SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-394
District Docket No. XIV-2010-0558E

IN THE MATTER OF

HARRIS C. LEGOME

AN ATTORNEY AT LAW

Decision

Argued: March 17, 2016

Decided: May 20, 2016

Timothy J. McNamara appeared on behalf of the Office of Attorney Ethics.

Joseph P. Grimes 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 on a recommendation for disbarment filed by a special master. The formal ethics complaint charged respondent with violations of RPC 1.5(a) (fee overreaching); RPC 1.5(c) (failure to provide a client with a writing in contingent fee case); RPC 1.7(a)(2) and (b) (concurrent conflict of interest; failure to obtain informed written consent after full disclosure and consultation); RPC 1.8(a) (conflict of interest; acquiring an ownership, possessory, security or other pecuniary interest

adverse to a client); RPC 1.8(c) (preparing an instrument giving the lawyer any substantial gift from a client, including a testamentary gift, except where the client is related to the attorney); RPC 1.14(a) (failure to maintain a normal relationship with a mentally impaired client); RPC 1.14(b) (failure to take reasonably necessary action to protect diminished capacity client's interests); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The Office of Attorney Ethics (OAE) agrees with the findings and determinations of the special master, and urges us to recommend respondent's disbarment. Respondent contends that he is guilty of no misconduct and, thus, all counts of the formal ethics complaint should be dismissed, and no discipline should be imposed. Finding respondent's exploitation of his cognitively impaired and trusting, childlike client to be reprehensible, we recommend respondent's disbarment.

Respondent was admitted to the Pennsylvania bar in 1991 and the New Jersey bar in 1992. For a portion of the relevant time frame, he was a partner at the law firm of Wallace & Legome, LLP, in Haddonfield, New Jersey. In May 2009, he formed his own law firm, Legome & Associates, LLC, also in Haddonfield. He has no disciplinary history in New Jersey.

This case arises from respondent's representation of Francis Edward Lewison (Lewison) in connection with a personal injury

claim. Lewison was seriously injured in a 2004 motor vehicle accident. Respondent initially represented the estate of the driver of the vehicle in which Lewison was a passenger. The driver, whom respondent concluded had no contributory liability in the accident, died the next day. Before the accident, Lewison suffered from developmental and cognitive disabilities. He sustained a traumatic brain injury as a result of the accident.

Ultimately, respondent represented both Lewison and the estate of the driver in a 2007 lawsuit that settled, resulting in a gross settlement of $3.5 million to Lewison. A few months prior to the settlement, Lewison, who had developed an extremely close relationship with respondent, promised to gift $484,500 to respondent, in addition to the significant contingent fee that respondent's firm was entitled to receive. Respondent received these gift monies and, because he failed to apply the appropriate New Jersey contingent fee rule, also received an excessive legal fee from Lewison.

On September 29, 2010, Bruce Wallace, respondent's former law partner, filed a grievance with the District IV Ethics Committee (DEC), alleging that respondent had misappropriated $439,500 from Lewison's personal injury settlement. On October 22, 2010, the DEC transferred Wallace's grievance to the OAE, informing the OAE that Wallace had further alleged that respondent "wrote himself into" Lewison's will, as a beneficiary. At the time Wallace filed the

grievance, and during the pendency of the ethics hearing, he and respondent were embroiled in civil litigation related to the dissolution of their law firm.

As previously noted, on September 23, 2004, approximately six years before Wallace filed his grievance, Lewison was severely injured in a motor vehicle accident in South Harrison Township, Gloucester County, New Jersey. Lewison was the passenger in a vehicle owned and driven by his friend, Thomas E. McDonnell, Sr. (McDonnell). The vehicle that struck them was driven by James R. O'Kane (O'Kane), a resident of Sewell, New Jersey. Both McDonnell and Lewison were residents of Philadelphia, Pennsylvania.

On the day of the accident, O'Kane gave a written statement to the police, admitting that he had failed to observe a stop sign as he approached the intersection where the accident occurred. Consequently, although he attempted to brake, he struck the vehicle driven by McDonnell, which had the right-of-way, at a speed of forty to forty-five miles per hour. As a result of the collision, Lewison was ejected from the vehicle; he was described by police at the scene as "in and out of consciousness with a severe head wound." Lewison and McDonnell were medically evacuated, by helicopter, to Cooper Hospital in Camden, New Jersey. The next day, McDonnell died of a heart attack in the hospital.

Lewison testified that, at the time of the collision, O'Kane had been traveling at a speed of 190 miles per hour. He further

testified that, after the collision, McDonnell pulled him out of the car and, in that process, his ear was "ripped off," was not located for two or three days, and was later stapled back onto his head.[1] Lewison recounted that his father explained all of the details of the accident to him when he awoke from a coma. Lewison also testified that, as a result of the collision, he had "an out of body event" and went to heaven. He repeatedly asked ethics counsel and the special master if he could see pictures of the 2004 accident.

Prior to the accident, Lewison suffered from significant developmental and cognitive disabilities. Specifically, he could not read or write, had been a special education student with an Individualized Education Program, and had dropped out of high school. His high school California Achievement Test scores ranged from the second to the sixteenth percentiles; he failed to answer any of the questions in the language component of the examination. As a result, it was undisputed that Lewison relied on others (mostly his father) to read and explain documents to him. He testified that, before the accident, he had trouble comprehending the lessons in school, offering that "maybe I am a bad apple."

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[1] According to Lewison's medical records, he sustained no ear injury in connection with the motor vehicle accident.

In the accident, Lewison sustained a severe head injury as well as significant mechanical injuries. He was admitted to Cooper Hospital with a subarachnoid hemorrhage – bleeding in the space between the brain and the tissue covering the brain. A CT scan showed, among other head injuries, a hemorrhagic contusion in the left frontal lobe of his brain. He devolved into an injury-induced coma for some time before regaining consciousness.

On October 27, 2004, after more than a month at Cooper Hospital, Lewison was transferred to Magee Rehabilitation Center (Magee) in Philadelphia. Upon admission at Magee, Lewison's primary diagnoses were traumatic brain injury (with prolonged loss of consciousness) and intra cerebral and left subdural hematomas. His secondary diagnoses included neurocognitive deficits, fractures, respiratory failure, dysphagia (difficulty swallowing), gait dysfunction, and weakness in his left side (hemiparesis). Lewison was discharged from Magee approximately two weeks later, on November 11, 2004, into the care of his father.

Lewison's Magee discharge records described him as "easily overwhelmed in busy environments with poor attention and decreased memory, therefore, he requires 24-hour supervision for safety." He was further diagnosed as having moderate neuropsychological deficits characterized by decreased problem-solving skills and reasoning, even for basic tasks, decreased functional skills, decreased recall and memory for novel details, decreased

organizational skills, decreased attention, and decreased executive function skills. The day before he left Magee, he was noted to show some improvement, but twenty-four hour supervision was still recommended.

Within days of the accident, Lewison's father retained Carol Mickey, a Philadelphia attorney, to pursue claims relating to the motor vehicle accident on behalf of Lewison.[2] On October 3, 2004, respondent was retained by the McDonnell estate to pursue all potential claims against any entity or person arising out of the accident.[3] It is unsettled whether Mickey ever asserted a claim on behalf of Lewison against the McDonnell estate. During the ethics hearing, respondent testified that he believed that she had asserted and settled a claim on behalf of Lewison against McDonnell's insurance policy, for $15,000. During a prior OAE interview, however, respondent asserted that Mickey had never made such a claim.

As a result of their discussions, Mickey and respondent agreed that respondent would lead the negotiations with O'Kane's insurance carrier, eventually resulting in a settlement. Lewison's and McDonnell's claims against O'Kane were settled simultaneously,

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[2] The record contains no retainer agreement for the representation.
[3] Although the record contains no retainer agreement for respondent's engagement on behalf of McDonnell's estate, respondent acknowledged the scope of his representation, as set forth above.

without the filing of lawsuits, for O'Kane's insurance policy limit of $300,000; that sum was split approximately evenly between the parties. On July 26, 2005, Lewison executed a release of his claims against O'Kane and, although the exact date is not known, the $300,000 was subsequently disbursed to Lewison and McDonnell's estate. At that point, Mickey's representation of Lewison in respect of the claim against O'Kane's insurance carrier ended.

During the ethics hearing, Lewison erroneously testified that Mickey stole his portion of the O'Kane settlement money, which he believed to be $5 million dollars; he later testified that it was more like $100,000, or a little more. Lewison believed that Mickey also paid her husband $50,000 out of his funds, even though he had not worked on his case; he believed that $50,000 was what a lawyer made, based on watching "Law & Order" episodes.

According to respondent, Mickey was unfamiliar with New Jersey's Personal Injury Protection (PIP) statute[4] and, thus, subsequent to the O'Kane settlement (but likely prior to disbursement of the settlement proceeds), she made clear to

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[4] The New Jersey PIP (No Fault) statute, N.J.S.A. 39:6A-1, et seq, mandates speedy first-party payment of a range of benefits, including medical expenses, lost wages (income continuation benefits), essential services, survivor benefits and funeral expenses to certain classes of persons injured in automobile accidents, without any consideration of fault.

respondent that she was not interested in continuing her representation of Lewison. Accordingly, Mickey referred Lewison to respondent, initially for the limited purpose of pursuing a PIP claim, since respondent was experienced in applying this statute in personal injury cases. Given Lewison's Pennsylvania domicile, his PIP claim was subject to New Jersey's "Deemer" statute.[5]

Accordingly, prior to the disbursement of the $300,000 in settlement proceeds, respondent began representing Lewison only in connection with his PIP claim, while Mickey continued her general representation of Lewison (presumably, including any other personal injury claims relating to the accident). Despite the fact that (1) the statute of limitations had not run on a potential claim by Lewison against the McDonnell estate; and (2) respondent admittedly still represented the McDonnell estate, respondent "didn't see that as a conflict" and obtained no conflict waivers. Respondent asserted that, because PIP claims were made in accordance with an established statutory framework, there were no adverse interests between the McDonnell estate and Lewison.

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[5] This statute deems New Jersey's "verbal threshold," which allows automobile accident tort recovery for non-economic losses only for bodily injury of a type or degree within one of the nine defined categories set forth under New Jersey law, to apply to the policies of out-of-state residents using their automobiles in New Jersey if their insurers are authorized to do business in New Jersey.

During this same time frame, in connection with his continuing representation of the McDonnell estate, respondent attended a meeting where O'Kane disclosed, for the first time, that he had been acting within the course of his employment with Allister Business Systems, Inc. (Allister) when the accident occurred. On or about August 17, 2005, armed with this new knowledge of potential liability, and prior to the disbursement of the O'Kane settlement proceeds, respondent began generally representing Lewison in connection with the accident, despite his continuing representation of the McDonnell estate. He testified that, again, he saw no potential conflict and, therefore, obtained no conflict waivers.

Respondent recounted that, after Lewison received his share of the O'Kane settlement, he spent $65,000 to $70,000 within six months, including an anonymous $10,000 donation to a church, the purchase of a car for one of his brothers, and other substantial gifts to his family. Eventually, respondent endeavored to reconstruct Lewison's spending of the O'Kane settlement funds, as part of efforts to justify the expenditures and to restore Lewison's Supplemental Security Income (SSI) and Medicaid benefits, which had been discontinued due to this direct receipt and spending of the O'Kane settlement proceeds.

