


BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 160 DB 2016
Petitioner	:	
v.	:	Attorney Registration No. 48046
DAVID FOSTER GOULD, III	:	
Respondent	:	(Bucks County)

ORDER

AND NOW, this 26th day of June, 2018, upon consideration of the Report and Recommendation of the Hearing Committee filed on December 18, 2017; it is hereby ORDERED that the said DAVID FOSTER GOULD, III, of Bucks County shall be subjected to **PUBLIC REPRIMAND** by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a)(5) of the Pennsylvania Rules of Disciplinary Enforcement. Costs shall be paid by the Respondent.


BY THE BOARD:



Board Chair

TRUE COPY FROM RECORD

Attest:



Marcee D. Sloan
Board Prothonotary
The Disciplinary Board of the
Supreme Court of Pennsylvania

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OPINION

On January 3, 2017, Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline against Respondent, David Foster Gould, III, charging him with violations of the Rules of Professional Conduct (“RPC”) 1.1, 3.1, 8.2(a), 8.4(c) and 8.4(d) arising from Respondent’s allegations of bias against Bucks County Court of Common Pleas Judge Wallace H. Bateman, Jr. Respondent filed an Answer to Petition for Discipline on February 23, 2017.

Following a prehearing conference on April 4, 2017, a disciplinary hearing was held on May 24, 2017, before a District II Hearing Committee. Petitioner presented documentary evidence and the testimony of two witnesses. Respondent appeared at the hearing, presented documentary evidence and testified on his own behalf.

At the conclusion of the hearing, the Hearing Committee requested that the parties’ briefs be limited to the issue of violation of RPC 8.2(a), which provides that a lawyer “shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.”

Following the submission of briefs by the parties, the Hearing Committee filed a Report on December 18, 2017, concluding that Respondent violated RPC 8.2(a) and recommending that he receive a Public Reprimand. Respondent took exceptions to the Report and Recommendation and posits that the Board dismiss the charges against him. Petitioner opposed Respondent's exceptions and urges the Board to adopt the Hearing Committee's recommendation. Oral argument was held before a three-member Board panel on April 3, 2018. The Board adjudicated this matter at the meeting on April 11, 2018.

In attorney disciplinary matters, Petitioner bears the burden of establishing misconduct by a preponderance of clear and satisfactory evidence. ***Office of Disciplinary Counsel v. Anthony Cappuccio***, 48 A.3d 1231, 1236 (Pa. 2012). After a full review of the record, the parties' briefs and argument, and for the reasons stated herein, we conclude that Respondent violated RPC 8.2(a) and we direct that Respondent receive a public reprimand.

Born in 1952, Respondent was admitted to practice law in the Commonwealth in 1986 and focuses his practice principally on zoning matters. Respondent owns real property in Bristol, Pennsylvania ("Property"). Respondent sought to redevelop the Property and pursuant to a redevelopment plan, on August 24, 2009, he submitted an application to the Bristol Borough Zoning Hearing Board ("Hearing Board") seeking relief from relevant ordinances. On April 5, 2010, the Hearing Board issued a Decision and Order denying Respondent's request for zoning relief. On April 13, 2010, Respondent filed an appeal to the Bucks County Court of Common Pleas. Respondent's appeal was assigned to the Honorable Wallace H. Bateman, Jr. The Hearing Board solicitor filed a response. Judge Bateman issued an Order dated January 7, 2011, which

affirmed the Hearing Board's April 5, 2010 Decision and Order, but he did not issue an opinion at that time. Respondent timely filed a notice of appeal to the Commonwealth Court. On March 7, 2011, following receipt of Respondent's Statement of Matters Complained of on Appeal, Judge Bateman issued an Opinion explaining the basis for affirming the Hearing Board and denying Respondent relief. By Opinion filed on August 24, 2011, the Commonwealth Court affirmed Judge Bateman's opinion on all grounds. Thereafter, on September 23, 2011, Respondent filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania. By Order dated July 9, 2012, the Supreme Court denied Respondent's Petition.

One year later, on July 8, 2013, Respondent filed a civil complaint against the Hearing Board, Council of Bristol Borough and its lawyer, in the United States District Court for the Eastern District of Pennsylvania. In his federal lawsuit, Respondent claimed that Judge Bateman:

- a. deprived Respondent of "procedural and substantial [sic] due process," and "would have been named a Defendant to the suit but for the immunity the law allows him."
- b. "refused to move on Plaintiff's Appeal, despite immediate requests by Plaintiff to have the process start,"
- c. "likely recognized the duplicity evidenced on the face of the Opinion, and, being disposed to uphold the Borough's position, as a municipal authority, hesitated to address the matter,"
- d. demonstrated his alleged bias by granting the defendant's Praecipe for Rule 27 Conference and not the Praecipe(s) allegedly filed by Respondent; and
- e. "impermissibly fabricate[d] a new rationale not articulated by the Defendants, and one which relied on a no longer valid Bristol Borough ordinance." ODC 29.

