

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 06-117  
District Docket No. VIII-04-056E

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IN THE MATTER OF  
A. KENNETH WEINER  
AN ATTORNEY AT LAW

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Decision  
Default [R. 1:20-4(f)]

Decided: July 26, 2006

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

This matter came before us on a certification of default  
filed by the District VIII Ethics Committee ("DEC"), following  
respondent's failure to file an answer to the formal ethics  
complaint. R. 1:20-4(f).

Respondent, among other things, improperly obtained fees from  
his client, a criminal defendant, and his client's parents; engaged  
in a conflict of interest in obtaining the fees, divulged  
confidential information to the client's parents, and engaged in  
deceit and fraudulent acts. The seven-count complaint charged

respondent with violating RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter and to promptly comply with reasonable requests for information), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation),<sup>1</sup> RPC 1.6, presumably (a) (a lawyer shall not reveal information relating to the representation of a client unless the client consents after consultation), RPC 1.7(b) (conflict of interest - a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests), cited as current RPC 1.7(a)(2), RPC 1.8(a) (conflict of interest - prohibited business transaction with a client), RPC 1.8(f)(3) (a lawyer shall not accept compensation for representing a client from one other than the client unless the information relating to the representation of the client is protected by RPC 1.6), RPC 1.16(d) (upon termination of representation, failure to turn over client's papers or property), RPC 4.1(a) (in representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person),

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<sup>1</sup> Because respondent's conduct occurred prior to the 2004 rule changes, the complaint should have referred to RPC 1.4(a) and RPC 1.4(b) under the former rules. This decision will reference the pre-2004 version of the rules.

RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). For the reasons expressed below, we recommend that respondent be disbarred.

Respondent was admitted to the New Jersey bar in 1970. At the relevant times, he maintained a law office in East Brunswick, New Jersey.

Respondent was privately reprimanded in 1988, for failure to properly safeguard a client's funds and to return the excess funds at the end of the representation. In the Matter of A. Kenneth Weiner, DRB 86-118 (May 5, 1988). In 1995, he was reprimanded for failure to properly supervise his non-lawyer staff through his excessive delegation of authority, and by condoning the staff's signing of clients' names to documents. In re Weiner, 140 N.J. 621 (1995).

Respondent was temporarily suspended on July 23, 2004, for failure to cooperate with a disciplinary investigation. In re Weiner, 180 N.J. 521 (2004). Thereafter, in a 2005 default, he received a six-month suspension for gross neglect and lack of diligence in an estate matter, failure to respond to his clients' requests for information about the case, failure to supervise the succession of attorneys involved in the case, misrepresentation to the clients about the progress of the matter, and failure to

cooperate with disciplinary authorities. The Court also ordered that respondent not be reinstated until all matters pending against him were resolved. In re Weiner, 183 N.J. 262 (2005).

In another default, the Court imposed a two-year suspension for respondent's misconduct in two matters. In re Weiner, 186 N.J. 468 (2006). In one matter, he exacted an additional fee to ensure that he would personally appear on behalf of the client, but failed to do so at either the status conference or sentencing proceeding. In the second matter, he accepted retainers to represent a client in two separate municipal court matters, but did little or no work on his client's behalf, and failed to appear in court. Respondent's misconduct in these matters included gross neglect, pattern of neglect, lack of diligence, failure to keep clients reasonably informed about the status of their matters, failure to explain a matter to the extent necessary to permit the client to make an informed decision about the representation, failure to charge a reasonable fee, failure to return an unearned fee, failure to reply to a lawful demand for information from a disciplinary authority, misrepresentation, and conduct prejudicial to the administration of justice by failing to comply with the requirements of R. 1:20-20.

We recently considered another matter against respondent. We found him guilty of abandoning twenty clients, after accepting

fees from them and performing little or no services, making misrepresentations, and engaging in a conflict of interest by borrowing money from a client. We recommended respondent's disbarment. In the Matter of A. Kenneth Weiner, DRB 06-097 (July 19, 2006). That matter is awaiting the Court's review.

Service of process was proper. On February 9, 2006, the DEC sent a copy of the complaint to respondent at 646 Cookman Avenue, Apartment No. 1, Asbury Park, New Jersey, by regular and certified mail. According to the certification, respondent received a copy of the complaint as shown by Exhibit B, the certified mail receipt containing an illegible signature. The regular mail was not returned.

On March 29, 2006, the DEC sent a second letter to the same address, via regular mail. The letter notified respondent that, if he did not file an answer within five days, the matter would be certified to us for the imposition of discipline and the complaint would be deemed amended to include a violation of RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority). The regular mail was not returned.

As of the date of the certification of the record, respondent had not filed an answer to the complaint.

In February 1997, the grievant, Steffan A. Franklin retained respondent to represent him on a pending murder charge.

Their retainer agreement was memorialized in documents dated February 25 and 26, 1997.

