

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-348

IN THE MATTER OF :
GEORGE GUYER YOUNG, III :
AN ATTORNEY AT LAW :
-----:

Decision of the
Disciplinary Review Board

Argued: November 15, 1995

Decided: April 17, 1996

Michael Huber, Esq. appeared on behalf of the District IV Ethics Committee.

Arthur Montano, Esq. appeared on behalf of the respondent.

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

This matter was before the Board based upon a recommendation for discipline filed by the District IV Ethics Committee. Respondent was charged in a one-count complaint with violations of RPC 5.5(a) (practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction) and R. 1:21(a) (failure to maintain a bona fide office in New Jersey). These charges stemmed from respondent's representation in an estate matter.

Respondent was admitted to the New Jersey bar in 1988. He is also admitted in Pennsylvania, the District of Columbia and Florida. Respondent maintains an office in Havertown, Pennsylvania, but not in New Jersey. He specializes in estate administration and planning and guardianship matters.

Respondent has no ethics history.

* * *

This matter arose from respondent's involvement in the estate of Daniel Herron ("the decedent"), a New Jersey resident who had executed a will on March 20, 1969. The will had been prepared by George Guyer Young, Jr., Esq., respondent's father ("Young"). Young also maintains a legal practice in Pennsylvania, but is semi-retired.

Under the terms of the decedent's will, Steven Newman was named as executor and Young was named as the alternate executor. When the decedent passed away in July 1992, Newman renounced his appointment and Young became the executor. Young took care of the probate of the will and performed a number of other duties in his capacity as executor. At some point, Young realized that the matter had become too complicated and that he needed the assistance of someone with expertise in New Jersey law. He, therefore, hired his son, respondent, in September 1992.

A grievance was filed against respondent when one of the decedent's heirs, his niece, became dissatisfied with the manner in

which respondent was handling the estate. Upon review by the DEC, it was determined that there was no merit to the grievance. As a result of the niece's grievance, however, the DEC learned that respondent did not maintain an office in New Jersey. It is undisputed not only that respondent did not maintain a bona fide office, but also that respondent performed certain services in connection with the New Jersey estate. Respondent, however, claimed that he did not deem the services he performed as "legal" or as the "practice of law" in New Jersey. He also claimed that his contacts with New Jersey were by correspondence only and that, because the estate was a "one-shot deal," he was not required to maintain an office in New Jersey.

Respondent contended that he had never represented a client in New Jersey prior to or since the Herron matter and that he had never solicited or advertised for clients in this State.

Respondent unquestionably held himself out to be the attorney for the estate. He claimed, however, that it was his understanding that the practice of law involved

either representing civil or criminal litigants within that aspect of the system and appearing, filing briefs, filing documents, that was [sic] in an adversarial proceeding. I did not see this was an adversarial proceeding, but an administrative proceeding.

[T67¹]

Respondent stated that, in the future, if he handles matters involving New Jersey residents, he will either engage local counsel or establish a bona fide office in New Jersey.

¹ T denotes the transcript of the June 6, 1995 DEC hearing.

Respondent's representation in this matter continued from approximately September 1992 through April 1994. During that period, respondent conducted numerous activities in behalf of his client (the executor and the estate). His activities included corresponding with estate beneficiaries, with the surrogate of Atlantic County and the county clerk, preparing New Jersey documents — such as the refunding bond and release and affidavits of mailing, preparing and filing the transfer inheritance tax returns and preparing the final accounting and statement of proposed distribution of the estate assets. Respondent also prepared and filed the New Jersey residence inheritance tax return and schedules, the United States 1992 individual income tax return, the 1992 United States fiduciary income tax form for the estate and the New Jersey 1992 income tax residential return. In addition, respondent was involved in the sale of the decedent's property located in Margate, New Jersey. Respondent admitted reviewing bids that had been submitted on the property. He also attended the closing on the property with Young, the executor.

