

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 00-407

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IN THE MATTER OF :  
MICHAEL PETER COUTURE :  
AN ATTORNEY AT LAW :

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Decision

Argued: March 15, 2001

Decided: July 19, 2001

Richard J. Engelhardt appeared on behalf of the Office of the Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based on a March 19, 2000 order of the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department, suspending respondent for fourteen months.

Respondent was admitted to the New Jersey bar in 1973 and has no prior discipline. He failed to notify the OAE of his New York suspension, as required under R.1:20-14(a) (1). The OAE discovered the suspension during a routine search of New York disciplinary cases for the year 1999.

Respondent's suspension was based on facts an October 26, 1998 guilty plea to a charge of first degree arson in Colorado. As discussed in his counsel's January 11, 1999 letter to the New York disciplinary authorities and the attached copy of the transcript of the Colorado plea, respondent set the fire in a botched attempt to self-immolate in a friend's bathroom.

The factual basis for the plea was set forth in the transcript of the Colorado criminal proceeding by Deputy District Attorney Philip A. Brimmer, as follows:

MR. BRIMMER: Your Honor, had this matter gone to trial, the People would have shown between the dates of May 21<sup>st</sup> and May 22<sup>nd</sup>, 1998, a fire took place which the defendant set at 3061 South Flamingo Way, which the People would have shown is in the City and County of Denver, State of Colorado. That is a residence that is owned by Mr. Thomas Baucum.

And the People would have shown that the defendant was inside of that residence, and he used lighter fluid and a lighter to ignite both a bathroom where he poured the lighter fluid, but also himself, and ignited the lighter fluid, which caused the fire within the house. The defendant did that in an unsuccessful attempt to commit suicide. And the People would have also introduced evidence to show that Mr. Baucum had not given any permission for the defendant to do that.

THE COURT: Are you satisfied the government has evidence to that effect?

THE DEFENDANT: That is correct, Your Honor.

THE COURT: Do you understand that the offense which you are pleading guilty has the following elements: That you are the person named in that charge, somewhere between May 21<sup>st</sup> and May 22<sup>nd</sup> of this year, here in Denver, that on that date you knowingly, which means you actually were aware that you were setting fire to burn or cause to be burning [sic] a building or occupied structure, that means a structure human beings use for some purpose, in this case the structure of Thomas Baucum, at 3061 South Flamingo Way, and you did not have consent to engage in that activity, and you had no legitimate reason for doing that. Do you understand that?

THE DEFENDANT: Yes, sir.

Respondent's plea was entered under an agreement providing for a deferred prosecution and deferred sentencing, comparable to New Jersey's Pretrial Intervention Program. Upon the expiration of an eighteen-month period from the entry of the plea and satisfactory completion of specific terms and provisions of the deferral, the charges will be dismissed with prejudice. As noted in the OAE's brief, respondent's plea in Colorado forms the basis for discipline in New Jersey, as R. 1:20-13 (c) (2) permits the filing of a motion for final discipline based upon either a criminal conviction or an admission of guilt that results in the attorney's enrollment in a diversionary program.

The OAE argued for the imposition of a fourteen-month suspension, the same period imposed by the New York disciplinary authorities.

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Upon review of the full record, we determined to grant the OAE's motion. We adopted the findings of the Appellate Division of the Supreme Court of New York that respondent was guilty of arson in the first degree, in violation of Colorado law. The New York disciplinary authorities determined to suspend respondent for a total of fourteen months, from February 3, 1999 to March 26, 2000, based on the Colorado plea.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a)(4), which states as follows:

. . . The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E).

New Jersey has few disciplinary cases analogous to the present matter. In re Litwin, 104 N.J. 362 (1986), dealt with an attorney who left the practice of law in 1978 to operate a carwash in Plainfield, New Jersey. In 1981, while severely depressed and without trying to hide his actions, the attorney burned down the carwash and was arrested hours later. He pleaded guilty to a charge of aggravated arson, was sentenced to five years of probation and ordered to undergo psychiatric evaluation. The attorney was institutionalized for eighteen months, having been diagnosed with several psychiatric disorders. Meanwhile, in July 1981, he had consented to his temporary suspension from the practice of law. By the time the final discipline hearing took place in New Jersey in 1986, the attorney had moved to Kansas, where he continued treatment on an outpatient basis. The Court suspended him for five years, retroactive to the beginning of the temporary suspension over five years earlier. In its opinion, the Court noted several mitigating factors. Those same factors are present in this matter: the arson was an aberrant act resulting from a mental condition; the arson involved no conspiracy or scheme; the attorney was not motivated by personal gain; and the act was unrelated to the practice of law.

Furthermore, the arson in this case was merely ancillary to respondent's failed suicide attempt. It is probable that respondent gave little thought to the fact that the bathroom, too, would be damaged when he tried to set himself ablaze in his friend's house. Rather, it appears that this respondent was desperate and wished to end his life. Under the circumstances of this difficult case, we unanimously determined that the imposition of a fourteen-month suspension, the same period meted out by the New York disciplinary authorities, is sufficient to address respondent's transgression. In addition, respondent may not apply for reinstatement until he is fully reinstated to practice law in New York. Prior to reinstatement, respondent must submit proof of fitness to practice law, following his examination by a psychiatrist approved by the Office of Attorney Ethics.

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

Dated: 7/19/01

By: 

ROCKY L. PETERSON

Chair

Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

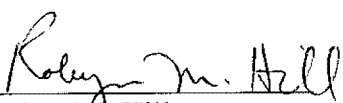
**In the Matter of Michael Peter Couture  
Docket No. DRB 00-407**

**Argued: March 15, 2001**

**Decided: July 19, 2001**

**Disposition: Fourteen-month suspension**

Members	Disbar	Fourteen-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>		9					

  
Robyn M. Hill 8/27/01  
Chief Counsel