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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-313

IN THE MATTER OF :
 :
ROBERT F. LYLE :
 :
AN ATTORNEY AT LAW :
 :
:

Decision

Argued: November 15, 2001

Decided: March 5, 2002

Sudha T. Kantor appeared on behalf of the District IV Ethics Committee.

Respondent did not appear, despite proper notice of the hearing.

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

This matter was before us based on a recommendation for discipline filed by the District IV Ethics Committee ("DEC"). The complaint charged respondent with violations of RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a

tribunal); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Respondent was admitted to the New Jersey bar in 1974. At the relevant time, he was ineligible to practice law for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection ("The Fund") and did not maintain a law practice. He has no history of discipline.

Respondent failed to appear at the DEC hearing. Apparently, he received notice of the hearing by certified mail. The receipt card indicates delivery of the notice on May 22, 2001. The recipient's signature appears to be that of respondent and is similar to signatures appearing on other documents. A message scheduling the hearing was also left on an answering machine at the last known number available for respondent. Because respondent replied to the grievance and filed an answer to the complaint, this matter did not proceed as a default. At the DEC hearing, the presenter requested that respondent's answer be stricken because of his failure to appear. Although the panel chair indicated that the request would be considered, the panel did not rule on it.

This ethics matter was initiated by the judge that heard respondent's own matrimonial matter. The charges in the complaint relate to respondent's conduct in his matrimonial proceeding, not in the course of representing a client. As noted above, respondent has been ineligible to practice law since September 15, 1997.

The only witness to testify at the DEC hearing was Office of Attorney Ethics ("OAE") Investigator Wanda Riddle. Riddle testified, that during the initial stages of her investigation, she had a difficult time serving respondent with the grievance. Initially, the

grievance was sent to respondent's last known address in Cherry Hill, New Jersey. The mail, however, was returned marked "no forwarding address." Thereafter, Riddle sent the grievance to respondent's residence. That mail was returned with a forwarding address in Neptune, Florida. The grievance was, therefore, forwarded to respondent at that address.

The central issue in this matter is respondent's misrepresentation in his divorce complaint, that he and his wife had been separated for eighteen months. The complaint was filed sometime in March 1999. At the time, the parties had been living apart for one month. Respondent's wife filed an answer and counterclaim in May 1999, charging respondent with acts of extreme cruelty and adultery with Virginia Wall, as of February 1995. Wall lived in Cherry Hill, New Jersey. In June 1999, respondent filed an amended complaint for divorce, listing acts of extreme cruelty by his wife as the cause for divorce. Both the complaint and amended complaint showed respondent's address as the same as Wall's, in Cherry Hill.

By letter to his wife, Margaret, dated June 6, 1999, respondent notified her that he had cashed in his retirement account and used the funds to pay off their credit card debts and loans from both of their families.

Following receipt of the letter on June 17, 2000, Margaret's attorney filed an order to show cause to try to prevent respondent from dissipating the marital assets. The order to show cause was sent to the Cherry Hill address. The return date was scheduled for July 9, 2000. When respondent did not appear, an order was entered on August 3, 2000. The order was also sent to respondent at the Cherry Hill address. Among other things,

the order restrained respondent from dissipating any marital assets, required him, within three days, to provide an accounting of any assets that were dissipated, directed him to deposit into an appropriate account, within three days, any monies withdrawn from any retirement account or from the transfer of any other assets and instructed him to provide proof of the deposit to the defendant.

On July 19, 2000, a case management conference was held, at which respondent did not appear. Another order was issued on August 3, 1999, requiring both orders to be served on respondent by regular and certified mail and by publication. Among other things, the order gave respondent thirty days from the date of publication to reply to the order, lest a bench warrant issue for his arrest.

Both orders were sent by regular and certified mail to the Cherry Hill address. On September 24, 2000, the orders were published in the Courier Post and the Burlington County Times.

On September 9, 1999, Margaret's attorney received a letter from respondent's retirement fund administrator (he had previously been a teacher), indicating that respondent had received a lump sum payment in the amount of \$62,417.88 on May 26, 1999. The letter also noted that respondent was to receive annual payments of \$6,000 for the next ten years.

The OAE investigator testified that, in November 1999, Margaret's attorney filed a motion to enforce litigant's rights. Respondent again failed to appear at the hearing. The order that ensued directed the retirement plan to forward annual payments to the probation department to satisfy respondent's child support obligations. It also dismissed

respondent's divorce complaint, enabling Margaret to proceed on a default basis and to move forward for a final judgment of divorce. A warrant for respondent's arrest was also issued.

