IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 1635 Disciplinary Docket No. 3
	:	No. 155 DB 2008
v.	:	
	:	Attorney Registration No. 28582
JEFFREY J. HOWELL, Respondent	:	(Berks County)

ORDER

PER CURIAM:

AND NOW, this 4th day of November, 2010, upon consideration of the Report and Recommendations of the Disciplinary Board dated July 23, 2010, the Petition for Review and response thereto, it is hereby

ORDERED that Jeffrey J. Howell is suspended from the Bar of this Commonwealth for a period of five years and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy John A. Vaskov
As of: November 4, 2010
Attest: John A. Vaskov
Deputy Prothonotary
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 155 DB 2008
v.	:	Attorney Registration No. 28582
JEFFREY J. HOWELL Respondent	:	(Berks County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On October 3, 2008, Office of Disciplinary Counsel filed a Petition for Discipline against Jeffrey J. Howell. The Petition charged Respondent with violations of the Rules of Professional Conduct with respect to his representation of his client, Anne Goldberg. Respondent filed an Answer to Petition for Discipline on November 17, 2008.

Disciplinary hearings were held on May 4, May 5, and May 12, 2009, before a District II Hearing Committee comprised of Chair Denis A. Gray, Esquire, and Members Stephanie L. Wills, Esquire, and Daniel J. Rovner, Esquire. Respondent was represented by James C. Schwartzman, Esquire and Dana P. Carosella, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 13, 2010, concluding that Respondent violated Rules of Professional Conduct 1.1, 1.8(a), 1.8(c), and 8.4(a), and recommending that Respondent be suspended for a period of three years.

Respondent filed a Brief on Exceptions on February 16, 2010 and requested oral argument before the Disciplinary Board.

Petitioner filed a Brief Opposing Exceptions on March 8, 2010.

Oral argument was held on March 26, 2010 before a three-member panel of the Disciplinary Board.

This matter was adjudicated by the Board on April 14, 2010.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania, is invested pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of any

attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the Rules.

2. Respondent is Jeffrey J. Howell. He was born in 1953 and was admitted to practice law in the Commonwealth of Pennsylvania in 1978. He maintains his law office at 530 Walnut Street, Reading, PA 19603. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has no history of professional discipline in Pennsylvania.

4. Following his admission to the bar, Respondent completed several judicial clerkships and worked as an associate for Franklin Poor, Esquire, in Reading for approximately three years.

5. In 1987, Respondent and Mr. Poor entered into a partnership, but it dissolved shortly thereafter due to a decline in Mr. Poor's health.

6. Respondent opened his own law firm as a solo practitioner in 1987 and continues to practice law in that capacity. Respondent's practice consists largely of court appointments from the Berks County Court of Common Pleas.

7. For the last 20 years, Respondent has served as a divorce master, master in equity and a backup master for juvenile detention matters.

8. In addition to court appointments, Respondent's law practice included matters relating to family law, zoning and municipal law, estate administration, will preparation, and miscellaneous general practice work.

9. In the late 1980's, Respondent was contacted by Anne Goldberg for professional services. Respondent went on to have a long-standing attorney-client relationship with Mrs. Goldberg and her husband, Melvin Goldberg.

10. Respondent was engaged to prepare wills for Mr. and Mrs. Goldberg at some time prior to Mr. Goldberg's death in 2003.

11. Respondent drafted a will and three codicils for Melvin Goldberg in 1992.

12. Respondent prepared a will for Mrs. Goldberg that she signed on May 3, 2001.

13. In Mrs. Goldberg's May 3, 2001 will, she left all of her assets in trust for the care of her husband, Melvin, with Respondent named as trustee. Mrs. Goldberg left directives as to her property upon the death of her husband or if he predeceased her. Mrs. Goldberg had no children of her own.

