SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-463

IN THE MATTER OF	
G. JEFFREY MOELLER	
AN ATTORNEY AT LAW	

Decision

Argued: April 17, 2003

Decided: June 19, 2003

Christine D. Petruzzell appeared on behalf of the Committee on Attorney Advertising.

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 Committee on Attorney Advertising ("CAA").

The twenty-seven count complaint alleged violations of RPC 1.4(b) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), RPC 1.5(a) (charging an excessive fee), RPC 1.7(b) (conflict of interest; representing a client when the representation may be

materially limited by the lawyer's responsibilities to another client or a third person or by the lawyer's own interests), RPC 1.8(f) (accepting compensation from someone other than the client), RPC 1.15(d) (failing to comply with the provisions of R. 1:21-6), RPC 5.4(a) (sharing legal fees with a nonlawyer), RPC 5.4(c) (permitting a person who recommends, employs or pays the lawyer to render legal services to another to direct the lawyer's professional judgment in rendering such legal services), RPC 5.5(b) (assisting another in the unauthorized practice of law), RPC 7.1(a)(1) (making false or misleading communications about a lawyer, the lawyer's services or any matter in which the lawyer has or seeks a professional involvement), RPC 7.1(a)(2) (making false or misleading communications likely to create an unjustified expectation about results the lawyer can achieve), RPC 7.1(a)(4)(ii) (making false or misleading communications about the lawyer's fee), RPC 7.3(b)(3) (using coercion, duress or harassment when contacting a prospective client to obtain professional employment), RPC 7.3(d) (compensating a person to recommend or secure the lawyer's employment by a client or as a reward for having made a recommendation resulting in the lawyer's employment by a client), RPC 7.5(a) (using a firm name or letterhead that violates RPC 7.1), RPC 8.1(a) (making a false statement to disciplinary authorities), RPC 8.1(b) (failing to disclose a fact necessary to correct a misapprehension known by the person to have arisen in a disciplinary matter), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), R. 1:21-1A(c) (using a corporate name that does not comply with RPC 7.5), Attorney Advertising Guideline 1 (using an advertisement that does not contain the attorney's or law firm's

bona fide street address) and N. J. Comm. on Attorney Advertising Opinion 25, 153 N.J.L.J. 1298 (1998) ("Opinion 25") (living trust flyers contained actual or potentially misleading statements, in violation of RPC 7.1(a)(1)).

Respondent was admitted to the New Jersey bar in 1978. He has no disciplinary history in New Jersey.[1] As of February 2002, he was an associate in a Livingston law firm.

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Most of the material facts are not in dispute. Between July 1995 and August 1998, respondent was a shareholder in the two-lawyer firm of Wallace & Moeller, P.C. In September 1998, he became a sole practitioner.

In February 1996, respondent filed a certificate of incorporation in New Jersey for American Estate Services, Inc. ("AES"),[2] a Texas corporation that marketed and sold living trusts to senior citizens. Respondent was AES's registered agent. AES's address on the certificate was the same as that of Wallace & Moeller – 200 Clove Road, P.O. Box

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[1] On July 10, 2002, the Pennsylvania Supreme Court suspended him for one year and one day for practicing while ineligible, assisting a nonlawyer in the unauthorized practice of law and sharing a fee with a nonlawyer. The Pennsylvania disciplinary proceedings arose out of the same conduct under review here – respondent's involvement in the marketing of living trusts.

[2] AES was later known, at various times, as Advanced Legal Services, American Legal Services and American Legal Marketing Services.

1848, Montague, New Jersey.[3]

In May 1996, AES opened an office in Morristown and retained respondent as a "referral attorney" to review the living trust documents of AES's clients. Thereafter, AES sent mailings to senior citizens in New Jersey in manila legal-size envelopes. In place of the sender's name and address, in the upper left-hand corner of the envelope were the words "OFFICIAL BUSINESS" and "IMPORTANT: Legal Information."