These five allegations form the basis of Petitioner's claim that Respondent

violated Rule 8.2(a). Ultimately, Respondent's original complaint in the federal litigation was dismissed, as was his amended complaint.¹

The controlling standard for determining whether Respondent violated RPC 8.2(a) was established by the Supreme Court of Pennsylvania in **Office of Disciplinary Counsel v. Robert Surrick**, 749 A.2d 441 (Pa. 2000). In **Surrick**, the Court explained:

The Office of Disciplinary Counsel has the burden of proving, by a preponderance of the evidence, that respondent's actions constitute professional misconduct. **Office of Disciplinary Counsel v. Keller**, 509 Pa. 573, 506 A.2d 872 (1986). This burden of proof must be established by clear and satisfactory evidence. **Office of Disciplinary Counsel v. Duffield**, 537 Pa. 485, 644 A.2d 1186 (Pa. 1994). Disciplinary Counsel can meet this burden by presenting documentary evidence or testimony from the persons at whom the allegations were aimed that the statements are false. **Office of Disciplinary Counsel v. Price**, 557 Pa. 166, 732 A.2d 699 (Pa. 1999).

The burden then shifts to respondent to establish that the allegations are true or that following a reasonably diligent inquiry, he had formed an objective reasonable belief that the allegations were true. *Id.* at 604.

Surrick, 749 A.2d at 444. In **Surrick**, as here:

A determination of misconduct in this case hinges upon whether respondent acted recklessly or with the support of a reasonable factual basis. Recklessness is shown by the "deliberate closing of one's eyes to facts that one had a duty to see or stating as fact, things of which one was ignorant."

Id. (citing **Anonymous Attorney A**, 714 A.2d at 446).

In setting forth this standard, the Supreme Court emphasized that "[a]n accusation of judicial impropriety is not a matter to be taken frivolously." *Id.* at 449 (citing

¹ The amended complaint no longer made accusations against Judge Bateman, and in fact did not mention Judge Bateman's name, but instead referred more generally to the "Court of Common Pleas."

Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981)). “When an attorney makes an accusation of judicial impropriety without first undertaking a reasonable investigation of the truth of that accusation, he injures the public, which depends upon the unbiased integrity of the judiciary, the profession itself, whose coin of the realm is their ability to rely upon the honesty of each other in their daily endeavors, and the courts, who must retain the respect of the public and the profession in order to function as the arbiter of justice.” *Id.*

In the five paragraphs identified by Petitioner, Respondent accuses Judge Bateman, *inter alia*, of being “biased” and pre-disposed to uphold the Borough’s position simply because the Borough is a “municipal authority,” and of taking purposeful actions against Respondent’s interests based upon that bias and predisposition in favor of municipal authorities.

For the purposes of the first prong of **Surrick**, we conclude that Petitioner satisfied its burden to demonstrate that the allegations against Judge Bateman are false. At the disciplinary hearing, Judge Bateman testified that the allegations against him are false. See **Surrick**, 749 A.2d at 444 (citing **Price**, 732 A.2d at 604). Judge Bateman testified credibly, under oath that, *inter alia*, (i) he had no bias in favor of the Borough; (ii) he was not predisposed to uphold the Borough’s position, (iii) he did not give the Solicitor’s submission more weight than Respondent’s; (iv) he had no animus or bias against Respondent, whom he did not know and had never seen before the disciplinary hearing; and (v) his opinion in the case was not biased. N.T. 37-40. Judge Bateman did not, therefore, take any action in the case, including issuing his opinion, based upon any bias or predisposition in favor of the Borough because they were a municipal authority. Judge Bateman credibly testified that he applied the appropriate legal standards in arriving at

his decision and even rejected one of the positions asserted by the Borough, though other positions required that the decision be affirmed. *Id.* Judge Bateman also credibly testified regarding the various arguments asserted by Respondent that Respondent purported to have relied upon in making his allegations against Judge Bateman that he was biased and predisposed, which are discussed below .

Consistent with the Supreme Court's guidance in ***Surrick***, we next consider whether Respondent has met his burden to demonstrate that either the allegations he made are true, or that, following a reasonably diligent inquiry, he formed an objective reasonable belief that the allegations were true. *Id.* at 444. In that regard, we consider whether Respondent acted "recklessly" by deliberately closing his eyes to facts he had a duty to see or state as fact, things of which he was ignorant.

