

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-205

IN THE MATTER OF :
 :
ANDREW D. STRUPP, :
 :
AN ATTORNEY AT LAW :

DECISION

Argued: July 17, 1996

Decided: September 18, 1996

Marianne A. Gallina appeared on behalf of the District XIII 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 the Board based on a recommendation for discipline filed by the District XIII Ethics Committee (DEC). Respondent was charged with violations of RPC 3.3 (lack of candor toward a tribunal); RPC 5.5 (unauthorized practice of law); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1973 and the New York bar in 1972. He does not maintain a law office in New Jersey. Respondent does not have a history of discipline.

* * *

In 1992, respondent represented the plaintiff in the matter of Mao Shiung Wei, M.D. v. Robert Haberkern, M.D. et al. before the Superior Court, Law Division, Warren County. On November 25, 1992, respondent called the Honorable John C. Stritehoff to request an adjournment of a summary judgment motion scheduled to be heard the following month. The judge's law clerk at the time, Theresa Yang, testified that, when respondent called for the adjournment, he represented himself as the plaintiff's new attorney, although he had not yet filed a substitution of attorney form with the court.

A telephone conference ensued with the parties and the judge granted the adjournment over the strenuous objections of opposing counsel. Thereafter, on December 4, 1992, the court received a substitution of attorney form prepared by respondent (Exhibit C-1), signed only by respondent as "superseding attorney." According to respondent, he had experienced difficulties in obtaining the signature of withdrawing counsel and had not yet been able to obtain the plaintiff's signature on the form. The form was submitted to the court as prepared by the firm of Pan and Strupp, 89 Millburn Avenue, Millburn, New Jersey 07041, attorneys for the

plaintiff. New Jersey and New York telephone numbers were included on the form. Respondent signed the form on behalf of "Strupp & Pan."

The court's receipt of the substitution of attorney without the required signatures apparently prompted Yang to contact respondent in that regard. When Yang called the New Jersey number listed on the form, she reached a recording indicating that the number had been disconnected. She then called the New York number, which was answered by an unidentified man "with a heavy accent," who took a message for respondent. Respondent returned Yang's call and informed her of his difficulties in getting the substitution of attorney form executed.

Thereafter, the judge directed Yang to look into the matter. Yang discovered that neither respondent's name nor the law firm of "Pan and Strupp" was listed in the New Jersey Lawyers Diary and Manual. Yang then contacted the Lawyers' Fund for Client Protection (The Fund) to verify whether respondent was actually licensed to practice in New Jersey. Yang learned that respondent had been listed as "retired completely from the practice of law" since 1990.

* * *

Respondent testified that, after he graduated from Harvard Law School, he worked in a non-legal business capacity for approximately three years. Thereafter, he was an assistant

district attorney in the fraud bureau of the Manhattan District Attorney's Office. After that position, he worked for the legal department of a company called United Technologies, doing "contracting work." Respondent testified that he had always been involved in an "international type practice, contracting and sales and marketing." He never engaged in the private practice of law. In 1992, respondent anticipated that his consulting position with Sumitomo Corporation of America would soon come to an end. While considering his options, his friend William Pan introduced him to Dr. Wei, the plaintiff in the New Jersey matter. Pan, a partner in a "major" New York law firm was, according to respondent, "distinguished in Chinese business and legal circles." Pan and respondent had discussed forming a law practice, possibly with one of Pan's junior associates, Ren Pan (of no relation to William).

Respondent expected to begin building a client base through Pan's connections in the Asian community. Respondent's unstructured plans for the law practice seemed to spring from his representation of his first client, Dr. Mao-Shiun Wei. Respondent explained that the law office of Pan and Strupp was to be located in a building owned by Pan in Millburn, New Jersey, in space recently vacated by a former tenant. Respondent and Pan never formalized a partnership agreement and the firm of Pan & Strupp never materialized. The New Jersey phone number that respondent included in the substitution of attorney document was the number that respondent believed belonged to the former tenant. He further believed it was operational at the time he prepared the

substitution of attorney form. The phone number, however, was never registered to Pan and Strupp or to respondent in his name alone. The New York number listed on the form was Pan's office number at Pan Pacific. Pan was not admitted to practice in New Jersey, but Ren Pan was.