14. Mrs. Goldberg appointed her friend Barbara J. Strause and Respondent as co-executors.

15. Between 1989 and 2004, Respondent's relationship with the Goldbergs was strictly a professional relationship.

16. Melvin Goldberg died on May 10, 2003.

17. On or around August 14, 2003, Respondent prepared a power-of-attorney for Mrs. Goldberg which named himself and Ms. Strause as attorneys-in-fact for Mrs. Goldberg.

18. The need for that power-of-attorney was prompted by hip surgery scheduled for Mrs. Goldberg.

19. Respondent alleged that between March and May 2004, Mrs. Goldberg contacted him several times to prepare a new will. According to Respondent,

Mrs. Goldberg purportedly advised Respondent that she wanted to name him as a beneficiary. Mrs. Goldberg was 86 years old at the time.

20. In or around June of 2004, Respondent contacted P. David Maynard, Esquire, to prepare a new will on Mrs. Goldberg's behalf.

21. In June 2004, Mr. Maynard prepared a new will and power-of-attorney for Mrs. Goldberg.

22. Mr. Maynard is a friend of Respondent. He rents office space to Respondent and they refer legal work to one another.

23. Mr. Maynard had not previously represented Mrs. Goldberg, he did not enter into a separate written fee agreement with her, and he did not meet with her prior to preparing the will.

24. Respondent, not Mrs. Goldberg, supplied the terms of the new will to Mr. Maynard. It was Respondent who told Mr. Maynard the specific bequests, the general bequests, and the executors to include in the new will.

25. Mr. Maynard prepared the new will in accordance with the terms provided to him by Respondent and without first speaking to Mrs. Goldberg.

26. On June 17, 2004, Respondent and Mr. Maynard went to Mrs. Goldberg's home with the new will.

27. In contrast to Mrs. Goldberg's previous will, her new will left specific bequests to five of her relatives, who had also been named in her previous will, and left the residuary of her estate to Respondent.

28. Respondent was not in the room with Mrs. Goldberg at the time the will was signed.

29. Mr. Maynard never asked to see Mrs. Goldberg's previous will so that he could compare it to the current version.

30. Mr. Maynard never asked Mrs. Goldberg to provide him with any financial information, including the extent of her assets and liabilities.

31. Mr. Maynard did not discuss Mrs. Goldberg's family with her.

32. Mr. Maynard did not discuss with Mrs. Goldberg the advantages or disadvantages of leaving money to Respondent versus any other person.

33. As Mr. Maynard never made any efforts to ascertain the extent of Mrs. Goldberg's estate, he could not and did not advise her that by making Respondent her residuary beneficiary Mrs. Goldberg was likely leaving Respondent appreciably more money than she was her family members.

34. Mr. Maynard's representation consisted of reading each paragraph of the will to Mrs. Goldberg, to make sure she understood it.

35. Beyond some general conversation with Mrs. Goldberg on June 17, 2004, Mr. Maynard took no steps to determine her capacity.

36. Mr. Maynard did not ask Mrs. Goldberg her age, or inquire into any health conditions she might have had.

37. Mr. Maynard prepared a file memorandum, dated June 18, 2004, describing the visit to Mrs. Goldberg's home. He wrote that she was "sharp" with "absolutely no degeneration of her thought process"; Respondent stepped out of the room during the first part of his "conference with Anne"; and no changes were made to the will.

38. The statement in Mr. Maynard's file memorandum that Mrs. Goldberg made no changes to her will is inconsistent with the facts Mr. Maynard testified to and the other documents in Mr. Maynard's file.

39. While he was not certain, Mr. Maynard testified that he believed that Mrs. Goldberg made several changes to the will on June 17, 2004.

40. It is not Mr. Maynard's usual practice to prepare such file memorandums. He prepares them only when he believes there may be some issue.

41. While Mr. Maynard testified that he believed that Mrs. Goldberg asked him during their June 17, 2004 meeting to prepare a power-of-attorney, there is no reference to such a request in the file memorandum. Mr. Maynard did not know why he did not include that in his memorandum. He was not aware of the prior power-of-attorney.

