

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 02-154

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IN THE MATTER OF :  
: ILLENE GREENBERG :  
: AN ATTORNEY AT LAW :  
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Decision  
Default [R.1.20 4(f)]

Decided: November 21, 2002

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us based on a certification of default filed by the District IV Ethics Committee ("DEC"), pursuant to R.1:20-4(f).

Respondent was admitted to the New Jersey and Pennsylvania bars in 1986. She formerly maintained an office for the practice of law in Camden, New Jersey. In 1998, she was the subject of a diversionary program, pursuant to R.1:20-3(i)(2)(B)(i), for failure to maintain a bona fide office in New Jersey. The program was completed on April 28, 1998.

In November 2000 the Supreme Court of Pennsylvania transferred respondent to disability inactive status for an indefinite period, pursuant to R.301(e), Pa.R.D.E. There is an issue as to whether we are bound by the Pennsylvania determination concerning respondent's status and ability to defend herself from ethics charges. The Pennsylvania rule states as follows:

If, during the course of a disciplinary proceeding, the respondent contends that the respondent is suffering from a disability by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, which makes it impossible for the respondent to prepare an adequate defense, the Court thereupon shall enter an order immediately transferring the respondent to inactive status until a determination is made of the respondent's capacity to aid effectively in the preparation of a defense or to continue to practice law in a proceeding instituted in accordance with the provisions of subdivision (d) of this rule. If the Court shall determine at any time that the respondent is able to aid effectively in the preparation of a defense or is not incapacitated from practicing law, it shall take such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent.

Subsection (d) of that rule states the following:

Whenever the Board shall petition the Court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illness or because of addiction to drugs or intoxicants, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Court shall designate. If, upon due consideration of the matter, the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring the attorney to inactive status on the grounds of such disability for an indefinite period and until the further order of the Court. If examination of a respondent-attorney by a qualified medical expert reveals that the respondent lacks the capacity to aid effectively in the preparation of a defense, the Court may order that any pending disciplinary proceeding against the respondent shall be held in abeyance except for the perpetuation of testimony and the preservation of documentary evidence. The order of abatement may provide for re-

examinations of the respondent-attorney at specified intervals or upon motion by Disciplinary Counsel. The Court shall provide for such notice to the respondent-attorney of proceedings in the matter as it deems proper and advisable and may appoint an attorney to represent the respondent if the respondent is without adequate representation

Due to the confidentiality rules of the Pennsylvania disciplinary system, we were unable to obtain a reply to our inquiries about the proceedings involving respondent. Specifically, we were unable to ascertain whether respondent had provided a medical report evidencing her disability and inability to defend herself. The Pennsylvania disciplinary system was unable to provide us with any documentation from that proceeding, other than the order, which was already in the record (exhibit 2 of the complaint).

Since the Pennsylvania rule is triggered by a respondent's "contention" that he or she is disabled, we do not know if this respondent produced medical evidence of her inability to defend against the ethics charges.

We asked the OAE to set out its position on what weight, if any, the Pennsylvania order transferring respondent to inactive status should have on this proceeding.<sup>1</sup> In its reply, the OAE stated that, given the uncertainty of the existence of a medical report or of the extent of the involvement of the Pennsylvania disciplinary authorities in the process that led to respondent's disability inactive status, the onus should be on respondent to come forward and make at least a preliminary showing of disability. Thus, the OAE urged us to allow the ethics proceeding to run its course and to "consider whether appropriate conditions should be imposed."

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<sup>1</sup> A copy of our letter to the OAE was sent to respondent.

We agreed with the OAE's position. A sister jurisdiction found respondent unable to prepare a defense to disciplinary charges against her. We know next to nothing about the details of that proceeding. The OAE is of the view that the onus should be on respondent to present evidence of her disability. As noted above, we sent to respondent a copy of our letter to the OAE, giving her the opportunity to come forward with medical evidence, if she so desired. We have not heard from her.

We considered the possibility of moving forward under R.1:20-12(b), which states as follows:

**Request for Medical Examination.** Whenever the Director presents evidence which reasonably brings into question the capacity of an attorney to practice law, whether by reason of mental or physical infirmity or illness, or because of addiction to drugs or intoxicants, the Board shall direct that the attorney submit to such medical examination as may be appropriate to enable the Director to determine whether the attorney is so incapacitated. Such action shall be taken on an expedited basis. Thereafter the Director may request the Board to recommend to the Supreme Court that the attorney be immediately transferred to Disability Inactive Status. If the Board concludes that the attorney lacks the capacity to practice law, it shall forthwith recommend to the Supreme Court that the attorney be transferred to disability inactive status until the further order of the Court. No pending disciplinary proceeding against the attorney shall be held in abeyance unless the Court shall additionally find that the respondent is incapable of assisting counsel in defense of any ethics proceedings.

Our concern was our inability to communicate with respondent. The rule requires that we direct respondent to submit to a medical examination. We deemed it unlikely that she would comply. Although we feel compassion for respondent, who could be quite ill and unable to comply with our orders, our primary duty is the protection of the public from an attorney who may do it harm. We, therefore, determined to continue with our review of this case, which is proceeding on a default basis.

