

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-323

IN THE MATTER OF :
BRIAN D. SOLOMON :
AN ATTORNEY AT LAW :

Decision

Argued: November 20, 2003

Decided: January 30, 2004

James Herman appeared on behalf of the District IV 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 on a recommendation for discipline (reprimand), filed by the District IV Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1992 and to the New York bar in 1990. He is primarily a New York attorney, with an office located in his Staten Island residence. He has no history of discipline in New Jersey.

In or about 2001, respondent filed a suit in the Superior Court of New Jersey, titled Mercedes Benz Credit Company v. Michael Ficher. He used two different New Jersey office addresses on motions filed in connection with that case. The first address, 4800 South Wood Avenue, Linden, New Jersey, was the address of a freight company, Bobco Transport and/or Roberts Power Units. The second address was 257 Broadway, Passaic, New Jersey, 07055, which belonged to a funeral home known under three names: Kriso Funeral Home, Garfield Community Funeral Home, and Community Funeral Home.

Court personnel attempted to reach respondent at the telephone numbers that he provided for those addresses, but the individuals who answered claimed that they had never heard of him.

When respondent appeared before the court, he told the judge that Bobco Transport and the funeral home were clients for whom he provided free legal work in exchange for the use of office space. According to respondent, he maintained a law office at Bobco Transport from 1996 through 2001, and at the funeral home since March 6, 2002.

After the court referred to the Office of Attorney Ethics ("OAE") the issue of respondent's questionable bona fide office in New Jersey, an OAE investigator attempted to inspect the Bobco Transport location, but was unable to find it. Apparently, the "office" was in the middle of an oil refinery, surrounded by several buildings and trailers that housed different businesses. At the funeral home address, however, the investigator was able to interview Joseph Fantasia, the funeral director. Fantasia stated that respondent came to the funeral home location one day per week to conduct business and collect the mail. The office used by respondent contained office furniture, but no client files. According to Fantasia, respondent did not have a dedicated telephone line and used the funeral home's telephone number as his office number.

There were no signs indicating that respondent had a law office at that location. In addition, he did not maintain trust and business accounts in New Jersey.

The formal ethics complaint charged respondent with failure to maintain a bona fide office in New Jersey, in violation of RPC 5.5(a) and Rule 1:21-1.

The DEC found that respondent did not maintain a bona fide office in New Jersey, as required by the rules. The DEC found, as an aggravating factor, that respondent was notified of the alleged violation by letter from the OAE dated July 11, 2002, but did not establish a bona fide office in New Jersey until April 2003.

The DEC recommended a reprimand.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent did not have a bona fide office in New Jersey is supported by clear and convincing evidence. In fact, respondent admitted that his office arrangement did not meet the requirements of the rules.

Rule 1:21-1 provides as follows, in relevant part:

A bona fide office is more than a maildrop, a summer home that is unattended during a substantial portion of the year, an answering service unrelated to a place where business is conducted or a place where an on-site agent of the attorney receives and transmits messages only. For the purpose of this section, a bona fide office is a place where clients are met, files are kept, the telephone is answered, mail is received and the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours to answer questions posed by the courts, clients or adversaries and to ensure that competent advice from the attorney can be obtained within a reasonable period of time. An attorney who practices law in this state and fails to maintain a bona fide office in this State shall be deemed to be in violation of RPC 5.5(a).

RPC 5.5 (unauthorized practice of law), in turn, states as follows:

A lawyer shall not:

(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

Unquestionably, respondent's office arrangement violated Rule 1:21-1. He did not have a dedicated telephone line, there was no sign indicating that he had an office there, files were not kept at the locations, and there was no responsible party or person acting on his behalf that could be reached in person and by phone during normal business hours to answer questions by the courts, clients or adversaries. We found, thus, that respondent did not maintain a bona fide office in New Jersey.

Failure to maintain a bona fide office generally results in a reprimand. See, e.g., In re Servin, 164 N.J. 366 (2000) (reprimand for failure to maintain a bona fide office for four years; prior private reprimand for recordkeeping violations and the commingling of personal and client funds in the trust account); In re Chen, 142 N.J. 479 (1995) (reprimand for failure to maintain a bona fide office and failure to communicate with the client); In re Kasson, 141 N.J. 83 (1995) (reprimand for failure to maintain a bona fide office).

Admonitions have been imposed when mitigating factors are present. In the Matter of Peter E. Hess, DRB 96-262 (September 24, 1996) (admonition for failing to maintain a bona fide office and practicing law while ineligible for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection; conduct was confined to one case); In the Matter of George Guyer Young, III, DRB 95-348 (June 3, 1996) (admonition for failure to maintain a bona fide office; conduct was limited to one matter).

We found no mitigating factors in this matter. On the other hand, we were unable to agree with the DEC's conclusion that there was an aggravating factor. Specifically, the DEC

found that respondent had notice of his alleged violation on July 11, 2002, and did not take appropriate action to establish a bona fide office until April 2003. The notice of July 11, 2002, however, was a letter from the OAE notifying respondent that a grievance had been docketed against him and that the OAE had been assigned to investigate the case. Until that investigation was completed, in February 2003, there were only allegations against respondent. Only in February 2003 did respondent learn that the OAE viewed his office arrangement as violative of the bona fide office rules. Two months later, he made the necessary arrangements for a bona fide office.

For respondent's violation of Rule 1:21-1 and RPC 5.5(a), we unanimously determined to impose a reprimand. Three members did not participate.

We further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

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

In the Matter of Brian D. Solomon
Docket No. DRB 03-323

Argued: November 20, 2003

Decided: January 23, 2004

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>			X				
<i>O'Shaughnessy</i>							X
<i>Boylan</i>			X				
<i>Holmes</i>							X
<i>Lolla</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>							X
<i>Stanton</i>			X				
<i>Wissinger</i>			X				
Total:			6				3


Julianne K. DeCore
Chief Counsel