

SUPREME COURT OF NEW JERSEY  
DISTRICT IIIB ETHICS COMMITTEE

Leslie M. Gore, Presenter  
R.J. Hughes Justice Complex  
25 Market Street  
P.O. Box 116  
Trenton, New Jersey 08625-0116

DISTRICT IIIB ETHICS COMMITTEE,	:	
	:	DOCKET NO: IIIB-02-011E
Complainant,	:	
	:	
vs.	:	
	:	
JAY L. EDELSTEIN	:	
	:	COMPLAINT FOR MISCONDUCT
Respondent,	:	

District IIIB Ethics Committee by way of complaint against Respondent, says:

**GENERAL ALLEGATIONS**

1. Jay L. Edelstein, Esquire (respondent) was admitted to the Bar of this State in 1991.
2. Respondent maintains law offices at One Greentree Plaza, Suite 201, Marlton, New Jersey 08060.

**FIRST COUNT**

1. On or about March 30, 2001, Respondent sent a letter of solicitation for legal services to Enrico J. Capone.
2. Respondent's letter stated his interest in representing Mr. Capone with regards to a motor vehicle accident that he had been involved in on October 26, 2000.

3. At the time Mr. Capone received the letter of solicitation from Respondent, he had already retained the grievant, Harvey Mitnick, Esquire to represent his interests in the motor vehicle accident and he sent Respondent's letter at solicitation to Mr. Mitnick.

4. Respondent's letter of solicitation did not contain the required language as provided under RPC 7.3(b)(5).

5. Respondent's failure to include the language required by RPC 7.3(b)(5) is a violation of RPC 7.3(b)(5).

#### **SECOND COUNT**

1. On or about April 16, 2001, the District IIIB Ethics Committee received a Transfer of Grievance from the District IV Ethics Committee in which Harvey Mitnick, Esquire alleges that Attorney Edelstein does not maintain a bona fide office for the practice of law in the State of New Jersey.

2. Respondent's failure to maintain a bona fide office as outlined under Rule 1:21-1(a) is a violation of RPC 5.5.

DISTRICT IIIB ETHICS COMMITTEE

Dated: June 19, 2002

/s/ Leslie M. Gore, Esquire  
Presenter/Investigator

ROBERT N. AGRE, ESQUIRE  
70 TANNER STREET  
HADDONFIELD, NEW JERSEY 08033  
(856) 428-7797  
Attorney for Jay L. Edelstein

DISTRICT IIIB ETHICS COMMITTEE,	:	
	:	DOCKET NO: IIIB-02-011E
Complainant,	:	
	:	
vs.	:	
	:	
JAY L. EDELSTEIN	:	ANSWER TO COMPLAINT
	:	FOR MISCONDUCT
Respondent,	:	

Jay L. Edelstein, Esquire, by way of Answer to the Complaint,  
says:

**GENERAL ALLEGATIONS**

1. Admitted.
2. Admitted.

**FIRST COUNT**

1. Admitted that Respondent sent a letter to Enrico J. Capone in which respondent invited Mr. Capone to call Respondent's office for the purpose of consulting with Respondent about Mr. Capone's automobile accident. Respondent cannot speculate as to whether not that consultation would have resulted in Respondent representing Mr. Capone; however, had Mr. Capone divulged to Respondent that he was represented at the time that he received Respondent's letter, Respondent, as his letter indicates, would have advised Mr. Capone to disregard the letter that Respondent had sent to him.

2. As indicated in Respondent's answer to paragraph one of the First Count, Respondent acknowledges that he expressed an interest in meeting with Mr. Capone to discuss Mr. Capone's automobile accident dated October 26, 2000. Likewise, Respondent emphasized that had he known that Mr. Capone was represented on March 30, 2001, Respondent would not have sent a letter to Mr. Capone inviting him to consult with the Respondent.

