

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 98-199

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IN THE MATTER OF  
RON MARTIN KUBIAK  
AN ATTORNEY AT LAW

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Decision

Argued: September 17, 1998

Decided: May 22, 2000

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Steven K. Kudatzky appeared on behalf of respondent.

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

This matter was dismissed by the District IIIB Ethics Committee (“DEC”), after a hearing. Following an appeal by the Office of Attorney Ethics (“OAE”), pursuant to R.1:20-15(e)(2), we determined to bring the matter on for hearing. We heard the matter on September 17, 1998 and determined to remand it for a supplemental hearing on the charge

of the unauthorized practice of law. A supplemental hearing took place on January 27, 1999. The Board thereafter decided the case without re-argument.

The two-count complaint charged respondent with violations of RPC 5.5(b) (assisting a person not a member of the bar in the performance of an activity that constitutes the unauthorized practice of law); RPC 5.4(b) (forming a partnership with a non-lawyer if any of the activities of the partnership consists of the practice of law); and RPC 5.4(a) (sharing legal fees with a non-lawyer) (count one); and RPC 7.1, RPC 7.2 and RPC 7.5 (using false and misleading advertising) (count two). More specifically, RPC 7.1(a) states that a lawyer shall not make false or misleading communications about the lawyer's services or any matter in which the lawyer has or seeks a professional involvement. RPC 7.2 relates specifically to advertising and prohibits certain types of advertisements. Finally, RPC 7.5 prohibits a lawyer from using a firm name, letterhead or other professional designation that violates RPC 7.1.

The charges in this matter stem from a grievance filed by Richard Kramer, who was engaged in a practice similar to that of respondent's. Both sold legal kits to the public. Kramer alleged that respondent was associated with an outfit by the name of Divorce Centers of New Jersey, Inc., a company engaged in the business of preparing divorce pleadings for pro se plaintiffs who wished to obtain uncontested divorces.

Respondent was admitted to the New Jersey bar in 1970. At the relevant times he maintained an office in Westmont, New Jersey. Respondent had no ethics history at the time

of the first hearing. Subsequently, on February 22, 2000, the Court suspended respondent for three months for conduct that occurred in 1989, including failure to safeguard trust funds and recordkeeping violations. That conduct was exacerbated in 1998 when respondent sent an alleged "sympathy card" to the grievants (parents of a deceased client), containing veiled threats to reveal negative privileged information about the client and the client's son, in an attempt to influence the grievants to dismiss their grievance. In re Kubiak, 162 N.J. 543 (2000).

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On March 18, 1996, prior to the DEC hearing, respondent filed a motion to dismiss the formal complaint in this matter on the grounds of lack of jurisdiction, failure to state a cause of action and the existence of a pending civil litigation between the grievant and respondent. The motion was also renewed at the DEC hearing. The DEC denied respondent's motion, finding that, although respondent had threatened to file a lawsuit against the grievant for trademark infringement, at the time of the DEC hearing there was no litigation pending between the two. The DEC also found that the question of trademark infringement was entirely unrelated to the ethics complaint and that there was no substantial similarity between the two matters that posed a bar to the proceedings. The DEC further found meritless respondent's argument that the complaint failed to state a claim. Finally, the

DEC concluded that it had jurisdiction over the matter. Although respondent contended that the allegations in the complaint pertained to an "ancillary law related business," rather than to his law practice, the DEC found that the charges dealt with respondent's conduct as an attorney and that, therefore, the disciplinary authorities had jurisdiction to decide the matter.

Also the DEC sua sponte raised an issue regarding its jurisdiction vis-à-vis jurisdiction by the Committee on Attorney Advertising ("CAA"). It noted that R. 1:19A-4(h) provides that, in the case of dual grievances, where one predominantly relates to advertising, the CAA shall take jurisdiction and may take jurisdiction of all other non-advertising related grievances. Here, the DEC found that advertising did not predominate the charges and that, hence, the CAA's jurisdiction was discretionary. The DEC contacted the CAA, who declined jurisdiction over the case.

We find that the DEC properly exercised jurisdiction in this matter.

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Respondent testified at the initial hearing. The presenter produced only one witness, Thomas McCay, the committee member who investigated the grievance.<sup>1</sup> On remand, we requested the submission of respondent's ledgers and telephone records. Supplemental

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<sup>1</sup> This matter was investigated by the District IV Ethics Committee and heard by the District III Ethics Committee.

testimony from respondent's sister, Dorothy Moran, as well as from respondent was also obtained.

A synopsis of the allegations of the complaint are helpful to an understanding of this matter. The complaint alleged that Divorce Centers of New Jersey, Inc. ("DCNJI") was incorporated by respondent's sister, Dorothy K. Moran, who is not an attorney. DCNJI was in the business of selling "do-it-yourself divorce kits." According to the complaint, Moran engaged in the unauthorized practice of law through DCNJI, of which respondent was a partner and with which he shared fees. The complaint also alleged that respondent misleadingly advertised his law practice as a "divorce center."

