

**SUPREME COURT OF NEW JERSEY**  
**DISCIPLINARY REVIEW BOARD**  
District Docket No. XIV-00-395E  
Docket No. DRB 02-

OFFICE OF ATTORNEY ETHICS  
P.O. Box 963  
Trenton, New Jersey 08625  
**MOVING PARTY**

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**IN THE MATTER OF**

**SUSAN E. CARDULLO,**

**AN ATTORNEY-AT-LAW**

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**NOTICE OF MOTION FOR**  
**FINAL DISCIPLINE**

Disciplinary Action

TO: Susan E. Cardullo, Esq.  
C/o Albert B. Jeffers, Esq.  
CELLI AND SCHLOSSBERG  
Court House Plaza  
60 Washington Street  
Morristown, New Jersey 07960

**PLEASE TAKE NOTICE** that, pursuant to R.1:20-13(c), the Office of Attorney Ethics petitions the Disciplinary Review Board for final disciplinary action based upon your conviction for assault by auto, in violation of N.J.S.A. 2C:12-1c(2).

**TAKE FURTHER NOTICE** that, at the time and place selected by the Board, application will be made for recommendation to the Supreme Court of New Jersey that you be reprimanded.

DATED: July 30, 2002

/s/ Richard J. Engelhardt  
Assistant

Ethics Counsel

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**IN THE MATTER OF**

**SUSAN E. CARDULLO,**

Disciplinary Action

**AN ATTORNEY-AT-LAW**

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**BRIEF AND APPENDIX IN SUPPORT OF MOTION FOR  
FINAL DISCIPLINE UPON CRIMINAL CONVICTION**

DAVID E. JOHNSON, JR., DIRECTOR  
OFFICE OF ATTORNEY ETHICS  
P.O. Box 963  
TRENTON, NEW JERSEY 08625

Richard J. Engelhardt  
Assistant Ethics Counsel  
OF COUNSEL AND ON THE BRIEF

**CASES CITED**

In re Addonizio, 95 N.J. 121, 124 (1984)  
In re Barber, 148 N.J. 74 (1997)  
In re Gavel, 22 N.J. 248, 265 (1956)  
In re Guzzino, 165 N.J. 24 (2000)  
In re Katz, 109 N.J. 17, 22-23 (1987)

**COURT RULES CITED**

R.1:20-13(c)(1)  
R.1:20-13(c)(2)

**RULES OF PROFESSIONAL CONDUCT CITED**

RPC 8.4(b)

**STATUTES CITED**

N.J.S.A. 2C:12-1c(1)  
N.J.S.A. 2C:12-1c(2)  
N.J.S.A. 39:4-50  
N.J.S.A. 39:4-129

**TABLE TO THE APPENDIX**

Complaint - Summons,  
dated October 4, 2000

Complaint - Summons,  
dated October 4, 2000

Indictment,  
dated October 4, 2000

Transcript of Plea,  
dated July 9, 2001

Judgment of Conviction,  
dated March 15, 2002

Transcript of Sentencing, dated March 15, 2002

Superior Court of New Jersey Order, State v. Cardullo  
dated March 20, 2002

Disciplinary Review Board Decision, In re Barber,  
dated November 18, 1996

Disciplinary Review Board Decision, In re Guzzino,  
dated December 6, 1999

## STATEMENT OF PROCEDURAL HISTORY AND FACTS

Respondent, Susan E. Cardullo, was admitted to the Bar of the State of New Jersey in 1996. As a result of an automobile accident in Pequannock Township on October 4, 2000, respondent was issued four municipal summonses charging her with driving while intoxicated, leaving the scene of an accident, failure to report an accident and careless driving. (Exhibits A and B). As a result of the same incident, respondent was later the subject of a one-count indictment returned by a Morris County Grand Jury charging her with fourth degree assault by auto, in violation of N.J.S.A. 2C:12-1c(2)<sup>1</sup>. (Exhibit C).

On July 9, 2001, respondent appeared before John S. Harper, J.S.C. and entered a guilty plea to the indictment and the summonses charging her with driving while intoxicated (N.J.S.A. 39:4-50) and leaving the scene of an accident. (N.J.S.A. 39:4-129). During the hearing, the factual basis for the plea was elicited by respondent's criminal defense attorney, Brian J. Neary:

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<sup>1</sup> N.J.S.A. 2C:12-1c(1) provides in a pertinent part that, "(a) person is guilty of assault by auto...when a person drives a vehicle...recklessly and causes either serious bodily injury or bodily injury to another. Assault by auto...is a crime of the fourth degree if serious bodily injury results and is a disorderly persons offense if bodily injury results." N.J.S.A. 2C:12-1c(2) provides that assault by auto is a crime of the fourth degree if merely bodily injury results so long as the person drives the vehicle while in violation of N.J.S.A. 39:4-50 (driving while intoxicated).

