SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 94-330; 94-331; 94-332; 94-333

IN THE MATTER OF	
CHARLES I. TIGHE, III AND PAMELA N. TIGHE	
ATTORNEYS AT LAW	

Decision and Recommendation of the Disciplinary Review Board

Argued: November 16, 1994

Decided: August 11, 1995

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics on DRB 94-330 and DRB 94-333 (Charles I. Tighe).

Thomas J. McCormick appeared on behalf of the Office of Attorney Ethics on DRB 94-331 (Charles Tighe) and DRB 94-332 (Pamela Tighe).

Respondent Charles I. Tighe, III appeared pro se.

Respondent Pamela N. Tighe waived appearance.

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

These disciplinary matters were before the Board based on a recommendation for public discipline filed by Special Master Janice L. Richter. The formal complaints collectively charged respondents with violations of RPC 1.8(a) (conflict of interest); RPC 1.15 (knowing misappropriation); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation) and RPC 5.4(a) (improper fee splitting).

Respondent Charles I. Tighe, III was admitted to the New Jersey bar in 1971. He has no prior ethics history.

Respondent Pamela Tighe was admitted to the New Jersey bar in 1978. She has no prior ethics history. In 1981, she and her brother formed the partnership of Tighe and Tighe, with offices in Moorestown, New Jersey.

THE KLATT MATTER - DRB 94-330 (Charles I. Tighe, III)

The Office of Attorney Ethics ("OAE") filed a one-count formal complaint, dated October 22, 1993, against Charles I. Tighe, III, charging him with violations of RPC 1.8(a) (conflict of interest); RPC 8.4(c) (dishonesty, fraud, deceit and misrepresentation) and RPC 1.15(b) (knowing misappropriation of client funds). These charges stemmed from respondent's actions in persuading a former client to invest in a real estate venture that subsequently failed and from respondent's failure to reimburse the client's investment.

At the District Ethics Committee ("DEC") hearing, the Special Master admitted video-taped testimony of two Florida witnesses, over respondent's objections. The video-taped testimony of each witness was taken before a Florida notary public. Respondent, the OAE presenter and the Special Master each had the opportunity to examine the witnesses by telephone. Respondent appeared pro se at the DEC hearing and did not testify in his own behalf.

The grievants in this matter are Linda and Harry Klatt. Mrs. Klatt and two of the Klatts' children had been clients of respondent in various personal injury actions, prior to the

circumstances that gave rise to the Klatts' grievance. The Klatts also maintained a social relationship with respondent and his ex-wife. They had become acquainted a number of years earlier, in approximately 1986, as the result of a friendship between their respective daughters.

Mrs. Klatt was injured in an automobile accident that occurred in either late 1986 or 1987. She retained respondent to represent her in that matter. In the summer of 1988, as the result of an arbitration, Mrs. Klatt's matter settled for approximately $98,000, from which she netted approximately $66,000. She received the settlement proceeds in or about July 1988.

Mrs. Klatt testified that, in November 1988, respondent contacted her regarding a real estate venture called the Countryside Pines Development, in Clearwater, Florida. Respondent told her that the venture appeared to be an extremely good investment. At the time, respondent was not representing Mrs. Klatt or anyone else in her family. Respondent asked Mrs. Klatt to meet him at his office to further discuss the venture. During their initial meeting, respondent provided Mrs. Klatt with a brochure depicting the units and their location. He informed Mrs. Klatt that three units had already been sold. 1T11-12.[1]

Respondent informed Mrs. Klatt that he and another person (Paul Schneller) were seeking six to eight investors and that the "other party involved" wanted all of the shares sold to people he

[1] 1T denotes the transcript of the DEC hearing on March 23, 1994.

knew because it was such a good investment. Respondent told Mrs. Klatt that he, too, wanted people he knew to benefit from the venture. That was the reason for contacting the Klatts. The Klatts had never asked respondent for assistance in investing the settlement proceeds.

Mrs. Klatt met with respondent a second time on November 18, 1988. In the interim, she had discussed the matter with her husband and together they had decided to invest in the venture. They were confident of the soundness of their investment because respondent had informed them that, ideally, their investment would triple and that, realistically, it would double. 1T39. Respondent told the Klatts that, "in an absolute worst case scenario," they would get their original investment back and that, therefore, no risk was involved. 1T13. Neither of the Klatts independently investigated the venture because they trusted respondent, as their attorney and friend. 1T31,36. Mrs. Klatt testified that respondent never advised her against the investment, if she could not afford to lose the money. 1T27. Moreover, respondent failed to advise the Klatts to seek the advice of another attorney.

During Mrs. Klatt's November 18, 1988 meeting with respondent, she provided him with a check in the amount of $25,000, made payable to Wellington Development, to be invested in the Countryside Pines venture. Exhibit C-2. Mrs. Klatt believed that Wellington Development, a company in which respondent was a principal, was involved in investments. Wellington Development,

however, was not a "legal entity," but merely a name that respondent and Schneller used for the Florida venture.

Upon receipt of the check, respondent advised Mrs. Klatt that, when he returned to Florida, the paperwork would be prepared and that the Klatts would receive a copy. 1T16. Despite this promise, the Klatts never received any such paperwork. The check to Wellington Development, nevertheless, was endorsed by Charles I. Tighe, re-endorsed "for deposit only" by St. Clair Realty, Inc., and then endorsed by Schneller.

