

Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-171

IN THE MATTER OF :
:
GARY L. KRULEWITZ :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: June 23, 1993
Decided: September 21, 1993

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before the Board based upon a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics, pursuant to R. 1:20-7. That motion stemmed from respondent's permanent resignation in Florida from the practice of law, without leave to reapply, for knowing misappropriation.

Respondent was admitted to the practice of law in New Jersey in 1969.

On July 27, 1992, the Supreme Court of Florida entered an amended order granting respondent's petition for permanent resignation, in lieu of disciplinary proceedings, without leave to reapply. Respondent had originally petitioned for resignation with leave to reapply in five years, but later agreed to resign

permanently from the Florida Bar, as part of a plea arrangement, to avoid any criminal proceedings. In his letter of resignation to the Bar Counsel of Florida, dated January 13, 1992, respondent admitted the following acts of misappropriation:

- a. Bielous estate - misappropriation of \$4,000 from a sale of estate property in 1988 (money was later replaced and remitted to client).
- b. Benowitz estate - withdrawal of over \$50,000 from estate's account, on which respondent was signatory (money was replaced in September 1990, prior to the closing of the estate, and was remitted to the beneficiaries).
- c. Teitelbaum estate - withdrawal of over \$19,000 from estate's account, on which respondent was signatory (money was replaced in December 1990, prior to the closing of the estate, and was remitted to the beneficiaries).
- d. Cooper sale - misappropriation of \$1600 made payable to trust account in 1991 (money was later replaced and remitted to client).

Although required by R. 1:20-7(a) to notify both the Director of the Office of Attorney Ethics and the Clerk of the Supreme Court of this 1992 discipline, respondent did not do so.

On May 12, 1993, respondent was temporarily suspended from the practice of law in New Jersey. The Office of Attorney Ethics now requests that reciprocal discipline issue, and that respondent be disbarred.

CONCLUSION AND RECOMMENDATION

Upon a review of the full record, the Board recommends that the Office of Attorney Ethics' motion be granted. Respondent has not disputed the factual findings of the Florida Supreme Court.

Hence, the Board adopts those findings. In re Pavilonis, 98 N.J. 36, 40 (1984); In re Tumini, 95 N.J. 18, 21 (1979); In re Kaufman, 81 N.J. 300, 302 (1979).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-7(d), which directs that:

(d) The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

- (1) the disciplinary order of the foreign jurisdiction was not entered;
- (2) the disciplinary order of the foreign jurisdiction does not apply to the respondent;
- (3) the disciplinary order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (4) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (5) the misconduct established warrants substantially different discipline. [Emphasis added.]

In Florida, respondent was able to voluntarily petition for resignation in lieu of disciplinary proceedings. Respondent argued that his resignation in Florida is not the same as a disbarment due to the stigma that accompanies disbarment. In New Jersey, however, although one may consent to disbarment, there is no opportunity for an attorney to simply resign if he or she is not in good standing or if there are disciplinary proceedings pending against the attorney. See R. 1:20-8. Also, although a disbarred attorney in Florida can apply for reinstatement after five years, respondent's resignation was accepted "without leave to reapply." Thus, his resignation in Florida is comparable to disbarment by consent in New Jersey, and is not "substantially different discipline."

Moreover, in the Florida proceedings, respondent admitted taking his clients' money for his own purposes. The misconduct involved at least four instances of theft of client funds, totaling approximately \$75,000.

The Office of Attorney Ethics requested disbarment because the facts of this case demonstrate a knowing misappropriation of client funds, which serves to destroy public confidence in the integrity and trustworthiness of the legal profession and which mandates permanent disbarment in New Jersey. In re Wilson, 81 N.J. 451 (1979).

In reciprocal discipline cases, the Court has not hesitated to hold a New Jersey attorney to the strict standards applied in this state, even where lesser discipline has been imposed by the initiating state. See In Re Tumini, 95 N.J. 18 (1983); In re Keesal, 76 N.J. 227 (1978). "[M]aintenance of public confidence in this Court and in the bar as a whole requires the strictest discipline in misappropriation cases". In re Wilson, 81 N.J. at 461.

The Board, therefore, unanimously recommends that respondent be disbarred for his knowing misappropriation of client funds. One member did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: _____

9/21/93

By: _____



Raymond R. Trombadore
Chair
Disciplinary Review Board