42. After the June 17, 2004 will was signed by Mrs. Goldberg, Mr. Maynard prepared another will and drafted a new power-of-attorney. He prepared those documents, dated June 23, 2004.

43. Contrary to the information contained in Mr. Maynard's file memorandum, Mr. Maynard testified that Mrs. Goldberg made several changes to the will on June 17, and asked him to prepare a new power-of-attorney making Respondent the sole power of attorney.

44. The handwritten changes to the will are in Mr. Maynard's handwriting, not Mrs. Goldberg's handwriting.

45. The handwritten changes were not made on the same version of the will which was signed by Mrs. Goldberg on June 17, 2004. For example, the will signed on June 17, 2004 appoints both Barbara J. Strause and Jeffrey J. Howell, Esquire as

executors of the will. The unsigned will with the handwritten changes appoints only Jeffrey J. Howell as executor.

46. On June 23, 2004, Respondent and Mr. Maynard went to Mrs. Goldberg's home with the revised will and power-of-attorney.

47. Mr. Maynard offer no reason for taking Respondent a second time, beyond that the house was "back in the boonies. It was easier to take Jeff with us." (N.T. 510)

48. Respondent testified that he was not specifically invited by Mrs. Goldberg to go to her house on June 23, 2004; however, he was aware from Mr. Maynard that she wanted to make some changes to her will and that a new power-of-attorney would be signed. Respondent asked to go along because he felt Mrs. Goldberg would be offended if he didn't show up.

49. The durable power-of-attorney prepared by Mr. Maynard named Respondent as "true and lawful attorney" for Mrs. Goldberg.

50. The power-of-attorney provided Respondent with broad powers over both the person and property of Mrs. Goldberg.

51. The acknowledgement to the power-of-attorney promised that as agent Respondent would:

a. exercise the power only for the benefit of the principal;

b. keep the assets of the principal separate from his assets;

c. exercise reasonable caution and prudence; and

d. keep a full and accurate record of all actions, receipts and disbursement on behalf of the principal.

52. The "Notice to Principal" that Mrs. Goldberg signed on June 23, 2004 explicitly provided that the "agent must keep your funds separate from your agent's funds."

53. Respondent did not inform Barbara Strause that the earlier power-of-attorney had been revoked.

54. While Mr. Maynard testified that he believed he was paid for his services, Mrs. Goldberg's bank records from May of 2004 through May of 2007 reveal no payment for Mr. Maynard's services. Mr. Maynard acknowledged that it was possible that Respondent paid his fee. Mr. Maynard's file contained no billing information, nor could Mr. Maynard supply any proof of payment.

55. While Respondent claims that his attorney-client relationship with Mrs. Goldberg ended in June of 2004, he did not provide her with any written notice or other documentation that their long-standing attorney-client relationship had ended.

56. After June of 2004, Respondent assumed near total control over Mrs. Goldberg's finances.

57. In or around December of 2003, Mrs. Goldberg purchased a single premium annuity for $100,000 which provided for monthly payments of $790.05 for life.

58. Shortly after taking control of Mrs. Goldberg's finances, Respondent sought to cancel the annuity.

59. By letter dated July 15, 2004, addressed to Mark Knepper, Financial Consultant, Respondent sought details of the annuity purchase.

60. This letter was written on Respondent's law firm letterhead.

61. When he received no response, Respondent filed a complaint with the Pennsylvania Office of Attorney General dated August 9, 2004, in which he alleged that

Mrs. Goldberg "did not understand some of the important details of this annuity" and expressed his concern that "she may have been taken advantage of."

62. Respondent succeeded in having the annuity cancelled in November of 2004 and received a 100% refund of the purchase price less the monthly payments already made.

63. On November 1, 2004, Mrs. Goldberg moved to an assisted living facility.

64. By account application dated November 24, 2004, Respondent and Mrs. Goldberg opened a joint account with right of survivorship at Wachovia Securities titled in their names.

65. The joint account was opened at Respondent's suggestion.

66. The joint account was funded entirely with Mrs. Goldberg's estate assets, including the annuity Respondent had cancelled.

