

DISTRICT VIII ETHICS COMMITTEE	:	Supreme Court of New Jersey
	:	District VIII Ethics Committee
Complainant,	:	
	:	Docket No. VIII-00-006E
vs.	:	
	:	DISCIPLINARY ACTION
CARL D. GENSIB	:	
	:	
Respondent,	:	COMPLAINT FOR MISCONDUCT
	:	R.1:20-4

District VIII Ethics Committee by way of complaint against respondent, says:

**GENERAL ALLEGATIONS**

1. Carl D. Gensib was admitted to the bar of this state in 1990.
2. Respondent maintains law offices at 850-870 Route 1 North, North Brunswick, New Jersey.

**FIRST COUNT**

1. At all times relevant hereto A. Todd Mayo has been an attorney licensed to practice in the State of New Jersey, with offices located at 743 Highway 18 South, East Brunswick, New Jersey.
2. Between the dates of May 4, 1999 and February 10, 2000, Mr. Mayo employed a Stacey Deitch as a paralegal to assist with real estate transactions.
3. On February 10, 2000, Ms. Deitch terminated her employment with Mr. Mayo and on the following day, February 11, 2000, began employment with the respondent.

4. On the day Ms. Deitch began employment with the respondent, the respondent began sending out letters to clients of Mr. Mayo in pending real estate transactions. Twenty-one letters were sent in total, nineteen of which bear the date of February 11, 2000, and two of which bear the date of February 14, 2000. Each letter advised the addressee of Ms. Deitch's change in employment. Each letter further offered Mr. Gensib's services to continue handling the pending real estate transaction with the assistance of Mr. Deitch. In order to accomplish the foregoing, each letter invited the addressee to sign an annexed authorization which would serve to transfer the particular file from Mr. Mayo to Mr. Gensib.

5. All or some of the twenty-one letters written by the respondent to Mr. Mayo's clients, represent unsolicited direct contact with prospective clients concerning specific events, i.e. specific real estate transactions.

6. None of the twenty-one letters written by the respondent to Mr. Mayo's clients contain the word "advertisement".

7. None of the twenty-one letters written by the respondent to Mr. Mayo's clients contain the following language:

"Before making your choice of attorney, you should give this matter careful thought, the selection of an attorney is an important decision."

8. None of the twenty-one letters written by the respondent to Mr. Mayo's clients contain an additional notice advising the addressee that if the letter is inaccurate or misleading he may report same to the Committee On Attorney Advertising, Hughes Justice Complex, CN-037, Trenton, New Jersey, 08625.

9. The respondent's forwarding of these unsolicited letters without the language as set forth above, constitutes a violation of RPC 7.3 (b)(5)(i)-(iii).

#### **SECOND COUNT**

1. The complainant repeats each and every allegations contained within the First Count and makes same a part hereof as if set forth at length herein.

2. During the investigation stage of this proceeding, the respondent submitted certain documentation under cover letter of May 5, 2000.

3. Within the body of his May 5, 2000 cover letter, the respondent averred that none of the twenty-one letters sent to Mr. Mayo's clients constituted an unsolicited communication. Specifically, the respondent contended that in each case the foregoing letters were only sent in response to inquiries made by the particular clients as to the whereabouts of Ms. Deitch.

4. The respondent made the foregoing contentions, knowing them to be false at least as to some of the clients contacted.

5. Accordingly, the respondent's statements in this regard constitute a violation of RPC 8.1 (a).

Dated: (none)

DISTRICT VIII ETHICS COMMITTEE

By /s/ C. Judson Hamlin

ROBERT J. ZULLO, JR.  
An Attorney at Law of New Jersey  
7 Wirt Street  
New Brunswick, New Jersey 08901  
(732) 993-0300

DISTRICT VIII ETHICS COMMITTEE	:	Supreme Court of New Jersey
	:	District VIII Ethics Committee
Complainant,	:	
	:	Docket No. VIII-00-006E
vs.	:	
	:	DISCIPLINARY ACTION
CARL D. GENSIB	:	
	:	
Respondent,	:	VERIFIED ANSWER &
	:	REQUEST FOR HEARING

Carl D. Gensib, Esq. ("Respondent") by way of answer to the Complaint of the District VIII Ethics Committee, says, as follows:

**PRELIMINARY STATEMENT**

It is important to recognize that the grievance that is the subject of this Complaint does not involve any allegation that the Respondent injured a client through unethical behavior of any sort or of any improper conduct on the part of the Respondent during the course of an attorney - client relationship. The grievance, essentially, is an allegation by A. Todd Mayo, Esq. ("Mr. Mayo") that the Respondent and his paralegal, Stacey Deitch, engaged in inappropriate competition<sup>1</sup>.

