

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-117
District Docket No. VC-2012-0029E

IN THE MATTER OF :
:
JEFFREY SCOTT BECKERMAN :
:
AN ATTORNEY AT LAW :
:
:

Decision

Argued: July 17, 2014

Decided: September 9, 2014

Philip B. Vinick appeared on behalf of the District VC Ethics Committee.

Elliott Abrutyn appeared on behalf of respondent.

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

This matter was before us on a recommendation for a reprimand, filed by the District VC Ethics Committee (DEC).¹

By way of background, the complaint in this matter charged respondent with violating various provisions of the conflict of

¹ This matter and In the Matter of David M. Beckerman, DRB 14-118 were consolidated for a hearing before the DEC and also for oral argument before us. On July 22, 2014, we issued a letter of admonition in DRB 14-118.

interest rules, failure to supervise a lawyer-employee, and failure to cooperate with disciplinary authorities. David Beckerman (Beckerman) is respondent's father.

Iyabo Oki (the former wife of Beckerman's client, Abayomi Oki) filed a grievance against respondent with the District VB Ethics Committee. That committee filed a complaint against respondent, alleging violations of RPC 1.7(a)(2) and RPC 1.7(b) (concurrent conflict of interest without obtaining informed written consent after full disclosure and consultation), RPC 1.8(a), (e), and (i) (improper business transaction with a client without providing the client with written disclosure of its terms, without giving the client an opportunity to seek independent advice, and without obtaining the client's informed written consent to the terms of the transaction; providing financial assistance to the client in connection with pending or contemplated litigation; and limiting the lawyer's liability for malpractice), RPC 5.1(a) (law firm's failure to make reasonable efforts to ensure that member lawyers undertake measures to reasonably ensure that all lawyers conform to the Rules of Professional Conduct), RPC 5.1(b) (failure of a lawyer with direct supervisory authority of another lawyer to make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct), RPC 5.1(c) (a lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if the lawyer orders or ratifies the conduct

or knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action), and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

Beckerman entered an appearance in respondent's matter and filed a verified answer on respondent's behalf. The answer stated that Beckerman, not respondent, had been the primary actor and that, therefore, respondent should not be the subject of any ethics proceedings. Beckerman filed a motion for summary judgment.

Following oral argument on the motion, the panel chair granted it in part and denied it in part. The panel chair dismissed the violations of RPC 1.7(a)(2) and (b), RPC 1.8(a), (e), and (i), and RPC 5.1(c)(1), but denied the motion as to RPC 5.1(b) and RPC 8.1(b).

Thereafter, the District VB Ethics Committee filed a complaint against Beckerman, charging him with various ethics violations (RPC 1.7(a)(2) and (b), RPC 1.8(a), (e), and (i), RPC 5.1(a), RPC 5.2, presumably (a) (a lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person), and RPC 8.1(b)). Due to a conflict of interest involving that committee, the Office of Attorney Ethics (OAE) transferred the matter to the DEC and consolidated the matters against father and son.

At the DEC hearing, the parties entered into a stipulation. Beckerman stipulated to violating RPC 1.7(a)(2) and (b), RPC 1.8(a), (e), and (i), and RPC 5.1(a).² Respondent stipulated to violating RPC 5.1(b). For lack of clear and convincing evidence, the presenter withdrew the charged violations of RPC 5.2 against Beckerman and of RPC 8.1(b) against both Beckerman and respondent.

The only issues left for our determination are whether there is sufficient evidence to sustain the DEC's findings of unethical conduct, following the presenter's withdrawal of the above charges, and, if so, the proper quantum of discipline for respondent. For the reasons expressed below, we are unable to agree with the DEC's findings and determine to dismiss the complaint against respondent.

* * *

Respondent was admitted to the New Jersey and the Georgia bars in 1983. He maintains a law office in South Orange, New Jersey.

In 2013, on a motion for discipline by consent, respondent was censured for referring 111 workers' compensation cases to another attorney who was not in the same law firm and was not a certified workers' compensation attorney. Respondent received referral fees totaling \$104,152.37. In re Beckerman, 213 N.J. 280 (2013).

² We found Beckerman guilty of violating only RPC 1.8(a) and (e).

We now turn to the facts of this matter.

Simply put, this matter resulted from Beckerman's improper loans to a financially-strapped client, an advance for improvements to the client's marital home, and the filing of a note and mortgage (in favor of respondent) against the client's share of the marital home to secure the repayment of the loans, following a sale of the home. Respondent was charged with failure to supervise his father.

