

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-431

IN THE MATTER OF :
 :
JEFFREY D. SERVIN :
 :
AN ATTORNEY AT LAW :

Decision

Argued: February 6, 2003

Decided: May 5, 2003

Anne S. Cantwell appeared on behalf of the District IV Ethics Committee.

Michael D. Miller 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 filed by the District IV Ethics Committee (“DEC”). The complaint charged respondent with a violation of RPC 5.5(a) for his failure to maintain a bona fide office.

Respondent was admitted to the New Jersey bar in 1977. He was privately reprimanded in 1990 for commingling personal and client funds and failing to comply with trust and business account recordkeeping requirements. In the Matter of Jeffrey D. Servin, Docket No. DRB 90-147 (June 20, 1990). More recently, he was reprimanded for

failure to maintain a bona fide office. Specifically, there was no personnel at his office location, telephone calls were forwarded to his Pennsylvania office and letters to him from the Office of Attorney Ethics (“OAE”) were returned as undeliverable on several occasions. In re Servin, 164 N.J. 366 (2000).

According to the report from the New Jersey Lawyers’ Fund for Client Protection (“The Fund”), respondent has been on the Supreme Court’s ineligible list on eight occasions, including during the hearing below, for failure to pay the annual attorney assessment to the Fund.

Respondent maintains an office for the practice of law in Camden, New Jersey. He also maintains an office in Philadelphia, Pennsylvania. Respondent leased the New Jersey office space from another attorney (“the attorney/landlord”) for \$100 a month. Writings reflecting their agreement are in evidence as exhibits J-8 and J-9. Respondent testified that he “did not have a specific office, but there was office space available on an as-needed basis. I would use it on a sharing arrangement with other attorneys who were probably using that office when I was not there.” T10/9/02 61. Respondent’s certificate of admission to the New Jersey bar was mounted on a wall in the reception area. Respondent stated that he used the Camden office location three or four times per quarter.

There were two signs on the building, one exterior and one interior, that listed the professional offices at that location. Respondent’s name appeared on both. Exhibits J-10 and J-11. However, when the OAE investigator, Mary Jo Bolling, visited the premises in November and December 2001, respondent’s name did not appear on the exterior sign, although it appeared on the directory inside the building. According to respondent, he

was assured that his name would be added to the exterior sign. Apparently, it was added after Bolling's inspection of the premises. Respondent's name did not appear on the door to the area used as his office and reception area, although approximately six other names were listed on the door.

Respondent testified that a portion of his monthly rent paid for the receptionist's salary, who, he acknowledged, was not his employee. He kept no additional staff at the New Jersey office. Typing was performed at his Pennsylvania office or by his wife, who is a paralegal. Respondent stated that the receptionist could do typing for him, but that he would have to pay her separately.

With regard to mail delivered to the Camden office, respondent testified that either he would travel to that office on a weekly basis to retrieve the mail or the attorney/landlord would bring it to him or send it via overnight mail. He received mail from the office once or twice a week. Respondent explained that the attorney/landlord would look at the mail and contact him if anything needed an emergent reply.¹

Produced at the DEC hearing was an August 2001 letter from the OAE to respondent's Camden office that was returned to the OAE. The letter was stamped by the post office "NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." Handwritten on the envelope was respondent's Pennsylvania address. Respondent was unable to explain why the letter had been returned to the OAE.

¹ Respondent testified that the attorney/landlord did not routinely open respondent's mail, but had done so on two or three occasions, on respondent's instructions, when the correspondence had been sent by Federal Express.

All calls to respondent's New Jersey office were forwarded to his Pennsylvania office and were not answered at the Camden location. Indeed, respondent's lease agreement, exhibit J-9, stated that he would not require phone service. Respondent testified that, if an emergent situation arose, his secretary in his Pennsylvania office would call him on his cell phone with the message. He stated further that he checked his messages every fifteen to thirty minutes.² Respondent added that, if someone came to his New Jersey office looking for him, the receptionist would call him. Indeed, Bolling testified that, when she went to respondent's office, the receptionist asked if she would like her to locate respondent or if she would like to leave a message. Bolling conceded that she was unaware of any complaints by clients or courts that they had been unable to contact respondent at the Camden office.

Respondent testified that he probably had no more than six New Jersey cases at any one time. As of the date of the DEC hearing, he believed that he had one or two pending New Jersey matters. His files were kept in a cabinet drawer in the common room he shared with the other attorneys. The cabinet was not locked.