67. In November of 2004, the month the joint account was opened, Respondent caused $139,892.66 of Mrs. Goldberg's assets to be deposited to the joint account.

68. Respondent failed to provide Mrs. Goldberg with any separate writing providing full disclosure about the effect of placing her assets in a joint account.

69. No attorney, other than Respondent, independently advised Mrs. Goldberg concerning the joint account.

70. Respondent failed to obtain Mrs. Goldberg's informed consent, in writing, to the essential terms of the joint account, including his role in the transaction and whether he represented her in the transaction.

71. Respondent failed to advise Mrs. Goldberg, in writing, of the advisability of seeking independent legal counsel concerning the joint account.

72. Respondent's defense to his failure to properly advise Mrs. Goldberg was that he was no longer her lawyer, and he had no duty to advise her in connection with the Rules of Professional Conduct.

73. Respondent denied that opening the joint account independently violated his duty to Mrs. Goldberg under the power-of-attorney taking the position that since he did not use any of the funds in the account for his own personal purchases there was no commingling of assets.

74. Respondent's suggestion to open the joint account with right of survivorship given the tax consequences seemingly would benefit Respondent in the long run. Any money in the joint account which was not spent would go to Respondent upon Mrs. Goldberg's death.

75. Noah Brooks is a portfolio manager and financial advisor with Wachovia Securities. He is not a lawyer.

76. Mr. Brooks has been acquainted with Respondent since 2001.

77. Mr. Brooks first met Mrs. Goldberg in November of 2004.

78. Mr. Brooks explained to Mrs. Goldberg at the time the joint account was set up that joint tenants with right of survivorship meant that each person owned 100% of the account and that if something happened to either of the persons, ownership would go to the survivor.

79. Mr. Brooks explained to Mrs. Goldberg that checks written on the account to third parties would need the signature of both registrants.

80. Mr. Brooks did not read or otherwise explain to Mrs. Goldberg any of the fine print in the application or provide any other information or advice about the ramifications of titling 90% of her assets jointly with Respondent.

81. Respondent was present at the two meetings that Mr. Brooks had with Mrs. Goldberg with respect to setting up the joint account.

82. Based upon the mailing address which appears on the statement for the joint account with Respondent, the statements were mailed to Mrs. Goldberg and Respondent at Mrs. Goldberg's assisted living facility in Shillington, Pennsylvania, from November of 2004 until December of 2006. Beginning with the statement dated January 31, 2007, all statements and other correspondence with respect to the joint account were mailed to Respondent at his home address.

83. Based upon the mailing address which appears on the statement for Mrs. Goldberg's Citizens Bank Checking Accounts, statements were mailed to her at her address through February of 2007. Beginning with statements dated March 7, 2007, statements for both accounts were mailed to Respondent at P.O. Box 249, Reading PA 19603.

84. Mrs. Goldberg's home was sold in January of 2005.

85. Respondent handled the paperwork in connection with the sale, corresponded with the buyer's attorney using his attorney letterhead and signed the deed on Mrs. Goldberg's behalf as her "attorney-in-fact."

86. Respondent's claim that Mrs. Goldberg and the buyer conducted all negotiations on the sale of the house is directly contradicted by the documentation in his file.

87. All proceeds from the sale of the house were deposited into the joint account.

88. No attorney independently advised Mrs. Goldberg about the advisability of depositing the proceeds from the sale of the home into the joint account. Respondent did not believe that Mrs. Goldberg required additional legal counsel since he claimed her new estate plan was discussed with Mr. Maynard in June of 2004 and thereafter with Mr. Brooks.

89. By February of 2005, the joint account had a balance of $632,079.62, which amounted to the bulk of Mrs. Goldberg's assets.

