be reversed because that violation was not charged in the Formal Complaint;

3) That the Hearing Panel failed to find the element of specific intent required to sustain a criminal conviction as an aider and abettor and could not, therefore, properly enter an Order disbarring the Respondent upon a finding that he had aided and abetted Judge Bronson in the solicitation of a bribe.

Canon 1 of the Code of Professional Responsibility, DR 1-103, provides:

A) A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon conduct of lawyers or judges.

In the brief submitted on Respondent's behalf, it is conceded that it is "fundamentally undisputed" that the Respondent did not communicate in any way with a tribunal or investigative authority following his discussions with Judge Bronson. Respondent openly admits that his failure to make such a report violated DR 1-103 and would therefore subject him to discipline. Respondent argues, however, that the Hearing Panel, presented with evidence clearly establishing a violation not charged in the Complaint, was presented with a "Hobson's choice" of (1) finding that the Respondent

should not be disciplined at all despite evidence that he had breached DR 1-103 or (2) finding that he was guilty of professional misconduct substantially more serious than a violation of DR 1-103. This, it is claimed, denied Mr. Canham a fair hearing.

The Board is unable to accept Respondent's argument that failure to charge a less serious violation constituted a denial of due process. Respondent cites no authority for this position but apparently argues that the widespread publicity surrounding this case put pressure upon the Hearing Panel to find professional misconduct. Because the Panel did not have the option of finding that Mr. Canham violated DR 1-103, the argument continues, the Panel was "forced" to make a finding that the Respondent aided and abetted in the solicitation of a bribe, as charged by the Grievance Administrator.

This argument is founded on the premise that the Panel relaxed the appropriate standard of proof with regard to the charge that the Respondent aided and abetted the solicitation of a bribe. Respondent emphasizes the finding in the Panel's preliminary report on page 20 that "the evidence is inconclusive concerning the specific intent of Mr. Canham . . ." Respondent has taken that quotation from the Panel' s preliminary report out of context and it must be read in light of the complete sentence:

> The evidence is inconclusive concerning the specific intent of the Respondent; however, the evidence conclusively demonstrates that the Respondent knew that Judge Bronson was actively pursuing the solicitation of a bribe; that he possessed the required criminal intent. (Hearing Panel Report April 1987 page 20)

Based upon our review of the record, we find no evidence that pre-trial publicity had any effect on the members of this Hearing Panel or their decision. Further, we are persuaded by the authorities cited by the Grievance Administrator that it was within his discretion to focus his prosecution on the more serious charges. Disciplinary proceedings in this jurisdiction are characterized as "quasi criminal" State Bar of Michigan v Woll, 387 Mich 154, 161 (1972) and a disciplinary Respondent enjoys some, but not all, of the rights to which criminal defendants are entitled, State Bar Grievance Administrator v Jaques, 401 Mich 516, 528-529 (1977). Even if the Respondent in this case had been afforded all of the protections available to defendants in criminal proceedings, the Grievance Administrator"s decision not to charge a violation of DR 1-103 would not appear to constitute a violation of due process. In People v Lombardo, 301 Mich 451 (1942), the Michigan Supreme Court held that "prosecuting officers have the right to use their discretion in determining under which of the applicable statutes a prosecution shall be instituted" 301 Mich 453. More recently, in People v Ford, 417 Mich 66 (1982), the Court ruled that although certain conduct might violate more than one statute, it is not improper, se, for the prosecutor to charge only the more serious offense. See also People v McClain, 105 Mich App 323 (1981).

The second argument raised by the Respondent on appeal alleges that the Panel erred in ruling that the Respondent violated the provisions of DR 1-103 inasmuch as that violation was not charged in the Complaint. Respondent cites the prior rulings of this Board in In the Matter of Lewis,

Opinions of the Board 137, 140 (1981) and In the Matter of Gray, Opinions of the Board (1983). In Lewis, the Board stated:

> It is a violation of constitutional due process provisions to impose discipline for findings not alleged in the Formal Complaint. See In Re Ruffalo, 390 US 544 (1968); In Re Crane 400 Mich 484, 255 NW2d 624 (1977); State Bar Grievance Administrator v Jackson, 390 Mich 147, 211 NW2d 38 (1973); State Bar Grievance Administrator v Freid, 388 Mich 711, 202 NW2d 692 (1972)

In the instant case, the Panel found that although the Respondent was not specifically charged under DR 1-103 he was charged with a breach of DR 1-102(A)(1) which states that "(A) a lawyer shall not: (1) violate a Disciplinary Rule". The Panel reasoned that DR 1-103 is a Disciplinary Rule within the meaning of DR 1-102(A)(1); therefore, a violation of DR 1-103 could properly be found if supported by the evidence received at the hearing.