According to respondent's answer, he maintained an office for the limited practice of law in Westmont, New Jersey. Respondent explained that he primarily engaged in an alternative dispute resolution practice. He stated that he also designed a "protocol" whereby pro se litigants would pursue uncontested and no-fault divorces based on the grounds of an eighteen-month separation.

Respondent admitted that he initially served as the attorney for DCNJI and that subsequently, for a brief period, he served as its supervising attorney. Specifically, respondent supervised the staff's duties and activities in marketing the divorce kits. Respondent claimed that DCNJI's policy was to limit contact on the telephone with potential customers. Any interaction was limited to obtaining names, addresses and telephone numbers and mailing them "self-explanatory-written information." Respondent claimed that

DCNJI, whose trade name was the Divorce Center™, neither offered nor provided legal advice. Respondent acknowledged that he authored the "no-fault" and uncontested divorce forms, instructions and manuals published and distributed by DCNJI to its customers.

According to the DEC investigator, he investigated Richard Kramer's allegations that respondent was engaged in the unauthorized practice of law through DCNJI, that respondent had contact with the customers of DCNJI, and that respondent gave legal advice to its customers. The investigator testified that he first reviewed materials sent to him by Kramer. Thereafter, he met with respondent, who admitted to him that he was involved in selling "do-it-yourself" divorce kits to customers attracted by advertisements placed in various papers or otherwise referred to DCNJI. Respondent explained to the investigator that his sister was the owner and incorporator of DCNJI. Respondent described his role with DCNJI as that of legal adviser and supervising attorney. He explained to the investigator that, in that capacity, he would deal on the telephone with individuals who contacted DCNJI. Respondent would speak to prospective clients on the telephone and identify himself as a lawyer. He told the investigator that he provided the clients with information about forms that were available from the company and discussed other services available from DCNJI, including typing or preparation of forms, if the clients did not wish to prepare them. Respondent also informed them of other documents that were available, such as, for instance, affidavits for name changes.

According to the investigator, respondent informed him that, from late 1992 until May 1993, he acted as DCNJI's legal supervisor and did the majority of its work. The clerical work was done by Moran's daughter. The investigator stated that, during the course of his investigation, he received a letter from a Superior Court judge in Sussex County, requesting that respondent's practices be examined. Enclosed with the judge's letter was a revised form of a final judgment of divorce order that had been drafted or revised for a client of DCNJI. Respondent had sent the order to the judge for signature, as the supervising attorney for DCNJI. Exhibit OAE-3.<sup>2</sup>

As to the fees charged by DCNJI, the investigator testified that respondent informed him that fees began at \$125, rose to \$225 and then increased to \$299. The investigator's testimony did not explain what the various fees covered. It is not clear whether they were solely to obtain the divorce kit and materials or for other services.

Respondent admitted to the investigator that, on occasion, he would receive a fee and deposit it into his attorney trust account. He would thereafter pay over the entire fee to DCNJI, without retaining any portion for himself. Respondent told the investigator that he had a ledger memorializing these transactions. He never turned them over to the investigator, however, although he was requested to do so. Respondent also told the investigator that he

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<sup>2</sup> A copy of the revised order was not made a part of the exhibits. It is, therefore, not known what revisions were made to the order.

never received a fee for any of the work he did for DCNJI and that no fee arrangement had ever been worked out between them.

The investigator obtained from respondent a copy of DCNJI's standard form letter and checklist questionnaire for prospective customers. Respondent told the investigator that he might have drafted the letter and questionnaire, admitting that, at a minimum, he had reviewed it and put it into final form.

The DCNJI letter to prospective customers stated, among other things, that DCNJI wanted to help the customer in processing their divorce through the New Jersey court system and that it was the "only registered, licensed and attorney approved DIVORCE CENTER in the State of New Jersey." The letter stated that DCNJI would do "whatever it takes to take the confusion out of your divorce process" and that the divorce processors were attorney-trained and supervised and did not violate New Jersey Supreme Court opinions on the "unlawful" practice of law. The letter also contained a statement that DCNJI would work directly with the customer by mail or over the telephone through a toll-free number. Along with the letter, DCNJI enclosed a basic divorce questionnaire. Some of the questions in the divorce questionnaire were as follows:

1. Do you want to represent yourself without a lawyer for your own uncontested divorce?
2. Have you and your spouse been living separate and apart in different places of residence for eighteen (18) consecutive months?
3. Have you been a resident of the State of New Jersey during the past year?



\* \* \*

7. Have all issues been resolved between you and your spouse, such as, child custody, visitation of children, child support, spousal support, division of property and other financial or economic issues?

8. Do you want a no-fault and uncontested divorce in New Jersey?

The questionnaire indicated that, if the customers answered "yes" to all of the questions, they could represent themselves in their own divorce with DCNJI's mail-processing assistance.

If the customers answered "no" to any of the questions, they were instructed to call DCNJI "so that [DCNJI] might be able to help [them] with a possible solution." Exhibit OAE-4.