3. Neither admitted nor denied. At the time that Respondent sent the letter to Mr. Capone, Respondent did not know whether or not Mr. Capone was represented by counsel. In his letter to Mr. Capone, he told Mr. Capone to disregard the correspondence, if, in fact, Mr. Capone had retained an attorney.

4. Admitted.

5. Admitted.

#### **SECOND COUNT**

1. Respondent is without sufficient knowledge to admit or deny when a transfer of grievance was effected. Denied that Respondent failed to maintain a bona fide office for the practice of law in the State of New Jersey at the time that the grievance was lodged.

2. Denied. Respondent maintained a bona fide office for the practice of law in the State of New Jersey.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Respondent maintained a bona fide office for the practice of law and was in compliance with Rule 1:21-1(a) during all time periods covered in the complaint.

**SECOND AFFIRMATIVE DEFENSE**

Any violation of RPC 7.3(b)(5) was unintentional on the part of Respondent.

**DEMAND FOR DISCOVERY**

Respondent hereby demands all documents, memoranda, physical evidence (including but not limited to videotapes and/or photographs), audiotapes, investigative notes, names and addresses of all witnesses upon whom the complainant intends to rely, and any and all other exhibits upon which the complainant intends to rely at the time of the ethics hearing.

Law Offices of

ROBERT N. AGRE

July 12, 2002

/s/ Robert N. Agre

**VERIFICATION**

Respondent, Jay Edelstein, verifies all answers and defenses contained herein.

Dated: July 17, 2002

/s/ Jay Edelstein



DISTRICT IIIB ETHICS COMMITTEE	:	SUPREME COURT OF NEW JERSEY
	:	DISCIPLINARY REVIEW BOARD
Complainant,	:	DOCKET NO: IIIB-02-011E
	:	
vs.	:	HEARING PANEL REPORT
	:	RECOMMENDING ADMONITION
JAY L. EDELSTEIN, ESQ.	:	
	:	
Respondent,	:	

To The Honorable Chair and the Members of the Disciplinary Review Board, the District IIIB Ethics Committee Hearing Panel respectfully reports:

**I. PROCEDURAL HISTORY**

The respondent, Jay L. Edelstein, Esquire, (hereinafter "respondent"), was admitted to the Bar of the State of New Jersey in 1991. At all times relevant, he was engaged in the practice of law at 230 South Broad Street, Suite 900, Philadelphia, Pennsylvania 19102. Respondent alleges he had a bona fide office located at One Greentree Plaza, Suite 201, Marlton, New Jersey 08053, at all times relevant. He resides in Voorhees, New Jersey.

During these proceedings, he was represented by Robert N. Agre, Esquire of 70 Tanner Street, Haddonfield, New Jersey 08033. This complaint for misconduct was presented by Leslie M. Gore, Esquire of Hughes Justice Complex, 25 Market Street, P.O. Box 116, Trenton, New Jersey 08625-0116, a member of the IIIB Ethics Committee.

A formal Complaint, a copy of which is attached hereto, was filed with the District IIIB Ethics Committee under Docket No. IIIB-02-011E dated June 19, 2002. A Verified Answer, a copy of which is attached hereto, was then filed on behalf of the Respondent on July 12, 2002. Discovery was conducted and a hearing was held on December 10, 2002 before a panel consisting of Jeffrey S. Apell, Esquire, Chair, Nancy I. Abbott, Esquire, and Ronald Monokian, Public Member.

## **II. SYNOPSIS OF ALLEGATIONS**

The formal Complaint alleges that the Respondent sent a letter of solicitation for legal services to Enrico J. Capone. It was alleged at the time that Mr. Capone received the letter of solicitation from the Respondent, Mr. Capone had already retained the Grievant, Harvey Mitnick, Esquire, to represent his interests in a particular motor vehicle accident. It is further alleged that the Respondent's letter of solicitation did not contain the required notices required in RPC 7.3(b)(5)(i), (ii), and (iii), all in violation of RPC 7.3(b)(5).

