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IN THE MATTER OF  
WILLIAM GOLDBERG  
AN ATTORNEY AT LAW

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Decision

Argued: January 31, 1996

Decided: September 18, 1996

John J. Breslin appeared on behalf of the District IIB Ethics Committee.

Respondent appeared pro se.

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

This matter was before the Board based on a recommendation for discipline filed by the District IIA Ethics Committee (DEC), following hearing on two matters investigated and prosecuted by the District IIB Ethics Committee. The complaints in both the Searles and Kagle matters charged respondent with a violation of RPC 1.4 (failure to communicate), RPC 1.7 (conflict of interest: dual representation), RPC 1.9 (conflict of interest: former client) and RPC 8.4(d) (conduct prejudicial to the administration of justice). In the Searles matter, the complaint also charged a violation of RPC 1.2(a) (failure to abide by a client's decisions concerning the representation).

Respondent was admitted to the New Jersey bar in 1967. He is

engaged in the practice of law in Hackensack, Bergen County.

By letter dated February 6, 1990, respondent was privately reprimanded for unethical conduct arising out of a condominium conversion matter. Specifically, respondent reached an agreement with the condominium sponsor without consulting 476 clients about its terms and improperly terminated his representation of two clients in the same matter.

On July 2, 1993, respondent was again privately reprimanded for unethical conduct (conflict of interest) in connection with a condominium conversion and subsequent sale.

This matter arose out of respondent's handling of several landlord/tenant matters. The two grievants, Eve M. Kagle and Victoria A. Searles, were tenants in the property in question. The landlord was Howard Koval. Respondent represented Mr. Koval in a municipal court matter arising under the Tenants' Property Tax Rebate Act, in which both grievants were Mr. Koval's opposing parties. Respondent had previously represented Ms. Kagle in an eviction proceeding initiated by Mr. Koval and continued to represent her in a lease extension during the municipal court proceeding. Similarly, respondent had previously represented Ms. Searles in an eviction proceeding filed by Mr. Koval, in which Ms. Searles essentially claimed that respondent entered into a stipulation of settlement without her consent. The Kagle and Searles eviction matters are immediately set forth below. The facts surrounding the tax rebate matter follow.

The Kagle Matter (District Docket No. IIB-93-60E)

For twenty-five years, Eve M. Kagle resided in an apartment building owned by Mr. Koval. In or about 1987, when it was converted to condominiums, she was offered an option to purchase her unit, which she declined. In or about March 1993, she was served with a complaint filed by Mr. Koval seeking her eviction and possession of the apartment. Sometime thereafter, Ms. Kagle retained respondent, paying him a \$1,250 retainer. Respondent told Ms. Kagle that she had a strong case and that he would negotiate and possibly get her an additional four or five-year occupancy in the apartment. Respondent had the court date in the eviction proceeding adjourned and entered into negotiations in Ms. Kagle's behalf. Respondent advised Ms. Kagle not to be concerned about further notices from Mr. Koval and to stay in contact with respondent.

According to respondent, at some point Mr. Koval abandoned the eviction proceeding, which was subsequently dismissed by the court on its own motion. Respondent did not notify his client that the case had been dismissed.

Seven months later, in October 1993, Ms. Kagle received a new lease from Mr. Koval. By that time, respondent was already representing Mr. Koval in a tax rebate matter. Respondent told Ms. Kagle that he was still her attorney and to contact him if she received further notices from Mr. Koval. On or about October 10, 1993, Ms. Kagle "faxed" a letter and a copy of the lease to respondent for his review. Upon Ms. Kagle's inquiry, respondent

again stated that he was still her attorney. Respondent advised Ms. Kagle to sign the extension to the lease, which she did.

Respondent did not believe that his advice to Ms. Kagle to sign the lease had affected Mr. Koval's rights.

In or about January 1994, Ms. Kagle received another eviction notice and contacted respondent. By this time, however, Ms. Kagle had already filed an ethics grievance against respondent. Respondent, thus, did not think it was appropriate to give her legal advice because of the pending ethics proceeding. Thereafter, Ms. Kagle was able to negotiate an agreement with Mr. Koval in her own behalf.