Respondent was aided in achieving the restoration of Lewison's benefits by Peggy Baraldi, who, at that time, worked as

a care manager for Intervention Associates.[6] Baraldi had been hired by Sovereign Bank, then the trustee of Lewison's special needs trust (SNT), to restore Lewison's SSI and Medicaid benefits. At the ethics hearing, Baraldi testified that she was able to restore Lewison's benefits in approximately two months. However, she was wholly unaware of the $484,500 in gifts that Lewison had given respondent. At the time Baraldi worked in behalf of Lewison, all Pennsylvania residents who had access to $2,000 or more in assets, or who had $710 or more of monthly income, were rendered ineligible for SSI and Medicaid.

As Lewison's care manager on behalf of the special needs trustee, Baraldi met with Lewison at least twice a month for the first six months, and filed detailed reports memorializing her interactions with him. Baraldi testified that Lewison had poor financial management skills, "could not account for his money" and, by the time she was assigned his case, had incurred substantial credit card debt. In December 2008, the trustee determined to close all of Lewison's credit card accounts, to pay off the balances, and to provide him with gift cards to the specific stores he patronized to purchase food, clothing, and other goods.

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[6] Intervention Associates is a nonprofit organization that provides professional care management and legal guardianship services.

Baraldi additionally testified that she became concerned about Lewison's personal/social judgment. Specifically, in the summer of 2008, Lewison began dating "Bonnie," the former wife of one of his friends, who was incarcerated. Bonnie had five children, four of whom were in the custody of the Pennsylvania Department of Human Services. Bonnie eventually moved into Lewison's home. Bonnie also had been injured in a car accident, and, like Lewison, had been prescribed pain medication. These facts exacerbated Baraldi's concern that Lewison had been self-medicating; Lewison's brother John also reported to Baraldi that Lewison and Bonnie were using drugs.[7] Moreover, at one point, Lewison had informed Baraldi that he had been buying jewelry for a woman "at a pawn shop."

In spring 2009, Lewison reported that he had broken up with Bonnie and removed her from his house, because she had "four other boyfriends" and her adult son had been selling drugs out of his basement. At another point, Baraldi and the trustee were concerned because Lewison had a new girlfriend, and was spending his monthly income on her and her baby, including for purchases of "a bikini and diapers."

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[7] Baraldi's concerns were later confirmed when Lewison tested positive for marijuana and cocaine. Additionally, during the relevant time frame, Lewison incurred multiple criminal charges for drug possession. Respondent represented Lewison in these cases, and billed Lewison's trust approximately $18,000 for his legal fees.

In October 2009, Baraldi learned that Bonnie had again moved in with Lewison, this time with four of her children. Lewison ultimately "kicked her out" for good, after she had a baby that he had hoped was his, but later learned was not. Baraldi added that Lewison had consistent cognitive and memory issues, and was impulsive; he would spend his trust and SSI money quickly upon receiving it, and then go without food for days.

Despite Baraldi's testimony regarding her visits and the numerous reports she filed, Lewison testified that he had met Baraldi only "once or twice," and that "she is always lying." He appeared upset that Baraldi had been involved with the transition of his monthly income from cash to gift cards, and that, for a period of time, she had received his SSI funds in his behalf, as his personal representative. Lewison claimed he was "suing her" for these actions.

On September 8, 2006, respondent filed a complaint, in the Superior Court of New Jersey, Camden County, on behalf of both the McDonnell estate and Lewison, against Allister. Respondent asserted that, based on the nature of the accident, he saw no cognizable non-PIP claim by Lewison against the McDonnell estate, because McDonnell had no liability for the accident, and, thus, there was no need for conflict waivers. Respondent did not recall whether he ever advised Lewison of a potential claim against the estate, but speculated that Lewison would not have wanted to sue

his friend. Moreover, respondent maintained that the value of Lewison's claim against Allister would far exceed the value of the McDonnell estate's claim against Allister.

During a prior OAE interview, however, respondent had essentially conceded the existence of a conflict of interest, stating:

> I never considered the conflict issue with respect to the lawsuit against McDonnell back then, never. In fact, I've never considered that really until [the OAE raised it.] I never thought about going after McDonnell's policy because to me . . . liability was clear.
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> In retrospect, I wish I had waivers signed. I think that would have been the prudent thing and the right thing to do. I completely agree with you on that.
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> [Ex.48 at Bates 1900.][8]

On February 27, 2007, Lewison submitted to a medical examination by Allister's neuropsychological expert, Dr. William D. Campana. During the ethics hearing, however, Lewison stated a belief that respondent had chosen Dr. Campana – he did not comprehend that Dr. Campana was the defense expert for Allister. When asked to describe the purpose of a neuropsychological exam, Lewison responded that it was to determine "[i]f I am straight, good looking, or retarded? It doesn't matter."

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[8] Because the exhibits in this case are extensive, the documents were Bates-stamped for ease of reference. Exhibit 48 is the transcription of interview on February 24, 2012.

After evaluating Lewison as best he could, Dr. Campana described him as "only a minimally reliable informant" who was "bewildered at the entire process," further stating that his initial impression of Lewison was that his "neurocognitive status is markedly impaired," with only minimal orientation to time, place, and person. The doctor noted that, when questioned, Lewison "exhibited considerable confusion . . . [and] response latency;" Campana was concerned that Lewison "did not actually comprehend the instructions" he was given during the evaluation. The doctor also determined that Lewison's "thought content was confused and he appears to experience difficulty in abstract reasoning . . . [with] no indication that he was consciously feigning impairment or attempting to malinger."

Based on the battery of neuropsychological testing performed on Lewison, Dr. Campana, Allister's defense expert, concluded:

> [Lewison's] overall functioning appears to suggest at best borderline functioning, although in most areas he scored in the deficient range (mildly retarded) . . . [with] deficits across the board in expressive vocabulary, quantitative reasoning, general reasoning and common sense judgment, abstract reasoning ability, and verbal memory . . . Memory functions are impaired for recall and learning of both verbal and visual material, although verbal material is particularly problematic for him . . . [including] markedly impaired auditory memory for both short-term and long-term data.
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> His reasoning skills are markedly impaired. [Lewison] demonstrated impaired

> understanding of practical reasoning and everyday social judgment . . . In summary, he had difficulty with all tasks of executive functioning, language functioning, and visuo-motor functioning . . .
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> There is no question in the mind of this writer that Mr. Lewison suffered significant head trauma as a result of his 2004 accident which left him significantly impaired. His memory is markedly impaired and his basic reasoning skills are deficient as well.
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> Mr. Lewison is incapable of understanding the nature of his disability. His neuropsychological profile is also clearly suggestive that he would be unable to independently manage his finances and this should be taken into consideration in any personal injury award case.
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> [Ex.2 at Bates 4-6.]

Approximately one year after the complaint was filed against Allister, and admittedly relying heavily on Dr. Campana's report for leverage, respondent settled the case on behalf of both the estate of McDonnell and Lewison. The estate received $250,000 and Lewison received $3.5 million. During his testimony, however, Lewison stated that he believed his portion of this second settlement was $5 million, the same belief he had initially advanced in respect of the prior O'Kane settlement.

In connection with the representation culminating in the Allister lawsuit and settlement, respondent had presented Lewison with a Pennsylvania contingent fee agreement under which respondent would pursue "any potential claim" for damages arising

out of the car accident. The fee agreement set forth a contingent fee of forty percent (40%) of the gross recovery, a fee potentially authorized in Pennsylvania, but not New Jersey, where respondent ultimately filed suit. Although undated, this first fee agreement was signed on or near August 18, 2005, the date of respondent's engagement letter to Lewison, which referenced their August 17, 2005 meeting. At respondent's request, Lewison's father executed a second, superseding Pennsylvania contingent fee agreement on or around June 21, 2007, subsequent to his appointment as Lewison's guardian ad litem,[9] and more than nine months after respondent filed suit on Lewison's behalf in the Superior Court of New Jersey.

Respondent had filed a motion, in behalf of Lewison, to have his father appointed as his guardian ad litem during the pendency of the New Jersey lawsuit against Allister. During both his OAE interview and the ethics hearing, respondent asserted that he had filed the motion solely for strategic purposes, both to enhance Lewison's case for damages against Allister, and to protect respondent from future criticism over the details of the settlement of Lewison's case; he repeatedly took the position, during the entire disciplinary process, even before us, that Lewison was not mentally incapacitated. Respondent conceded, however, that he

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[9] Pursuant to R. 4:26-2, a guardian ad litem may be appointed, on motion by a party to an action, "for a minor or alleged mentally incapacitated person."

required Lewison's father's permission, as Lewison's guardian ad litem, to settle the case against Allister.

Respondent also asserted that, at the time the fee agreements were executed, the jurisdiction for the complaint against Allister had not yet been determined; he admitted, however, that, since the complaint ultimately was filed in New Jersey, the contingent fee agreements violated R. 1:21-7, and, thus, disgorgement of some amount of the $1.4 million contingent fee taken by the firm from Lewison's settlement was required.[10] Respondent conceded that the disgorgement amount was in the range of hundreds of thousands of dollars. At the time of his OAE interview, respondent claimed that he had not researched the New Jersey contingent fee rules with respect to Lewison's settlement with Allister, the subsequent disbursement of the settlement funds, and the payment of his firm's legal fee.

During his OAE interview and at the ethics hearing, respondent conceded that, if the New Jersey court rules applied, the $1.4 million attorney fee was improperly calculated at forty percent and was improperly based on the gross amount of the settlement, instead of the net, and that he had not sought court approval for his fee, as required under R. 4:44-3, because he and Wallace viewed

[10] It is undisputed that respondent and Wallace equally divided the legal fees taken from Lewison's settlement.

Lewison's case as a "Pennsylvania case." During his OAE interview, respondent stated "if we were wrong, we were wrong, and I'm willing to live with those consequences."

During the ethics hearing, respondent testified that: he did not know how much money he needed to refund to Lewison because "a court has to make that determination;" he told Lewison that he had overcharged him by hundreds of thousands of dollars; both he and Wallace owed the money equally; he had encouraged Lewison "multiple times" to "get an attorney" and bring an action in court against him to recoup the excess attorney's fees, but that Lewison does not want the money back; and he would rectify the situation, but admittedly had not done so for more than five years. Indeed, to date, respondent has taken no action to return to his client the excess fees he took.

Sometime before July 27, 2007, and, thus, approximately three months prior to the Allister settlement, Lewison, Lewison's father, and respondent attended a court proceeding in either Philadelphia Traffic Court or Municipal Court. While waiting for Lewison's matter to be called, respondent was using his smart phone to look at a Porsche Carrera GT, for sale on eBay, for $425,000. Respondent showed Lewison a picture of the Porsche, asking something to the effect of "how cool is that?" According to both respondent and Lewison, Lewison responded "I will buy that car for you;" both respondent and Lewison were steadfast in their

testimony that respondent never solicited a gift from Lewison to purchase a car, or any subsequent gifts.

Respondent testified that he attempted to discourage Lewison after his offer of such a substantial gift, but that Lewison persisted over the course "of months." Lewison staunchly corroborated respondent's position on this issue, although he claimed that his persistence lasted only a day or two. During an OAE interview, respondent submitted that Lewison's persistence wore him down to a point where his will was overcome, "absolutely," and, consequently, he agreed to accept multiple monetary gifts from Lewison for himself, his staff, and even his parents. The gifts were made by Lewison, and the accompanying gift letters were prepared by respondent and executed, in the summer of 2007, despite the fact that the case against Allister did not settle until months later, in October 2007, as set forth below.

