

Mandel broke canon of lawyers, judge says

By Karen E. Warmkessel

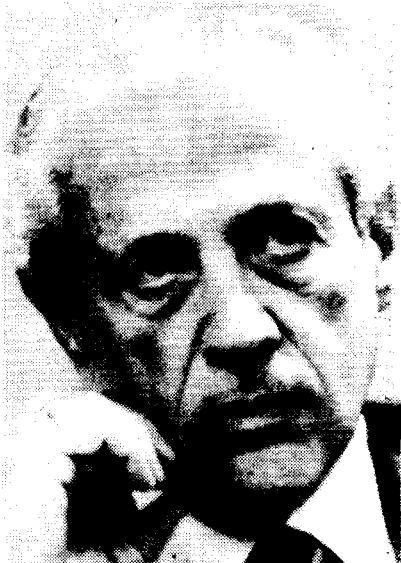
Because of his 1977 conviction on federal mail fraud charges, former Governor Marvin Mandel violated five of the state's disciplinary rules for lawyers, a city judge ruled yesterday.

Judge J. Harold Grady, chief judge of the Supreme Bench, made the ruling as part of disbarment proceedings brought against Mr. Mandel by the state Attorney Grievance Commission, the body that investigates complaints against lawyers.

His findings now go to the state Court of Appeals, which—after hearing further argument—will decide Mr. Mandel's future as a lawyer. The former governor's license has been suspended since his conviction. Based on the judge's findings, the court can disbar, suspend or reprimand him.

The Attorney Grievance Commission is attempting to disbar Mr. Mandel because of his conviction on mail fraud and racketeering charges in connection with a scheme while he was governor to fix racing dates at the now-defunct Marlboro racetrack. He was released from prison last December after serving 19 months of a three-year sentence.

The commission charged that Mr.



MARVIN MANDEL

Mandel had violated five disciplinary rules governing the behavior of lawyers, including one that prohibits engaging in "illegal conduct involving moral turpitude."

In his ruling, Judge Grady found that mail fraud is a crime of "moral turpitude," noting that the Court of Appeals has already clearly defined it

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as such in recent decisions to disbar several lawyers.

The judge concluded that "by virtue" of his mail fraud conviction, the ex-governor violated the five disciplinary rules.

But, Judge Grady, who was assigned by the Court of Appeals to hear arguments and to make a formal report on the case, did not make a recommendation on what, if any, disciplinary action the appeals court should take.

He said later in an interview that the rules do not require him to make such a recommendation. "It would be totally beyond the function that is assigned to me," he said.

Mr. Mandel's lawyers and the Attorney Grievance Commission will have the opportunity to file exceptions to Judge Grady's findings and to make recommendations before the case is argued before the appeals court.

M. Albert Figinski, one of the former governor's lawyers, said he didn't want to comment on the judge's

findings, but said he will definitely file exceptions.

A lawyer for the commission, Glenn M. Grossman, said he had not seen the ruling and declined to comment on the findings.

Judge Grady based his ruling solely on the conviction itself, not on any new evaluation of the facts surrounding it, and on previous Court of Appeals interpretations of mail fraud as a crime of "moral turpitude."

In one case, the appeals court last year disbarred a Baltimore attorney who had been convicted of mail fraud and racketeering charges for submitting false medical bills to insurance companies in automobile accident cases.

Judge Grady said in his ruling that he was bound by those interpretations and "must find that he has been convicted of a crime of moral turpitude."

He also said he was prevented from looking at the "factual underpinnings of [Mr. Mandel's] federal conviction."

Mr. Mandel's lawyers had argued that the former governor should not be disbarred because his mail-fraud

conviction was "unique" and did not fit "the mold of the traditional mail-fraud case."

They claimed the case was not clear-cut because of a long, complicated appeals process that resulted in a tie vote by the 4th U.S. Circuit Court of Appeals upholding the conviction.

In his 6-page opinion, Judge Grady expressed sympathy for that point of view and strongly criticized the federal courts:

"While the Supreme Court of The United States and the lesser federal courts regard themselves as the repository of ultimate knowledge on what constitutes due process, and frequently find fault with state courts in this regard," Judge Grady said, "the dubious due process [Mr. Mandel] received in the course of his appeal fails to measure up to that afforded any criminal defendant by the Maryland appellate courts."

But, he also quoted from a 1974 Court of Appeals decision in which the court said that "a conviction of an attorney is conclusive proof of guilt."

The five disciplinary rules Judge

Grady found Mr. Mandel violated are those which say a lawyer shall not:

- Violate a disciplinary rule.
- Engage in illegal conduct involving moral turpitude.
- Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
- Engage in conduct that is prejudicial to the administration of justice.
- Engage in any other conduct that adversely reflects on his fitness to practice law.

Judge Grady also noted in his opinion that Mr. Mandel produced character witnesses that said his conduct as a lawyer "was above reproach and in accordance with ethical standards of his profession."

Four of the seven judges on the state's highest court have disqualified themselves from sitting on the case since they were Mandel appointees either to the high court or to some other state government position. They will be replaced for this case by judges brought out of retirement or temporarily elevated from lower courts.