

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 95-160

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IN THE MATTER OF :  
BASIL D. BECK, III :  
AN ATTORNEY AT LAW :

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Decision of the  
Disciplinary Review Board

Argued: June 21, 1995

Decided: October 23, 1995

R. Robert Fleming appeared on behalf of the District I Ethics Committee.

Respondent appeared pro se.

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

This matter was before the Board based upon a recommendation for discipline filed by the District I Ethics Committee (DEC). The complaint charged respondent with violations of RPC 3.3(a)(1) (false statement of material fact to a tribunal), RPC 5.5(a) (failure to maintain a bona fide office), RPC 7.1(a) (false or misleading communication about the attorney's services), RPC 7.5(a) (false or misleading letterhead) and RPC 8.4(a), (c) and (d) (violation of the Rules of Professional Conduct; conduct involving dishonesty, fraud, deceit or misrepresentation; and conduct prejudicial to the administration of justice).

Respondent was admitted to the New Jersey bar in 1992. He maintains an office in Norristown, Pennsylvania, and allegedly also in Bridgeton, Cumberland County, New Jersey. Respondent has not

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yet presented proof of this office location. The 1995 New Jersey Lawyers' Dairy lists respondent's office as located in Wilmington, Delaware. He has no history of discipline.

In the Spring of 1993, respondent was involved in a proceeding before the Honorable John A. Fratto, J.S.C. During the course of that proceeding, Judge Fratto issued an order, dated April 5, 1993, directing respondent to submit evidence to the court, within ten days, that he was an attorney in good standing in New Jersey and that he maintained a bona fide office in the state. (The record does not reveal the reason for the court's inquiry.) By letter dated April 13, 1993, respondent supplied to the court a copy of his New Jersey State Bar Association membership card and a piece of his letterhead, listing an office in Pennsylvania as well as an office at 5409 Simpson Avenue, Ocean City, New Jersey, and a phone number of (609) 484-2877. At the time respondent made this representation to the court, only his home address in Wilmington, Delaware, was listed with the New Jersey Lawyers' Fund for Client Protection ("The Fund"). Furthermore, respondent's name did not appear in either the Ocean City telephone book or the New Jersey Lawyers' Diary.

Judge Fratto forwarded to the DEC the documentation received from respondent and asked that the information be confirmed. Julius N. Korschak, Esq., a member of the DEC, went to the Ocean City address on June 21, 1993, at approximately 11:00 A.M. The building was a residence. There was no sign indicating that a law office was located inside; the visible furnishings were

residential; and no office equipment was observed. There was no response when Mr. Korschak knocked on the door. He returned the following day, June 22, 1993, at approximately 1:30 P.M. Again, there was no reply when he knocked on the door.

Mr. Korschak reviewed the Ocean City Land Use Ordinances and determined that 5409 Simpson Avenue was in an R-2 Zone, which permitted only the property owner to maintain a professional office on the premises. Respondent does not own the property. (The owner of the property is the mother of a friend of one of the tenants.) Mr. Korschak did not determine if a variance had been granted.

Mr. Korschak recognized that the telephone number on respondent's letterhead was not an Ocean City exchange. He did not, however, call the number.

Respondent testified that his primary law office was in Norristown, Pennsylvania. He used a portable computer to meet clients in Ocean City on a by-appointment basis. Respondent testified that he had, in fact, met numerous clients and potential clients at that location.

The property in question was leased by respondent's brother and another individual. Based on conversations with them, it was respondent's understanding that someone would be on the premises during most business hours. Neither individual, however, was respondent's employee. Respondent was unable to explain why no one was there when Mr. Korschak went to inspect the property.

Respondent did not have a business arrangement with the owner of the property. He did not pay for the use of the property and

was unaware of the zoning problem. He did not have a full- or part-time secretary, office equipment or furniture on the premises. Respondent explained that he visited the premises approximately once every two weeks. When respondent received mail at that location, he either picked it up or it was forwarded to him within two days.