Respondent stated that he communicated to his partner, Wallace, "this is crazy . . . Can I do this? This is craziness." Respondent claimed that Wallace advised him that he could accept the gifts, and even assisted him in the preparation of gift letters. During his testimony, however, Wallace unequivocally refuted respondent's assertions, denying having told respondent that acceptance of the gifts was appropriate, or assisting with the gift letters that were eventually drafted and executed. Wallace received no gifts from Lewison, monetary or otherwise.

Respondent ultimately accepted several monetary gifts from Lewison, totaling $484,500, which were used to purchase gifts for respondent, his office staff, and his parents in Ohio (specifically, for his parents, a flat screen television and electronics, totaling $4,000, including shipping). These monetary gifts were transferred to respondent via trust checks made payable to Lewison, drawn from the settlement funds held in the Wallace & Legome attorney trust account; Lewison then endorsed the checks to respondent, who deposited them into his personal bank account. During his OAE interview, respondent stated that he did not think the gifts were "inappropriate nor did I think it was appropriate. I thought it was like crazy. Why would someone want to do that?" Respondent later clarified that, by "crazy," he meant "wild" and "outlandish." Respondent justified the gifts, stating "you can't deny [Lewison] what he wants. It's his money. This is his choice." Respondent admitted that he had not insisted that Lewison and his father seek independent counsel regarding the gifts and that, in retrospect, "maybe I would have had Bruce Wallace sign off on [the gifts.]"

Lewison's father was aware of these gifts, and even co-signed two letters, prepared by respondent, memorializing the gifts. The first such gift letter, dated July 27, 2007, stated that Lewison "freely and voluntarily request [sic] that $425,000 be taken from the settlement of my claim" in connection with the 2004 car

accident and "paid to Mr. Harris Legome as a gift." The letter further stated that, despite respondent's advice that he does not need the gift, that his firm will be paid in accordance with the retainer agreement, and that Lewison should seek the advice of another attorney before making the gift, Lewison nevertheless wanted respondent to have the money "for the purchase of a Porsche Carrera GT or a Ferrari." The letter additionally provided that Lewison "can revoke this gift at any time prior to disbursement . . . in writing sent via certified mail to the office of Wallace and Legome, LLP."

Respondent testified that he used the entire $425,000 gift to purchase art work, not the Porsche Carrera GT or a Ferrari.

A second gift letter, which was undated, but also executed before the October 2007 settlement, similarly stated that Lewison "freely and voluntarily request [sic] that $14,500 be taken from the settlement of my claim" in connection with the 2004 car accident and "paid to Mr. Harris Legome as a gift to be used for the purchase of watches and/or jewelry for his staff . . . who were [not included in the prior $425,000] gift." The letter further stated that despite respondent's advice that he does not need the gift, and that Lewison should seek the advice of another attorney before making the gift, Lewison nevertheless wanted respondent to have the money "as a Christmas gift to him." Additionally, the letter stated that respondent could use any money left over from

the $14,500 towards the "Porsche Cayenne which he recently purchased" and that the prior $425,000 gift "can be used by him for anything he desires and it does not need to be used only for the purchase a fancy car [sic.]" The letter also provided that Lewison "can revoke this gift at any time prior to disbursement . . . in writing sent via certified mail to the office of Wallace and Legome, LLP."

Respondent maintained that there was a third gift letter, which he was unable to locate, memorializing a final gift, for $45,000, that Lewison made to him. Respondent acknowledged that had Lewison not given him the $484,500 in gifts, those settlement funds "would have gone to [Lewison] for his benefit one way or another," likely into his SNT.

During the same month that Lewison signed the first two gift letters, he was referred by his primary physician to Dr. Jeanne Pelensky, the attending physician at the Drucker Brain Injury Center, who summarized his medical history as "severe traumatic brain injury leaving him with left hemiparesis, cognitive deficits, recurrent falls . . ." Dr. Pelensky noted that she would consider a "neurology consult . . . for the patient's ongoing complaints of dizziness, syncope, and falls." Lewison remembered meeting with Dr. Pelensky, but denied that he had told her he was suffering blackouts and frequent falls during this period of time.

When queried regarding his gifts to respondent, Lewison could not communicate the number of, or value of, gifts he had made, replying "I can't tell you." He did not know what a gift letter was, stating that his father "did [handled] that." He believed that a certified letter, which was his sole revocation mechanism in the gift letters, is when "a judge puts a stamp on it." During his testimony, respondent conceded that Lewison would need help to effect a certified mailing.

When Lewison was shown the check for $439,500 that he had endorsed to respondent as a gift, he testified that it was actually a check for $4,039; when he was shown a gift check for $45,000, he correctly identified that amount. When asked the total amount of money he had given to respondent, Lewison replied "[i]t doesn't matter . . . whatever it is, whatever it is."

Lewison also acknowledged that, when he first met the OAE ethics counsel and investigator assigned to respondent's matter, he asked ethics counsel about his yellow bracelet; when told it was for cancer awareness, Lewison offered both staff members money. During his testimony, he advised ethics counsel "[i]f you need money now, I will give it to you." Concerning his gifts to respondent and others, Lewison stated multiple times that "[t]he money came out of my heart" and that he was "good." During the ethics hearing, Lewison steadfastly reaffirmed all of his inter vivos and testamentary gifts to respondent.

On September 21, 2007, Lewison and his father, in his capacity as Lewison's guardian ad litem, executed an "Authorization to Transfer Settlement Monies into a Special Needs Trust." That authorization stated, in pertinent part:

> I am satisfied that the benefits to me in placing my net settlement monies into this Special Needs Trust are such that it is appropriate to transfer said net settlement proceeds into the Trust. I hereby authorize Harris C. Legome, Esquire, to transmit my net settlement proceeds into the "Francis Edward Lewison Self-Funded Special Needs Trust" by transmitting my net settlement proceeds to the Trustee of said Trust.
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> [Ex.13 at Bates 69.]

On September 26, 2007, in accordance with respondent's advice and direction, Pennsylvania attorney Dennis C. McAndrew prepared Lewison's SNT. Lewison's father, in his capacity as Lewison's parent, established the SNT, which provided that:

> Any portion of the trust estate remaining after reimbursement to the Commonwealth [of Pennsylvania] required under this Article, shall be paid pursuant to the limited power of appointment set forth herein, and if none, in two (2) substantially equal shares to [Lewison's father], and to Harris C. Legome, Esquire, the attorney and friend of [Lewison.]
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> [Ex.13 at Bates 57 to Bates 58.]

The trustee of Lewison's SNT was unaware that Lewison had gifted $484,500 to respondent prior to the disbursement of the "net" Allister settlement proceeds into the trust.

On October 2, 2007, Lewison and his father, as Lewison's guardian ad litem, signed the "Settlement Agreement and Release" with Allister, which provided for payment of $3.5 million to Lewison, as follows: (1) an immediate payment of $250,000 into Lewison's SNT; (2) an immediate payment of $2 million to Lewison's father (as guardian ad litem), Lewison, and the law firm of Wallace & Legome; and (3) periodic structured payments into Lewison's SNT from 2007 through 2032. Lewison testified that his belief was that $5 million went into his trust from the Allister settlement.

On October 9, 2007, Allister sent respondent settlement checks totaling $2.25 million. Subsequently, a structured settlement annuity, costing $1.25 million, was purchased in behalf of Lewison from these initial settlement proceeds. Contemporaneous with the settlement, respondent directed Lewison and his father to execute an undated "Disbursement Sheet." During his OAE interview, respondent acknowledged that the disbursement sheet did not specifically reflect the gifts given by Lewison, but offered that the document does refer to "medical bills and other outstanding obligations."

In support of his grievance against respondent, Bruce Wallace provided the OAE with Wallace & Legome's client ledger for Lewison's attorney trust sub-account. The Lewison ledger confirms that multiple trust account checks were issued to Lewison from the

Allister settlement proceeds, then endorsed by Lewison, to respondent, as gifts totaling $484,500.

During the relevant time frame, at least two wills were prepared in behalf of Lewison. In October 2007, after being contacted by respondent, Pennsylvania attorney Laurence Mester met with Lewison and his father and prepared a will, a durable power of attorney, and a healthcare directive for Lewison. This first will left Lewison's estate to his father and to respondent, in equal shares, and further named respondent as Lewison's executor and trustee. The additional documents named respondent as Lewison's financial attorney-in-fact and alternate agent for healthcare decisions. For reasons unknown, Lewison never executed the first will and ancillary documents. Lewison testified that he thought that Mickey had prepared the first will.

In January 2009, after being contacted by respondent, Pennsylvania attorney Maggie Soboleski met with Lewison and prepared a will, a durable power of attorney, and a healthcare directive for him. This second will left Lewison's estate solely to respondent, or, if respondent were to pre-decease Lewison, to respondent's heirs, and if he had no heirs, to respondent's secretary; it further named respondent as Lewison's executor and trustee, with his secretary as the alternate. The additional documents named respondent as Lewison's financial attorney-in-fact and agent for healthcare decisions. Respondent acknowledged a

friendship with both Soboleski and her husband, and admitted that he suggested that she prepare Lewison's will because she had recently started her own practice and needed work. He testified that he saw no impropriety in Soboleski's preparation of the documents.

On June 23, 2009, Lewison executed the second will and ancillary documents. Respondent admitted that he was present when the will and the other documents were signed, and had transported Lewison to his Philadelphia office for that purpose. In June 2009, Lewison's father was diagnosed with colon cancer; he died on May 14, 2010. Lewison testified that, despite the language of his will, he believes that respondent will take care of his brother, John, but also stated that his father and his brother John were express beneficiaries in the will, and did not recall or understand that his will had expressly excluded his father and brother.

Evidence and testimony regarding a possible third will surfaced both during the OAE investigation and the ethics hearing. Lewison testified that he and respondent had prepared this third will, under which respondent receives all of Lewison's assets. No further evidence of the third will was produced, however, and the special master did not find clear and convincing evidence to support its existence.

During the ethics hearing, Lewison described respondent as both a father and a mentor, and testified that he calls respondent

"dad." Respondent confirmed Lewison's testimony, and further offered that Lewison calls respondent's secretary "mom," and that respondent's office is Lewison's "family." When Lewison was told that his will requires his home mortgage to be satisfied before title to it is transferred to respondent, his beneficiary, Lewison replied "[respondent] can do anything he wants, no problem. You want it, I will give it to you." Lewison, however, could not explain what a mortgage was, and did not know whether he had one on his house. Lewison added that he paid "three-fifty [$350,000]" for his house, but got "ripped off" and hoped that real estate prices would go down, because he had paid too much. Lewison, aware that respondent and Wallace were engaged in a lawsuit against each other, remarked that "I don't want anything to happen to [respondent.] That's my dad."

At the ethics hearing, Wallace testified that he had very little involvement in Lewison's case, besides performing some preliminary research on vicarious liability of employers. Wallace claimed that he discovered the trust account checks relating to the $484,500 in gifts Lewison had given respondent only after they had ended their law partnership; his discovery was made while researching a non-related Wallace & Legome trust account issue. On finding the record of the cancelled check for $439,500, Wallace called Lewison, who said he knew nothing about the check and could really use that money.

Wallace denied that he had previously been aware of these gifts, that he had received any gifts from Lewison, that he had told respondent that the gifts were appropriate, and that he had participated in the drafting of the gift letters. Wallace acknowledged that the contingent fee that he and respondent had taken was improper under New Jersey rules, and that he was liable to disgorge to Lewison his portion of the excess fee.

Respondent testified that, in his view, he had not violated a single RPC in respect of this matter. He acknowledged that he had previously told the OAE that, if faced with a similar situation in the future, he would again accept financial gifts from his client. He qualified his prior answer, however, stating "I would absolutely make sure that there were other people involved to protect myself even better because I don't want to be in a situation like this ever again." Respondent further admitted that he continues to accept gifts from Lewison, such as vases, a watch, "nothing of any real merit."

