

DRAFTED BY: Ellen
DATE TRANSMITTED TO COURT: 6/28/02

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 02-058

IN THE MATTER OF :
:
MELVIN G. DUKE :
:
AN ATTORNEY AT LAW :
:

Decision

Argued: April 18, 2002
Decided: June 10, 2002

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 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 in New York.

Respondent was admitted to the New Jersey bar in 1990. He has no disciplinary history. Respondent has been ineligible to practice in New Jersey since December 1994, due

to his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

Respondent was disbarred in New York for negligently misappropriating trust funds, commingling of trust and personal funds in his trust account, improperly drawing an escrow check to cash, failing to maintain required bookkeeping records and failing to timely cooperate with the grievance committee.

In January 1997, respondent deposited \$4,293 in his trust account on behalf of a client, identified only as Rollins. Although respondent was required to maintain those funds in trust, his account balance fell to \$3,300.25 in February 1997. In June 1997, respondent issued a trust account check in the amount of \$4,293 to Sutton Land Services on behalf of Rollins. The record did not reveal the reason for the payment. The check was returned for insufficient funds on June 18, 1997. It cleared the account on June 24, 1997, after respondent deposited \$160 of his own funds in the trust account. It was undisputed that the overdraft was the result of negligent, not knowing, misappropriation and that respondent corrected the overdraft before New York began its investigation.

In 1997, it was respondent's practice to deposit all of his retainer fees in his trust account and withdraw his fees from the account as he earned them, either by paying himself or a creditor. Respondent also drew at least one trust account check (for \$35) to "cash." Although respondent had a business account, he did not deposit his retainer checks in that account.

It was also undisputed that respondent did not maintain “a ledger book or similar record of deposits into and withdrawals from his attorney escrow account.” In the New York proceeding, the attorney trust account was referred to as the “escrow” account.

Finally, it was undisputed that respondent failed to reply in a timely manner to the New York disciplinary committee’s requests for information about the grievance.

There are numerous mitigating factors in this case. Respondent has a history of civic service, both in New York and in Guyana, where he was born. Although respondent did not reply to the New York investigation in a timely manner, when he finally replied, he immediately admitted his mistakes, expressed his remorse and took steps to insure that his conduct would not be repeated.

Furthermore, as set forth above, respondent covered the shortfall in his trust account even before the investigation began. Finally, respondent has no disciplinary history.

* * *

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

Reciprocal disciplinary 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 upon 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.

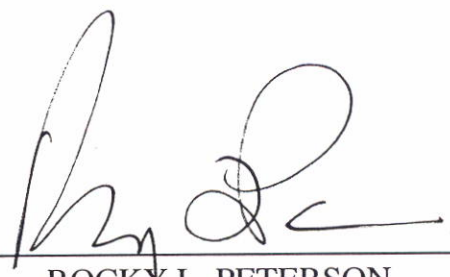
We agree with the OAE that subsection (E) is applicable here, namely, that respondent's misconduct warrants substantially different discipline in New Jersey. The New York court disbarred respondent. In New York, disbarment is not permanent. An attorney can apply for reinstatement seven years after being disbarred. However, as correctly pointed out by the OAE, respondent's actions would not result in a seven-year suspension in New Jersey.

The OAE urged the imposition of a reprimand, citing In re Daniels, 157 N.J. 71 (1999)

(reprimand for negligent misappropriation of almost \$65,000 in clients' funds, recordkeeping violations and making loans to clients in anticipation of settlements); In re Blazsek, 154 N.J. 137 (1998) (reprimand for negligent misappropriation of client funds and recordkeeping violations); In re Gilbert, 144 N.J. 581 (1996) (reprimand for negligent misappropriation of client funds, commingling, recordkeeping violations and failure to properly supervise firm employees) and In re Marcus, 140 N.J. 518 (1995) (reprimand for negligent misappropriation of client funds and recordkeeping violations; attorney had a prior reprimand).

Here, respondent was guilty of one instance of negligently misappropriating trust funds, commingling of trust and personal funds in his trust account, improperly drawing a trust account check to cash, failing to maintain required attorney records and failing to timely cooperate with disciplinary authorities. We agree with the OAE that, based upon this misconduct, as well as the mitigating circumstances, respondent actions warrant no more than a reprimand. We, therefore, unanimously determined to reprimand respondent.

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

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

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

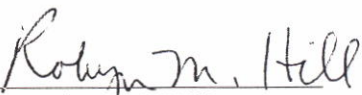
In the Matter of Melvin G. Duke
Docket No. DRB 02-058

Argued: April 18, 2002

Decided: June 10, 2002

Disposition: Reprimand

<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:			9				

 6/18/02
 Robyn M. Hill
 Chief Counsel