Respondent submits that the matter must be viewed against the backdrop of the reality that real estate transactions, particularly residential real estate transactions, although a significant profit center for a law firm when done in volume, are not the exclusive

---

<sup>1</sup>This matter was the subject of a civil action: Mayo & Russ, P.A. v. Stacey Deitch and Carl D. Gensib, Esq., Superior Court of New Jersey, Docket No. MID-C-38-00.

province of attorneys in this state. Apart from South Jersey, where title companies routinely close real estate transactions, here in Central and Northern New Jersey independent persons with real estate transactional experience are contracting with lawyers to perform pre-closing, closing and post-closing services for a portion of the usual and customary fee. In fact, this practice has evolved to the point where the tables have turned against the lawyers - some of whom are now cutting deals with experienced real estate para-professionals with their own book of business for a portion of the fees such para-professionals generate.

The Committee should recognize that Mr. Mayo had such an arrangement with Stacey Deitch, a real estate paralegal whose subsequent employment by Respondent precipitated first a fee controversy, and then this Grievance.

#### **RESPONSE TO GENERAL ALLEGATIONS**

1. Respondent admits the allegations of Paragraph 1.
2. Respondent admits the allegations of Paragraph 2.

#### **FIRST COUNT**

1. Respondent admits the allegations of Paragraph 1 of the First Count.

2. Respondent denies the allegations of Paragraph 2 of the First Count in that: (a) Stacey Deitch was an independent contractor who engaged in the business of closing real estate transactions; (b) Stacey Deitch maintained her primary place of business at her residence, handled active files from that location, and (c) generally only attended closings at the offices of the attorneys with whom she

had a contractual relationship, including Mr. Mayo. Under the terms of her arrangement with Mr. Mayo, Stacey Deitch received \$350.00 for a purchase and \$200.00 for a sale or re-finance. Only in the final few months of her association with Mr. Mayo was Stacey Deitch on Mr. Mayo's payroll. Even then, her compensation was determined by the number of real estate closings that she generated for Mr. Mayo's law office.

3. Respondent admits that Stacey Deitch began employment with Respondent on February 11, 2000, but denies that Stacey Deitch terminated her employment with Mr. Mayo on February 10, 2000. Rather, after accepting an offer of employment with Respondent and giving Mr. Mayo two (2) weeks notice on February 10, 2000, Mr. Mayo summarily fired Stacey Deitch and required her to immediately leave the office - actually ushering her out the door - after overhearing her advise certain real estate salespersons with whom she had referral relationships that she would soon be ending her association with Mr. Mayo. The following day, Stacy Deitch complained to Respondent that she would now not be compensated for her files.

4. Respondent admits that he sent twenty-one (21) letters, as is alleged in the second sentence of Paragraph 4 of the Complaint. Respondent considered the letters an announcement. Respondent denies, based upon information provided by Stacey Deitch, that the persons to whom the letters were addressed were, in any real sense, clients of Mr. Mayo's in that the persons to whom the letters were addressed had initially contacted Stacey Deitch for real estate closing services.

None were clients of Mr. Mayo - independent of the business relationship that she had with him according to Stacey Deitch.

5. Respondent admits that he had no pre-existing relationship with the individuals involved; Respondent submits, upon information and belief, that Stacey Deitch, his then real estate paralegal, did have such a pre-existing relationship; Respondent denies that the communication was unsolicited in that he was advised that inquiries were being made of Mr. Mayo's office as to the whereabouts of Stacey Deitch and that Mr. Mayo's office was refusing to provide that information; Respondent denies that his personal financial gain was a significant motive for the communication, although the prospect of losing compensation was an issue for Stacey Deitch; Respondent neither admits nor denies that the letters constituted contact or communication concerning a "specific event" within the meaning of RPC 7.3 (b)(5) in that the open real estate files under consideration here would seem to be entirely different in nature than the type of specific event - a mass disaster event - that is the subject of RPC 7.3(b)(4). Respondent does not know whether or not pending real estate closings constitute specific events within the intendment of the Rule. In *Matter of Caola*, 117 N.J. 108 (1989), an unsolicited, blatantly false and misleading letter was sent to a prospective client concerning a specific event - the prospective client's recent criminal indictment. In *Shapero v. Kentucky Bar Association*, 486 U.S. 466 (1988), the advertising activity there sought to be proscribed (unsuccessfully) involved unsolicited communications to mortgage foreclosure defendants. *Matter of Anis*, 126 N.J. 448 (1993) and *Matter*

of Ravich, Koster, Tobin, 155 N.J. 357 (1998), the Pan Am Flight 103 crash over Lockerbie, Scotland and the gas line explosion at the Durham Woods apartment complex in Edison, respectively, involved mass disaster events. Nevertheless, two common elements in these cases are: (a) the happening of an event that would render the prospective client more vulnerable, mentally or emotionally, than might otherwise be the case and (b) no pre-existing relationship whatsoever between the solicitor and the prospective client. Those elements are not present in this case.