Three or four months after giving respondent the check, Mrs. Klatt had still not received any information regarding her investment and, therefore, began calling respondent on a regular basis to determine the status of the matter. At one point, respondent advised Mrs. Klatt that there had been some problems with the venture, but that the paperwork was being prepared, which they would soon receive. He also advised her not to worry, "everything was alright."

Approximately one year later, in late 1989 or early 1990, the Klatts still had not received any documents or money from their investment. Around that time, in a telephone conversation with Mrs. Klatt, respondent advised her that he had pulled them out of the venture because he felt it was in their best interest; he did not like what was going on and the parties involved were having problems with zoning boards. At this time, respondent advised Mrs. Klatt that they would receive a check for $50,000 on their initial investment within thirty days. The Klatts did not receive a check,

despite respondent's many subsequent assurances that they would receive it within thirty days. 1T18.

On or about March 7, 1991, when respondent was dining at the Klatts' home, he advised them that the builder of the development in Clearwater had filed for bankruptcy and that respondent had filed a claim in their behalf for $50,000, knowing that their claim would be downgraded in the bankruptcy proceedings. He informed the Klatts that they would, nevertheless, recoup their initial investment. 1T19. He further advised them that he expected the final bankruptcy order to be on his desk, in Florida, when he returned there the following week. Respondent added that, soon thereafter, they would begin receiving checks of $10,000 per month for the next three to five months, depending upon the terms of the final order. However, the Klatts never received any money. They again called respondent, who advised them that the bankruptcy order was the subject of an appeal and that he would keep them apprised of its status. Respondent, however, did not to do so and the Klatts never recouped any of their investment.

Paul Schneller, who was in Florida at the time of the DEC hearing, provided testimony by way of a video-taped deposition. Schneller testified that he had told respondent of the available property in Clearwater, Florida, known as Countryside Pines. The land was already zoned and the project was ready to go forward. The purchase price for the land, permits and property that was already developed was $570,000. Respondent and Schneller formed a partnership to purchase the property, which they called Wellington

Development. Respondent prepared the agreement in behalf of Wellington Development for the purchase of the Countryside Pines property. Exhibit C-4.

Of the $25,000 that respondent had turned over to him, Schneller disbursed $5,000 to Buddy D. Ford, Esq., as a deposit for the purchase of Countryside Pines. Exhibit C-3. Ford, the attorney for Countryside Pines, Inc. and its principal, Howard Nemovitz, was to hold the deposit in escrow.

Wellington Development was allotted a period of time during which to perform due diligence investigation of the property. After the allotted time had expired, respondent and Schneller discovered that the property was not as marketable as originally anticipated. They, therefore, decided not to go forward with the venture. As a result, on December 16, 1988 — less than one month after respondent received the Klatts' investment check — Schneller issued a check to respondent in the amount of $17,000 ($25,000 minus the $5,000 deposit and $3,000 to Schneller, which respondent had instructed him to deduct for his expenses in connection with their venture). Schneller issued that check at respondent's request. It was his understanding that, since the transaction had failed, respondent would return the $17,000 to the Klatts. Schneller steadfastly maintained that the $17,000 was not for legal services rendered by respondent in their pursuit of the Countryside Pines venture. 2T12.[2] He also testified that he did not know of

[2] 2T denotes the transcript of the video-taped testimony of Schneller on March 24, 1994.

any other investors in the Countryside Pines venture and, to the best of his knowledge, there was no bankruptcy involved.

Buddy D. Ford, Esq., also provided testimony by way of a video-taped deposition. Ford recalled that, after the expiration of the due diligence period, the $5,000 "good faith" deposit became non-refundable. Apparently, respondent threatened to sue Nemovitz for the return of the deposit. Nemovitz decided to split the deposit monies with him, rather than litigate the matter. 3T17.[3] Nemovitz instructed Ford's firm to disburse one-half of the deposit ($2,500) to respondent and the other half to Countryside Pines. A check dated April 5, 1989, in the amount of $2,500, was disbursed to respondent. Exhibit C-5. It was Ford's understanding that the check had been issued to the expected purchaser of Countryside Pines.

Ford testified that he did not recall Countryside Pines filing for bankruptcy. He did recall that the corporation had experienced some financial difficulties and that Nemovitz had asked him to research filing a petition in bankruptcy. Ford, however, advised Nemovitz against doing so.

Respondent stipulated that both the $17,000 check to him from Schneller and the $2,500 check to him from Ford's firm were

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[3] 3T denotes the transcript of Ford's video-taped testimony on March 24, 1994.

deposited into his personal account in West Palm Beach, Florida. 4T11.[4]

Gerald Smith, Chief Auditor for the OAE, testified that, during the course of his investigation of this matter, respondent had told him that the check for $17,000 from Schneller was for legal services he had rendered in connection with the Countryside Pines venture. 4T14, 19. Respondent also told Smith that the Klatts had asked him for investment advice with regard to the proceeds of Mrs. Klatt's personal injury settlement. 4T15. Both of these statements were unequivocally denied by Schneller and Mrs. Klatt.

