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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-361

IN THE MATTER OF :
 :
GARY E. THOMPSON :
 :
AN ATTORNEY AT LAW :
_____ :

Decision

Argued: December 16, 1999

Decided: May 10, 2000

Louis G. Hasner appeared on behalf of the District IV Ethics Committee.

Respondent waived appearance.

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

This matter was originally before us on a recommendation for an admonition by the District IV Ethics Committee ("DEC"). We determined to bring the matter on for hearing. The two-count complaint charged respondent with violations of RPC 5.5(a) (failure to maintain a bona fide New Jersey law office) (count one), RPC 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter), RPC 8.1(b) (failure

to respond to a lawful demand for information from a disciplinary authority) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (count two) for failing to provide the information requested by the Office of Attorney Ethics ("OAE") and misrepresenting the status of his attorney trust and business accounts.

Respondent was admitted to the New Jersey bar in 1987. Although he stated that he has a law office in Cherry Hill, New Jersey, his primary law practice is in Philadelphia, Pennsylvania. He has no history of discipline.

This matter arose from a Superior Court judge's referral to the OAE. The judge noted that respondent "appear[ed] to be a Philadelphia lawyer trying to practice in this state from 'long distance' to the detriment of our system." Respondent had not replied to the court's telephone calls and respondent's office appeared to be nothing more than a "mail-drop." The judge's letter mentioned a lawsuit in which respondent was representing a defendant in the partition of a parcel of real estate in Ocean City, New Jersey. The property had been owned by two brothers. The defendant was the widow of one of the brothers. According to respondent, he was not charging the defendant for his services because he was representing her as a friend. Respondent maintained four separate offices, including one in New Jersey.

As a result of the judge's letter, an OAE investigator contacted respondent and received his consent to inspect his New Jersey office at 1040 North Kings Highway, Cherry Hill, New Jersey. Respondent was not present during the investigator's visit. Inside the lobby, the investigator found a tenants' listing that included respondent's name. The

investigator met with Marguerite Rosato, the office manager for the entity known as the "Executive Commons." Rosato told the investigator that Executive Commons maintained space in the building and, in turn, sublet space to other entities. While some tenants leased permanent office space, others leased space on an "as-needed basis." Rosato told the investigator that respondent fell within the latter category but he had not used the space at all in 1998.

In reality, respondent did not have an office there. Nameplates for the tenants were kept on file with the receptionist. When a tenant called to use space, the nameplates were changed for whomever utilized the space. Respondent did not have his own telephone or filing cabinets at the Executive Commons and no one was there to personally answer calls about his New Jersey practice. Respondent testified that calls made to his New Jersey office were "physically" answered in Pennsylvania.

Respondent's lease agreement with the Executive Commons stated, in relevant part:

II. Executive Commons of Cherry Hill agrees to provide tenant with the following services and/or office usage weekdays during the hours of 8:30 A.M. to 5:30 P.M.

Plan II Services

- A. Use of our address in conjunction with Tenant's name specifically:
1040 N. Kings Highway
Suite 600
Cherry Hill, NJ 08034

B. Office/conference room use, on a reservation basis, between the hours of 8:30 AM to 5:30 PM, Monday through Friday, to be billed at the hourly rate of

\$15/hr - small conference and office

\$20/hr - large conference room

D. Mail Facility/Mail Forwarding - Postage and 10% surcharge

E. Directory Signage for a one time fee of \$12.00

* * *

The circumstances that prompted the judge to contact the ethics authorities were as follows:

According to a memorandum prepared by the court's staff (Exhibit J-12), prior to the entry of the court's order a case management order had been sent to counsel listing a pre-trial date of January 9, 1998. Before the pre-trial date, someone from the court's office called respondent because he had not submitted a pre-trial memorandum. At that time, respondent informed the individual that he had not received the management order, possibly because it had been sent to his Cherry Hill office, instead of his Philadelphia office. Respondent stated that he was unaware of the pre-trial conference. As a result, the pre-trial order was sent to his Philadelphia address. The pre-trial order listed a trial date of April 8, 1998. Respondent's office notified the court that he would be unavailable on that date and requested an adjournment. Respondent was informed that all requests for adjournments had to be in writing. The court, thus, did not adjourn the trial date. Respondent claimed that he

was under the impression that the trial had been adjourned because he had not heard from the court. On April 9, 1998 the judge issued an order effectively dismissing respondent from the case. Based on the court's difficulties in reaching respondent, the court referred the matter to the OAE.

