

violation of *R. 1:20-3(g)(3)* and *R. 1:20-3(g)(4)* (count three), more appropriately a violation of *RPC 8.1(b)*.

Respondent was admitted to the New Jersey bar in 1987. He was suspended for three months on August 11, 1999, based on a conviction of contempt of court and a guilty plea to a fourth degree stalking charge, in which the victim was a Passaic County Superior Court judge. According to the order of suspension, before his reinstatement respondent must submit proof of fitness to practice law. Prior to his suspension, respondent maintained a law office in Paterson, Passaic County, New Jersey.

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This is the third time that this matter has been before us. On January 16, 1997, we denied a motion for discipline by consent (admonition) because the stipulation lacked an adequate factual statement and a citation of the violated *RPCs* (Docket No. DRB 96-447). On July 27, 1998, after reviewing an amended motion for an admonition by consent, we rejected the motion and remanded the matter to the DEC for a hearing (Docket No. DRB 98-122). The case is again before us, following the hearing on remand.

* * *

The facts are as follows: After respondent accepted a pool case from the Middlesex County Public Defender's Office, he continually failed to appear for pre-trial conferences. Because the judge recognized that respondent had to travel a substantial distance from Paterson to New Brunswick, she accorded him a great deal of latitude. Following two trial continuances granted at respondent's last-minute requests, in May and July 1995, the judge allowed respondent to choose a trial date. Several weeks before the November 13, 1995 trial date selected by respondent, the judge learned from the prosecutor that, because respondent's telephone had been disconnected, the prosecutor was unable to contact him. After the judge sent letters to both respondent and the prosecutor, reminding them that the trial would begin on November 13, 1995, respondent informed her office that he was not prepared for trial, was unable to contact his client and, therefore, would not be appearing on that date. Respondent became "increasingly abusive" to the case manager and to the judge's secretary, insisting that he would not appear. Under threat of sanctions, respondent appeared at 1:30 p.m. on November 13, 1995. His client had appeared at 9:00 a.m. and had informed the judge that he had been unable to contact respondent, having received no response to the messages left on respondent's answering machine.

Respondent's only excuse for not being prepared for trial was that his private clients took precedence over Public Defender's Office's cases. He did not identify by name any of these cases, however. Because respondent became loud, repetitious and increasingly agitated,

the judge continued the discussion in chambers, along with the prosecutor and the case manager. Respondent denied having any personal or business problems affecting his ability to work, repeatedly insisting that he would not try the case because he was unprepared. Respondent explained that his telephone had been disconnected because he was irresponsible and neglected to pay his bills. As respondent's behavior became more bizarre, characterized by anger, hostility, agitation and inappropriate answers, the judge directed respondent to return to the courtroom, where she announced that respondent was relieved from the case. She directed him to return the file to the Public Defender's Office.

The only information submitted by respondent in these three matters is contained in his answer to the complaint, as follows:

While I differ with the substantive allegations set forth in the complaint, whatever difficulties arose with reference to the representation within, did from an essential misunderstanding as to procedures and protocol within the Middlesex County Criminal Part, particularly [the judge's] courtroom. The gist of the problem surrounded the trial call procedures with the Court. We in northern New Jersey are accustomed to a system whereby an individual Judge, either within his or her own courtroom or through a centralized calendar, is given a particular number of cases for the trial call week which in essence represent "possible actual trials." The system is a practical one in that it insures a trial eventuating within the particular Court. While preparedness is required under the system, a certain flexibility inheres and becomes accustomed to. That a particular case may not be ready to proceed is certainly not fatal to the Court's undertakings for that day or week. It was upon this understanding that I proceeded, and which I conveyed, albeit repeatedly, to the staff of [the judge].

There was in fact an issue of prioritization which I explained to [the judge]. I also expressed either to the Judge or her staff that the subject case,

which stemmed from an October 1994 indictment, would by Northern New Jersey terms hardly be considered stale or time concerned.