ADVANCE FEE MATTERS - DRB 94-331 and 94-332 (Charles I. Tighe, III and Pamela N. Tighe)

The OAE filed a three-count formal complaint, dated October 4, 1993, against Charles I. Tighe, III and Pamela N. Tighe. Count one charged Charles Tighe with violations of RPC 1.15 (knowing misappropriation of client funds); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and the principles set forth in In re Wilson, 81 N.J. 451 (1979) and In re Warhaftig, 106 N.J. 529 (1987). These charges stemmed from Charles Tighe's conduct in advancing legal fees to his law firm prior to the receipt of corresponding funds. In count two, Pamela Tighe was charged with a violation of RPC 1.15 for the negligent

[4] 4T denotes the transcript of Gerald Smith's testimony before the DEC on March 24, 1994.

misappropriation of client funds arising from the same conduct as alleged in count one against her brother. Count three charged both Charles Tighe and Pamela Tighe with a violation of RPC 5.4(a), for sharing legal fees with and/or paying of referral fees to a non-lawyer.

Respondents did not testify at the DEC hearing or present any witnesses in their behalf. Charles Tighe admitted in his amended answer to the complaint that, from the time his sister joined the firm until late 1987, he was responsible for the firm's books and records. He further admitted that his sister was not responsible for the knowing advancement of legal fees from their trust account. Respondent neither admitted nor denied the relevant allegations of counts one and three of the complaint. He did, however, deny that his conduct gave rise to any ethics violations.

Similarly, Pamela Tighe neither admitted nor denied any relevant allegations of counts two and three, but denied any ethics violations.

Respondents' office was selected for a random compliance audit by the OAE. The audit commenced on January 27, 1989 and was continued on February 16, 1989. Thereafter, OAE representatives met with respondents on August 1 and 15, 1989. Respondents stipulated that the documents that were entered in evidence, other than those prepared by the auditor, were obtained during the course of the audit. 1T71. No evidence was submitted by either respondent to refute the accuracy contained in any of the exhibits, including the auditor's work papers.

Mary Waldman, an OAE auditor, was assigned to conduct the audit of respondents' records and books. During the course of her audit, Waldman determined that there was a practice of withdrawal of fees from the trust account prior to the corresponding deposits to cover the withdrawals. The effect of such a practice was the invasion of client trust funds, even though the account had not been overdrawn. 5T19.[5]

Waldman testified with regard to thirty-four separate matters in which respondents took fees prior to the deposit of corresponding funds. The records Waldman reviewed included client ledger cards, bank statements, deposit slips, negotiated checks, client settlement sheets, letters relating to settlements, powers-of-attorney, releases and disbursement ledgers.

The following is illustrative of the improprieties Waldman uncovered:

1. Bisbiglia, client file No. 8553 (Exhibits C-10 to C-10L)

The client ledger sheet (Exhibit C-10) showed the receipt of $3,000 for this client on June 19, 1987 and, on June 25, 1987, of an additional $3,000. The client ledger sheet also shows a $2,000 disbursement (check No. 3211), in April 1987, to Tighe and Tighe. Exhibit C-10A included copies of two deposit slips and check No. 3211, dated April 23, 1987, to Tighe and Tighe, P.A., written on respondents' trust account. The check is in the amount of $2,000 and confirms the entry on the client ledger sheet. The check also includes the notation "Bisbiglia - 8553". The check was signed by Charles Tighe.

Exhibit C-10C is a copy of respondents' receipts journal. Under June 19, 1987, it refers to the Bisbiglia matter and shows the receipt of $3,000 as being part of a larger deposit of $18,300. Under June 25, 1987, again $3,000 appears for Bisbiglia and shows it as part of a larger deposit of $67,900. Exhibit C-10D is the June 1987 bank statement for respondents' trust account.

[5] 5T denotes the transcript of the DEC hearing on March 21, 1994.

The deposits for $18,300, made on June 18, and for $67,900, on June 25, 1987, appeared on this bank statement. [There was no testimony presented as to why there was a discrepancy between the date on the receipts journal for this deposit and the date it appeared on the bank statement. One can conclude that the receipts journal entries were not made contemporaneously with the bank deposit and, therefore, the difference resulted. This does not alter the fact that fees were withdrawn in this matter almost two months earlier].

Exhibit C-10E is the May 1987 trust account bank statement showing that check No. 3211, for $2,000, cleared the bank on April 27, 1987. Exhibit C-10J is a statement of settlement and distribution for this matter, which was prepared on April 24, 1987. Respondents' 33 1/3 percent fee is shown as $1,941.74, with $2,000 written alongside. Exhibit C-10K is another copy of this document, fully executed by the client and dated June 8, 1987. Finally, the client ledger sheet (Exhibit C-10) indicates that Bisbiglia was paid in July 1987.

2. Digiorgio, client file No. 527 (Exhibits C-11 to C-11F)

The client ledger sheet (Exhibit C-11) shows the receipt of $17,000 from Liberty Mutual on June 25, 1987 and the disbursement of $4,000 (check No. 3235) to respondents in June 1987. Exhibit C-11C is check No. 3235 on respondents' trust account to Tighe and Tighe, P.A., for $4,000. The check is dated June 4, 1987 and signed by Pamela Tighe. The notation on the check is "#527", which is the Digiorgio matter.

The receipts journal (Exhibit C-11B) confirms the receipt of $17,000 on June 25, 1987 and its deposit on that date, as part of a $67,900 deposit. Exhibit C-11A, respondents' trust account bank statement, also shows this deposit on June 25. The fee check (No. 3235) for $4,000 also appears on this statement and is shown as having cleared on June 4, 1987.

