

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-264

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

Decision

Argued: November 18, 1999

Decided: October 18, 2000

Eugene McCaffrey, Jr. appeared on behalf of the District IV Ethics Committee.

Respondent waived appearance before the Board.

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 three-count complaint charged respondent with violations of RPC 1.15(d) (recordkeeping violations) and RPC 5.5(a)(failure to maintain a bona fide office) (count one); and RPC 8.1(a) (making a false statement of material fact in

connection with a disciplinary matter) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (counts two and three).

Respondent was admitted to the New Jersey bar in 1989 and was also admitted to practice in Pennsylvania. At the relevant times, he maintained a law practice in Philadelphia, Pennsylvania.

In 1998, respondent was reprimanded for violations of RPC 5.5(a) (practicing law while ineligible for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection), RPC 5.5(a) (failure to maintain a bona fide office in New Jersey) and RPC 8.1(b) (failure to cooperate with the disciplinary authorities). In re Alston, 154 N.J. 83 (1998).

Following the June 10, 1997 DEC hearing in the above matter respondent again violated the bona fide office rule. Only one month later, on July 17, 1997, respondent filed a form with the Superior Court of New Jersey, Cape May County, as counsel for the defendant. On the form, respondent listed his New Jersey office address as 624 Moore Boulevard, Clayton, New Jersey (his home address), and his office telephone number as 609-881-0192.

By letter dated September 15, 1997, the supervising clerk of the court informed the Office of Attorney Ethics ("OAE") that she had been unable to reach respondent at the phone number listed on the appearance form. The clerk added that neither respondent nor his client appeared in court on September 12, 1997 for a hearing that had been earlier postponed at

respondent's request. Based on this letter, the OAE launched an investigation. At the DEC hearing, the OAE investigator testified about her actions. She stated that she and another OAE investigator went to the address listed on the appearance form. The investigators discovered that the Moore Boulevard address was respondent's private residence. There was no on-site parking at the address or signs indicating the presence of a law office. The only sign the investigator saw read "Home of the Alstons." According to the investigator, she knocked on the front door repeatedly, but no one answered. Afterwards, she used her cellular telephone to call the number given as respondent's New Jersey office telephone number. The call, however, switched to respondent's Philadelphia office, where it was answered. On a subsequent visit to the neighborhood, the investigator spoke to several of respondent's neighbors. They stated that they did not know that respondent had a law office in his home.

According to respondent, a bona fide office is one where clients can come to visit, where there is access to the attorney by telephone and there is a sign outside indicating the existence of a law practice. Respondent claimed that, when he entered his appearance in the New Jersey matter, his New Jersey office was in his home. Respondent admitted that there was no one at his home to act as a responsible person for the practice. He had told the investigator before that his mother-in-law was living with him and was the responsible person to answer the telephone or the door. At the DEC hearing, however, respondent admitted that he did not want his mother-in-law answering the door and that he, not she, was

the responsible person for his office. Respondent acknowledged the absence of a sign on the premises demonstrating the presence of a law practice. He explained that, because of the criminal nature of his practice, his wife did not want him to advertise the residential office; in addition, he did not want criminal defendants meeting with him at his home. For the same reason, respondent stated, he did not advertise his New Jersey office in the telephone directory. Respondent also claimed that, because he had so few New Jersey clients, he did not need to work in a New Jersey office.

Respondent was unable to show proof that he maintained New Jersey trust and business accounts. In reply to a request for such proof, respondent "faxed" to the investigator a statement from a Pennsylvania branch of the CoreStates Bank, addressed to Alston and Bemby of 1315 Walnut Street, Philadelphia, Pennsylvania. That firm was no longer in existence. Respondent testified that he did not supply further documentation to the investigator because, after she questioned his neighbors, he felt "violated" and disinclined to cooperate further with the investigation.

* * *

Count two of the complaint charged respondent with violations of RPC 8.1(a) for knowingly making a false statement of material fact in connection with a disciplinary matter and RPC 8.4(c) for conduct involving dishonesty, fraud, deceit or misrepresentation.

Specifically, the complaint charged that, at the earlier June 10, 1997 ethics hearing, respondent had misrepresented that he had arranged "to open a New Jersey law office" with Philip Parker, Esq. in Cherry Hill, New Jersey. The office was to open that Friday, June 13, 1997. A portion of the transcript from that hearing states, in relevant part:

Q: Okay. And do you intend to have an office in New Jersey other than your home?

A: Yes

* * *

Q: With whom do you intend to maintain an office?

A: Philip Parker.

* * *

A: In Cherry Hill, New Jersey. . . .

* * *

Q: Is it your intention to place your New Jersey records in this office?

A: Yes.

Q: Okay. And when is it your intention to move into this office?

A: By Friday.

Q: And you've [sic] made any contractual relationship arrangement you need to make with Mr. Parker?

A: Just talked over the phone, sure, no problem and I will reciprocate by allowing him to set up in my Philadelphia office for Pennsylvania purposes.