According to the complaint, respondent induced Franklin to give him his motorcycle as collateral for legal fees. Thereafter, respondent convinced Franklin to authorize the sale of his motorcycle to apply the proceeds toward respondent's legal fees. Respondent also persuaded Franklin to execute a mortgage on his house, in respondent's favor, as collateral for legal fees. Respondent, however, failed to advise Franklin of the desirability of seeking independent counsel, and failed to give him a reasonable opportunity to seek advice from counsel of his choice for these transactions. In addition, the complaint charged that respondent failed to obtain a writing from Franklin, indicating whether respondent was representing him in the transactions.

After executing the retainer agreement, Franklin "expressly" instructed respondent not to contact his parents. Nevertheless, respondent did so to obtain additional fees to pursue Franklin's case. Respondent induced Franklin's parents to pay him an additional \$10,000, by falsely representing to them that no retainer agreement existed and that the payment was a prerequisite to his representation of Franklin.

After obtaining the fee from Franklin's parents, and against Franklin's express instructions, respondent "repeatedly divulged"

confidential information to Franklin's parents, "citing a sense of duty and loyalty occasioned by their financial contribution."<sup>2</sup> In doing so, the complaint charged that respondent violated RPC 1.6. Also, by accepting compensation from third parties without protecting confidential information, respondent violated RPC 1.8(f)(3).

In March 1997, respondent persuaded Franklin to give his parents a power-of-attorney to authorize them to sell his house. On June 2, 1997, respondent entered into a contract with Franklin's parents, who were acting as Franklin's attorneys-in-fact, to convey Franklin's house to respondent. One of respondent's employees, Linda Costabile, Esq., represented respondent in the transaction.

On July 24, 1997, Franklin wrote to Costabile to inform her that he was revoking the power-of-attorney previously given to his parents. The complaint does not state if respondent was aware of Franklin's revocation. Notwithstanding the revocation, on October 3, 1997, Franklin's parents, acting as the attorneys-in-fact, conveyed title to Franklin's house to respondent.

The sale price for Franklin's house was substantially below fair market value. Respondent failed to fully disclose the terms of the transaction to Franklin, in a manner that Franklin could understand.

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<sup>2</sup> The complaint did not specify the nature of the confidential information divulged by respondent.

As before, the complaint alleged that respondent did not (1) advise Franklin, in writing, of the desirability of seeking independent counsel; (2) give Franklin an opportunity to seek counsel of his own choice; and (3) obtain Franklin's written consent to the "essential" terms of the transaction and respondent's role in it, "including whether respondent was representing [Franklin] in the transaction." The complaint charged that respondent violated RPC 1.8.

The complaint also charged that respondent failed to "adequately" defend Franklin and failed to apply sufficient fees, obtained from Franklin's parents and from the sale of Franklin's assets, towards the investigation and preparation of Franklin's defense. According to the complaint, "[r]espondent's failure to adequately defend [Franklin] arose from the fact that all defense expenditures would commensurately reduce Respondent's fee." According to the complaint, respondent's refusal to make necessary and reasonable expenditures towards Franklin's defense resulted from the conflict of interest between respondent's and Franklin's interests, a violation of RPC 1.7(a)(2), and also constituted gross neglect (RPC 1.1(a)) and a pattern of neglect (RPC 1.1(b)).

The complaint also alleged that respondent failed to keep Franklin reasonably informed about the developments in his case and to sufficiently explain the matter to Franklin so that he

could make informed decisions about the representation, violations of RPC 1.4(a) and RPC 1.4(b).

At "various times" during the representation and thereafter, Franklin demanded that respondent turn over his file. Prior to "the conclusion of the representation," respondent refused to do so. Subsequently, respondent provided portions of the file to Franklin, but only after the DEC instructed him to return the file.

On June 17, 2004, the Honorable Bradley J. Ferencz, J.S.C., ordered respondent to turn over Franklin's entire file to his "Post Conviction Relief Counsel." As of the date of the formal ethics complaint, February 6, 2006, respondent had not complied with the order, thereby violating RPC 1.16(d) and RPC 8.4(d).

The complaint contains sufficient facts to support the violations charged. Because of respondent's failure to file an answer to the complaint, the allegations are deemed admitted. R. 1:20-4(f).

Respondent took advantage of Franklin and Franklin's parents. He induced Franklin to sign over his motorcycle as collateral for fees, and then persuaded him to authorize its sale and to apply the proceeds towards respondent's legal fees. In addition, respondent induced Franklin to execute a mortgage on his house, also to be used as collateral. The complaint

charged that this conduct violated RPC 1.8(a). The pre-2004 rule, which is similar to the current rule, stated:

A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in manner and terms that should have reasonably been understood by the client, (2) the client is advised of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel of the client's choice on the transaction, and (3) the client consents in writing thereto.

Respondent did not comply with any of the requirements of this rule. He did not explain the transaction in terms that Franklin could understand or transmit them to Franklin in writing; the terms were not reasonable; respondent did not advise Franklin to consult with another attorney, and did not obtain Franklin's consent to the transactions in writing. We, therefore, find that respondent violated this rule.