Respondent testified before the DEC that the telephone number on his letterhead was answered by an answering service. The service would then take a message or provide respondent's Pennsylvania office number where he could be reached. Before the Board, respondent stated only that the service would take a message. He added that the calls were not forwarded to him in Pennsylvania, recognizing that such an arrangement would be frowned upon by the New Jersey rules. Respondent would subsequently communicate with these clients and then set up a meeting in Ocean City, at the location in question. He admitted that his clients could not reach him immediately in the event of an emergency.

Respondent testified that he believed that this arrangement, which he utilized for only four or five months, met the requirements of a bona fide office. He pointed out that Opinion 19, 138 N.J.L.J. 268 (1994), which defined the bona fide office, was not published until September 14, 1994, well after respondent's April 1993 letter in reply to the court's inquiry. He contended that the Ocean City arrangements had met the previous definition within the meaning of R.1:21-1 as of April 5, 1993 and that the requirements of Opinion 19 could not be applied retroactively.

Respondent argued that the Ocean City address was not a maildrop, a summer house, or an answering service. Respondent further argued that he lacked the intent to violate the charged Rules of Professional Conduct.

Respondent testified, in mitigation, that he received notice of the DEC's investigation in this matter on July 7, 1993. Several days later, on July 12, 1993, respondent signed a lease with the law firm of Veight and Hunsberger, in Bridgeton, New Jersey, and obtained an office. He stated that he relocated his office because of the possible zoning problems and "because I am who I am and known throughout the community in Ocean City I felt that I had to go up and over the base requirements for an office and I should, you know, contract with a law firm and have all the bells and whistles along with it" (T11/16/94 31). Respondent testified that he sees New Jersey clients at the new location by appointment, does not have a sign in front of the office and is not listed in the telephone book. As noted above, he is still listed in the New Jersey Lawyers' Diary at his Wilmington, Delaware, address.

Respondent testified that, between 1992 and 1993, he had a number of addresses. He apparently continued to list the Wilmington, Delaware, address with the Fund, despite having moved from that location. Respondent stated that his mother lived there, and that he received mail sent to that location. Respondent explained that he never provided the Ocean City address to the Fund because he had the office for such a short time and did not have the opportunity to obtain and fill out the appropriate form. As of

May 26, 1995, the Fund listed respondent's address as 603 Swede Street, Norristown, Pennsylvania.

Respondent added that he knew of no requirement that his business telephone number be listed in a telephone book, the New Jersey Lawyers' Diary or with the Fund.

Respondent argued that, other than the alleged violation of RPC 5.5, the other cited Rules of Professional Conduct were not applicable to these facts and/or that he lacked the intent to violate them. To what the alleged violation of RPC 8.4(d) referred was unclear to respondent.

The DEC determined that respondent violated RPC 3.3(a)(1), RPC 5.5(a), RPC 7.5(a) and RPC 8.4(a) and (c). The DEC further found that the alleged violation of RPC 7.1(a) should merge with the violation of RPC 3.3(a). With regard to the alleged violation of RPC 8.4(d), the DEC concluded that, although respondent "may have engaged in conduct which may have led to prejudice to the administration of justice, at the stage in which this matter was concluded, prejudice was not of any substantial nature and, therefore, no violation of this R.P.C. 8.4(d) is found."

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Upon a de novo review of the record, the Board is 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 states, in relevant part:

For the purpose of this section, a bona fide office is a place where the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours. A bona fide office is more than a maildrop, a summer home that is unattended during a substantial portion of the year, or an answering service unrelated to a place where business is conducted.

Respondent argued that his office, which he stopped using in July 1993, should be judged by the standard applicable prior to the issuance, in September 1994, of Opinion 19. That opinion, however, did not materially amend the requirements of the bona fide office, but rather served to explain them more fully. Thus, the standard remained the same.

Although respondent was correct in his assertion that the Ocean City property was not a summer house or a mail drop, his office arrangement clearly violated the intent of the bona fide office rule: to prevent the sporadic practice of law in New Jersey in order to ensure a sufficient degree of "competence, accessibility and accountability" by attorneys. In re Sackman, 90 N.J. 521, 533 (1982). By his own admission, respondent visited the Ocean City office approximately once every two weeks, a practice the rule is intended to prevent.

