

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-296

IN THE MATTER OF
FREDERICK A. KIEGEL
AN ATTORNEY AT LAW

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Decision

Argued: February 7, 2002

Decided: April 30, 2002

Paul Felixon appeared on behalf of the District IV 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 an admonition filed by the District IV Ethics Committee ("DEC"), which we determined to bring on for a hearing.

Respondent was admitted to the New Jersey bar in 1992. He has no disciplinary history.

The complaint alleged numerous violations arising out of respondent's dealings with an estate planning service: RPC 1.8(f) (improper acceptance of fees from a third party), RPC

1.8(h) (improper agreement limiting the attorney's liability), RPC 5.4(a) and(c) (professional independence of a lawyer), RPC 5.5(b) (assisting a non-lawyer in the unauthorized practice of law), RPC 7.3(d) (compensating an organization for recommending or securing the lawyer's employment by a client), RPC 7.3(e) (improper promotion of the lawyer's services) and (f) (improper acceptance of employment when the lawyer knows or it is obvious that the person seeking the lawyer's services does so as a result of conduct prohibited by RPC 7.3). As discussed below, we dismissed all but the allegation that respondent violated RPC 1.8(f) and, in addition, found that the record contains evidence of unethical conduct in one matter only, Duvally.¹

In or about July 1998 respondent met Deborah Male, a tenant in his office building. Male owned Sage Senior Services, Inc. ("Sage"), an estate and financial planning company. It is uncontested that Male explained to respondent that her company provided estate planning advice, prepared estate planning documents and assisted in the creation of estate planning for Sage's clients. Those estate plans often involved the origination of revocable living trusts, under which the clients transferred assets, including real estate, to the trust. Sage retained outside attorneys, such as respondent, to draft the appropriate deeds. Respondent was not involved in preparing other estate planning documents or in providing estate planning advice to Sage's clients.

¹The grievant in this matter is the attorney for Charlotte Duvally.

Respondent, the only witness at the DEC hearing, testified that Male asked him if he would be interested in preparing the deeds transferring properties to the trusts. Respondent's version of the events is set forth in his answer to the complaint:

[Male] explained that her new company, Sage Senior Services, Inc. provided estate planning advice, prepared estate planning documents and assisted in the creation of an estate plan for clients of her firm. The estate plan involved the creation of a Revocable Living Trust and transfer of existing assets into the name of the trust. She explained that the documents she prepared were previously created, reviewed and approved by legal counsel. She explained that many of her clients owned real estate and may need real property transferred into the name of the trust by Deed. She asked if I was interested in preparing Deeds to transfer real property from the individual to the trust. She explained that she had other attorneys who were performing this work, and she would gladly consider adding my name to her list of recommended attorneys if I was interested. Ms. Male advised that the client was advised that they were free to use their own personal attorney, retain an attorney of their choice or use my services to prepare the Deed. Additionally, Ms. Male advised that the client was advised that they were free to hire independent counsel to review all documents prepared for the transaction. She explained that I would receive a form containing personal information about each client, and I was authorized to prepare the Deed for each individual. Then, I was to prepare a Deed transferring the real property into the name of the trust, and provide the Deed to Sage or mail the Deed to the client. Next, Sage secured the signature(s) on the Deed, and some of the Deeds were returned to my office along with a check for recording fees. Some of the Deeds were recorded by my office and returned to the client, or returned to Sage to be returned to the client. Although Ms. Male advised that I might represent these individuals if requested for estate planning work and charge on an hourly basis, I had no interest in doing so because I did not feel comfortable providing legal advice regarding estate planning matters due to my limited experience in the field.

A few months after meeting Ms. Male, I began receiving requests for Deed preparation. I was provided with an information form in the Duvally file, and I was provided with a copy of the existing Deed to the property. Upon receipt of the information form, my intent was to contact each individual and confirm the information and my representation of them. Although I usually contacted and spoke with the clients I have no present recollection of contacting, being contacted by or otherwise speaking to Ms. Duvally.

The work from Sage clients was sporadic and ended around early 1999.

At some point, Ms. Male explained that her company also provided investing services involving annuities. She told me she was a licensed insurance agent, and her business involved selling annuities to clients that used Sage for estate planning. I did not understand the operation of an annuity as an investment vehicle. I limited my involvement to the preparation of Deeds, however, I began to grow increasingly uncomfortable with my association with Ms. Male on a personal and professional basis.