RPC 7.3(b)(5) states that

a lawyer shall not contact, or send a written communication to, a prospective client for the purpose of obtaining professional employment if the communication involves unsolicited direct contact with a prospective client concerning a specific event. . . when such contact has pecuniary gain as a significant motive except that a lawyer may send a letter by mail to a prospective client in such circumstances provided that the letter (i) bears the word "ADVERTISEMENT" prominently displayed in capital letters at the top of the first page of text; and (ii) contains the

following notice at the bottom of the last page of text: before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision."; and (iii) contains an additional notice also at the bottom of the last page of text that the recipient may, if the letter is inaccurate or misleading, report same to the Committee on Attorney Advertising, Hughes Justice Complex, CN 037, Trenton, New Jersey 08625. [RPC 7.3(b)(5)(i), (ii), and (iii)].

The Second Count of the Complaint alleges in that Respondent failed to maintain a bona fide office as outlined under Rule 1:21-1(a), a violation of RPC 5.5. RPC 5.5 deals with the unauthorized practice of law and states that "a lawyer shall not: (a) practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction." Rule 1:21-1(a), states, in pertinent part, that

no person shall practice law in this State unless that person maintains a bona fide office for the practice of law in this State regardless of where the attorney is domiciled. A bona fide office is more than a maildrop, 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 purposes of this section, a bona fide office is a place where clients are met, files are kept, the telephone is answered, and 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. An attorney who practices law in this State and fails to maintain a bona fide office in this State shall be deemed to be in violation of RPC 5.5(a)...

### III. FINDINGS OF FACT

On or about March 30, 2001 Respondent sent a letter of solicitation for legal services to Enrico J. Capone. Respondent's letter stated his interest in representing Mr. Capone regarding a motor vehicle accident that Mr. Capone had been involved in on or about October 26, 2000.

On or about April 4, 2001, Mr. Capone retained the services of Grievant, Harvey Mitnick, Esquire, to represent his interests in that same motor vehicle accident. Mr. Capone presented the letter in question to Mr. Mitnick.

The letter, which was marked as P-1 in evidence (hereinafter "letter"), did not have the requisite notice language required by RPC 7.3(b)(5). It did not have the word "ADVERTISEMENT", as required by RPC 7.3(b)(5)(i), printed on the top of the letter itself.

The letter also did not have the notice language required by RPC 7.3(b)(5)(ii), which requires an attorney to provide the following at the bottom of the last page of text: "Before making your choice of attorney, you should give this matter careful thought."

This same letter failed to have the following at the bottom of the last page of text, that "the recipient may, if the letter is inaccurate or misleading, report same to the Committee on Attorney Advertising, Hughes Justice Complex, CN 037, Trenton, New Jersey 08625." This is in violation of RPC 7.3(b)(5)(iii).

The Respondent's Verified Answer admitted the allegations set forth in paragraphs 4 and 5 of the First Count of the Complaint for Misconduct, dealing with the violations of RPC 7.3(b)(5)(i), (ii), and (iii).

Regarding the Second Count of the Complaint for Misconduct, the Respondent personally testified at length before the Panel. Respondent stated that Rita, with an unknown last name, was the office manager for his landlord, American Executive Centers of One Greentree Centre, Inc. She would answer the phones or personally greet any clients or other third parties involving his law practice in New Jersey. He also stated that a Chris and Heather (each also without known last names) would likewise do the same. They were also employed by Respondent's landlord.

Jeffrey German, Esquire, the Respondent's current partner also testified on behalf of the Respondent. The Respondent did indicate that his current partner, Mr. Jeffrey German, Esquire, would also be present at the New Jersey office. However, the Panel specifically found, and which was corroborated by both Respondent and Mr. German, that Mr. German was not employed by the Respondent during the time in question in late March or early April 2001. Mr. German became employed by the Respondent in August 2001.

