

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-029

IN THE MATTER OF
ANTHONY YOUNG
AN ATTORNEY AT LAW

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Decision

Argued: March 13, 2003

Decided: May 15, 2003

Melissa A. Czartoryski appeared on behalf of the District IIIB Ethics Committee.

Thomas M. Barron appeared on behalf of respondent.

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 (three-month suspension) filed by the District IIIB Ethics Committee (“DEC”). The three-count complaint charged respondent with violations of RPC 8.4(b) (conduct that adversely reflects on the lawyer’s honesty, trustworthiness or fitness), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), RPC 8.4(d) (conduct prejudicial

to the administration of justice) and RPC 5.5(a) (failure to maintain a bona fide office). At the DEC hearing, the panel chair “tentatively” amended the complaint to include an additional period during which respondent allegedly did not maintain a bona fide office. For the reasons expressed below, we dismissed this matter.

Respondent was admitted to the New Jersey bar in 1991. He maintains a law office in Marlton, New Jersey. He has no history of discipline.

The crux of the grievance filed by Patricia Young Bortz, respondent’s former wife, was that she continued to receive respondent’s office mail at her home office, after he moved his practice from that location. Although it appears that Bortz withdrew her grievance as to that conduct, additional facts surfaced during the DEC’s investigation, leading to the filing of a formal ethics complaint against respondent.

The complaint focuses on three areas of alleged unethical conduct. The first concerns respondent’s possible violation of the Domestic Violence Act, N.J.S.A. 2C:25-17 et seq. The next area centers on (a) whether respondent coerced his ex-wife to sign an affidavit that resulted in, among other things, the dismissal of a final restraining order against him, and (b) if there was coercion, whether it amounted to an ethics violation. The final area focuses on whether respondent violated the bona fide office rule when he maintained full-time employment in Philadelphia, when he practiced law from the home office and also in or about 1999, when he moved his office to Mount Laurel, New Jersey.

* * *

In 1991, respondent worked at Alexis Risk Management Corporation (“Alexis”) in Philadelphia, Pennsylvania, as a litigation manager. In December 1991, he and Bortz were married. They had one daughter together. In addition, they had children from prior relationships. They were divorced on June 23, 1998.

As of 1986, Bortz owned and operated a business known as Legal Billing Services, Inc. (“LBS”), which was run from her residence at 302 Villinger Avenue, Cinnaminson, New Jersey. LBS provided billing services for attorneys, as well as transcription work.

According to Bortz, respondent worked at Alexis on a full-time basis until he was discharged in 1994. Bortz claimed that, both before and after respondent’s employment was terminated, he practiced law from her Cinnaminson home office, although he did not maintain a law office “set up” at that location. Bortz claimed that respondent interviewed clients at that address, did not maintain filing cabinets there, and received mail and telephone calls. Bortz stated that, when respondent’s clients called on LBS’s telephone line, either she or an LBS employee would forward the calls to his office in Philadelphia.

In or about 1999, respondent moved his law office to Mount Laurel. Apparently, the complaint charges respondent with failure to maintain a bona fide office between that time and October 1999, when he became an associate with the law firm of Parker, McCay & Criscuolo.

* * *

On November 26, 1996, Bortz filed a domestic violence complaint against respondent and obtained a temporary restraining order. The hearing on the final restraining order was scheduled for December 5, 1996. When respondent failed to appear, allegedly because he was living temporarily in Maryland and had no financial means to travel to New Jersey, a final order was entered barring him from the Cinnaminson home office as well as Bortz' parents' house. The order also prohibited him from harassing Bortz, her office staff and her parents.

According to Bortz, within a few days of obtaining the final restraining order, respondent began contacting her. He telephoned her, wrote her letters, left notes on her car and asked her for forgiveness. He went to her parents' house frequently. The first time he went to her house, he arrived with her mother, smiled at Bortz and said, "You wouldn't call the police when I had your mother here, would you?" Bortz testified that respondent came over often, accompanied by her mother. Respondent, too, testified that he and Bortz visited each other at their residences, dined out together and even maintained intimate relations. He submitted photocopies of a few e-mails received from Bortz after the restraining order.