I had considered Ms. Male a friend and I agreed to help her with some personal and business related legal matters. Not long after she began operations in my building, she was contacted by the Office of Consumer Affairs. She asked me to accompany her to a meeting at the Consumer Affairs Office and I agreed to go to assist her as a friend. I assisted her in the purchase and sale of a house and I attended a municipal court hearing for a traffic ticket. This help was clearly not to be considered in exchange for referral work, and I recall being upset because I rarely received any expression of thanks. I also accompanied Ms. Male at two meetings with the Department of Insurance at her request. The Department of Insurance questioned her regarding previous employment with another company doing the same type of work. After these meetings, I began to get a bad feeling regarding this individual and this work, and I told her I would do no further work with Sage even though I had received no work from Sage clients for many months prior to these meetings.

At the DEC hearing, respondent reiterated that his involvement with Sage was confined to drafting deeds for Sage's clients, using information provided by Male. Respondent was adamant that he did not prepare or review any other legal documents for Sage. He also clarified an admission at paragraph thirteen of the complaint, which stated that "Sage prepared all other documents related to its services, including the Revocable Living Trust." Respondent testified that he was uncertain about who prepared the other documents necessary for the business, including the trust and other estate planning documents. According to respondent,

[Male] had documents that she represented were prepared by the quote, end quote, legal counsel and were reviewed and were on the up and up.

Respondent also testified that, in each of the eleven instances that he prepared deeds for Sage, it was his practice to call the client prior to drafting the deed, in order to verify the information given to him by Male. Respondent had no specific recollection, however, of contacting Duvally about her deed.² According to respondent, because it was not his practice to document his contacts with Sage's clients, he had no proof that he had contacted Duvally. Similarly, according to respondent, he did not witness the signing of the deeds. His involvement with Sage would conclude upon the drafting of the deed, after which Sage would complete the transaction.

²Apparently, Duvally suffered from Alzheimer's disease. To respondent's credit, he did not claim that he had spoken to Duvally and that she might have forgotten their conversation.

The record in this matter has not been fully developed, containing few facts beyond those above. However, respondent testified briefly about Duvally. Specifically, respondent stated that, despite his acceptance of fees from Sage, his judgment remained independent from Sage. In fact, respondent recalled one matter in which he refused to draft a deed because he could not verify the accuracy of Male's information, even after consulting directly with the client.

In or about 1999, Duvally's attorney contacted respondent about a financial loss that Duvally had allegedly suffered at the hands of Male and Sage. The attorney alleged that Duvally's only asset, other than the deeded property, was a Merrill Lynch cash management account. Male liquidated that account to purchase an annuity, exposing Duvally to \$9,000 in tax consequences. In fact, Duvally sued respondent, Sage, Male and others for those losses. On this score, respondent testified that he knew nothing about the Merrill Lynch account prior to the lawsuit and that thereafter he attempted to resolve it by pressing Male to pay Duvally the \$9,000. Apparently, that litigation was later settled as to respondent.

* * *

The DEC found that respondent accepted payment for legal services from a third party (Sage) without the client's consent, in violation of RPC 1.8(f). The DEC dismissed the remainder of the allegations contained in the complaint for lack of clear and convincing evidence. The DEC recommended an admonition.

* * *

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

The complaint alleged a number of violations that cannot be sustained by the record before us. With regard to RPC 1.8(h), there is no evidence that respondent prospectively attempted to limit his liability for malpractice. This charge was based on a clause in respondent's settlement agreement in the Duvally litigation, which apparently required the withdrawal of the ethics grievance.³ However, the DEC did not explore the issue, find any wrongdoing in this regard or explain its failure to do so. In any event, there is no evidence that respondent attempted to limit his liability to Duvally for malpractice. Similarly, with regard to RPC 5.4(a), there is no evidence that respondent shared legal fees with Male or allowed Male to direct or regulate his professional judgment in drafting the deed for Duvally. Therefore, we dismissed both of those allegations.

