SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 00-194 and
DRB 00-195

IN THE MATTER OF	:
	:
CHARLES MORRONE AND	:
	:
STEPHEN DANASTORG	:
	:
ATTORNEYS AT LAW	:
	:

Decision

Argued: September 21, 2000

Decided: February 6, 2001

Arthur Penn appeared on behalf of the District IIIB Ethics Committee.

Respondents appeared pro se.

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

These matters were before us based on a recommendation for discipline filed by the District IIIB Ethics Committee (DEC). Count one of the complaint alleges violations of R. 1:21-1(a) (failure to maintain a bona fide office) (that count did not reference RPC 5.5 (a)). Prior to the DEC hearing, the presenter withdrew counts two and three of the complaint. Lastly, count four charged respondents with a violation of RPC 1.16(a)(1), presumably for his conduct in the Yackel matter.

Morrone was admitted to the New Jersey bar in 1996. Danastorg was admitted to the New Jersey bar in 1994. Neither respondent has an ethics history.

* * *

Between September 1997 and December 1999, Danastorg was a member of a Pennsylvania law firm, Freezman and Danastorg, which also maintained an office for its New Jersey clients in Cherry Hill, New Jersey. Morrone was an associate of the law firm during that time.

On or about January 22, 1999, shortly after the within alleged misconduct, Morrone became the partner in charge of the Cherry Hill office. At all relevant times, a Pennsylvania attorney not licensed to practice law in New Jersey, Brad L. Freezman, was also a partner in the law firm.

The DEC hearing took place on February 23, 2000. No testimony was taken. Instead, the parties entered into a stipulation of facts regarding the bona fide office issue and respondents' conduct in the Yackel matter.

I. The Bona Fide Office Issue

The stipulated facts are as follows:

1. On or about September 17, 1997, the Executive Commons of Cherry Hill, Inc., as landlord, entered into a lease with Freezman and Danastorg (the 'Firm'), as tenant, for premises located at 1040 North Kings Highway, Cherry Hill [References to exhibits omitted].

2. The leased premises consisted of an unfurnished, lockable, 10' by 13' private office, #651, as well as a common reception area and shared conference rooms.

3. The leased premises, which had the Firm's name on its door, was one of 56 offices on the sixth floor.

4. The sixth floor reception area and conference rooms were leased on a non-exclusive basis to all tenants on the sixth floor.

5. The conference rooms were available to the Firm as well as to all other tenants on the sixth floor on either an advance reservation basis or an 'as available' basis (if no prior reservation had been made).

6. A full-time employee of Executive Commons of Cherry Hill, Inc., staffed the reception area and answered incoming calls for the Firm as well as for other tenants. The Firm had a telephone number (609.482.6484) assigned for its use on the main switchboard of the Executive Commons.

7. The full-time receptionist/telephone attendant was not an employee of the Firm. The full-time receptionist/telephone attendant answered incoming calls to the Firm on the Firm's phone line by stating the Firm's name to the caller.

8. The only person answering calls to the Firm's 609.482.6484 telephone number was the full-time receptionist/attendant.

9. The full-time receptionist/telephone attendant was not generally aware of the daily schedule of the Firm's New Jersey-admitted attorneys, including Respondents.

10. The receptionist/attendant's responsibility with regard to incoming calls to the Firm's New Jersey-admitted attorneys, including Respondents, was to

receive the calls, take messages (unless the attorney being called for was present on site) and transmit the messages to the attorneys or the Firm's support staff (if the attorney called for was not available) by calling the Firm's principal office in Trevose, PA.

11. Other than on those occasions when the Firm's New Jersey-admitted attorneys, including Respondents, met with clients or conducted (or were preparing to conduct) mortgage transactions closing on site at 1040 Kings Highway, no employees of the Firm conducted business at the leased premises.