Q: Is it your intention to use this office?

A: Yes, yes, if I have to, of course.

Q: Will you be able to be reached at this office?

A: Yes.

Q: How?

* * *

A: [The receptionist] . . . will call me wherever I am or call the Philadelphia office. I also have a beeper with two numbers on it; one is a straight pager and the other one is a [sic] message pager on it.

* * *

Q: How would you get your mail that's addressed to that office?

A: I stop by and pick it up. It's in Cherry Hill.

Q: You will have a presence there?

A: Yes.

Q: You plan to do that regularly?

A: At least twice a week, at the minimum.

* * *

Q: And you intended to keep your records with respect to your New Jersey clients at that office?

A: Yes.

[Exhibit P-6 at 14-18]

According to the investigator, she contacted Parker on November 19, 1997 to verify the accuracy of respondent's testimony. Parker informed her that respondent did not maintain an office there. He claimed that, although they had discussed the matter, no firm agreement had been established. The investigator telephoned respondent the next day. He

informed her that his arrangement with Parker had fallen through and that he had opened an office in his home instead.

At the DEC hearing, respondent explained that, after the arrangements had been made, Parker "got cold feet" about sharing space with him because Parker was only a tenant in the building. According to respondent, Parker suggested that he contact the landlord about renting space there. Respondent claimed that he then decided to start an office in his home.

Although Parker was present at the DEC hearing, he was not called to testify.

* * *

The final count of the complaint charged respondent with violations of RPC 8.1(a) and RPC 8.4(c) for false statements to the OAE investigator. The complaint alleged that, on November 20, 1997, respondent told the investigator that he had been renting office space from Emmett Primas, Esq. in Woodbury, New Jersey, as of November 1, 1997. The complaint charged that respondent's statement was knowingly false because he did not contact Primas about renting space until November 21, 1997, one day after his statement to the investigator.

According to the OAE investigator, on November 20, 1997 respondent informed her of his arrangement with Primas. On November 25, 1997 the investigator went to Primas' office unannounced. According to the investigator, when she asked to see respondent's

office, Primas appeared somewhat confused and told her that respondent did not have an office there. Primas stated, however, that respondent had called him on November 21, 1997 about establishing a bona fide office in that location.

After the investigator's visit, respondent and Primas entered into some type of agreement. On September 3, 1998, the investigator contacted Primas to verify the arrangement. Primas told the investigator that respondent had the use of the conference room, copy machine "and so forth" for \$200 a month. Primas also stated that respondent did not maintain a separate phone line, did not maintain his files there and "he didn't have anything at the office to indicate that he had an office there. . . ." Respondent had no letterhead, business cards or sign indicating the presence of his office at that location. According to the investigator, Primas noted that any calls to respondent would be directed to respondent's Philadelphia office. Respondent and Primas did not enter into a formal lease agreement and respondent only paid rent sporadically. Primas told the investigator that respondent was "way behind" in his payments.

At the DEC hearing, Primas testified that the space that respondent rented was an area used for storage that was never converted into a functioning office. Primas stated that, during the course of the agreement, respondent never used the office, never had a filing cabinet or any personal effects in the office and did not have a sign indicating that he had an office there.

At the DEC hearing, respondent also admitted that he never used the space at Primas's office. He claimed, however, that he had approached Primas in October 1997, before his conversation with the OAE investigator.

* * *

The DEC determined that respondent violated RPC 5.5(a) and R. 1:21-1(a) by failing to maintain a bona fide office in July 1997 when he entered an appearance with the Cape May County Superior Court . The DEC also found that respondent failed to provide any documentation that he maintained the requisite New Jersey trust and business accounts. The DEC, thus, found a violation of RPC 1.15(d).

As to count two, the DEC concluded that respondent's testimony about a "firm" agreement with Parker did not amount to clear and convincing evidence that his comments were willfully false at the time. The DEC, therefore, did not find violations of RPC 8.1(a) or RPC 8.4(c).

As to the final count, the DEC found a violation of RPC 8.4(c) based on respondent's statements to the OAE investigator that he would establish a bona fide office in Woodbury, New Jersey. The DEC concluded that, at the time of the statement, respondent had no intention of establishing a bona fide office at that location. The DEC's conclusion was based on Primas's testimony that the space purportedly rented by respondent was never converted

into a functioning office from storage space, that respondent never used the office, that he did not maintain any files, filing cabinets or personal effects at the location, that he never met with clients there and that there was no sign indicating that he maintained an office in that location.

* * *

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

R.1:21.1(a) states as follows:

A bona fide office is more than a mail drop, 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 bone 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 insure that competent advice from the attorney can be obtained within a reasonable period of time.

