

## Court Relaxes Bona Fide Office Rule, Lifting Need for Physical Location

By Mary Pat Gallagher

**S**tarting next month, lawyers will no longer need bricks-and-mortar offices to practice in New Jersey.

The state Supreme Court has eased the bona fide office rule to allow attorneys to operate without a fixed physical location, so long as they take certain steps to ensure that clients, courts and other lawyers can reach them, adversaries can serve them and ethics authorities can review their records.

Attorneys will have to ensure “prompt and reliable communications with and accessibility to clients, other counsel and judicial and administrative tribunals before which the attorney may practice,” according to revised Rule 1:21-1, which takes effect Feb. 1.

The rule change paves the way for “virtual offices” — those that make use of advanced information technology — but it requires lawyers to maintain a toehold in the real world by designating one or more fixed locations where regulators can inspect client files and business and financial records on short notice, where papers may be served and where delivery can be made by mail and by hand.

The revision largely follows the January 2012 recommendations of the court’s Professional Responsibility Rules Committee, but in some respects goes further.

For one, the fixed locations need not be in New Jersey, as the PRRC would have required.

For another, the court added language describing how to comply with

the revised rule.

A new subparagraph (3) states that the requisite “prompt and reliable” communications “may be achieved through maintenance of telephone service staffed by individuals with whom the attorney is in regular contact during normal business hours, through promptly returned voicemail or electronic mail service, or through other means demonstrably likely to meet” the specified standard.

And new subparagraph (4) requires that attorneys “be reasonably available for in-person consultations requested by clients at mutually agreeable times and places.”

Those two new provisions had been recommended by the State Bar Association but were not in the PRRC version. The revised rule as adopted largely follows the bar’s proposal.

The amendments to R. 1:21-1 overrule Joint Opinion 718/41 of the Advisory Committee on Professional Ethics and the Committee on Attorney Advertising.

That March 2010 opinion — stating that lawyers need to have an office where they or responsible persons acting on their behalf can be reached by person or telephone during normal business hours — drew criticism for failing to take into account developments in technology and law practice that have seen most states abandon the bona fide office rule.

Women lawyers expressed concern that those who practice from home as they juggle child-care responsibilities might not want to give out that address



**WELCOME RELIEF:** The court adopted the State Bar Association’s suggested reforms to New Jersey’s bona fide office rule, which Bar President Kevin McCann called onerous.

for safety reasons, preferring use of an alternate location for deliveries and meetings.

Chatham solo Matthew Stoloff petitioned the Supreme Court to overturn the joint opinion. The court denied Stoloff’s request on Aug. 5, 2010, but asked the PRRC to confer with the ethics and advertising committees and report back to it on whether to amend R. 1:21-1.

The ethics committee was divided, with some members viewing a “real office with a known street address” accessible during normal business hours as necessary, while others thought accessibility could be achieved through technology, noting that even those with a physical office are not always reachable.

The advertising committee refused to take a position, saying its role is to enforce rules on attorney

communications, which would be unaffected by amending the rule.

The State Bar Association weighed in with its view that “the current rule governing bona fide offices does not reflect the realities of law practice today, and imposes significant financial burdens on lawyers, particularly solo, part-time and small firm practitioners.”

In a statement issued Wednesday, State Bar President Kevin McCann said the association is “pleased that the Supreme Court has relaxed the onerous bona fide office rule,” calling it “one of the few rules of its type in the country.”

McCann, of Chance & McCann in Bridgeton, said the rule change “ensures that lawyers will be obligated to continue to be responsive to clients, courts and adversaries” but also “removes barriers to maintaining a law practice,” which “will enable solo and part-time practitioners to flourish and result in a wider range of legal services being available to consumers.”

PRRC member Steven Richman, of Duane Morris in Cherry Hill, says the court’s action “affords appropriate safeguards to lawyers and clients, while at the same time recognizing the practical realities of today’s practice.”

New Jersey Women Lawyers Association president Galit Kierkut said the revised rule is “of benefit to solo attorneys, many of whom are women working part-time while they undertake child care responsibilities, including many of our members.”

It will also help women who are “onboarding” — trying to resume working after a period of child rearing,



**BALANCING ACT: Professional Responsibility Rules Committee member Steven Richman says the court’s action provides safeguards to lawyers and clients while recognizing the realities of everyday practice.**

who “often have a tough time obtaining jobs, especially in this economy” and start a part-time practice, says Kierkut, of Sills Cummis & Gross in Newark.

Stoloff, who had petitioned to overturn Joint Opinion 718/41, says he is delighted the Supreme Court recognizes that “reliable communication and accessibility are more important than having a fixed, physical office to meet clients.

“We’re now keeping pace with technology where many young and middle-aged attorneys regularly use

email and texting and meet clients at their homes or at popular spots,” says Stoloff, who interacts with clients via telephone, email, Skype, AIM chat and TTY.

He adds that most of his clients are in their 30s and 40s, and “prefer to communicate via email.” When they do want to meet face-to-face, most work and cannot take the time to travel to his office, so he agrees to meet with them at a convenient location during their lunch hours or after work.

“Now, I can meet and communicate with my clients without worrying about the need to maintain a fixed physical office with a shingle and a secretary,” he says.

Stephanie Kimbro, who writes books and blogs about virtual law offices and practices out of one in North Carolina, says New Jersey has been more protectionist and slower than other states to abandon the requirement of a bona fide physical office.

“The bottom line is that virtual offices increase access to justice” by giving the public more alternatives for receiving legal help, she says.

Andrew Perlman, who served as chief reporter for the American Bar Association Commission on Ethics 20/20, which examined the subject of virtual law offices, says the change brings New Jersey more into the mainstream. Perlman, a professor at Suffolk University Law School in Boston, also says the movement away from a physical office requirement “seems to me to be a good one given the way the technology is evolving and the way legal services are now being delivered.” ■