

# OFFICE OF BAR COUNSEL

March 16, 2012

## CONFIDENTIAL

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Professor Jason E. Huber  
Charlotte School of Law  
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Re: Zatz/Huber  
Bar Docket No. 2011-D387

Anderson/Huber  
Bar Docket No. 2011-D388

Nathanson/Huber  
Bar Docket No. 2011-D389

Welt/Huber  
Bar Docket No. 2011-D390

Dear Professor Huber:

This office has completed its investigation of your allegations of misconduct against Clifford Zatz, Esquire; William Anderson, Esquire; Kirsten Nathanson, Esquire; and Monica Welt, Esquire (collectively, the "Crowell & Moring Lawyers"). We have evaluated these matters in light of an attorney's obligations as set forth in the District of Columbia Rules of Professional Conduct (the "Rules"). It is the burden of our office to find clear and convincing evidence of a violation of the Rules in order to sustain a disciplinary proceeding against an attorney. Clear and convincing evidence, as you know, is more than a mere preponderance of the evidence, which would be sufficient in a civil proceeding. We do not find such evidence in our investigation and therefore, we must dismiss your complaint.

We docketed this matter for investigation after receiving your complaint on October 5, 2011. To summarize, you allege that the Crowell & Moring Lawyers violated Rule 7.1 and Rule 8.4(c) in publishing certain material on their firm's website in June of 2011. The material in question was a "Client Alert" which, among other things, outlined certain purported methodological flaws in a recently published epidemiological study of birth defects in Central Appalachian locales ("the Ahern Study"). The Client Alert noted six points of criticism,

including the following: “[t]he study failed to account for consanguinity [sic], one of the most prominent sources of birth defects.”

You allege that this statement about consanguinity “was rightfully perceived by many as another attempt by coal industry apologists to degrade the Appalachian People in order to mask the epidemiological, social and environmental consequences of mountaintop removal mining.” You further state that the Client Alert “perpetuates and exploits the empirically debunked notion that inbreeding is regularly practiced by the Appalachian People . . .” and constituted an “attempt to mislead the reader into believing that Appalachian incest, not mountaintop removal mining, caused the observed birth defects.” You assert that, in publishing the disputed statement, the Crowell & Moring Lawyers violated Rule 7.1(a) (lawyer advertising) and Rule 8.4(c) (dishonesty).

In their response, which this office received on November 28, 2011, the Crowell & Moring Lawyers, through counsel, deny misconduct. They maintain (i) that the statement at issue is not material, false nor misleading; (ii) that it is not a “statement about [a] lawyer or [a] lawyer’s services” within the meaning of Rule 7.1(a), and (iii) that the disputed statement is scientific speech protected by the First Amendment. Lastly, counsel asserts an independent defense on behalf of Ms. Welt, stating that she, as a junior lawyer, properly relied on the judgment of the other Crowell & Moring lawyers (who are partners) and thus is afforded the protection of Rule 5.2(b).

In your reply, which this office received on January 3, 2012, you reiterate the allegations of your complaint, and state that you would not object to the dismissal of the complaint against Ms. Welt on the grounds asserted on her behalf. You further propose a compromise resolution to this matter in which you would withdraw your complaint if the Crowell & Moring Lawyers agree to issue an unqualified apology for the offending statement, and a statement explaining that inbreeding rates are not higher in Appalachia than in other parts of the United States, both to be published on the firm’s website.

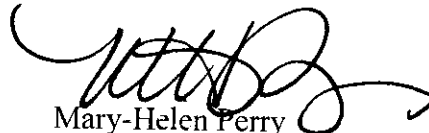
Our investigation of this matter has not revealed clear and convincing evidence of a violation of the Rules by the Crowell & Moring Lawyers. We do not find that the statement in question relates to a lawyer or a lawyer’s services, as would be required to find a violation of Rule 7.1(a). Moreover, we could not prove by clear and convincing evidence that the disputed statement was knowingly false when made, or made with reckless disregard for its truth, in violation of Rule 8.4(c). As you have conceded, the Ahern Study does not address consanguinity, in that respect the Client Alert statement is indisputably true. As for the second clause of the statement – which names consanguinity as “one of the most prominent sources of birth defects” – we could not prove that consanguinity is such an irrelevant control factor in the epidemiological study of birth defects that its mere mention in the Client Alert constitutes a knowing or reckless falsehood. Lastly, it is undisputed that the statement does not compare rates of consanguinity in Appalachia against those of other regions. While it could be said that the

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Client Alert, in its overall context, implies or alludes to offensive Appalachian stereotypes, we do not find such implications or allusions to be a sufficient basis to sustain disciplinary charges for dishonesty in violation of Rule 8.4(c).

In closing, we in no way condone the promotion of repugnant stereotypes by members of the District of Columbia Bar, and acknowledge that the preamble to the Rules states that the "Rules do not . . . exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules." D.C. Rules of Professional Conduct ("Scope" comment [2]). The Rules do, however, define the boundaries of this Office's statutory authority to pursue disciplinary action against members of the D.C. Bar (*see* D.C. Bar Rule XI § 2(b) (defining misconduct)), and we may not proceed in the absence of clear and convincing evidence of a violation. We trust that this letter adequately advises you of the basis of our decision.

Sincerely,



Mary-Helen Perry  
Senior Staff Attorney

cc: Crowell & Moring Lawyers  
c/o Barry E. Cohen, Esquire

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