The investigator also testified about several advertisements that were published in local newspapers. One of the advertisements mentioned the "DIVORCE CENTER™" and stated "NO-FAULT & UNCONTESTED DIVORCE in New Jersey without a lawyer." The ad listed as telephone numbers "609 DIVORCE" and "1-800-8-NO-FAULT." Exhibit OAE-5. The second advertisement referred to a divorce hotline. This advertisement also offered help with uncontested divorces in New Jersey, without the aid of a lawyer. It claimed that it was an attorney-supervised service, not a kit, and that it drafted all the paperwork and prepared the individual for court. The number for this service was the same as that listed in the previous ad. Exhibit OAE-6.

In addition to the foregoing, the DEC investigator found that DCNJI listed its services in the Atlantic County White Pages under "Divorce Center," with the same telephone numbers. A separate newspaper advertisement appeared in the Courier Post for "DIVORCE CENTER RON KUBIAK, ESQ." Among other things, the ad stated that Kubiak "Divorce by Mail" service applied only to New Jersey divorces, where all issues were already resolved and the marital couple had been living separately for at least eighteen months. The phone number listed in that ad was "1-800-99-DIVORCE." Exhibit OAE-8. An ad that appeared in a free newspaper read "Divorce Center, Ron Kubiak, Attorney at Law." It stated the following: "I will prepare and process your divorce and YOU represent yourself in court." The phone number listed there was "1-800-36-KUBIAK." Exhibit OAE-9.

The investigator testified that, when he questioned respondent about the advertisements, respondent replied that DCNJI ran various advertisements in different newspapers and had various telephone listings, in order to promote business. According to the investigator, respondent stated that all the "short" names or trade names, "Divorce Center," "Divorce Hotline," "Divorce Center of Ron Kubiak," were used in conjunction with the advertising of DCNJI.

The investigator called the different telephone numbers advertised. When he dialed DCNJI, as listed in the Atlantic County white pages, he received a message indicating that he had reached DCNJI. The message stated that, if the individual wanted to represent him or herself in a no-fault and uncontested divorce, he or she should call the participating

divorce center toll free, 1-800-99-DIVORCE. When the investigator called that number, he received a number of recorded options indicating that he had reached the Divorce Center of Ron Kubiak. The first option stated as follows:

The Divorce Center of Ron Kubiak provides divorce processing assistance to persons who want to represent themselves in court for their own divorce without a lawyer. At the Kubiak Divorce Center we work with you directly through the mail so an appointment is not necessary at our New Jersey center. . . . The Kubiak Divorce Center will process your divorce quickly so that you can be expected to be divorced in about two to three months after your divorce complaint is filed. We provide you with status reports during that time and until your case is scheduled for court. . . .

[Joint Exhibit 1]

According to the investigator, after dialing all the various telephone numbers, he concluded that they were "intertwined, if not the same." Apparently, respondent's law practice had a different phone number. The investigator admitted, however, that the distinction among the different entities was less than crystal clear.

The investigator testified as follows:

I didn't see the distinction between his law firm and the operation of Divorce Center of Ron Kubiak. I didn't see any distinction between those two.

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. . . I made a reasonable conclusion based upon what I saw. I didn't see any difference between the law firm, his law firm and this other business he had called Divorce Centers of Ron Kubiak, and coupling that with his statement to me that he didn't like direct client contact, it seemed to me that . . . this referral to the Divorce Center of Ron Kubiak was an effective referral to him as a lawyer.

[1T81<sup>3</sup>]

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<sup>3</sup> 1T denotes the transcript of the October 31, 1997 DEC hearing.

Upon completion of his investigation, the investigator believed that the entities were interrelated and that it was difficult to sort out one entity from the other. The investigator was unable to say that they were separate, stand-alone entities. The investigator concluded the following:

The phone numbers were just very confusing and seemed to tie the two entities, Ron Kubiak Divorce Center and Divorce Center of New Jersey together to one another. You would call Divorce Center of New Jersey expecting to deal with them and you would be sent to Ron Kubiak's Divorce Center. As someone looking at it, even as a lawyer, I have difficulty trying to sort out who was who.

[1T98-99]

According to the investigator, respondent admitted that he would speak to the customers of DCNJI. Respondent stated that he would discuss what they wanted to do, give them directions, if they wanted, sell them the forms and, if desired, arrange to have the forms typed for them at an additional fee. Also, respondent would determine whether they needed other services, such as the preparation of an affidavit, and would offer that service for an additional fee.

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At the initial DEC hearing, respondent testified that the "divorce by mail processing service" was geared to supply the pro se litigant with general forms to enable them to proceed with their own divorce. The object was not to provide any legal advice, but to avoid

customer contact. Contrary to the investigator's testimony, respondent claimed that there was no personal consultation; everything was done through the mail. Respondent explained that the "Divorce Center of Ron Kubiak" was separate and apart from DCNJI. He claimed that it was not incorporated, but a free-standing business that was short-lived. Respondent used the designation "Esq." in his advertisement for this entity because he wanted people to know that, even though he did not act as an attorney, the title set him apart from, presumably, other divorce centers. Respondent argued that advisory opinions did not prohibit him from using the title "Esq." for his "ancillary business."