In the envelope was a postage-paid reply card addressed to the Estate Conservation Unit ("ECU"), 1825 I Street, NW, Suite 400, Washington, D.C. 20077-244. The reply card contained the following banner headline: "**SPECIAL BULLETIN** IT IS YOUR **LEGAL RIGHT** AS A UNITED STATES TAXPAYER TO ESTABLISH A **LIVING TRUST**." The reply card also stated as follows:

> By establishing a **funded Living Trust** now, when you die your estate can avoid probate. Probate may cost a significant amount of money in legal and executor fees. The probate process may take several months or even years before your estate is transferred to your family (*depending on the size and complexity of your estate*). By having a **funded Living Trust** you **retain full control of** your assets and your family can avoid any delays! **YOU CAN SAVE VALUABLE TIME AND MAY SAVE UP TO THOUSANDS OF HARD EARNED DOLLARS!** You are **ENTITLED** TO **FREE** INFORMATION ON HOW TO CREATE A **FUNDED LIVING TRUST** From the Law Offices of G. Jeffery [sic] Moeller, Attorney.

Although respondent was a member of the firm of Wallace & Moeller, neither the

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[3] The address on Wallace & Moeller's letterhead was shown as 399, not 200, Clove Road. The record does not explain this discrepancy.

firm name nor its address was included in the mailings.

In November 1998, an additional statement was included in the mailings:

> **A properly prepared and funded Living Trust can keep your personal affairs private and save your beneficiaries time by simplifying and avoiding the probate process altogether.**

When a client returned the reply card, an AES customer service representative ("CSR") interviewed the client at his or her home, had the client sign a service agreement, obtained personal and financial information from the client, completed the application and client information sheet, advised the client that AES would retain and pay for the fees of the attorney who would review the documents and obtained a check to AES for an amount between $1,695 and $1,895.[4] AES paid respondent $100 to review the documents.

In the brochure that the CSR gave to a client, the client was told that one of the advantages of a living trust was that it enabled the client to "avoid conservatorship or guardianship if [the client] becomes incompetent."

After the client paid the CSR, respondent sent a "retainer confirmation letter" stating that he would "review the Trust instruments that you have requested from [AES]" for a $100 fee to be paid by AES. The $100 fee "represents attorney fees only and

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[4] The CSRs were independent contractors who were paid a $500 commission on the sale of each living trust. The New Jersey branch manager in charge of the CSRs was initially an independent contractor, who was paid a $100 "override commission" on each sale, but became an employee of AES in 1997. AES also had a regional director, an independent contractor who was paid a $30 override commission on each sale in AES's eastern region.

includes our review of one or two deeds transferring real estate into the Trust...Please be advised that we are not providing financial, investment, or tax advice or counseling."

When respondent received the client information from AES, he or someone in his office telephoned the client to verify the information, paying particular attention to specific directives to be included in the documents. Respondent met with a client only when the client specifically requested a meeting. After the client's information was verified, respondent made the necessary changes on a "data sheet" and sent it to AES for the completion of the trust documents.

After respondent reviewed the completed trust documents, AES's "delivery agents" delivered them to the client at his or her home, explained the documents and notarized the client's signature on them.[5]

In October 1997, respondent entered into a "Services Agreement" with AES, whereby AES agreed to assist him in the creation of a direct mail marketing program, provide him with "trained individuals capable of performing administrative and client support services" and give him a license to use certain software to create estate planning documents. In exchange for AES's services and license, respondent agreed to pay $1,750 to AES within ten business days of the date of respondent's engagement letter to the

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[5] At least some of the delivery agents worked for an insurance marketing company. At the initial visit, the CSR asked the client if he or she wanted to meet with a "financial services representative who is also a licensed insurance agent" about "financial planning options." If the client signed a consultation request form, the delivery agent from the insurance marketing firm discussed insurance, annuities and other financial options with the client.

client. Respondent also agreed to adhere to AES's "Standard Operational Procedures." One of the procedures set respondent's total fee to prepare the basic estate-planning package at $1,995. That package included a trust summary, revocable living trust agreement, pour-over will, living will, durable general power-of-attorney, durable health care power-of-attorney, asset transfer documents, trustee instructions and one deed transferring property to the trust. If more than one deed was to be transferred to the trust, respondent could charge the client $25 for each additional deed. Under the agreement, respondent received $245 of the $1,995 paid by the client.

On November 7, 1997, respondent entered into a "Software and Hardware License Agreement" with AES, giving him a license to use AES's "Estate Planning Document Preparation System" and specifying support services for a "licensing fee" of $1,745 per use. Under the new agreement, respondent kept $250 of the $1,995 fee paid by the client.

