

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|-----------------------------|---|----------------------------|
| In the Matter of | § | |
| LEONARD B. EDELSTEIN | § | No. 262, 2014 |
| | § | |
| Respondent. | § | Board Case No. 2012-0258-B |
| | § | |
| | § | |

Submitted: June 6, 2014

Decided: June 18, 2014

Before **STRINE**, Chief Justice, **BERGER** and **RIDGELY**, Justices.

O R D E R

This 18th day of June 2014, it appears to the Court that the Board on Professional Responsibility has filed a Report on this matter pursuant to Rule 9(d) of the Delaware Lawyers' Rules of Disciplinary Procedure. Neither the Office of Disciplinary Counsel nor the Respondent filed objections to the Board's Report. The Court has reviewed the matter pursuant to Rule 9(e) of the Delaware Lawyers' Rules of Disciplinary Procedure and approves the Board's Report.

NOW, THEREFORE, IT IS ORDERED that the Report filed by the Board on Professional Responsibility on May 19, 2014 (copy attached) is hereby APPROVED and ADOPTED.

IT IS FURTHER ORDERED that:

1. Respondent is hereby suspended from the practice of law in the State of Delaware for a period of one year effective as of the date of this Order.

2. Respondent is prohibited from providing advice to any Delaware clients on matters of Delaware law for a period of one year.
3. Respondent is prohibited from acting *pro hac vice* on any matter in Delaware for a period of three years.
4. The contents of the Board's report shall be made public.
5. The ODC is directed to file within ten days of the date of this Order the costs of the disciplinary proceedings. Thereafter, Respondent is directed to pay all costs within thirty days.

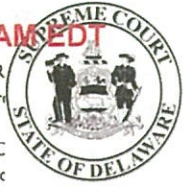
BY THE COURT:

/s/ Henry duPont Ridgely
Justice



DARBY | BROWN-EDWARDS LLC
ATTORNEYS

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May 19, 2014

Stephen D. Taylor, Court Administrator
Supreme Court of Delaware
Elbert N. Carvel State Office Building
820 North French Street
Wilmington, DE 19899

DELAWARE SUPREME COURT
2014 MAY 20 A 9 47
DEPARTMENT CLERK
WILMINGTON

VIA HAND DELIVERY

Re: Board on Professional Responsibility – Case No. 2012-0258-B- Board Report and Recommendation of Sanctions

Dear Mr. Taylor:

Enclosed herewith, please find the *Board Report and Recommendation of Sanctions* in connection with the above-referenced matter. Please do not hesitate to let me know if you require anything further.

Very truly yours,

DARBY | BROWN-EDWARDS LLC

By: _____

Theresa V. Brown-Edwards

**BOARD ON PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF THE STATE OF DELAWARE**

In the Matter of:) **CONFIDENTIAL**
)
LEONARD B. EDELSTEIN,) Board Case No.2012-0258-B
)
Respondent.)
)
)

Before Theresa V. Brown-Edwards, Esquire (Chair), Susan H. Kirk-Ryan, Esquire and Louise Roselle

Patricia Bartley Schwartz, Esquire for Petitioner, Office of Disciplinary Counsel

Charles Slanina, Esquire for Respondent

Dated: May 19, 2014

**BOARD ON PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF THE STATE OF DELAWARE**

In the Matter of:) **CONFIDENTIAL**
)
LEONARD B. EDELSTEIN,) Board Case No.2012-0258-B
)
Respondent.)
)
)
)

BOARD REPORT AND RECOMMENDATION OF SANCTIONS

On January 30, 2014, a panel of the Board on Professional Responsibility (the "Board") consisting of Theresa V. Brown-Edwards, Esquire, Chair, Susan H. Kirk-Ryan, Esquire and Louise Roselle (the "Panel"), conducted a hearing (the "Hearing")¹ on the allegations of misconduct brought by the Office of Disciplinary Counsel ("ODC") against Leonard B. Edelstein ("Respondent"). Patricia Bartley Schwartz, Esquire appeared on behalf of the ODC and Charles Slanina, Esquire appeared on behalf of the Respondent. Pursuant to Rule 9(d) of the Delaware Lawyers' Rules of Disciplinary Procedure, this is the Report, Findings and Recommendation of the Board (the "Report"), by the assigned Panel regarding the matter. The date for filing of the Report has been extended, by order of the Court, until May 19, 2014.