3. Henderson, client file No. 8678 (Exhibits C-14 to C-14P)

The client ledger sheet (Exhibit C-14) shows the receipt of $49,140 from Allstate on April 6, 1987. It also shows disbursements to respondents on March 5, 1987 for $2,000 (check No. 2817), April 3, 1987 for $5,000 (check No. 2846) and what appears to be April 7, 1987 and April 23, 1987 in the amounts of $4,170.76 (check No. 2851) and $268.55 (check No. 2888), respectively. The $49,140.80 is shown on Exhibit C-14C, respondents' trust account statement, as being deposited on April 6, 1987. Checks Nos. 2846 ($5,000) and 2851 ($4,170.96) are shown as having cleared on April 6, 1987. Exhibit C-14E, respondents' March 1987 trust account statement, shows check No. 2817 ($2,000) as having cleared on March 6, 1987.

Copies of checks numbered 2817 and 2846 on respondents' trust account to Tighe and Tighe, P.A., contain the notation "8678 - Henderson". Both checks were signed by Charles Tighe. (Exhibit C-14F).

4. Luongo, client file No. 8527 (Exhibits C-15 to C-15J)

The client ledger sheet (Exhibit C-15) shows the receipt of $23,500 from CIGNA on December 31, 1986 and the disbursement of $8,056.60 (check No. 2754) to respondents on December 11, 1986. Exhibit C-15B is check No. 2754 written on respondents' trust account in the amount of $8,056.60 on December 11, 1986 and signed by Charles Tighe. The notation "8527 - Luongo" appears on the check.

Exhibit C-15D is a bank deposit slip dated December 31, 1986 which contains the settlement check of $23,500 as part of a larger $49,757.59 deposit. This deposit appears on respondents' January 1987 statement and is shown as having been deposited on January 2, 1987. Respondents' fee of $8,056.60, check No. 2754, appears on Exhibit C-15A, respondents' December 1986 trust account statement. That check cleared on December 12 — almost three weeks before the corresponding deposit.

In addition to the foregoing, Waldman uncovered a similar pattern of drawing fee checks against the trust account prior to the receipt of corresponding funds in several other matters. See, e.g., Exhibits C-9 through C-50.

Waldman performed a reconciliation of respondent's client ledgers to bank statements through an analysis of respondents' bank records, client ledger cards and other financial records. Her analysis revealed a trust account shortage in the amount of $23,874.44 as of May 29, 1987. Exhibit C-20. Exhibits C-20 and C-21 are the corrected version of Waldman's earlier reconciliation (Exhibit C-60), which contained certain mathematical errors. 1T118,120. Respondents failed to submit any evidence that either questioned the methodology used by Waldman to calculate the shortage or indicated that the calculations were improper.

OAE Chief Auditor Smith testified about two interviews of respondents conducted by the OAE. Smith testified that, during those interviews, Charles Tighe admitted his primary responsibility for the firm's books and records. Charles Tighe also admitted that, as he was withdrawing from the practice in late 1987 and early 1988, his sister became involved with the firm's recordkeeping. 1T171.

Smith testified that Charles Tighe had admitted to him that he had instructed his bookkeeper not to disburse checks to clients until the settlement checks were received by the firm, but that the firm could receive its fee checks in advance. 1T172.

According to Smith, Charles Tighe indicated he had taken the fees in advance because the firm was experiencing cash flow problems. Respondent made specific reference to a medical malpractice case being handled by the firm, which required substantial outlays of money. Respondent believed that his actions were only a technical violation of the rules and that the clients were always eventually paid in full. 1T172-73. He admitted that he did not inform his sister of his practice of advancing fees to the firm. 1T173.

Based on the foregoing circumstances, Pamela Tighe was charged with negligent misappropriation of client funds. The record indicated that, in approximately sixteen of thirty-four matters, Pamela Tighe was responsible for signing the checks that removed funds from the firm's trust account prior to the receipt of the corresponding fees. However, there was no evidence to suggest that

Pamela Tighe was aware that the firm still had not received the relevant funds when she authorized the fee disbursements. When Pamela Tighe assumed responsibility for the firm's books and records, she was advised of her brother's practice in this regard. She immediately discontinued that practice.

Charles Tighe provided no evidence to refute Smith's testimony. In his amended answer, however, he denied telling Smith that he had invaded client funds without clients' knowledge or authorization, although he acknowledged that he had commented on his cash flow problems.

LYNN-COR MATTER - DRB 94-331 and 94-332 (fee splitting) - (Charles I. Tighe and Pamela N. Tighe)

On or about March 1, 1987, E. Joseph Schlafer, president of LYNN-COR Investigations, Inc. entered into a "services contract" with Tighe and Tighe, P.A. Exhibit C-4. The contract was signed by Pamela Tighe on behalf of the firm. Paragraph 1 of the contract specifically stated:

> For the period of one (1) year from the date of this contract 'LYNN-COR' will supply investigative services to and act pursuant to the instruction of 'TIGHE' and shall be deemed an independent contractor and not an employee in such situation. (Emphasis supplied).

The significant terms of the fee arrangement between respondents and LYNN-COR were set forth at paragraphs 2,3,5 and 6 of the contract. Paragraph 2 indicated that LYNN-COR was to receive a yearly fee of $4,700, to be paid in fifty-two equal weekly installments or "in a manner as the parties may later direct."

Paragraph 3 of the contract read:

> As further compensation 'TIGHE' agrees to make a monthly review of the efforts of 'LYNN-COR' and shall pay an additional fee for services based on the gross legal fees earned during the period. 'LYNN-COR' shall receive an amount equal to 10% of all gross legal fees earned in excess of $25,000.00 during the period or $1,200.00, which ever [sic] amount is greater, said payment being guaranteed and considered as an inducement for 'LYNN-COR' to devote its best efforts to the interest of 'TIGHE'. (Emphasis supplied).