The November 1997 agreement also provided that

> [f]unds received for packages sold and produced shall be deposited into a joint account between Licensor and Licensee. Upon delivery of the package, each party shall authorize payment from the account of their respective fees for their services performed. Refunds shall be recouped and reconciled between the parties.

Apparently, the October 1997 agreement was superseded by the November 1997 agreement.[6] Under the agreement, which respondent termed "Plan B" (the prior

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[6] Respondent testified that the 1997 agreement was actually implemented in January 1998. However, respondent's records indicate that it was implemented in October 1997.

procedure was termed "Plan A"), AES marketed the trusts in the name of its attorney in each state.

Although the reply postcards in some of the initial mailings under Plan B continued to show the ECU's Washington, D.C. return address, they were supposed to be returned to a Sparta, New Jersey post office box.[7] The reply postcards returned to Sparta were then sent to AES in Texas, rather than to respondent. AES continued to arrange the appointment with the client and its CSRs continued to meet with the client. Respondent stated that, under Plan B, the CSR telephoned him from the client's home so that respondent could introduce himself to the client and remind the client that he, not the CSR, would answer any legal questions.

Another difference under Plan B, according to respondent, was that, after the client's information was verified, he would call the client to review anything he considered to be "of a legal nature." Respondent did not describe what he considered to be "of a legal nature." The "disclosure statement and agreement" signed by the client stated that the client retained respondent to "assist...with estate planning matters and to prepare legal documents which are suitable for your estate planning needs."

Under Plan B, the trust documents were completed by respondent's office, using AES's software. However, AES's delivery agents continued to deliver the documents to

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[7] In a February 19, 1998 deposition taken by the New Jersey Division of Consumer Affairs, AES's president testified that the earlier postcards were returned to Washington, D.C. because the corporation that handled AES's mailings was located there.

the clients.

Finally, under Plan B, respondent, not AES, received the $1,995 fee. Respondent deposited the funds in his trust account and did not take his fee until the client received the completed trust documents, signed a statement that he or she was satisfied with the services and authorized the release of the payment.

Under the 1997 agreement, respondent was obligated to remit $1,745 to AES within ten days of his retainer letter to the client. Respondent testified that, rather than pay AES before the client indicated satisfaction with his services, he opened a line of credit, secured by his mother's home, and used that credit to pay AES. Respondent admitted that he never told his clients that his fee was $250 and that he had to remit the remaining $1,745 to AES. He denied that he ever maintained a joint account with AES.

During respondent's association with AES, he participated in the training of AES's CSRs, answered their questions and often attended the branch manager's weekly meetings with the CSRs.

By letter dated June 9, 1998, the CAA asked respondent to describe the nature of his involvement with ECU. At that time, the CAA was unaware of AES. On July 6, 1998, respondent replied that ECU was a "departmental designation of AES for the company's own internal administration, in which I am not involved." He described AES as a "legal support and marketing services company...I pay AES directly and only for the professional services it renders to me." Respondent denied any interest in AES:

I do not have any legal or equitable interest in [AES]. More particularly, I

> have no investment in the company, I own no stock, I am not a general or limited partner and I am not otherwise affiliated with the company except to utilize its professional services.

In fact, in June 1998, when Plan B was in effect, respondent participated in the training of AES's CSRs and continued to be AES's registered agent in New Jersey.

In December 1998, respondent terminated his agreement with AES, although he continued to perform legal work for clients who had received mailings prior that date. In February 1999, he became AES's New Jersey office manager, processing clients' trust information for AES's new attorney in New Jersey. In February 2000, he severed all connection with AES and ceased his estate planning practice. At that time, he became an associate in a law firm, practicing civil litigation.

Respondent testified that, prior to becoming involved with AES, he researched New Jersey case law and ethics opinions concerning attorneys' involvement with companies that marketed living trusts, but found no relevant law. He stated that, although he had done some estate and trust work, he did not consider himself an expert in the field. Therefore, according to respondent, his firm paid $400 to an attorney with expertise in estate and trust law to review AES's "exemplar trust package" to "make sure that we weren't missing anything," then conformed the documents to comply with New Jersey law.

Respondent further testified that, as AES's "referral attorney" under Plan A, his function was

> to simply review the living trust documents that had already been requested

> by customers of AES. And we were not providing any further tax advice, counseling, or whatever. Our role, as I saw it, was really in the nature of, for example, a mortgage review attorney for the bank. In other words, the customer has already decided that they want to buy the house and they want to get the mortgage. The attorney reviews the mortgage documents to make sure that the documents are correct and they meet their intended purpose. The attorney is not there to say don't buy the house; it's not a good business deal, whatever. That was my role. As a matter of fact, AES entered into a separate contractual arrangement with its customers so that AES would be providing the estate planning services requested.