Q Susan, I'm going to show you an indictment. This is - this is Morris County Indictment 00-11-01491-5, charging you with one count of a fourth degree crime of assault by auto. Are you familiar with this indictment?

A Yes.

Q Okay, I'm going to ask you certain questions concerning this that would be - would give those facts where the judge will know and be comfortable in allowing you to enter a guilty plea.

Now, do you remember being in the Township of Pequannock, that's here in Morris County?

A Yes.

Q Okay. And did you have the occasion to be driving a car at that time?

A Yes.

Q Whose car was that?

A My own.

Q Okay. Now, did you have the occasion to have - well, did you have a traffic accident?

A Yes.

Q Okay. And in the accident what - or whom did you strike?

A. The car of Ashley Nester.

Q Okay. The person's name you've come to learn the driver of the car was by the name of Ashley-

A Nester.

Q - Ashley Nester; is that correct?

A Correct

Q And Ms. Nester was driving a car?

A Yes.

Q Okay. And what did you do, did you - did you rear end the car? Did you hit her from the -

A My car hit the back of her car.

Q Okay. Did you later learn that, in fact, that she had sustained some bodily injury with regard to that collision?

A Yes, I - yes.

Q Now, did you stay at that scene or did you have the occasion to leave the scene of that accident?

A I had occasion to leave the scene of the accident.

Q Okay. Where did you go?

A I drove home.

Q Okay. And where did you live at that time?

A Lincoln Park.

Q Okay. And that same afternoon then did you have the occasion to be arrested by the police?

A Yes.

Q Okay. And did you also have the occasion to be taken down to the police station and tested as to your blood alcohol concentration?

A Yes.

Q Okay. Did you come to learn that that blood alcohol concentration was higher than a .10?

A Yes.

Q Okay. And at the time that you operated your car, had – had you had something to drink prior to driving the car?

A Yes.

Q And that something, was that an alcoholic beverage?

A Yes.

Q Okay. And as a result of the drinking of that alcoholic beverage, were you operating that car while you were under the influence of alcohol?

A Yes.

THE COURT: Is the State satisfied?

MS. HARRIS: Just have a few questions.

THE COURT: Sure.

CROSS EXAMINATION BY MS. HARRIS:

Q This was on October 4th in the year 2000?

A Yes.

Q And at the time you were driving your car, you were driving it recklessly and caused bodily injury to Ms. Nester, correct?

A Yes. (Exhibit D, pp 14-17).

A more detailed recitation of the underlying facts is set forth in respondent's Adult Presentence Report<sup>2</sup>:

On 10/4/00 at approx. 3:00 P.M., Ptl. Greg Bosland of the Lincoln Park Boro., Police responded to a request from Pequannock Twp., Police in locating a suspect vehicle in a hit-and-run incident which had occurred on Oak Avenue and Lincoln Park Road in Pompton Plains. Ptl. Bosland was dispatched to look for a silver 2000 Saturn with N.J. registration KCZ21U in the area of 28 Alpine Drive. Ptl. Bosland arrived at this address to find that the suspect vehicle was nowhere to be seen. At that point, Ptl. Bosland decided to back track Alpine Drive to Skyline Drive to the intersection of Boonton Turnpike. Ptl. Bosland only traveled a few hundred feet past the home at 28 Alpine when he spotted the suspect vehicle coming the opposite way on the road. Ptl. Bosland immediately activated his overhead lights and stopped the vehicle in the driveway of 28 Alpine Drive with the driver still behind the wheel. Ptl. Bosland immediately observed a large scrape on the driver side rear quarter panel. The driver was a female (later identified as Susan Cardullo). Ptl. Bosland approached and asked her for her documents and she immediately asked the officer what she was stopped for. Ptl. Bosland then asked if she was just involved in an accident in Pequannock. Her answer was 'no' at first, but was changed when Ptl. Bosland told her that they have witnesses that put her at the scene of the accident. She then said that she stopped her car and that she never hit the car. At that time, Ptl. Bosland detected a slight odor of an alcoholic beverage on her breath and observed that her eyes were bloodshot and watery. Her speech was also slightly slurred. At that time, Ptl. Bosland asked

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<sup>2</sup> The entire Adult Presentence Report will be separately provided to the Board.