The Searles Matter (District Docket No. IIB-93-60E)

Victoria A. Searles had lived at Mr. Koval's property since July 1, 1964. When the property was converted to condominiums, she was informed of her right to purchase her unit, which she declined to exercise. Ms. Searles retained Herbert McCarter, Esq., who sent a notice to Mr. Koval requesting comparable housing. In November 1992, Ms. Searles received an eviction notice from Mr. Koval. She contacted Mr. McCarter, who informed her that he no longer handled such matters. Accordingly, on or about November 11, 1992, Ms. Searles retained respondent. She paid him a \$1,000 retainer in three installments. Respondent was not yet representing Mr. Koval in the tax rebate matter.

Respondent and Ms. Searles discussed possible outcomes of her proceeding. Those discussions apparently resulted in some

confusion on her part. According to Ms. Searles, respondent assured her that he would do his best to secure occupancy for one additional year, and perhaps even three or four more.

In turn, respondent testified that, although he mentioned three or four years' occupancy as a possibility, he informed Ms. Searles that he needed to review the documents in the matter, explaining that, if Mr. Koval's filing procedures had been flawed, it would be possible to have the case dismissed; thereupon, Mr. Koval would be forced to begin the procedure again, by sending a three-year notice to quit, thereby causing a three- or four-year delay in the eviction proceeding. Respondent explained, however, that Mr. Koval's attorney, Bruce L. Safro, Esq., had followed the appropriate procedure. Respondent testified that he had so informed Ms. Searles. Respondent contended that, thereafter, throughout the negotiations, he had told Ms. Searles that there were two possibilities: 1) Ms. Searles could remain in her apartment for one additional year (apparently based on rights stemming from her earlier letter requesting comparable housing) or 2) respondent could get her "something more," referring to some additional months.

After respondent was successful in adjourning the court date, he entered into negotiations with Mr. Safro. Respondent ultimately obtained a six-month extension of Ms. Searles' occupancy. According to respondent, he informed Ms. Searles of this outcome and advised her that she either could accept it or proceed to court. Respondent added that Ms. Searles had agreed to the outcome.

Mr. Safro testified before the DEC.<sup>1</sup> He stated that, at one point during the negotiations (January 1993, in respondent's estimation), respondent informed him that he had to discuss the terms of the settlement with Ms. Searles, who was on vacation at the time, and that he would have to wait for her return to proceed. Thereafter, respondent told Mr. Safro that the settlement terms were acceptable. Contrary to respondent's testimony, however, Ms. Searles stated that she was not on vacation at any time from November 1992 to April 1993. The DEC did not question respondent about this contradiction. Ms. Searles also testified that she was "reasonably certain" that she did not receive any telephone calls from respondent in January 1993.

Following the negotiations with respondent, Mr. Safro prepared a stipulation of settlement, which he forwarded to respondent. Respondent signed the settlement in January 1993 and returned it to Mr. Safro for filing. Mr. Safro sent the filed settlement to respondent on March 25, 1993. By letter dated April 2, 1993, respondent mailed the agreement to Ms. Searles, who received it on April 6, 1993. Thereafter, Ms. Searles telephoned respondent on April 14, 1993 and expressed her displeasure with the settlement terms. Respondent discussed the settlement with her, assuring her that it was the best he could do.

Ms. Searles testified that, between November 1992 and January 1993, she would talk with respondent every seven to ten days, at

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<sup>1</sup> Mr. Safro is a member of the District IIB Ethics Committee. He disqualified himself from the DEC discussions during the investigation of the case.

which time respondent would tell her that he was working on the matter. (Their communication was less frequent between February and April 1993; it is unclear what respondent said during those conversations). Although Ms. Searles recalled that respondent discussed the negotiations during their frequent communications, she contended that she was unaware of its terms until she received the settlement agreement in April 1993. She testified that she had not authorized respondent to sign the agreement and had expected to review it before it was signed. She also testified that she was not aware that the matter was final and believed that respondent would continue to pursue it.

Respondent admitted that he had not sent the final agreement or earlier drafts to Ms. Searles for her review. He deemed such unnecessary because they had discussed the terms of the agreement during their telephone conversations and because of the "singularity of the issue involved," apparently referring to the length of time Ms. Searles could remain in the apartment. According to respondent, he told Ms. Searles that there would be a written agreement by which she would be bound. She did not ask to see it prior to his signature. Respondent was certain that he had Ms. Searles' authorization to sign the agreement, concluding that it would be "preposterous" for him to enter into an agreement without his client's consent.

Ultimately, Ms. Searles hired another attorney to represent her in the eviction proceeding. For reasons not clear from the record, the matter was still pending as of the date of the DEC

hearing.

