SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-040

IN THE MATTER OF

MICHAEL J. WEINTRAUB

AN ATTORNEY AT LAW

Decision

Argued: May 17, 2001

Decided: October 9, 2001

William S. Wolfson appeared on behalf of the District XIII Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter was before us based on a recommendation for discipline filed by the District XIII Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1971. During the relevant time, he maintained an office for the practice of law first in Lambertville, then in Flemington, New Jersey. He has no disciplinary history.

According to respondent, he retired from the practice of law in 1997. As of the November 2000 hearing, he resided in St. Kitts, West Indies.[1]

The complaint alleged violations of RPC 1.5(b) (failure to provide in writing the basis or rate of a fee); RPC 1.15(b) (failure to promptly deliver to a client or third person funds that the client or third person is entitled to receive); RPC 1.8(a) (conflict of interest/prohibited business transaction); RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).[2]

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In the early 1980s, Dean Sparling and respondent became very good friends, even sharing an apartment for a time. Thereafter, respondent represented Sparling in several matters, involving "speeding tickets and fender benders." Respondent never charged Sparling for his legal services. Sparling would assist respondent in various ways, such as helping respondent to move his office and to build a miniature golf course in Nevis, West Indies.

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[1] Respondent did not appear at the ethics hearing. However, he replied to the grievance and filed an unverified answer to the complaint. The statements attributed to respondent are taken from those documents.

[2] The record also contained a reference to respondent's possible advice to Sparling to prepare fraudulent 1099 tax forms for independent contractors. However, the complaint does not contain any charges of fraudulent tax returns.

This matter concerns respondent's conduct with respect to (1) Sparling's personal injury claim, (2) Sparling's will-contest action venued in Colorado and (3) a loan brokerage business.

I. The Personal Injury Matter

In June 1995, Sparling retained respondent to represent him in a personal injury claim for a shoulder injury sustained in an automobile accident that occurred in Pennsylvania.[3] Thereafter, respondent attempted to settle Sparling's claim with the insurance company. In a June 9, 1997 letter to the insurance company, respondent demanded $675,000 to settle the claim. In July 1997, shortly before the expiration of the statute of limitations, respondent referred Sparling to another attorney.

It is undisputed that respondent agreed that respondent told Sparling that he would not charge him for the representation and that there was no written retainer agreement. Sparling testified that he insisted that respondent take one-third of any settlement proceeds as his fee, lest he refuse to retain respondent. According to Sparling, he believed that the second attorney had filed the complaint as an accommodation to respondent, who was in St. Kitts at the time, and that respondent would continue to represent him. Sparling did not recall whether the complaint listed respondent or the other attorney as the attorney of record.

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[3] Respondent was also a member of the Pennsylvania bar.

Sparling testified that, sometime prior to July 1996, respondent told him that the insurance adjuster had orally agreed to settle the claim for $300,000, but that some "paperwork" needed to be completed. Sparling stated that he later learned that there was no agreement.

Apparently, Sparling later retained a third attorney to represent him in the personal injury action. His case was settled for $70,000 in September 1999.

According to respondent, he did not believe that a written retainer agreement was necessary because he was not charging Sparling for the representation. Respondent stated that he and Sparling agreed to wait to file a complaint because (1) the insurance adjuster had promised respondent that a "good faith" offer would be made by the insurance company and (2) Sparling might have required additional treatment because surgery on his shoulder had not been successful. Respondent denied having told Sparling that the insurance adjuster had agreed to settle the claim for $300,000.

II. The Will-Contest Matter

In July 1995, Sparling consulted respondent about contesting his stepfather's will, which had been submitted to probate in Colorado.[4] With respondent's assistance, Sparling retained a Colorado attorney to contest the will.

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[4] Respondent was not admitted to the Colorado bar.

Respondent did substantial research on the relevant Colorado law and prepared a memorandum for the Colorado attorney. Also, in a letter to the Colorado court, respondent stated that he represented Sparling.