I. Procedural Background

On December 5, 2013, the ODC filed a Petition (the "Petition") for Discipline against Respondent alleging Respondent engaged in the unauthorized practice of law in violation of **Rule 5.5(b)(1) and Rule 5.5(b)(2)** of the Delaware Lawyers' Rules of Professional Conduct (the "Rules").

On December 23, 2013, Respondent filed a Response (the "Response") to the Petition in which Respondent admitted the allegations contained in Count I of the Petition, the Rule

¹ The transcript of the January 30, 2014 hearing is cited as "Tr. at ___."

5.5(b)(1) violations, but admitted in part and denied in part the allegations contained in Count II of the Petition, the 5.5(b)(2) allegations.

On January 28, 2014, the Panel Chair conducted a pre-trial conference with counsel to the ODC and Respondent.

No pre-trial motions were filed nor were any pre-trial stipulations submitted by the parties.

At the Hearing, during the portion pertaining to the allegations of misconduct, the Panel heard testimony from the single witness offered by the ODC, namely, the Respondent himself. The Respondent did not present any witnesses during its case in chief.

During the sanctions phase of the Hearing, the Panel received into evidence, a singular stapled packet of documents, marked "Respondent's Exhibit 1 for Mitigation Purposes."² (Tr. at 44-45) The Panel also heard testimony from three witness offered by Respondent, namely, William L. McLaughlin, Jr., Esquire, Michael I. Silverman, Esquire and the Respondent who took the stand on his own behalf. The ODC did not present any witnesses during the sanctions phase of the hearing.

II. Factual Background

1. Respondent is not a member of the Bar of the Supreme Court of Delaware. (Petition and Answer, ¶ 1 and Tr. at 14)
2. Respondent is an active member of the Bar of the Commonwealth of Pennsylvania. (Petition and Answer, ¶ 2 and Tr. at 14)
3. Respondent was admitted to the Pennsylvania bar in 1965, began the practice of law in 1968, and has practiced ever since then. (Tr. at 14-15)
4. At all times relevant to the Petition, Respondent was associated with the law firm of Edelstein, Martin & Nelson in its Philadelphia office. (Petition and Answer, ¶ 3 and Tr. at 15)
5. Edelstein, Martin & Nelson also has an office in Wilmington, Delaware. (Petition and Answer, ¶ 4 and Tr. at 15)
6. Respondent has never worked out of the Delaware office of his firm. (Tr. at 15)

² The ODC did not oppose the receipt into evidence of Respondent's Exhibit 1 for Mitigation Purposes.

7. From February 2006 until March 2013, Respondent represented Delaware residents in over 100 matters arising out of motor vehicle accidents which occurred in Delaware and involved a policy of insurance issued for a vehicle registered in the State of Delaware.³ (Petition and Answer, ¶ 6 and Tr. at 16-18)

8. Many of Respondent's Delaware clients came to him as a result of a referral from Morris Peterzell, D.O., Wilmington, Delaware. (Petition and Answer, ¶ 8 and Tr. at 17)

9. Respondent met with some of his Delaware clients to discuss his representation at Dr. Peterzell's office. (Petition and Answer, ¶ 9 and Tr. at 17)

10. Some of Respondent's Delaware clients came to him as a result of television advertisements which targeted Delaware residents. (Petition and Answer, ¶ 10 and Tr. at 18-19)

11. Respondent's firm has been running television ads for twenty years. (Tr. at 18)

12. Respondent met with some of his Delaware clients at Edelstein, Martin & Nelson's Wilmington, Delaware office. (Petition and Answer, ¶ 11 and Tr. at 20)

III. Allegations of Misconduct

In light of the pleadings, in which all of the allegations of misconduct in Count I were admitted and the allegations related to Count II were admitted in part and denied in part, ODC and Respondent requested that the Panel address both the allegations of misconduct and sanctions at the Hearing. The Panel consented to this approach. Mindful of the Court's guidance suggesting that the Panel should make its own independent determination, the Panel will first address the allegations of misconduct before turning to sanctions.

a. Count I of the Petition alleges:

COUNT ONE: RESPONDENT HAS ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW IN VIOLATION OF RULE 5.5(b)(1)

12. **Rule 5.5(b)(1)** states, "[a] lawyer who is not admitted to practice in this jurisdiction shall not: (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence this jurisdiction for the practice of law."