90. In or around January of 2007, Mrs. Goldberg asked Barbara Strause to assist her with opening her mail.

91. Ms. Strause opened the joint account statement and noticed that it was titled "JTWROS" with Respondent.

92. Ms. Strause became concerned because she understood that it meant Joint Tenant with Right of Survivorship.

93. Ms. Strause asked Mrs. Goldberg if it was her intention to make such a large gift to Respondent. Mrs. Goldberg responded "heavens no – I have a family." (N.T. 112-113)

94. Ms. Strause turned to Paul Marella, her financial consultant who is also a licensed attorney.

95. Mr. Marella in turn contacted Michael Zubey, Esquire, who was asked to meet with Mrs. Goldberg to make sure that she understood what the titling of her joint account meant, and to determine if that was what she wanted to do.

96. Mr. Zubey met with Mrs. Goldberg at the assisted living home on January 12, 2007.

97. After asking Mr. Marella and Ms. Strause to leave the room, Mr. Zubey and an associate interviewed Mrs. Goldberg. Mr. Zubey asked Mrs. Goldberg to provide him with a copy of her will. Mrs. Goldberg responded that her attorney, Respondent, had the will.

98. At the time, Mrs. Goldberg had no idea the amount of money that was in the joint account. According to documentation, at the time the account was worth in excess of $650,000.

99. Mr. Zubey discussed the joint account with Mrs. Goldberg. Mrs. Goldberg told him that she did not understand what it meant, and stated that it was not her intention for all the money in the account to go to Respondent if something happened to her.

100. Mrs. Goldberg told Mr. Zubey that she wanted her family to inherit her money.

101. After ascertaining that Mrs. Goldberg did not intend nor did she wish to hold her assets jointly with Respondent, Mr. Zubey and Mr. Marella sought to assist Mrs. Goldberg in transferring the funds held in the joint account to be held solely in her name.

102. Wachovia refused to re-title the joint account without Respondent's agreement and Respondent refused to voluntarily take his name off of the account.

103. Several days after speaking with Mrs. Goldberg, Mr. Zubey spoke with Respondent on the telephone.

104. During the course of Mr. Zubey's conversation with Respondent, Respondent acknowledged that he was currently Mrs. Goldberg's attorney.

105. Respondent refused to provide Mr. Zubey with any information pertaining to either the joint account or Mrs. Goldberg's will on the basis that both were covered by attorney-client privilege.

106. Respondent told Mr. Zubey that he was Mrs. Goldberg's attorney and he did not believe that she was competent to either retain Mr. Zubey's services or to consent to allow Respondent to discuss legal representation with Mr. Zubey.

107. Respondent refused to supply Mr. Zubey with any records and claimed he could not discuss how the account was created.

108. After that conversation, Mr. Zubey contacted Christine Sadler, Solicitor for the Berks County Office of Aging.

109. Thereafter, Mr. Zubey took no further action beyond cooperating with Office of Aging and Office of Disciplinary Counsel.

110. In January of 2007, a report was made to the Office of Aging concerning possible financial exploitation of Mrs. Goldberg.

111. The Office of Aging opened a file and assigned Christine Ciotti as the case worker.

112. The Office of Aging conducted an investigation and interviewed Respondent on March 2, 2007.

113. Ms. Sadler testified that Respondent provided inconsistent information and repeatedly changed his story during the course of the interview.

114. Ms. Ciotti testified that Respondent told different stories during the course of the interview.

115. Ms. Sadler explained to Respondent that the Office of Aging had seen the 2004 power-of-attorney, that it was their position that the joint account was inconsistent with the power-of-attorney, and she asked Respondent to remove his name from the joint account.

116. Respondent refused, stating, "It's a done deal. It was a gift. It's too late. She can't take it back." (N.T. 255)

117. Ms. Sadler persisted, telling Respondent that Mrs. Goldberg had told the Office of Aging she didn't want Respondent's name on her account, and that she signed a letter in January asking to have his name removed.