Respondent received a legal fee in excess of \$16,000. The executor, Young, also received a commission in excess of \$18,000.

There is no question that respondent held himself out as the attorney for the estate and for the executor in this matter. At one point, respondent forwarded a letter to the deputy surrogate in Atlantic County, advising her that he was counsel for the estate and requesting certain information for the proper administration of the estate. Exhibit C-3. The deputy surrogate informed respondent

that the office of the surrogate had no attorneys on staff and, therefore, could not counsel him as to how to administer the estate. She advised respondent that any questions he had should be posed to New Jersey counsel. Exhibit C-4.

* * *

The DEC concluded that respondent represented to the estate beneficiaries, the public and public authorities that he was legal counsel for the estate and for its executor. The DEC concluded that respondent's activities in connection with the estate constituted the practice of law within the State of New Jersey. The DEC also found that respondent did not maintain a bona fide office in New Jersey. As a result of the testimony and evidence in the matter, the DEC concluded that respondent's conduct constituted a violation of RPC 5.5(a). The DEC recommended that respondent be reprimanded.

* * *

Following a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent acted unethically was fully supported by clear and convincing evidence.

Respondent was the legal representative for the executor and the estate and performed legal services in New Jersey, but did not maintain an office in this State. Respondent's representation of

the estate violated the objective of the bona fide office rule: to prevent the sporadic practice of law in New Jersey in order to ensure a sufficient degree of "competence, accessibility and accountability" by attorneys. In re Sackman, 90 N.J. 521, 533 (1982). As is evident from respondent's letter to the surrogate, he was not entirely familiar with New Jersey estate practice. Respondent's conduct violated RPC 5.5(a) and R. 1:21(a).

Prior to In re Kasson, 141 N.J. 83 (1995), cases involving the lack of a bona fide office that resulted in reprimands ordinarily included additional ethics violations or previous discipline. See e.g., In re Zaleski, 127 N.J. 384 (1992) (attorney failed to maintain a bona fide office and was previously privately reprimanded for the same dereliction); In re Pitt, 121 N.J. 398 (1990) (failure to maintain bona fide office and failure to cooperate with the disciplinary authorities).

Kasson, however, makes it clear that a reprimand may be warranted even in the absence of additional violations or prior discipline. There, the Court reprimanded an associate of a Pennsylvania attorney solely for his failure to maintain a bona fide office in New Jersey.² The Court did so despite Kasson's difficulties in maintaining an office because of limitations allegedly imposed by his employer, an out-of-state law firm. Unlike this case, Kasson practiced law without a bona fide office

² Although the attorney was also found guilty of failure to keep attorney trust and business accounts in New Jersey, that violation is subsumed in cases involving the failure to keep a bona fide office. As such, it is not considered as an additional ethics violation.

in New Jersey for approximately one year and was involved in an unspecified number of New Jersey matters. Here, respondent's representation of the estate was only a "one-shot deal." He did not represent any New Jersey clients prior to the estate matter. Because of this significant distinguishing factor, a seven-member majority of the Board determined that an admonition was sufficient discipline. One member voted for a reprimand and one member voted to dismiss the matter.

The Board further required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated:

4/17/96



LEE M. HYMERLING
Chair
Disciplinary Review Board

Supreme Court of New Jersey
Disciplinary Review Board

Voting Sheet

IN THE MATTER OF GEORGE GUYER YOUNG, III

DOCKET NO. DRB 95-348

HEARING HELD: November 15, 1995

DECIDED: April 17, 1996

	Disbar	Suspension	Reprimand	Admonition	Dismiss	fied	Did Not quali- fied	Partici- pate
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HYMERLING	X
BUFF	X
COLE	X
HUOT	X
MAUDSLEY	X
PETERSON	X
SCHWARTZ	X
THOMPSON	X
ZAZZALI	X

By Robyn M. Hill
ROBYN M. HILL
CHIEF COUNSEL