Susan to step out of her vehicle to show him the damage to her car from the accident that she just left in Pequannock. After saying once again that she stopped before she hit the car, she walked the officer to the back of her vehicle. She then just stared off into space and never pointed out the damage. Ptl. Bosland then asked if the damage to her rear quarter panel was the damage from the accident She answered 'no' and explained that his damage was from earlier in the day when she backed into a sign of some sort. Ptl. Bosland asked if she reported this accident to the police and she said 'no' because the only damage was to her car. Ptl. Bosland explained that any accident with any damage must be reported even if the damage is to her own car. Ptl. Bosland then walked to the front of the vehicle and saw the damage immediately.

The front bumper was all scratched and the front license plate was missing, leaving three open screw holes that once held the plate in place. The left front headlight and blinking unit were ticking out from the car about four to five inches, when it clearly should have been flush. Ptl. Bosland then asked Susan to come to the front of the car and asked how this damage occurred if she didn't hit anything. Her answer was that she stopped very suddenly and the plate must have just flown off and the light must have come loose. When asked about the scratches, she had no answer. Ptl. Bosland then asked her to tell him exactly what happened in Pequannock. She explained that the car in front of her stopped and that she had to stop suddenly behind the vehicle. She again said that she never hit the vehicle. She then said that she waited for about ten to fifteen minutes and then pulled around the car and went home. During the story, she also mentioned that while she sat there she could hear the woman in the car in front of her crying. When asked, she said that she never got out of her car to see if everyone

was alright. She just sat there and waited for them to get out of her way so she could go. When the car in front of her didn't move, she said she just went around it. She also stated that she couldn't stay there all day because she had things to do. During this long description of the accident and the events that followed, Ptl. Bosland again observed the slurred speech, bloodshot and watery eyes, and the slight odor of an alcoholic beverage. At that time, Ptl. Bosland decided to do some simple sobriety tests on her which she failed.

During this testing, Ptl. Rick Vanderclark of the Pequannock Twp. Police responded to 28 Alpine Drive. Upon his arrival, he noticed Ms. Cardullo standing very rigid with her feet together and her knees locked straight to maintain balance. He was shown the damage to the suspect vehicle and took photos for his report. Testing continued with the Horizontal Gaze Nystagmus test, which Ms. Cardullo failed as well. Ms. Cardullo admitted to Ptl. Vanderclark to being in a motor vehicle accident in Pequannock and stated in slurred speech that the vehicle in front of her stopped short and that it was her fault for stopping quickly. She stated that after she hit the vehicle, she waited inside the vehicle for ten to fifteen minutes, heard the other people screaming, but felt that it was okay to leave. A short while later, Susan then stated that she hit the vehicle in the rear, then waited only a minute. She then tried to pull on a side street, but then just kept going home.

Ptl. Vanderclark was advised by the Pequannock dispatch that the accident involving Ms. Cardullo involved neck and back injuries to the driver of the other vehicle. This meant that Susan was going to be placed under arrest for leaving the scene of an accident which involved injuries. Ptl. Vanderclark mirandized and placed Susan in

the rear of his patrol car. It was then discussed that she should be arrested for D.W.I. as well and administered a breath test. It was further decided that this breath test would be performed at the Pequannock Twp. Police Dept. Susan's car was secured in her driveway and her belongings were secured with PU. Vanderclark and the Lincoln Park units cleared the scene. Susan's front license plate was recovered from the scene of the accident. At police headquarters, a small bottle of Suffer Home white zinfandel wine was located inside of her purse. Susan submitted to two breath tests which yielded successive results of 0.17% BAG and 0.16% BAG. Susan Cardullo was then lodged in the Morris County Jail in default of \$10,000 bail.

On March 15, 2002, respondent appeared for sentencing before Judge Harper. On the fourth degree assault by auto offense, she was sentenced to a two-year term of probation and a 180 days in the Morris County Jail, to which she was given credit for six months inpatient alcohol rehabilitation program which she had completed at High Watch in Kent, Connecticut. She was also required to continue outpatient care and counseling with a therapist. She was further directed to adhere to her plan from the New Jersey Lawyers Assistant Program which included attending 90 meetings in 90 days as well as complying with other plan recommendations. She was also ordered to complete 90 days of community service at Holy Spirit School. Finally, she was directed to provide restitution of \$500 to the victim of the accident, Ashley Nestor, and \$270.18 restitution to Liberty

Mutual Insurance Company, as well as assorted fees and penalties.

She received concurrent sentences for the driving while intoxicated and leaving the scene of the accident charges, with the additional provision of a mandatory ten year loss of New Jersey Drivers License and mandatory \$1,000 fine.<sup>3</sup> She was further directed to undergo random urine monitoring. (Exhibits E and F). Pursuant to her plea agreement, the summonses charging respondent with failure to report an accident and careless driving were dismissed. (Exhibit G).

