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October 14, 2009

BY FAX and U.S. MAIL

Marc H. Zitomer, Esq.
Schwartz Simon Edelstein Celso & Zitomer LLC
44 Whippany Road - Suite 210
P.O. Box 2355
Morristown, NJ 07960

Re: New Jersey On-Line, LLC

Dear Mr. Zitomer:

Please be advised that I represent the holders of twelve of the twenty forum names whose identity you unlawfully have attempted to garner.

The violations of law committed by you with regard to this subpoena are so extensive, I feel compelled to number them.

1. You have issued a subpoena without authority, in that there was no public vote by the School Board authorizing this action, as required by law.
2. You arranged for the consent of the Board to proceed in this manner in executive session, which is a violation of the Open Public Meetings Act.
3. You have issued this subpoena purportedly under N.J.S.A. 18A:6-20 which permits subpoenae solely for the purpose of having witnesses attend hearings and/or to bring documents to those scheduled hearings. You have cited this statute as the authority for

what is in essence a “discovery” subpoena, which is not authorized by this statute.

4. You have claimed that the subpoena is issued “in anticipation” of a hearing. There is no hearing scheduled, so claiming it is in anticipation of a hearing is perpetrating a fraud on both NJ.COM and the individual forum name holders.

5. You claim there are “staff” members for whom you wish to subpoena these records. If you discussed any issues regarding “staff” members, you have violated the Open Public Meetings Act by taking legal steps in connection with disciplinary proceedings without issuing a Rice notice to those staff members.

6. Obviously, having discussed the “staff” members in executive session without the issuance of a Rice notice is itself a violation of law.

7. If, on the other hand, the alleged “staff” members are a fiction, designed to enable you to unlawfully invade the first amendment rights of the posters, that is not only a violation of these posters’ first amendment rights, subjecting you personally to damages as well as Mr. Ronald Lawson whom you are supposed to be protecting, (pursuant to, *inter alia*, 42 U.S.C. §1983) but you yourself would be in violation of Rule of Professional Conduct 4.1 which prohibits lawyers in the representation of a client from making “a false statement of material fact or law to a third person,” and failing “to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.” Mr. Lawson’s issuance of the subpoena under your direction is a criminal and/or fraudulent act which you have assisted, if not outright encouraged.

8. You are also fully aware that most, if not all, of these posters posted absolutely nothing that would constitute evidence for any disciplinary hearing. Indeed, it is not likely any of the postings would

be deemed actionable defamation. You are therefore in violation of Rule of Professional Conduct 4.4, wherein you are attempting solely to embarrass and/or harass these posters because they said things about a certain official that you don't like. RPC 4.4 forbids an attorney from using "means that have no substantial purpose other than to embarrass, delay, or burden a third person."

9. While it probably doesn't arise to a violation of law, your subpoena identifies the Freehold Regional High School District Board of Education as being located in Ocean County. One would expect a competent education attorney to be aware that the state's largest regional school district – especially one he represents – is located in Monmouth County.

10. I would also call your attention to the **Electronic Communications Privacy Act**. Title 18 U.S.C. §2703 provides that it is a **criminal** act to seek or provide private information such as the identity of a poster on an online forum, except in certain circumstances. One of those circumstances is the issuance of a properly authorized *trial* subpoena. You have issued an unauthorized discovery subpoena. That there is a clear distinction in the Act between trial subpoenae and discovery subpoenae is set forth in *FTC v. Netscape Communications Corp.*, 196 F.R.D. 559 (N.D.Cal. 2000), which held unequivocally that such information is not to be disclosed pursuant to a discovery subpoena.

11. In addition to subjecting yourself and Mr. Lawson to criminal prosecution, however, you have also made yourselves liable in connection with a civil action brought by the forum users. Section 2007 of the Electronic Communications Privacy Act provides that the aggrieved individual whose privacy has been violated has a **cause of action for damages** against any party participating in the illegal attempt or illegal successful acquisition of private information, as well as the provider of that information. In this case, at the least you and Mr. Lawson would be personally liable as would NJ.COM. Should

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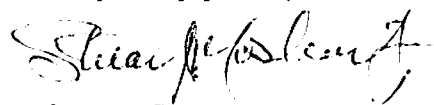
it turn out that other Board members were complicit in your illegal activity, they too could be held liable. At this point, since there was no legitimate action taken to authorize the subpoena, it does not appear that any Board member other than Mr. Lawson would be liable.

In that it does not appear you are familiar with the Electronic Communications Privacy Act, let me advise you that the plaintiffs would each be entitled to actual damages including court costs and attorneys fees – and I would anticipate zealously pursuing this matter to protect my clients – as well as punitive damages. The statute also provides that even if there are no actual damages, each plaintiff is entitled to a minimum of \$1,000.00 plus attorneys fees and costs and, potentially punitive damages.

Accordingly, I am notifying you that unless NJ.COM (through its attorney, Neil M. Rosenhouse, Esq.) and I are advised no later than October 21, 2009 that the subpoena is being withdrawn and will not be reissued, we will proceed in accordance with the Electronic Communications Privacy Act with all appropriate claims.

Please feel free to contact me at your convenience should you wish to discuss any of the foregoing.

Very truly yours,



Stuart J. Moskowitz

SJM/slf4191

cc: All Board Members
Neil M. Rosenhouse, Esq.
Paul Alan Levy, Esq.
Clients