Paragraph 5 permitted LYNN-COR to participate in investments entered into by respondents that were either related or unrelated to the practice of law. Finally, paragraph 6 permitted respondents, solely at their discretion, and based on the "independent nature of [their] employment of 'LYNN-COR' to pay the 'corporation' additional bonuses and/or compensation."

An analysis by the OAE auditor of respondents' trust and business account records revealed numerous disbursements to LYNN-COR between 1986 and 1989. Waldman prepared a schedule of several client matters in which she calculated the percentage of payment to LYNN-COR based on respondents' client ledgers and business and trust account disbursement records for 1986. The matters are as follows:

	CLIENT NAME	SETTLEMENT AMOUNT	RESPONDENTS' FEE	LYNN-COR FEE
1.	Banks	$ 6,000	$2,000	$ 667.66*
2.	Cook	4,000 (no disbursement sheet was available)	unknown	443.00**
3.	Cox	13,200	4,400	1,466.52*
4.	Griffith	6,500	2,131.34	789.40* 71.05 860.45

5.	Henderson	2,500	unknown	277.47
6.	Mazzoni	4,250	unknown	466.99**
	(no settlement or disbursement sheet was available)			
7.	Overstreet	5,000	1,637.66	545.88*
8.	Salvano	7,000	unknown	777.78**
9.	Schott	4,000	unknown	426.67**
	(LYNN-COR received slightly less than 1/9 of the settlement)			
10.	Scully	16,000	unknown	1,065.26
	(LYNN-COR received 6.7 percent of the fees)			
11.	Hillman	5,000	1,666.66	555.55*

*(LYNN-COR received 1/3 of respondents' fees)
**(LYNN-COR received 1/9 of the settlement)
[Exhibit C-64]

Exhibit C-65 similarly sets forth for 1987 eleven out of fourteen reported matters in which LYNN-COR received one-third of respondents' fees. Exhibit C-67 shows fifteen matters in 1988 in which LYNN-COR was paid one-third of respondents' fees. These fees were paid from respondents' trust account and totalled $17,545.72. LYNN-COR was additionally paid $71,302.29, in 1988, from respondents' business account. Exhibit C-68.

While payments made to LYNN-COR from respondents' business account may have been based upon the terms of the contract between the parties, the payments from the trust account represented, in almost all instances, one-third of respondents' fees.

Chief Auditor Smith testified that he requested from respondents any records to explain how payments to LYNN-COR correlated with their services contract. Charles Tighe, however, indicated that the firm had no records to show how such remuneration was derived. 1T176. Similarly, respondents offered no witnesses or other evidence in that regard.

THE DUFFEY MATTER - DRB 94-333 (Charles I. Tighe, III)

The OAE filed a formal complaint charging Charles I. Tighe, III with a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). This charge arose from his conduct during the course of his representation of his client.

In or about 1985, respondent was retained by Mary Duffey (hereinafter "grievant") to represent her in a medical malpractice suit against her former treating physician, Dr. Leonberg. T11.[6] The doctor had allegedly overprescribed steroids that caused Duffey to experience severe problems, including the loss of muscle control. Respondent succeeded the firm of Weber, Viniar and Marcus, located in Woodbury, which had previously filed a complaint in Duffey's behalf. Exhibit C-3.

In 1985, while represented by respondent, Duffey's lawsuit was dismissed with prejudice on a motion for summary judgment. Exhibit C-4. Respondent claimed that the dismissal was for failure to produce an expert witness, Dr. Osterholm, who refused to testify on Duffy's behalf. T11. He also had treated Duffey for her problem with steroids but, apparently, had prepared a medical report in support of Duffey's claims.

After Duffey's suit was dismissed, respondent advised her that they might be able to file a suit against Dr. Osterholm for his failure to testify. Duffey was reluctant to do so because she felt Dr. Osterholm had helped her with her medical problems.

[6] T denotes the transcript of DEC hearing on April 12, 1994.

Approximately one year after the suit was dismissed, Duffey decided to sue Dr. Osterholm. T13.

Duffey recalled meeting with respondent and signing some papers, which she believed to be a power-of-attorney. Duffey also recalled that respondent had informed her that, because Dr. Osterholm was from Pennsylvania, the suit would have to be filed in that state. Respondent, however, was not admitted to practice in Pennsylvania. He advised Duffey that he would have to work on the case with a Pennsylvania attorney. On cross-examination, Duffey stated that she may have met with respondent and the Pennsylvania attorney and that the attorney did not believe that the case could go forward without an expert witness. T36. Respondent, nevertheless, informed Duffey that he would try to pursue the matter himself and that their "best bet" would be to try to settle the matter. T39-40.

Finally, in 1990, respondent advised Duffey that her case had settled for $30,000 and that she would receive approximately $20,000. T14. In December 1990, respondent told Duffey that he had the settlement check and that it would take approximately seven to ten days for the check to clear. T15. He led her to believe that the check had been deposited in a bank in Florida, where he resided on a part-time basis. Based on this representation, Duffey, who was experiencing financial difficulties, borrowed $1600 from her sister, Carol Quigley. Quigley obtained the money from a home equity loan, which she did not disclose to her husband because she believed that her sister

would be able to repay her immediately from the settlement proceeds.