By order dated February 7, 1996, the Colorado court required that Sparling deposit $20,000 with the court or his case would be dismissed. Sparling testified that respondent advised him to secure a bond, rather than deposit the funds with the court. According to Sparling, respondent later told him that the bonding company had rejected his application, but that Sparling could borrow $20,000 from Theodore Sierputoski, respondent's partner in a loan brokerage business.

Thereafter, Sparling secured a loan from Sierputoski. The loan note, in the amount of $23,000, was dated September 1, 1995, prior to the February 1996 order.[5] It was due "on or about August 31, 1996 or upon demand of Lender." The September 1, 1995 escrow agreement between Sparling and respondent, as escrow agent, stated that, until the note became due, Sparling "wishe[d] to maintain such monies as an asset titled to himself" and was, therefore, placing the $23,000 in escrow with respondent as the escrow agent. The escrow agreement further stated that, after the $23,000 was deposited in the escrow account, Sparling authorized respondent "to draw a check [for $23,000] made payable to [Sierputoski]...which check [respondent] agree[d] he should hold in escrow" until the earliest of (1) Sierputoski's letter demanding payment, in accordance with the note, (2) an

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[5] The record does not explain this discrepancy.

order by the Colorado court directing the release of the monies or (3) Sparling's letter directing the release of the check to Sierputoski. Sierputoski signed an "acknowledgment" as the third-party beneficiary of the escrow agreement, consenting to the terms of the agreement.

The loan documents indicated that respondent's secretary, Abbie Musto, witnessed Sparling's signature on the loan note, respondent's and Sparling's signatures on the escrow agreement and Sierputoski's signature on the "acknowledgment." However, according to Sparling, Musto was not present when the documents were signed.[6]

The escrow account was opened on March 28, 1996.[7] Although the agreement stated that $23,000 was to be placed in escrow, only $20,000 was deposited in the account. The escrow agreement also provided that, after the escrow account was opened, respondent would make a check payable to Sierputoski and hold the check in escrow. The record is silent as to whether that was done. The $20,000 remained in the escrow account until May 5, 1997, when, as detailed below, Sparling withdrew the funds at respondent's request.

On September 1, 1996, Sparling and Sierputoski signed a "modification and extension of note" providing that, in consideration of Sparling's payment of $1,500 to

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[6] Musto did not testify at the ethics hearing.

[7] Although Sparling testified that he signed the loan documents less than a week after he learned of the February 8, 1996 order and that the escrow account was opened a few days thereafter, the bank documents show that the escrow account was opened on March 28, 1996. The record does not explain this discrepancy.

Sierputoski, the maturity date of the note would be extended to December 1, 1996 and the amount owed would be $20,000, not $23,000 as stated in the original note.

Sparling testified that respondent, as well as the Colorado attorney, represented him in the will contest and that that he told respondent he would give him fifty percent of whatever he received from the case for his services, but that respondent refused to accept any fee. According to Sparling, he then told respondent "I'll buy you a new car or something" with the money he obtained from the will-contest action.

Sparling further testified that he met Sierputoski for the first time in February 1996, at respondent's apartment.[8] At that time, according to Sparling, respondent had already prepared the loan documents, but there "were no dates or anything" on the documents. Respondent allegedly told Sparling that he was in a hurry and would "fill it out later." Sparling testified that he signed the loan documents and gave $3,000 cash to respondent "for interest up front for the first few months, whatever."

When asked why he had paid $3,000 in interest in February 1996 and then an additional $1,500 in September 1996 to extend the due date to December 1996, Sparling replied, "I was basically directed by [respondent] verbally for those things. It gets confusing with the contracts for me. I honestly can't give you an honest answer. It was just too confusing. [Respondent] would direct me. That's what I would do." According to Sparling, he understood the interest on the $20,000 loan was "$1,500 every six months or something."