Respondent denied that he failed to exercise independent judgment. "If something jumped out at me, or in my conversation with [clients], I felt that they needed less or more, I would tell them that." According to respondent, his "shortest consultation" with a client was "as little as 10 minutes," while the longest "could be hours," including meeting with the client. Respondent contended that "many times" he advised clients that a living trust was not appropriate for them. He stated that he had letters to prove his contention. He never produced such letters, despite the CAA's request.

W. Robert Hengtes, the Cape May County surrogate, testified that, in 1997, he alerted all of the county surrogates of "AES's attempt to sell living trusts to unsuspecting senior citizens." According to Hengtes, he learned of the solicitations when elderly citizens of Cape May, usually widows, called him because they "were being scared out of their wits, they were being told that it would cost 18 to $24,000 for their next of kin or children...to admit a will of [sic] probate. And, of course, we know that's not true." Hengtes stated that he was also contacted by an attorney whose client was charged $1,800 for a living trust, when all she needed was a simple will, which he prepared for

$100. According to Hengtes, the attorney had his client stop payment on the $1,800 check.

Nancy Fitzgibbons, the Sussex County Surrogate, testified that, in October 1998, she issued a press release about the marketing of living trusts, after she received telephone calls from several constituents and one from a postal inspector about AES's mailings. She particularly recalled a woman who had paid almost $1,900 for a living trust, when she was "on disability for $471" and could not afford the $1,900 payment. Fitzgibbons did not state whether the woman asked for and received a refund.

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Respondent argued that he should not be suspended because of his good faith belief in the efficacy of living trusts and because there was no ethics opinion prior to Opinion 25 that would have placed him on notice that what he was doing was unethical. According to respondent, he relied in good faith upon AES's representations concerning the value of revocable living trusts and on information from organizations such as the American Association of Retired Persons and publications such as the Wall Street Journal. He asserted that he did not become aware of Opinion 25 until December 2, 1998. He further argued that, prior to the CAA's investigation, he was the subject of an investigation by the Committee on the Unauthorized Practice of Law ("CUPL") and that neither the CUPL nor the CAA directed him to cease his involvement with AES. Respondent believed that he was the victim of a conspiracy among various county

surrogates, who sought to protect their positions by denigrating living trusts.

Respondent contended that his clients received the legal documents and services promised to them, that the "efficacy and validity of the trust documents has gone unquestioned" and that no client suffered any financial loss. According to respondent, clients who expressed their dissatisfaction with the living trusts received refunds for the entire fee. Respondent compared his relationship to AES to an attorney who is paid by an insurance company to defend its insured.

Respondent testified that he had suffered personally and economically because of the CAA's investigation. According to respondent, after he left AES in January 1999, he was unemployed for four months. He then became an associate at a law firm, earning $90,000. However, that firm requested him to leave, when the CAA filed its complaint in October 2000 and he was unemployed for three months. Respondent then became of counsel to a law firm, where he was provided office space and health insurance, but received no salary. In October 2001, respondent became an associate with another law firm, earning $75,000.

Respondent testified that he is the sole support of his wife and young son, born in February 2000. According to respondent, he had "over $50,000 in unsecured debt" and had been sued by a hospital for $6,000 because he and his wife did not have medical insurance when his wife was hospitalized and they were unable to pay the hospital bill. Respondent further testified that he had to represent himself at the CAA hearing because he owes his former attorney $30,000. He maintained that any "further interruption in

[his] efforts to rehabilitate his financial and professional life will be nothing short of fatal."[8]

Respondent presented the testimony of an attorney who testified about respondent's integrity and professionalism. Respondent also offered the testimony of his former law partner, who stated that, when respondent became involved with AES, he pursued education and training in the estate and trust area to better serve his clients.

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The CAA found respondent guilty of all of the charges in the complaint. The CAA stated that respondent "served two masters – the client and AES, for whom he effectively acted as a member of the sales force."