Respondent's most damaging allegation against Judge Bateman is that he is predisposed to rule in favor of municipal authorities. Respondent maintains Judge Bateman demonstrated that bias by refusing to schedule Respondent's requested Rule 27 Conference and by relying on a new rationale for affirming the Hearing Board's Decision. ODC-29. In his testimony, Respondent reinforced that he ardently believed, and specifically intended to express in the averments in his federal litigation, that Judge Bateman is generally predisposed to ruling in favor of municipalities over the rights of citizens. Respondent testified:

...I claimed a bias against Judge Bateman, but, generally speaking, local Court of Common Pleas judges are biased against landowner applications. Why? Because they're elected, and the municipal bodies represent organized political activity that can either support them or go against in the event of election.

N.T. 261. This is the type of accusation that the Supreme Court warned in ***Surrick*** injures not only the reputation of the individual judge, but the courts. *Id.*, 749 A.2d at 449.

Respondent points to two main arguments to support the reasonableness of his allegations. In Respondent's appeal to the Bucks County Court of Common Pleas, on two separate occasions over the course of two months, Respondent requested a Rule 27 Conference before Judge Bateman, which was the typical manner to advance a zoning hearing appeal. Respondent's Exhibits E, F and H; ODC-10; N.T. 33-34, 279-281. However, the Court did not schedule the conference. N.T. 34-36. When Bristol Borough filed a motion for a Rule 27 Conference, Judge Bateman granted the motion within one week and promptly scheduled a conference, leaving Respondent to believe that the municipal authority's request received immediate attention and, from his perspective, his request was ignored. N.T. 286-287; ODC-10. We note that Respondent ultimately had the opportunity to have a Rule 27 Conference with Judge Bateman and the opportunity for oral argument, but for his own reasons, chose not to have either. N.T. 62-63. Taken as a whole, Judge Bateman's expeditious action on Bristol Borough's Motion for a Rule 27 Conference, contrary to the manner in which Respondent's requests were received, while frustrating to Respondent does not justify Respondent's conclusion that Judge Bateman is predisposed to ruling in favor of municipal authorities.

Second, Respondent maintained a belief that Judge Bateman ultimately relied upon an argument in his Opinion that the Hearing Board did not specifically posit in its Decision. While there is some evidence that the precise rationale relied upon by Judge Bateman may have been novel, such evidence does not support Respondent's conclusion that Judge Bateman was predisposed to rule in favor of municipal authorities. We note in Judge Bateman's Opinion his reversal of the Hearing Board's reasoning on one issue and the strong language he used to convey his disagreement. ODC-16.

Upon our review, there is no evidence of record that Judge Bateman

actually had a predisposition to rule in favor of municipalities, only that he ruled in favor of Bristol Borough in Respondent's case. Respondent did not testify or introduce any evidence that at any point in the time span between Judge Bateman's Opinion and the federal litigation in which Respondent made his allegations against Judge Bateman, he took any action to investigate the veracity of his claims. ODC-16, 29.

In considering Respondent's conduct, we conclude that while Respondent produced some evidence to support his strong belief that there were irregularities in the proceedings, Respondent did not actually produce any evidence that Judge Bateman was predisposed to rule in favor of Bristol Borough because it is a municipal authority, as Respondent alleged, and he failed to provide evidence that he made the accusation after a reasonably diligent inquiry. *Surrick*, 749 A.2d at 444. We conclude, therefore, that Respondent violated RPC 8.2(a).

Under these circumstances, a public reprimand is appropriate discipline. Respondent's public, false claims about Judge Bateman demand public discipline in order to protect the integrity of the judiciary. We note that in the matter of *Office of Disciplinary Counsel v. Gregory Stagliano*, No. 66 DB 2011 (D. Bd. Order 7/27/2012), the Board imposed a public reprimand where Stagliano had made unwarranted accusations of bias against two Court of Common Pleas Judges, one of whom had decided a case in which Stagliano represented his own interests. Stagliano's claims were made on the record at a hearing, rather than in a court-filed document. The Board noted that the contentious nature of Stagliano's proceeding involving his personal matter caused him to lose his objectivity and professionalism. Stagliano showed remorse and had no discipline of record during a career that spanned nearly thirty years. Unlike Stagliano, Respondent herein has not shown remorse and has a prior informal admonition from 2010, his only

incident of discipline since his admission in 1986. The most significant similarity in these cases is the genesis of the allegations against the jurists, which arose during contentious litigation over personal issues. Consistent with **Stagliano**, we conclude that Respondent lost his objectivity and professionalism in this one personal matter. A public reprimand will serve to remind Respondent of his obligations as an officer of the court and will help clear the undeserved tarnish placed upon Judge Bateman's reputation as a fair and impartial jurist.

DETERMINATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously determines that the Respondent, David Foster Gould, III, shall receive a Public Reprimand.

The expenses incurred in the investigation and prosecution of this matter shall be paid by Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 

John F. Cordiseo, Member

Date: _____

6/26/15

Members Penny, Trevelise and Haggerty recused.

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	:	
v.	:	
	:	Attorney Registration No. 48046
DAVID FOSTER GOULD	:	
Respondent	:	(Bucks County)

PUBLIC REPRIMAND

David Foster Gould, you stand before the Disciplinary Board, your professional peers and members of the public for the imposition of a Public Reprimand. It is an unpleasant task to publicly reprimand one who has been granted the privilege of membership in the bar of this Commonwealth. Yet as repugnant as this task may be, it has been deemed necessary that you receive this public discipline.

Mr. Gould, this matter concerns your allegations of bias against Bucks County Court of Common Pleas Judge Wallace H. Bateman, Jr.

The record indicates that in 2009, you submitted an application to the Bristol Borough Zoning Hearing Board seeking relief from relevant ordinances pertaining to your plan to redevelop real property owned by you. The Zoning Hearing Board denied your request for relief and you filed an appeal to the Bucks County Court of Common Pleas, which appeal was assigned to Judge Bateman. By Order dated January 7, 2011, Judge Bateman affirmed the Zoning Hearing Board's decision and order. You timely filed an appeal to the Commonwealth Court. On March 7, 2011, following receipt of your Statement of Matters Complained of on Appeal, Judge Bateman issued an Opinion explaining the basis for affirming the Zoning Hearing Board and denying your requested

relief. By Opinion filed on August 24, 2011, the Commonwealth Court affirmed Judge Bateman's Opinion on all grounds. Thereafter, you filed a Petition for Allowance of Appel with the Supreme Court of Pennsylvania, which ultimately denied your Petition.

On July 8, 2013, you filed a civil complaint against the Bristol Borough Zoning Hearing Board and its lawyer in the United States District Court for the Eastern District of Pennsylvania. In your federal lawsuit, you made five allegations against Judge Bateman, claiming that he was biased and predisposed to uphold Bristol Borough's position because the Borough was a municipal authority, and you accused Judge Bateman of taking purposeful actions against your interests based upon that bias and predisposition. This complaint eventually was dismissed.

The record demonstrates that the allegations in the complaint were false, and that you failed to produce any evidence that Judge Bateman was predisposed to rule in favor of Bristol Borough because it was a municipal authority, and you further failed to provide evidence that you made your allegations after a reasonably diligent inquiry.

Your public, false claims about Judge Bateman demand public discipline in order to protect the integrity of the judiciary. It is apparent that when engaged in this contentious litigation concerning your personal matter, you lost your objectivity and professionalism. This public reprimand will remind you of your obligations as an officer of the court and will help clear the undeserved tarnish placed upon Judge Bateman's reputation as a fair and impartial jurist.

As a result of your conduct, you have violated the following Rule of Professional Conduct ("RPC"):

1. RPC 8.2(a) – A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

It is my duty to reprimand you for your misconduct. We note that you have practiced law since 1986 and received an Informal Admonition in 2010. Please be aware that any subsequent violations on your part can only result in further discipline and perhaps more severe sanctions. We sincerely hope that you will conduct yourself in such a manner that future disciplinary action will be unnecessary.

Mr. Gould, your conduct in this matter is now fully public. This Public Reprimand is a matter of public record.

As you stand before the Board today, we remind you that you have a continuing obligation to abide by the Rules of Professional Conduct and Rules of Disciplinary Enforcement. This Public Reprimand is proof that Pennsylvania lawyers will not be permitted to engage in conduct that falls below professional standards. Be mindful that any future dereliction will subject you to disciplinary action.

This Public Reprimand shall be posted on the Disciplinary Board's website at www.padisciplinaryboard.org



Designated Member
The Disciplinary Board of the
Supreme Court of Pennsylvania

Administered by a designated panel of three Members of The Disciplinary Board of the Supreme Court of Pennsylvania, at Philadelphia, Pennsylvania, on April 18, 2019.

ACKNOWLEDGMENT

The undersigned, Respondent in the above proceeding, herewith acknowledges that the above Public Reprimand was administered in his presence and in the presence of the designated panel of The Disciplinary Board at the Board offices located at the 1601 Market Street, Suite 3320, Philadelphia, Pennsylvania, on April 18, 2019.



David Foster Gould