

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-401

IN THE MATTER OF :
 :
LESLIE A. SMALLWOOD :
 :
AN ATTORNEY AT LAW :
 :

Decision

Argued: December 19, 2002

Decided: April 1, 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 on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), pursuant to R.1:20-14, following respondent's disbarment by consent in Pennsylvania.¹

Respondent was admitted to the New Jersey and Pennsylvania bars in 1992. She has no history of discipline in New Jersey. She has been ineligible to practice law in

¹ Respondent did not notify the OAE of her disbarment in Pennsylvania, as required by R.1:20-14(a).

New Jersey since September 24, 2001 for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

On June 13, 2002, the Supreme Court of Pennsylvania issued an order accepting respondent's disbarment by consent. The order was based on respondent's Statement of Resignation under Rule 215, Pa.R.D.E., dated April 24, 2002. In her sworn resignation statement, respondent acknowledged as follows:

She is aware that there are presently pending investigations into allegations that she has been guilty of misconduct, the nature of which allegations have been made known to her by service of a Petition for Discipline at the above numbers, a true and correct copy of which is attached hereto, made a part hereof and marked Exhibit 'A'.

She acknowledges that the material facts upon which the allegations contained in Exhibit 'A' are based are true.

She submits the within resignation because she knows that she could not successfully defend herself against the charges of professional misconduct set forth in the attached exhibits.

Exhibit A to the resignation statement is a Petition for Discipline filed before the Disciplinary Board of the Supreme Court of Pennsylvania, charging respondent with, among other things, numerous instances of knowing misappropriation of client funds. For example, Charge I (the Pattern of Financial Misconduct) discussed respondent's general pattern of misappropriation:

As a result of Respondent's conversion of fiduciary funds, she was cumulatively out-of-trust from February 1997 through at least September 2000, in an amount from no less than \$900 to no less than \$139,500.

As of September 29, 2000, Respondent was cumulatively out-of-trust in no fewer than sixty-eight cases, in a total amount no less than \$117,000.

Charge II (the Rogers Matter) detailed respondent's misappropriation of client funds belonging to a minor. Charge III (the Rochester Matter) detailed respondent's misappropriation of \$1,093 due a doctor for treatment rendered to respondent's client. Respondent withheld the funds from the settlement of the matter and advised the client that the funds had been paid to the doctor. Charge IV (the Jackson Matter) concerned respondent's neglect and failure to communicate in a medical malpractice case.

Although respondent was disbarred in Pennsylvania, a disbarred attorney there may seek reinstatement five years after the effective disbarment date. Rule 218(b), Pa.R.D.E. The OAE argued that more severe discipline than that imposed in Pennsylvania is required. The OAE urged us to recommend respondent's disbarment.

* * *

Following a de novo review of the record, we determined to grant the OAE's motion for reciprocal discipline. Respondent was disbarred by consent in Pennsylvania for improprieties that included knowing misappropriation of client funds. Pursuant to R.1:20-14(a)(5) (another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding), we adopted the findings of the Supreme Court of Pennsylvania.

Reciprocal discipline proceedings in New Jersey are governed by R.1:20-14(a), 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;

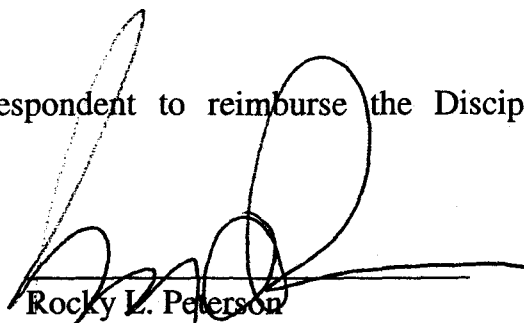
(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the misconduct established warrants substantially different discipline.

Our review of the record did not reveal any conditions that would fall under subparagraphs (A) through (D). As to paragraph (E), however, it is unquestionable that similar misconduct in New Jersey would result in permanent disbarment, not the five-year suspension that is equivalent to disbarment in Pennsylvania. In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985). We, therefore, unanimously determined to recommend respondent's disbarment.

One member did not participate.

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


Rocky L. Peterson
Chair
Disciplinary Review Board

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

In the Matter of Leslie A. Smallwood
Docket No. DRB 02-401

Argued: December 19, 2002

Decided: April 1, 2003

Disposition: Disbar

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

Robyn M. Hill 4/3/03
Robyn M. Hill
Chief Counsel