* * *

The DEC determined that respondent violated RPC 5.5(a) and R.1:21-1(a). The DEC noted the following shortcomings in respondent's office arrangement: (1) Calls to his New Jersey office were automatically forwarded to his Pennsylvania office. Neither

² Bolling successfully contacted respondent by phone in January 2002. She testified, however, about her unsuccessful attempts to call the Camden office on January 29, 30 and 31 and February 13, 2002. The calls were received by an "AT & T Account Verification Center." That was apparently an unexplained problem with the phone company that was subsequently resolved.

respondent nor a responsible person acting on his behalf could be reached by telephone at the New Jersey office; (2) the storage of respondent's files caused concern. They were not kept under lock and key. Anyone entering the office had access to the files. The DEC found that this situation created "a potential if not real breach of attorney-client confidentiality," which was, in the DEC's opinion, one of the key reasons for the bona fide office requirement; (3) the attorney/landlord, who was not affiliated with respondent's law practice, would occasionally open and read correspondence addressed to respondent. Again, the DEC thought these circumstances created a potential or actual breach of attorney-client confidentiality; and (4) respondent had no staff at that location.

In light of respondent's prior reprimand, the DEC determined that a sixty-day suspension was warranted. In addition, the DEC recommended that respondent not be permitted to resume the practice of law until he demonstrates to the OAE that he has established an office in full compliance with the requirements of R.1:21-1(a).

* * *

Upon a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

R.1:21-1(a) states as follows:

A bona fide office is more than a maildrop, a summer home that is unattended during a substantial portion of the year, an answering service unrelated to a place where business is conducted or a place where an on-site agent of the attorney receives and transmits messages only. For the purpose of this section, 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.

Here, the telephone calls to respondent were not answered at the Camden office location, but forwarded to his Pennsylvania office or directed to his cell phone, if urgent. Mail was not received there, but forwarded to another location. Respondent or a responsible person acting in his behalf could not be reached at the Camden location; the receptionist could only place a call to locate him. There was no way for clients, courts or adversaries to reach him or a responsible person acting in his behalf at that location. We found, thus, that respondent did not maintain a bona fide office in New Jersey.

Cases involving failure to maintain a bona fide office ordinarily result in the imposition of a reprimand. In re Morrone, 170 N.J. 66 (2001) (reprimand for attorney who was the partner in charge of the New Jersey office of a Pennsylvania law firm; the firm leased office space in New Jersey consisting of an unfurnished, lockable office, as well as a common reception area and shared conference rooms; no files were kept at that location; the attorneys rarely used the office and then only for conducting closings for the firm's only New Jersey client); In re Kasson, 141 N.J. 83 (1994) (reprimand imposed for failure to maintain a bona fide office; 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, respondent's arrangement was more inadequate than Morrone's. Unlike in Morrone, respondent's clients could not even reach the receptionist in the Camden office, since all calls were forwarded to Pennsylvania. Moreover, in 2000 respondent was reprimanded for failure to maintain a bona fide office. One would hope that, since then, he would have ensured that his office arrangement complied with the rules. Nevertheless, he continued to skirt the requirements of R.1:21-1(a), despite our previous statement, in our decision, that he "should have had a heightened awareness of the importance of maintaining his ancillary New Jersey practice in a manner that complied with the rules."

We also considered that respondent was ineligible to practice law during the hearing below, at which time he stated that he had one or two pending New Jersey matters. He was not charged with practicing law while ineligible and this issue was not explored below. This demonstrates, however, respondent's further lack of attention to and compliance with the rules.³

In light of the foregoing, we found that a reprimand is insufficient to address the seriousness of respondent's conduct. We, therefore, determined to suspend him for a period of three months. See, e.g., In re Alston, 166 N.J. 597 (2001) (three-month suspension for attorney who failed to maintain a bona fide office and made

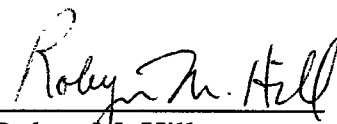
³ We noted that respondent practices in New Jersey and Pennsylvania under the firm name "Servin & Associates." It appears that, at least in New Jersey, he is a sole practitioner. He was not charged, however, with a violation of RPC 7.5(e) (misleading letterhead).

misrepresentations to disciplinary authorities; attorney had received a prior reprimand for, among other violations, failure to maintain a bona fide office). Prior to reinstatement, respondent must demonstrate to the OAE that his office arrangement in New Jersey complies with R.1:20-1(a).

Two members did not participate.

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

Disciplinary Review Board
Rocky L. Peterson, Chair

By: 
Robyn M. Hill
Chief Counsel

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

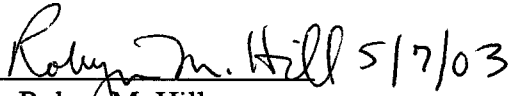
In the Matter of Jeffrey D. Servin
Docket No. DRB 02-431

Argued: February 6, 2003

Decided: May 5, 2003

Disposition: Three-month suspension

| <i>Members</i> | <i>Disbar</i> | <i>Three-month 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