118. Respondent told Ms. Sadler, "She doesn't know what she's signing. She'll sign anything you put in front of her. " He told Ms. Sadler, "I could get her to sign a letter tomorrow agreeing that she doesn't want my name taken off the account." (N.T. 256)

119. Respondent claimed that the joint account was created for estate planning purposes.

120. When Ms. Sadler asked Respondent to explain what he meant by that, he stated that it was attorney-client privileged, that the account was changed in accordance with Mrs. Goldberg's will, which Respondent claimed went from many beneficiaries to just a few, but also stated that he could not discuss the concerns of Mrs. Goldberg's will on the grounds of attorney client privilege.

121. Despite claiming that the will was attorney-client privileged, Respondent also told the Office of Aging that he provided the will terms to Dave Maynard,

and that Mrs. Goldberg signed the will at Mr. Maynard's office, while Respondent sat in another room.

122. On April 3, 2007, Office of Aging filed a Petition in the Berks County Court of Common Pleas seeking to have Mrs. Goldberg adjudicated an incompetent person, and to have Barbara J. Strause appointed guardian of the person and Wachovia Bank, N.A. appointed the guardian of her estate.

123. Respondent, through counsel, filed a Petition to intervene on May 11, 2007, seeking to have himself and Linda Rinker, the ex-wife of Mrs. Goldberg's stepson, appointed co-guardians of Mrs. Goldberg's person and estate.

124. The Petitions concerning Mrs. Goldberg were scheduled for hearing on May 23, 2007.

125. Sometime in April of 2007, Brian Ott, Esquire, was appointed by the Orphan's Court as counsel for Mrs. Goldberg.

126. While Respondent has claimed that Mr. Maynard was Mrs. Goldberg's attorney starting in June of 2004, at no time during the guardianship proceeding did he advise the Court of Mr. Maynard's possible representation of Mrs. Goldberg.

127. At the time of the guardianship hearing, Ms. Sadler, Mr. Ott, and James Polyak, Esquire, Respondent's attorney, all appeared in chambers to speak to the Judge.

128. When Mr. Ott was initially appointed as counsel for Mrs. Goldberg, he met with representatives for the Office of Aging to obtain background information. Thereafter, Mr. Ott met with Mrs. Goldberg privately in an attempt to address the concerns that had been raised with her. Mr. Ott also met with Respondent and Mr. Polyak.

129. Prior to the hearing, Mr. Ott discussed with Respondent and Mr. Polyak a proposed resolution of the guardianship issues in order to avoid a contested hearing. The reasons provided to Mr. Ott for Respondent originally wanting to set up the joint account were inconsistent with the reasons offered by Respondent in his Answer to Petition for Discipline.

130. Under the circumstances, Mr. Ott did not find the joint account proper for Mrs. Goldberg because there were other methods of obtaining the same level of protection.

131. Mr. Ott did not believe that Respondent was an appropriate guardian of Mrs. Goldberg's estate, as he was concerned about the conflict between Respondent's position as beneficiary and the possibility of financial exploitation.

132. After a conference in chambers, the Court issued an Order dated May 30, 2007, which reflected an agreement between Respondent, Office of Aging, and Mr. Ott as representative of Mrs. Goldberg, that among other things, adjudicated Mrs. Goldberg a totally incapacitated person, appointed Wachovia Bank and Respondent guardians of the estate and appointed Adjustments, Inc, guardian of Mrs. Goldberg's person.

133. The Order required that all assets titled in joint names between Mrs. Goldberg and any other party be turned over to the exclusive possession and control of the guardians of the estate and that all ownership rights in such joint assets be held by the guardianship estate alone. Respondent complied with the Order.

134. Mrs. Goldberg died on October 3, 2008.

135. Respondent's testimony with respect to the facts and circumstances pertaining to the wills prepared in June of 2004, the new power-of-attorney, and the jointly

titled account with right of survivorship was replete with inconsistencies and lacked credibility.

136. Respondent expressed no remorse, no regret and no recognition that he engaged in any misconduct.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.1 - A lawyer shall provide competent representation to a client.

