GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,
v
GERALD F. DOHERTY,
Respondent/Appellee.

File No. DP 153/84

Decided: September 30, 1986

OPINION OF THE BOARD

In May 1979 and again in July 1980, the Respondent drafted wills for client Charles Barnhart naming the Respondent and his wife the sole beneficiaries. A revocable living trust was drafted for the client by the Respondent later in 1980 and that Document also named the Respondent and his wife as beneficiaries upon Mr. Barnhart's death.

The Formal Complaint filed by the Grievance Administrator charged that the Respondent committed professional misconduct in drafting these instruments. Following a hearing on the merits, the Hearing Panel dismissed the Formal Complaint. We hereby affirm the Hearing Panel's decision that no discipline be imposed in this case. We issue this opinion; however, to reemphasize the prior ruling of this Board that such a practice cannot be condoned and, in the absence of exceptional circumstances, will result in professional discipline.

In an opinion issued by this Board July 18, 1983, we discussed the extenuating circumstances surrounding respondent's drafting a will naming himself as beneficiary. While no discipline was imposed in that case, the opinion issued by the Board for the advice and guidance of the Bar closed with the admonition that:

> "[We] hereby place the Bar on notice that without a substantial showing of exceptional circumstances, the lawyer who drafts a will naming himself as a beneficiary may be guilty of misconduct under the general provisions of GCR 1963, 953(1)(2) [MCR 9.104(1)(2)] Canon 1 DR 1-102(A)(5)(6) and/or Canon 7 DR 7-101(A)(3)", In the Matter of Robert H. Watson, Jr., ADB File No. DP 209/82, July 18, 1983 (application for leave to appeal - denied January 30, 1984 S.Ct. #72249)

In the instant case, the Hearing Panel declined to weigh the Respondent's conduct in 1979 and 1980 against the standards discussed by the Board in 1983 in Watson. The Panel properly ruled that our warning to the Bar in Watson could not be applied retroactively to this Respondent but determined that the Respondent's admitted drafting of wills naming himself as beneficiary did create a presumption of undue influence which the Respondent was obligated to overcome. We affirm the Panel's conclusion that the Respondent did overcome that presumption in this case, but emphasize,

as did the Panel, that such a conclusion does not carry with it our endorsement of Respondent's conduct.

In our discussion in Watson, we noted that the Michigan Supreme Court has warned the legal profession against the practice charged in that case as well as in the instant matter.

> "Although there is no statute to invalidate a bequest to a scrivener, [it is] generally recognized by the profession as contrary to the spirit of its code of ethics for a lawyer to draft a will making dispositions of property in his favor, and this Court has held that such dispositions are properly looked upon with suspicions, Abrey v Duffield, 149 Mich 248, 259; 112 NW2d 936, 940 (1907)."

[See also In the Estate of Karabatian, 17 Mich App 541; 170 NW2d 166 (1960); In re: Powers Estate, 375 Mich 150; 134 NW2d 148 (1965)]

Recognizing that the Court's views expressed in Abrey the cases cited above were not rendered in professional disciplinary proceedings, we issued a specific warning to the Bar in Watson that "a lawyer who drafts a will naming himself as a beneficiary commits professional misconduct . . . unless he or she can demonstrate particularly exceptional circumstances which make such conduct acceptable". The Board's views on that subject have not changed.

Chairperson Patrick J. Keating, Vice Chairperson Martin Doctoroff, Board Secretary Charles C. Vincent, M.D., and Members Robert S. Harrison, Hanley M. Gurwin, Remona A. Green and Odessa Komer Concur.