In addition to not attending his New Jersey office, respondent did not have any employees or a "responsible person" acting on his behalf within the meaning of R.1:21-1(a). The two tenants in the house, even if present during business hours, had no connection whatsoever with respondent's law practice. They merely accepted his mail. The two tenants were not prepared to act or provide

information on respondent's behalf to clients, attorneys or the courts.

Further, although respondent stated that he met clients at that location by appointment only, a client, having met respondent at that location, would reasonably believe that respondent could be found there at any time during business hours.

In addition, respondent testified before the DEC that he relied on an answering service to take messages from clients or to refer them to his Pennsylvania office. He stated before the Board that the service would take a message. In either event, this is precisely what the rule sought to avoid: an answering service unrelated to a place where business is conducted.

In light of these factors, the Board determined that respondent violated RPC 5.5.

Although respondent violated the bona fide office rule, his misconduct was not serious. It is highly unlikely that respondent knew that his office arrangement was not in compliance with the rules when he advised the court that he had a bona fide office. A finding of intentional misrepresentation to the court therefore cannot be made here. The allegations that respondent violated rules pertaining to attorney advertising and letterhead are likewise inappropriate and excessive. A six-member majority of the Board, therefore, dismissed all of the remaining alleged violations. One member disagreed with the majority and would find, in addition to the violation of RPC 5.5(a), a violation of RPC 3.3(a)(1) (lack of candor toward a tribunal).



There was considerable concern in this matter about respondent's addresses listed with the Fund and with the New Jersey Lawyers' Diary and about the absence of published telephone numbers. There are no allegations that respondent did not receive mail sent to him. Similarly, there were apparently no allegations that clients were unable to contact him. R.1:20-1(c), however, requires that attorneys notify the Fund of changes in their home or primary bona fide office addresses prior to or within thirty days after such changes. As noted above, respondent is now listed with the Fund at his Norristown office. Respondent apparently, however, failed to change his address with the Fund on a timely basis. This is not a serious violation and does not warrant discipline more severe than that resulting from respondent's failure to maintain a bona fide office.

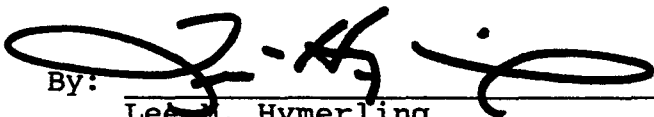
In the past, cases involving the lack of a bona fide office have, on occasion, resulted in a public reprimand. In those cases, however, either an additional ethics violation or previous discipline was also present. See, e.g., In re Zaleski, 127 N.J. 384 (1992) (where the attorney was publicly reprimanded for failure to maintain a bona fide office. Zaleski, however, had been previously privately reprimanded for the same dereliction) and In re Pitt, 121 N.J. 398 (1990) (where a public reprimand was imposed for failure to maintain a bona fide office and failure to cooperate with the disciplinary authorities).

A majority of the Board is of the opinion that an admonition is sufficient discipline for respondent's failure to maintain a

bona fide office. One member disagreed and would reprimand respondent, based on his failure to maintain a bona fide office, as well as lack of candor toward a tribunal. Two members did not participate.

The Board further directed that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 10/23/95

By:   
Lee M. Hymerling  
Chair  
Disciplinary Review Board

Supreme Court of New Jersey  
Disciplinary Review Board

Voting Sheet

IN THE MATTER OF BASIL D. BECK, III

DOCKET NO. DRB 95-160

HEARING HELD: June 21, 1995

DECIDED: October 23, 1995

	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did Not Participate
TROMBADORE					X (bona fide charge only)		
BUFF							X
COLE					X		
HUOT					X		
HYMERLING							X
PETERSON					X		
SCHWARTZ			X				
THOMPSON					X		
ZAZZALI					X		

*Robyn M. Hill* 11/3/95  
ROBYN M. HILL  
CHIEF COUNSEL