

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-184

IN THE MATTER OF :
 :
JOHN J. ANASTASIO :
 :
AN ATTORNEY AT LAW :
 :

Decision

Argued: September 11, 2003.

Decided: October 29, 2003

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

Respondent did not appear for oral argument, despite proper notice.

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

This matter was before us based on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE") following respondent's ten-day suspension in Florida.

Respondent was admitted to the New Jersey bar in 1981, and to the Florida bar in 1987.¹

¹ The OAE's brief stated that respondent was placed on the ineligible list of the New Jersey Lawyers' Fund for Client Protection on September 30, 2002. According to a report from the Fund, he was again eligible to practice law in April 2003.

On November 14, 2002, the Supreme Court of Florida issued an Order imposing a ten-day suspension on respondent, effective November 22, 2002. The suspension was the result of a consensual agreement between respondent and the Florida Bar, as set forth in respondent's Conditional Guilty Plea for Consent Judgment. That document set forth the pertinent facts, detailing respondent's misconduct in two matters:

Case No. 2001-30,771(19B)

- A. In or around October 2000 respondent informed The Florida Bar that he had mistakenly issued two personal checks from his trust account in the amounts of \$999.20 and \$35.00. Respondent issued the checks on March 14, 2000, yet according to respondent's deposit slip, the funds were not replaced until October 17, 2000.
- B. On or about July 19, 2001, The Bar prepared a compliance audit on respondent's trust account books and records for the period of January 1, 2000 through December 31, 2000.
- C. The Bar's audit revealed that respondent's trust account yielded a total shortage of \$1,273.20 for the months March through September 2000.
- D. The Bar's audit also revealed that the respondent failed to maintain certain trust account records required by The Florida Bar Rules Regulating Trust Accounts.
- E. Respondent failed to maintain monthly reconciliations for his trust account for several of the months during the period of the audit. The monthly reconciliations that respondent did produce failed to comply with the Rules Regulating The Florida Bar. On various occasions the balance on the monthly reconciliations failed to match the balance in the trust journal. The monthly reconciliation also failed to list outstanding checks by date and check number.

- F. In addition, respondent's deposit slips failed to disclose the source of the trust deposit as required.

Case No. 2001-31, 113(19B)

- G. In or around January 1997, Ariane Brown hired respondent to handle the estate of her deceased father, Raimo Suikki. Ms. Brown subsequently hired respondent to handle a guardianship matter involving her brother, Johans Suikki.
- H. Respondent failed to diligently represent Ms. Brown in these matters. On more than one occasion respondent and the personal representative received a Rule to Show Cause regarding non-compliance in the administration of the estate and guardianship proceedings.
- I. Respondent received funds from the estate to pay for services that he rendered to Ms. Brown in several unrelated legal matters.
- J. On or about December 15, 2000, Judge Marc A. Cianca entered an Order on Rule to Show Cause in Case No. 97-284-CP-06, which concluded that respondent was dilatory in his duties and responsibilities as the attorney of record on behalf of the personal representative and that he received \$17,500 of estate funds and was unable to produce records which verified his position that a portion of those funds related to work he did outside the estate for the personal representative. Judge Cianca further ordered respondent to return attorney fees paid to him in the amount of \$17,500.00 to the estate's account, which Respondent did.²

² There was no finding of misappropriation of client funds. Rather, respondent's client paid him legal fees for matters unrelated to the estate, of which she and her brother were the sole heirs. Judge Cianca's Order on Rule to Show Cause provided that respondent could petition the court for payment of fees, subject to review by all parties.

Respondent admitted to violations corresponding to New Jersey's Rules of Professional Responsibility, specifically, RPC 1.15 (recordkeeping violations), RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 8.4(d), (conduct prejudicial to the administration of justice). The Conditional Guilty Plea for Consent Judgment was reviewed by Referee Thomas Mitchell Barlow, Jr., who, on September 10, 2002, issued a Report accepting the consent judgment. The Supreme Court of Florida approved the referee's report and issued its November 14, 2002 Order, imposing a ten-day suspension.