The Tax Rebate Matter

In July 1993, five tenants in Mr. Koval's building, including Ms. Kagle and Ms. Searles, filed complaints against him in municipal court for failure to comply with the Tenants' Property Tax Rebate Act for 1992. It is respondent's representation of Mr. Koval in that proceeding that is at issue. The facts are as follows:

According to Ms. Searles, on July 16, 1993, when she had not received money allegedly due to her by Mr. Koval, she "faxed" to respondent nine pages of documents on the tax rebate matter. Despite Ms. Searles' dissatisfaction with the results of her eviction matter, she still considered respondent to be her attorney at that time. Ms. Searles testified that, on July 16, 1993, shortly before or shortly after her "fax" transmission, she contacted respondent and announced her intention to pursue the matter against Mr. Koval, "asking [respondent] in a sense to represent [her]." Ms. Searles stated that, at "about that time," respondent told her that he was representing Mr. Koval in the tax rebate matter. According to Ms. Searles, she pointed out to respondent that it was a conflict of interest for him to represent Mr. Koval because he was her attorney. (It should be recalled that Ms. Searles believed that her eviction matter was still ongoing, despite the fact that respondent had signed the settlement agreement some six months earlier, in January 1993). Ms. Searles, who was concerned that



respondent had confidential information about her, allegedly apprised respondent of her objection to his representation of Mr. Koval; respondent, however, replied that he was no longer her attorney, as her case had been finalized. According to Ms. Searles, respondent denied the existence of a conflict of interest, explaining that he was not representing Mr. Koval against her or against Ms. Kagle,<sup>2</sup> but against the three other tenants who had filed complaints against Mr. Koval. Ms. Searles added that, during their conversation, respondent read to her the statute applicable to the tax rebate matter and predicted that she would not be successful in her claim.

Sometime after Ms. Searles' conversation with respondent, she advised Ms. Kagle of respondent's representation of Mr. Koval in the tax rebate matter. Ms. Kagle then called respondent, presumably in July 1993. Respondent admitted to Ms. Kagle that he was representing Mr. Koval in the tax rebate matter and assured her that the case had nothing to do with the eviction proceeding in which he was acting as her attorney. According to Ms. Kagle, at that time she expressed her opinion that respondent's representation of Mr. Koval created a conflict of interest. Respondent's reply was that he was not discussing the eviction case with Mr. Koval and that the two cases were totally unrelated. According to Ms. Kagle, respondent also forecasted that Mr. Koval had a good chance of winning the rebate case.

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<sup>2</sup> Ms. Kagle did not consult with respondent about filing the complaint against Mr. Koval or ask him to represent her in the tax rebate matter.

Respondent, in turn, had no recollection of receiving a "fax" from Ms. Searles in July 1993 or of having a telephone conversation with her about the rebate case during that period. Respondent's version of the events was that, on August 6, 1993, he received a call from Mr. Koval, who set up an appointment to discuss the tax rebate matter on a number of occasions. Over a twelve-year period, respondent had opposed certain of Mr. Koval's claims in connection with various real estate ventures. Respondent had not acted as Mr. Koval's attorney before. On August 11, 1993 respondent met with Mr. Koval to discuss the tax rebate case. Respondent testified that he saw interesting constitutional issues in the case and wished to pursue Mr. Koval's representation. According to respondent, Mr. Koval told him that he had received five complaints, but did not disclose the names of the complainants or the building involved. (Mr. Koval knew that Ms. Searles and Ms. Kagle had been respondent's clients). Later that day, Mr. Koval "faxed" to respondent the five complaints. Respondent's secretary, Donna Setlock, testified at the DEC that she looked at the complaints and recognized the names of Ms. Kagle and Ms. Searles as former clients. She then revealed this information to respondent, who contacted Mr. Koval and declared that he could not represent him in the matters involving Ms. Searles and Ms. Kagle, only in the other three.

Respondent testified that he thereafter spoke to Ms. Searles, on August 12, 1993, at which time he disclosed his representation of Mr. Koval in the three remaining cases. (Ms. Searles, in fact,

remembered a conversation with respondent on that date about his representation of Mr. Koval). Respondent recalled telling Ms. Searles that the case had interesting constitutional issues. He added that they may have discussed possible outcomes of the matter.

Respondent denied, however, that Ms. Searles or Ms. Kagle ever objected to the representation or raised the existence of a conflict of interest during their conversations. He recalled that, only at a later court appearance, did Ms. Koval express her belief that there was a problem.