In sum, respondent maintained that he did not give legal advice to the customers of the "divorce by mail centers." He explained that they were merely given written instructions on what to do and how to address the court.

As to compensation, respondent testified that he was never paid for his role as a supervising attorney for DCNJI. He claimed that there was an understanding that, at some point in time, he would receive some type of economic benefit. Respondent stated that eventually he did receive a royalty for designing the "no-fault kit" and that he designed the last kit in 1996. According to respondent, DCNJI has been inactive since then.

Respondent also testified that his role as the supervising attorney was to make sure that the staff was not giving legal advice to his customers. He supervised two of his nieces and two other individuals who worked at the center. He claimed that the four were not providing legal or paralegal services, but merely word processing or technical services.

According to respondent, his law office, too, was separate and apart from the offices of DCNJI, as was the Divorce Center of Ron Kubiak. The Divorce Center of Ron Kubiak was his ancillary, law-related business, a sole proprietorship, intended to be an affiliate of the DCNJI. However, respondent indicated that within one month he terminated his activities in connection with that business.

Respondent asserted that his law firm never received any referrals as a result of the ancillary divorce center business. He also denied forming a partnership with his sister, Dorothy Moran, owning any stock in DCNJI or being an officer in the company. Respondent added that he merely incorporated the business for his sister and did all the legal work to get the business going.

At the initial DEC hearing, respondent testified that fees paid to DCNJI were deposited into its own account. However, there were several occasions when he received DCNJI's checks. Although respondent did not explain how this occurred, he claimed that he deposited the money into his trust account and thereafter remitted the entire amounts to DCNJI. Later, at the supplemental hearing, respondent explained that several checks made payable to DCNJI and endorsed by DCNJI were deposited into his trust account. Respondent explained that because initially DCNJI did not have a bank account, he had held DCNJI's money in trust and then remitted the money once the account was established. As to a couple of checks issued in 1993 to DCNJI, but deposited into his trust account, respondent was unable to recall the reason for those deposits. He could not recall much of what transpired

in 1993, including who was doing the processing of the forms or whether he was practicing law in and around 1993 to 1994.

In short, respondent testified, he did not share any legal fees with DCNJI and he did not receive any fees in connection with his work with the center.

Respondent described the practice of DCNJI as follows:

DCNJI's employees would take information from a prospective customer on an application; they would put the information in the complaint, would file the complaint and would keep the customer informed of every step. Respondent claimed that he had no telephone contact with customers of DCNJI. He later admitted that, although he did not recall having telephone contact with the center's customers, he may have spoken to them. The company was only permitted to sell the kits and type information, if necessary, as provided by the customer. Respondent claimed that he only spent approximately two hours a week supervising employees of DCNJI to ensure that the model used by the company was in accordance with the court rules and court opinions. Respondent admitted that he had prepared the procedures, manuals and written guidelines for DCNJI employees, but did not have any samples available at the DEC hearing.

Respondent testified that the customers of DCNJI were given instruction sheets regarding courtroom etiquette. They would call the center seeking information about the status of their divorces. Respondent's response as to how he was aware of the status of the cases was somewhat vague. Initially, he indicated that either he would call the court to

determine the status of the matters or the court would send him information. Later, however, respondent claimed that, if customers called seeking the status of their case, they would be told to call the court clerk. Respondent indicated that all materials sent to the customers directed them to call the court directly and to speak with the case manager to "iron out" any problems. Respondent asserted that nothing in the pleadings identified DCNJI. He stated that "the processing of their documents went to the Divorce Center." After a complaint was typed by DCNJI it was returned to the customer for his or her review. If the information was correct, the customers would return it to DCNJI. While respondent first implied that the customer would submit a filing fee to DCNJI and, thereafter, DCNJI would file the complaint in the customer's behalf, he later testified that DCNJI did not file any documents on behalf of its customers.

The testimony respondent provided at the supplemental hearing was confusing and vague. Many times he failed to reply to the questions posed and discussed other issues instead. At one point, the panel chair admonished respondent to pay attention to the questions.

According to respondent, his office had been moved three times, along with his records. He was, therefore, unable to locate forms requested by the OAE relating to his business, which, according to respondent, in 1990 consisted primarily of alternative dispute resolution.



Respondent explained that DCNJI's exclusive business was selling divorce kits and that it no longer did any processing. The record does not establish when DCNJI stopped doing processing. Respondent testified that his own business, Divorce Center of Ron Kubiak, was in the business of performing the processing. He stated that he was the sole proprietor of this divorce center, which was unrelated to DCNJI.