Respondent stated that his name (or firm's name) was not on the door to his Suite in Marlton, New Jersey. He further testified that he personally appeared during the time in question, and continues to

appear, at the office about one time per week. He also testified on December 10, 2002 that his work schedule was such that he had no plans to appear at the Marlton office until February 2003.

P-2 in evidence is the Lease dated January 7, 2002 between his current law firm and the landlord, relating to the One Greentree Plaza, Marlton, New Jersey office. The Respondent testified that the terms of P-2 lease were substantially the same as the terms of the lease were in effect at the time of the date in question. The Respondent testified that he had exclusive use of the office three (3) times a week, in that it was a shared office arrangement with another entity.

Respondent testified that either he or his secretary in Pennsylvania opened the incoming mail. Respondent averred that his Pennsylvania legal secretary would come by and pick the mail up or he would pick it up on his way to or from home in Voorhees, New Jersey.

Respondent proffered R-1 in evidence, which are various invoices from the landlord. These dealt with services rendered for October 2002 to the Respondent by the landlord. The Panel did not give any weight to R-1 in that it dealt with invoice statements a year and a half after the date in question of the alleged violation.

Respondent presented only one other witness beside himself, as stated above, Jeffrey German, Esquire, who is his current law partner. Mr. German stated that he is in the New Jersey office in question about two (2) times a week. He started to work for the Respondent

sometime in August 2001, after the date in question when the alleged violations occurred. He further stated that another associate was there from "time to time". He stated that approximately three (3) to five (5) of the landlord's employees would be present to receive faxes, open mail, and otherwise greet clients or other third parties involving the Respondent's law practice.

Mr. German stated that his firm would rely on the office staff to determine how important certain things would be regarding mail or fax or telephone calls from Court, adversaries, or clients.

#### **IV. CONCLUSIONS**

In Matter of Kasson, 141 N.J. 83 (1995), the Court reprimanded a New Jersey associate for practicing under the name of an out-of-state law firm that did not have a bona fide office. That case held that the Rule

requires more than an occasional attendance in an office by an attorney and more than an answering service unrelated to a place where business is conducted. It requires a responsible person at the office to answer questions posed by the courts, clients, or adversaries so that accurate information about the attorney's whereabouts and competent advice from the attorney can be obtained within a reasonable period of time. It is insufficient for an employee to receive and transmit messages and nothing more. [Kasson 141 N.J. at 86].

Here, the Respondent did not even have one of his own employees receive and transmit the messages. He relied upon the services of his landlord's employees, who are also responsible for other firms in answering calls and the like.

The Panel discounted Mr. German's testimony to support Respondent's Answer and Affirmative Defense that he had a bona fide office for the time period in question primarily because the testimony did not relate to the allegations contained in Count One or Count Two of the Complaint for the period in question.

However, Mr. German's testimony did support the fact that the Respondent failed to comply with RPC 5.5 and Rule 1:21-1(a). Since Mr. German's began his employment after the period in question, there appears to be more attention given the New Jersey office. We were not called on to determine whether there was a bona fide office after Mr. German was hired (or after the period in question of March and April 2001). This Panel is not making any finding about whether the Respondent, Mr. German or Respondent's law firm is complying with any Rule of Professional Conduct or Rules of Court, not relating to the period in Question listed in the Complaint.

In sum, the issue is not whether the Respondent is now complying with the bona fide office rule, but whether he violated the requirements of that in March and April of 2001.

Respondent stated that his office was a place where clients were met. However, he qualified that allegation by averring that that his was the type of practice where clients really did not come to his office and that he was generally an insurance defense attorney. His clients were more than likely corporations. However, he acknowledged that the insureds of his corporate clients were individuals

throughout, apparently, New Jersey. The Panel finds that clients could meet at that office.

Respondent further stated that he had a locked filing cabinet where files were kept. He further stated that the telephone was answered by any one of landlord's several employees.