The CAA recommended that respondent be suspended for one year. Its recommendation was based upon respondent's "numerous ethical violations" and on his "misrepresentation to the [CAA] that he has never been the subject of disciplinary action when in fact the conduct complained of here was under investigation by the State of Pennsylvania at or about the same time, and never disclosed to the [CAA]." In respondent's February 20, 2002 post-hearing submission to the CAA, he stated that he "has until now never been subject to disciplinary action." As previously noted, on July

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[8] The record does not indicate the amount of fees respondent received from his relationship with AES. Respondent's records indicate that he had approximately thirty-two living trust clients in January 1998 and thirty-seven in February 1998.

10, 2002, the Pennsylvania Supreme Court suspended him for one year and one day for practicing law while ineligible, aiding AES in the unauthorized practice of law and sharing a fee with a nonlawyer, AES. The Pennsylvania disciplinary matter began in 2000. However, the disciplinary board's decision and the disciplinary order post-dated respondent's submission to the CAA.

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Upon a de novo review of the record, we are satisfied that the CAA's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

The Advertising Charges

The mailings contained misleading statements about the cost, complexity and time involved in probating a will. The mailings also overstated the benefits of a living trust and the superiority of a living trust over a will. Finally, the mailings contained misleading statements concerning the avoidance of guardianship proceedings through a living trust.

We rejected respondent's argument that he is not accountable for the mailings because AES sent the mailings. He was an integral part of AES's marketing of living trusts to senior citizens. He permitted his name to be used in the mailings and he benefited financially from the sale of the living trusts. Therefore, we found respondent

guilty of violating RPC 7.1(a)(1) and RPC 7.1(a)(2).

However, we found no clear and convincing evidence that respondent violated the principles of Opinion 25. The CAA based its finding of a violation on the fact that the Opinion – like RPC 7.1(a)(1) – "proscribes statements that are actually or potentially misleading." Although Opinion 25 was issued on September 21, 1998, respondent testified that he did not become aware of it until December 2, 1998 and that, as soon as he learned of it, he took steps to terminate his relationship with AES. Respondent admitted that he continued to perform legal work for clients who had received mailings prior to December 1998. However, he did not admit – and there is no evidence – that any mailings were sent in his name after December 1998. See RPC 7.1(b) ("It shall be unethical for a lawyer to use an advertisement or other related communication known to have been disapproved by the [CAA] or one substantially the same as the one disapproved.") (Emphasis added). Therefore, we dismissed the charge that respondent violated Opinion 25.

Undeniably, however, respondent violated R. 1:21-1A(c) by using "the Law Offices of G. Jeffery [sic] Moeller," rather than the correct corporate name – "Wallace & Moeller, P.C." – and failing to identify the firm as a professional corporation. The rule permits attorneys to practice law as professional corporations, provided that, among other things, the corporate name is "used on all pleadings, correspondence or other documents" and the corporate name is "followed by the phrase 'A professional corporation,'" or other authorized phrase identifying it as a professional corporation. Also, respondent violated

Attorney Advertising Guideline 1 by failing to include Wallace & Moeller's address in the mailings.

The complaint also charged respondent with coercion, duress or harassment in contacting prospective clients, in violation of RPC 7.3(b)(3), because (1) the envelopes contained the words "OFFICIAL BUSINESS" and "IMPORTANT:Legal Information" in place of the sender's name and address; (2) the mailings contained a banner heading "**SPECIAL BULLETIN** IT IS YOUR **LEGAL RIGHT** AS A UNITED STATES TAXPAYER TO ESTABLISH A **LIVING TRUST**"; and (3) the reply card was addressed to the Estate Conservation Unit, Washington, D.C. The CAA found that the envelopes were "not unlike that in which social security checks are sent" and that the mailings made it appear that the Estate Conservation Unit was a "governmental agency." The CAA also stated that the "documents speak for themselves, and, by so doing, establish each of the violations pled, including the material misrepresentations of fact and misleading nature of the documents." The CAA did not specifically address the RPC 7.3(b)(3) charge. Although we concluded that the mailings were deceptive, we were unable to find clear and convincing evidence that they were coercive. We, therefore, dismissed that charge.

The Conflict of Interest and Professional Independence Charges

Under Plan A, AES, not the clients, paid respondent for his legal work. Respondent never consulted his clients about the fee or sought their consent to the

arrangement, in violation of RPC 1.8(f).