The services respondent provided to the customers of Divorce Center of Ron Kubiak included assisting individuals who wanted a no-fault uncontested divorce and had resolved all issues with their spouses. He claimed that he provided a limited legal service. According to respondent, he believed that the form he used included a disclaimer that no legal advice would be given because there were no issues to resolve and also that, if legal advice was required, the individuals should contact the county bar association. Respondent alleged that he was not acting as the customers' attorney. According to respondent, the processing he performed involved filling out forms from information obtained from customers. The record, however, does not show whether there was a nexus between the kits sold by DCNJI and respondent's processing of information gleaned from those kits.

Respondent's testimony detailing his involvement both with his own customers as well as those of DCNJI was confusing and at times contradictory. It is, therefore, difficult to determine the true extent of DCNJI's and respondent's participation in preparing and filing documents on behalf of their customers. For example, in connection with a judgment of divorce filed with the court, respondent first claimed that he amended the judgment, as

supervising attorney, and filed it with the court. Respondent claimed that, because the judge had required an extra clause in a standard order, it was just typed in. He provided no advice, no counsel, no legal opinion or legal expertise to add the clause. Respondent added that, if any of the forms submitted to the court would prove to be inadequate, the customer would contact the center about what was needed, prompting a new form to be sent to the customer. Later, however, respondent claimed that he merely submitted to the court an entirely different form that included language permitting a party to resume her given name.

At the supplemental hearing, Moran testified that she was the president and sole officer of DCNJI. The company was incorporated in 1978 and was created to offer do-it-yourself divorce kits. According to Moran, respondent developed and designed the divorce kit and the divorce-by-mail process and system. Moran worked out of her house and, on occasion, from a room in respondent's office. Contrary to respondent's testimony, Moran testified that there were no other employees of the company. Moran explained that, during summers, her two daughters would help out by putting together divorce kits, photocopying materials and going to the post office.

When the OAE requested the names of Moran's customers from 1990 through 1993, she replied that she did not keep that information. Also, she claimed that she had no sample divorce kits to submit to the OAE for review nor did she have any telephone records from the business.

Moran alleged that respondent's connection to DCNJI was to ensure that her business fell within appropriate guidelines, presumably set out in New Jersey State Bar Association v. Divorce Center of Atlantic County, 194 N.J. Super 532 (Ch. Div. 1984) and Supreme Court Committee on the Unauthorized Practice of Law Opinion 20, 100 N.J.L.J. 893 (Oct. 6, 1997), more fully discussed below. Moran stated that neither she nor respondent had any contact with the public. 2T10.<sup>4</sup> She further claimed that she did not pay respondent for any assistance he provided.

According to Moran, customers were obtained through either ads placed in newspapers or DCNJI's listing in the telephone directory. Moran stated that, when customers would contact DCNJI, they would reach a recorded message explaining that DCNJI was offering divorce kits for "no-fault uncontested divorces based on eighteen months separation, that they represented themselves without an attorney and for more information to send their name and address and further information would be sent to them about cost and so forth." 2T12-13. According to Moran, customers were never able to call someone from DCNJI directly; they always reached an answering machine. If there was a question requiring legal advice, DCNJI directed the customer to contact an attorney. If the customer did not have an attorney, it was suggested that they contact the county bar association or a lawyer referral service. Moran did not recall ever filing any documents with the court on behalf of her customers.

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<sup>4</sup> 2T denotes the transcript of the January 27, 1999 supplemental DEC hearing.

Moran alleged that she never saw her clients, never helped them fill out any forms and never gave them any advice on how to fill out the forms. The newspaper ads, however, claimed that DCNJI would assist with the processing. According to Moran's explanation, this meant that, if clients did not feel they could fill the forms out themselves, they were to fill out a worksheet and mail it back to DCNJI; the information set forth in the worksheet would then be transcribed onto the forms. DCNJI maintained a number of different forms, including forms for name changes and judgments.

The OAE questioned Moran about a newspaper ad (OAE-6), which stated that DCNJI offered help with uncontested divorces in New Jersey without a lawyer, that the service was supervised by an attorney, that the service was not a kit and that DCNJI drafted all paperwork and prepared the individual to appear in court. Moran replied that the ad had not been used for very long because it was not "a good ad." She explained that the processing service that was advertised related to "where the person did get the worksheet, and then it came back, we did the kit." 2T17.

As to sharing fees with respondent, Moran was questioned about a \$1,345 personal check that she wrote to respondent on January 28, 1992 and that was deposited into respondent's trust account. Moran contended that it was not a fee to respondent and that it related to a personal matter. With regard to several other checks drawn to DCNJI and deposited into respondent's trust account, Moran's testimony mirrored that of respondent's. She claimed that she did not have a checking account set up when DCNJI first began

operating; therefore, the money was deposited into respondent's trust account and later remitted to her.

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The DEC found that respondent and the investigator testified truthfully and credibly "in all material respects." The DEC also found credible Moran's and respondent's testimony at the supplemental hearing, particularly in light of the remoteness of events. Based on the testimony presented at both the initial and supplemental hearing, the DEC found no clear and convincing evidence of the charged violations.