The OAE urged us to impose a three-month suspension.

Upon a review of the record, we determined to grant the OAE's motion for reciprocal discipline.

Respondent received a ten-day suspension in Florida for recordkeeping violations, neglect, and for his improper and premature receipt of attorney fees from an estate. His conduct violated RPC 1.15, RPC 1.1(a), RPC 1.3 and RPC 8.4(d).

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a)(4), which directs that:

...[t]he 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 on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) 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

(E) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D).

As to subparagraph (E), because we do not impose ten-day suspensions in New Jersey, we were called upon to determine whether respondent's actions warrant a reprimand or a longer term of suspension.

Respondent has a significant disciplinary history. Referee Barlow's report mentioned his three prior disciplinary proceedings in Florida:

1. . . . Public reprimand and one year period of probation for neglect and inadequate communication in a criminal defense representation.
2. . . . Admonishment by appearance before the Board of Governors for engaging in conduct that was prejudicial to the administration of justice by threatening criminal prosecution in a civil matter.
3. . . . Public reprimand for advertising violations and for failing to hold in trust funds and property of a client or third person and for failing to appropriately safeguard that property.³

³Respondent did not notify the OAE of his prior discipline in Florida, as required by R.1:20-14(a)(1).

In addition, respondent has twice been disciplined in New Jersey. In 1988, he was privately reprimanded for engaging in a conflict of interest. In the Matter of John J. Anastasio, Docket No. DRB 88-226 (September 30, 1988). Thereafter, in 1990, he received a second private reprimand for failing to adequately communicate with a client. In the Matter of John J. Anastasio, Docket No. DRB 90-021 (March 30, 1990).

In recommending that respondent receive a three-month suspension, the OAE relied on In re Gilbert, 159 N.J. 505 (1999) (three-month suspension where the attorney failed to promptly return \$6,400 in escrow funds deposited with him by a third party under a written escrow agreement, and improperly asserted a lien on the escrow funds in order to attempt to collect fees owed him by his client; prior public reprimand); In re Bancroft, 163 N.J. 139 (2000) (three-month suspension where the attorney failed to safeguard escrow funds, grossly neglected a matter, failed to communicate with a client, failed to provide a written fee agreement, failed to expedite litigation, failed to maintain adequate billing records and improperly terminated representation; two prior private reprimands and a public reprimand); and In re Payton, 168 N.J. 109 (2001) (three-month suspension where the attorney failed to timely file an inheritance tax return or to appeal the Division of Taxation's assessment, significantly delaying the administration of his client's estate and resulting in the loss of almost \$2,000 in interest penalties to the estate, failed to provide a written fee agreement, failed to communicate with his client and committed recordkeeping violations; prior admonition and public reprimand).

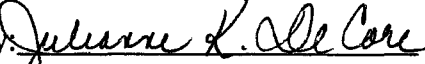
The OAE's reliance on the above cases is well placed. Despite respondent's numerous bouts with the disciplinary system both in New Jersey and in Florida, he is

either unable or unwilling to comply with the rules imposed on members of the bar. A suspension is necessary to impress upon him the seriousness of these matters.

Accordingly, in light of respondent's within misconduct, and his disciplinary history, we unanimously determined to impose a three-month suspension. One member did not participate.

We further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Acting Chief Counsel

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

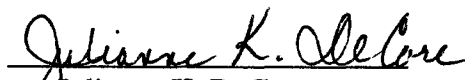
In the Matter of John J. Anastasio
Docket No. DRB 03-184

Argued: September 11, 2003

Decided: October 29, 2003

Disposition: Three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Boylan</i>							X
<i>Holmes</i>		X					
<i>Lolla</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>		X					
<i>Stanton</i>		X					
<i>Wissinger</i>		X					
Total:		8					1


Julianne K. DeCore
Acting Chief Counsel