As of March 2008, the Social Security Administration (SSA) determined Lewison to be totally disabled and began providing him with SSI and Medicaid benefits. The record does not reveal whether the SSA's conclusion was based on Lewison's physical or mental impairments, or both.

A life care plan[11] was prepared for Lewison within one month of his execution of the gift letters. Respondent submitted a copy of that plan to the OAE. It states:

> Lewison has sustained an extensive brain injury and, consequently, will always require supervision and assistance with his cognitive and executive functioning . . . [his] cognitive and physical impairments could make him vulnerable to crime in the community. . . A long-term residential program, specifically designed for individuals with brain injury is recommended . . . To summarize the anticipated expenses, it will cost approximately $9,067,990.51 to meet Mr. Lewison's related needs [for the rest of his life.]. . .
>
> [Ex.50 at Bates 2042-52.]

* * *

The special master recognized that Lewison's mental capacity was the linchpin of the analysis in respect of the allegations of misconduct respondent faced. Specifically, the special master stated that "Lewison's mental status at the present time is relevant only to the extent that it informs the evaluation of his mental status at previous times."

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[11] A life care plan is a document prepared by experts, using published standards of practice, comprehensive assessment, data analysis, and research, to provide a plan for current and future needs, with associated costs, for individuals who have experienced catastrophic injury.

Accordingly, the special master evaluated Lewison's mental capacity pursuant to N.J.S.A. § 3B:1-2, which, in the context of New Jersey's statutory guardianship framework, defines an 'incapacitated individual' as one "who is impaired by reason of mental illness or intellectual disability to the extent that the individual lacks sufficient capacity to govern himself and manage his affairs." The special master further noted that New Jersey courts may find that a person is legally incapacitated for some purposes, but not for others, citing N.J.S.A. § 3B:12-24.1.b (authorizing the appointment of a limited guardian where the court determines that a person lacks capacity to do some, but not all, of the tasks necessary to take care of himself, including, but not limited to, medical, legal, and financial decision making).

Based on the relevant New Jersey standards for incapacity, the special master made the following findings of fact:

> Lewison is not now fully incapacitated in a functional sense; however, he does exhibit some significant impairments. Lewison's impairments surely arise from a combination of preexisting developmental and educational deficits, as well as from the traumatic brain injury he suffered in his accident. Lewison's impairments can be described as involving illiteracy, impaired comprehension, impaired memory, impaired foresight, and impaired judgment. Clearly, Lewison is incapable of managing his own financial affairs without assistance; however, equally clearly, he is able to live and function independently in society, albeit at a very uncomplicated level.
>
> . . . .

> Lewison is incapacitated in fact to some degree, because he is definitely incapable of managing his financial affairs without assistance. . . . [T]he Special Master believes that a court faced with a general guardianship application would determine Lewison to be incapacitated so as to justify the appointment of a guardian of his estate, but not that of his person.
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> [SMR24 to SMR25.][12]

The special master then considered Lewison's incapacity status during the extended time frame encompassed by the allegations of respondent's misconduct. Specifically, the special master concluded that Lewison was more significantly impaired in 2004, when Carol Mickey undertook his representation, as well as later, when respondent assumed his representation.

Significantly, the special master determined that, sometime after September 2007, Lewison was found to be incapacitated as a matter of law, based on respondent's own motion, filed pursuant to R. 4:26-2(b)(3), during the pendency of the lawsuit against Allister. In making this determination, the special master rejected respondent's argument that the guardian ad litem motion had been filed solely for strategic purposes - to enhance his client's claim for damages and to protect respondent from future scrutiny - pointing out that, in granting the motion, the court necessarily determined

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[12] "SMR" refers to the report of the special master, dated October 2, 2015.

that Lewison was, as a matter of law, incapacitated.

Specifically, the special master concluded:

> A determination of incapacity is an essential prerequisite to the appointment of a guardian ad litem. The limited "ad litem" nature of the appointment, the limited authority of the guardian ad litem, and the simplified procedure applicable to the appointment process, do not obviate the underlying necessity of a determination of incapacity, which must be made before the court can act.
>
> A court cannot make such an appointment for someone who is not incapacitated merely to create a 'safety net' or to protect the lawyer from future questions over the client's capacity or the adequacy of a settlement.
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> [SMR33.]

Accordingly, the special master concluded that, when the court appointed Lewison's father as his guardian ad litem, the court found, as a matter of law, that Lewison was incapacitated. The special master emphasized that his determination was corroborated by multiple components of the record, including Baraldi's and respondent's testimony regarding Lewison's continuing dependence on respondent and his staff, the special master's observations of Lewison during the ethics hearing, and the SSA's 2008 determination that Lewison was totally disabled.[13]

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[13] Respondent's secretary, along with Jesse Spalletta and Adam Baas, testified during the ethics hearing. The special master appropriately gave little, if any weight, to their testimony. Our independent review of the record convinced us that their testimony was irrelevant to our analysis.

Lewison's lawsuit against Allister was filed and settled in New Jersey. New Jersey's court rules, thus, governed respondent's contingent fee. Accordingly, the special master found that respondent violated RPC 1.5(a) (reasonable fee) in multiple respects in representing Lewison. As respondent conceded during the ethics hearings, both contingent fee agreements he used in Lewison's case were Pennsylvania forms, and were "grossly inconsistent with R. 1:21-7."

In New Jersey tort cases, where a client is mentally incapacitated and the case settles prior to empanelment of a jury, the contingent fee "shall not exceed 25%." See R. 1:21-7(c)(6). Therefore, the special master concluded, "a contingent fee agreement in a personal injury matter that fails to conform to R. 1:21-7(c) is unreasonable per se, in violation of RPC 1.5(a)." In support of this finding, the special master cited In re Mezzacca, 120 N.J. 162 (1990) (holding that miscalculated contingent fees that violate R. 1:21-7(c) also violate RPC 1.5(a)).

Specifically, the special master found that respondent violated RPC 1.5(a) as follows: (1) the contingent fee exceeded the 25% limitation set forth in R. 1:21-7(c)(6), which was applicable because Lewison was mentally incapacitated; (2) the contingent fee exceeded all percentage limitations set forth in R. 1:21-7(c)(1)-(6); yet, respondent made no application to have the court determine the amount of his reasonable fee, pursuant to

R. 1:21-7(f); (3) although R. 4:44-3 requires that all settlements involving incapacitated persons be approved by the court, respondent made no application for court approval; (4) respondent improperly calculated his fee based on Lewison's gross, versus net, recovery, in violation of R. 1:21-7(d); and (5) respondent failed to inform Lewison of his right to retain respondent "on the basis of the reasonable value of the services," in violation of R. 1:21-7(b). The special master additionally noted that, despite respondent's conceded knowledge of some impropriety, "[r]espondent's multiple violations of RPC 1.5(a) have not been cured and therefore continue to date."

The special master determined that respondent violated RPC 1.5(c) (in a contingent fee matter, attorney must provide the client with a statement showing the method of determining the amount of the client's portion of the recovery) by failing to set forth the Allister settlement disbursements to Lewison, in the amount of $484,500, subsequently gifted to respondent. The special master noted that the disbursement sheet falsely stated that (1) Lewison received "$0" as the net amount to client; and (2) the net sum of the settlement monies would be disbursed into Lewison's SNT.

The special master rejected the OAE's contention that respondent additionally violated RPC 1.5(c) by indicating "to be determined" on a line item on the disbursement sheet.

The special master reasoned:

> Although the Disbursement Sheet reflects improperly calculated fees, and fails to disclose the disbursements to Lewison . . . it does reflect the amounts of the gross recovery, the costs of litigation, the attorney fee, the payment for the structured settlement annuity, and the net proceeds of the settlement. In addition to these essential elements, the Disbursement Sheet reflects planned applications of Lewison's net proceeds for various purposes, including several items in amounts 'to be determined.' The Special Master perceives no ethical problem with the fact that the amounts of some of the planned disbursements were still to be determined. Further, there is no evidence to suggest that these categories of disbursements were actually expended for anything other than Lewison's benefit, or without his and his father's knowledge and approval.
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> [SMR36-37.]

The special master next addressed the allegation that respondent violated RPC 1.7(a)(1) and (2) (concurrent conflict of interest), in multiple respects, by simultaneously representing the McDonnell estate and Lewison prior to the disbursement of the O'Kane settlement, and in their respective PIP claims and joint lawsuit against Allister. Although the special master rejected respondent's testimony that, given the facts of the accident, Lewison had no viable claim against the estate,[14] he found no clear

[14] The special master found respondent's testimony on this issue to be argumentative versus factual, and inconsistent with the common practices of plaintiffs' personal injury lawyers.

and convincing evidence that a potential claim against McDonnell remained at the time respondent undertook Lewison's representation. The special master assumed that Mickey had made a claim against the McDonnell estate at the same time she had made the initial claim against O'Kane, noting that such a claim would be standard practice, and that there was no evidence to the contrary in the record.

Likewise, the special master found no clear and convincing evidence that, because the claims by Lewison and the McDonnell estate were settled but not disbursed, and therefore not final, respondent engaged in a concurrent conflict of interest in respect of the division of O'Kane's insurance proceeds between the parties. Specifically, the special master determined, that Mickey, not respondent, had acted as Lewison's attorney through the conclusion of his claim against O'Kane. Additionally, the special master determined that it was not clear from the record exactly when the O'Kane settlement proceeds were disbursed to the parties and, therefore, it could not be determined that respondent commenced representation of Lewison before the parties' respective claims against O'Kane had been completed.

As to respondent's simultaneous representation of the McDonnell estate and Lewison in their respective PIP claims, the special master agreed with respondent's position that, given the statutory nature of PIP claims, which are "first party" insurance

coverage claims, neither party's claim could be directly adverse to the other. Accordingly, there was no conflict of interest in this context. The special master concluded that "Lewison's statutory rights flowed directly between [his own] insurer and Lewison and did not implicate McDonnell's interests." Under the PIP framework, the same would be true for McDonnell's PIP claim vis-à-vis Lewison's interests.

Further, the special master found no violation of RPC 1.7(a)(2) in connection with respondent's simultaneous representation of the parties in respect of their claims against Allister. The special master found:

> Although the hypothetical possibility existed that a conflict under [RPC 1.7(a)(2)] might have arisen, if Allister's insurance coverage and corporate assets appeared insufficient to cover the combined values of Lewison's and McDonnell's claims, the evidence does not establish, clearly and convincingly, that such an insufficiency ever amounted . . . To the contrary, it appears that Allister's coverage and assets were more than sufficient to cover both claims. Therefore, the evidence is insufficient to conclude that there was a 'significant risk' that the simultaneous representation of either Lewison or McDonnell was 'materially limited' by Respondent's responsibilities to the other in connection with the claims against Allister.
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> [SMR43-44.]

The special master made express findings in respect of the OAE's contention that (1) respondent violated RPC 1.7(a)(2) and RPC 1.8(a) (conflict of interest; knowingly acquire an ownership,

possessory, security or other pecuniary interest adverse to a client), beginning at least at the point that the first gift letter was prepared, because there arose a "significant risk" that respondent's continued representation of Lewison would be "materially limited" by respondent's "personal interest" associated with the gifts; (2) that the gift letters were insufficient to satisfy the requirement for written "informed consent" in respect of a concurrent conflict of interest, in violation of RPC 1.7(b)(1); (3) that respondent solicited and acquired a "pecuniary interest adverse to his client" without complying with RPC 1.8(a)(1) through (3) and RPC 1.8(c); and (4) that all of the above violations continue, since respondent testified that he represents Lewison to date.