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[8] Sierputoski did not testify at the hearing.

With respect to the bond required by the Colorado court, Sparling testified that he sent $20,000 to the court from his own funds. According to Sparling,

> [t]he reason why I borrowed the $20,000 because [sic] I wanted to have money in the bank to get a house. [Respondent] told me that if the monies from [Sierputoski], you know, if I put that into the bank in an escrow account, I could use those monies to borrow monies again. So in the event that I did need some money, if I found a house that I wanted, I could borrow on the $20,000. That's why I wanted to send a bond out to Colorado and use somebody else's money instead of my own.

Eventually, the Colorado case was settled for $3,500. Although the $20,000 deposit with the court was returned to Sparling, he had to pay his Colorado attorney from those funds. He did not pay any fee to respondent.

Respondent denied that he represented Sparling in the will contest. He stated that he completed the research and memorandum on the Colorado law because Sparling was his best friend.

With respect to the loan, respondent stated that he told Sparling that Sierputoski granted personal loans and introduced Sparling to Sierputoski, but was not involved in the loan negotiations. Respondent denied having drafted the note and the escrow agreement, contending that he merely provided legal forms to Sierputoski. Respondent also denied having been present when the documents were signed. Respondent claimed that his signature on the escrow agreement was a forgery and that he was in St. Kitts at the time. Respondent did not provide any corroboration for his statements.

III. The Loan Brokerage Business

In 1996, respondent and Sierputoski were partners in Phoenix Financial Services ("Phoenix"), a loan brokerage business based in St. Kitts. Apparently, Sierputoski paid for all of respondent's business and living expenses to allow respondent to spend the majority of his time on Phoenix's business, rather than his law practice. Sierputoski was also listed on respondent's law firm letterhead as his business manager. Sometime in 1997, Sierputoski ceased paying respondent's bills and withdrew from Phoenix.

As mentioned above, Sparling borrowed $20,000 from Sierputoski in February 1996. Sometime later in 1996, Sparling borrowed an additional $3,000 from Sierputoski to purchase a computer. The record does not contain any details on the $3,000 loan although Sparling testified that he paid $150 per month to Sierputoski on account of the loan.

According to Sparling, respondent, Sierputoski and he agreed that the computer would be used by Sparling's wife, Lynn, to assist respondent and Sierputoski with Phoenix's business; Lynn would be paid on an hourly basis for her work and respondent and Sierputoski, too, could use the computer, which was located in the Sparlings' home. Sparling testified that respondent and Sierputoski used the computer "on several occasions."

It is undisputed that Sparling gave money to respondent and paid respondent's bills. Sparling testified that those funds represented "fee payments up front because [respondent] needed money for [Phoenix]. Money was tight." According to Sparling, the funds he expended on behalf of respondent were to be deducted from respondent's fee for

representing Sparling in his personal injury claim. There was no testimony elicited from Sparling as to whether he expected to be repaid by respondent, in the event that he received nothing or little from the personal injury claim.

Lynn Sparling prepared a list of payments made on behalf of respondent and monies reimbursed to them by respondent. That document indicated that, between March 1997 and September 1998,[9] the Sparlings spent approximately $90,000 and respondent repaid approximately $45,500. However, during Lynn Sparling's testimony, it became obvious that there were errors in the document. The record was not clear as to how the document should be corrected. However, it appeared that the errors were to the detriment, not benefit, of the Sparlings.

At various times, Sparling paid respondent's credit card, utility, telephone and pharmacy bills, business loans, rent and respondent's secretary's salary. Sparling even borrowed $10,000 from his father, in June 1997, because respondent needed $12,000 to close a $35,000,000 loan that would result in approximately $700,000 in commissions for Phoenix and would permit respondent to repay Sparling.