Mr. Koval testified before the DEC. He remembered that respondent had contacted him to say that he could not represent him in the matters involving Ms. Kagle and Ms. Searles, but did not recall with specificity when the call had occurred. Mr. Koval testified that he and respondent had discussed the fact that the issue was the same in each of the cases. Mr. Koval stated that he had been "hoping that one of the other three [cases] would be one of the ones that came up. I figured I had better odds, three to two, that if one of those cases came up, that he would represent me, and that if that case was won, that would be a basis or foundation for the others."

Indeed, respondent confirmed that the outcome of the tax rebate case in any one of the five matters would affect the result in the remaining four matters. Ms. Kagle and Ms. Searles acknowledged that respondent apprised them of this fact.

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Respondent admitted that he never sought consent from Ms. Kagle and Ms. Searles to his representation of Mr. Koval, deeming it unnecessary. Respondent testified that Mr. Koval had consented to the representation because he knew "what [respondent] couldn't do and what [he] could do." With regard to Ms. Kagle's lease extension, respondent stated that Mr. Koval knew that Ms. Kagle was his client and that respondent would not compromise her interests. According to respondent, he and Mr. Koval never discussed the lease extension matter.

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A hearing in the tax rebate matter was held on September 23, 1993 before the Honorable John DeShelpo, J.M.C. The tenants were represented by the municipal prosecutor. Although this is not mentioned in the DEC's report, according to Ms. Kagle and Ms. Searles there had been an earlier hearing on August 17, 1993. What occurred on that date is unclear. According to Ms. Searles, however, at that time she informed the municipal court of the conflict of interest created by respondent's multiple representation of her and Mr. Koval's interests.

At one point, apparently early in the September 23, 1993 proceeding, the court called Ms. Kagle to the bench. Respondent stated to the court that Ms. Kagle was his client, that he was not representing Mr. Koval against her and that he had so informed Ms. Kagle. The court and respondent discussed the propriety of

respondent's representation of Mr. Koval. Upon inquiry from the court, Ms. Kagle stated her belief that there was a problem with respondent's representation of Mr. Koval.<sup>3</sup> The court adjourned the hearing and suggested that respondent obtain an ethics advisory opinion about the propriety of his representation of Mr. Koval.

The next tax rebate hearing took place on December 9, 1993. (It should be recalled that, two months earlier, respondent had advised Ms. Kagle about her lease extension). During that hearing, respondent informed the court that he had not sought an advisory opinion, although he had discussed the issue with "members of Ethics Committees." Respondent stated to the court that "[t]he fact that [Ms. Kagle's] case may have a similar outcome, I do not feel is an ethical question." Respondent asserted that he wanted to proceed with his representation of Mr. Koval in the three matters that did not involve Ms. Searles or Ms. Kagle. Exhibit CS-1, Exhibit 5. The DEC summed up respondent's position on the matter as follows:

He testified that since the three actions were of a quasi criminal nature, he felt that Mr. Koval had the right to retain the attorney of his choice. He stated that Judge DeShelpo did recommend that he get an advisory ethics opinion and that he spoke with people who taught ethics and one former member of an ethics committee. He stated that he felt this situation was analogous to a municipal

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<sup>3</sup> Ms. Kagle acknowledged, during the September hearing, that respondent had told her that he would not be involved in her particular matter. Ms. Kagle explained, however, that "that was after the fact" and that, when she first saw respondent in court, presumably at the August hearing, she did not know that he was representing Mr. Koval. Exhibit CS-1, Exhibit 3.

Ms. Kagle's statement is in conflict with her testimony about a July 1993 telephone call wherein she and respondent discussed his representation of Mr. Koval, after she had been contacted by Ms. Searles. This lends support to respondent's contention that Mr. Koval did not consult with him until August and that he did not speak with Ms. Searles until after that meeting.

attorney representing a municipality in a tax appeal which would impact on the residents of the municipality. In such a hypothetical, he did not feel that this municipal attorney would be precluded from representing anyone who resided in the town. He felt the tax rebate matter was a separate proceeding and just because he had represented one or two tenants it did not mean that he could never represent the landlord. The caption of the municipal complaints was the State of New Jersey v. Koval and the tenants were to be beneficiaries of the action but were not the direct litigants. Additionally, the tenants were represented by the municipal prosecutor. He stated that he decided to proceed and told this to Judge DeSheplo [sic] stating that he understood the ramifications.

