

Ronald B. Grayzel, Esq. - Presenter
2 Lincoln Highway
P.O. Box 2905
Edison, New Jersey 08818-2905
(732) 494-2727

DISTRICT VIII ETHICS COMMITTEE	:	
	:	DOCKET NO: VIII-06-015E
Complainant,	:	
	:	
vs.	:	DISCIPLINARY ACTION
	:	
GARY L. MASON, ESQ.,	:	COMPLAINT
	:	
Respondent,	:	

District VIII Ethics Committee, by way of Complaint against the Respondent, says:

GENERAL ALLEGATIONS

1. Gary Mason was admitted to practice to the Bar of the State of New Jersey in 1990.
2. At all times relevant hereto, Respondent practiced with the firm of Klafter, Mason & Socher, L.L.C., 300 Craig Road, Manalapan, New Jersey.

FIRST COUNT

1. In approximately May of 2003, Respondent was retained by Steven Wise to represent Marx Toys.
2. Respondent represented Marx Toys.
3. Marx Toys had a licensing agreement with United Internet Technologies, Inc. The subject matter of the agreement was a significant aspect of the business of Marx Toys.
4. Gary L. Mason alleges that he withdrew from the representation of Marx Toys.

5. On or about August 14, 2003, an Order To Show Cause was filed by Marx Toys against United Internet Technologies, Inc. and others in Superior Court, Monmouth County, Chancery Division.

6. Plaintiff, Marx Toys, was represented by Michael Chazan, Esq.

7. Defendant, UIT, was represented by Gary L. Mason, Esq.

8. Plaintiff's counsel and plaintiff's President/CEO advised Respondent that he should not represent defendant due to a conflict of interest.

9. Respondent refused to withdraw as counsel for UIT.

10. A Hearing on the Order To Show Cause was conducted by the Honorable Alexander Lehrer on August 14, 2003.

11. Plaintiff sought an injunction against UIT regarding an alleged violation of the licensing agreement and also an Order precluding Respondent from performing any legal work for the defendant.

12. Gary L. Mason, Esq. appeared telephonically on behalf of United Internet Technologies at the Hearing.

13. The issue of Respondent's potential conflict of interest was raised at the Hearing.

14. An Order was entered prohibiting Respondent from representing UIT, Inc. in the litigation.

15. Respondent's actions violated RPC 1.8 and 1.9.

SECOND COUNT

1. District VIII Ethics Committee repeats and reiterates the facts and contentions set forth in the First Count and repeats them herein.

2. After the Hearing on the Order To Show Cause, Respondent continued to participate in the dispute despite the existence of a conflict and the entry of the Order.

3. Plaintiff's new counsel requested that Respondent cease and desist from participating in the matter.

4. Respondent continued to participate in the matter.

5. Respondent's actions constituted a violation of RPC 1.8, 1.9 and 8.4.

DISTRICT VIII ETHICS COMMITTEE

Dated: February 15, 2007

/s/ Ronald B. Grayzel

LoFARO & REISER, L.L.P.
55 Hudson Street
Hackensack, NJ 07601
(201) 498-0400
Attorneys for Respondent

DISTRICT VIII ETHICS COMMITTEE	:	
	:	DOCKET NO: VIII-06-015E
Complainant,	:	
	:	
vs.	:	DISCIPLINARY ACTION
	:	
GARY L. MASON, ESQ.,	:	VERIFIED ANSWER
	:	
Respondent,	:	

Gary L. Mason, Esq., the above-captioned respondent ("Mason"), by way of answer to the Disciplinary Action Complaint filed by the District VIII Ethics Committee ("Complainant"), says as follows:

AS TO THE GENERAL ALLEGATIONS

1. Admitted.
2. Admitted.

AS TO THE FIRST COUNT

1. Admitted in part, denied in part. By retainer agreement dated May 1, 2003, Mason's firm was retained to represent Marx Toys and Entertainment Corp. ("Marx"). At the time, Steven Wise ("Wise") was the CEO of Marx and executed Mason's retainer agreement on behalf of Marx.

2. Mason admits that his firm represented Marx from May 1, 2003 through August 4, 2003, the date on which Mason resigned as Marx's counsel.

3. Mason admits that Marx had a licensing agreement with United Internet Technologies, Inc. ("UIT"), but can neither admit nor deny the remaining allegations

contained in this paragraph as Mason was only aware of the licensing relationship and not familiar with other aspects of the parties' relationship. Admittedly, the licensing relationship was a major component of the parties' business relationship.

4. Admitted.

5. Admitted.

6. Admitted.

7. Mason admits that for the purpose of the August 14, 2003 Order to Show Cause hearing, he appeared via telephone on behalf of all defendants.

8. Mason does not recall Wise ever advising him not to represent defendants because of an alleged conflict of interest, but admits receiving correspondence authored by Mr. Chazen suggesting that a conflict of interest existed.

9. Denied. As per the Court's August 14, 2003, Mason agreed to discontinue any representation of defendants.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Denied. The August 14, 2003 Order specifically states that Mason agreed not to represent defendants.

15. Denied.

WHEREFORE, Mason hereby demands that the First Count of the Complaint be dismissed.

AS TO THE SECOND COUNT

1. Mason repeats and restates all answers to the preceding paragraph of the Complaint as if they same were set forth at length herein.

2. Denied. Wise and his counsel specifically asked Mason to participate in a meeting subsequent to the Order to Show Cause hearing, for the purpose of assisting both parties in facilitating a settlement. Mason did not represent any party at that meeting. He was there at plaintiff's request for the benefit of all parties.