Dean and Lynn Sparling denied that they became partners in Phoenix. Sparling testified that, at some unspecified point, respondent promised to give him ten percent of Phoenix's commissions to induce him to continue paying respondent's bills. Lynn Sparling

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[9] Lynn Sparling's list also showed 1996 expenditures to ship files to respondent. However, it was not until March 1997 that Sparling began paying respondent's bills and wiring funds to him.

testified that respondent also promised her a percentage of Phoenix's commissions to compensate her for her work on behalf of the business. However, both Lynn and Dean stated that there was never any formal agreement by which they became partners in Phoenix or became entitled to receive a percentage of Phoenix's commissions.

In May 1997, respondent requested that Sparling withdraw the funds from the escrow account to pay some of respondent's expenses. In his May 3, 1997 "fax," respondent requested that Sparling take $15,551.85 "from $20,000 belonging to Ted which we put in escrow" to repay a loan on behalf of respondent and to pay some of respondent's bills, including the rent for his Pennsylvania apartment, telephone and credit card bills and his daughter's credit card bill. Respondent also sent a "fax" to the bank, authorizing the release of the funds to Sparling.

Sparling testified that, pursuant to respondent's instructions, he withdrew the $20,000, plus $304.15 interest, from the escrow account. He then deposited $11,044.63 into his checking account, paid some bills from his checking account, obtained money orders with the remainder of the funds and sent the money orders to respondent.

Lynn Sparling testified that respondent assured her that Sparling was not responsible for the escrow funds. According to Lynn, respondent stated that [respondent] was the escrow agent and that "[t]his is business between [Sierputoski] and I. [Sierputoski] is getting 50 percent of my legal practice. Hence, there is no need for you to be involved." She also testified that, at respondent's request, she did not discuss the release of the escrow

with Sierputoski. In a September 17, 1997 "fax" to Lynn, respondent stated that, "if at some point [Sierputoski] pushed you would just say okay you have to get hold of me because I'm holding in escrow. I'll explain in more detail later. But still okay as I first thought."

According to Sparling, when Sierputoski learned, during a telephone conversation with him, that the escrow funds had been released, Sierputoski "just went wild on the phone." In an October 24, 1997 "fax" from respondent to the Sparlings, respondent stated that "[Sierputoski's] reading of the escrow agreement, as well as Dean's is 100% dead wrong. All that needed to be said by Dean to Ted was that he did not know I took the money and Dean would have been non-culpable. That part about my not having liability is meaningless if the document was read as a whole which the law requires. The exception was if there was intentional wrongdoing. Well, my using that money is an intentional wrongdoing."

In 1997, when Sierputoski pressed Sparling for payment of the $20,000 loan, Sparling gave him a lien against the proceeds of his personal injury claim. When the claim was settled in 1999, Sparling paid Sierputoski $14,000.[10] According to Lynn, the Sparlings successfully negotiated a reduction in the loan balance to $14,000, because they had determined that (1) respondent and Sierputoski were "swindling money" from Sparling, (2) the loan documents had been back-dated, (3) Sierputoski had charged Sparling an "illegally

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[10] Although Sparling testified that he repaid $20,000 to Sierputoski, he seemed to be somewhat confused about the repayment. On the other hand, Lynn clearly remembered that they had paid only $14,000 to Sierputoski. Both Sparlings testified that Lynn was more knowledgeable about their finances.

inflated loan interest rate" and (4) some of the bills that Sparling had paid on behalf of respondent were also debts of Sierputoski.

Respondent, in turn, claimed that Sparling became a partner in Phoenix, that the funds expended by Sparling on respondent's behalf represented investments in Phoenix and that Sparling was to be repaid from Phoenix's brokerage commissions. Apparently, however, Phoenix never earned any commissions. According to respondent, after Phoenix's business failed, the Sparlings asserted that they were not partners in Phoenix in order to bolster their claims with the New Jersey Lawyers' Fund for Client Protection and the Pennsylvania Lawyers' Fund for Client Security.