Furthermore, throughout his association with AES, respondent never discussed with his clients his relationship with AES and the inherent conflicts of interest entailed in that relationship. Indeed, respondent obtained his information about his clients from AES and took his instructions from AES, rather than his clients. As stated by the CAA, respondent's "representation of clients was materially limited by his responsibilities to AES, whose goal was to aggressively market the [living trusts] and by Respondent's own interests, pecuniary and otherwise, in his relationship with AES." Therefore, we found clear and convincing evidence that respondent violated RPC 1.7(b) and RPC 5.4(c).

The Attorney-Client Relationship Charges

It is undisputed that respondent did not explain living trusts to his clients or discuss with them whether other estate planning options were more appropriate for their needs. In fact, respondent did not contact his clients until after they had agreed to purchase the living trusts and paid the fees. He testified that, under Plan A, he considered himself to be merely a "review attorney," reviewing the documents prepared by AES. Therefore, respondent violated RPC 1.4(b).

The Charges Relating to Respondent's Relationship with AES

Under Plan B, respondent received a $1,995 legal fee from the client. From that fee respondent was required to pay $1,745 to AES, pursuant to their contract. Although

the contract stated that the payment related to support services, respondent and AES were, in fact, sharing legal fees. AES's Standard Operating Procedures manual set $1,995 as the legal fee to be charged the client. Furthermore, as aptly stated by the CAA,

> the hollow nature of this assertion [that the payment was for support services] is demonstrated by the undisputed fact that the portion of the money which AES received came from the legal fees paid by the consumer, and also by the fact that, if the consumer chose to cancel the transaction, the entire sum paid as the legal fee would be refunded, including the portion that was remitted to AES.

Also, respondent's contractual relationship with AES, including the sharing of legal fees, was, at least in part, to compensate AES for referring clients to respondent, in violation of RPC 7.3(d),

Moreover, AES and its representatives were involved in the unauthorized practice of law. AES's representatives, who were not lawyers, met with the clients, obtained the relevant information from the clients, secured the fees from the clients, explained the completed trust documents to the clients, obtained the clients' signatures and notarized their signatures on the documents. Respondent was aware of AES's procedures, modified and ratified them and trained AES's representatives. He, therefore, assisted AES and its representatives in the unauthorized practice of law, in violation of RPC 5.4(a), RPC 5.5(b) and RPC 7.3(d).

The Fee and Bookkeeping Charges

The complaint charged that, by representing that his legal fee was $1,995 when,

in fact, he received only $250, respondent misrepresented the actual amount of the fee. It is undisputed that the clients were told that respondent's legal fee was $1,995 when, in fact, it was $250. In this regard, respondent's conduct violated RPC 7.1(a)(1), RPC 7.1(a)(4)(ii) and RPC 8.4(c).

The complaint also charged that the $1,995 fee was unreasonable, given the amount of time and labor, the lack of novelty and difficulty of the questions involved and the amount of skill required to perform the services properly. As to the skill required to perform the services properly, $1,995 would not be an excessive fee for proper estate planning services. However, respondent did little beyond ascertaining that the clients' information was correct and that it was properly inserted in the trust documents. Although respondent claimed that he had documentation advising some clients that a living trust was not appropriate for them, he never produced it. Given respondent's limited services and the fact that most of the fee went to AES, the $1,995 fee was indeed unreasonable, in violation of RPC 1.5(a)(1).

Finally, the complaint charged that respondent violated RPC 1.15(d) and R. 1:21-6 because his license agreement with AES required that the clients' fees be deposited in a joint account with AES. Respondent testified, however, that he never established the joint account and that he deposited the fees in his trust account until the clients received their trust documents and indicated their satisfaction with them. According to respondent, he paid AES from a line of credit. Therefore, we dismissed the charge of a violation of RPC 1.15(d) and R. 1:21-6.

The Misrepresentation Charges

The complaint charged that respondent misrepresented his relationship with AES in his July 6, 1998 reply to the CAA, when he denied any "legal or equitable interest" in AES and stated that he was "not otherwise affiliated with [AES] except to utilize its professional services." Respondent did not advise the CAA of his close association with AES, their financial relationship or his status as AES's registered agent. We found, thus, clear and convincing evidence that respondent violated RPC 8.1(a), RPC 8.1(b) and RPC 8.4(c).