The DEC found only one instance that might have constituted the unauthorized practice of law: the preparation of the revised final judgment of divorce forwarded to the Somerset County judge. The DEC determined, however, that there was no unauthorized practice of law in this instance. The DEC noted that the better practice for DCNJI, as acknowledged by respondent, would have been to refer the customer to a lawyer referral service to obtain attorney representation. The DEC, nevertheless, believed that respondent was attempting to fulfill what he understood his obligation to be under ACPE Opinion 20, that is, acting as a supervising attorney for the DCNJI staff. The DEC believed that respondent's actions in this regard constituted the practice of law, rather than assisting a non-lawyer in the unauthorized practice of law.

The DEC found respondent's testimony credible on the issue of sharing fees with a non-lawyer. The DEC believed respondent's assertions that he deposited the fees into his attorney trust account, collected it and turned it over in its entirety to DCNJI without any deductions for himself. The DEC concluded that respondent's conduct in this regard was, in fact, required by RPC 1.15(b).

As to the charges of false and misleading advertisements (RPC 7.1, RPC 7.2 and RPC 7.5) the DEC concluded that the investigator mistakenly assumed that the "Divorce Center of Ron Kubiak" was identical to respondent's law practice. The DEC found that each was a separate entity, with a separate address, a separate telephone number and a separate purpose.

The DEC found meritless the argument that the word "center" implies a large organization. The DEC remarked that the reference in the ads to "I" or "my" negated that implication. The DEC also found that the ads related to DCNJI, not to respondent's law practice. Because the text of the advertisements limited the services offered to simple, no-fault, uncontested divorces by mail, the DEC believed that there was no danger that the public would be misled by any claim of specialization or ability to obtain a superior result.

In conclusion, the DEC found that 1) the processing, when it took place, consisted of extracting information from client-prepared answers to form questions and plugging it into pleadings and judgments; 2) that persons with something other than uncontested, no-fault divorces were told to contact an attorney or provided with a telephone number of a lawyer

referral service; 3) that all DCNJI funds initially deposited in respondent's trust account were turned over to DCNJI without being "shared" in any way; 4) that respondent did not receive payment or any other compensation from Moran or DCNJI; and 5) that respondent had no proprietary interest in DCNJI, which was wholly owned and controlled by Moran. The DEC, thus, recommended the dismissal of all charges against respondent.

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Following a de novo review of the record, we disagree with the DEC's conclusion that the complaint should be dismissed in its entirety.

A synopsis of the relevant case law in this matter is helpful in determining whether respondent engaged in unethical conduct. In a case similar to this matter, New Jersey State Bar Association v. Divorce Center of Atlantic City, 194 N.J. Super. 532 (Ch. Div. 1984), the bar association sued the divorce center, an entity owned by Richard Kramer, alleging that he had engaged in the unauthorized practice of law by selling "do-it-yourself" legal kits. There, the center was selling legal kits to members of the public through advertisements in newspapers and in the yellow pages. The divorce center was listed in the yellow pages under the category of "Divorce Supplies" and the listing for "Lawyers." In that case, the owner of the company was a non-lawyer. When individuals contacted the divorce center to obtain a divorce or bankruptcy kit, they were requested to answer a questionnaire about the services

they were seeking. The forms submitted to the customers contained a disclaimer that the center employees were not attorneys and that they were not permitted to give legal advice. Customers were required to certify that they were representing themselves in the action and that matters involving child custody, support, alimony, etc., were to be resolved by them, not by the center. Prior to the center's use of the questionnaire, the same type of information was obtained by means of an interview. The customers could opt to use the typing services of the divorce center to prepare a complaint, a summons and a letter to the clerk of the court. The customers received an instruction sheet describing the procedures to be followed in preparing and filing the complaint.

The Chancery Court ruled, however, that the divorce center's practices went beyond the selling of legal forms. It found that the exchange between the representatives of the divorce center and the customers included giving advice and interpreting raw data for the purposes of completing the various pleadings. The so-called "typing" services offered by the divorce center also appeared to be a veiled way of providing claimed expertise and guidance that went well beyond the mere typing of a form. The court took judicial notice that the costs for the typing seemed to be inflated for merely filling in blanks on a form.

The court concluded that the sale of "do-it-yourself legal kits" with related textual instructions is permissible in this state and does not constitute the practice of law. The mere sale of such kits, however, was significantly distinct from conduct and activity that included personal contact between the distributor of the kit and its customers in the nature of



"consultation, explanation, recommendation or advice or other assistance in selecting particular forms, in filling out any part of the forms or suggesting or advising how the form should be used in solving the particular customers' marital problems." [Citations omitted].

