

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 00-216

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IN THE MATTER OF  
JAMES R. COLEY  
AN ATTORNEY AT LAW

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Decision

Argued: October 19, 2000

Decided: February 6, 2001

Elizabeth D. Beranato appeared on behalf of the District IIIB Ethics Committee.

Respondent appeared pro se.

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

This matter was before us based upon a recommendation for discipline filed by the District IIIB Ethics Committee (DEC).

Respondent was admitted to the New Jersey bar in 1969. He has no prior ethics history.

The complaint alleges that respondent twice represented clients in a municipal court while ineligible to practice law for failure to pay the annual assessments to the Lawyers' Fund for Client Protection (CPF).

This matter comes to us following respondent's failure to abide by the provisions of an agreement in lieu of discipline between respondent and the Office of Attorney Ethics (OAE). The district ethics committee (DEC) brought the matter directly to us without hearing pursuant to R. 1:20-6 (c), which states as follows:

A hearing shall be held only if the pleadings raise genuine disputes of material fact, if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter or ethics counsel requests to be heard in aggravation. In all other cases, the pleadings, together with a procedural history, shall be filed by the trier of fact directly with the Board for its consideration in determining the appropriate sanction to be imposed.

The complaint alleged that respondent violated RPC 5.5 (a) (practicing law while ineligible), RPC 8.4 (a) (violate or attempt to violate the RPCs) and RPC 8.1 (b) (failure to cooperate with disciplinary authorities) in two municipal court matters.

On February 4, 1999 respondent appeared in Hightstown municipal court on behalf of Lester McLaughlin, a defendant in a criminal matter. On March 4, 1999 he appeared before the same municipal court judge in another matter involving Lester's brother, Edward McLaughlin. At the time of the appearances, respondent was ineligible to practice law for failure to pay the CPF's annual assessment.<sup>1</sup>

Respondent did not dispute that he was ineligible to practice law during the time that he appeared in court. On January 3, 2000 respondent entered into an

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<sup>1</sup> The record does not specify the dates of respondent's period of ineligibility. However, a letter from the OAE refers to his uninterrupted ineligibility since September 1996.

agreement in lieu of discipline with the OAE, in which he agreed to send a written apology to the court and to become current with his obligations to the CPF. Respondent did neither. Therefore, on March 22, 2000 the OAE remanded the case to the DEC for the filing of a complaint.

On May 5, 2000, rather than file an answer to the complaint, respondent sent the DEC a handwritten letter stating the following:

This is to confirm my statement to you of yesterday that I have no intention in participating in this proceeding. I have previously supplied to the committee a written narative [sic] explaining the circumstances relating to my appearances before [the judge] on behalf of Lester and Edward McLaughlin.

My only regret is that I signed the Agreement in Lieu of Discipline prepared by the Office of Attorney Ethics. The requirements in that agreement that I apologize to [the judge] and make back payments to the Lawyer's Fund for Client Protection makes [sic] no sense to me. Incidentally, I verbally appraised [sic] [the judge] of the facts and circumstances surrounding my appearances before him.

I permanently retired from the practice of law in 1990. My representation of Lester and Edward McLaughlin before [the judge] was motivated solely because of my close personal relationship of fifteen years with their sister. During that time I helped them in other ways.

\* \* \*

Now apparently my sense of priorities is at odds with the Office of Attorney Ethics, accordingly I submit herewith my resignation from the bar and tender for cancellation my license to practice law in New Jersey.

True to his word, respondent participated no further in the DEC proceedings,

beyond his May 5, 2000 letter.

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Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

Undoubtedly, respondent's behavior was unethical. Respondent did not dispute his ineligibility to practice law when he represented the McLaughlins in 1999. In fact, respondent was fully aware that he was ineligible to practice law at the time. Despite his statement that he had permanently retired in 1990, he apparently continued to pay the CPF annual registration fee until 1996 when, according to the OAE, he was placed on the list of ineligible attorneys. Obviously, respondent knew that he was not a "retired" attorney for purposes of the CPF and continued to pay the assessment through at least part of his "retirement." For unknown reasons, respondent ceased making those payments. Unquestionably, thus, he knowingly violated RPC 5.5(a) and RPC 8.4(a) when he twice appeared in court on behalf of two clients. At oral argument before us, respondent reiterated his belief that he acted appropriately, was not regretful for his actions and sought to surrender his license to practice law in apparent disgust. Respondent showed anew his disrespect for the ethics system.

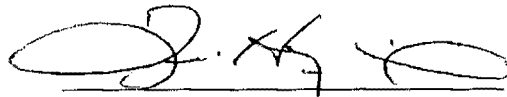
Practicing law while ineligible for failure to pay annual CPF fees, without more, has generally resulted in an admonition. See In the Matter of Edward Wallace, Docket No. DRB 97-381(1997) (admonition where an attorney appeared twice in a criminal matter while ineligible to practice); In the Matter of Peter E. Hess, Docket No. DRB 96-262 (1996) (admonition where attorney practiced law while ineligible and failed to maintain a bona fide office). Generally, reprimands have been imposed where the attorney exhibited other misconduct, in addition to practicing law while ineligible, or where there were aggravating circumstances. See In re Namias, 157 N.J. 15 (1999) (reprimand for practicing law while ineligible, lack of diligence and failure to communicate with a client); In re Alston, 154 N.J. 83 (1998) (reprimand for practicing law while ineligible and failure to cooperate with disciplinary authorities); In re Armor, 153 N.J. 359 (1998)(reprimand for practicing law while ineligible, gross neglect, failure to communicate and failure to maintain a bona fide office); and In re Gaskins, 151 N.J. 3 (1997) (reprimand for practicing law while ineligible, failure to maintain a bona fide office and failure to maintain trust and business accounts in an approved banking institution). But See In re Van Sciver, 158 N.J. 4 (1999)(three-month suspension imposed where, for a period of six months and in three separate matters, the attorney practiced law while on the eligible list; the attorney also failed to cooperate with ethics authorities.)

Here, had respondent cooperated with the disciplinary system by participating

in this matter and acknowledging his wrongdoing, he might have received an admonition. Because, however, of his demonstrated disrespect for ethics authorities and his refusal to recognize his misconduct, a seven-member majority determined that a reprimand is the appropriate level of discipline. This discipline is conditioned upon his payment to the CPF the amounts owed necessary to remove his name from the ineligible list. Payment must be made within thirty days of receipt of this decision. Respondent may, if he so chooses, resign after that payment, but not before. Should respondent fail to make payment of the required amount, the Board will impose an indefinite suspension. One member would have suspended respondent for six months for the level of his disrespect for the ethics system and the municipal court. One member did not participate.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 2/6/2001



LEE M. HYMERLING  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

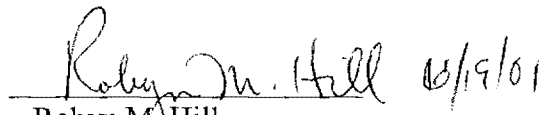
**In the Matter of James R. Coley, Jr.  
Docket No. DRB 00-216**

**Argued: October 19, 2000**

**Decided: February 6, 2001**

**Disposition: Reprimand**

Members	Disbar	Six-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			X				
Peterson			X				
Boylan							X
Brody			X				
Lolla			X				
Maudsley		X					
O'Shaughnessy			X				
Schwartz			X				
Wissinger			X				
<b>Total:</b>		1	7				1

  
Robyn M. Hill 6/19/01  
Chief Counsel