On an unknown date, respondent entered into an agreement with Bortz' attorney, the terms of which are unclear. Apparently, the agreement permitted respondent to enter the house to pick up his work until such time as he was able to relocate his practice.

Sometime in the fall of 1999, Bortz began discussing with respondent the possibility of relocating to Ohio with their daughter. Bortz intended to wind down her business because of health problems and to obtain a job in Ohio. By this time, she was

romantically involved with Mr. Bortz, who was planning to move to Ohio to be near his children. Bortz intended to move to Ohio with him and ultimately marry him.

According to Bortz, respondent initially consented to her move to Ohio with their daughter. Based on their understanding, she sold her house, withdrew her daughter from school, enrolled her in a school in Ohio, and arranged for movers. Bortz testified that at the "eleventh hour," however, respondent withdrew his consent and threatened that, if she did not sign an affidavit that he had prepared, he would be require a plenary hearing on the issue of their daughter's removal from New Jersey. The affidavit stated as follows, in relevant part:

(E) Although it is my intention to leave my business . . . in a defunct state, I recognize that Mr. Young had a right to his equitable share of this business upon our divorce, said value being worth at a minimum \$25,000, . . . but elected not to take these funds from the business but chose instead to keep this money in the business so not to cause any financial hardship upon same, in lieu of child support payments for Emily . . . and as such I shall hold harmless and indemnify, including all legal fees and costs Mr. Young in any action for additional child support through Emily's eighteenth birthday.

(F) Although I have taken the prescription diet drug Fen-Phen . . . and have sustained damage to my heart as a result thereof, for which litigation is pending . . . I recognize that Mr. Young may have a cause of action in any potential litigation and I shall notify him prior to commencing any lawsuit relative to any damages i [sic] may have incurred taking fen-Phen [sic].

(G) Title to the 1990 Chevrolet Cavalier currently owned by L.B.S., Inc. shall be transferred to Mr. Young prior to April 1, 2000 and auto insurance on same will continue to be paid by me to June 8, 2000.

* * *

(I) I recognize Mr. Young to be a very good father who loves his daughter dearly, would never harm her, and by way of affidavit I ask that and do not

oppose the removal of the Restraining Order filed by me against Mr. Young in 1996, or thereabout.

* * *

16. Jurisdiction over this matter shall rest under the laws of the State of New Jersey, and venue shall reside in the Superior Court of Burlington County, unless mutually agreed otherwise by both parties

[Exhibit P-5]

According to Bortz, respondent told her that he wanted jurisdiction to remain in New Jersey so that he could “reel her back” anytime he wanted. Bortz testified that, although she disagreed with most of the contents of the affidavit, respondent told her to either sign it or stay in New Jersey.

Bortz’ attorney, Karen Amacker, filed a notice of motion on short notice to obtain the court’s permission to remove the couple’s daughter from New Jersey without Bortz signing the affidavit. At the hearing on the motion on short notice, Amacker informed the court that Bortz was discharging her as counsel because Amacker did not endorse the contents of the affidavit. After Amacker’s discharge, respondent’s affidavit was presented to the court. The court informed Bortz that she was not required to sign it and that they could proceed to a plenary hearing. Against Amacker’s earlier advice, Bortz signed the affidavit. Immediately after the court proceeding, Bortz had the final restraining order vacated, in accordance with the provisions of the affidavit.

According to Bortz, she felt intimidated by the entire process and knew that, if she had not signed the affidavit, she would have been forced to stay in New Jersey.