After respondent passed the New Jersey bar, he began working in his father's law office. Several years later, father and son began practicing under the name of Beckerman & Beckerman. In 2001, for estate planning purposes, Beckerman transferred his interest in the law firm to respondent, as memorialized by a buy-out agreement. That agreement provided for Beckerman's sale of his fifty percent share of the law firm to respondent, "in consideration of the full and unencumbered use of a dedicated office, underground parking space, secretarial staff services, telecom service, use of office letterhead and placement on errors and omissions coverage." In addition, Beckerman would continue to receive health benefits paid by the firm and an annual salary of \$125,000, from 2001 to 2004, and \$100,000, in 2005. There was no written agreement concerning their rights and responsibilities for the firm's operations. Their

work policies were informal. Respondent did not oversee his father's work.³

Another reason for Beckerman's transfer of his interest in the firm to respondent was his desire for "quasi-retirement." Under their informal agreement, Beckerman would take cases on a limited basis. Beckerman lived half of the year in New Jersey and the other half in Florida. He was not concerned about income from the law firm, as he derived part of his wealth from investments in apartment buildings in Essex County. He did not need to practice law, but did so because he enjoyed it.

Respondent testified that, from the time that his father transferred his interest to him, they each worked on their own separate cases. They never worked on a case together. On occasion, they may have "filled in" for each other. Respondent recalled that happening only once in the last five years.

In May 2007, Abayomi Oki⁴ retained Beckerman in connection with a matrimonial dispute with his wife, Iyabo, the grievant. On May 26, 2007, Beckerman and Abayomi entered into a fee agreement calling for a \$300 hourly rate for Beckerman and \$250 for

³ Beckerman's answer to the ethics complaint stated that he is a "totally independent contractor" in the firm and receives no direction or oversight from the firm or its principal, respondent.

⁴ Spelled Oaki in the hearing transcript.

respondent. Abayomi did not pay an initial retainer because, according to Beckerman, Abayomi did not have any money. Beckerman was aware that, years earlier, respondent had turned Abayomi away because of his inability to pay a fee. When Abayomi returned seeking legal assistance, Beckerman felt sorry for him because Abayomi was facing serious financial problems.

Respondent testified that his father had not consulted with him, before agreeing to represent Abayomi. Respondent claimed that he would have objected to the representation, without first obtaining a retainer, but was sure that his objection would not have influenced his father.

Prior to retaining Beckerman, Abayomi had filed a divorce complaint pro se. According to Beckerman, Abayomi had three children, a disastrous marriage, and worked two jobs to make ends meet. When Abayomi retained Beckerman, a pendente lite support order required Abayomi to contribute \$1,000 per month towards his share of the mortgage on the marital home.

Because Abayomi could not pay the \$1,000 per month, Beckerman filed a motion setting forth Abayomi's abysmal finances. The judge refused to reduce the payment and, according to Beckerman, threatened to send Abayomi to jail, if he failed to make the payments. Beckerman claimed that, after he informed the judge that Abayomi was unable to borrow the money, the judge told him to lend it to Abayomi, which he did. Beckerman also filed an appeal on

Abayomi's behalf, which resulted in a remand on certain issues. Beckerman then withdrew from the case and turned over all of Abayomi's files to a new attorney.

In total, Beckerman loaned Abayomi \$16,000 and had him sign a note and mortgage against his undivided half of the marital home. Without respondent's knowledge, Beckerman prepared the note and mortgage, naming respondent as the obligee. Beckerman filed the documents to recoup the loan, after the marital house was sold.⁵ At that time, there was some equity in the house.

In loaning the money to Abayomi, Beckerman did not comply with the requirements of RPC 1.8(a). Respondent was unaware of the loans, the note, and mortgage, until Iyabo filed the grievance in this matter.

Without respondent's knowledge, Beckerman also paid for the replacement of a broken furnace in the Oki marital home. He obtained a signed document from the Okis, acknowledging that they were indebted to respondent (rather than Beckerman) for \$3,500, the sum Beckerman had advanced for the new furnace and installation. The document stated that it was the Okis' joint debt, that the

⁵ Beckerman testified that the mortgage was prepared because both he and John Dell'Italia, Iyabo's attorney, were "looking to the real estate for our fees but it made no difference whether I got the money or I didn't because I didn't need the money. It was irrelevant. I was most concerned with something to keep me occupied intellectually."

amount was "presently due and payable," and that, at respondent's election, it would be paid upon the sale of the premises. Again, respondent did not become aware of the replacement of the furnace or of the signed agreement until Iyabo filed the grievance against him. Neither of the Okis repaid the monthly loans or the cost of the new furnace and installation.