³ See Petition pp 2-8, attached as *Exhibit 1*, hereto for table detailing Delaware matters handled by Respondent.

13. By representing eighty-one Delaware residents, on a continuing basis since February 24, 2006, in over 100 claims arising out of accidents that occurred in Delaware involving an insurance policy issued to a vehicle registered in Delaware, Respondent established a systematic and continuous legal presence in Delaware, in violation of **Rule 5.5 (b)(1)**.

14. By airing television advertisements which targeted Delaware residents, Respondent established a systematic and continuous legal presence in Delaware, in violation of **Rule 5.5 (b)(1)**.

Petition at 9.

Discussion

Respondent admitted in his Response each of the allegations contained in Count I of the Petition and testified at the Hearing that he is a lawyer licensed to practice in the state of Pennsylvania and is not admitted to practice law in Delaware. Respondent further admitted and testified that he provided legal services to eighty-one Delaware residents from February 24, 2006 through March 2013 in over 100 claims arising out of automobile accidents that occurred in Delaware involving an insurance policy issued to a vehicle registered in Delaware. (Tr. at 14-17)

Respondent further admitted and testified that for nearly the past 20 years his law firm has run television ads and some of the clients that he represented in Delaware came to him because of the television ads. (Tr. at 18-19) In speaking of the advertisements, Respondent testified, “. . . they’re aired on television. And I’m assuming, since television goes over state lines, some of the ads would be seen in Delaware.” (Tr. at 18)

Respondent also testified that he advocated on behalf of his clients in an attempt to resolve their disputes during the pre-litigation phase. If the matter did not resolve via settlement, Respondent testified that he would transfer the matter to a Delaware lawyer. Respondent, “[i]f a matter didn’t settle – I had thought that what I had done was very preliminary in getting information from the insurance company, getting information from the doctor and then sending out a letter trying to resolve these matters preliminarily -- they would [then] be referred to Delaware counsel.” (Tr. at 22)

The Panel takes note that while Respondent’s firm had a Delaware office which was managed by a Delaware licensed attorney, Respondent never consulted his Delaware law partner

or any other Delaware lawyer about whether his actions in representing clients in Delaware was permissible. (Tr. at 22)

The recent Supreme Court decision in In re Nadel, 2013 WL 6252499 (Del.Supr.), fits squarely with the facts and circumstances presented in the within matter. Both the ODC and Respondent assert that the Court's holdings in that case are precedential. The Panel agrees. In Nadel, on substantially identical facts,⁴ the Court found that respondent's conduct constituted the unauthorized practice of law in violation of Rule 5.5(b)(1). Id. The Court opined that "Nadel knew that he could not actively represent Delaware clients in court, but he failed to determine any limits on the pre-litigation assistance he thought he could provide." (Nadel at 7.)

Conclusion and Findings

The Panel finds that Nadel is controlling and, thus, concludes that the allegations of misconduct contained in Count 1 are supported by clear and convincing evidence and Respondent's conduct constitutes the unauthorized practice of law in derogation of Rule 5.5(b)(1).

b. Count II of the Petition alleges:

COUNT TWO: RESPONDENT HAS ENGAGED IN THE UNATHORIZED PRACTICE OF LAW IN VIOLATION OF RULE 5.5(b)(2)

15. **Rule 5.5(b)(2)** states, "[a] lawyer who is not admitted to practice in this jurisdiction shall not: . . . (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction."

16. By meeting Delaware clients in Dr. Peterzell's Wilmington office to discuss his representation, Respondent held out to the public he was admitted to practice law in Delaware, in violation of **Rule 5.5 (b)(2)**.

⁴ In Nadel, respondent was a non-Delaware lawyer admitted to practice in the States of New Jersey and Pennsylvania. For a period of nearly 3.5 years, respondent represented more than 75 Delaware residents who were involved in automobile accidents which occurred in Delaware and involved Delaware insurance policies. The respondent, in Nadel, also took referrals from Dr. Morris Peterzell and met with approximately half of his Delaware clients at Dr. Peterzell's Delaware office. Similar to Edelman, Nadel would endeavor to settle the insurance claims on behalf of his Delaware clients and, if unsuccessful at doing so, he would then refer the matter to local Delaware counsel to pursue the litigation. Neither, Nadel, nor his firm, had an office in Delaware and Nadel did not use advertising.

17. By airing television advertisements which targeted Delaware residents, Respondent held out to the public he was admitted to practice law in Delaware, in violation of **Rule 5.5 (b)(2)**.