2. RPC 1.8(a) - A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client.

3. RPC 1.8(c) - A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close familial relationship.

4. RPC 8.4(a) - It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

5. Respondent did not violate Rule of Professional Conduct 1.15(c).

6. Respondent's attorney-client relationship with Mrs. Goldberg continued through the time frame of the misconduct and did not terminate at any time.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of charges against Respondent that he violated numerous Rules of Professional Conduct arising out of his representation of his client, Anne Goldberg. Three days of hearing were held, during which thousands of pages of documents were introduced into evidence. The Hearing Committee filed a 50 page Report wherein it made lengthy findings of fact and thoroughly discussed its conclusions as to the Rules violations engaged in by Respondent. Based upon its findings and conclusions, the Committee recommended that Respondent be suspended for three years.

The most critical finding made by the Committee was that Respondent continued to have an attorney-client relationship with Mrs. Goldberg throughout the events in question. This is contrary to Respondent's assertion that he no longer represented Mrs. Goldberg after June of 2004 and therefore is not liable under the Rules. Careful review of the record shows that the Committee was correct in its determination of the existence of an attorney-client relationship.

The record is clear that Respondent provided Mrs. Goldberg with no written notification that their longstanding attorney-client relationship, existing since the late 1980's, had allegedly ended. Respondent continued to act on Mrs. Goldberg's behalf, and she relied on him to provide the same types of service after June of 2004 that he provided to her prior to June of 2004.

Respondent regularly used his law firm letterhead for all of the correspondence he wrote on Mrs. Goldberg's behalf, both before and after June of 2004. In some letters, Respondent identified himself as Mrs. Goldberg's "attorney in fact" or referenced a power of attorney, but in others he did not, stating more generally that he "represents" Mrs. Goldberg. Respondent held himself out to others as Mrs. Goldberg's attorney, claiming an attorney-client privilege with respect to her last will to the Office of Aging and Michael Zubey, Esquire. As Respondent maintained an attorney-client relationship with Mrs. Goldberg, he is subject to the provisions of the Rules of Professional Conduct

Petitioner bears the burden of proving ethical misconduct by a preponderance of the evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). The record demonstrates that Petitioner met its burden of proof.

Respondent violated RPC 1.1 when he failed to provide Mrs. Goldberg with competent representation on issues pertaining to the creation of a new will, power-of-attorney, and the creation of a jointly titled account with right of survivorship which was directly contrary to the terms of the power-of-attorney.

Respondent violated RPC 1.8(a) when he entered into a business transaction and/or knowingly acquired an ownership interest adverse to Mrs. Goldberg when he became her residuary beneficiary, power-of-attorney and a joint-account owner with rights of survivorship of 90% of her assets . He did not ensure that the transactions and terms on which he acquired these interests were fair and reasonable to Mrs. Goldberg and fully disclosed and transmitted in writing. Critically, he did not advise her in writing of the

desirability of seeking advice of independent legal counsel to the transactions. He did not obtain her informed consent in a signed writing to the essential terms of the transactions and his role in the transactions, including his claim that he no longer represented her. Essentially, Respondent took none of the precautions spelled out in the Rules of Professional Conduct to safeguard such transactions.

Respondent violated RPC 1.8(c) as he was extensively involved in the preparation of Mrs. Goldberg's will which named him as a residuary beneficiary. Merely because P. David Maynard, Esquire, was involved in the actual preparation of the new will does not insulate Respondent from a finding that he engaged in unethical conduct. Mr. Maynard was not truly independent legal counsel to Mrs. Goldberg.