Specifically, the special master determined that, based on respondent's testimony, as corroborated by Lewison, who repeatedly reaffirmed the gifts during the ethics hearing, respondent did not solicit the gifts made by Lewison but, rather, accepted the gifts at Lewison's insistence. Nevertheless, the special master determined that respondent violated RPC 1.8(c) "by preparing, or participating in the preparation of, the gift letters giving respondent substantial gifts." Additionally, the special master concluded that, by accepting the gift letters, respondent knowingly acquired a pecuniary interest in Lewison's settlement proceeds adverse to Lewison, in violation of RPC 1.8(a), and that

respondent's representation of Lewison was materially limited by respondent's "personal interest," under RPC 1.7(a)(2). The special master reasoned that the gift letters were adverse to Lewison, as they (1) "reduced the amount of funds that otherwise would have been deposited" into Lewison's SNT; and (2) would have disqualified Lewison from receiving SSI and Medicaid benefits, had they been disclosed to the SSA, contrary to the efforts to ensure that he would keep those benefits via the SNT.

Additionally, the special master found that the gift letters that respondent prepared did not satisfy the requirements set forth under RPC 1.8(a)(1) through (3) and RPC 1.7(b), because the gifts were neither reasonable nor fair to Lewison, the funds for the gifts were diverted from the SNT and exposed Lewison to the loss of his SSA benefits, and these consequences were never explained to Lewison or to his father (his guardian ad litem). The special master concluded that, even if Wallace had participated in the preparation of the gift letters,[15] he would not have qualified as independent counsel, and, thus, Lewison's consent was not sufficiently informed, in accordance with RPC 1.7(b)(1) and RPC 1.8(a)(3).

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[15] The special master found Wallace's testimony wholly credible and, thus, concluded that Wallace neither participated in the preparation of the gift letters, nor had knowledge of their existence.

The special master also examined whether respondent's status as the primary beneficiary under Lewison's testamentary instruments violated RPC 1.7(a)(2). In summary, the special master concluded that "[r]espondent's personal interests arising out of Lewison's testamentary gifts are so remote and attenuated that they do not arise to the level of creating a 'substantial risk' that [r]espondent's representation of Lewison was 'materially limited by . . . a personal interest of the lawyer.'"

Further, the special master concluded that respondent did not violate RPC 1.7(a)(2) or RPC 1.8 in respect of the preparation of Lewison's testamentary documents. The special master found Soboleski's testimony on this point credible and, thus, determined that there was insufficient evidence to support the OAE's claim that respondent "improperly arranged for, or improperly influenced, attorney Soboleski (sic)" in her preparation of Lewison's testamentary documents, which were executed on June 23, 2009.

The special master rejected the RPC 1.14(a) and (b) violations. The complaint alleged that respondent failed to maintain a "normal client-lawyer relationship" with Lewison and developed a close personal relationship with him, allowing respondent to take improper advantage of Lewison's diminished capacity, a violation of RPC 1.14(a). Although the special master reiterated that "there is no doubt that Lewison's 'capacity to

make adequately considered decisions' was, and is, diminished" and noted that Lewison is "extremely fond of" respondent and even calls him "dad," the special master concluded that RPC 1.14(a) "does not prohibit, or discourage, lawyers from developing close personal relationships with their client," and that, if respondent did take advantage of Lewison, this RPC would not be applicable to such misconduct.

As to the allegation that respondent violated RPC 1.14(b) by failing to take the necessary action to protect Lewison, a mentally incapacitated client, from financial harm, the special master found, to the contrary, that respondent complied with RPC 1.14(b) "rather admirably," emphasizing that respondent (1) regularly communicated with Lewison's father regarding Lewison's case; (2) applied to have Lewison's father court-appointed as his guardian ad litem; and (3) obtained Lewison's father's signature on the contingent fee agreement, the disbursement sheet, and the gift letters.

Finally, the special master determined that respondent violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) with respect to both the contingent fee agreements and the gifts from Lewison.

Citing In re Halligan, D-44, September Term, 2003, the special master applied an objective standard to the question of whether respondent's conduct involved "dishonesty, fraud, deceit or

misrepresentation." The special master reasoned that the phrase "dishonesty, fraud, deceit or misrepresentation" encompasses more than "express lies, misstatements and misleading statements, but also [includes] the omission of information that is necessary under the circumstances to convey full, accurate and complete information about the subject matter at issue," citing Kevin H. Michels, New Jersey Attorney Ethics, §41:2-2(c)(Gann 2014). The special master concluded that the phrase "includes circumstances where a lawyer 'hoodwinks' a client by taking, or even passively accepting, personal advantage from a client's ignorance, naiveté, or educational or mental impairment," citing In re Wolk, 82 N.J. 326, 335 (1980).

From that perspective, the special master rejected respondent's explanation that the first contingent fee agreement can be explained by the fact that it had not yet been determined in which jurisdiction the Allister lawsuit would be brought, and that he subsequently overlooked the applicability of R. 1:21-7(c) when the second contingent fee agreement and the disbursement sheet were prepared and signed. The special master found that "[l]awyers licensed to practice in New Jersey are charged with knowledge of the Rules of Professional Conduct and the Rules of Court," and that the "presentation of a contingent fee agreement to a client carries with it an implied representation that the agreement conforms to applicable ethical and court rules."

The special master expounded:

> Lewison and his father had no possible way to know whether Respondent's unilateral choice to benefit himself with a Pennsylvania contingent fee agreement was justified or not. It is inconceivable to the Special Master that Respondent could have overlooked the applicability of New Jersey Rules to the second Contingent Fee Agreement, which was sent to Lewison's father for signature immediately after Respondent secured the appointment of Lewison's father as guardian ad litem in the New Jersey Superior Court action. Respondent's reliance on the slender threads of Lewison's residence and consideration of potential venue issues to sustain his unilateral, undisclosed choice to apply Pennsylvania contingent fee rules is mere sophistry.
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> [SMR59.]

The special master further concluded that respondent's failure to apply to the court for a reasonable fee determination, pursuant to R. 1:21-7(c)(5) and (f), "smacks of concealment," and was avoided because respondent "knew that the court would not approve of either the gifts or Respondent's fee." Accordingly, the special master found that respondent violated RPC 8.4(c) in connection with both contingent fee agreements and the knowing concealment of his fees from the court.

Additionally, the special master determined that the "gifts" from Lewison to respondent, as well as the gift letters, violated RPC 8.4(c):

> The first gift letter was dated July 27, 2007, several months before . . . the [Allister]

> settlement in late September and early October, 2007. Thus while Respondent clearly knew in advance that Lewison intended to give Respondent the money, and therefore, that Lewison necessarily had to receive a distribution in at least the amount of the gifts, the Distribution Sheet does not reflect any distribution at all to Lewison. To the contrary, the Disbursement Sheet falsely states that Lewison was to receive "$0" as the "Net Amount to Client," with the added qualification that "The remainder of any unpaid monies will be forwarded to" the Trustee of Lewison's Special Needs Trust. These are plainly false statements.
>
> In addition, the "Authorization to Transfer Settlement Monies Into Special Needs Trust," signed by Lewison and his father on September 21, 2007 . . . authorized, and impliedly directed, Respondent to transmit Lewison's "net settlement proceeds" into Lewison's Special Needs Trust. Viewed together, the Authorization, the Disbursement Sheet, the Settlement Agreement and Release, the Special Needs Trust, defense counsel's cover letter sending the settlement checks - in short, all of the documents related to the settlement - convey the unmistakable representation that Lewison would not receive a single dollar in cash from the proceeds of the settlement. Nowhere is it disclosed in the settlement documents that close to a half million dollars of Lewison's net proceeds were going to be diverted from the Special Needs Trust, and converted by distributing those moneys to Lewison, for gifting over to Respondent.
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> [SMR60-61, citations omitted.]

The special master found that respondent engaged in additional deception in respect of the gifts by issuing the attorney trust checks to Lewison, who then endorsed them over to

respondent, making it appear, on the surface, that the settlement distributions were made to Lewison in the ordinary course of legal representation, rather than made as gifts to respondent.

The special master emphasized respondent's concession that, but for the gifts, the funds would have been deposited in Lewison's SNT. Moreover, the trustee of Lewison's SNT was completely unaware that these gifts had been made from Lewison's Allister settlement funds.

The special master further determined that Lewison's settlement proceeds were not permitted to be disbursed to anyone:

> Lewison and his father did not have to agree to set up the Special Needs Trust. Lewison could have taken his proceeds in cash and forfeited his entitlements to government benefits: SSI and Medicaid. However, when Lewison and his father (on Respondent's advice) chose to preserve his government benefits through the mechanism of the Special Needs Trust, Lewison necessarily gave up all rights to receive, or control the disposition of his settlement proceeds. Indeed, a stated purpose of the Special Needs Trust was to preserve Lewison's entitlement to uninterrupted government benefits by allowing every dollar of Lewison's net settlement proceeds to be placed into the trust, beyond Lewison's reach. Even setting aside the issue of whether Lewison had sufficient capacity to make a valid gift, the money was no longer within Lewison's legal authority to give away. Thus in reality, Lewison and Respondent, acting together secretly diverted and converted funds that rightfully belonged to the Special Needs Trust.

> Lewison is too naive, uneducated and mentally impaired to know better. Respondent has no excuse.
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> [SMR63-64, citations omitted.]

The special master further noted the deception inherent in the restoration of Lewison's SSI and Medicaid benefits subsequent to the Allister settlement. Specifically, on July 9, 2008, the SSA forwarded to Lewison a restoration of benefits statement, which memorialized certain information Lewison had provided, under oath, to the SSA. Although Lewison had disclosed all of his resources and income, the Allister distributions to Lewison, which were subsequently gifted to respondent, were never disclosed. On July 16, 2008, the SSA restored Lewison's SSI and Medicaid benefits, retroactive to March 2008. The special master concluded that, based on the deceit contained in the SSI application, and even assuming, arguendo, that someone had provided the SSA copies of the Allister settlement agreement, the SNT, and the disbursement sheet, the deceptive nature of those documents would have ensured that the SSA remained unaware of the distributions to Lewison and gifts to respondent.

The special master expressed no doubt that Lewison's application would have been denied, if the distributions to Lewison, gifted to respondent, had been disclosed:

> [b]y orchestrating the general concealment of the distributions to Lewison, Respondent has at least aided and abetted Lewison in the commission of a fraud on the government entities that provide SSI and Medicaid to Lewison . . . Respondent has exposed Lewison, if not himself, to substantial civil liability if the SSA and Medicaid authorities seek reimbursement of overpayments, and/or the possible suspension of Lewison's SSI and Medicaid benefits, and even the possibility (although the possibility is probably remote) of criminal prosecution for Lewison's false statements to the SSA, given under oath.
>
> And the fraud is not only associated with the restoration of Lewison's benefits, but also with the fact that the Special Needs Trust now has almost a half million dollars less available with which to provide Lewison support during his life, and to reimburse to the appropriate government agencies after Lewison's death.
>
> In addition, while Respondent's concealment of the distributions to Lewison and the gifts to himself may not have been dishonest to Lewison and his father, Respondent's participation in the preparation of the 'gift letters,' and Respondent's acceptance of the gifts, without insisting that Lewison be represented by independent counsel, and fully informed of all the ramifications, including the prospect that Lewison stood to lose his SSI and Medicaid benefits, amounts to "hoodwinking of [a] helpless client" condemned in In re Wolk, 82 N.J. 326, 335 (1980).
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> [SMR66-67.]