The following excerpts from respondent's "faxes" to the Sparlings supported his position that Sparling became a partner in Phoenix:

> (1) August 2, 1997: the pressure of your fears, the pressure of not disappointing you...because of what I have lived through this is why I expressed to you the risks you were taking.
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> (2) September 4, 1997: When you guys jumped in to help, I was so excited because my intent was then to have all 3 of you [Dean, Lynn and their child] to have the easy life...So that I can keep you financially protected it is imperative you drop everything and prepare an itemized list of everything you have spent, including Ted's $20K and the final 2 weeks pay we promised Abbie and I will just spend the next week or two trying to sell off the business in exchange for the total amount you are out...We can at least say we tried and we can rationalize but for $32,750 we would have had it made.
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> (3) September 11, 1997: At the same time as I try for the 20K I will simultaneously try to get all of your money all at once and if that works then you can decide at that point whether to take all and end everything or to await Almond [Resort]...Believe me if I had ever thought for a second there would of [sic] been a risk of your feeling such hate...with me, I never would have let

you chance this from the beginning...My intentions were honest and quite simple. If I was going to be fortunate enough to reap a great harvest I wanted you in the fields with me to share the bounty of the yield...I would never have let you join me in this quest had I known it might result in the feeling you had inside of you last night.

(4) October 24, 1997: We have our 1st 'for sure' response. Someone who is doing exactly what we are except prior to the present he had limited the loans he would work on to just infrastructure projects...For 40% he will pay...$20,000 on November 21, 1997...He will cover all expenses to our 1st settlement...At our 1st settlement he will pay balance of $45,000 and one time 40% interest charge on the $45,000...This means you will still have silent 10% because he thinks I have 60% and you 40%. Although he will only be 40% partner, I had to agree that on each loan he personally brings into business he gets 50% commission...and at a minimum I will not only have kept my promise to make you whole one day, if you wanted out but you'll still have 10% for the rest of my life.

However, respondent's statement that Sparling "will still have a silent 10%" interest in Phoenix is at variance with his claim that the Sparlings became "50/50 equal partners with Respondent."

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Lynn Sparling also testified that, in March 1997, pursuant to respondent's instructions, she signed his name on an attorney trust account check. According to Lynn, she made the check payable to "[respondent] or Dean Sparling" in the amount of $9,680 and forged respondent's signature on it. Lyn testified that, when she told respondent that she was uncomfortable signing his name on an attorney trust check, resspondent told her "not

to worry about it." Her husband then endorsed and cashed the check and wired the proceeds to respondent in St. Kitts.

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Prior to the date for oral argument, the presenter filed a motion to supplement the record to add (1) the Sparlings' comments to the DEC's hearing panel report and (2) new evidence of further violations of the Rules of Professional Conduct. We determined to grant the motion.

As to the first issue, the Sparlings correctly pointed out that the DEC report inaccurately states that, after Lynn forged respondent's signature on the trust check, she "deposited same." Lynn testified at the hearing that, at respondent's direction, her husband cashed the trust check and wired the funds to respondent.

Also, the Sparlings complained that they did not understand the DEC's reference to "an inherent contradiction" between Dean's testimony that he repaid Sierputoski $20,000 from the proceeds of his personal injury case and Lynn's testimony that they paid Sierputoski only $14,000. As set forth above, the DEC was correct that there was a discrepancy.

In addition, the Sparlings complained of the DEC's statement, according to respondent, the Sparlings had admitted to him, in June 2000, that they had filed the grievance to enhance their claims with the New Jersey and Pennsylvania client security

funds and buy a house. The Sparlings referred to their testimony, denying that they made those statements and stating that they had purchased a house in December 1999.

With respect to new evidence of additional violations, the presenter requested that we give him instructions on what to do about four trust account checks that respondent had negotiated. Lynn Sparling had given the checks to the presenter. Two of the checks, in the amount of $320 and $9,400, were made payable to respondent and appeared to have been endorsed by respondent. The third check, in the amount $500, was made payable to cash and seemed to have been deposited by American Express. The final check, in the amount of $9,680, was the one bearing Lynn's forgery of respondent's signature.

