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SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB 99-338

IN THE MATTER OF :
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 :
DAVID ASSAD, JR., :
 :
 :
AN ATTORNEY AT LAW :
 :

Decision

Argued: October 14, 1999

Decided: February 22, 2000

Michael A. Kaplan 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 admonition filed by the District IV Ethics Committee ("DEC"), which we determined to bring on for a hearing. The complaint charged respondent with practicing law while ineligible and failing to maintain a bona fide office, in violation of RPC 5.5(a) and R.1:21-1(a). Through a stipulation, respondent admitted his misconduct in both counts of the complaint.

Respondent was admitted to the Pennsylvania bar in 1982 and to the New Jersey bar in 1983. He maintains an office in Cherry Hill, Camden County. Respondent has no history of discipline.

As noted above, respondent admitted that he (1) practiced law after being declared ineligible to do so by the Court for failure to pay the 1997 annual assessment to the New Jersey Lawyers' Fund for Client Protection ("CPF") and (2) failed to maintain a bona fide office.

Respondent was declared ineligible to practice law by Order dated September 5, 1997. According to respondent, he learned of his ineligibility on March 1, 1998, on which date he paid the CPF assessment. Respondent admitted that he had represented several family members during that six-month period. Specifically, he represented family members in two real estate transactions and also his aunt in a criminal matter. Although in that matter he was retained in 1996, prior to his period of ineligibility, the matter culminated in a jury trial in late 1997, when respondent was on the ineligible list. In a fourth matter, respondent represented another aunt in a personal injury matter. The accident occurred in July 1997. Respondent admitted that, during the period of his ineligibility, he had telephone conferences with the insurance adjuster in an effort to settle the matter. Ultimately, respondent settled the case at the end of 1998.

Respondent testified that he received the 1997 invoice from the CPF and "just did not pay it." In his initial reply to the grievance, respondent stated that "in the hustle and bustle of a parental illness, a new marriage, a new baby, two moves (necessitated by [his] father's

illness and the new marriage all within a year), the invoice did not get paid."¹ As stated above, respondent paid the CPF assessment when he learned of his dereliction.

As to the bona fide office issue, respondent is primarily a Pennsylvania practitioner and is in compliance with that Commonwealth's rules and regulations. From 1983 through 1995 respondent shared an office in Cherry Hill, New Jersey, with Dino Mantzas, Esq. There are no allegations of impropriety concerning that office arrangement. In 1995 respondent left the Cherry Hill office and moved to a house in Edison, Middlesex County, where he maintained a home office. Respondent admitted that he had no exterior sign, no secretary and no separate phone line. Respondent remained at the Edison location for less than one year. Thereafter, he moved to Marlton, Burlington County. Respondent maintained a home office at the Marlton location. That Marlton office is the subject of this disciplinary matter.

Respondent stipulated that (1) he did not have any external indication that the residence was used as a law office, (2) during most weekdays there was no secretary or responsible person acting on his behalf at the location, (3) his telephone was not answered at the New Jersey office unless his wife was home to do so and (4) at an inspection by the Office of Attorney Ethics (OAE) during normal business hours, no one was present at that

¹In the hearing panel report, the DEC pointed to the stress of respondent's five-year divorce and custody battle as among the factors affecting him during the period of his misconduct. That litigation, however, ended in 1995, prior to this dereliction. In addition, it appears from respondent's testimony that his two moves occurred prior to 1997.

location.

By way of mitigation, respondent stated in his answer that, when he had to see his New Jersey clients, he would invariably see them in their own residences, rather than ask them to travel to Marlton.

* * *

In May 1998, the OAE advised respondent that a grievance had been docketed, alleging that he had practiced law while ineligible to do so for failure to pay the 1997 annual assessment to the CPF. After further investigation and communication with respondent, a formal complaint was filed against him. Immediately upon receipt of the complaint, respondent reassociated himself with Mantzas and now shares an office with him in Cherry Hill. According to the DEC report, when the hearing panel telephoned that office, a secretary stated that it was Mantzas' office. With regard to that office arrangement, the panel chair questioned respondent as follows:

Q: Is the situation you now have at Executive Mews in terms of your relationship with Mr. Mantzas similar to the relationship you had when you were at Executive Campus with him where there's a secretary and they refer your calls to Philadelphia and/or your home?

A: Yes, it is. It's almost identical. The only other thing is - - with the extra is, I've ordered a sign. At Two Executive Campus, I never had a sign out there.

Q: So now you have a sign with your name on it?

A: It's on order. It still hasn't gotten there. He called me last month, he goes, 'Do you want the Junior?' But it is on order.

Q: So the sign is on order?

A: Yes. And I have the few files I have there. At the office I have a desk, chairs, diploma hanging, credenza with a few files.

[T29-20]²

Jack Briscoe, an attorney admitted to practice in Pennsylvania who has known respondent since 1980, testified before the DEC. Briscoe attested to respondent's good character, his pro bono work and concern for his clients.