The special master concluded that respondent's violations of RPC 8.4(c) in connection with the contingent fee agreement and the gifts were serious and warranted substantial discipline. Given their respective roles, respondent had a clear responsibility to

apply the correct contingent fee rule, while Lewison and his father lacked the expertise to protect themselves. Despite his ethical obligation to apply New Jersey court rules, respondent instead chose to employ two Pennsylvania contingent fee agreements.

With respect to the gifts, the special master determined that, although it was clear from the evidence that Lewison initiated them, Lewison's mental impairments were "a causative factor leading to Lewison's actions," noting Lewison's willingness to give money away to strangers he has only just met. In short, the special master concluded, respondent should not have accepted gifts from Lewison, whom he knows to be mentally incapacitated.

Finally, the special master concluded that respondent's "diversion and conversion of funds" from Lewison's Allister settlement proceeds, which were earmarked for Lewison's SNT, constituted a knowing misappropriation of client funds, and, thus, respondent should be disbarred. The special master reasoned that the "knowing" element "was established by Respondent's conscious, deliberate, conduct and is bolstered by Respondent's concealments."

In aggravation, the special master found that:

> [r]espondent's failure to initiate affirmative, proactive steps to obtain a determination of the proper amount of his fee and to refund the excess to Lewison's Special Needs Trust, is an aggravating factor. In the Special Master's view, Respondent's ethical responsibility is not dependent on whether

> Lewison wants the money back, or whether Mr. Wallace may be liable to Respondent, or has the ability to reimburse Respondent for any amount . . . For the most part, Respondent did an excellent job of representing Lewison. As noted above, Respondent explained that his "will was overcome" by Lewison's persistence regarding the gifts. However, the Special Master's view is that Respondent's judgment was overcome, not by Lewison's persistence, but by Respondent's avarice.
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> [SMR75.]

* * *

As a threshold matter, in respect of the special master's determination that respondent knowingly misappropriated Lewison's Allister settlement proceeds, we observe that the formal ethics complaint did not charge respondent with knowing misappropriation. Because respondent was never put on notice of such an allegation, nor afforded the opportunity to mount any defense to it, as due process so plainly requires, we cannot agree with the special master's finding of knowing misappropriation. See R.1:20-4(b) and In re Roberson, 210 N.J. 220 (2012).

On de novo review, however, we find that the record otherwise contains clear and convincing evidence to support the special master's determination that respondent was guilty of serious unethical conduct and should be disbarred. Specifically, as discussed in more detail below, respondent is guilty of violations of RPC 1.5(a) and (c); RPC 1.7(a)(2) and (b); RPC 1.8(a)

and (c); and RPC 8.4(c).[16]

It is clear that Lewison was significantly impaired at the time respondent undertook his representation, at least as of the dates of the ethics hearing, and remained impaired and subject to potential exploitation. Our finding in this regard is based on the evidence in the record, including the court finding of incapacity in respect of the appointment of a guardian ad litem, Dr. Campana's evaluation, extensive medical and education records, the SSA determination of disability, Lewison's life care plan, and relevant testimony.

Respondent took shameless advantage of an opportunity to line his own pockets at the expense of his significantly mentally impaired client. Lewison trusted respondent and relied on him to protect him and his interests, much as he trusted his own father. In fact, particularly following his own father's death, Lewison

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[16] We specifically adopt the special master's findings, dismissing the following allegations: (1) that respondent violated RPC 1.5(c) in respect of the "to be determined" line items in the disbursement sheet he prepared; (2) that respondent violated RPC 1.7(a) by his simultaneous representation of Lewison and McDonnell in their respective PIP claims and in respect of their claims against Allister; (3) that respondent violated RPC 1.8 in respect of the preparation of Lewison's testamentary instruments by Sobeleski; and (4) that respondent violated RPC 1.14(a) and (b) in respect of respondent's relationship with Lewison. In light of our recommendation that respondent be disbarred on the remaining charges, we have refrained from discussing these findings in greater detail.

referred to respondent as "dad," and to respondent's secretary as "mom." Respondent himself acknowledged that Lewison considered his office staff to be his family. So devoted to respondent was Lewison that he would, by his own words, give him anything: "[respondent] can do anything he wants . . . that's my dad." Respondent, however, acted nothing like a dad – and certainly nothing like a trustworthy attorney.

Respondent's misconduct was both serious and extensive. To begin, in representing Lewison against Allister, respondent violated RPC 1.5(a) in various respects. It is undisputed that the lawsuit against Allister was filed and settled in New Jersey. Accordingly, respondent's contingent fee of forty percent was "grossly inconsistent" with R. 1:21-7(c)(6). That Rule limits the contingent fee in New Jersey tort cases to 25% where the client is mentally incapacitated and the case settles prior to empanelment of a jury. Accordingly, respondent's fee per se violated RPC 1.5(a). Given Lewison's incapacity, respondent also violated RPC 1.5(a) by failing to make application to the court to approve his legal fee, as R. 4:44-3 expressly requires. Moreover, respondent improperly calculated his fee based on Lewison's gross, instead of net, recovery, in violation of R. 1:21-7(d), and, further, failed to inform Lewison of his right to retain respondent "on the basis of the reasonable value of the services," as required by R. 1:21-7(b). Respondent's improper application of a Pennsylvania fee

agreement, under which he collected a 40% fee, his calculation of his fee based on the gross settlement, and his failure to apply to the court for approval of his fee all netted him a fee that was "hundreds of thousands of dollars" in excess of the amount that respondent was legally and ethically entitled to take.

Although respondent acknowledges these violations as set forth above, he continues to assert that they are more properly characterized as a fee dispute, not ethics violations. The Court has expressly rejected such a position, however, treating the improper calculation of a contingent fee as serious misconduct. See In re Feng Li, 213 N.J. 523 (2013) (holding that attorney's improper application of New York contingent fee rules, instead of the New Jersey contingent fee rules contained in the retainer agreement his clients had executed, lacked a "reasonable, good-faith belief of entitlement" to the portion of settlement funds taken by attorney as his fee; additionally, since his clients had promptly disputed the attorney's calculation of his contingent fee, the Court found the attorney guilty of knowing misappropriation, and, thus, disbarred him). Here, although Lewison has taken no steps to dispute the fee taken, respondent has admitted that it violates New Jersey's court rules and that the client is entitled to reimbursement of "hundreds of thousands" of dollars. Yet, he has taken no measures to cure this gross overpayment.

Respondent's explanations regarding the contingent fee agreements, indeed, amount to nothing more than "sophistry," as characterized by the special master. Even if we were to accept respondent's argument that the first contingent fee agreement was excusable, because it had not yet been determined in which jurisdiction the Allister lawsuit would be brought, it is wholly incredible that he simply overlooked R. 1:21-7(c) when he presented the second contingent fee agreement and the Disbursement Sheet to Lewison and his father. At that point, suit had been filed in New Jersey approximately ten months earlier. It has not escaped our attention here that respondent required Lewison's father to sign the second (Pennsylvania) contingent fee agreement in his capacity as Lewison's guardian ad litem, a capacity respondent used as both a sword and a shield throughout this case, as it might benefit him.

Lawyers licensed to practice in New Jersey are charged with knowledge of the Rules of Professional Conduct and the Rules of Court. In re Berkowitz, 136 N.J. 134, 147 (1994). Accordingly, we find that respondent's failure to apply to the court for a reasonable fee determination, pursuant to R. 1:21-7(c)(5) and (f) indeed "smacks of concealment," and was avoided by respondent because he "knew that the court would not approve of either the gifts or [r]espondent's fee." Respondent is an experienced New Jersey personal injury attorney who chose to litigate against

Allister in Camden County. His use of a Pennsylvania contingent fee agreement, as well as his subsequent failure to rectify it, was purposeful and designed to take the largest fee possible from a vulnerable client.

Additionally, respondent violated RPC 1.5(c) by intentionally obscuring the Allister settlement proceeds he disbursed to Lewison, in the amount of $484,500, as part of a premeditated scheme to conceal the fact that those monies were subsequently gifted to respondent. Specifically, the disbursement sheet falsely stated that (1) Lewison received "$0" as the net amount to client; and (2) the net sum of the settlement monies would be disbursed into Lewison's SNT. Although respondent's use of a line item entry on the disbursement sheet titled "to be determined" also was questionable, we adopt the special master's finding that this facet of the disbursement sheet did not rise to the level of an ethics violation by clear and convincing evidence.

Respondent violated RPC 1.7(a)(2) and RPC 1.8(a) beginning in June of 2007, when he prepared and presented Lewison with the first gift letter. Although the evidence does not support the OAE's allegation that respondent solicited the gifts, this finer point of contention is of no moment when the totality of respondent's misconduct is fully appreciated. Respondent clearly violated RPC 1.8(c) by preparing, or participating in the preparation of, the gift letters by which respondent received

substantial gifts. Additionally, by accepting the gifts that were memorialized and perfected months prior to the Allister settlement, respondent placed himself in a conflict of interest situation, in violation of RPC 1.7(a)(2), and knowingly acquired an adverse pecuniary interest in Lewison's settlement proceeds, in violation of RPC 1.8(a). As the special master correctly reasoned, the gift letters were adverse to Lewison, as they (1) "reduced the amount of funds that otherwise would have been deposited" into Lewison's SNT; and (2) would have disqualified Lewison from receiving SSI and Medicaid benefits, had they been disclosed to the SSA, contrary to the efforts to ensure that he would keep those benefits via the SNT. Respondent's deception to prevent such disclosure is addressed in more detail below.

In addition, the gift letters clearly did not satisfy the requirements set forth under RPC 1.8(a)(1) through (3) and RPC 1.7(b), because the gifts were neither reasonable nor fair to Lewison, the settlement funds constituting the gifts were diverted from the SNT, and the consequences of these actions, which could have resulted in the loss of Lewison's SSA and Medicaid benefits, were never explained to Lewison or his father, Lewison's guardian ad litem.

Respondent's conduct is particularly egregious and troubling when viewed through the lens of RPC 8.4(c). In our view, respondent's flagrant misconduct with respect to both the

contingent fee agreements and the gifts from Lewison have set a new high water mark for attorney dishonesty and the "hoodwinking" of a vulnerable client. Respondent orchestrated a scheme to omit information necessary to convey a full and accurate picture in connection with the contingent fee agreements, the Allister settlement, and the $484,500 in gifts he accepted from Lewison. Simply put, respondent hoodwinked Lewison "by taking . . . personal advantage [of Lewison's] ignorance, naiveté, or educational or mental impairment." See In re Wolk, supra, 82 N.J. at 335.

The "gifts" from Lewison to respondent, as well as the gift letters, violated RPC 8.4(c). Specifically, the first gift letter was executed on July 27, 2007, several months before the Allister lawsuit settled, in early October 2007. Thus, respondent knew, in July 2007, that Lewison intended to give Respondent $484,500, in addition to his improper fee, and therefore, that Lewison necessarily had to receive a distribution in at least the amount of the gifts. Yet, the distribution sheet reflects no distribution to Lewison, falsely stating that Lewison was to receive "$0" as the "Net Amount to Client."

Further, the "Authorization to Transfer Settlement Monies Into Special Needs Trust," signed by Lewison and his father on September 21, 2007, directed respondent to disburse Lewison's net settlement proceeds into the SNT. Viewed together, the

Authorization, the disbursement sheet, the Settlement Agreement and Release, and the SNT all purposely convey, by respondent's design, the appearance that Lewison did not directly receive a single dollar from the proceeds of the Allister settlement. Simply put, respondent affirmatively ensured that the documents memorializing the Allister settlement would not divulge that $484,500 of Lewison's net settlement proceeds were ultimately gifted to respondent and that his firm took an improper $1.4 million contingent fee.