As to that evidence, we determined that it should be submitted to the OAE for further investigation.

* * *

The DEC found that "there remains some degree of uncertainty as to the extent of participation [the Sparlings] willingly played in the several business schemes of [respondent], and certainly, the forging of an attorney trust account check by Mrs. Sparling measurably diminishes one's presumption of blamelessness and naivete on the part of [the Sparlings]." Nevertheless, the DEC found that there was an attorney-client relationship between respondent and Sparling and that respondent violated RPC 1.8 by "inducing" Sparling to pay his bills and to use the escrow funds for his debts. The DEC rejected, as

"not supported by the evidence," respondent's contention that the funds represented the Sparlings' investment in the business.

Furthermore, the DEC found that respondent violated RPC 8.4(c) when he induced Sparling to secure the loan from Sierputoski and deposit the proceeds in an escrow account and then "manipulated" Sparling into withdrawing the funds to pay respondent's debts. According to the DEC, respondent "compounded" his misconduct by counseling the Sparlings not to discuss the withdrawal of the escrow funds with Sierputoski. The DEC found that respondent also violated RPC 8.4(c) when he told Mrs. Sparling to forge his signature on an attorney trust account check and "then deposit for his use."[11]

Finally, the DEC found that respondent knowingly misappropriated Sparling's escrow funds when he "arranged the withdrawal of his clients' escrowed funds and then induced them to apply a major portion of these monies to pay Respondent's own debts...then direct[ed] his clients to hide the fact that these monies had been withdrawn...from his own business partner and the holder of the promissory note. The business partner would, under any scenario, be recognized as an interested third party to the misappropriated monies in this case."

The DEC recommended that respondent be disbarred.

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[11] As set forth above, the testimony was that the trust account check was cashed and the funds wired to respondent.

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. Unlike the DEC, however, we conclude that the proofs do not show to a clear and convincing standard that respondent knowingly misappropriated escrow funds. The clear and convincing standard requires evidence that produces "in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." In re Purrazella, 134 N.J. 228, 240 (1993) (citation omitted).

The evidence shows that Sparling borrowed funds from Sierputoski and placed the funds in an escrow account. The funds belonged to Sparling, not Sierputoski. As stated in the escrow agreement, Sparling "wishe[d] to maintain such monies as an asset titled to himself." It was Sparling who took the funds from the escrow account. Although respondent may have requested that Sparling withdraw the funds, a request that a client take his own funds out of escrow does not amount to a knowing misappropriation.

In fact, there was no logical reason for the funds to be placed in escrow. If Sparling wished to have $20,000 available to purchase a house, he could have sent the $20,000 he borrowed from Sierputoski to the Colorado court and kept the $20,000 that he sent to the court in his own account. Instead, Sparling agreed to pay $1,500 in interest every six months on a $20,000 loan and place the $20,000 in an escrow account apparently because he accepted respondent's advice that the escrow was more beneficial to him than simply keeping his own money in an interest-bearing account. The fact that Sparling agreed to the

escrow shows his naivete' with respect to financial matters and/or the absolute trust he placed in respondent.

Furthermore, the complaint did not charge knowing misappropriation. It merely alleged that respondent failed "to make proper disposition of escrowed funds," in violation of RPC 1.15(b). For some unexplained reason, the escrow agreement provided that, after the funds were placed in the escrow account, respondent would draw a check payable to Sierputoski and hold the check itself in escrow. Respondent could only release the check under certain circumstances, as set forth above. Because none of the requisite circumstances had occurred, respondent had no right to release the funds. Therefore, while respondent violated the terms of the escrow agreement and RPC 1.15(b), he did not knowingly misappropriate the funds.