Respondent further stated that mail was received at the office. There was an issue as to whether and when the mail was picked up. Respondent did not specify whether the mail was picked up on a daily basis or some other time frame.

The main issues that the Panel gave great weight to was whether the Respondent or a responsible person acting on his behalf could have been 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 can be obtained within a reasonable period of time. See Rule 1:21-1(a) and Kasson at 86.

The Respondent, by his own admission, was (and is) only present in the office about one (1) time a week, and there is not set time or hours that he is there. Counsel for Respondent brought up an interesting point in that how do solo practitioners comply with this Rule if they are out in Court or have another office when mail, faxes, or telephone calls come in.

The Rules, in this Panel's opinion, provide for this by allowing a "responsible person acting on the attorney's behalf to be reached." The Panel believes that this encompasses an employee, including, but

not limited to, the lawyer's secretary, paralegal or other staff member to be able to intelligently and competently discuss the nature of the file or other legal matter. This violates Rule 1:21-1 and the requirements in Kasson at 86.

The Respondent and his witness both confirmed that only employees of the landlord were regularly at the office to receive fax, answer telephone calls, or otherwise greet clients or other individuals. This violates Rule 1:21-1 and the requirements in Kasson at 86. He also admitted that he did not use any of the additional phone services available to him as a tenant, under the terms of the lease with American Executive Centers of One Greentree Centre, Inc. (his landlord), during the time in question, due to financial considerations.

It would be a major problem, and a violation of the Rule in question, to enable his landlord's employees to open files and otherwise give information out regarding those files since they were not employees of the Respondent. Not only is that disturbing to the confidentiality requirement of a lawyer, but it is just not good business practice. It, more importantly, violates the holding of Kasson and the Rules.

The Panel also found that there was no one available to respond to faxes, mail or telephone calls from the Courts, clients, or adversaries. Respondent stated that if any faxes, mail or telephone calls came in to his office, that information would be forwarded to

him or his Pennsylvania practice based upon how important the message or document was. The problem is that who would intelligently and competently be able to make that determination. See Kasson at 86.

It is also important to note that the Respondent stated that he did not use the fax service or call forwarding features offered by the landlord as part of the Lease, marked into evidence as P-2. He stated that he only used his cell phone due to the expense of using the landlord's outgoing phone service. Respondent did state that he had no charge from incoming calls and that those calls would be received by the landlord's employees.

#### **V. DETERMINATIONS**

The Panel was unanimous in its finding that the Respondent violated RPC 7.3(b)(5) concerning the solicitation letter. This is supported by the Verified Answer as well as the testimony of the Respondent. The second Affirmative Defense posed by the Respondent stating that "any violation of RPC 7.3(b)(5) was unintentional on the part of Respondent" is not supported by case law or Rule. The Respondent has the burden of proof on this affirmative defense, which may include expert testimony. There was no expert testimony provided. See Rule 1:20-6(c)(2)(B) and (C).

As for the Second Count involving bona fide office violations, the Panel was likewise unanimous in its finding that the Respondent violated RPC 5.5(a) by failing to maintain a bona fide office as required under Rule 1:21-1(a). This is supported by the fact that

neither the Respondent nor a responsible person acting on his behalf could be reached in person and by telephone to answer questions posed by the courts, clients, or adversaries. Reliance on the landlord's employees to make important decisions regarding calls, faxes, and personal visits from client's (or their insureds) does not satisfy the Rule's requirements. Furthermore, being in the office one time a week is occasional attendance, and violates Kasson, the Court Rules, and RPC 5.5, given the set of facts presented to us.

The Panel recommends admonishment for the letter solicitation violation (Count One). We also recommend admonishment for the bona fide office rule violation, as this was a first time offense (Count Two).

Respectfully submitted,

Dated: December 16, 2002

/s/ Jeffrey S. Apell, Esq.  
Panel Chair