Thereafter, Duffey called respondent on a number of occasions to learn whether her check had cleared. Each time, respondent told her that it had not.

In January 1991, Duffey and her sister met with respondent at his office in New Jersey. Respondent informed the sisters that he had some "bad news;" he claimed that, at the time that he deposited the settlement check, he did not have the power-of-attorney with him and that, therefore, the bank had returned the check to the insurance company because of an improper endorsement. Respondent told them that he would have to fight to get the money back. T17.

Thereafter, Duffey repeatedly telephoned respondent to learn whether he had obtained the replacement check. Duffey testified that, at that time, she was still confident that everything was alright. She felt that respondent was a good friend and she "really trusted him." T18.

Duffey's repeated calls to respondent to determine the status of her case were documented by her telephone bills. Exhibits C-6 through C-16. Duffey called respondent at his home in West Palm Beach, Florida and in Philadelphia, where he occasionally worked. The calls continued from December 1990 to May 1991. During that time, Duffey placed approximately 170 calls to respondent. Most of those calls were to West Palm Beach.

Duffey was able to speak with respondent on a number of occasions, at which time respondent advised her that things were

"either looking good or bad or that he was working on it." Eventually Duffey asked respondent to send her something in writing. In response, on or about April 10, 1991, respondent faxed her a letter, which read:

> This will confirm our various conversations regarding the settlement of your matter that I am handling. I am sorry for the delays that we have encountered but it does appear that we have finally reached a conclusion. As you know, I did have to make a compromise with the other party and, although I have not yet received all of the final documentation on this point, I am satisfied that all is in order and this information will be to us in the next few days. I anticipate that you will receive your portion of the settlement, the amount of which is known to you, next week and am doing all that I can to see to it that this will take place as early as Monday, April 15, 1991.
>
> I appreciate your patience regarding this matter and can advise you that it will be concluded as rapidly as is possible. I shall continue to stay in touch with you as matters develop.
>
> [Exhibit C-17]

When questioned with regard to his letter, respondent admitted forwarding it to Duffey. He claimed:

> I did write it at her request and there was a lawsuit pending, which she has testified which was an automobile accident lawsuit in which she had herniated discs.
>
> [T83]

Respondent, claimed, however, that the letter did not refer to any particular lawsuit and that it had been written to mislead Duffey's relatives, who had lent her money. T85. Duffey testified that the

automobile lawsuit to which respondent referred occurred in 1981 and there were no other cases pending at the time.

On or about May 23, 1991, respondent sent Duffey a second letter enclosing a statement of settlement. That letter stated:

> Enclosed please find the Statement of Settlement on the proposed settlement of the above captioned matter. Based on our telephone conversations you are fully aware of the manner in which these funds will be transmitted to you when available. At this point, I am not quite sure when this transfer will take place and will have more information on this either later today or tomorrow morning. I shall call you the minute that I know that final arrangements have been made.
>
> Please indicate your acceptance of the terms of this settlement by signing where indicated and returning by fax to (407)798-3568. If you have any questions please do not hesitate to contact me. Thank you.
>
> [Exhibit C-18]

The statement of settlement and distribution indicated that Duffey would receive $21,000. Duffey executed the document on May 23, 1991. Exhibit C-19.

Duffey's testimony on cross-examination, according to the Special Master, ended on an emotional note:

> Q. And at that point, as you said, you had asked me for something in writing because you wanted something in writing to evidence you were going to be getting funds, you needed that?
>
> A. I wanted something in writing to prove that I had -- that things were the way you were telling me. My family was telling me I was out of my mind to believe everything I was being told, which I did, and at the time my husband was dying with cancer and it was a very, very bad time. You know it was a really bad time.
>
> Q. I know it was.

A. I mean, to have things that happened transpire at that time, I mean, I just still -- I can't believe that I'm sitting here today. I really can't. I just can't believe that it had to come to this. I really trusted in you [sic].

MR. TIGHE: I have nothing further. Thank you, Mary.

[T46]

On redirect examination, Duffey testified that she never requested respondent to prepare fraudulent documents to mislead her relatives. She believed that all the documents prepared by respondent were accurate representations of the status of her lawsuit. Duffey believed that respondent had actually filed an action in her behalf and that she would be receiving settlement funds.

OAE Chief Auditor Smith questioned respondent with regard to Duffey's alleged lawsuit. Respondent informed Smith that, after he discussed the possibility of suing Dr. Osterholm with the attorney from Pennsylvania and after independent research, he had concluded that it was not worth pursuing the matter. T65. Respondent also admitted that he knew that the documents that he had prepared were not authentic and that he should not have prepared them. T66.

* * *

At the conclusion of the ethics hearing, the Special Master found that, in the Klatt matter, respondent had violated RPC 1.8(a) (conflict of interest) because Mrs. Klatt was a client of respondent Charles I. Tighe and respondent had, or anticipated

having, an interest in the Countryside Pines venture. Therefore, the Special Master found that respondent was under an obligation to obtain Mrs. Klatt's written consent to the transaction, after transmitting to her, in writing, the terms of the deal. This respondent failed to do. The Special Master also found that respondent had failed to advise the Klatts to consult with another attorney and that his off-handed advice to "talk to your banker or broker" or "consult with whomever she wished" (if he, in fact, did so) did not satisfy the requirements of RPC 1.8(a). Finally, the Special Master found that respondent failed to give Mrs. Klatt sufficient information about the transaction so that she could determine whether the terms were "fair and reasonable" and "fully disclosed."