With respect to the conflict of interest charge, RPC 1.8(a) prohibits an attorney from entering into a business transaction with a client and from acquiring a pecuniary interest adverse to a client, unless the terms of the transaction are fair and reasonable to the client, the terms are fully disclosed, the client is advised of the desirability of seeking independent counsel and the client consents in writing to the transaction. There was no attorney-client relationship between respondent and Sparling with respect to Phoenix. However, RPC 1.8(a) may apply even where the attorney is not acting in that capacity in a particular business transaction. In re Reiss, 101 N.J. 475, 488 (1986) In Reiss, the Court stated that "[r]espondent's claim that he was merely acting as a businessman in the [transaction] ignores

that attorneys are held to a higher standard than that of the market place. An attorney's conduct must measure up to the high standard required of a member of the bar even if his duties in a particular transaction do not involve the practice of law." Reiss was suspended for one year for conflict of interest, improper recordkeeping, improper use of his trust account and commingling of trust and personal funds.

Unquestionably, there was an attorney-client relationship between respondent and Sparling, since respondent represented Sparling in the personal injury case. Sparling also had reason to believe that respondent was his attorney in the Colorado will-contest case. Even if respondent did not intend to charge Sparling any fee for the representations, an attorney-client relationship existed at the time that the Sparlings sent funds to respondent and paid his expenses.

There is a question as to whether the attorney-client relationship was a determinative factor in Sparling's loans to respondent. The Sparlings claimed that the funds represented "fee payments up front" from respondent's fee in the personal injury case. Respondent contended that the funds represented Sparling's investment as a partner in Phoenix. However, respondent did not testify at the ethics hearing and his answer to the ethics complaint was not verified. Furthermore, the evidence indicates that, at various times, respondent reimbursed Sparling for expenditures on behalf of respondent, a circumstance that is at variance with respondent's contention that the expenditures represented investments in the business. The contemporary documents indicate that, while Sparling did

not become a partner in Phoenix, respondent did promise him that he would share in Phoenix's profits. Lynn Sparling also had a pecuniary interest in Phoenix's success, since she expected to be paid for her work on behalf of Phoenix. Therefore, there is evidence to suggest that the Sparlings paid respondent's expenses because they believed that they would share in Phoenix's profits. There is also evidence indicating that Sparling lent money to respondent because respondent and Sparling had a longstanding tradition of assisting one another, a tradition that, in the past, had benefitted both men.

There is no question, however, that Sparling relied on and trusted respondent, in part because respondent was an attorney. Respondent violated that trust, inducing Sparling to send him money and pay his bills, without any security for repayment and without advising Sparling of the need for independent counsel. Sparling was not a sophisticated businessman. His financial naivete was evidenced in the $20,000 loan transaction and the escrowing of the proceeds. We find, therefore, that respondent violated RPC 1.8(a).

There is also no question that respondent never provided any writing to Sparling setting forth their agreement as to fees, in violation of RPC 1.5(b).

With respect to the alleged violations of RPC 8.4(c), there is clear and convincing evidence that respondent engaged in a course of deceitful conduct by manipulating Sparling into paying his bills. He took advantage of a naive friend and client, for his own pecuniary benefit. His advice to Sparling concerning the $20,000 loan from Sierputoski and the escrowing of the proceeds of the loan was particularly egregious. Sparling paid $4,500 in

interest on a loan that was of no benefit to him. On the other hand, respondent controlled the payment of the loan proceeds and Sierputoski, who was paying respondent's bills, received an exorbitant interest rate.

The DEC did not determine whether respondent violated RPC 8.4(c) when he told Sparling that the insurance adjuster had agreed to a $300,000 settlement of the personal injury claim and that only some paperwork remained to be completed. Both Sparlings testified that respondent made those representations to them. Again, because respondent did not testify, there is clear and convincing evidence that respondent violated RPC 8.4(c) when he misrepresented to the Sparlings that the personal injury claim had been settled for $300,000.