Petition at 9-10.

Discussion

With respect to paragraph 16 of the Petition, Respondent admitted in his Response and testified at the Hearing that he met and conducted meetings with some of his clients in the Delaware offices of Dr. Morris Peterzell. (Tr. at 17) The meetings would result in Respondent representing the client to final settlement or if settlement was not to occur, only at that point, was the matter referred to a Delaware lawyer for litigation. (Tr. at 40-41) Respondent further admitted in his Response that “meeting clients at Dr. Peterzell’s office and subsequently the handling of their legal matters may have resulted in a misunderstanding on the part of his clients.” (Response at 10)

With respect to paragraph 17 of the Petition, and as discussed, *supra*, Respondent’s law firm ran ads which aired in Delaware markets and netted some of his Delaware clients. (Tr. at 18-19) However, Respondent denies that the airing of the television ads resulted in him holding himself out as a Delaware lawyer in violation of the ethical rules.

The uncontroverted evidence introduced at the Hearing, was Respondent’s testimony that, “[i]t was generic advertising. I was never in the advertising. Nobody in my firm was ever in the advertising. It just said if you need a lawyer, if you are in an accident, call. Some of those cases I got calls.” (Tr. at 41) Neither the ODC nor the Respondent offered the actual ad or its precise content into evidence.

Conclusion and Findings

With respect to paragraph 16 of the Petition, the Panel finds that absent an affirmative disclosure by Respondent that he was not admitted to practice law in Delaware, his meetings with clients in Dr. Peterzell’s Delaware office coupled with his agreement to represent Delaware residents and, in fact, representing those clients about legal matters arising under Delaware law and factual circumstances arising in Delaware would bolster a reasonable assumption that he was

licensed to practice law in Delaware and, as such, he held himself out to be a Delaware lawyer in violation of Rule 5.5(b)(2).

With respect to paragraph 17 of the Petition, the Panel finds that the “airing” of the television ads without the inclusion of Respondent by name, photo or likeness or any representative of his firm is insufficient to create a violation of Rule 5.5(b)(2) on the part of the Respondent. Given that there exists no all-encompassing ban on attorney advertising, a violation of Rule 5.5(b)(2), in this Panel’s view, would require more than mere “airing” of an add which did not include or reference Respondent. While the overall fact pattern of this matter illustrates that Respondent agreed to and in fact represented his Delaware clients up to and including settlement, Paragraph 17 of the Petition is narrowly drafted and simply refers to the “airing” of the ads as the sole basis for the violation. Given the precise language contained in paragraph 17, it is the Panel’s belief that the mere “airing” of the ads ---which did not include or reference Respondent or any lawyer in his firm---, does not establish a violation.

Nevertheless, since the Panel finds that the allegations of misconduct contained in paragraph 16 of Count II are supported by clear and convincing evidence, Respondent’s conduct constituted the unauthorized practice of law in derogation of Rule 5.5(b)(2).

IV. Sanctions Recommendation

Having found that Respondent violated Rules 5.5(b)(1) and 5.5(b)(2), the Panel must now address a recommendation for sanctions. The Panel is guided and bound by the precedents of the Delaware Supreme Court and the ABA Standards for Imposing Lawyer Sanctions.⁵ In determining an appropriate recommendation for sanctions, the Panel has utilized the four-part framework set forth in the ABA Standards for Imposing Lawyer Discipline, (1991 & Supp. 1992) (hereinafter “the ABA Standards”), as required in In re Steiner, 817 A.2d 793, 796 (Del. 2003).

A preliminary determination of appropriate sanctions is made by assessing the first three (3) prongs of the test: (1) the ethical duty violated; (2) the lawyer’s state of mind; and (3) the actual or potential injury caused by the lawyer’s misconduct. Once the preliminary

⁵ *In re Agostini*, 632 A.2d 80 (Del. 1993).

determination is made, the fourth prong addresses whether an increase or decrease in the presumptive sanction is justified because of the presence of mitigating or aggravating factors.

The Panel has also been mindful that the overarching objective of the lawyer disciplinary system in Delaware is to protect the public, protect the administration of justice, preserve confidence in our legal profession and to deter other lawyers from similar misconduct. We now turn to the rationale of the Panel's recommendation. The Panel finds:

Ethical Duties Violated

The Panel has found that Respondent engaged in the unauthorized practice of law in violation of Rule 5.5(b)(1) and 5.5(b)(2). Further, Rule 5.5 is generally viewed as embodying duties to the profession. As such, Respondent violated his duties to the Profession.