A final hearing was held on December 17, 1999. Again, respondent did not appear. The final judgment of divorce was entered on January 24, 2000. According to the OAE investigator, Margaret's attorney forwarded a copy of the final judgment to the Cherry Hill address by regular and certified mail. This time the certified mail was accepted on February 9, 2000. The OAE investigator opined that the signature appeared to be respondent's.

The OAE's investigator noted that, although respondent indicated that he had not received any of the earlier court orders, he acknowledged, in his answer to the ethics complaint, that he had received a copy of the final judgment of divorce, which purportedly incorporated the earlier orders.

During the course of her investigation, the OAE investigator spoke with Virginia Wall. Wall claimed that, in early February 1999, respondent began renting a room from her. She stated that the two had met at their job at Prime Time Meats. Respondent was not employed there as an attorney. Wall claimed that she befriended respondent because she felt sorry for him. According to Wall, respondent left her Cherry Hill address in May 1999. Wall believed that respondent was suicidal at the time that he left New Jersey. Wall claimed that she wanted to protect respondent and, hence, disposed of any mail that she believed related to his divorce. She thought that the mail would "push him over the edge." Wall insisted that respondent never asked her to dispose of the mail and that she

never told respondent that she was doing so. She recalled receiving the bench warrant and “remembered specifically disposing of that.”

According to Wall, in August 1999, Margaret’s attorney had sent a deposition notice to her, requesting information about respondent’s whereabouts. She, therefore, tried to reach respondent at his brother’s house in Ohio. Respondent, however, had already moved to Florida, where she contacted him. Wall told the investigator that respondent would not give her his address in Florida, but purportedly told her to give Margaret’s attorney his Ohio and Florida telephone numbers. The investigator noted that, contrary to Wall’s statements, respondent’s answer to the ethics complaint stated that he had asked Wall to give Margaret’s attorney his address in Florida.

According to the investigator, the January 24, 2000 final judgment of divorce was sent to the Cherry Hill address. It was the investigator’s belief that Wall had forwarded it to respondent.

In summary, the investigator stated that respondent left New Jersey sometime in May 1999; he cashed out his pension on May 26, 1999; there was no evidence to establish that respondent received the order prohibiting him from dissipating marital assets or any evidence that he received any other orders, other than the final judgment of divorce; and there was no evidence that, as of the date of his ineligibility (September 1997), he was representing any clients, other than himself. Although respondent purportedly left New Jersey in May 1999, he continued to use the Cherry Hill address in letters written in June 1999. His auto insurance renewal, effective June 14, 1999, listed

the Cherry Hill address. The investigator concluded that it was not clear when respondent left New Jersey.

* * *

In his answer to the ethics complaint, respondent stated that, during the time of his divorce proceedings, he was undergoing treatment for severe depression at the Mood Anxiety Disorder Clinic at the University of Pennsylvania. Respondent included a June 7, 1999 letter from his physician there, indicating that, although respondent had undergone treatment for severe depression, it had proven resistant to cognitive therapy and treatment with a number of antidepressant medications. The letter also stated that respondent was presently participating in a new program involving treatment with a class of drugs known as MAO inhibitors. It further stated that, as in the case of most antidepressant medication, it would take approximately six to eight weeks before respondent could be evaluated.

The doctor concluded that respondent had biochemical depression, from which he had apparently been suffering since adolescence. The doctor stated that respondent's level of functioning, both personally and professionally, had been seriously impaired by his depression, that he had lost two jobs within the past eighteen months and, during that time, had also separated from his wife and was in the midst of divorce proceedings. The doctor concluded that, given respondent's history of response to treatment, it was likely

that he would require relatively "long-term care," before he would be in full remission and back to normal.

Respondent admitted that, on June 15, 1999, he informed Margaret that he was leaving New Jersey and had cashed out his retirement fund to pay off their marital debts. Respondent also claimed that Margaret had agreed to the above, as part of their settlement.

Respondent claimed that he went to Chagrin Falls, Ohio, to stay with his brother for nearly a month and left in early July to move to the Jacksonville, Florida area before finally settling in Neptune Beach, Florida, to be close to his mother and sisters. Respondent claimed that he took up residence in Neptune Beach in August 1999 and, as of the date of his answer, continued to reside there.

