

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 90-019

IN THE MATTER OF
HOWARD PITT,
AN ATTORNEY AT LAW

Decision and Recommendation
of the
Disciplinary Review Board

Argued: March 21, 1990

Decided: May 25, 1990

Thomas J. Barrett appeared on behalf of the District IIA Ethics Committee.

Respondent waived appearance before the Disciplinary Review Board.

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

This matter is before the Board based upon a presentment filed by the District IIA Ethics Committee.

Respondent was admitted to practice in New Jersey in 1974, and is also admitted to practice in New York. In 1985, respondent designated 396 18th Avenue, Paterson, Passaic County, New Jersey, as his primary New Jersey law office. This address refers to a one-family dwelling owned by a party other than respondent. The property is zoned R1, indicating that a professional office is permitted if it is occupied by the resident of the property. Respondent does not reside at that address.

On October 24, 1988, Richard Kraus, Esq., who was investigating this matter, phoned respondent at his Paterson office. The phone was answered by a woman saying simply "Hello", who, in reply to an inquiry, stated respondent was out. Mr. Kraus left his name and phone number, and asked that respondent call him back. After not receiving a call from respondent, Mr. Kraus phoned the Paterson office on October 26, 1988. No one answered the phone. On October 28, which was a Friday, Mr. Kraus called again, at which time the same woman answered, again saying simply "Hello". Mr. Kraus left a message asking respondent to call him. On the following Monday, respondent called Mr. Kraus and they agreed to meet at the Paterson office on November 7. On the morning of the 7th, respondent called Mr. Kraus, informing him that he had been in an automobile accident and was going to the hospital. Mr. Kraus told respondent to call him to set up another appointment. Respondent did not call. On November 14, Mr. Kraus sent a letter to respondent's Paterson office reminding respondent that he was to contact him. There was no response to the letter. On November 22, Mr. Kraus called respondent's office, asking to speak with respondent. Mr. Kraus testified that the woman answering the phone appeared to have no idea who respondent was. Another woman, presumably the one with whom Mr. Kraus had spoken in his earlier attempts to reach respondent, spoke with Mr. Kraus, who again left his name and number. Once again, respondent did not return the call.

On November 29, Mr. Kraus called respondent in New York, at which time he was able to speak with him. Respondent indicated that he was recovering from his accident, and had been intending to call Mr. Kraus back. They set up an appointment for December 6, for Mr. Kraus to see the office. During the conversation, respondent explained to Mr. Kraus that the owner of the property is a friend of respondent who is allowing him to use the property as an office.

Mr. Kraus testified before the committee that the address in Paterson is in a residential area. There were no signs to indicate that the property in question is a law office, including no indication on the door. The office itself is in the basement of the house. The first area of the office "looked like a modern eat-in kitchen" (T12 - 8)¹, which respondent indicated he could use to meet with clients, although he stated that he had never had a client at that office.

According to Mr. Kraus' testimony, the office area itself was in an unfinished section of the basement near the furnace and hot water heater. The walls were unfinished and covered with cloth. The office equipment in the area consisted of a desk with legal documents on it, one chair, a telephone, a typewriter, and a bookcase. There were none of the types of books expected to be

¹T refers to the transcript of the hearing before the committee.

present in a law office. There was no secretarial area. Mr. Kraus testified that respondent told him that he spends no time at the Paterson office, and that he does not meet clients in that location.

The committee found that respondent violated R. 1:21-1(a) and RPC 5.5(a) by failing to maintain a bona fide office for the practice of law within the State of New Jersey.

During the hearing before the committee, the chair granted the presenter's motion to amend the complaint to include an allegation of a violation of RPC 8.1(b) for respondent's failure to answer the complaint. The committee found that there was a violation of RPC 8.1(b).

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the committee in finding respondent guilty of unethical conduct are supported by clear and convincing evidence.

With regard to the violation of R. 1:21-1(a) and RPC 5.5(a), the Board is cognizant of the fact that the concept of what is a bona fide office is indeed nebulous. While it may be difficult to define exactly what a bona fide office is, however, it is easy to say what it is not. Clearly, respondent's "office" in Paterson is not what was contemplated by the letter or the spirit of R. 1:21-1(a).

To be sure, the rule does not provide a definition of what constitutes a bona fide office. Neither does the comment to the rule expressly delineate the scope thereof.² It is clear, nonetheless, that, as the rule states, a mail drop or an answering service will not meet the requirements of a bona fide office. Indeed, Mr. Kraus testified that respondent

...indicated... that he spent no time at this office, that he didn't meet clients in this office, he never had a closing in this office. Without saying it directly, he basically said that this was an area of a friend's house and the friend had allowed him to use this address and phone number, I think really just so he could try to satisfy the rules here in New Jersey. He was really pretty honest about it. [T18-24 to 19-7.]

Clearly, whatever the location in question is, it does not fulfill the requirements of R. 1:21-1(a). It is apparent that respondent does not conduct business at this location. The office does not have facilities for any employees and, given Mr. Kraus' experiences in trying to reach respondent at that location, it seems there are no employees. Rather, someone on the premises answers the phone. This individual cannot be deemed a "responsible person" acting on respondent's behalf, within the meaning of R. 1:21-1(a). The individual is an "answering service" and nothing

²R. 1:21-1(a) established only the minimum requirements for a bona fide office.

into account respondent's candor with Mr. Kraus in admitting that he spent no time at the Paterson office.

In view of the above, the Board unanimously recommends that respondent be publicly reprimanded.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for appropriate costs.

Dated: 5/25/80



Raymond R. Trombadore
Chair
Disciplinary Review Board