* * *

The DEC determined that respondent was guilty of the allegations of the complaint, specifically, a violation of RPC 5.5(a) and R.1:21-1.

In mitigation, the DEC considered that respondent was candid with the investigator and the panel and had been "in the throws of some fairly significant personal issues." The DEC also noted that there had been no complaints from clients or from court personnel about respondent's handling of their cases. In addition, the DEC pointed to Briscoe's good character testimony and to the steps that respondent took to rectify his noncompliance with the rules, when he became aware of his violations. Accordingly, the DEC termed respondent's violations "technical" and recommended the imposition of an admonition.

During the hearing, the DEC asked respondent to supply a copy of the lease for his current Cherry Hill office. The panel stated that the lease would become a supplemental part

²Although this may sound like a "bare bones" arrangement, it appears to be in compliance with the court rules.

of the record, but would not alter the DEC's determination unless the lease revealed a continuing violation of the rules. The lease is not a part of the record before us.³

* * *

Upon a de novo review of the record, we are satisfied that the allegations of the complaint were proven by clear and convincing evidence. Indeed, respondent admitted that he failed to maintain a bona fide office and practiced law while ineligible. The only question, therefore, is the appropriate quantum of discipline.

In In re Kasson, 141 N.J. 83 (1995), an attorney was reprimanded for failure to maintain a bona fide office. Kasson was the employee of Spencer Wertheimer, a Pennsylvania attorney. A DEC investigator went to a Pitman address listed on Kasson's letterhead as the New Jersey office of Wertheimer. A sign at the building, with Kasson's name misspelled as "Kaffon," indicated that his office was in suite 2B. (Kasson's letterhead represented that the office was in suite 105.) The investigator was unable to find suite 2B or 105 in the building or an office under the name Kasson or Wertheimer. The rental agent for the building advised the investigator that, although the rent was paid, he had never seen the property used as an office. During the DEC hearing, Kasson was unable to tell the panel how to get to the Pitman address and unable to describe the building. He acknowledged that there was no attorney or responsible person available at the location or by phone during

³For unknown reasons, the panel also asked to see a copy of the letter of representation respondent sent out in the personal injury case he handled in his aunt's behalf. That letter is also not a part of the record.

business hours. Wertheimer sent an employee to pick up the mail at the Pitman location once every two weeks.

Although clearly Kasson had been placed in an untenable situation by Wertheimer, the Court could not find "that a New Jersey attorney is, by reason of such an employment situation, not responsible to conform to applicable ethical standards." Kasson, supra, 141 N.J. at 87.

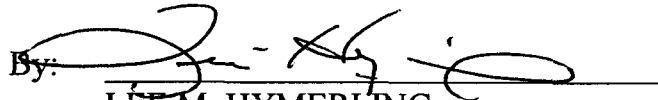
Here, respondent is at least as culpable as Kasson. He has no one but himself to blame for his noncompliance with the rules. Respondent apparently thought he was in compliance with the bona fide office rule because he was in compliance with the corresponding Pennsylvania rule and he was unaware that New Jersey had more stringent requirements than its sister jurisdiction. Respondent's duty, however, was to examine the rules and confirm, not just assume, that he was in compliance with them.

Although, even after Kasson, admonitions have occasionally been imposed for failure to maintain a bona fide office, this case does not merit less than a reprimand. See In the Matter of Basil D. Beck, III, DRB 95-160 (February 1996) (admonition imposed for failure to maintain a bona fide office; several mitigating factors were present, including the attorney's 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; the distinguishing factor was that the attorney's conduct was confined to one matter). Here, unlike Beck and Guyer Young, respondent was also guilty of practicing law while

ineligible. Indeed, he admitted his receipt of the invoice from the CPF and his failure to pay it. Although respondent apologized "for that stupid move of not paying the invoice on time," he failed to provide an adequate explanation for this dereliction. Discipline similar to that imposed in Kasson - a reprimand - is, therefore, more appropriate than the lesser discipline imposed in Beck and Guyer Young. We, therefore, unanimously determined to impose a reprimand. Two members did not participate.

We further determined that respondent be required to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 2/24/2000

By: 
LEE M. HYMERLING
CHAIR
DISCIPLINARY REVIEW BOARD

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

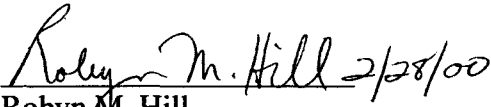
In the Matter of David Assad, Jr.
Docket No. DRB 99-338

Argued: October 14, 1999

Decided: February 22, 2000

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling			x				
Cole			x				
Boylan							x
Brody			x				
Lolla			x				
Maudsley							x
Peterson			x				
Schwartz			x				
Wissinger			x				
Total:			7				2


Robyn M. Hill
Chief Counsel