Respondent handled other matters in New Jersey. He represented the daughter of the above client in a collection matter and did collection work in New Jersey for three Pennsylvania companies. The monies respondent collected were given to the companies, which, in turn, paid him a fee. No funds passed through respondent's New Jersey bank accounts. Respondent kept the New Jersey client files in his Pennsylvania office.

* * *

Respondent maintained a New Jersey business and trust account. However, since there was no activity in the accounts, respondent believed that the bank would send him yearly statements. Respondent later learned that, because of the lack of activity in the accounts, the bank would provide a statement only at the request of the customer. There was either no money or very little money in the trust account and only \$1,520 in the business account. Respondent claimed that, at the time the accounts were opened, he was in partnership with another attorney, who was the partner in charge of maintaining the accounts. Respondent further stated that, once the partnership was terminated, his former partner

continued to receive the bank statements. Therefore, respondent added, when the OAE requested copies of his most recent bank statements for his New Jersey trust and business accounts, he was unable to provide more than photocopies of the front pages of the checkbooks.

Count two charged respondent with misrepresentations concerning his New Jersey trust and business accounts. Apparently, during the course of the DEC investigation, when respondent was requested to provide copies of his most recent bank statements for his New Jersey accounts and failed to do so, the investigator believed that respondent was not being truthful about his records. Upon further investigation, however, including the examination of subpoenaed bank records, the investigator learned that respondent did, in fact, maintain the required accounts in New Jersey.

Respondent testified that he was very surprised when a formal ethics complaint was filed against him, because he was trying to cooperate with the OAE investigation and wanted an opportunity to bring his office into compliance with the bona fide office rule.

* * *

As to the first count of the complaint, the DEC found that the arrangement that respondent had with the Executive Commons did not comply with the court rules requiring an attorney to maintain a bona fide office, in violation of RPC 5.5(a).

As to the second count, the DEC determined that, because of the inactivity in respondent's trust and business account and the fact that bank statements were still being sent to his former partner, he was unable to produce satisfactory statements of these accounts until the time of the hearing. The DEC, therefore, recommended the dismissal of the charges of RPC 8.1(a), RPC 8.1(b) and RPC 8.4(c).

The DEC recommended an admonition.

* * *

Following a de novo review of the record, we are satisfied that the DEC's finding of unethical conduct is supported by clear and convincing evidence.

As to count two, there was no evidence presented to rebut respondent's testimony that the bank statements were sent to his former partner. Therefore, it cannot be found that respondent misrepresented the status of his New Jersey accounts. The DEC, thus, properly dismissed the charges in count two of the complaint.

As to count one, it is undeniable that the minimal efforts made by respondent to maintain a New Jersey office were insufficient to comply with RPC 5.5(a). R.1:21-1(a) provides as follows:

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.

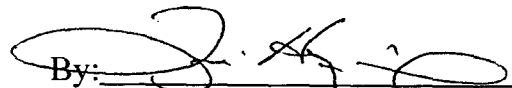
In In re Kasson, 141 N.J. 83 (1995), the Court ruled that a reprimand is the appropriate form of discipline for attorneys who failed to comply with the bona fide office rules. Even before Kasson, however, reprimands had been imposed where attorneys had failed to comply with the minimum requirements of a bona fide office. See In re Gajewski, 139 N.J. 389 (1995) (reprimand for failure to maintain a bona fide office and failure to maintain required trust and business account records). In Kasson, the Court made it clear that the requirement of a bona fide office does not represent 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." In re Kasson, *supra*, 141 N.J. at 87, citing In re Sackman, 90 N.J. 521 (1982). See also In re Mirow, 151 N.J. 479 (1997) (reprimand for failure to maintain a bona fide office); In re Brewington, 143 N.J. 3 (1995) (reprimand for failure to maintain a bona fide office and failure to maintain trust and business accounts).

Based on the foregoing, we unanimously determined that a reprimand is the required discipline in this matter.

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

Dated:

5/10/00

By: 

LEE M. HYMERLING

Chair

Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Gary E. Thompson
Docket No. DRB 99-361**

Argued: December 16, 1999

Decided: May 10, 2000

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			X				
Cole			X				
Boylan			X				
Brody			X				
Lolla			X				
Maudsley			X				
Peterson			X				
Schwartz			X				
Wissinger			X				
Total:			9				

Roby M. Hill 5/24/00
Roby M. Hill
Chief Counsel