State of Mind

While Rule 5.5 does not have a mental state requirement, the Panel finds that Respondent knew or should have known that his actions on behalf of Delaware residents who were involved in automobile accidents which occurred in Delaware in vehicles that were both insured and registered in Delaware, was tantamount to the practice of law. Certainly, the Panel believes that Respondent knew or should have known enough to inquire about limitations on his practice. Respondent has been admitted to the bar of Pennsylvania since 1965 and practicing law since 1968. (Tr. at 14) He was quite aware that he could not represent clients in Delaware lawsuits pending before the Delaware courts. (Tr. at 22, 24-25)

Similarly, in Nadel, the Supreme Court held that:

Nadel knew that he could not actively represent Delaware clients in the court, but he failed to determine any limits on the pre-litigation assistance he thought he could provide. Further, he had every opportunity to learn this information. Nadel regularly worked with licensed Delaware attorneys when a client needed to file a claim in court. Moreover, the Delaware Lawyers' Rules and the case law interpreting those rules are also publicly available-something an experienced attorney from any state would know.

Nadel at 4.

Accordingly, the Panel finds Respondent's knowledge as a lawyer admitted to the bar of Pennsylvania and the length of time in which he has been practicing law suggest a knowing mental state.

Actual or Potential Injury Caused by Respondent's Misconduct

While the record reflects that there was no actual harm or injury to any client or any claim of any such injury, the Panel finds that potential harm existed by Respondent's unauthorized practice of law. In Nadel, the Supreme Court held:

But there was the potential for injury. Nadel could have been confronted with a unique issue of Delaware law or a right of his client that he failed to notice. Further, he could have created a situation where one of his Delaware clients came to rely on his legal assistance in this or a related matter, only to be stranded later when she realized that Nadel could not provide proper legal assistance. This amounts to a potential injury to Nadel's clients.

Nadel at 4.

Akin to the Supreme Court in Nadel, so, too, this Panel finds that Respondent's unauthorized practice of law presented the potential for injury.

Presumptive Sanctions

The ABA Standards set out criteria for determining presumptive sanctions based upon the findings for the first three criteria. Section 7 addresses violations of duties to the profession. The ODC and Respondent both advance that the appropriate sanction for Respondent is a suspension of one-year from the practice of law. Section 7.2 of the ABA Standards provides that "[s]uspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public or the legal system." (ABA Standards at 45)

Based on (a) the record before the Panel, (b) the Panel's independent analysis of prongs one through three of the four-part test for imposing lawyer discipline and (c) the Supreme Court's decision in Nadel, the panel agrees that a one-year suspension is appropriate.

Aggravating and Mitigating Factors

Section 9.22 of the ABA Standards provides the following factors which may be considered in aggravation:

(a) Prior Disciplinary Offenses: Respondent has no prior record of discipline in any jurisdiction (Tr. at 39); therefore, the Panel finds that this is not an aggravating factor;

(b) Dishonest or Selfish Motive: The ODC did not present evidence in support of an argument, nor did it argue, that Respondent acted out of dishonesty or selfish motive. The Panel does not find sufficient evidence of dishonesty or selfish motive to find this an aggravating factor;

(c) A Pattern of Misconduct: The evidence before the Panel reflects that Respondent represented over 80 Delaware clients in an excess of 100 matters over a period spanning 7 years and 1 month. (Petition and Answer, ¶ 6 and Tr. at 16-18) The Panel finds that Respondent persisted in his manner of obtaining clients in Delaware and undertaking the attendant representations for a period in excess of 7 years. Additionally, the Panel finds that with respect to certain of his 80 plus Delaware clients, Respondent represented them in multiple matters. As such, the Panel considers this to be an aggravating factor;

(d) Multiple Offenses: The evidence before the Panel reflects that Respondent represented over 80 Delaware clients in an excess of 100 matters over a period spanning 7 years and 1 month. (Petition and Answer, ¶ 6 and Tr. at 16-18) The Panel finds each individual matter to represent a separate offense and separate violations by Respondent of the Rules. As such, the Panel considers this to be an aggravating factor;

(e) Bad Faith Obstruction of the Disciplinary Proceeding by Intentionally Failing to Comply with Rules or Orders of the Disciplinary Agency: There is no evidence in the record that this factor exists;

