SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-202

IN THE MATTER OF

FREDERICK W. HOCK

AN ATTORNEY AT LAW

Decision

Argued: October 18, 2001

Decided: February 5, 2002

Burton L. Eichler appeared on behalf of the District VI Ethics Committee.

Peter M. Burke appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by the District VI Ethics Committee ("DEC"). Respondent was admitted to the New Jersey bar in 1949. He has no disciplinary history.

The complaint alleged that respondent improperly drafted a client's will in which he was a named beneficiary, in violation of RPC 1.8 (c). The complaint also alleged that respondent had his secretary "notarize" a power-of-attorney and a living will, without witnessing the signatures on the documents, in violation of RPC 5.3(c).

The relevant portion of that rule states as follows:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or ratifies the conduct involved;

* * *

Respondent and the DEC entered into the following stipulation of facts:

1. The Respondent was admitted to the bar of this state in 1949.
2. The Respondent currently maintains law offices at 130 Pompton Avenue, Verona, New Jersey, 07044. He is semi-retired and visits those offices approximately twice a month.
3. The Respondent prepared Wills for the late Julia Weber Gordon dated June 26, 1995 and November 16, 1995. He was a beneficiary of the June 26th Will; he and his wife were beneficiaries of the November 16th Will.
4. The Respondent violated RPC 1.8(c) which states as follows: 'a lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.'
5. The Respondent, on two occasions, had his secretary notarize a document without her having seen the signatory sign the document.
6. The two documents notarized by the Respondent's secretary were a Living Will dated May 24, 1995 and a Power of Attorney dated January 6, 1997.
7. The actions of the Respondent were violative of RPC 5.3(c).

Respondent testified at the DEC hearing that he first met Julia Weber Gordon and her husband, Philip Gordon, in the early 1950s and became their attorney shortly

thereafter. Throughout the next three decades, respondent handled an assortment of legal matters for the couple, including their wills. He considered the Gordons to be close friends, as well as clients. Philip Gordon passed away in 1983, leaving his entire estate to Julia.

Respondent also testified that, at Julia's request, he prepared wills for her in 1984 and 1989. In 1989, for the first time, respondent was named a beneficiary of one-sixth of her estate. At the time, the estate was valued at about $1,100,000. According to respondent, Julia wanted him to share in the estate so that he could buy her house. According to all accounts, that house was a treasure to Julia. Years earlier, respondent explained, he had introduced the Gordons to the architect who ultimately designed and built the Gordons' dream house. Respondent also arranged the financing for the house. Julia was grateful to respondent for his involvement in that happy aspect of their lives. Respondent claimed that it was very important to Julia that someone, such as he and his wife, who had always loved the house, enjoy it after she passed away. Respondent's version of these events is uncontested.

In April 1995 Julia suffered a minor stroke. Her hospital discharge summary indicated that, in addition to the stroke, she suffered from Alzheimer's disease. There is no evidence in the record that Julia was rendered incompetent, however. In fact, respondent solicited the opinion of Julia's physician, Dr. Fulmer, who attested that she

was mentally competent at the time. Therefore, on June 26, 1995, respondent drafted a new will for Julia.

Under the June 1995 will, respondent was to receive a larger portion of her estate (still worth about $1,100,000), a one-half interest in the house and a one-third interest in the residuary estate. Julia's live-in caregiver, Mable Shedrick, was to receive the remaining one-half interest in the house and one-third of the residuary. Three other individuals were to receive one-ninth interests in the residuary estate. In addition, the new will omitted two former would-be beneficiaries – a college and a local art association.

On November 16, 1995 respondent drafted yet another will for Julia. The November 1995 will was similar to the June will, but contained several changes, including the addition of respondent's wife as respondent's co-beneficiary with respect to his interest in the house.

Julia passed away on November 3, 1997. Thereafter, respondent filed a complaint for the probate of the November 16, 1995 will. Julia's next-of-kin and nephew, Richard Alan Weber, filed a caveat with the Mercer County Surrogate's Office, challenging the will, claiming an interest in the estate and charging respondent with undue influence. Later, the college and the art association also became involved in the litigation, having been notified that they had been named in the earlier wills.

Ultimately, Richard Alan Weber's caveat was dismissed, insomuch as he had not been named in any of the prior wills and had no standing for a claim as beneficiary. The estate settled, however, with the college and the art association, each agreeing to receive $140,000.

At the DEC hearing, respondent did not oppose the introduction of testimony from several witnesses in the underlying probate litigation. The testimony centered on Julia's state of mind at the time of the later wills. Not surprisingly, witnesses for each side differed with respect to Julia's mental capacity at the time that the wills were drafted. There is no clear indication in the record about how the probate court viewed these witnesses, other than to look at the result of the litigation, in which the claims of undue influence leveled against respondent by Richard Alan Weber were dismissed and the probate matter closed.