The record establishes that respondent's residence did not comply with the requirements of a bona fide office. Calls made to respondent's New Jersey telephone number were forwarded to his Philadelphia office. There was no one present at his home

during the day as "a responsible person" acting in respondent's behalf. Respondent testified that both he and his wife did not want his clients coming to his home because his clients were criminals. There was no one available at the home during normal business hours to answer questions posed by the courts, clients or adversaries. Respondent did not have a sign indicating that there was a law office in his home and he did not advertise his New Jersey telephone number in the yellow pages of the telephone directory. Also, respondent did not provide any proof that he maintained New Jersey trust and business accounts, as required by R. 1:21-6 (recordkeeping). We find, thus, that respondent violated RPC 5.5(a).

The complaint also charged respondent with violations of RPC 8.1(a) and RPC 8.4(c) for making false statements about his arrangements with Philip Parker. There is no clear and convincing evidence of these violations, however. At the first DEC matter respondent testified that he "intended" to establish an office with Parker, "intended" to maintain a presence at the office and "intended" to maintain his files at that office. Respondent also "intended" to establish his presence at Parker's office in three days, that is, by June 13, 1997. In addition, respondent testified in this matter that, after the hearing on June 10, 1997, but presumably before June 13, 1997, Parker "got cold feet" and declined to rent space to him. Parker was present at the DEC hearing, but was not called to testify to corroborate either the investigator's version of events or respondent's. We, therefore, dismissed this charge.

As to the last count of the complaint, according to the OAE investigator's testimony, respondent contacted Primas only after his conversation with her. When the investigator

visited Primas, he was confused by her request to see respondent's "bona fide" office, because respondent had not yet made arrangements with him. The space in Primas' office that respondent was to use was a storage room that was never converted for use as an office. In addition, respondent failed to keep any files, filing cabinets or personal belongings at that office. Finally, it is undisputed that respondent never used the office during the time of his and Primas' alleged agreement. Like the DEC, we, therefore, find clear and convincing evidence that respondent's representations to the investigator were false and that he never intended to use Primas' storage space as an office. Respondent's conduct in this regard was a violation of RPC 8.4(c) and also RPC 8.1(a).

One last point warrants mention. Respondent never maintained a bona fide office in either his residence or at Primas' office, in violation of RPC 5.5(a). Since he had no legitimate office in New Jersey, it was unnecessary for him to maintain New Jersey trust and business accounts. The charge of a violation of RPC 1.15(d) is, therefore, subsumed in the violation of RPC 5.5(a). However, respondent submitted to the investigator a copy of a statement from an account of a Pennsylvania bank, a closed account for his former practice located in Philadelphia, Pennsylvania. Respondent's action in this regard was designed to mislead the investigator, which we considered to be an aggravating factor.

Cases involving only a failure to maintain a bona fide office ordinarily result in the imposition of a reprimand. In re Kasson, 141 N.J. 83 (1994). In a more serious case, the Court imposed a three-month suspension where an attorney failed to maintain a bona fide

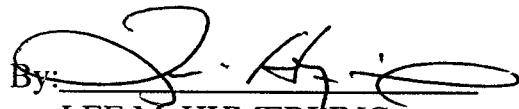
office, practiced law for seven years while on the New Jersey Lawyers' Fund for Client Protection list of ineligible attorneys in violation of RPC 5.5 and misrepresented to a bankruptcy court that she was in good standing in violation of RPC 8.4(c). In re Schwartz, 163 N.J. 501 (2000).

This is respondent's second violation of the bona fide office rule. Moreover, it occurred on the heels of respondent's first violation. More seriously, however, respondent knowingly made false statements to the OAE investigator, when he assured her that he intended to open a bona fide office with Primas. Respondent's agreement with Primas was nothing more than a sham. Attorney's misrepresentations to tribunals have been viewed as serious transgressions by the Court. See In re D'Arienzo, 157 N.J. 32 (1999) (three-month suspension for multiple misrepresentations to a judge for his tardiness for court appearances or failure to appear) and In re Kernan, 118 N.J. 361 (1990) (three-month suspension where attorney, in his own matrimonial matter, failed to inform the court of a transfer of property for no consideration which had previously been certified to the court as an asset; the attorney knowingly made a false certification to the court when he failed to amend the previous certification to include the property as an asset; attorney had prior private reprimand). While respondent's misrepresentations were made to the OAE, not a tribunal, we nonetheless consider them to be critical.

While there was some sentiment by several members to impose a more severe sanction, ultimately the vote was unanimous to suspend respondent for only three months. One member did not participate in the decision.

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

Dated: 10/18/00

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

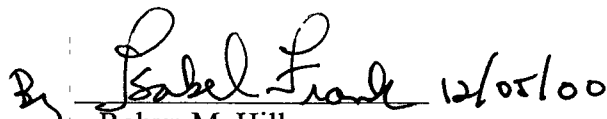
**In the Matter of Gerald M. Alston
Docket No. DRB 99-264**

Argued: November 18, 1999

Decided: October 18, 2000

Disposition: Three-month suspension

Members	Disbar	Three-month 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:		8					1

By  12/05/00
Robyn M. Hill
Chief Counsel