During the December 9, 1993 hearing, the court called the first of the five cases, the Kagle matter. Mr. Koval, who frequently represented himself as well as other landlords in court, proceeded pro se. Mr. Koval testified before the DEC that he had gathered information on the tax rebate issue and thought he "was very comfortably ready."

According to Ms. Kagle, respondent and Mr. Koval conferred during recesses both in the courtroom and in the lobby. Ms. Searles, too, testified that respondent and Mr. Koval spoke briefly during the recesses and added that respondent handed Mr. Koval an unidentified document.

In turn, respondent testified that he walked to the back of the courtroom and denied having spoken with Mr. Koval about Ms. Kagle's case. He stated that Mr. Koval had asked him for a copy of the pertinent statute, which he gave him. That apparently was the unidentified document mentioned by Ms. Searles.

Mr. Koval did not recall if he had any discussions with respondent during the recesses. Similarly, Mr. Koval did not

remember if he and respondent had discussed how to defend the cases prior to the hearing.

The Kagle case was not finalized during the December 9, 1993 proceeding and the matter was continued. With Mr. Koval's permission, the court consolidated the five cases. The only difference between them, according to Mr. Koval, was the amount in question. Upon the conclusion of the Kagle matter, the court applied its decision to the remaining four. Although the record is unclear, apparently the tenants were victorious. Thereafter, Mr. Koval filed a successful appeal. The tenants' subsequent appeal was pending as of the date of the DEC hearing.

In early January 1994, respondent received the ethics grievances filed by Ms. Searles and Ms. Kagle. Upon advice from an unidentified party or parties, respondent determined to discontinue his representation in the tax rebate matter and so notified Mr. Koval. By letter dated January 10, 1994, respondent informed the court that he was withdrawing his appearance in the matter, with Mr. Koval's consent. According to respondent, he and Mr. Koval had no further communication until the day before the DEC hearing. Mr. Koval, however, recalled that he initiated a conversation with respondent after he filed the appeal. Mr. Koval added that respondent was allegedly unaware of the appeal, and did not discuss the case with Mr. Koval.

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The DEC found that, as to Ms. Kagle and Ms. Searles, respondent violated RPC 1.7, in that he undertook the representation of Mr. Koval in a matter where his interests were adverse to respondent's then clients, Ms. Searles and Ms. Kagle, without requesting or obtaining their consent thereto. As the DEC noted:

It is clear that interpretation of RPC 1.7 requires a lawyer not to represent a client whose position is adverse to an existing client unless two conditions of the RPC are fulfilled. As stated before, the respondent himself offered no evidence that he obtained written consent from the grievant[s], nor did he consult with grievant[s] as to his intention to represent Mr. Koval. With respect to the second condition as to reasonable belief on the part of respondent that the representation of Mr. Koval did not adversely affect the relationship with grievant[s], the panel feels that respondent honestly believed there was no conflict of interest in that he did not represent Mr. Koval in the tax rebate case involving the grievant, Victoria Searles [and Eve M. Kagle]. Again stated, and perhaps an unfortunate result for the respondent, the rule provides that both conditions be fulfilled.

The DEC found no violation of RPC 1.4 (lack of communication) in either matter, noting that, in Searles, respondent and Ms. Searles discussed the possible outcomes of her case, kept her advised of the negotiations and sufficiently apprised her of the matter to allow her to make informed decisions. Similarly, the DEC found that, although the contact between Ms. Kagle and respondent was not very frequent, they had discussed the case and she had been kept reasonably informed about the proceedings.

The DEC found no violation of RPC 1.9, reasoning that the rule applies to former clients and that Ms. Searles and Ms. Kagle were clients at the time of the "alleged grievance." The DEC found that



no information relating to respondent's representation of Ms. Searles and/or Ms. Kagle had been used during his representation of Mr. Koval. Similarly, the DEC found no violation of RPC 8.4(d) in either matter.

With regard to the alleged violation of RPC 1.2 in the Searles matter, the DEC did not find clear and convincing evidence that respondent had failed to inform Ms. Searles of the terms of the agreement or that she had not agreed to it. The DEC noted the frequency of their communication and Ms. Searles's awareness of the terms of the settlement. The DEC also noted Ms. Searles' erroneous statement that she had not received a copy of the settlement until October 1993 and her subsequent amendment of that statement.