Beckerman never billed Abayomi for his fees or expenses nor did he pursue him for the loans. Respondent, who maintained the trust and business accounts and was responsible for the administrative end of the practice, confirmed that he had never seen any bills to Abayomi or any payments from him. He and his father did not discuss Abayomi's lack of payment until after the grievance was filed. Respondent added that he never checked the total expenses in Abayomi's matter, because it would have bothered him to lose legal fees, as well as expenses for a trial and an appeal.

At some point during the representation, Abayomi informed Beckerman that Iyabo had not paid the mortgage for months, as she was required to do. As a result of the non-payment, the mortgage went into foreclosure.

On April 26, 2010, Penny Mac Loan Services, LLC, filed a foreclosure complaint against the Okis. Because respondent was named on the mortgage, the complaint named him as a defendant. He was personally served with it, at his home. He was also served with

the foreclosure case information statement, which did not include his name in the caption.

Respondent testified that, because of his various business interests, it was not uncommon for him to receive certified mail at his home or even foreclosure complaints, if he was the attorney for a judgment-creditor. He stated that he received service of process at his home at least once or twice a year. He was adamant that he did not recall being served with the Oki foreclosure complaint. Moreover, he speculated that, if he had looked only at the summons or the FCIS, he would have seen only "Iyabo Oki, et al." named on them. He would not have looked further. He would have recognized that the documents were in connection with his father's matters, not his, and would have added them to the pile to be brought to the office, for his father's action. When asked if he had looked beyond the FCIS or summons, respondent replied that, because he did not recall receiving the documents at all, he was unable to answer the question.⁶ He reiterated that he did not discuss the mortgage with his father until the ethics complaint was filed.

Beckerman testified that he believed in helping people and was not concerned about losing money, in this case approximately \$20,000, because he had more money than he could spend. His loans

⁶ The papers were served on respondent in April 2010, three years before the ethics hearing.

to Abayomi were made from his personal checking account, not from the firm's account. Beckerman explained that he did not tell his son about the loans because his son would have been vehemently opposed to them and he did not want to argue with his son. Indeed, respondent testified that he never would have permitted loans to a client, particularly when the client was not paying a legal fee. He also would have objected to the mortgage, especially one with his name on it. He conceded, however, that, if he had objected to his father's actions, which included an appeal for which they were not being compensated, his father would have told him to "butt out" or mind his own business.

John Dell'Italia testified at the DEC hearing. He stated that he had represented Iyabo in the divorce proceedings. In those proceedings, he had dealt only with Beckerman, not respondent.

According to Dell'Italia, every month Abayomi would bring him a \$1,000 money order, which Iyabo would pick up on the same day. In October 2009, he learned that Iyabo had not paid the mortgage for several months, even though she continued to collect the court-ordered funds from Abayomi. He, therefore, stopped turning over the money orders to Iyabo, left them in the file, and turned the file over to her new attorney.

Dell'Italia was a signatory on the furnace agreement, a joint debt of the Okis to respondent, payable on the sale of the marital

home. He testified that the new furnace was a necessity for preparing the house for sale.

According to Dell'Italia, he had worked with the Beckermans on numerous matters and had an excellent rapport with them. He and his partners were surprised about the ethics matters against the Beckermans, because they are "dot the i's, cross the t's" type of attorneys and scrutinize everything.

At the DEC hearing, the presenter argued that respondent owned the firm and was, therefore, responsible for it, even though his father would not listen to anyone. "[P]erhaps the son should have done something. But clearly he did not conform with the RPCs." The presenter recommended that respondent be admonished.

* * *

The DEC believed respondent's testimony that he was unaware that his father had loaned money to Abayomi or paid for the furnace and installation and that his father was "highly resistant to interference in 'his' cases." The DEC found, however, that respondent's "complete and utter lack of understanding of how his father was handling cases" and his lack of responsibility for his father's cases were primarily responsible for their ethics troubles.