This type of contact was deemed to constitute the unauthorized practice of law and was prohibited. In analyzing the sale of divorce kits in the context of the unauthorized practice of law, the court cited Supreme Court Committee on the Unauthorized Practice of Law Opinion 20, Supra, 100 N.J.L.J. 893 (Oct. 6, 1977). Opinion 20 prohibits personal contact between the distributor of the kit and the purchaser when it takes the form of "consultation, explanation, recommendation or advice or other assistance in selecting particular forms and filling out any part of the forms or suggesting how the forms should be used in solving a particular customers' marital problem." Id. at 899. The opinion does not, however, proscribe all personal contact between the distributor of the kit and the customer. The court found that the selling of divorce kits is permitted, as long as the public is insulated from the improper, incorrect and otherwise unauthorized advice from the purveyors of the kit. In order to further this goal, the court required an adequate disclaimer in the materials, stating that the seller is not an attorney and does not render legal advice. The kit should alert the public that it does not deal with certain issues, such as child custody or equitable distribution. The court found that Opinion 20 also prohibits the sale of these kits through personal contact in the nature of consultation, explanation, recommendation or advice or other assistance in selecting particular forms and filling out any part of the forms or

suggesting or advising how the forms should be used in solving the customers' particular problems. The court, thus, found that verbal exchanges need be limited to a description of the kits available, prices, payment plans and directions to the customer that the kits contain their own instructions and are, therefore, self-explanatory. The court found that the use of questionnaires by the Divorce Center was prohibited. The court ruled that, if a customer wishes to have the center type the forms, the forms must be completed by the customer without any assistance from the center.

The presenter urged a finding in the matter now before us that DCNJI engaged in the unauthorized practice of law by violating the guidelines set forth in the Divorce Center of Atlantic City case. The presenter pointed to DCNJI's letter to prospective customers indicating that it will "help in processing" or "do whatever it takes to take the confusion out of your divorce process" and "work directly with you." The presenter maintained that these statements go beyond the mere sale of a kit and indicate that DCNJI will actually consult with and assist a customer in the processing of the divorce. The presenter, however, failed to present any evidence that DCNJI actually participated in any improper practices. Although DCNJI indicated that it would assist the customers, the manner in which it planned to do so is left to speculation.

Next, the presenter suggested that DCNJI's questionnaire sent to prospective customers is proof of the unauthorized practice of law. While the Divorce Center of Atlantic City opinion prohibits the use of questionnaires, it is not clear that the use of all

questionnaires is prohibited. The questionnaire prohibited in Divorce Center of Atlantic City might differ from those used by DCNJI. It is clear that DCNJI sought to elicit information to determine whether an uncontested divorce based on an eighteen-month separation period was possible. If the customer utilizing DCNJI's form answered "no" to any of the questions on the questionnaire, an uncontested divorce might not have been possible. In that case, the use of the kit was inappropriate and an attorney might be needed. As the DEC pointed out, though, the fact that the questionnaire included information that one of the specialists would contact the customer to provide further information or help does not establish to a clear and convincing standard that that help would have been in the form of the unauthorized practice of law.

Finally, Exhibit OAE-3, the letter from respondent to Judge Parker, does not clearly and convincingly establish that DCNJI was engaged in the unauthorized practice of law. It is clear from the letter that respondent submitted a revised final judgment of divorce to the court. One can only guess about the nature of the revision to the order: it might have been merely a correction to the order or respondent may have exceeded the permissible duties of the divorce center, thereby engaging in the unauthorized practice of law. There is simply no evidence, however, to clearly show what occurred here. Moreover, the testimony presented at the supplemental hearing did not clarify exactly what transpired. As to information that we requested to be submitted at the supplemental hearing, both Moran and respondent

purportedly were unable to locate the information disseminated to the public by DCNJI. Again, we are left to speculation as to the propriety of the information.

The presenter contended that respondent violated RPC 5.4(b) by forming a partnership with DCNJI, which was engaged in the unauthorized practice of law. Based on Opinion 20, and Divorce Center of Atlantic City, however, there is no clear and convincing evidence that either DCNJI engaged in the unauthorized practice of law or that respondent formed a partnership with DCNJI. Respondent testified that he assisted his sister in the formation of the corporation, but that he was neither an officer or stockholder of the corporation. He stated that he acted as the supervising attorney to ensure that the corporation would not engage in the unauthorized practice of law. Hence, there is no clear and convincing evidence of a violation of RPC 5.4(b).

The presenter claimed that respondent's telephone number and that of DCNJI were the same. This was not borne out by the evidence. Respondent's private practice number was different from that of DCNJI or any of its affiliates. What is troublesome, though, is that the telephone number for DCNJI, the Divorce Center, the Divorce Hotline and Divorce Center of Ron Kubiak were all somehow interconnected. Some of the telephone numbers were the same and those that were not had recordings that eventually led to respondent or his divorce center. The evidence regarding the telephone numbers and the various affiliates was confusing and inconsistent. The investigator had a reasonable belief that, eventually, when calling DCNJI, a consumer would reach respondent's law practice. Moreover, respondent's

testimony regarding the interrelationship of DCNJI and its affiliates was less than clear. While respondent initially told the investigator that he spoke to DCNJI customers, he later testified that he did not speak to the company's customers or at least did not recall speaking to them.