Regarding [the judge's] staff, I have come to know them as congenial, capable, professional individuals who consistently afforded me every consideration and courtesy not only with respect to this case, but with all cases I have had before [the judge] dating back to I believe 1992. As judicial staffs go, this is at the finest. Never did I or would I verbally abuse [the case manager]. I may have disagreed with [the case manager], but only with a healthy, lively sense of difference.

* * *

The DEC found that respondent "exhibited unprofessional conduct towards the court by continually failing to appear at court, by being unprepared to proceed with his case, and by his conduct towards court personnel. His actions evidenced a pattern of disrespect in that his verbal responses were loud and abusive." The DEC found that respondent's actions violated *RPC 1.3*, *RPC 3.2* and *RPC 8.4(d)*. In addition, the DEC determined that, by not replying to the grievance despite three requests from the DEC investigator, respondent failed to cooperate with the disciplinary authorities.

The DEC recommended a reprimand.

* * *

Following a *de novo* review of the record, we are satisfied by clear and convincing evidence that respondent committed ethics violations. Respondent continually failed to appear in court for pre-trial conferences, thus disobeying pre-trial orders and disregarding the rights of his client and his adversary and his duties toward the court. Respondent then obtained two continuances immediately before the trial was scheduled to begin. The judge extended a courtesy to respondent by allowing him to select the trial date. Shortly before the scheduled trial date, respondent notified the judge's office that he was unprepared for trial and would not be appearing. In persisting in his refusal to appear, respondent became increasingly abusive to the case manager and the judge's secretary. He appeared only under threat of sanction and stated that he was unprepared because his private clients took precedence over Public Defender's Office's cases. Respondent then became loud, repetitious and agitated. After the judge continued the discussion in her chambers, respondent displayed anger and hostility and his answers to the judge's inquiries were inappropriate. As a result, the judge removed respondent from the case.

By failing to appear at pre-trial conferences, respondent displayed a lack of diligence, in violation of *RPC* 1.3, failed to expedite litigation, in violation of *RPC* 3.2, and engaged in conduct prejudicial to the administration of justice, in violation of *RPC* 8.4(d). Moreover, his rude conduct toward both the judge and her staff constituted a violation of *RPC* 3.2, which requires attorneys to treat with courtesy and consideration all persons involved in the legal process.

With respect to the charged violation of failure to cooperate with the disciplinary authorities, we note with disapproval respondent's failure to reply to the grievance, despite several requests from the ethics investigator. Because, however, respondent filed an answer to the complaint, fully cooperated with the DEC and entered into a stipulation, we reluctantly determined to dismiss that charge.

We do not consider respondent's disciplinary history as an aggravating factor. Although he was suspended for three months, that suspension was imposed in 1999, after the misconduct in this matter had occurred.

Conduct similar to respondent's ordinarily leads to the imposition of a reprimand. *See In re Antonas*, 157 N.J. 547 (1999) (reprimand for gross neglect and failure to appear in court on scheduled trial dates, resulting in contempt order); *In re Hartmann*, 142 N.J. 587 (1995) (reprimand for intentionally and repeatedly ignoring court orders to pay opposing counsel a fee, resulting in a warrant for attorney's arrest, and for discourteous and abusive conduct toward a judge, with intent to intimidate her); and *In re Yengo*, 92 N.J. 9 (1983) (reprimand following conviction for contempt based on persistent abuse of judicial process and lack of respect for the administration of justice; strong mitigating factors considered).

Based on the foregoing, by a five-member majority we determine to reprimand respondent. Two members voted for a three-month suspension. Two members did not participate.

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

Dated: Feb 3 2000

By: 

ROCKY L. PETERSON
Member
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

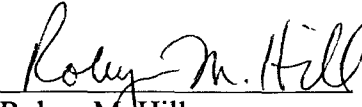
**In the Matter of Stanley S. Frankfurt
Docket No. DRB 99-219**

Argued: October 14, 1999

Decided: February 3, 2000

Disposition: Reprimand

Members	Disbar	Three-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		x					
Cole			x				
Boylan							x
Brody			x				
Lolla			x				
Maudsley							x
Peterson			x				
Schwartz		x					
Wissinger			x				
Total:		2	5				2


Robyn M. Hill
Chief Counsel