

April 24, 2001

Dear Counselor,

In my last letter, I set forth the longstanding rule regarding conduct in Arraignment B (no distribution of business cards or letterhead unless requested) and received a number of responses about it from concerned panelists.

I was told, among other things, that it was in the best interest of the defendants for them to know who represented them at their own arraignment, in case they had questions later that day or in the future. I was shown samples of letterhead that some attorneys had previously distributed in Arraignment B that explained the arraignment process and provided space for the defendants to fill in personal information that would assist the 18B attorney in representing them.

Having considered all of the panelists' input, having personally reflected upon the matter and having visited Arraignment B twice to get the flavor of the experience, I am now of the opinion that the rule restricting the use of letterhead and/or business cards should be changed.

I believe that, once an "attorney client" relationship has been established (even if only for an arraignment or in the 511 vacate calendar part), it is proper for the attorney to provide the client with his or her business card, or with letterhead explaining the process that has just occurred. Indeed, it is arguably unprofessional to do otherwise.

Accordingly, I will recommend to the 18B Advisory Committee at its next meeting that this rule be changed. Until then, I am instituting that change on a temporary basis. At the same time, I do not wish anyone to lose sight of the fact that the purpose of the original rule was to promote professionalism and prevent the use of one's 18B status as a means of soliciting private business. My opinion as to that has not changed. If any defendants in Arraignment B or in the 511 vacate part seek to retain you as private counsel, that is fine, as long as it is their idea.

With that in mind, those of you who distribute your business card may advise the defendant that you are available to answer any questions he or she may have, but you should not initiate further contact with the defendant by telephone or by mailings of any kind.

Those of you who distribute your letterhead with an explanation of the procedure and a questionnaire for personal information, should not include language touting your ability as an attorney, nor should you initiate further contact with the defendant by telephone or mailings of any kind.

The foregoing prohibitions against initiating further contact apply not only to the 18B attorney of the day, but also to all of his or her partners, associates, paralegals, secretaries, etc.

It has been suggested that a standard form be designed for use by those who wish to distribute information on their letterhead. If the 18B Advisory Committee approves of this change on a permanent basis, I will address the standardization issue at that time. Until then, if you plan to distribute something on your letterhead in Arraignment B or in the 511 vacate calendar part and want me to review it first, I would be pleased to do so if you fax it to me at 873-8032.

Thank you for your continued work on the 18B panels. I'm not just saying that. I really appreciate it.

Very truly yours,

Patrick L. McCloskey