

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 01-079

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IN THE MATTER OF :  
ELISSA L. INSLER, :  
AN ATTORNEY AT LAW :  
:

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Decision

Argued: May 17, 2001

Decided: October 9, 2001

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

Respondent waived appearance for oral argument before the Board.<sup>1</sup>

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"), based on the January 11, 2001 order and decision of the Appellate Division of the Supreme Court of New York, First Judicial Department, accepting respondent's resignation from the role of attorneys (New York's disbarment by consent).

R.1:20-14.<sup>2</sup>

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<sup>1</sup>By letter dated March 6, 2001, respondent waived appearance before us and indicated that she did not intend to challenge the findings and/or recommendation of the trier of fact .

<sup>2</sup>Respondent did not notify the OAE of her disbarment, as required by R.1:20-14(a)(1). The OAE was notified of respondent's disbarment by the New York disciplinary authorities.

Respondent was admitted to the New York and New Jersey bars in 1987. She has been on the New Jersey Supreme Court's list of ineligible attorneys since July 18, 1991 for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. She has not been previously disciplined.

The facts leading to respondent's disbarment in New York are as follows:

Essentially, respondent served as the attorney and executrix of the estate of Dr. Willy Mautner, who died in June 1996. Respondent admitted that she stole funds from the estate and also charged it an excessive attorney's fee. Respondent summarized her misconduct in her October 30, 2000 affidavit of resignation:

5. . . . At my request, in June, 1996 Norma Mautner, the widow, paid me a \$3,500 retainer fee, from which I paid disbursements in the amount of \$565.00 to the Orange County Surrogate's Court and other miscellaneous disbursements for additional death certificates and additional Letters Testamentary. I offered the will for probate in July 1996 and Letters Testamentary were issued to me on August 21, 1996. The estate included real property in the state of Maine.

6. As executrix, I was responsible for filing and paying federal and state estate taxes timely. I failed to do so, notwithstanding the fact that there was sufficient money in the estate account to pay the taxes. Specifically:

7. I failed to file Federal Form 706, U.S. Estate Tax Return and to pay the taxes due thereon on a timely basis.

8. I failed to file Form ET 90, New York State Estate Tax Return and to pay the taxes due thereon on a timely basis.

9. I failed to file State of Maine Estate Tax Return 706 or pay the taxes due thereon in a timely manner,

10. I failed to file Federal form 1041, Federal Income Tax for the year ending

December 31, 1996 or pay the taxes thereon on a timely basis.

11. I failed to file IT 205, New York State Fiduciary Income Tax Return for the year ending December 31, 1996 and pay the taxes thereon on a timely basis.

12. As a result of my nonfeasance, the estate incurred interest and penalties. The total amount of interest assessed against the estate was \$29,062.91. The total amount of penalties assessed against the estate was \$45,199.75. The penalties were subsequently abated. The interest was not.

13. I deposited the estate funds into a money market account and a linked checking account at Citibank.

14. I failed to keep the required bookkeeping records for either of the estate trust accounts.

15. Between December, 1996 and February 1998, unbeknownst to Mautner's widow and daughter who were the beneficiaries of the estate, I took a total of \$41,550.75 from the Mautner estate.

16. Of the \$41,550.75, I took \$19,550.75 by checks and money orders made payable to myself.

17. Between March 1997 and February 1998, on fifty eight (58) occasions, and sometime [sic] on consecutive days, I withdrew the balance, totaling \$22,401.00, from cash machines in amounts ranging from \$50 to \$600.

18. On or about September 15, 1998 in Surrogate's Court of the County of Orange, I filed a formal accounting in which I claimed \$35,216 of those monies which I had taken as attorney fees. I took the monies without prior application to the Court as required by Surrogate's Court Procedure Act §2111. I did not account for the remaining \$6,766.75 of the \$41,550.75 which I had taken.

19. I performed minimal work for the estate as attorney (as opposed to executrix).

As noted above, respondent was disbarred in New York. In New York, a disbarred attorney may seek reinstatement seven years after the effective date of disbarment.

R.1:20-4(a)(4) states as follows:

. . . The Board shall recommend the imposition of 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:

\* \* \*

(E) the misconduct established warrants substantially different discipline.

In the OAE's view, "respondent's knowing misuse of client funds is an act which serves to destroy public confidence in the integrity and trustworthiness of the legal profession and mandates permanent disbarment." The OAE relied on R.1:20-14(a)(4)(E) to seek more exacting discipline than that imposed in New York and requested that we recommend to the Court that respondent be disbarred. In support of its recommendation, the OAE cited In re Wilson, 81 N.J. 451 (1979); In re Noonan, 102 N.J. 157 (1986); In re Hein, 104 N.J. 297 (1986) and In re Ryle, 105 N.J. 10 (1987).

\* \* \*

Upon a de novo review of the record, we determined to grant the OAE's motion for reciprocal discipline. Pursuant to R.1:20-14(a)(5) (another court's finding of misconduct shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding), we adopt the findings of the Appellate Division of the Supreme Court of New York, First Judicial Department.

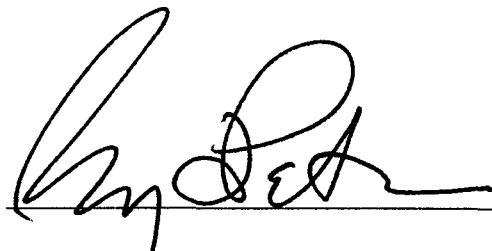
Conduct similar to respondent's has resulted in disbarment. In In re Ort, 134 N.J. 146

(1993), the attorney was disbarred for withdrawing fees from an estate account without informing the client, knowingly misrepresenting the value of his services, charging excessive and unreasonable fees and failing to properly comply with the client's request for an itemization of the attorney's fees. Similarly, in In re McCue, 153 N.J. 365 (1998), the attorney was disbarred for knowing misappropriation of at least \$500,000 in trust funds, while acting as trustee. See also In re Wilson, supra, 81 N.J. 451 (1979) (knowing misappropriation of client trust funds will result in disbarment).

Here, respondent admitted that, in addition to neglecting the Mautner estate, she knowingly took estate funds totaling \$41,550.75. Disbarment, therefore, is required. We unanimously so recommend. One member did not participate.

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

Dated: Oct 9 2001

By:   
ROCKY L. PETERSON  
Chair  
Disciplinary Review Board

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**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

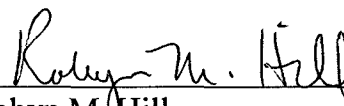
**In the Matter of Elissa L. Insler  
Docket No. DRB 01-079**

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**Decided:                    October 9, 2001**

**Disposition:            Disbar**

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

 10/31/01  
Robyn M. Hill  
Chief Counsel