We wholly adopt the special master's most condemning findings of fact regarding the mechanical details of the gifting of Lewison's settlement proceeds — that respondent engaged in affirmative deception to further cloak the existence of the gifts by issuing attorney trust account checks payable to Lewison for the $484,500. Proceeding in this fashion, respondent rendered the gifts all the more difficult to detect, by creating the appearance, on the surface, that settlement distributions in the amount of $484,500 were made to Lewison, in the ordinary course of legal representation. One would have to obtain access to the cancelled checks, as Wallace ultimately did when he happened upon them, in order to view the endorsements, and to discover that, in reality, a total of $484,500 was gifted to respondent.

Respondent admitted that, but for the gifts, an additional $484,500 would have gone into Lewison's SNT. Lewison received a

gross settlement of $3.5 million from Allister; ultimately, he netted less than $2 million – an amount, respondent knew, was woefully insufficient to fund the life plan respondent himself had commissioned to maximize any settlement offer he might receive in Lewison's suit against Allister. Moreover, the trustee of Lewison's SNT was completely unaware that these gifts had been made from the Allister settlement funds. As the special master properly determined, Lewison's total net settlement proceeds were required, by law, to go into the SNT.

Even more dishonesty occurred, at respondent's direction, in the restoration of Lewison's SSI and Medicaid benefits, subsequent to the Allister settlement. Under respondent's guidance, Lewison had disclosed all of his resources and income to the SSA, but failed to disclose the Allister distributions, which were subsequently gifted to respondent. Accordingly, on July 16, 2008, unaware of the $484,500 that had been directly received, albeit momentarily, by Lewison, the SSA restored Lewison's SSI and Medicaid benefits, retroactive to March 2008. As has been noted above, even if the SSA had received copies of the Allister settlement agreement, the SNT, and the disbursement sheet, the purposefully deceptive nature of those documents would have ensured that the SSA remained unaware of the distribution of $484,500 to Lewison and the matching gifts to respondent. Thus, as noted by the special master, respondent's conduct in this

respect exposed his client to both civil and criminal liability and to the loss of his SSI and Medicaid benefits.

It could not be more clear to us that respondent "abused his close relationship with [Lewison] and unfairly profited from [his] unconditional trust in him." Lewison was incapacitated, and his open and deeply-held adoration of respondent put him in a position to be controlled and manipulated by respondent, who masterfully took advantage of that relationship. As previously noted and as respondent admitted, Lewison calls him "dad," and depends on him, almost daily, to function.

Rarely have we witnessed such hubris on the part of an attorney to justify his shameless exploitation of an impaired client. Sadly, however, there are similar cases in which we find guidance.

In In re Tan, 220 N.J. 587 (2015), the Court suspended, for one year, an attorney who, among other things, had engaged in conflicts of interest and in an improper business transaction with his client, in violation of RPC 1.7(a)(2) and RPC 1.8(a). Like Lewison, the attorney's client in that matter, Pachowicz, was vulnerable and limited in her ability to fully understand the various aspects of her interactions with the attorney. In the Matter of Herbert Joni Tan, DRB 14-103 (November 7, 2015) (slip op. at 39). The attorney's conflicts were multiple.

In one transaction, during the course of their attorney-client relationship, the attorney retained Pachowicz to create blogs for him and to promote his website, without setting forth a rate of pay. The attorney failed to advise his client to consult with independent counsel in this regard and her lack of experience prevented her from knowing what constituted a fair rate. Based on their professional relationship, she trusted respondent to treat her fairly. Ultimately, respondent paid Pachowicz nothing.

In a second transaction, the attorney created a payroll company with Pachowicz. We found that Pachowicz was unsophisticated and lacked the capacity to understand the terms of their business arrangement. Moreover, the attorney entered into the transaction knowing that Pachowicz had been abused by her former employer, was easily influenced and dominated, and trusted him unconditionally. The attorney failed to ensure that Pachowicz understood the terms of their transaction such that her consent to the terms was informed, thereby violating RPC 1.4(c) and RPC 1.8(a). Any attempts he made to comply with the requirements of RPC 1.8(a) had been to protect himself rather than to inform Pachowicz of the essential terms of the transaction and the consequences of his representation of her interests in the transaction.

In a third conflict of interest, the attorney represented Pachowicz and another client in the same matter when their

interests were clearly adverse. Because Pachowicz was a co-plaintiff with the other client, she had to forego a harassment claim (sexual or other forms) against the co-plaintiff. She did not know or understand that she had a cause of action for harassment against the co-plaintiff because the attorney never discussed it with her. Rather than terminate the dual representation, the attorney coerced and intimidated Pachowicz into going forward with the case by threatening to withdraw from it if she did not go along with the dual representation.

In imposing a one-year suspension, we noted that the attorney knew his client was unsophisticated, inexperienced in business matters, limited in her capacity to understand them, vulnerable, trusting, and reliant on him to protect her interests.[17] "It is that reliance and trust that 'triggers the need for . . . full disclosure and informed consent.'" Id. at 39, citing In re Humen, 123 N.J. 289, 301 (1991).

In re Casale, 213 N.J. 379 (2013), presented a case of an egregious conflict of interest, also involving an impaired client. In that matter, the Court suspended for three years an attorney who, at the request of his long-time friend and ongoing client, Sollitto, represented an elderly widow, Stockdale, who was in poor

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[17] The Court subsequently disbarred the attorney, on April 13, 2016, based on additional misconduct. In re Tan, D-75 (September Term 2015).

health and of questionable competence, in the sale of her million-dollar home to Sollitto. Stockdale's former attorney had advised against the sale for several reasons, including the absence of any provision in the proposed contract permitting her to continue to reside in the home, as she wished and had been promised. Sollitto, however, continued to negotiate with Stockdale directly, convincing her to go through with the sale and to take back a purchase money mortgage, with no discussion about its amount or its rate. He then set about arranging for a title search and title insurance through a friend, by-passing the attorneys who had earlier been involved in the transaction.

Stockdale's health began to deteriorate quickly, resulting in her hospitalization, and prompting Sollitto to procure the services of his longtime friend and attorney, Casale, to represent the widow in the proposed transaction. Sollitto told Casale that Stockdale had complained that her former attorney was too far away. Sollitto then encouraged Casale to consummate the sale and closing quickly, due to Stockdale's advanced age and poor health. Thereafter, Casale first visited her in the hospital. Although he did disclose to her that he was representing Sollitto in an arbitration matter, he did not disclose to Stockdale the extent of his professional and personal relationship with Sollitto and his wife and did not discuss with her the risks or disadvantages

of representing her at the same time he had an ongoing professional relationship and close personal friendship with him.

During that first visit, Casale learned that Stockdale also wished to change the terms of an earlier will she had executed, leaving her residuary estate to the local (Spring Lake) first aid squad. He offered to make any changes for her. Casale made several other visits to Stockdale, all in the hospital, while her health continued to fail. After each visit, he telephoned his friend, Sollitto, presumably to report on the progress of the transaction.

During one of their meetings, Casale prepared a contract for sale and a mortgage and note calling for a substantially lower rate of interest than the current rate of interest. Moreover, the note identified a severely deficient monthly payment by Sollitto to Stockdale. Despite Stockdale's request that she be permitted to remain in her home as long as possible, Casale did not prepare a use-and-occupancy agreement or otherwise negotiate with Sollitto to allow her to remain in the home for any period following the execution of the deed.

At their third meeting, Stockdale's health had taken a turn for the worse, requiring medication[18] and, ultimately, additional

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[18] The parties stipulated that the medication likely affected the widow's ability to understand and appreciate the consequences of the documents she was signing.

surgery. Before the surgery, however, Casale effectuated the changes to the will, in which Stockdale changed her residuary beneficiary from the Spring Lake First Aid Squad (SLFS) to Sollitto because she liked him and his family. Casale suggested that Stockdale also include a provision forgiving Sollitto's mortgage upon her death, since he would receive the money anyway as her residuary beneficiary. She also named Casale as her sole executor, replacing her former attorney and longtime friend, who had been the co-executors. He did not explain to Stockdale that, by making Sollitto the residuary beneficiary, instead of the SLFS, her estate would be liable for substantial taxes, something she had tried to avoid in the past out of her distrust for government. Casale further failed to inform her that, as executor, he would be entitled to earn substantial fees and commissions on the estate corpus and income.

Ultimately, after Stockdale was released from the hospital, Sollitto set her up in an apartment with a non-English-speaking care giver. She died receiving only the initial payment on the sale of the house. Sollitto never made any payments on the note, and the mortgage was completely forgiven on Stockdale's death.

In recommending to the Court that the attorney be suspended for three years for his serious conflicts, we observed that "one of the most basic responsibilities incumbent on a lawyer is the duty of loyalty to his or her clients." In the Matter of Michael

A. Casale, DRB 12-143 (November 1, 2012) (slip op. at 18), citing Tartaglia v. UBS PaineWebber, Inc., 197 N.J. 81, 111 (2008). We then noted that "standing alone, these two situations represent egregious acts of disloyalty . . . [which] considered in context . . . shocks one's conscience." Id. at 25. Specifically, in circumstances that should have caused respondent to "raise his eyebrows," he instead allowed his friend's entreaty to propel him forward at his own client's great expense. Ibid. See also, In re Tormey, 190 N.J. 578 (2007) (two-year suspension imposed on attorney who represented a seventy-nine-year-old man, who had immigrated to the United States from Portugal, who had difficulty speaking and understanding English, and who was of questionable competence, in the sale of his home to a friend of the attorney, with whom he also maintained a business relationship).

A similarly vulnerable client was involved in In re Humen, supra, 123 N.J. 289. In that case, the Court suspended, for two years, an attorney who engaged in multiple conflicts of interest during his eight-year representation of widowed, unsophisticated, elderly client, who relied on him for legal and financial advice. The attorney counseled the client to purchase property owned by the attorney's friend, who was not independently represented, and who took back a purchase money mortgage. To guarantee payments, and unbeknownst to the client, the attorney prepared a rider to the contract of sale providing that the mortgage and note would

not be recorded for thirty months to facilitate reversion of the title to his friend in the event of the client's default. Thus, for a period of six years, there was no formal record of the client's ownership of the property.

At some point later, the attorney persuaded the client to allow him to take over the management of the property. During the years that the attorney managed the property, he never formally reported or accounted to the client for the income produced by the property and misled her to believe that she was making no profit at all.

Ultimately, the attorney convinced the client to sell him the property for $14,000 less than its appraised value and $4,000 less than she had paid for the property. The client agreed to do so, believing the attorney's advice that she was losing money by keeping the property. The client did not receive a penny from the sale of the property to the attorney, allegedly because she owed him legal fees, which proved, in part, to be untrue.

In yet another transaction, the attorney convinced the client, who wished to purchase a new home, to obtain a mortgage. The attorney told the client that he had procured private financing for her, but that the lenders wished to remain anonymous. In fact, unbeknownst to the client, it was the attorney who provided the financing, secured by a mortgage on the property. The attorney

then later refused to renegotiate a lower interest rate, although rates had fallen.