Respondent alleged that, sometime in August 1999, Margaret's attorney had contacted Virginia Wall who, after obtaining his approval, had given Margaret's attorney his telephone number and address. Despite this information, respondent claimed, the attorney continued to send correspondence to the New Jersey address and published notices of hearings or orders in local New Jersey newspapers, "knowing full well that Respondent would not be notified of those Hearings or Orders."

As to the charge that respondent knowingly made a false statement of material fact or law to a tribunal, he admitted stating that he had been separated for eighteen months, which was not true, and stated that he had amended the complaint to allege extreme cruelty as the cause of action. Respondent claimed that he did not intend to mislead the court in any material way and that he had attempted to rectify that incorrect statement.

As to the charge of knowingly disobeying the obligations under the rules of a tribunal, respondent claimed that he did not have notice or knowledge of the motions, rulings or resulting obligations placed upon him by any tribunal. He claimed that he responded timely and appropriately to all of the obligations for which he had notice.

In defense of the charge of a violation of RPC 8.4(c), respondent contended that he used only one marital asset — his pension fund — to meet marital financial obligations, as provided by his and his wife's settlement agreement.

With respect to the charge that he engaged in conduct prejudicial to the administration of justice, respondent stated that he was undergoing treatment for depression, which was due in a large part to circumstances surrounding the divorce proceedings. Respondent further alleged that he made every attempt to timely reply to matters, when he was appropriately notified. Respondent blamed Margaret's attorney for not sending him appropriate or timely notice of hearings, motions or other matters that required his response.

* * *

The DEC determined that respondent knowingly made a false statement of material fact to a tribunal, when he filed the initial divorce complaint alleging an eighteen-month separation, in violation of RPC 3.3(a)(1). The DEC also found a violation of RPC 8.4(d) (conduct prejudicial to the administration of justice). The DEC's reasoning was unclear:

he notified his wife of this fact. Respondent claimed that, thereafter, he did not receive notice of any of the subsequent hearings or orders, other than the final judgment of divorce incorporating the earlier orders.

According to the OAE investigator, Wall told her that she had disposed of all documents relating to respondent's divorce. Although Wall's statement could be viewed as questionable in light of her alleged romantic involvement with respondent, there is no clear and convincing evidence that respondent received notice of the orders and/or proceedings, prior to his receipt of the final judgment of divorce.

As to the charge that respondent violated RPC 3.4(c), the records show that respondent withdrew his pension fund before the court ordered the preservation of the marital assets. Moreover, there is no evidence to refute respondent's claim that the funds were used to pay off marital debts and that Margaret had agreed to that use. We, therefore, dismissed that charge.

The only surviving impropriety here was respondent's misrepresentation in the complaint for divorce. Six members voted to impose a three-month suspension, believing it necessary to address respondent's transgression and to protect the public's confidence in the profession. See In re Mark, 132 N.J. 268 (1993) (three-month suspension where attorney made oral misrepresentations and fabricated two letters and submitted them to a trial court and his adversary); and In re Kernan, 118 N.J. 366 (1990) (three-month suspension where attorney lied in a certification to the court and fraudulently conveyed property to his mother to avoid child support obligations; attorney had received a prior private reprimand). Two members believed that a reprimand was sufficient discipline for

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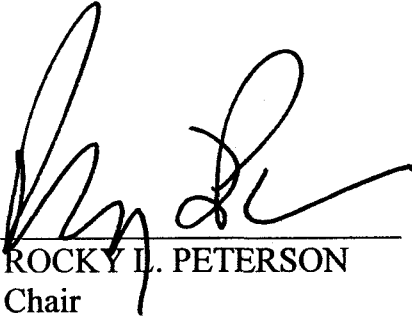
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respondent's misconduct. They considered that respondent was acting as a pro se litigant and believed that he should not be more severely disciplined simply because of his status as an attorney. One member did not participate.

We also determined to require respondent to provide proof of fitness to practice law prior to his reinstatement.

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**

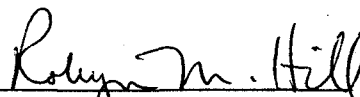
In the Matter of Robert F. Lyle
Docket No. DRB 01-313

Argued: November 15, 2001

Decided: March 5, 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				
Total:		6	2				1



Robyn M. Hill
Chief Counsel