PRACTICE TIPS

ETHICS & PROFESSIONAL RESPONSIBILITY

Inappropriate Behavior in Your Law Firm Can Result in Discipline

By Bonnie Frost
Einhorn, Barbarito, Frost, Botwinick, Nunn & Musmanno, PC

Most times when one thinks about whether a lawyer has committed an ethical lapse, one thinks about their relationship with clients. But a lawyer can be disciplined by the Supreme Court because of their relationship with their law firm.

Several recent cases demonstrate that there are two kinds of behavior relating to a lawyer's relationship with a law firm which can result in sanctions—misappropriating law firm funds and performing outside work without the law firm's knowledge.

Misappropriating Law Firm Funds

In re Steven Seigel stands for the proposition that if one steals from one's partners, they will be disbarred.[1] Siegel was a partner in a large law firm who, over a period of three years, improperly charged $25,000 in false expense requests for his personal use on 34 separate occasions. He paid his personal tennis club fees, purchased theater tickets and sports memorabilia, paid for his home's landscaping and for his mother-in-law's mortgage. He also disbursed to himself $53,450 that belonged to the law firm claiming it was a gift from a client without seeking approval to accept the gift. In a 6–3 decision, the Disciplinary Review Board recommended a three-year suspension with the dissent recommending disbarment. The Supreme Court ruled that Siegel's repeated deception compelled disbarment because a lawyer who "for personal gain willfully defrauds a client and one who for the same untoward purpose defrauds his or her partners"[2] must be disbarred. In the Board's decision, it stated that a partnership relationship requires "reliance, confidence and trust," qualities Siegel did not demonstrate.[3] The inescapable conclusion is that the misappropriation of funds from one's law firm' s partners is as wrong as misappropriating a client's money.

Misappropriating law firm funds can result in disbarment for associates as well as members of a law partnership.

In the Matter of Daniel A. Frischberg, Frischberg was an associate who had been permitted to use the law firm's credit card for legitimate law firm expenses.[4] Frischberg charged $43,691 in total

on the law firm's credit card in Amazon purchases which he represented to the bookkeeper were for law firm related expenses. Contrary to that representation, he purchased "game coin packs" with Amazon using the firm's credit card. During the ethics proceedings, Frischberg stipulated that $16,755 of the $43,691 was not for law firm purchases. Although he was not charged, he admitted he committed a third-degree crime of fraudulent use of a credit card in violation of N.J.S.A. 2C-21-6(h). Frischberg promised to repay the law firm the $16,775 he admitted he took, but he failed to do so.

Frischberg was charged with violating *RPC* 8.4 (b) (committing a criminal act which reflects adversely on a lawyer's honesty, truthfulness or fitness as a lawyer) and (c) (engaging in conduct involving dishonesty, fraud deceit or misrepresentation). It bears noting that he was also charged with failing to cooperate with disciplinary authorities under *RPC* 8.1(b) because he refused to provide the Office of Attorney Ethics (OAE) with his Amazon credentials without which the OAE could not corroborate his self-created spread sheet which he asserted represented his impermissible charges of $43,691.

Of note, Frischberg mounted defenses which did not persuade the Disciplinary Review Board to reduce its recommended sanction. He argued that he suffered from a mental illness including a gambling habit for which for he had sought treatment both of which excused his ability to act ethically. The Board stated that even though "compulsive behavior may lead to misconduct, [we] will not allow the public to go unprotected," citing *In re Bock*, 128 N.J. 270, 273 (1992).[5]

In the final analysis, Frischberg's misappropriation of law firm funds for his personal use warranted disbarment.

Outside Work

Taking on outside work for oneself might seem, on the surface, like a benign thing to do but cases demonstrate that lawyers who do so without the knowledge of their firm can be treated by the ethics system as if they misappropriated law firm funds.