The facts establish that Respondent engaged Mr. Maynard, who was a friend and rented office space to Respondent, to prepare Mrs. Goldberg's will. Mr. Maynard did not enter into a separate written fee agreement with Mrs. Goldberg, nor did he meet with her prior to preparing the new will. Significantly, it was Respondent, not Mrs. Goldberg, who supplied the terms of the new will to Mr. Maynard. It was Respondent who told Mr. Maynard the specific bequests, general bequests and the executors to include in the new will. Mr. Maynard never examined Mrs. Goldberg's old will, but simply prepared the first version of a new will, in accordance with Respondent's directives. Shockingly, Mr. Maynard never spoke to Mrs. Goldberg prior to preparing the will. He never asked the crucial questions that attorneys ask clients before drawing up a will. This is obviously because Respondent had already told Mr. Maynard what he wanted put into the will. These are glaring examples of Mr. Maynard's lack of independence

Respondent violated RPC 1.8(c) with respect to Mrs. Goldberg's will and her joint account with right of survivorship in that he solicited substantial testamentary and inter vivos gifts from Mrs. Goldberg. Not only was Respondent intimately and inexplicably involved with the preparation of Mrs. Goldberg's will, which named him as a beneficiary, but he also suggested that she open the jointly titled account, with rights of survivorship.

Such gifts are considered presumptively fraudulent, and the comment to RPC 1.8(c) states that " ...due to concerns about overreaching and imposition on a client, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit." Further, "If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, the client should have the detached advice that another lawyer can provide." As explained above, Respondent and Mrs. Goldberg had an attorney-client relationship, and as the facts bear out; no detached advice was given as to the preparation of the will, power of attorney, or the formation of the joint account.

Respondent violated RPC 8.4(a) when he engaged Attorney Maynard to act as the scrivener of Mrs. Goldberg's will, and thus violated the Rules through the acts of another. As detailed above, Respondent used the services of Mr. Maynard to write a will wherein Respondent himself supplied the contents of the document.

Respondent testified on his own behalf at the hearing. The Hearing Committee made a determination that Respondent's testimony lacked credibility. This is fully substantiated by the evidence of record, including numerous inconsistent positions, claims and statements made by Respondent. For example, Respondent's repeated claim during the hearing that he told Mrs. Goldberg he was no longer her lawyer and that she understood that fact was directly contradicted by his admission to the Office of Aging that

he had no idea whether Mrs. Goldberg considered him to be her lawyer. Also, Respondent's claim that the attorney-client relationship between him and Mrs. Goldberg ceased in June of 2004 is contradicted by his admission to Michael Zubey in 2007 that he was currently Mrs. Goldberg's lawyer. In Respondent's Answer to Petition for Discipline, he said that he suggested the joint account to Mrs. Goldberg, then claimed in his testimony at the hearing that Mrs. Goldberg suggested the joint account. There are many instances like this in the record.

The Committee has recommended a suspension of three years, Petitioner has recommended a suspension for at least three years, and Respondent asserts that the Petition for Discipline should be dismissed. Barring that possibility, Respondent suggests a sanction of no more than public censure.

The Supreme Court imposed a five year suspension on an attorney in a matter involving a conflict of interest. Office of Disciplinary Counsel v. John Francis Murphy, 18 DB 2004, 1086 Disciplinary Docket No. 3 (Pa. Feb. 7, 2006). After obtaining a discharge in bankruptcy for his clients, Mr. Murphy purchased a junior mortgage on the property, foreclosed on that mortgage, and evicted his clients from the property, after which he sold the land at a profit. Mr. Murphy acquired an ownership interest adverse to his clients by acquiring the second mortgage. The clients were unsophisticated with little knowledge of real estate transactions, and believed that Mr. Murphy continued to represent their interests throughout the proceedings. Mr. Murphy claimed there was no attorney-client relationship at the time he took these adverse actions, but the evidence proved otherwise. At the time of his misconduct, Mr. Murphy had been practicing law for 30 years with no record of discipline.

There is no reason to treat Respondent differently than Mr. Murphy. Respondent saw an opportunity and took advantage of his elderly client. He has refused to admit any wrongdoing or show remorse, and seems to have little recognition of the implications of his actions. Even though Respondent has practiced law since 1978 and has an unblemished record, the Board finds that Respondent is unfit to practice law.

The Board recommends that Respondent be suspended from the practice of law for a period of five years.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Jeffrey J. Howell, be Suspended from the practice of law for a period of five years.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: _____
Stewart L. Cohen, Board Member

Date: July 23, 2010