With respect to RPC 5.5(b) (assisting a nonlawyer in the unauthorized practice of law), there is some suggestion in the record that Male engaged in the unauthorized practice of law by drafting or redrafting the estate planning documents, other than the deeds. In fact, the complaint states that Male was a law school graduate. However, Male did not testify about her involvement in the estate planning transactions and there is no other evidence in the record that Male herself prepared those documents. In fact, respondent testified that he

³Paragraph twenty of the complaint contained this allegation, which respondent admitted in his answer.

never probed the extent to which Male may have been involved in the actual drafting of legal documents and relied on Male's representations that the estate planning documents had been prepared by outside counsel. Under these circumstances, we could not find that Male engaged in the unauthorized practice of law, let alone that respondent assisted her in such misconduct. Therefore, we dismissed the allegation of a violation of RPC 5.5(b).

In the same vein, with regard to RPC 7.3(e) (assisting an organization that pays for legal services to others to promote the use of the lawyer's services), there is no evidence in the record to sustain a finding of guilt. The DEC correctly dismissed it. The DEC also dismissed RPC 7.3 (f) (accepting employment when the lawyer knows or it is obvious that the person who seeks the lawyer's services does so as a result of conduct prohibited under this rule). The DEC properly dismissed that charge after a challenge from respondent's counsel, who correctly pointed out that respondent could not have been in violation of a rule that first required a finding that Male had engaged in the unauthorized practice of law. We, too, dismissed that charge for lack of clear and convincing evidence of unethical conduct.

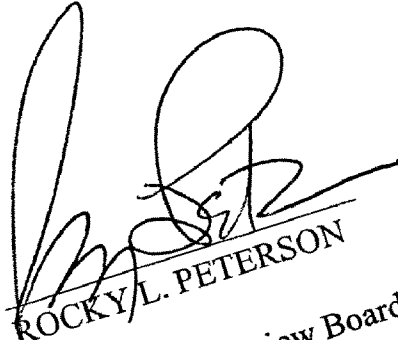
The only remaining charge is that of a violation of RPC 1.8(f), which prohibits the acceptance of fees by a third party unless three conditions are met: 1) the client consents after consultation; 2) there is no interference with the lawyer's independent professional judgment or with the lawyer/client relationship; and 3) the information relating to the representation is protected, as required by RPC 1.6 (confidentiality of information).

As noted earlier, nothing in this record establishes that respondent failed to comply with the requirement of RPC 1.8(f) with regard to any clients other than Duvally. However, with regard to the Duvally deed, respondent failed to obtain the informed consent of his client prior to accepting fees from Sage. Specifically, respondent did not advise Duvally about his limited role in the matter or that he was unfamiliar with the field of estate planning. Likewise, respondent did not advise her that, because of his lack of expertise, he was unqualified to analyze Sage's estate plan to determine if the real estate transfer suited her estate needs. Respondent should have advised Duvally to consult an experienced attorney so that she could make an informed decision about the transfer. By failing to do so, respondent violated RPC 1.8(f).

Ordinarily, an admonition or a reprimand is sufficient discipline for conduct analogous to that of respondent. See, e.g., In the Matter of Robert C. Gruhin, DRB Docket No. 97-403 (February 9, 1998) (admonition for attorney who prepared a codicil to a will of a client that bequeathed the attorney the sum of \$25,000; the attorney failed to advise the client to seek independent counsel, in violation of RPC 1.8(c)); In the Matter of James A. Geller, DRB Docket No. 96-439 (January 24, 1997) (admonition for attorney who entered into a business venture with a client without first securing informed consent after making full disclosure, as required under RPC 1.8(a)); and In re Schofield, 126 N.J. 515 (1992) (public reprimand for attorney who entered into a business transaction with a client without complying with the mandatory disclosure requirements of RPC 1.8(a)).

After consideration of the relevant circumstances, we unanimously determined that a reprimand more adequately addresses the nature and severity of respondent's conduct. One member did not participate.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.



ROCKY L. PETERSON
Chair
Disciplinary Review Board

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

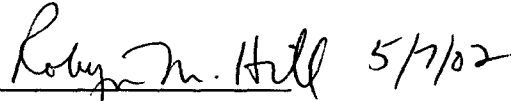
In the Matter of Frederick A. Kiegel
Docket No. DRB 01--396

Argued: February 7, 2002

Decided: April 30, 2002

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>			X				
<i>Maudsley</i>			X				
<i>Boylan</i>			X				
<i>Brody</i>			X				
<i>Lolla</i>							X
<i>O'Shaughnessy</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>			X				
<i>Wissinger</i>			X				
Total:			8				1


 Robyn M. Hill
 Chief Counsel