The complaint also charged that respondent violated RPC 1.7(b) when he refused to make necessary and reasonable expenditures towards Franklin's defense because it would reduce his fee. This conduct, however, would not give rise to a violation of this rule because this provision is typically reserved for situations where an attorney stands to derive some other benefit,

in addition to a legal fee. The additional benefit need not be monetary. Kevin H. Michels, New Jersey Attorney Ethics §19:3-2 at 415 (2006). Michels cited some examples of actionable conduct under RPC 1.7(a) (former RPC 1.7(b)): a lawyer for a local planning board advising the board with respect to a matter in which he or she has a personal, financial business or property interest; a lawyer's ownership interest in an entity that proposed a zoning amendment not disclosed to one of the lawyer's partner's client that would have been adversely affected by the proposal; and failure to disclose a lawyer's potential liability to the client for malpractice, but continuing with the representation without obtaining the client's consent. Id. at 415-16.

Here, respondent's alleged misconduct, which dealt solely with his failure to properly allocate his fees for Franklin's defense, would more properly constitute gross neglect, rather than a conflict of interest. Thus, his gross neglect here, coupled with his neglect in his prior ethics matters, established a pattern of neglect (RPC 1.1(b)).

Respondent also exacted additional fees from Franklin's parents - \$10,000 - by misrepresenting to them that no retainer agreement existed and that collection of that fee was a prerequisite to taking on Franklin's case. In this regard, respondent's conduct was deceptive and fraudulent, a violation of

RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 4.1(a)(1) (in representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person).

In addition, the allegations of the complaint establish that, after improperly obtaining additional monies from Franklin's parents, respondent divulged confidential information to Franklin's parents, "citing a sense of duty and loyalty occasioned by their financial contribution." He did so against Franklin's unambiguous instructions. Respondent, thus, violated RPC 1.6 and RPC 1.8(f).

The latter rule states in relevant part:

- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
  - (1) the client consents after consultation;
  - (2) there is no interference with the lawyer's independence of professional judgment or with the lawyer-client relationship; and
  - (3) information relating to representation of a client is protected as required by RPC 1.6.

[R. 1.8(f)]

Respondent failed to keep Franklin reasonably informed about developments in his case and failed to explain the matter to the extent necessary to permit Franklin to make informed decisions about his case, violating RPC 1.4(a) and RPC 1.4(b). Respondent also failed to turn over the file when Franklin requested it, gave Franklin only a portion of it when instructed to do so by the DEC,

and ignored a court order directing him to turn over the file. In this context, respondent violated RPC 1.16(d) and RPC 8.4(d).

We are deeply troubled by respondent's conduct in persuading Franklin to give his parents a power-of-attorney to sell his house, after which respondent obtained the house for less than fair market value. More troubling, prior to the transfer of the house to respondent, Franklin wrote to respondent's associate, in an attempt to revoke his parent's power-of-attorney. The transfer, nevertheless, went through. Because, however, the complaint did not charge that respondent knew of Franklin's revocation, we make no findings in this regard.

Finally, we find that respondent failed to cooperate with the investigation in this matter, violating RPC 8.1(b).

This case is analogous to In re Wolk, 82 N.J. 326 (1980). In Wolk, the attorney was disbarred for misconduct in two separate matters. In one matter, Wolk attempted to commit a fraud on a federal district court and his clients, in order to obtain a greater fee. The fraud involved a gross, intentional exaggeration of services rendered. In another matter, he represented a client in a business matter in which he was personally involved. He counseled an elderly widow to make a hopeless investment in a building in which he had an interest, and concealed material information from her, including the recent purchase price of the property, its real

value, the fact that taxes were unpaid, and the existence of a foreclosure and sheriff's sale on the building.

The Court found that in both matters, the attorney's clients

had every right to expect honesty and fair dealing. In both of these matters, respondent in effect attempted to appropriate his client's money to his own purposes. "No clearer wrong suffered by a client at the hands of one he had every reason to trust can be imagined." [citation omitted].

[Id. at 335.]

The Court concluded that it would "no more tolerate the hoodwinking of helpless clients out of funds in a business venture that is essentially for the benefit of the lawyer than it will outright misappropriation of trust funds."

Although Wolk involved two matters and here there is only one, the same outcome is required by the totality of respondent's circumstances: respondent's serious ethics history (a private reprimand, a reprimand, a temporary suspension, and, in a series of defaults, a six-month suspension, a two-year suspension, and a recommendation for disbarment pending with the Court); Respondent's hoodwinking of not only Franklin, but his parents as well; and respondent's pattern of misconduct, as evidenced by his violations of RPC 1.1(a), RPC 1.1(b), RPC 1.4(a), RPC 1.4(b), RPC 1.6, RPC 1.8(a), RPC 1.8(f)(3), RPC 1.16(d), RPC 4.1(a), RPC 8.4(c), RPC 8.4(d) and RPC 8.1(b)).

Finding that respondent is not salvageable as an attorney, we again recommend that he be disbarred.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board  
William J. O'Shaughnessy, Chair

By: Julianne K. DeCore  
Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of A. Kenneth Weiner  
Docket No. DRB 06-117

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Decided: July 26, 2006

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy	X					
Pashman	X					
Baugh	X					
Boylan	X					
Frost	X					
Lolla	X					
Pashman	X					
Stanton	X					
Wissinger	X					
Total:	9					

  
Julianne K. DeCore  
Chief Counsel