(f) Submission of False Evidence, False Statements, or Other Deceptive Practices During the Disciplinary Process: There is no evidence in the record that this factor exists;

(g) Refusal to Acknowledge Wrongful Nature of Conduct: Respondent admitted in his Response all of the allegations in Count I of the Petition and at the Hearing. While admitting in part and denying in part the allegations in Count II of the Petition, Respondent did acknowledge his actions in his Answer and while testifying at the Hearing. Panel finds that this is not an aggravating factor;

(h) Vulnerability of Victim: There is no evidence in the record that this factor exists;

(i) Substantial Experience in the Practice of Law: Respondent was admitted to practice law in 1965 and has been continuously practicing law since 1968, a period of 46 years. The Panel finds that Respondent has substantial experience in the Practice of law and that this is an aggravating factor;

(j) Indifference to Making Restitution: There is no evidence in the record that this factor exists; and

(k) Illegal Conduct, Including that Involving the Use of Controlled Substances: There is no evidence in the record that this factor exists.

Section 9.32 of the ABA Standards provides the following factors which may be considered in mitigation:

(a) Absence of a Prior Disciplinary Record: Respondent has no prior record of discipline in any jurisdiction. (Tr. at 39) The Panel finds this to be a mitigating factor;

(b) Absence of a Dishonest or Selfish Motive: As discussed, *supra*, no evidence was introduced into evidence regarding Respondent's motive, thus, the Panel finds insufficient evidence exists to establish this as a mitigating factor;

(c) Personal or Emotional Problems: There is no evidence in the record that this factor exists;

(d) Timely Good Faith Effort to Make Restitution or to Rectify Consequences of Misconduct: There is no evidence in the record that this mitigating factor has any application as it relates to restitution, since none is necessary. Upon his realization that his representation of

clients in Delaware was actionable by the ODC, as the unauthorized practice of law in violation of Rule 5.5(b)(1) and Rule 5.5(b)(2), Respondent immediately ceased representing clients in Delaware and transitioned them to a Delaware lawyer. (Tr. at 45) Respondent also placed a firewall in his records at his law firm between him and each of his former Delaware clients. (Tr. at 45) The Panel views Respondent's immediate efforts to rectify consequences of his misconduct as a mitigating factor;

(e) Full and Free Disclosure to Disciplinary Board or Cooperative Attitude toward Proceedings: The record reflects that Respondent was immediately cooperative and responsive to the ODC once it became involved in this matter and proceeded in a cooperative fashion throughout the Hearing. The Panel finds that this is a mitigating factor;

(f) Inexperience in the Practice of Law: As discussed, *supra*, the Panel finds that Respondent has substantial experience in the Practice of law such that it is an aggravating factor and not a mitigating factor;

(g) Character or Reputation: Pennsylvania attorney, William L. McLaughlin, Jr. and Delaware attorney, Michael I. Silverman, both testified on Respondent's behalf to offer mitigating testimony. They each testified to Respondent's good character and his good reputation as a lawyer. (Tr. at 50-53 and 54-56) In addition, the Panel takes note of Respondent's Exhibit 1 for Mitigating Purposes which contains a sizeable compilation of "thank you" notes and various expressions of gratitude offered by some of Respondent's former clients. The Panel accepts that Respondent is a long standing, successful attorney practicing in the area of accident litigation with a good reputation with both the bench and bar in the state of Pennsylvania. The panel views this as a mitigating factor;

(h) Physical Disability: There is no evidence in the record that this factor exists;

(i) Mental Disability or Chemical Dependency Including Alcoholism or Drug Abuse
When:

- (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
- (2) the chemical dependency or mental disability caused the misconduct;

- (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
- (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.

There is no evidence in the record that this factor exists;

(j) Delay in Disciplinary Proceedings: There is no evidence in the record that this factor exists;

(k) Imposition of other Penalties or Sanctions: This factor is inapplicable to this proceeding;

(l) Remorse: Respondent expressed sincere remorse and regret for his actions and apologized to the Panel, the ODC, the Delaware Supreme Court and the Delaware Bar for his actions. (Tr. at 42) The Panel finds this to be a mitigating factor; and

(m) Remoteness of Prior Offenses. This is inapplicable to this proceeding as Respondent had no record of prior discipline.

