

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-398

IN THE MATTER OF
ROWLAND V. LUCID, JR.
AN ATTORNEY AT LAW

Decision

Argued: February 7, 2002

Decided: June 20, 2002

Walton W. Kingsbery, III 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 post-hearing appeal filed by the Office of Attorney Ethics (“OAE”), which we determined to bring on for a hearing. The OAE appealed from the District VA Ethics Committee’s (“DEC”) dismissal of a complaint charging respondent with practicing law while ineligible for failure to pay the annual assessment to the New Jersey Lawyers’ Fund for Client Protection (“CPF”), in violation of RPC 5.5(a).

Respondent was admitted to the New Jersey bar in 1968. He maintains an office for the practice of law in Morristown, Morris County.

Respondent has been previously disciplined on three occasions. In 1990 he received a private reprimand for lack of diligence and failure to communicate with the client. In the Matter of Rowland V. Lucid, Jr., Docket No. DRB 90-108 (June 22, 1990). In 1993 he was privately reprimanded once again for gross neglect, lack of diligence, conduct prejudicial to the administration of justice and failure to cooperate with the DEC. In the Matter of Rowland V. Lucid, Jr., Docket No. DRB 93-060 (April 28, 1993). In 1995 he was reprimanded for lack of diligence, failure to communicate and failure to have a written fee agreement. In re Lucid, 143 N.J. 2 (1995).

By order dated September 21, 1998 the New Jersey Supreme Court declared respondent ineligible to practice law for failure to pay his 1998 annual assessment to the CPF. In July 1999 respondent paid the annual assessment for both 1998 and 1999. He was reinstated to practice on August 2, 1999. Respondent admitted that he practiced law during the period of his ineligibility, but contended that he did not know that he had been declared ineligible.

By way of explanation, respondent testified that, in June 1998, he had relocated his office. Although he advised the post office of his forwarding address, he did not notify the CPF. Respondent claimed that he did not recall receiving a CPF bill in 1998. According to respondent, he must have received it, but must have been mislaid during his move. Subsequently, respondent received

his 1999 annual assessment from the CPF, which indicated that he owed a balance due and a current payment. He paid both. Respondent did not recall whether the bill had been sent to his new address or forwarded from his prior address. Respondent testified that it was not until the fall of 1999, when he received a letter from the CPF advising him that he had been reinstated, that he learned that he had been declared ineligible to practice law.

In reply to an inquiry from the OAE investigator, the CPF advised that respondent had been declared ineligible to practice law for failure to timely pay the annual assessments for 1993, 1995 and 1998. Respondent testified that he learned of these previous periods of ineligibility only after he reviewed the complaint in this matter, which included, as an exhibit, the letter from the CPF to the OAE investigator.

* * *

The DEC determined that respondent's failure to pay his annual assessment to the CPF was inadvertent and most likely due to his inadequate office procedures, as a sole practitioner. The DEC mistakenly remarked that, other than respondent's three periods of ineligibility for failure to timely pay the CPF, his ethics record was unblemished.

The DEC recommended that the matter be dismissed, based "in substantial part on Mr. Lucid's unequivocal commitment to the Panel to conduct himself in the future so that his annual payments to the Fund are made in a timely fashion." The DEC also pointed to respondent's testimony about his embarrassment and

distress caused by his conduct. The DEC was satisfied that, under these circumstances, respondent has been sufficiently punished, relying on the presenter's comments that, in his experience, transgressions of this nature do not lead to the filing of a formal ethics complaint. The DEC theorized that respondent's third appearance on the ineligible list might have sparked the formal action against him.

* * *

Following a de novo review of the record, we determined to grant the OAE's appeal. The OAE argued that respondent's admission that he had practiced law while ineligible conclusively established that he had acted unethically and that his lack of awareness might serve as a mitigating factor only. The OAE noted further that respondent did not deny that he had received the 1998 assessment, that he had moved and failed to advise the CPF of his new address and that he had twice before been declared ineligible. In addition, as the OAE pointed out, the hearing panel thought that, but for the periods of ineligibility, respondent's record was unblemished. That statement was not only erroneous but, as the OAE noted, improper for the DEC to consider in finding that respondent's conduct was not unethical. Lack of prior discipline is relevant to ascertaining the appropriate measure of discipline, not to a finding of misconduct.

As noted above, respondent has been declared ineligible to practice law on two prior occasions, in 1993 and 1995. On those occasions, his ineligibility lasted

three days and nine days, respectively.¹ Even if respondent's dereliction was simply the product of neglect or inadequate office procedures, he must still be held responsible for his actions. We found, thus, that respondent's conduct in practicing law while ineligible violated RPC 5.5(a).

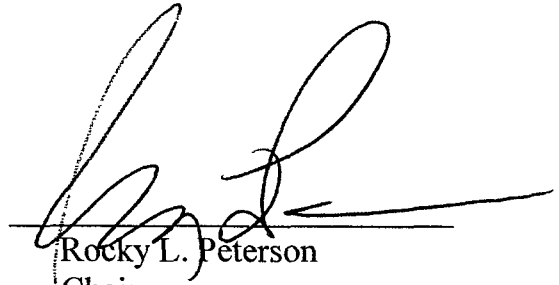
Contrary to the DEC's view, respondent's distress and embarrassment are insufficient to address his wrongdoing. Misconduct of this sort, without more, ordinarily merits an admonition. See In the Matter of Joseph V. Capodici, Docket No. DRB 00-294 (November 21, 2000) (admonition imposed where the attorney took on the representation of a client when he had been declared ineligible to practice law for failure to pay the annual assessment to the CPF); In the Matter of Edward Wallace, III, Docket No. DRB 97-381 (December 3, 1997) (admonition imposed where an attorney who was ineligible to practice law for failure to pay the CPF appeared in Superior Court on two occasions on behalf of a client) and In the Matter of Peter E. Hess, Docket No. DRB 96-262 (September 24, 1996) (admonition imposed where the attorney filed a complaint on behalf of a client at a time when he did not maintain a bona fide office and, in addition, continued the representation when he was ineligible to practice law for failure to pay the CPF). Because, however, this is respondent's fourth encounter with the disciplinary system, we unanimously determined that a reprimand is the appropriate form of

¹ These brief periods make it appear that, contrary to respondent's testimony, he knew that he was ineligible to practice and quickly made the necessary CPF payments.

discipline in this case. Respondent is hereby forewarned that any future misconduct will be met with more severe discipline.

One member recused himself. One member did not participate.

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

A handwritten signature in black ink, appearing to read 'Rocky L. Peterson', written over a horizontal line.

Rocky L. Peterson
Chair
Disciplinary Review Board

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

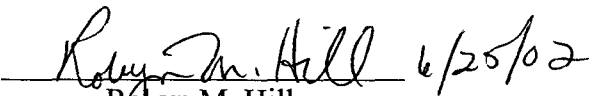
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Disposition: Reprimand

<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:			7			1	1


 Robyn M. Hill
 Chief Counsel