Such an interpretation of the scope of DR 1-102(A)(1) is too broad and would allow the Grievance Administrator to file complaints alleging only a violation of DR 1-102(A)(1), thus depriving the Respondent of any reasonable opportunity to discern the nature of the charges against which he or she must defend. Such an interpretation is at odds with the rule set forth in In Re Ruffalo, 390 US 544, 88 SCt 1222 (1968) that an attorney facing misconduct charges may receive discipline only for those acts for which fair notice is given in written form. The Respondent in this case was not charged with a violation of DR 1-103 and, in accordance with Ruffalo, could not be disciplined for that violation which was not charged in the Complaint.

Notwithstanding the Panel's conclusion that the Respondent violated DR 1-103, the Panel declined to imposed discipline for that violation "in view of the more serious charge of aiding and abetting". (Panel Report April 13, 1987 Page 4) Therefore, the Panel's finding that Respondent violated DR 1-103 does not constitute reversible error since the panel specifically declined to impose discipline as a result of that finding and in light of Respondent's admission that such a finding, if it had been charged, was supported by the evidence.

We now consider the final objection raised by the Respondent; that the Hearing Panel failed to make a finding that the Respondent possessed "specific criminal intent" to aid and abet Judge Bronson in the solicitation of a bribe.

The Formal Complaint filed by the Grievance Administrator recites the factual background of the Harrigan v Ford Motor Company appeal and Respondent's meetings and conversations with Judge Bronson and attorney James Finn between October 29, 1986 and November 13, 1986. By engaging in that conduct, the Complaint charges, Respondent Canham "did knowingly and willfully act in concert with the late Judge Bronson to cause, aid, abet and effect the corrupt solicitation of the payment of money from Finn to the late Judge Bronson for the purpose and intent of influencing Judge Bronson's act, vote, opinion, judgment, action or exercise of discretion in a pending matter which was brought before Judge Bronson in his public capacity as a Judge of the Michigan Court

of Appeals; and Respondent did further intentionally engage in conduct which is prejudicial to the proper administration of justice . . ."

In its application of the evidence presented to the charges in the Complaint, the Hearing Panel specifically considered the criminal statute on aiding and abetting in Michigan, MCLA 767.39; MSA 28.979, and the Panel then considered the evidence in light of the requirement that a person charged as an aider and abettor in this jurisdiction must either possess the required specific intent or participate while knowing that the co-participant possessed the requisite intent, People v Triplett, 105 Mich App 182 (1981); People v Turner, 120 Mich App 23 (1982). Applying that standard, the Panel concluded that Respondent Canham did indeed "encourage" Judge Bronson by acting as an intermediary to convey the bribe solicitation to attorney Finn and by physically delivering to Finn the internal court documents supplied by Bronson. The Panel further found that such "encouragement" was offered by the Respondent at a time when he knew that it was Bronson's intent to solicit $15,000 to $20,000 from Finn in exchange for a favorable opinion in the Harrigan appeal.

This Board concludes that the Hearing Panel had substantial and compelling evidence before it to support such a finding and that the Panel's findings with regard to Respondent's intent are in accord with the existing law in this jurisdiction. In stating this conclusion, we must emphasize that it was not necessary for the Hearing Panel to find that Respondent's conduct contained each and every element which would have been necessary to sustain a criminal conviction. The state and federal law governing criminal trials is not fully applicable to professional disciplinary proceedings, State Bar Grievance Administrator v Jaques, 401 Mich 516, 529 (1977), nor is it necessary that a lawyer be proved a criminal before he can be professionally disciplined. "It is requisite only that his conduct be that which proves clearly that he is unfit to be entrusted with the duties and responsibilities belonging to the office of attorney" State Bar of Michigan v Block, 383 Mich 384, 392 (1970). The Rules and Canons governing the conduct of attorneys "do not envisage criminal proceedings nor is discipline necessarily premised on statutory violations" State Bar Grievance Administrator v Ryman, 394 Mich 167, 176 (1975). The Grievance Administrator is not required to prove that the Respondent is a criminal, only that the Respondent has acted unprofessionally. Ryman at 177.

In the supplemental brief filed in conjunction with the oral arguments presented to the Board, Respondent urges that the Board consider the Hearing Panel's reliance upon the aiding and abetting standard expressed in People v Triplett, 105 Mich App 182 (1981) in light of the 1979 ruling of the United States Supreme Court in Sandstrom v Montana, 442 US 511, 99 SCt 2450, 61 L Ed 2d 39 (1979). In Sandstrom, the Supreme Court reversed the instruction to the jury that "the law presumes that a person intends the ordinary consequences of his voluntary acts". In that case, the Court found that the jury instruction violated the defendant's constitutional rights as it had the effect of relieving the State of the burden of proof on the critical question of Petitioner's state of mind. Sandstrom 442 US at 521. In the instant case, Respondent has seized upon the language in Triplett that "the criminal intent of the aider and abettor is presumed from his actions with knowledge of the actors wrongful purpose" and argues that such a presumption is "outlawed" by the Supreme Court's ruling in Sandstrom. Our review of the cases cited by Respondent convinces us that we are bound to reject this argument and to conclude that the Panel properly looked to People v Triplett in its analysis of Respondent's culpability as an aider and abettor in the bribery scheme.