In a letter to the DEC dated June 17, 1993 (Exhibit R-4), respondent explained that, because his work was primarily business-oriented and he was not practicing law, he went on inactive status with the Fund. At the time he agreed to represent Dr. Wei, he merely forgot about paying the Fund. He did not omit the payment to deceive anyone. Thereafter, during a telephone conference with Judge Stritehoff, the judge advised respondent to pay the Fund. Respondent paid the Fund on February 26, 1993 and became active for 1993.¹

Respondent claimed that, in pursuit of the Wei case, he obtained numerous boxes of files in the matter. The files were in completed disarray. He kept and reviewed the files in the office space in Millburn. Soon after respondent became involved with the matter, he realized that it was too complicated for him to handle on a part-time basis. He, therefore, decided to withdraw from the case and drafted a letter dated January 1, 1993, so advising the judge. Attachment to Exhibit R-1. The record does not reflect whether the letter was actually mailed.

¹ According to staff at the Fund, respondent was listed as being retired from practice in 1988, paid the annual assessment in 1989, was listed as retired in 1990, 1991 and 1992, and paid the 1993 assessment on February 26, 1993. He has been listed on the Fund rolls as retired since 1994.

Respondent had prepared a brief in connection with the matter, but claimed it was never filed with the court. He made no court appearances in Wei's behalf. Respondent also contended that he helped Wei obtain another attorney, who was more experienced in civil litigation.

* * *

The DEC found that respondent's failure to advise the court that he was not authorized to practice law in New Jersey was a violation of RPC 3.3 (candor toward the tribunal). Additionally, the DEC found that the submission of a document to the court containing false statements of material fact — the name, address and telephone numbers of a non-existent law firm — was a "major misrepresentation" to the court.

The DEC also found a violation of RPC 5.5 (unauthorized practice of law) because of respondent's failure to pay the Fund and because respondent did not have a bona fide office in New Jersey.

Finally, the DEC found that respondent's conduct was a violation of RPC 8.4(c) because he misrepresented to the court, adverse parties and the public that he was admitted to practice in New Jersey (the DEC must have meant "authorized" to practice) and that he was a member of a non-existent law firm.

The DEC recommended discipline less severe than a suspension.

* * *

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is supported by clear and convincing evidence. The DEC properly found a violation of RPC 5.5 because of respondent's representation of Wei at a time when he was ineligible to practice law in New Jersey and because of his failure to maintain a bona fide office in this State.

The Board also finds that respondent made a false statement of material fact to the court and others, by his statements, both oral and written, regarding the existence of the firm of Pan & Strupp. Respondent's failure to pay the Fund and to properly establish a law firm appears to be more a lack of experience with and knowledge of New Jersey rules than the product of an intent to deceive.

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 appropriate 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. Kasson practiced law without a bona fide office in New Jersey for approximately one year and was involved in an unspecified number of New Jersey matters. Here, respondent's representation of Wei was cut short once he realized he could not handle such a complex case, particularly on a part-time basis. While respondent did not represent any New Jersey clients prior to the Wei matter and it does not appear that he will be practicing in New Jersey in the future, his conduct is exacerbated by the fact that he made misrepresentations to the court and others in violation of RPC 3.3 and RPC 8.4(c).

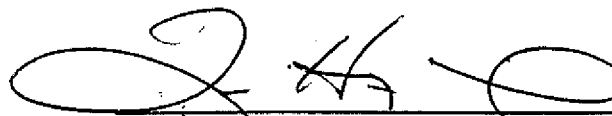
In light of the Court's recent ruling in Kasson, the Board unanimously determined to reprimand respondent for his conduct. Should respondent decide to practice law in New Jersey, he shall be required to take appropriate steps to reactivate his license and to take the skills and methods core courses offered by the Institute for Continuing Legal Education. One member did not participate.

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 the case involving the failure to keep a bona fide office. As such, it is not considered as an additional ethics violation.

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

Dated:

9/18/96



LEE M. HYMERLING
Chair
Disciplinary Review Board