William Kelly[6] was a non-equity partner in a large firm who performed legal services "outside" the firm without the firm's knowledge. He did not open his "outside work" files at the firm, bypassed the firm's conflict procedures, and generated invoices on the firm's letterhead. He misrepresented to the court in a verified answer to a complaint that the law firm represented the client and that he was acting under its auspices. He issued several discovery demands under the law firm's name and wrote to government entities on the firm's letterhead. When clients made out checks to the law firm, he returned them and asked clients to pay him directly. He communicated with his "outside" clients by phone or via his personal email to hide his "outside" work and kept $11,415 from his "outside work" for his personal use.

To mitigate his behavior, Kelly argued that he was compelled to pursue "outside work" to meet his support obligations from his divorce because the law firm had reduced his salary in 2019 and 2020. Kelly did not have a written employment agreement with the firm, nor did the firm have a policy about "outside work" without firm authorization. The firm did not seek to recover the money, and he had an unblemished record since his admission in 2005. Kelly had a lapse in sobriety in 2021 and since that time had been living in a sober house, regularly attending AA meetings. The Office of Attorney Ethics asked for disbarment. The Disciplinary Review Board recommended a three-year suspension based on compelling mitigation, but the Supreme Court disagreed and imposed a two-year suspension.

In the Matter of Stephen Lankenau,[7] the lawyer's behavior was different than that of Kelly. Lankenau was an associate who had a fee sharing agreement with Lundy Law. The law firm only took personal injury cases and turned away cases which were nearing the statute of limitations. Those cases which the law firm turned away were the ones which Lankenau worked on as "outside work" as Lundy Law "would not have accepted them."[8] He filed litigation under his own name using his Delaware Attorney ID number and kept fees of $6,444.45 from those cases for himself without the knowledge of the law firm. The Disciplinary Review Board did not minimize the seriousness of Lankenau's misuse of firm funds as an ethics violation but determined his behavior did not rise to the level of disbarment within the meaning of *In re Wilson.*[9] It stated that a "New Jersey lawyer is subject to mandatory disbarment in a 'knowing misappropriation' case where the misappropriations violated a fiduciary duty to a client, to an escrow beneficiary or to a fellow law partner."[10] Here, Lankenau did not take the money of a client nor did he have a fiduciary duty to any partners. His behavior in mitigation was significant, however. He admitted his misconduct to the senior partner of Lundy Law. He reimbursed the law firm $900 for filing fees he charged to the law firm's court account, and he repaid the law firm, in full, the sum of $6,444.45 without the law firm asking to be repaid. In analyzing the discipline to be imposed, the Disciplinary Review Board stated that while his behavior was a serious infraction of the Rules of Professional Conduct, his behavior did not rise to the level which warranted disbarment for life as recommended by the dissent. The Supreme Court imposed a two-year suspension.

Endnotes

1. *In the Matter of Steven G. Siegel*, 133 N.J. 162, 168 (1993)
2. *Attorney Grievance Commission of Maryland v. Nothstein*, 300 Md. 667 (1984)
3. *Siegel*, 133 N.J. at 167
4. *In the Matter of Daniel A. Frischberg*, DRB 24-064 (January 6,2025).
5. *In re Bock*, 128 N.J. 270, 273 (1992)
6. *In re William Kelly*, DRB 24-140 (February 11. 2025).
7. *In the Matter of Steven Lankenau*, DRB 16-442 (June 19, 2008)
8. *Id.*
9. *In re Wilson*, 81 N.J. 451 161 (1979)
10. *Lankenau* at DRB 16-442 p.27

WRITER'S CORNER

The Art of the Pivot: Transitions That Work

By Veronica J. Finkelstein
Litigative Consultant, U.S. Attorney's Office, Eastern District of Pennsylvania

Legal writing is often criticized for its formulaic nature and its tendency toward terseness. In many law school classrooms, students are taught to favor the active voice, to strip away archaic legalese, and to organize their arguments with mechanical precision. These are valuable lessons. After all, clarity, conciseness, and logical structure are essential tools for any legal communicator. Yet, in the pursuit of technical correctness, legal writing can begin to resemble a construction project: a series of rigidly stacked argument blocks, each carefully aligned but devoid of connection.