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Following a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence. Also, for the reasons expressed in the hearing panel report, the Board agreed with the DEC's dismissal of the allegations of violations of RPC 1.4, RPC 1.9 and RPC 8.4(d).

It is undeniable, however, that respondent violated RPC 1.7. As noted by the DEC, RPC 1.7 requires that the attorney fulfill two requirements: consent and a reasonable belief that the representation is not adverse to the interests of his other client(s). Setting aside for a moment the issue of consent, in

order for respondent to properly represent Mr. Koval he had to have a reasonable belief that his representation would not adversely affect Ms. Searles and Ms. Kagle. The DEC determined that respondent held that belief. The Board disagrees. Respondent, an experienced practitioner in this field of law, recognized that the outcome in any one of the five cases would determine the outcome in the other four. Thus, respondent's representation in the three cases of necessity would adversely affect the other two cases involving his clients. The fact that he did not plan to stand up in court and argue those two particular cases is of little moment.

With regard to the second element of RPC 1.7, respondent failed to seek Ms. Searles and Ms. Kagle's consent to his representation, deeming it unnecessary because of his belief that the multiple representation would not have detrimentally affected the relationship with each client. This belief, however, is immaterial. RPC 1.7 requires the lawyer's reasonable belief and the client's consent after full disclosure. Respondent did not fully disclose to each client the circumstances of the representation and did not obtain their consent thereto. Respondent appeared to be arguing that he had Ms. Searles' and Ms. Kagle's implied consent because they never expressed their disapproval of his representation of Mr. Koval prior to the court appearance. Even accepting that as true, once Ms. Kagle stated in court that she believed there was a conflict and the court pointed out its misgivings as well, at a minimum respondent had an obligation to make full disclosure of the circumstances of the

representation and to obtain a waiver of the conflict.

Respondent also argued that he never actually represented Mr. Koval in any proceeding. This argument is specious. It was entirely fortuitous for respondent that Ms. Kagle's was the first case called by the court and that it was not completed until after he received the ethics grievance and withdrew from the representation. Furthermore, representation entails more than court appearances; it incorporates the legal research, preparation and advice given to the client as well. Respondent had prepared to argue the three cases in Mr. Koval's behalf. The fact that he did not is immaterial to his intent and to the benefit that Mr. Koval received from respondent's preparation.

It is no small coincidence that respondent entangled himself in a conflict of interest situation in both the matter that led to his prior private reprimand and in this matter. Following that encounter with the disciplinary system, respondent should have known better. The only logical inference is that he refuses to recognize conflict of interest situations, dismissing the impropriety of multiple representation when adverse interests are at stake. This conclusion is further corroborated by respondent's refusal to seek an advisory opinion, as suggested by the court.

In In re Guidone, N.J. (1994), the Court stated, "[w]e have generally found that in cases involving a conflict of interest, absent egregious circumstances or serious economic injury to the clients involved, a public reprimand constitutes appropriate discipline." (Citations omitted). In Guidone, an attorney was

suspended for three months for acquiring an interest in the company purchasing the property, while representing a client in the sale of real estate. The attorney continued the representation for some time before disclosing his interest in the venture. In imposing a suspension, the Court noted "that the conflicting interest of the attorney was both pecuniary and undisclosed." (Original emphasis). Here, respondent had no personal interest in the matter. However, he did not make full disclosure to his clients of the circumstances of the representation. Although all of the parties acknowledged that respondent told them about the multiple representation, it is undeniable that he did not take the steps necessary for his clients to fully appreciate the situation. Disclosure requires more than simply informing the clients of the consequences of the representation. Respondent had a duty to sit down with each client individually; explain in detail the circumstances of the representation; advise them to consult with independent counsel prior to agreeing to the representation; and obtain their consent to the representation. Respondent took none of these steps.


In view of the foregoing, a seven-member majority of the Board determined to reprimand respondent and to require that, within one year, he complete ten hours of professional responsibility courses. Proof of compliance shall be submitted to the Office of Attorney Ethics. Respondent should consider this action to be a severe warning that further failure to avoid conflicts of interest situations will, of necessity, be met with even greater sanctions.

One member would have dismissed the matter, finding no conflict of interest on the basis that Ms. Searles and Ms. Kagle were complaining witnesses in the municipal court matter, as opposed to parties. One member did not participate.

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

Dated:

9/18/96

  
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Lee M. Hymmerling  
Chair  
Disciplinary Review Board