Respondent admitted a violation of RPC 1.8(c). He also testified, however, about the appearance that he might have unduly influenced Julia in the preparation of the later wills. According to respondent, although he was unaware of the prohibition contained in RPC 1.8(c), he had knowledge of caselaw that created a presumption of undue influence in this sort of situation. Indeed, respondent asserted, he told Julia that she should have another attorney draft the June and November 1995 wills, because it could appear that he had unduly influenced her. Respondent testified, as did several other witnesses, that Julia refused to retain another attorney. Therefore, respondent

prepared the documents, but had another attorney from his office go over every detail of the will with her, to ensure that it reflected her wishes. That attorney, Alexander Graziano, confirmed respondent's recollection of those events. There is no evidence in the record that respondent influenced Julia's decision-making in this regard. For unknown reasons, Julia's nephew, who contested the will, did not testify at the DEC hearing.

With regard to the improper notarization of two documents, respondent testified that, in the first instance, he updated Julia's living will, which, by 1995, was several years old. According to respondent, Dr. Fulmer had suggested the update. Therefore, respondent printed out a new, identical version for Julia's signature, dated May 24, 1995. Respondent added that, once he was back in the office with the signed document, he directed his secretary, Theresa Spiezer, to call Julia before "notarizing" it, in order to satisfy herself that Julia had actually signed the document. Spiezer later testified that she had, in fact, called Julia to confirm the authenticity of her signature on the document. After speaking to Julia about it, she "notarized" the signature.

Spiezer also improperly "notarized" a power-of-attorney dated January 6, 1997. According to respondent, Julia's 1987 power-of-attorney, which respondent had also prepared, was by then ten years old. Therefore, he printed out an identical version, but with the new date. After Julia signed the document, respondent had Spiezer "notarize"

it, even though Spiezer had not attended the signing. Respondent added that the 1987 power-of-attorney was already in force and that he had no other motive for the update.

Respondent expressed remorse for his actions in connection with his preparation of the wills. He stated that he was unaware of the prohibition under RPC 1.8(c). He reiterated his belief that he was permitted to prepare the wills and that he would have to rebut the presumption of undue influence under the old caselaw. Respondent was willing to take that approach, he stated, because Julia had been his client and friend for so many years. In addition, respondent testified, he had reassured himself that he could rebut the presumption of undue influence, since other people also knew Julia's wishes and could testify in his defense, if necessary.

* * *

For respondent's stipulated violations of RPC 1.8(c) and RPC 5.3(c), the DEC recommended the imposition of an admonition. The DEC noted that respondent was not motivated by self-interest, that several witnesses testified about Julia's intent to bequeath some of her assets to respondent and that this is respondent's first brush with disciplinary authorities in his fifty years at the bar.

* * *

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 preparation of a will naming the drafting attorney a beneficiary of the testator or testatrix's estate creates a conflict-of-interest situation that gives rise to serious questions of undue influence. This is particularly true when the testator or testatrix is elderly, infirm, and there are some doubts as to his or her competence. Here, not only did respondent's, Speizer's, Shedrick's and Graziano's testimonies establish that Julia wanted – indeed, insisted – that respondent draft the June and November 1995 wills, but there is no evidence that Julia's wishes were any different from those contained in the two wills. There is no inkling of foul play in this regard. Nevertheless, respondent created a serious appearance of impropriety that should have been avoided.

With respect to the improper notarizations carried out by respondent's secretary, respondent offered no excuse. In fact, he did not attempt to mitigate his actions, other than to explain that both documents, a living will and a power-of-attorney, were identical to their originals, save the date. Although the DEC charged him with violating RPC 5.3(c), in a long line of cases, we have consistently found that attorneys who have taken improper jurats or signed the names of others, with authorization, have been found guilty of RPC 8.4(c) (misrepresentation). While respondent was not specifically charged with a violation of RPC 8.4(c), the facts in the complaint gave him

sufficient notice of the potential finding of a violation of that RPC. Therefore, we found a violation of RPC 8.4(c) rather than RPC 5.3(c).

Although respondent has no history of discipline, an admonition, as recommended by the DEC, falls short of the required level of discipline for his actions. See, e.g., In re Polis, 136 N.J. 421 (1994) (public reprimand imposed where the attorney prepared a will for an elderly client giving most of her $500,000 estate to the attorney's sister, thereby creating a conflict-of-interest situation). Here, respondent violated RPC 1.8(c) by involving himself in a conflict-of-interest situation and, in addition, involved another – his secretary – in improper conduct by asking her to notarize two important documents signed outside of her presence, in violation of RPC 8.4(c). We unanimously determined that a reprimand is more appropriate, even when mitigating factors are considered, including respondent's fifty-year unblemished career and the testimony of others that the testatrix wanted the changes to her will. Three members did not participate. One member recused himself.

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

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Frederick W. Hock
Docket No. DRB 01-202

Argued: October 18, 2001

Decided: February 5, 2002

Disposition: Reprimand

Members	*Disbar*	*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:			5			1	3

Robyn M. Hill 2/25/02
Robyn M. Hill
Chief Counsel