Although the DEC believed respondent's testimony that his father took a "butt out" approach with regard to his cases, it did not find credible respondent's testimony that he could not recall

(1) objecting to his father's loans to Abayomi, (2) being personally served with the foreclosure complaint, and (3) being unaware that he was an obligee on the mortgage and note.

The DEC, thus, concluded that respondent was either unable or unwilling to address problematic issues with his father, including his father's violation of the RPCs. The DEC found that Beckerman's sale of his interest to respondent subordinated his interests to his son's and elevated respondent to a supervisory status in the management of the firm, despite Beckerman's view that he was entitled to do as he pleased, because of his superiority within the family hierarchy. The DEC determined that respondent's principal failing was that he had made no effort to supervise his father at all.

Based on these factors, as well as respondent's prior censure, the DEC determined that respondent deserved a reprimand.

Respondent's counsel filed a brief with us, arguing that discipline less than a reprimand was in order and pointed out that the DEC's recommendation deviated from the presenter's recommendation for an admonition. Counsel underscored the DEC's failure to consider that the foreclosure complaint had been filed three years before the ethics hearing and that memories fade over time. In addition, counsel argued that the fact that respondent had been served with the complaint at his home was not dispositive of the issue of knowledge, given the other notices and summonses that

respondent received there in connection with his other businesses or client cases.

Counsel pointed to respondent's adamant testimony that, had he known of his father's conduct, he would have strenuously objected to it, a circumstance that demonstrated respondent's "ability and willingness to address potentially 'upsetting matters' with [Beckerman]."

Counsel took issue with the DEC's disregard of mitigating factors, that is, Abayomi's lack of harm, the Okis' benefit from the installation of the new furnace at Beckerman's expense, respondent's reputation within the legal community, and the fact that Iyabo came to the proceedings with "unclean hands."

* * *

Following a de novo review of the record, we are unable to agree with the DEC's conclusion that respondent was guilty of unethical conduct.

As noted above, we found that Beckerman violated the conflict of interest rules (RPC 1.8(a) and (e)). As to respondent, he stipulated that he violated RPC 5.1(b) (a lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct). By virtue of the terms of the buy-out agreement and the fact that Beckerman was only in the office for six months out of the year, respondent was the supervising attorney

for the firm. He was bound by the RPCs and, therefore, was required to ensure compliance with them. However, part of the purpose of RPC 5.1(b) is to ensure that novice attorneys receive the guidance they require to properly carry out their professional and ethical responsibilities. Beckerman, who had practiced law for more than sixty years, did not require such supervision. In fact, at the beginning of their professional association, it was Beckerman who was the supervising attorney.

It is true that, if respondent was aware that Beckerman was engaging in improper conduct, he could not have stood silent; he had an obligation under the RPCs to take steps to try to prevent it, or risk being viewed as ratifying the conduct (RPC 5.1(c)). In light of their work relationship, however, there is no evidence in the record from which to conclude that respondent was aware of his father's improper loans to Abayomi or of Beckerman's note and mortgage, at the time they were executed.

The DEC did not believe respondent's testimony that he failed to scrutinize the foreclosure complaint, when served with it at his home. We cannot agree with the DEC. The caption on the FCIS listed the defendants as "Iyabo Oki, et al." The affidavit of service contained a similar caption. Respondent was only listed as the "person to be served." Moreover, respondent testified that it was not unusual for him to be served at home in connection with his or his clients' cases and that, once he noticed that the foreclosure

papers involved his father's client, he put them aside to take to the office, for his father's action. Under the circumstances, respondent's explanation is not unreasonable. Although, if respondent had noticed that he was named on the mortgage and arranged for its discharge as improper, his failure to do so would not have prevented the foreclosure by the lender.

All in all, there is no clear and convincing evidence that respondent violated RPC 5.1(b). We, therefore, determine to dismiss the complaint against him. See, e.g., In re Hamlin, 217 N.J. 620 (2014) (dismissal of complaint charging attorney with a similar violation – failure to make reasonable efforts to ensure that member lawyers conform to the Rules of Professional Conduct; we found that the attorney was unaware of a conflict of interest generated by the simultaneous representation of parties with competing interests).

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Jeffrey S. Beckerman
Docket No. DRB 14-117

Argued: July 17, 2014

Decided: September 8, 2014

Disposition: Dismiss

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost				X		
Baugh				X		
Clark				X		
Gallipoli				X		
Hoberman				X		
Rivera				X		
Singer				X		
Yamner				X		
Zmirich				X		
Total:				9		


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