

if

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 97-364

IN THE MATTER OF :
:
GERALD M. ALSTON :
:
AN ATTORNEY AT LAW :
:

Decision

Argued: December 18, 1997

Decided: April 13, 1998

Maury K. Cutler appeared on behalf of the District IV Ethics Committee.

Respondent waived appearance for oral argument.

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 IV Ethics Committee (DEC). The formal ethics complaint charged respondent with practicing law while on the ineligible list for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF), in violation of RPC 5.5(a); failure to maintain a bona fide office in New Jersey, in violation of R 1:21-1(a) and RPC 5.5(a); and failure to cooperate with disciplinary authorities, in violation of RPC 8.1(b).

Respondent was admitted to the New Jersey bar in 1989. He is primarily a Pennsylvania attorney with a sporadic practice in New Jersey.

The complaint charged — and respondent admitted — that he was declared ineligible to practice law by Order of the Supreme Court, published in the December 12, 1994 issue of the New Jersey Law Journal, as a result of his failure to pay the 1994 annual assessment to the CPF. By Order published in the September 25, 1995 issue of the New Jersey Law Journal, respondent's ineligibility was continued, this time for failure to pay the 1995 annual assessment to the CPF. Respondent stipulated that he remained ineligible to practice law in New Jersey until February 23, 1996, when he first learned of his suspension from a judge of the Superior Court in Camden. Respondent then promptly paid the required annual assessments for 1994 and 1995.

Respondent also stipulated that, while he was ineligible to practice law in New Jersey, he appeared before New Jersey courts on five occasions in 1995. It was stipulated that respondent was unaware that the CPF annual assessments remained unpaid. At the time, respondent had a law partnership with another attorney who acted as the administrative partner in the law firm and paid most of the office bills. According to respondent, he never had any reason to question whether the CPF annual assessments were being paid.

It was also stipulated that respondent violated the bona fide office rule. For some time between February 1993 and mid-1995, when respondent was in the law partnership with the same attorney mentioned above, respondent did not have a bona fide office in New Jersey, even though he represented clients in some New Jersey matters. According to respondent, his partner had assured him that they had a bona fide office at 19 Gordon's Alley, Suite 400, Atlantic City, New Jersey. Nevertheless, the office in that location did not meet the

requirements of the rule, a violation that respondent admitted at the DEC hearing. Respondent testified that he was unaware that the office did not comply with the requirements of the rule, because he had never gone to that location.

Respondent informed the DEC that, at the time of the hearing, he had a New Jersey office in his residence in Clayton and that, in the following weeks, he would be sharing office space with a New Jersey attorney in Cherry Hill. Respondent assured the DEC that he would be present at that location at least twice a week.

Lastly, respondent admitted that for six months he failed to respond to inquiries from the Office of Attorney Ethics (OAE). In three letters forwarded during that time, the OAE asked respondent to reply to the allegations that he had practiced law in New Jersey while on the ineligible list. Six months after the first letter respondent finally complied with the OAE's requests for information.

At the DEC hearing, respondent explained that his failure to cooperate with the OAE was the result of panic:

I buried my head in the sand***There's no excuse for it***I panicked***I kind of panicked and buried my head in the sand. That's the bottom line.

* * *

At the conclusion of the ethics hearing, the DEC found that respondent practiced law at a time when he was on the ineligible list for failure to pay the CPF assessment; that he

failed to maintain a bona fide office at the Gordon's Alley address; and that he failed to cooperate with disciplinary authorities, all in violation of RPC 5.5(a), R 1:21(a) and RPC 8.1(b). In its report, the DEC expressed concern that respondent's future office arrangement with the Cherry Hill attorney might still be deficient:

As a result of the testimony of the Respondent, the Panel continues to have concern that the Respondent's contemplated office sharing***may not constitute a bona fide office. The Panel does not find Respondent intends to intentionally violate the bona fide office requirements but does not believe that Respondent established that he is completely aware of the bona fide office requirements. As a result, the panel recommends public reprimand to Respondent and further recommends that the Respondent be required to either establish compliance with the bona fide office, recordkeeping and bank account requirements to the Office of Attorney Ethics or that his compliance with same be audited promptly. Alternatively, the panel suggests that the respondent be assigned to a Proctor who can advise Respondent and monitor his compliance.

* * *

Following a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence. The facts are not in dispute. Respondent appeared in a New Jersey court on five occasions during 1995, at a time when he was ineligible to practice law for failure to pay the annual assessment to the CPF. He also did not have a bona fide office and failed to cooperate with the OAE. Respondent's claimed lack of knowledge that the CPF fee had not been paid because of reliance on his partner, his unawareness that the Gordon's Alley

location did not comply with the bona fide office requirements because he had never been there and he had been assured by his partner that they were in compliance with the rule and, lastly, his assurance that his failure to cooperate with the OAE was not motivated by indifference or disregard for the system, but instead by a panic reaction, do not serve to excuse his conduct, but may be considered as mitigating factors.

An attorney's failure to maintain a bona fide office in New Jersey requires discipline. In re Kasson, 141 N.J. 83 (1995). Kasson argued that he should not be disciplined because he was merely the employee of a Pennsylvania attorney who also listed a New Jersey office address. In fact, the New Jersey arrangement did not satisfy the requirements of the bona fide office rule. Acknowledging the difficulties encountered by the attorney by virtue of his employment, the Court ruled that he was nonetheless obligated to conform to applicable ethical standards and imposed a reprimand.

Here, although there are two additional violations — practicing while on the ineligible list and failing to respond to three letters from the OAE — a reprimand is sufficient discipline for respondent's ethics infractions in light of mitigating circumstances. The Board considered that respondent was ultimately cooperative, stipulated his misconduct, assured the DEC that he would take appropriate action to ensure that he would never again run afoul of the disciplinary rules and, lastly, explained that his failure to reply to the OAE's requests for information had been the product of panic, instead of indifference toward the disciplinary process.

The Board unanimously voted to reprimand respondent. Two members did not participate. The Board also considered the concerns expressed by the DEC regarding respondent's understanding of the bona fide office requirements and determined to require respondent to show proof to the OAE that he is currently in compliance with the bona fide office rule and that he is maintaining his attorney records in conformance with the recordkeeping rules.

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

Dated: _____

4/13/98



LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Gerald M. Alston
Docket No. DRB 97-364

Argued: December 18, 1997

Decided: April 13, 1997

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling			X				
Zazzali							X
Brody			X				
Cole			X				
Lolla			X				
Maudsley							X
Peterson			X				
Schwartz			X				
Thompson			X				
Total:			7				2

Robyn M. Hill 4/24/98
Robyn M. Hill
Chief Counsel