3. Admitted. Subsequent to the above-referenced meeting, plaintiff's new counsel advised Mason not to participate any further in any discussions involving resolution.

4. Denied.

5. Denied. See comments above regarding RPC's 1.8 and 1.9. There is no reference to any subsection of RPC 8.4 so Mason cannot possibly respond to this very general and conclusory allegation.

WHEREFORE, Mason hereby demands that the Second Count of the Complaint be dismissed.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.

2. Mason did not violate either RPC 1.9 or 1.8 because whatever communications he may have had with Mr. Chazen or with the Court on the return date of the order to show cause did not materially and adversely affect Marx.

3. Any information Mason had regarding the Marx/UIT dispute he acquired from Mr. Lomonaco after Mason had already resigned as counsel for Marx.

4. The conduct alleged in the Complaint, even if proven by clear and convincing evidence, constitutes minor misconduct and Mason should have been offered diversion in accordance with Court Rule 1:20-3(i)(2).

5. Mason was deprived due process by not being offered diversion in accordance with Court Rule 1:20-3(i)(2).

6. Marx did not suffer any adverse consequences as a result of Mason's limited involvement in the Marx/UIT litigation.

7. The Complaint fails to put Mason on proper notice of the specific subsections of RPC 1.8, 1.9 and/or 8.4 that Mason allegedly violated.

8. The subject matter of the Marx/UIT litigation was not something Mason was ever engaged to work on as counsel for Marx and, as a result, Mason could not possibly have information that would have been adverse to Marx in that litigation.

9. The allegations set forth in the Complaint cannot be established by clear and convincing evidence.

10. The claims asserted in the Complaint are barred by the principals of res judicata and collateral estoppel as the same have already been the subject of a full hearing before the District IX ethics committee.

MITIGATING FACTORS

1. For the entirety of his 17 years in practice, Mason has been actively involved with the State, National and Local bar associations. Mason served as the treasurer of the New Jersey State Bar Association Young Lawyers Division, as well as its delegate to the American Bar Association Young Lawyers Division. At the national level, Mason has been appointed to leadership positions on professionalism committees, section steering committees and served as the district representative to the Federal Emergency

Management Agency. He also served on the State Bar's General Counsel Executive Committee and, from 1997 -2000, on the Board of Directors for the Institute of Continuing Legal Education. Since 1999, Mason has served on the Monmouth County Bar Association Professionalism Committee and various substantive law committees.

2. Mason has devoted a significant amount of time to various charitable and community causes. He volunteers with Make a Wish Foundation, and coaches various youth sports. Most notably, Mason is the regional director of Comfort Zone Camp, Inc. ("CZC"), a non-profit bereavement camp for children who have a lost a parent, sibling or primary caregiver. After September 11, 2001, Mason single-handedly spearheaded a tri-state campaign on behalf of CZC and organized one (1) day "mini camps" and weekend bereavement camps for children who lost a loved one on 9/11. Beginning in 2005, after three (3) years of only serving the needs of the 9/11 children, and as a direct result of Mason's fundraising and marketing efforts, the NJ/NY division of CZC will open its doors to all grieving children in the tri-state area.

3. During his 15 years of practice, Mason has provided only competent, professional and ethical legal service to the residents of New Jersey, as exemplified by the character references annexed hereto. As further demonstrated by the attached character references, Mason's reputation in the community and in the Bar is exemplary.

4. None of the aggravating factors typically discussed in the context of an ethics violation and set forth in various precedent are applicable herein.

5. If, in fact, Mason's conduct constitutes an ethical infraction, it was an isolated incident and clearly not for personal gain.

6. Marx was not injured, damaged or prejudiced in any way as a result of Mason's conduct.

7. Notwithstanding the fact that Mason acknowledged the appearance of a conflict and agreed not to represent the defendants, Marx's counsel and Wise asked Mason to participate in a subsequent meeting for the purpose of discussing resolution of the matter. Had the conflict of interest, if it existed at all, been that egregious, it is doubtful that either Wise or Marx's counsel would have actively solicited Mason's participation in settlement discussions.

8. If a conflict existed, it was limited to two (2) specific acts: (i) Mason's electronic mail to Michael Chazen, Esq. and his participation in the August 14, 2003 telephone conference. No damage or injury occurred as a result of these acts, and no one - neither Wise nor Marx - was prejudiced in any way by Mason's involvement. Rather, the Court awarded Marx the equitable relief it sought.

9. Mason agreed not to continue representing defendants in the UIT/Marx litigation after the August 14, 2003 Order to Show Cause hearing.

10. Mason's disciplinary record is spotless.

11. Mason has fully cooperated with the presenter and with the Complainant with regard to this matter, and has made every effort to fully disclose Mason's recollection of events which occurred more than eighteen (18) months ago.

WHEREFORE, Mason respectfully submits that his conduct, as set forth in the Complaint, did not rise to the level of any ethical violation and specifically did not violate any section of either RPC 1.8 , 1.9 or 8.4 and, therefore, the Complainant's Complaint must be dismissed.

DEMAND FOR HEARING ON CHARGES AND MITIGATION

Mason hereby demands a hearing on charges and mitigation with regard to this matter.

LoFARO & REISER, L.L.P

Attorneys for Respondent

Dated: April 13, 2007

/s/ Glenn R. Reiser

VERIFICATION

I, Gary L. Mason, Esq., am the respondent in the within disciplinary action and hereby certify as follows:

1. I have read every paragraph of the foregoing Answer to the Complaint and verify that the statements therein are true and based on my personal knowledge.
2. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Gary L. Mason