12. In or about November, 1998, Vincent Robertson, Esquire, in his capacity as investigator for the District IIIB Ethics Committee, visited the Firm's leased premises at 1040 North Kings Highway, Cherry Hill. As no Firm attorneys were present at the leased premises at the time of his unannounced arrival, Mr. Robertson had the receptionist/attendant call the Firm's Trevose, PA office to secure authorization for him to inspect the office. Within a few minutes after that request was communicated to the Firm, Respondent Danastorg called back and authorized a representative of Executive Commons to permit Mr. Robertson to conduct the requested inspection of the Firm's private office.

13. Mr. Robertson was admitted to the Firms's private office by an office manager who was not employed by the Firm and found the office to be equipped with a telephone, an adding machine, two fax machines, three chairs, a desk and credenza and a small filing cabinet. No files were observably present. [References to photographs omitted].

14. The name of Freezman and Danastorg appeared on the office directory in the main lobby of the building at 1040 North Kings Highway.

15. The letterhead of the business stationary for Freezman and Danastorg in or about November of 1998 had 1040 North Kings Highway, Cherry Hill, New Jersey listed as the Firm's New Jersey office address and 609.482.6484 listed as the Firm's New Jersey phone number. [Reference to sample stationary omitted].

16. Between September, 1997 and December, 1999, the Firm's New Jersey legal work consisted primarily of representing a New Jersey-based mortgage lender in connection with the closings of mortgage refinancing and secondary loan transaction. Three attorneys from the Firm, including Respondents,

serviced the needs of that client by conducting the closings on such transactions.

17. At no time between September, 1997 and December, 1999 was any complaint or grievance received by District IIIB Ethics Committee from any Court, Firm client, or Firm adversary counsel concerning an inability to have questions posed by such entities responded to by the Firm's New Jersey-admitted attorneys, including Respondents, or concerning an inability to receive advice from any such New Jersey-admitted attorney, including Respondents, within a reasonable time after such advice was sought.

[Exhibit J-3]

Although the facts were stipulated, Danastorg and Morrone did not concede a violation of the bona fide office rule. Indeed, they argued that, "while not as bonified [sic] as one would like, [the office] was bonified [sic] enough to satisfy the rule." According to respondents, the rule is flexible enough to allow their New Jersey practice, which was limited in scope to mortgage refinancing transactions for Tri-Star Financial Services, Inc. (Tri-Star). Respondents further argued, in mitigation, that (1) there has never been a single complaint about an inability to contact them at the New Jersey office; (2) they believed that they were in compliance with the requirements of the bona fide office rule; and (3) they had unblemished legal careers. In essence, they argued that the New Jersey bona fide office rule was primarily designed to ensure that attorneys are accessible to clients and courts. Tri-Star, they stated, the firm's sole New Jersey client, knew how to contact them at all times. In addition, due to the nature of their New Jersey practice, primarily mortgage closings for Tri-Star, there was no need to staff the New Jersey office with their own employees or to keep client files there.

II. The Yackel Transaction

This matter stemmed from the law firm's representation of Tri-Star in a mortgage refinancing transaction with the borrowers, the Yackels. The stipulated facts are as follows:

> On or about July 30, 1996, Respondent Morrone, an associate attorney employed by the Firm, conducted a closing on a $70,000 mortgage loan refinancing transaction on behalf of the Firm's client, Tri-Star Financial Services, Inc. (the 'Lender'), with Nancy Yackel and Sean Yackel as borrowers concerning real property located in Cinnaminson, New Jersey.
>
> The Yackel's mortgage refinancing with the Lender was a transaction to which N.J.S.A. 46:10A-6 was applicable.
>
> The Respondent Morrone and the Firm allowed the Lender to cause the Yackels to be charged a fee of $445.00 for the Firm's review of loan documents prepared by the Lender and for the Firm's conducting of the closing (the 'Fee'), which services were in fact rendered to the Lender and charged to the Lender by the Firm [Reference to invoice omitted).
>
> As a result of a clerical error, the Firm's invoice to the Lender on the Yackel matter inadvertently contained the Firm's Pennsylvania address rather than its New Jersey address.
>
> The Yackels effectively paid the Fee by having that amount deducted from the proceeds of their refinance settlement by the Lender. [Reference to HUD-1A form omitted]. The Lender thereafter paid the Fee to the Firm.
>
> The Yackels were not clients of the Firm or Respondent Morrone in connection with the refinance transaction which closed on July 30, 1996.
>
> [Exhibit J-3]