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Altogether, respondent violated RPC 1.4(b), RPC 1.5(a), RPC 1.7(b), RPC 1.8(f), RPC 5.4(a), RPC 5.4(c), RPC 5.5(b), RPC 7.1(a)(1), RPC 7.1(a)(2), RPC 7.1(a)(4)(ii), RPC 7.3(d), RPC 7.5(a), RPC 8.1(a), RPC 8.1(b), RPC 8.4(c), R. 1:21-1A(c) and Attorney Advertising Guideline 1.

There remains the issue of the appropriate measure of discipline. In In re Sharp, 157 N.J. 27 (1999), the attorney was reprimanded for publishing and circulating a flyer in several newspapers in January 1996. The flyer, which was geared toward the elderly, contained misrepresentations and misleading statements about living trusts, probate and guardianships, similar to the mailings here. The purpose of the advertisement was to attract readers to a seminar given by the attorney and perhaps retain the attorney.

Respondent's misconduct was more serious than that of Sharp. In addition to the

false and misleading advertising, he assisted others in the unauthorized practice of law, engaged in conflicts of interest, accepted compensation from someone other than clients, failed to explain matters to his clients, failed to exercise independent judgment, compensated others for securing clients for him and made misrepresentations to the CAA concerning his relationship with AES. Furthermore, respondent was less than candid in his post-hearing submission to the CAA when he stated that he "has until now never been subject to disciplinary action." While it is true that respondent had not been yet been disciplined, he was well aware that there was a disciplinary proceeding pending in Pennsylvania. Although we did not find a separate violation of RPC 8.1(a) or RPC 8.4(c), respondent should have been more candid with the CAA.

In cases involving fee sharing with a nonlawyer or assisting in the unauthorized practice of law, along with other violations, discipline has ranged widely from a short suspension to a three-year suspension. See In re Chulak, 152 N.J. 443 (1998) (three-month suspension where the attorney allowed a nonlawyer to prepare and sign pleadings in the attorney's name and to be designated as "Esq." on his attorney business account; the attorney then misrepresented to the court his knowledge of these facts); In re Carracino, 156 N.J. 477 (1998) (six-month suspension where the attorney entered into a law partnership agreement with a nonlawyer, agreed to share fees with the nonlawyer, engaged in a conflict of interest, displayed gross neglect, failed to communicate with a client, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation and failed to cooperate with disciplinary authorities); In re Rubin, 150 N.J. 207 (1997) (one-

year suspension in a default matter where the attorney assisted a nonlawyer in the unauthorized practice of law, improperly divided fees without the client's consent, engaged in fee overreaching, violated the terms of an escrow agreement and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation); In re Introcaso, 26 N.J. 353 (1958) (three-year suspension where the attorney employed a runner to solicit criminal cases for the attorney and received fifty percent of the attorney's fee as compensation; attorney also lacked candor in his testimony at the ethics hearing).

There are several mitigating circumstances here. Except for his foray into living trusts, respondent has an otherwise unblemished twenty-four year legal career. He has a history of public and professional service, having served as a deputy attorney general, an assistant county counsel and the president of a county bar association. Also, he has suffered financially, including the loss of a significant legal position, after the CAA filed its complaint.

On the other hand, we had grave concerns about the impact of the deceptive advertising, particularly because it was geared toward the elderly, a vulnerable audience. Of equal concern was respondent's willingness to substantially relinquish his independent professional judgment to nonlawyers who were in the business of selling living trust packages. His actions enabled a nonlawyer entity to practice law in New Jersey. The result, as stated by the county surrogates, was that unsuspecting senior citizens purchased trust packages that they did not need and could not afford. Yet, respondent has apparently not yet recognized the seriousness of his unethical conduct. During the CAA

hearing, respondent maintained that he was the victim of a conspiracy among various county surrogates, who sought to protect their positions by denigrating living trusts.

In light of the foregoing, we determined to suspend respondent for one year. One member recused himself. Two members did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Robyn M. Hill
Robyn M. Hill
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of G. Jeffrey Moeller
Docket No. DRB 02-463

Argued: April 17, 2003

Decided: June 19, 2003

Disposition: One-year suspension

Members	*Disbar*	*One-year Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley		X					
O'Shaughnessy						X	
Boylan							X
Holmes		X					
Lolla		X					
Pashman		X					
Schwartz		X					X
Stanton		X					
Wissinger		X					
Total:		6				1	2

Robyn M. Hill

Robyn M. Hill
Chief Counsel