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<sup>3</sup>The Adult Presentence Report and the Sentencing Transcript disclose that this was respondent's third conviction for driving while intoxicated. Her first conviction was in May 1999 in Wayne Township resulting from an incident occurring on August 28, 1998. The second conviction was in Lincoln Park in March 2001, based upon an incident occurring May 29, 2000. Subsequent to the October 4, 2000 accident in Pequannock Township which forms the basis of the underlying matter, respondent was again arrested in Lincoln Park and charged with driving while intoxicated on February 12, 2001. The sentencing transcript discloses that respondent subsequently pleaded guilty to this fourth violation as well.

## ARGUMENT

### RESPONDENT'S CONVICTION FOR ASSAULT BY AUTO WARRANTS A REPRIMAND

Respondent pleaded guilty to a charge of fourth degree assault by auto, in violation of N.J.S.A. 2C:12-1c(2), thus admitting that she caused bodily injury by driving a vehicle recklessly while intoxicated. Respondent's conviction clearly and convincingly demonstrates that she has "commit(ted) a criminal act that reflects adversely on... [her] trustworthiness or fitness as a lawyer in other respects." RPC 8.4(b). In a disciplinary case, a criminal conviction is conclusive evidence of a respondent's guilt. R.1:20-13(c)(1). Thus, "[t]he sole issue to be determined shall be the extent of final discipline to be imposed." R.1:20-13(c)(2).

The fact that respondent's offense does not relate directly to the practice of law does not negate the need for discipline. Whether related to the practice or not, even a minor violation of the law tends to lessen public confidence in the legal profession as a whole. In re Addonizio, 95 N.J. 121, 124 (1984).

The Court has been clear on its reasons for disciplining attorneys whose illegal conduct was not related to the practice of law. "An attorney is 'bound even in the absence of the attorney-client relationship to a more rigid standard of conduct than required of laymen. To the public he is a lawyer whether he

acts in a representative capacity or otherwise.' In re Gavel, 22 N.J. 248, 265 (1956)." In re Katz, 109 N.J. 17, 22-23 (1987).

Although there are no attorney disciplinary cases involving the offense of assault by auto, two recent cases involving motor vehicles and the use of alcohol may provide some insight into the discipline appropriate in this case. In re Barber, 148 N.J. 74 (1997) (Exhibit H), involved an attorney convicted of homicide by vehicle while driving in Pennsylvania. Prior to the accident, the attorney had been drinking with a friend, who was a passenger in the vehicle and killed in the one-car accident. Although he was not convicted of driving while intoxicated, the Board found that Barber's consumption of alcohol was an aggravating factor warranting a suspension. The Court agreed and Barber received a six month suspension.

The Barber case was followed by In re Guzzino, 165 N.J. 24 (2000). (Exhibit I), where the Court ruled that a two year suspension was appropriate for an attorney who pleaded guilty to one-count of second degree manslaughter (reckless homicide), in violation of N.J.S.A. 2C:11-4(b), and as well as a charge of driving while intoxicated, in violation of N.J.S.A. 39:4-50. In that case, the attorney was responsible for causing a motor vehicle fatality while under the influence of alcohol when, while traveling at an undetermined high rate of speed, he lost control of his vehicle, striking another vehicle and causing the

death of a passenger in that vehicle.

In this case, it is clear that respondent caused an accident while intoxicated. Fortunately, however, the injured party did not receive serious bodily injury. Although respondent has a long history of driving while under the influence of alcohol, given the lack of cases directly on point and the fact that it appears that she has finally taken measures to combat her addiction, we submit that a reprimand is the appropriate discipline.

#### **CONCLUSION**

For the foregoing reasons, the Office of Attorney Ethics respectfully requests that the Disciplinary Review Board recommend to the Supreme Court of New Jersey that respondent receive a reprimand.

Respectfully submitted,

**DAVID E. JOHNSON, JR., DIRECTOR  
OFFICE OF ATTORNEY ETHICS**

DATED: July 30, 2002

/s/ Richard J. Engelhardt  
Assistant Ethics Counsel  
OF COUNSEL AND ON THE BRIEF

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**CERTIFICATION  
OF MAILING**

1. I, Danette Brown, am employed as a Legal Secretary with the Office of Attorney Ethics, the Moving Party in this action.

2. On July 30, 2002, I mailed in the Capitol Post Office at West Trenton, New Jersey 08628, by Certified Mail - Return Receipt Requested one copy of Notice of Motion for Final Discipline, Brief and Appendix in Support of Motion dated July 30, 2002 to Susan E. Cardullo, Esq., c/o Albert B. Jeffers, Esq., CELLI AND SCHLOSSBERG, Court House Plaza, 60 Washington Street, Morristown, New Jersey 07960.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: July 30, 2002

/s/ Danette Brown  
Legal Secretary  
Office of Attorney Ethics