N.J.S.A. 46:10A-6 states as follows:

> No banking institution or other financial institution authorized to engage in the business of making loans secured by mortgage hereinafter referred to as a 'lender,' shall require a borrower of a loan to be secured by a mortgage on real estate, to employ the services of the lender's counsel or an attorney specified by the lender but the borrower shall have the right to be represented

> in the transaction by an attorney at law of New Jersey of his own selection. Provisions of this act shall not preclude a lender from requiring the documents prepared in connection with a mortgage loan transaction prepared by a borrower's attorney to be submitted to the lender's attorney for examination and review and to require the borrower to pay a reasonable fee as defined by the Disciplinary Rules of the Code of Professional Responsibility adopted by the New Jersey Supreme Court for such service by the lender's attorney provided, however, that the lender shall provide the borrower, at the time a loan commitment is made, a written statement covering the basis of the review fee.

Danastorg and Morrone admitted that they violated RPC 1.16(a)(1) by failing to withdraw from the representation after charging the Yackels for their fee, while acting as counsel to Tri-Star in the transaction. In effect, respondents admitted that the Yackels were charged for fees that were not their responsibility, but should have been paid by Tri-Star.

* * *

The DEC found that respondents violated R.1:21-1 (a) for failure to maintain a bona fide office. The DEC also found that respondents violated RPC 1.16(a)(1) for failing to withdraw from the representation before charging the Yackels a fee for legal services performed in behalf of Tri-Star. The DEC recommended that each respondent receive an admonition for the bona fide office violation and a reprimand for the conduct in the Yackel matter. The DEC also recommended that respondents reimburse the Yackels for the $445 fee.

* * *

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

Danastorg and Morrone admitted that the Yackel transaction violated RPC 1.16 (a) (1) by virtue of their failure to prevent the violation of N.J.S.A. 46:10A-6. Although there might be a suspicion that respondents attempted to implicate Tri-Star in their wrongdoing by saying that "the Firm allowed the Lender to cause the Yackels to be charged," there is no evidence that Tri-Star was in any way involved in a scheme to shift to the Yackels responsibility for fees owed by Tri-Star. Indeed, the RESPA statement, the only document reflecting the improper charge, was prepared by respondents, not Tri-Star. It is likely that Tri-Star was never made aware of the improper charge to the Yackels. After all, respondents also charged Tri-Star (and Tri-Star paid) for the legal fees ($445) associated with the Yackel closing. Respondents' conduct in this regard was improper, but not a violation of the RPC 1.16(a)(1), cited in the complaint. RPC 1.16(a)(1) applies to situations where the client is attempting act in violation of the ethics rules or other law. That RPC requires the attorney to refuse the representation or, as here, withdraw from the representation. But here there was no "wrong" being committed by the client that would have required respondents to withdraw from the representation. Rather, RPC 8.4(c) (dishonesty) is implicated. Indeed, nowhere in the record is there any mention that respondents made the charges to the Yackels mistakenly or inadvertently. The logical inference, thus, is that they intended to charge the fees to the Yackels, fees that were admittedly in contravention of statute. In fact, it appeared from the

record that respondents may have been engaged in double-billing, in contravention of RPC 8.4 (c), by playing "both ends against the middle" when they charged the Yackels a legal fee for services rendered in behalf of Tri-Star, without disclosing that fact to the Yackels. The record hinted that respondents also charged Tri-Star for the legal services, without disclosing to Tri-Star that the Yackels had already paid those legal fees out of the closing funds. However, at oral argument before us we specifically questioned respondents about this unclear aspect of the case. Respondents assured us that the legal fees had not been paid twice: once by the Yackels and again by Tri-Star. Only the Yackels paid the legal fees. On that basis, we determined that there was no clear and convincing evidence of impropriety regarding the Yackel transaction and, thus, dismissed those allegations.