6. Respondent admits the allegations of Paragraph 6.

7. Respondent admits the allegations of Paragraph 7.

8. Respondent admits the allegations of Paragraph 8.

9. Respondent denies that the sending of the letters constituted a violation of RPC 7.3(a) and (b)(5) in that Respondent did not consider the communication to be unsolicited and letters were directed only to persons who were regarded by his paralegal, Stacey Deitch, as her clients under the then-terminated contractual arrangement that had existed between Stacey Deitch and Mr. Mayo. The persons involved were not prospective clients; they were current clients of Respondent's newly associated real estate paralegal. Law firms break up frequently.

When they do, departing lawyers communicate the fact that they are leaving ( or have left) to existing (or former) clients and some clients are persuaded to follow the departing lawyers. This case seems no different. If this is was ethical violation, Respondent was not cognizant of it.

## **AFFIRMATIVE DEFENSES**

1. The First Count pleads a violation of RPC 7.3.(a)(5)(i)-(iii) - an advertising violation that, pursuant to R.1:19A-4(a), is subject to consideration solely by the Advertising Committee. (See also, *Petition of Felmeister & Isaacs*, 104 N.J. 515 (1986)). Accordingly, the District VIII Ethics Committee lacks jurisdiction over the First Count of the Complaint and the First Count fails to state a claim upon which relief can be granted.

2. The letters forming the basis of the First Count of the Complaint constitute commercial speech protected under Article I of the Constitution of the United States. *Bates v. State Bar of Arizona*, 433 U.S. 350, (1977); *Peel v. Attorney Disciplinary Comm.*, 496 U.S. 91, (1990); *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, (1985); *Central Hudson Gas & Elec. v. Public Service Comm.*, 447 U.S. 557, (1980).

WHEREFORE, Respondent respectfully requests that the First Count of the Complaint be dismissed.

## **SECOND COUNT**

1. Respondent reavers his responses to the allegations made in the First Count, as if fully set forth herein.

2. Respondent admits the matters alleged in Paragraph 2 of the Second Count.

3. Respondent admits that in his letter dated May 5, 2000 to Craig M. Terkowitz, Esq. and Lorraine K. Barnett, Respondent wrote, the following:

"... an announcement was sent out only to those individuals who had attempted to or had gotten in touch with Stacey Deitch."

4. Respondent denies the matters alleged in Paragraph 4.

Respondent was informed and believes that the letters that are the subject of the First Count of the Complaint were sent to persons identified on a list prepared by Stacey Deitch herself from information maintained on her home computer. At the time of those letters and the May 5, 2000 letter, Respondent understood that all names on the list represented persons who had contacted Stacey Deitch or attempted to contact Stacey Deitch, either through real estate sales persons or directly. All names on the list in fact represented persons whom Stacey Deitch regarded as clients of hers, under the terms of the contractual arrangement that had existed between her and Mr. Mayo. Respondent nevertheless believed the statement to be true on February 11, 2000, February 14, 2000 and May 5, 2000.

5. Accordingly, Respondent denies any violation of RPC 8.1(a) in that he did not knowingly make a false statement of material fact.

#### **AFFIRMATIVE DEFENSES**

1. R.1:19A-4(h) provides that when the ethical issues presented involve advertising and other communications within the jurisdiction of the Advertising Committee the First Count, and also other ethical issues - the Second Count, the Advertising Committee shall take jurisdiction of the entire matter. Accordingly, the District VIII Ethics Committee lacks jurisdiction over the Second Count and the Second Count fails to state a claim upon which relief can be granted.

WHEREFORE, Respondent respectfully requests that the Second Count of the Complaint be dismissed.

**REQUEST FOR HEARING**

Respondent respectfully requests a hearing on the charges.

Respectfully submitted,

/s/ Robert J. Zullo, Jr.  
Attorney for Respondent

**VERIFICATION**

1. I am the Respondent in the above entitled action.
2. The contents of the above Answer are true to the best of my knowledge and belief.
3. I certify that the above statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

Dated: February 23, 2001

/s/ Carl D. Gensib, Esq.

**CERTIFICATION OF SERVICE**

On February 23, 2001, I served a copy of the within Verified Answer and Request for Hearing via regular U.S. mail as follows:

(i) Original and one (1) copy to:

Brian D. Gillet, Esq.  
Office of Attorney Ethics  
Hughes Justice Complex  
P.O. Box 963  
Trenton, New Jersey 08625

(ii) Six (6) copies to:

Manny Gerstein, Esq., Secretary  
1901 Highway 27  
P.O. Box 356  
Edison, New Jersey 08818

(iii) One (1) copy to:

Craig M. Terkowitz, Esq., Vice Chair  
District VIII Ethics Committee  
c/o Law Offices of Lorraine K. Barnett  
200 Centennial Avenue, Suite 205  
P.O. Box 1487  
Piscataway, New Jersey 08855-1487

(iv) One (1) copy to:

Janet Brownlee Miller, Statewide Coordinator  
Office of Attorney Ethics  
Hughes Justice Complex  
P.O. Box 963  
Trenton, New Jersey 08625

I certify that the foregoing statements are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: February 23, 2001      /s/ Robert J. Zullo, Jr., Esq.