\* \* \*

On October 9, 2001 the DEC secretary mailed a copy of the complaint to respondent's last address listed in the New Jersey Lawyers' Diary and Manual, 528 Benson Street, Camden, New Jersey 08103, as well as respondent's office address in Pennsylvania, First Union Building, 123 South Broad Street, Suite 2140, Philadelphia, Pennsylvania, via certified and regular mail. The certified mail receipt was returned indicating that the complaint mailed to the Philadelphia address had been forwarded to 2000 Hamilton Street, Box 725, Philadelphia, Pennsylvania. The identity of the agent that accepted delivery is unknown. The regular mail was not returned.

On December 26, 2001 a copy of the complaint was sent to respondent at her last known home address, 2201 Pennsylvania Avenue, Apartment 103, Philadelphia, Pennsylvania 19130, via certified and regular mail. The return receipt card indicated delivery on December 29, 2001 and bore the initials of an unidentified individual. On January 23, 2002 a second letter was sent to respondent advising her that, unless she filed an answer within five days, the allegations of the complaint would be deemed admitted and the record would be certified to us for the imposition of sanction. The letter also served to amend the complaint to include a violation of RPC 8.1(b). The letter was sent via certified and regular mail to respondent's 2201 Pennsylvania Avenue address. The certified mail was returned marked "unclaimed." The regular mail was not returned.

Respondent did not file an answer to the complaint.

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On September 20, 1999 respondent was declared ineligible to practice law for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection ("CPF"). On February 29, 2000 respondent appeared before the Honorable Marie E. Lihotz, J.S.C., Superior Court, Family Part, in the matter captioned Tomeki Jones v. David Henderson. At the hearing, respondent entered her appearance on behalf of Henderson. Respondent represented to the court that she maintained a New Jersey office at 1931 Route 70 East, Cherry Hill. According to the complaint, respondent did not maintain an office at that location at that time. Also, respondent stated to the court that her name did not appear in the New Jersey Lawyers' Diary and Manual because she had not completed the necessary form to have her name included. In fact, respondent's name did not appear in that publication because she was ineligible to practice law. In addition, respondent provided the court with what she represented to be her New Jersey telephone number. Respondent did not have an operational New Jersey telephone number at the time, however. When respondent made those statements to the court, she knew that they were false.

The court's attempts to contact respondent at the Cherry Hill address by telephone and in writing were unsuccessful. In addition, Henderson's subsequent attorney attempted to contact respondent by phone at the Cherry Hill address, also to no avail.

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By letters dated October 27 and November 27, 2000 the OAE asked respondent to reply to the allegations of the grievance. The letters were sent to her Pennsylvania office address. Respondent did not reply to the OAE's letter. On April 12, 2001 the OAE again asked respondent to submit information about the grievance. That letter was sent to respondent's residence in Philadelphia. Again, respondent ignored the OAE's request. On May 10, 2001, the OAE once again wrote to respondent, via regular mail, addressed to Hamilton Street, Box 725, Philadelphia, Pennsylvania 19130, an address provided by Pennsylvania disciplinary authorities and by respondent's counsel in the Pennsylvania proceeding. None of the letters were returned to the OAE as undeliverable. Respondent failed to comply with the OAE's request for a reply to the grievance.

The complaint charged respondent with a violation of RPC 5.5(a) (practicing law in violation of the regulations of the profession in that jurisdiction); RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal); RPC 3.3(a)(5) (failing to disclose to a tribunal a material fact with knowledge that the tribunal may tend to be misled by such failure); RPC 8.1(b) (failing to cooperate with disciplinary authorities) and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

\* \* \*

Service of process was properly made. Following a review of the record, we found that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R.1:20-4(f)(1).

Practicing law while ineligible for failure to pay annual CPF fees generally results in an admonition. See In the Matter of Edward Wallace, Docket No. DRB 97-381 (1997) (admonition where an attorney appeared twice in a criminal matter, while ineligible to practice); and In the Matter of Peter E. Hess, Docket No. DRB 96-262 (1996) (admonition where attorney practiced law while ineligible and failed to maintain a bona fide office). When the attorney's misconduct is exacerbated by an affirmative misrepresentation to the court, a reprimand is warranted. In In re Strupp, 147 N.J. 267 (1997), the attorney was reprimanded after he falsely represented to a court that he was a member of a New Jersey law firm that did not exist. The attorney also failed to maintain a bona fide office and was ineligible to practice law because he had represented to the CPF that he had retired from the practice of law.

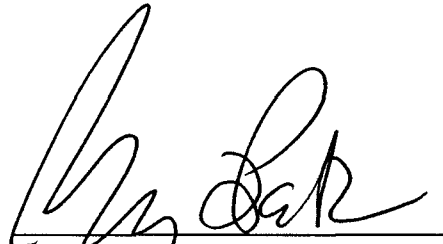
Here, respondent made misrepresentations to the court about a bona fide office, operative New Jersey telephone number, and the reason why she was not listed in the New Jersey Lawyers' Diary and Manual. Ordinarily, conduct of this sort leads to a reprimand. In light of the default nature of the proceeding, however, enhanced discipline is required. We, therefore, unanimously determined to impose a three-month suspension.



We also determined to require respondent to submit, prior to reinstatement, proof of fitness to practice law, as attested by a mental health professional approved by the Office of Attorney Ethics.

Three members 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

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

In the Matter of Illene Greenberg  
Docket No. DRB 02-154

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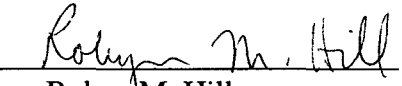


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Decided: November 21, 2002

Disposition: Three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-month 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					
<b>Total:</b>		6					3

 12/4/02  
 Robyn M. Hill  
 Chief Counsel