We did not make a determination, however, as to whether respondent violated RPC 8.4(c) when he had Lynn Sparling forge his signature on the attorney trust account check and had Dean cash the check and send the proceeds to him. The question of whether respondent knowingly misappropriated client trust funds in that instance or in those instances that were the subject of the presenter's motion to supplement the record has not been addressed. We, therefore, refer that issue to the OAE for further investigation.

In summary, respondent violated RPC 1.5(b), RPC 1.15(b), RPC 1.8(a) and RPC 8.4(c). It is well-settled that, absent egregious circumstances or serious economic injury to clients, a reprimand is the appropriate discipline in conflict of interest situations. In re Berkowitz, 136 N.J. 134, 148 (1994). Where an attorney's conflict of interest has caused

serious economic injury or the circumstances are more egregious, the Court has not hesitated to impose a period of suspension. See In re Humen,123 N.J. 289 (1991) (two-year suspension where the attorney engaged in numerous sensitive business transactions with his client, in which the attorney's interests were in direct conflict with those of the client); In re Harris, 115 N.J. 181 (1989) (two-year suspension where the attorney induced his client to lend large sums to another client of whom respondent was a creditor, without informing the first client of the financial difficulties of the borrowing client); In re Dato, 130 N.J. 400 (1992) (one-year suspension where the attorney represented both parties in a real estate transaction, purchased property from a client for substantially less than its actual value and resold it ten days later for a $52,500 profit); In re Griffin, 121 N.J. 245 (1990) (one-year suspension where the attorney entered into a business transaction with a client who was unable to manage her affairs properly and did not fully disclose to the client the consequences of the transaction or advise her to seek independent counsel); In re Shelly,140 N.J. 501 (1995) (six-month suspension where the attorney borrowed funds from his client without advising her to seek independent legal counsel and failed to keep his attorney records in accordance with R.1:21-6); In re Guidone, 138 N.J. 273 (1994) (three-month suspension where the attorney deliberately concealed his involvement in a partnership that was purchasing property from the Lion's Club, when he was already representing the Lion's Club in the transaction); In re Hurd, 69 N.J. 316 (1976) (three-month suspension where

attorney advised his client to transfer title to property to attorney's sister for twenty percent of the property's value).

Here, respondent took advantage of a friend and client who trusted him. For more than eighteen months, respondent engaged in a pattern and practice of misleading Sparling. Respondent's motive for the deception was venal. He initially deceived Sparling for Sierputoski's benefit, when Sierputoski was paying respondent's bills. When Sierputoski would no longer pay his bills, respondent induced Sparling to support him, by making misrepresentations about the personal injury settlement and by promising him a share of Phoenix's profits.

In light of the prolonged nature of the misconduct, we unanimously determined to suspend respondent for six months. One member did not participate. As set forth above, we refer to the OAE the issue of the trust account checks, for further investigation.

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

Dated: Oct 9 2001

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

*SUPREME COURT OF NEW JERSEY*
*DISCIPLINARY REVIEW BOARD*
*VOTING RECORD*

In the Matter of Michael J. Weintraub
Docket No. DRB 01-040

Argued: May 17, 2001

Decided: October 9, 2001

Disposition: Six-month suspension

| Members | Disbar | Six-month Suspension | Reprimand | Admonition | Dismiss | Disqualified | Did not Participate |
|---|---|---|---|---|---|---|---|
| Peterson | | X | | | | | |
| Maudsley | | X | | | | | |
| Boylan | | | | | | | X |
| Brody | | X | | | | | |
| Lolla | | X | | | | | |
| O'Shaughnessy | | X | | | | | |
| Pashman | | X | | | | | |
| Schwartz | | X | | | | | |
| Wissinger | | X | | | | | |
| **Total:** | | 8 | | | | | 1 |

Robyn M. Hill 11/20/01
Robyn M. Hill
Chief Counsel