The language from Triplett cited above, that "the criminal intent of the aider and abettor is presumed from his actions" appears in that decision in a quotation from a 1962 California case, People v Ellhamer 199 Cal App 2d 777, 782; 18 Cal Rptr 905, 908 (1962). We do not agree with Respondent that the case law relied upon by the Panel has been "outlawed" or otherwise invalidated by the Sandstrom decision. We cannot find that the Hearing Panel improperly shifted the burden of proof or the burden of persuasion to the Respondent or that the Grievance Administrator was relieved of his obligation to establish the elements of professional misconduct alleged in the Complaint. Furthermore, our Courts have expressly reiterated the standard applied by the Panel in more recent cases. See, for example, People v White 147 Mich App 31, 38 (1985); People v Cortez 141 Mich App 316, 333 (1984). "To be convicted as an aider or abettor, the defendant must either himself possess the required intent or participate while knowing that the principal possessed the required intent" People v Turner 125 Mich App 8, 11 (1983).

In such cases, either the defendant's own specific intent or his knowledge that his co-participant had the necessary specific intent may be inferred from circumstantial evidence People v Fields 64 Mich App 166, 174 (1975); People v Triplett, supra.

In this case, it was not necessary for the Panel to infer such knowledge from circumstantial evidence. The Panel needed to look only to Respondent's own admissions that there was no question in his mind on November 4, 1986 that Judge Bronson was looking for a bribe (Transcript Volume I page 86); that Bronson wanted Respondent to convey a request to James Finn that Finn pay the sum of $15,000 to $20,000 (Transcript Volume I page 87); and that the payment would be for the purpose of influencing Bronson's decision (Transcript Volume I page 88).

Further, the Panel had before it substantial evidence upon which to conclude that the Respondent, with knowledge of Bronson's intent, provided "encouragement" to him in furtherance of a wrongful purpose. Referring to Respondent' s willingness to carry the messages to Finn that his case "was in trouble" and that a payment would be required, that Panel noted:

> It is apparent, however, that if the Respondent had refused to act as a messenger to Finn of both conversations with Bronson or of the internal court documents which Canham delivered to Finn, Bronson would have had to either (i) seek out a new intermediary, (ii) contact Finn directly or (iii) retreat from the scheme. (Panel Report April 3, 1987 page 21)

While the Respondent has denied such "encouragement" in his claim that he was acting in concert with Finn pursuant to a "tacit understanding", we affirm the Panel finding that there is no evidence in the record aside from Respondent's own self-serving testimony upon which to conclude that such an understanding existed. Quite simply, Respondent's testimony that he intended, at some point, to expose Judge Bronson is not persuasive and is belied by his actions as well as his inaction. As the Panel further noted, although the Respondent had a legion of friends and acquaintances at all levels of the legal profession, "he chose not to communicate this bribery scheme to these or to any other persons in authority although the record demonstrates that he had ample opportunity to do so" (Panel Report April 3, 1987 page 18)

CONCLUSION

Upon its review of the whole record, the Attorney Discipline Board affirms the findings and conclusions of Oakland County Hearing Panel #5, as expressed in its Reports filed April 3, 1987 and April 13, 1987, that the Respondent, James N. Canham, knowing of Judge Bronson's intent to solicit a bribe, aided, abetted and provided active encouragement to Bronson. By engaging in that conduct, Respondent violated the provisions of MCR 9.104(1-4) and Canon 1 of the Code of Professional Responsibility DR 1-102(1, 3, 4, 5 & 6).

The Respondent, in seeking vacation of the Hearing Panel's decision, has not presented a claim that the misconduct found by the Hearing Panel warrants a reduction in the level of discipline imposed. Nevertheless, the Board's review of the record below included consideration of the aggravating and mitigating evidence presented to the Panel. We expressly affirm the Panel's conclusion that Respondent's experience in the judiciary and his presumed knowledge that public trust in the integrity of the courts and its judges is crucial to our system of justice makes this conduct most egregious. As an officer of the court and as a person whose license to practice law constituted a proclamation that he was fit to Bid in the administration of justice as an attorney, Respondent had an affirmative duty to protect the integrity of our judicial system. His participation in a bribery scheme warrants a revocation of his license to practice law.

Board Members Remona A. Green, Hanley M. Gurwin, and Robert S. Harrison concurring. (Board Members Patrick J. Keating and Charles C. Vincent, M.D. did not participate in this decision.)