

VIRGINIA :

BEFORE THE THREE-JUDGE COURT PRESIDING
IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

VIRGINIA STATE BAR, ex rel.
FIFTH DISTRICT COMMITTEE SECTION I,

Complainant/Petitioner,

v.

Case No. 2216~~7~~⁸1
681

KENNETH R. WEINER, ESQUIRE,

Respondent.

ORDER

This matter came before the Three-Judge Court empaneled by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to §54.1-3935 of the 1950 Code of Virginia, as amended. An endorsed Agreed Disposition, dated the 16th day of September, 2004, was tendered by the parties, and was considered by the Three-Judge Court, consisting of the Honorable James E. Kulp and H. Selwyn Smith, retired Judges of the Fourteenth and Thirty-First Judicial Circuits, respectively, and by the Honorable Ann Hunter Simpson, Judge of the Fifteenth Judicial Circuit and Chief Judge of the Three-Judge Court.

Having considered the Agreed Disposition, it is the decision of the Three-Judge Court that the Agreed Disposition be accepted, and said Court finds by clear and convincing evidence as follows:

1. At all times relevant hereto, Kenneth R. Weiner, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Sometime prior to May 22, 2000, Mr. Weiner met with a client who explained that she (“WIFE”) and her husband (“HUSBAND”) were contemplating divorce. She stated that she and her husband were agreed as to the distribution of their property. Mr. Weiner agreed to prepare a property settlement agreement (the “PSA”) reflecting the distribution as stated by the wife, and told WIFE to furnish him with a list of property and directions for its distribution.

3. WIFE agreed to pay Mr. Weiner’s entire fee, but Mr. Weiner told her she should not have to pay the entire fee; rather, it should be divided equally between her and her husband. Accordingly, Mr. Weiner gave WIFE a Retainer Agreement reciting that each would pay one thousand two hundred fifty dollars (\$1,250.00) towards his fee for preparing the PSA and for preparing a Will for each. The Retainer Agreement also identified WIFE and HUSBAND as Clients.

4. WIFE took the Retainer Agreement, presented it to HUSBAND, and each signed the Retainer Agreement on May 22, 2000. WIFE then returned the Retainer Agreement, along with a handwritten list for the distribution of property, to Mr. Weiner. Mr. Weiner countersigned the Retainer Agreement on May 23, 2000 and assigned the task of drafting the PSA to an associate attorney in his office. The associate attorney prepared the PSA, telephoned WIFE that it was ready, and WIFE came to the office to pick up the PSA.

5. WIFE and HUSBAND reviewed the PSA together and on June 6, 2000, drove to a local bank, where they signed the PSA before a Notary Public.

6. Mr. Weiner offered no advice to either WIFE or HUSBAND regarding the terms of the PSA. Mr. Weiner did not discuss with, or advise, HUSBAND of any potential conflict of interest that might exist by virtue of Mr. Weiner preparing the PSA.

7. Mr. Weiner also had one of his associates prepare wills for HUSBAND and WIFE which they signed at Mr. Weiner’s office on June 16, 2000.

8. On August 8, 2000, HUSBAND, by counsel, filed a motion in the Circuit Court of Fairfax County, to have the property settlement agreement set aside. Following a hearing, the Court ruled that the Property Settlement Agreement was unconscionable and unenforceable.

THE THREE-JUDGE COURT finds by clear and convincing evidence that such conduct on the part of the Respondent, Kenneth R. Weiner, Esquire, constitutes a violation of the following Rule of Professional Conduct:

RULE 1.7 Conflict of Interest: General Rule

- (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another existing client, unless:
 - (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
 - (2) each client consents after consultation.
- (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
 - (1) the lawyer reasonably believes the representation will not be adversely affected; and
 - (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

UPON CONSIDERATION WHEREOF, the Three-Judge Court hereby ORDERS that the Respondent shall receive a PUBLIC REPRIMAND.

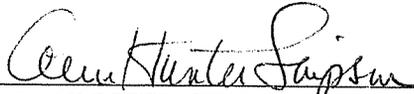
It is further ORDERED that, pursuant to The Rules of the Supreme Court of Virginia, Pt. 6, § IV, ¶ 13, B(8)(c)(1), the Clerk of the Disciplinary System shall assess costs against the Respondent.

It is further ORDERED that four (4) copies of this Order be certified by the Clerk of the Circuit Court of Fairfax County, Virginia, and be thereafter mailed to the Clerk of the

Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, VA 23219-2800, for further service upon the Respondent and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.

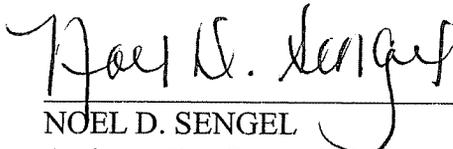
ENTERED this 6th day of October, 2004.

FOR THE THREE-JUDGE COURT:

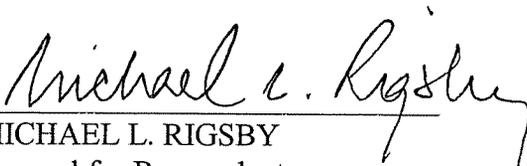


ANN HUNTER SIMPSON
Chief Judge of Three-Judge Court

WE ASK FOR THIS:



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ACCOMPLISHED
Jury R. Oliver
10-27-04