In all of these transactions, the attorney had failed to advise the client to consult with independent counsel. In addressing the attorney's failure to do so, the Court noted:

> Respondent knew that Mrs. O'Connell, a widow, relied substantially on him for all legal and financial matters. She trusted him. It is that reliance and trust that "triggers the need for the rule's prescriptions of full disclosure and informed consent" . . . Humen was not only Mrs. O'Connell's attorney but her friend and confidant. He abused both positions . . . .
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> [Id. at 301, citing In re Silverman, 113 N.J. 193 (1988).]

In In re Griffin, 121 N.J. 245 (1990), the Court suspended, for one year, an attorney who had entered into a loan transaction with a client without advising her to consult with independent counsel. The client, an alcoholic, had been in various institutions over many years in an attempt to cure her alcoholism. In the Matter of Frank J. Griffin, DRB 88-276 (October 11, 1989) (slip op. at 2). She and the attorney had become quick friends and he began to represent her on the various legal and financial problems she had. Eventually, the attorney rented a room in the client's house and the two became closer. Ibid.

At some point, the attorney recommended that the client obtain a mortgage on her home to satisfy her remaining outstanding debts

and further suggested that she borrow an additional amount for his own use. She accepted his advice and the two executed an agreement. Under the terms of that agreement, the client would apply for a $20,000 mortgage loan, using her home as collateral. The attorney was to co-sign the loan, accept primary responsibility for its repayment, and obtain life insurance in the amount of the loan, naming the client as the beneficiary. The attorney was to receive three-quarters of the loan proceeds, and the client one-quarter. The loan agreement between the attorney and the client was completely unsecured. Id. at 2-3. In short, the attorney risked nothing in the event of default, while the client risked her own home.

During their period of cohabitation, the client continued to suffer from alcoholism, which became progressively worse. At the time that she signed the loan agreement with the attorney, she "was drunk" and "had been drinking for weeks and weeks." She did not recall signing either the loan document between her and the attorney or any of the mortgage loan documents and denied that the attorney had explained the terms of the transaction to her. She further denied, as the attorney had claimed, that he had advised her to seek the advice of independent counsel. Although there had been a "vague reference" to the client's alleged understanding of a possible conflict in the loan agreement between the two, we found her testimony in this regard to be credible. Id. at 4-5.

Sometime after the client obtained the mortgage loan and the proceeds distributed largely to the attorney, the client again entered a rehabilitation clinic. Thereafter, the attorney left the residence. Eventually, the attorney discontinued his payments on the loan, forcing the client to assume them. When she was no longer financially able to make the payments, the loan fell into default and the client was forced to sell her home to avoid foreclosure. Id. at 3-4.

We found that the attorney had violated the Disciplinary Rules when he entered into a business transaction with his client, without full disclosure of its consequences and without insisting that the client seek the independent advice of counsel. Id. at 8. In this regard, we noted that the attorney had taken advantage of a client who was significantly impaired and who "was unable to display meaningful independence of action." Id. at 10. We found that, under the circumstances, the attorney either should have insisted that the client consult with independent counsel or refused to consummate the transaction. Ibid. The Court accepted our recommendation and imposed a one-year suspension.

In In re Wolk, 82 N.J. 326 (1980), the attorney was disbarred for misconduct in two separate matters. Id. at 327. In one matter, the attorney attempted to commit a fraud on a federal district court and on his clients, in order to obtain a greater fee at the expense of a paralyzed eight-year-old plaintiff. Id. at 327-330.

The fraud involved a gross, intentional exaggeration of services rendered. Ibid.

In the other matter, the attorney represented a client in a business matter in which he was personally involved. Ibid. Specifically, he counseled his client, an elderly and recent widow, to make a hopeless investment in a building in which he had a financial interest. The attorney concealed from his client material information regarding the proposed transaction, including the recent purchase price of the property, its actual value and its poor condition, the true nature of the property (the widow believed that it was a garden apartment complex when, in fact, it was a three-story building in a depressed area, consisting of six apartments and one common toilet on each floor), the fact that taxes remained unpaid, and, ultimately, the existence of a foreclosure and sheriff's sale on the building. Ibid.

In his defense, and like respondent here, the attorney asserted that he had advised the widow to seek independent legal advice. Id. at 331. The Court, however, rejected his assertion, noting that "respondent knew that his client was naïve and inexperienced in business matters, and that she was relying not only upon his advice but upon his judgment and upon the confidence she had in him based on his past 16 years of service as her late husband's attorney." Id. at 333. In that context, the Court noted, the attorney's advice to his client to consult with independent

counsel was of little consequence, as he "had every reason to believe that she would not do so." Id. at 331, 333.

Thus, the Court found that the attorney had "exploited his client for his own financial benefit," and that "he should have insisted that she retain independent counsel or refused to consummate the transaction." Id. at 334. "Undoubtedly, independent counsel would never have allowed the widow to make this investment." Ibid.

In reaching its determination to disbar the attorney, the Court stated:

> [L]awyers have a duty to explain carefully, clearly and cogently why independent legal advice is required. When a lawyer has a personal economic stake in a business deal, he must see to it that his client understands that his objectivity and his ability to give his client his undivided loyalty may be affected . . . Respondent cannot shield himself behind the glib recitation of a disclosure the practical meaning of which was unknown to his client.
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> [Id. at 333.]

Citing In re Wilson, 81 N.J. 451 (1979), the Court stated, "[t]his Court will no more tolerate the hoodwinking of helpless clients out of funds in a business venture that is essentially for the benefit of the lawyer than it will outright misappropriation of trust funds." Id. at 335.

It is true that these cases involved, primarily, conflicts of interest and impermissible business transactions with clients,

as opposed to conflicts of interest and impermissible gifts. However, the principle running throughout, that is, the disgrace in the abuse and exploitation of a trusting professional relationship – especially one involving an impaired client – is the same and, perhaps, even more pronounced here, where Lewison's limitations were so profound.

We also find instructive In re Halligan, D-44, September Term, 2003, cited by the special master, in which the Court signaled the application of an objective standard to future similar cases to evaluate an attorney's conduct vis-à-vis his or her infirm or elderly clients.

In that case, involving a similar factual scenario, we examined the conduct of an attorney who, over a period of fifteen years, represented Elsie Finninger, a wealthy, elderly widow who suffered from "mild to moderate dementia, depression, and physical ailments, including vision and hearing problems." In the Matter of Francis X. Halligan, DRB 03-144 (November 5, 2003) (slip op. at 2-4). After the Ocean County Board of Social Services questioned some of the expenditures Halligan made in behalf of Finninger, the OAE charged him with violations of RPC 1.5(a) (fee overreaching), RPC 1.7(a) and (b) (conflict of interest), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) (slip op. at 1-2).

Pursuant to a March 1992 will, power of attorney, and revocable living trust, prepared for Finninger by independent counsel, Halligan acted as her personal attorney, attorney-in-fact, trustee, and attorney for the trust; he was also the executor and a beneficiary under the client's Last Will and Testament (slip op. at 2-3).

Halligan received trustee commissions of $147,780 from 1996 to 2000 (slip op. at 7). Additionally, in his capacity as Finninger's personal attorney, he charged her $225,363.64 in legal fees over that same period (slip op. at 7). The legal fees included: between April 1996 and December 1999, $60,000 for "sending 840 identical letters to charities that had solicited contributions from Finninger;" from 1996 to 1998, a total of $4,600 to attend Heisman Trophy Award dinners, as Finninger's guest; $1,000 for buying Finninger a new couch, which cost $889; and $500 for purchasing a $29.95 electric fan (slip op. at 7-9).

The attorney asserted that he had committed no misconduct, noting that his legal fees had not been challenged by the client or her family, and that he had agreed to reimburse $50,000 to Finninger's estate in an acknowledgement of unintentionally charging excess legal fees in connection with the 840 identical charity letters (slip op. at 26-27).

A five-member majority of the Board determined to dismiss the charges and impose no discipline (slip op. at 32). The majority explained:

> [W]e believe that the client has the right to employ and compensate an attorney for both legal and non-legal services, provided that there is no overreaching. In this case, we found no evidence that respondent unduly influenced Finninger or took advantage of her, or that she had become incompetent.
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> [slip op. at 34.]

Three board members disagreed and filed a dissenting opinion, asserting that Halligan "abused his close relationship with [Finninger] and unfairly profited from her unconditional trust in him," thereby violating RPC 1.5(a) (fee overreaching).

The Supreme Court agreed with the Board majority and dismissed the charges. In its narrative order, however, the Court announced:

> [I]n future cases the Disciplinary Review Board and the Court will apply an objective conduct standard to evaluate and determine whether the actions of attorneys who deal with elderly and infirm clients have been consistent with the requirements and obligations of the Rules of Professional Conduct, including, but not limited to, RPC 1.5 (fees), RPCs 1.7 and 1.8 (conflict of interest), and RPC 8.4 (misconduct); and is further
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> ORDERED that the Court will subject attorneys to the imposition of significant discipline when, after application of the objective standard, they are found to have violated the Rules of Professional Conduct.

[In re Halligan, D-44, September Term, 2003, http://njlaw.rutgers.edu, Supreme Court of New Jersey, August 5, 2004.]

Applying an objective standard to respondent's conduct in this case, we can reach no other conclusion but that respondent blatantly exploited his impaired client's childlike, unconditional, and blind trust in him and put his own interests above those of his client.

The endgame of respondent's misconduct is clear. When Lewison's lawsuit versus Allister settled for $3.5 million, respondent took an improper contingent legal fee in the amount of $1,400,000, plus $484,500 in gifts, totaling $1,885,500. He additionally took his firm's costs. In the end, respondent received more money from the Allister settlement than did Lewison, who clearly needed the funds to live any kind of protected life. And, as if he hadn't already received such a lofty and unauthorized fee, we note that respondent had the audacity to subsequently bill an additional $18,000 in legal fees to the trust for representing Lewison in criminal matters.

Respondent's unyielding attempts to place himself completely above reproach, despite admitting the impropriety of the contingent legal fee he took from Lewison's Allister settlement, his continuing acceptance of gifts from Lewison, and his astonishing admission that he would likely accept financial gifts from future clients, under similar circumstances, albeit with

"better protection" for himself, gives us no confidence that respondent is capable of ever appreciating his responsibility to conduct himself in an honest, forthright, and fair manner. We are, indeed, perplexed by respondent's failure to grasp the gravity of his misconduct.

Finally, in aggravation, we note that respondent has taken no steps to return to his client, the "hundreds of thousands of dollars" respondent took in overpayment of his fee. His claims that the client has not pursued them, that they are owed back to Lewison equally by respondent and his former partner, and that they cannot be repaid until a court declares what his rightful fee is, all ring hollow. Rather, as aptly noted by the special master:

> [R]espondent's ethical responsibility is not dependent on whether Lewison wants the money back, or whether Mr. Wallace may be liable to Respondent, or has the ability to reimburse Respondent for any amount . . . As noted above, Respondent explained that his "will was overcome" by Lewison's persistence regarding the gifts. However, the Special Master's view is that Respondent's judgment was overcome, not by Lewison's persistence, but by Respondent's avarice.
>
> [SMR75.]

Accordingly, given the totality of respondent's misconduct, and his gross exploitation of his client's mental limitation, and considering the discipline imposed in Wolk for similar misconduct,

we determine that respondent is not salvageable as an attorney, and, therefore, recommend that he be disbarred.

Vice-Chair Baugh did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: _____
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Harris C. Legome
Docket No. DRB 15-394

Argued: March 17, 2016

Decided: May 20, 2016

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh						X
Boyer	X					
Clark	X					
Gallipoli	X					
Hoberman	X					
Rivera	X					
Singer	X					
Zmirich	X					
Total:	8					1

Ellen A. Brodsky
Chief Counsel