The Special Master also found a violation of RPC 8.4(c), based on respondent's failure to disclose the true nature of the Countryside Pines project. Specifically, respondent had failed to advise the Klatts that only a $5,000 deposit was required to hold the property, pending the due diligence investigation; that Wellington Development was not an actual entity; and that their check would be deposited in the Schneller Realty account.

Moreover, the Special Master concluded that respondent failed to advise the Klatts that he and his partner had decided to withdraw from the project. This occurred on or before December 18, 1988, the date Schneller refunded $17,000 to respondent, supposedly to be returned to the Klatts.

The Special Master also found that respondent violated RPC 1.15(b), for his deposit of $19,500 of the Klatts' funds into his personal account and for his failure to reimburse them. Thus, the Special Master found that the strong evidence presented, combined with the complete absence of "objective proof" to substantiate the statements respondent made in his answer and closing statement, provided clear and convincing proof of a knowing and intentional misappropriation of the Klatts' money. The Special Master, therefore, concluded that, under the mandate of In re Wilson, 81 N.J. 529 (1979), disbarment was the only appropriate sanction.

As to the advance fee matters, the Special Master found that Charles Tighe had instructed his bookkeeper to make disbursements to the firm from trust funds prior to the receipt of settlement monies, but had cautioned her not to disburse funds to clients prior to receipt. The Special Master found this to be evidenced by the actual practice of the firm and by respondent's knowledge of when settlement checks were received, deposited and distributed to clients and when checks were written to the firm in advance of settlement monies. The Special Master, therefore, concluded that there was clear and convincing evidence that Charles Tighe knowingly misappropriated client funds without the client's knowledge or authorization in order to fund the business operations of the law firm, in violation of RPC 1.15. The Special Master made no reference to a violation of RPC 8.4(c).

The Special Master found that Pamela Tighe had signed checks removing funds from the firm's trust account prior to the receipt

of relevant settlement monies. The Special Master concluded, however, that Pamela Tighe was not aware that there were no corresponding funds on deposit against which the fees could be drawn. Accordingly, the Special Master found that Pamela Tighe was guilty of negligent misappropriation, but not of knowing misappropriation. The Special Master also noted that, when the bookkeeper brought this practice to Pamela Tighe's attention, the latter instructed the bookkeeper to discontinue it immediately.

With regard to the LYNN-COR matter, the Special Master rejected respondents' argument that there was no proof in the record that monies paid to LYNN-COR were anything other than those permitted under the contract — fees and profit sharing. Rather, the Special Master found that the source of the payments proved otherwise. The Special Master reasoned that, while the business account payments to LYNN-COR may have represented contractual payments and profit-sharing distributions, such payments would not have been made from the trust account, but only from the business account, after monies were moved from the trust account to the business account. Until that accounting procedure was accomplished, neither contractual payments nor profit-sharing funds could be disbursed. Moreover, respondents' profits could not even be calculated until all of the firm's legal fees were deposited into the business account and analyzed in conjunction with business expenses.

The Special Master concluded that the funds paid to LYNN-COR from respondents' trust account were referral fees, in clear

violation of RPC 5.4(a). She found that the practice was a continuing violation encompassing several years, including 1988, when Pamela Tighe was in charge of the firm's financial matters. The Special Master's findings in this regard applied to both respondents.

As to the Duffey matter, the Special Master commented that Charles Tighe acknowledged that his conduct was designed to deceive someone, albeit not his client. The Special Master found that respondent's testimony was not credible and that Duffey's testimony, her signature on the settlement sheet and the extensive number of telephone calls to respondent clearly and convincingly demonstrated that Duffey believed that her case had been settled. The Special Master observed that, had Duffey been aware that there was no case pending on her behalf, there would have been no reason for the constant telephone calls to respondent.

* * *

RESPONDENT CHARLES TIGHE

Following a de novo review of the record, the Board is satisfied that the Special Master's findings are supported by clear and convincing evidence. With regard to the Klatt matter, while a technical attorney-client relationship may not have existed at the time respondent initially approached Mrs. Klatt with the investment opportunity, there can be no doubt that Mrs. Klatt held a reasonable expectation that respondent, as her former attorney and

her friend, was bound to protect her interests. Indeed, respondent's own representation to her — that he had "pulled [the Klatts] out" of the venture because he believed that to be in their best interest — further supports the reasonableness of her expectation. Therefore, the Board has no hesitation in finding the existence of an attorney-client relationship between respondent and the Klatts in this particular transaction. As the Klatts' attorney and now business partner, respondent was clearly obligated to exercise the utmost care to make full disclosure of all relevant considerations, pursuant to RPC 1.8(a). This he did not do. The evidence clearly and convincingly established that respondent failed to fully disclose the terms of the transaction; failed to transmit the terms of the transaction to Mrs. Klatt in writing, failed to advise Mrs. Klatt of the desirability of seeking independent counsel and failed to obtain her consent in writing, all in violation of RPC 1.8(a).

In addition, for the reasons expressed by the Special Master, the record established by clear and convincing evidence that respondent violated RPC 8.4(c). For an extended period of time, respondent misled the Klatts about the status of their investment, when in fact he had, early on, withdrawn from the venture.