V. Panel Conclusions and Recommendations

Upon weighing the applicable aggravating and mitigating circumstances, the Panel believes that the presumptive sanction of suspension remains appropriate. The circumstances of this case are substantially similar to those presented in Nadel. The Nadel court adopted a panel's recommendation of a one-year suspension with several conditions: (a) a prohibition on advising Delaware clients on matters of Delaware law for a period of one year; (b) a prohibition from acting *pro hac vice* on any matter in Delaware for a period of three years; (c) that the content of its report be made public; and (d) that Nadel pay the costs of these proceedings. The Court held:

We hold that the Panel properly concluded, a one year-suspension, along with the additional limitations that it recommended, would adequately protect the public and the administration of justice, preserve confidence in the legal profession, and deter other lawyers from engaging in similar conduct.

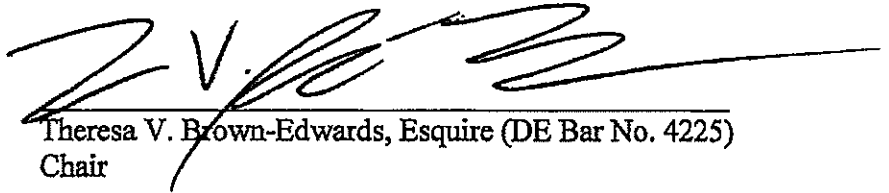
Nadel at 5.

This Panel believes that Respondent's sanctions should parallel those held up by the Supreme Court in Nadel. Accordingly, the Panel recommends that the Court impose the following sanctions and conditions, to wit, that:

- 1) Respondent be suspended from the practice of law in the State of Delaware for a period of one year;
- 2) Respondent be prohibited from providing advice to any Delaware clients on matters of Delaware law for a period of one year;
- 3) Respondent be prohibited from acting *pro hac vice* on any matter in Delaware for a period of three years;
- 4) The contents of this report be made public; and
- 5) Respondent pay the costs of these proceedings.

Respectfully submitted,

Date: May 19, 2014



Theresa V. Brown-Edwards, Esquire (DE Bar No. 4225)
Chair

Date: May 19, 2014

Susan H. Kirk-Ryan, Esquire (DE Bar No.1070)

Date: May 19, 2014

Louise Roselle

This Panel believes that Respondent's sanctions should parallel those held up by the Supreme Court in Nadel. Accordingly, the Panel recommends that the Court impose the following sanctions and conditions, to wit, that:

- 1) Respondent be suspended from the practice of law in the State of Delaware for a period of one year;
- 2) Respondent be prohibited from providing advice to any Delaware clients on matters of Delaware law for a period of one year;
- 3) Respondent be prohibited from acting *pro hac vice* on any matter in Delaware for a period of three years;
- 4) The contents of this report be made public; and
- 5) Respondent pay the costs of these proceedings.

Respectfully submitted,

Date: May 19, 2014

Theresa V Brown-Edwards, Esquire (DE Bar No. 4225)
Chair

Date: May 17, 2014


Susan H. Kirk-Ryan, Esquire (DE Bar No. 1070)

Date: May 19, 2014

Louise Roselle

CERTIFICATE OF SERVICE

I, Theresa V. Brown-Edwards, certify that I am not less than 18 years of age and that on this 19th day of May, 2014, I caused a true and correct copy of the foregoing *Report and Recommendation of Sanctions* to be served, as indicated, upon the following parties:

Under penalty of perjury, I declare that the foregoing is true and correct.

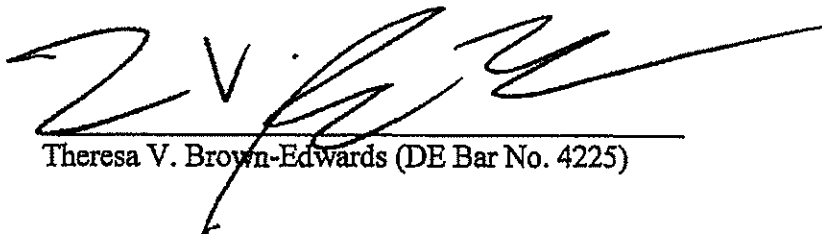
**VIA HAND DELIVERY AND
ELECTRONIC MAIL**

Patricia Bartley Schwartz, Esquire
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Carvel State Office Building
820 N. French Street
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Date: May 19, 2014



Theresa V. Brown-Edwards (DE Bar No. 4225)