For his part, respondent denied any domestic violence in his and Bortz’ household. He testified that he did not attend the hearing on the final restraining order because he

was living in Maryland and had no funds to travel to New Jersey. He denied violating the restraining order, stating that it had been “rescinded” by the parties. As to the affidavit that he prepared for Bortz’ signature, he stated that it accurately memorialized their discussions and that, in fact, Bortz had corrected or clarified some of its contents.

As to his New Jersey offices, respondent claimed that there was always someone on site to answer the telephone calls and receive the mail. He stated that his client files were maintained in his New Jersey offices.

* * *

The DEC found insufficient evidence that respondent coerced Bortz to execute the affidavit. On the other hand, the DEC found clear and convincing evidence that respondent committed an act of domestic violence, in violation of RPC 8.4(b). The DEC also found that, although there was some conflict as to the circumstances of respondent’s return to Bortz’ house, there was unanimity in the testimony that he returned to the house and that Bortz never charged him with violating the final restraining order.

As to the issue of the bona fide office violation, the DEC found that, while respondent was employed by Alexis, he used his wife’s home office address for his New Jersey clients. The DEC concluded that respondent’s office arrangements met the bare minimum requirements of the bona fide office rule. Furthermore, the DEC found that, after respondent’s employment with Alexis ended and he began to operate his office from the Cinnaminson address on a full-time basis, he fully complied with the bona fide office

rule. Finally, as to the Mount Laurel office, the DEC concluded that it was reasonable that “[r]espondent would have needed a transition period to relocate his law office from the former marital home to an alternate location.” The DEC, thus, found no violation of RPC 5.5(a).

Based on the finding that respondent committed an act of domestic violence, the DEC recommended a three-month suspension.

* * *

Following a de novo review of the record, we were unable to find clear and convincing evidence that respondent’s conduct was unethical.

For the reasons expressed by the DEC, we dismissed the charge of a violation of the bona fide office requirements. We also dismissed the allegation that respondent violated the Domestic Violence Act. N.J.S.A. 2C:25-15 et seq. There has been no criminal conviction or guilty plea in this case. The record developed below does not contain clear and convincing evidence to support a finding in this regard, despite the entry of a restraining order. We were unable, therefore, to find a violation of RPC 8.4(b).

As to whether respondent coerced Bortz in signing the affidavit, we found that, although he might have held an unfair advantage in setting forth its terms, there is evidence that Bortz negotiated some of its contents. She testified that she reviewed several drafts before she signed it. More importantly, her attorney advised her that some of the conditions were against her and their daughter’s interests, and cautioned her

against signing the document. The court, too, advised her that she need not sign the affidavit and that she was entitled to a plenary hearing on the issue of the daughter's relocation to Ohio. Fully informed of her rights, Bortz chose to sign the affidavit, notwithstanding that her move to Ohio could have awaited the outcome of the plenary hearing. Under these circumstances, we could not find that she was coerced in signing the affidavit.

In light of the foregoing, we determined to dismiss the complaint for lack of clear and convincing evidence of unethical conduct. Two members did not participate.

Disciplinary Review Board
Rocky L. Peterson, Chair

By: Robyn M. Hill
Robyn M. Hill
Chief Counsel

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

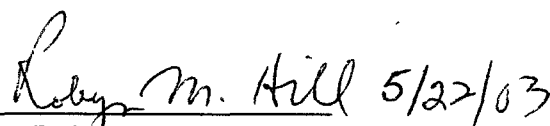
In the Matter of Anthony Young
Docket No. DRB 03-029

Argued: March 13, 2003

Decided: May 15, 2003

Disposition: Dismiss

<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>Peterson</i>					X		
<i>Maudsley</i>					X		
<i>Boylan</i>							X
<i>Brody</i>					X		
<i>Lolla</i>					X		
<i>O'Shaughnessy</i>					X		
<i>Pashman</i>							X
<i>Schwartz</i>					X		
<i>Wissinger</i>					X		
Total:					7		2


 Robyn M. Hill
 Chief Counsel