The most serious charge against respondent in this matter is the alleged knowing misappropriation of client funds. The record established that respondent obtained $25,000 from the Klatts, purportedly for investment in the Countryside Pines project. While respondent may have originally intended to invest the money, once

he and his partner withdrew from the project, he had an obligation to so notify his client and to refund any monies that had not been legitimately expended in furtherance of the venture. Nonetheless, for well over a year, respondent misled the Klatts as to the status of their investment by fabricating one story after another. In the end, the Klatts were never reimbursed any portion of their investment and respondent never accounted for the missing funds. Instead, he claimed that the $17,000 that was returned to him by his partner, which should have been returned to the Klatts, was intended for and applied to his legal fees incurred in the Countryside Pines venture. The Board considers respondent's contention to be an after-the-fact justification for his misuse of his client's funds. Indeed, if respondent genuinely perceived that he was entitled to legal fees from the Klatts' investment, he would have simply advised the Klatts of the precise allocation of their investment to his fee. Instead, he advised them that he made a decision to pull them out of the venture and promised the full return of their funds. Respondent's failure to deal with his clients openly and fairly severely undercut his credibility of his assertion that he was legitimately entitled to apply his client's money to his fees.

Respondent's misconduct in the Klatt matter is compounded by his systematic misappropriation of client funds in the advance fee matters. The evidence clearly and convincingly established that, in thirty-four matters, respondent knowingly misappropriated client funds by withdrawing legal fees prior to receiving the

corresponding funds. This conduct, which was repetitive and extended over a considerable period of time, in and of itself requires respondent's disbarment. See In re Warhaftig, 106 N.J. 529 (1987).

In Warhaftig, a random compliance audit of the attorney's books and records, which covered a two-year period, disclosed that he continually issued checks to his own order for fees in pending real estate matters. The attorney replaced the 'advance' when the funds were received from each real estate closing. The Court rejected the distinction between the attorney's conduct, characterized as the premature withdrawal of monies to which he had a colorable interest, and knowing misappropriation as described in In re Wilson, 81 N.J. 451 (1979). The Court concluded that such a distinction could not be sustained, and disbarred Warhaftig.

The Court stated:

> It is clear that respondent's conduct constituted knowing misappropriation as contemplated by Wilson. Through the use of the advance-fee mechanism, he took funds from his trust account before he had any legal right to those monies. These 'fees' were taken by respondent before he received any deposits in connection with the relevant real-estate closings. Thus, he was effectively borrowing monies from one group of clients in order to compensate himself, in advance, for matters being handled for other clients. Respondent made these withdrawals with full recognition that his actions had not been authorized by his clients, and that he was therefore violating the rules governing attorney conduct. Respondent's unauthorized misappropriation of clients' trust funds for his personal needs cannot be distinguished from the conduct condemned in Wilson, supra. See also In re Lennon, supra, 102 N.J. at 521 (respondent disbarred where audit disclosed 'a

> pattern of taking trust funds held as deposits on real estate closings and replacing them before the closing occurred').
> [Id. at 533-34]

The only difference between Warhaftig and this matter is that respondent herein "borrowed" his fees in connection with personal injury matters, rather than real estate closings — a distinction of no moment. Therefore, this respondent, too, must be disbarred. The Board unanimously so recommends. Two members did not participate. The Board further recommends that respondent be required to reimburse the Disciplinary Oversight Committee for administrative costs.

* * *

While the Board also finds respondent guilty of violations of RPC 5.4(a) for his payment to LYNN-COR of what were clearly intended as referral fees, such a finding is rendered moot by the Board's findings of knowing misappropriation in the Klatt and advance fee matters. In addition, while the Board was inclined to make a finding of a violation of RPC 8.4(c) for respondent's conduct in the Duffey matter, such a finding is similarly rendered moot. However, respondent's conduct in those matters, and particularly in the Duffey matter, underscores the callousness and disregard respondent displayed towards his clients, who were also his friends and who trusted him as a professional.

RESPONDENT PAMELA TIGHE

Following a de novo review of the record, the Board is satisfied that the Special Master's finding that respondent was guilty of unethical conduct is supported by clear and convincing evidence. Like the Special Master, the Board concludes that the record is devoid of any evidence to suggest that respondent was aware that there were no funds on deposit for the matters in which she authorized the withdrawal of legal fees. Moreover, respondent Charles Tighe admitted that he had full control of the financial aspects of the firm until late 1987 and that he did not tell his sister about his practice of advancing fees to the firm.

Finally, respondent took immediate measures to discontinue her brother's practice, once she was advised of the situation. There is, therefore, no clear and convincing evidence in the record that she knowingly misappropriated client funds. Nevertheless, because an attorney is ultimately responsible for maintaining a proper trust account and cannot avoid that responsibility by claiming reliance on staff, respondent's conduct did amount to a negligent misappropriation of client funds. See In re Barker, 115 N.J. 30 (1989) (attorney publicly reprimanded for inattention to the firm's books and records and his reliance on his bookkeeper, which resulted in a one-time overdraft in the firm's trust account).

The Board, however, cannot agree with the Special Master's finding that Pamela Tighe was also guilty of a violation of RPC 5.4(a) in the LYNN-COR matter. There was simply no clear and convincing evidence of respondent's participation in that fee-

splitting arrangement, beyond her execution of the services contract. For that reason, the Board has determined to dismiss that charge.

Under a totality of the circumstances, the Board has unanimously determined to reprimand respondent Pamela Tighe for her participation in the advance fee matters. Two members did not participate.

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

Dated: 5/11/95

By: _____
Raymond R. Trombadore
Chair
Disciplinary Review Board