With regard to the bona fide office issue, contrary to respondents' assertions, the New Jersey office did not comply with the rules. As previously noted, respondents argued that their New Jersey office complied with the spirit of the bona fide office rules because Tri-Star, respondents' sole New Jersey client, knew how to contact them at all times and because the nature of their New Jersey practice, composed primarily of mortgage closings for Tri-Star, did not require the office to staff or keep files there, as prescribed by the rule. Accessibility, however, is only one of the several requirements of the rule. "The requirement that attorneys maintain a bona fide office represents, not an effort at protectionism, but a reasonable effort to assure 'competence, accessibility and accountability' of attorneys for the benefit of clients, courts, counsel and parties. As the U.S. District Court for the District of New Jersey has

explained, our Court Rules "ensure that attorneys representing New Jersey clients in New Jersey courts are sufficiently familiar with state law and practice to represent their clients knowledgeably and effectively." In re Kasson, 141 N.J. 83 (1995). Therefore, respondents' argument falls short of the mark for two reasons: first, other people were interested in contacting respondents, such as borrowers' attorneys, title companies and the like; second, the rule is not intended simply to ensure that an attorney is reachable and accountable. It is also designed to ensure that attorneys are sufficiently familiar with New Jersey law.

Respondents' New Jersey office had several deficiencies. All calls to the office, regardless of their origin, were handled by the receptionist for the landlord, Executive Commons. Those calls were invariably transferred to the main office in Pennsylvania because there was no staff at the Cherry Hill location to respond to the callers. In addition, respondents rarely used the Cherry Hill office, and then only for the purpose of conducting mortgage closings for Tri-Star. In addition, no files or other documents were ever kept in the New Jersey office. Finally, the "office" was not leased for the exclusive use of the law firm. Rather, it was shared with an unrelated entity, Legal Title, Inc. RPC 5.5(a) and R.1:21-1(a) require more than "a mail drop...or an answering service unrelated to a place where business is conducted." Respondents' New Jersey office was little more than a mail drop with shared office space, conference room privileges and a receptionist to forward calls. For all of these reasons, respondents clearly violated R.1:21-1(a) and RPC 5.5(a).

As to the issue of discipline. Cases involving failure to maintain a bona fide office ordinarily result in the imposition of a reprimand. In re Kasson, supra, 141 N.J. 83 (1994) (reprimand imposed for failure to maintain a bona fide office, after a trial judge was unable to reach an attorney at his office to discuss a pending matter; no attorney or responsible person was available at the attorney's office location or by telephone during normal business hours.) But see In the Matter of Basil D. Beck, III, DRB 95-160 (February 1996) (admonition imposed for failure to maintain a bona fide office; in mitigation, it was considered that the attorney took swift measures to remedy the deficiency) and In re Guyer Young, 144 N.J. 165 (1996)(admonition imposed for failure to maintain a bona fide office while representing an estate; attorney's representation in New Jersey was confined to one matter.) Here, we see no need to deviate from the precedent established by Kasson. Accordingly, we unanimously determined to impose a reprimand on each respondent for their violations of the bona fide office rules.

In addition, we required respondents, jointly and severally, to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 2/6/2001

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Charles Morrone and Stephen Danastorg
Docket No. DRB 00-194 and 00-195

Argued: September 21, 2000

Decided: February 6, 2001

Disposition: Reprimand

Members	Disbar	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				
Total:			7				2

Robyn M. Hill
Chief Counsel