SUPREME COURT OF NEW JERSEY  
DISTRICT VIII ETHICS COMMITTEE

DISTRICT VIII ETHICS COMMITTEE, :  
: DOCKET NO: VIII-00-006E  
Complainant, :  
: vs. :  
: DISCIPLINARY ACTION  
CARL D. GENSIB, ESQ. :  
: TRANSCRIPT OF PROCEEDINGS  
Respondent. :

Held at  
MIDDLESEX COUNTY COURTHOUSE  
1 JFK SQUARE  
NEW BRUNSWICK, NEW JERSEY  
THURSDAY, OCTOBER 3, 2002  
10:15 A.M.

BEFORE:

C. JUDSON HAMLIN, ESQ. - CHAIRMAN  
MARC BRESSLER  
JERRALD KAPLAN

APPEARANCES:

JULIUS J. FEINSON, ESQ., PRESENTER  
PATRICK J. BRADSHAW, ESQ., ATTORNEY FOR RESPONDENT

ALSO PRESENT:

A. TODD MAYO, ESQ.  
CARL D. GENSIB, ESQ.

Reported by:

SANDRA A. BYBEL, C.S.R.

REPORTING SERVICES ARRANGED THROUGH

VERITEXT/NEW JERSEY REPORTING COMPANY, L.L.C.  
Kabot Battaglia & Hammer - Suburban Shorthand  
Waga & Spinelli - Arthur Frannicola, CSR  
25B Vreeland Road  
Suite 301

Florham Park, N.J. 07932  
Tel: (973) 410-4040 Fax: (973) 410-1313

MR. HAMLIN: The record will reflect after consideration of the motion to dismiss by the presenter, the Committee has considered the respective merits and is in concurrence on the following findings.

Todd Mayo and Carl Gensib are both attorneys of law of the State of New Jersey. Mr. Mayo was the original complainant. This is not a situation of a client who has suffered some loss or claim making a claim against improper activity on behalf of an attorney, rather it's a dispute between two attorneys frankly over the diversion of business.

Specifically, the Committee and the Panel concludes that Mr. Gensib apparently hired away a paralegal that was employed by Mr. Mayo. The paralegal apparently had working relationships with real estate interests which provided a fairly steady flow of real estate business to an attorney by whom she was employed.

The dispute resulted in a lawsuit which was entitled Mayo and Russ versus Stacey Deitch, D-E-I-T-C-H, and Carl Gensib, Esq. and that bore a Superior Court docket number MID-C-38 which was a dispute over fees as a result of the severance. That matter was amicably settled between the attorneys. This complaint, which was filed by Mr. Mayo, continued.

In the course of the investigation the presenter of the complaint reached the conclusion that the letter mailed by Mr. Gensib was possibly violative of the rules only by not including a

particular sentence which advised that the choice of attorney should be given careful consideration.

The second count had to deal with an unspecified allegation that one of the letters may have been mailed at a different time than was indicated by the respondent in the course of the investigation.

After further investigation, the presenter, Mr. Feinson, has concluded that the heavy burden of proving guilt by clear and convincing evidence could not be met, and in any event, no public injury occurred, no person suffered any loss, and under the circumstances and under the applicable rules decided to make a motion to dismiss.

The Committee has considered it, the Panel has considered it rather, and we are prepared to dismiss the complaint.

Are those findings in accordance with the Committee or the Panel?

MR. KAPLAN: Yes.

MR. BRESSLER: Yes.

MR. HAMLIN: So ruled. Let me go get them in.

(The participants are called in)

MR. HAMLIN: The record will reflect that all parties are back in the presence of the Panel.

Gentlemen, the Panel has considered the application of Mr. Feinson and we have unanimously agreed that the dismissal is an

appropriate resolution of this matter. We have granted the application.

We will forward our findings to the Committee and the matter will be concluded.

MR. MAYO: Thank you.

MR. GENSIB: Thank you.

MR. HAMLIN: Thank you very much.

#### **CERTIFICATE OF OFFICER**

I, SANDRA A. BYBEL, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination the witness was duly sworn by me.

I do further certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties involved, and that I am not financially interested in the action.

/s/ Sandra A. Bybel  
Notary Public of the State of New Jersey  
My Commission expires 06/26/07  
CSR License No. 30XI00058300