In addition to the confusion over the various telephone numbers, respondent's advertisements were also confusing and, indeed, misleading. Respondent argued that DCNJI and its affiliates did not engage in the practice of law. However, its advertisements might lead a reasonable person to conclude otherwise. As shown in the investigator's transcribed telephone calls to DCNJI (Exhibit Joint-1), the customer was referred to a toll free number, "1-800-99-DIVORCE." After dialing this number, a recorded message announced that it was the Divorce Center of Ron Kubiak. The corresponding newspaper advertisement was captioned "DIVORCE CENTER RON KUBIAK, ESQ." (Exhibit OAE-8), or "No Fault and Uncontested Divorce in New Jersey."

Another advertisement read as follows: "DIVORCE CENTER, Ron Kubiak, Attorney at Law." Exhibit OAE-9. While the other advertisements offered uncontested divorces without a lawyer or "divorce by mail," Exhibit OAE-9 states that "I will prepare and process your divorce and YOU represent yourself in court." Clearly, anyone that saw the multiple advertisements could have been misled and confused. The record did not clarify which entities were affiliates of DCNJI and only provided "kits" without legal assistance and which related to respondent's law practice. Based on this confusion, the investigator's confusion

and the likelihood of confusion to the public, we find that DCNJI and its affiliates used misleading advertising, in violation of RPC 7.1, RPC 7.2 and RPC 7.5.

We were, however, unable to find that respondent improperly shared fees with a non-lawyer. No evidence was presented to rebut respondent's claim that he did not receive fees for his supervisory assistance to DCNJI. The fact that respondent deposited fees into his trust account and then disbursed them in their entirety does not prove "fee splitting." Moreover, both respondent and his sister claimed that checks that were made out to DCNJI were deposited into respondent's trust account early on because DCNJI had not yet established its own bank account; respondent, therefore, held the checks in trust and later remitted the monies to DCNJI. As to the checks written in 1993, respondent did not recall the circumstances leading to their deposit into his trust account. He theorized that it might have been an error and that that money, too, was remitted to DCNJI. There is, thus, no clear and convincing evidence of fee splitting between respondent and DCNJI, in violation of RPC 5.4(a) (sharing legal fees with a non-lawyer).

The DEC found the testimony of both the investigator and respondent to be believable. However, respondent contradicted himself while explaining his personal contact with DCNJI customers. He admitted to the investigator that he did speak with customers. The messages on his answering machine certainly implied that he spoke with them. Yet, he testified that he did not recall speaking directly to customers. Likewise, respondent's testimony about contacting the courts to obtain the status of a client's case was

contradictory. Respondent implied that the courts gave DCNJI information about its customers' cases. Respondent also claimed that either he or DCNJI would research the status of cases with the courts. Later, however, respondent testified that the "customers" were told to contact the court directly.

While respondent's testimony was less than credible in many respects, there was insufficient evidence presented for a finding that either respondent, DCNJI or its affiliates engaged in the unauthorized practice of law or that respondent formed a partnership with a non-lawyer to engage in the unauthorized practice of law.


In sum, we unanimously find that respondent violated RPC 7.1, RPC 7.2 and RPC 7.5. In other matters involving false and misleading communications, either admonitions or reprimands have been imposed. See In the Matter of Ernest H. Thompson, Jr., Docket No. DRB 97-054 (June 5, 1997) (admonition for sending a targeted direct mail solicitation flyer with false and misleading statements to an individual); In the Matter of Bryan F. Ferrick, Docket No. DRB 97-307 (October 28, 1997) and In the Matter of Ronald Aurzeja, Docket No. DRB 97-308 (October 18, 1997) (admonitions imposed for causing targeted direct mail solicitation letters containing false and misleading communications to be sent to homeowners whose properties may have been over-assessed for tax purposes); In re Sharp, 157 N.J. 27 (1999) (reprimand where attorney made false and misleading communications about her services in newspapers reaching the general public and targeting the elderly).

In determining the appropriate level of discipline, we have considered, in mitigation, respondent's representation that he is no longer in the business of promoting "divorce kits." On the other hand, his prior discipline and the fact that his testimony was less than candid, even contradictory in certain areas, are aggravating factors.

After balancing the mitigating and aggravating circumstances, we unanimously determined that respondent's conduct should be met with a reprimand, rather than an admonition. Two members did not participate.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 5/22/00

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board



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**SUPREME COURT OF NEW JERSEY**  
**DISCIPLINARY REVIEW BOARD**  
**VOTING RECORD**

**In the Matter of Ron Martin Kubiak**  
**Docket No. 98-199**

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**Argued: September 17, 1998**

**Decided: May 22, 1999**

**Disposition: Reprimand**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Cole			x				
Boylan							x
Brody			x				
Lolla			x				
Maudsley							x
Peterson			x				
Schwartz			x				
Wissinger			x				
<b>Total:</b>			7				2

*Robyn M. Hill 6/5/00*  
Robyn M. Hill  
Chief Counsel