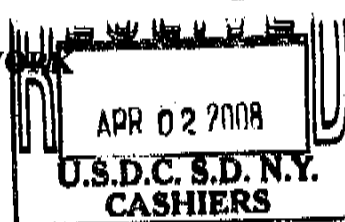


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08 CV 3305

UNITED STATE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Case No. _____-CIV-_____ -



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PAMELA CARVEL,
Plaintiff,

-against-

**COMPLAINT
JURY TRIAL
DEMANDED**

NEW YORK STATE;
OFFICE OF COURT ADMINISTRATION OF THE UNIFIED COURT SYSTEM;
THOMAS J. CAHILL, in his official and individual capacity;
SHERRY M. COHEN, in her official and individual capacity;
EVE MARKEWICH, individually and as a partner of BLANK ROME LLP;
FRANK STRENG, individually and as a partner of McCARTHY FINGAR LLP
and
JOHN/ JANE DOE, DOE CO. 1-20,
Defendants.

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PLAINTIFF Pamela Carvel, appearing *pro se*, as and for her Complaint against the above captioned defendants, under penalty of perjury alleges upon knowledge as to her own facts and upon information and belief as to all other matters:

PRELIMINARY STATEMENT

1. This is a civil action seeking injunctive relief, monetary relief including past and ongoing economic loss, compensatory and punitive damages, disbursements, costs and fees for violations of rights, brought pursuant to 42 U.S.C. §§ 1981, 1983; the First, and Fourteenth Amendments to the United States Constitution; and State law claims.

2. Plaintiff alleges that all of the above-captioned Defendants wantonly, recklessly, knowingly and purposefully, acting individually and in conspiracy with each other, sought to deprive Plaintiff of her legal claims, status, and money, through a pattern of violating Plaintiff's

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guaranteed and constitutional rights, intimidation, misrepresentation, misinformation, fraud, manipulation of laws, rules, and regulations and for various other reasons.

3. Plaintiff brings claims against Eve Markewich (hereinafter "Markewich" in her individual capacity and in her capacity as responsible partner of Blank Rome LLP at time relevant herein) and Frank Streng (hereinafter "Streng" in his individual capacity and in his capacity as managing partner of McCarthy Fingar LLP) for fraud, fraudulent transfers, harassment, breach of contract, and breach of fiduciary duties.

4. Plaintiff alleges that for profit and benefit to themselves and others defendants Markewich and Streng sought/seek to deprive Plaintiff of equal rights to all other fiduciaries in Carvel matters, through a pattern of intimidation, extortion, retaliation, character assassination, and obstructing Plaintiff's business opportunities, money, and position, because of Plaintiff's demand for equal treatment and honest services through her "whistle-blowing", reporting of misconduct, assisting law enforcement, and her exercise of her free speech rights on matters of public concern, on her own behalf, on behalf of the Carvels and their charities, and on behalf of other women (primarily widows) who have been similarly victimized in estate and trust matters by these same lawyers and other lawyers.

5. Said acts were done knowingly (from letters and complaints) with the consent and condonation of Defendants: New York State ("State"); Office of Court Administration of the Unified Court System, New York State Supreme Court, Appellate Division, First Judicial Department Disciplinary Committee ("OCA"); Thomas J. Cahill ("Cahill") in his official and individual capacity, Sherry K. Cohen ("Cohen") in her official and individual capacity; Eve Markewich in her individual capacity and as responsible partner for Blank Rome LLP ("Blank

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Rome”); Frank Streng in his individual capacity and as managing partner for McCarthy Fingar LLP (“McCarthy Fingar”).

6. Plaintiff is aware of four related pending cases against the New York State Office of Court Administration of the Unified Court System concerning, *inter alia*, “white-washing” and covering-up of complaints against certain select attorneys and other state employees for “political reasons.”

7. At all times relevant, the defendants, individually and in concert with each other, acted to “white-wash”, cover-up, and otherwise conceal various improper actions devised to prevent the rightful return of over \$250 million stolen from Plaintiff individually and as fiduciary, from Thomas and Agnes Carvel and their successors in interest, and from Carvel founded and funded corporations including charities. These offenses additionally resulted in subsequent tax fraud and charity fraud against the People and Government of New York and the United States.

JURISDICTION AND VENUE

8. Jurisdiction of this Court is invoked under 28 U.S.C. §1331, 28 U.S.C. §§1343(3) and (4), and the First and Fourteenth Amendments to the United States Constitution. Pendent jurisdiction over Plaintiff’s state law claims is proper pursuant to 28 U.S.C. §1367.

9. This Court has jurisdiction pursuant to 42 U.S.C. §1981, 1983, because defendant New York State is a “state actor” within the meaning of §1983; and the Offices of Court Administration of the Unified Court System, New York State Supreme Court Appellate Division, First Department, Departmental Disciplinary Committee is an arm of New York State and are “state actors” within the meaning of § 1983.

10. Venue herein is proper under 28 U.S.C. § 1391(b); the causes of action arose in the Southern District of New York, all of the parties reside in, or worked at all times relevant, in the

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State of New York, and because the events or omissions giving rise to plaintiff's claims occurred in this judicial district.

THE PARTIES

11. At all times relevant in this Complaint, Plaintiff is an individual and fiduciary who retained defendants Frank Streng, Eve Markewich, and others for matters occurring in, or before courts within, the Southern District of New York. Plaintiff sought redress of grievances through New York State governmental agencies charged by law and the People with the protection of Citizens' rights and enforcement of ethical standards for legal professionals. Plaintiff is now compelled to appear *pro se* as a result of unethical acts by all defendants as individuals; by collusion between Markewich and Streng to "milk" Pamela as "cash-cow" and to collude with the Carvels' adversaries to withhold ALL funds from the Carvels as fiduciaries, creditors, and asset owners; and by other violations of Plaintiff's rights by defendants. At all relevant times, Plaintiff was complainant and witness to the various grievance complaints in the Southern District of New York contained herein.

12. At all times relevant to this Complaint, defendant New York State (hereinafter "State") is a sovereign state of the United States of America. At all times relevant herein, defendant State was an employer within the meaning of the Constitution of the State of New York and was a governmental entity acting under color of the laws, statutes, ordinances, regulations, policies, customs and usages of New York State.

13. At all times relevant to this Complaint, defendant Office of Court Administration of the United Court System, New York State Supreme Court Appellate Division, First Department, Departmental Disciplinary Committee (hereinafter "OCA") are and were at all relevant times governmental entities created by and authorized under the laws of the State of New York. At all

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times relevant herein, defendant OCA was a governmental entity acting under color of the laws, statutes, ordinances, regulations, policies, customs and usages of the New York State.

14. At all times relevant to this Complaint, defendant Thomas J. Cahill (hereinafter "Cahill"), sued here in his official and individual capacity, is an attorney, who, upon information and belief, resides in the State of Connecticut. At all times relevant herein, defendant Cahill was employed by OCA as Chief Counsel for the Departmental Disciplinary Committee ("DDC"); was a policy maker for administrative and employment-related matters at the DDC; and was an employer within the meaning of the Constitution of the State of New York.

15. At all times relevant to this Complaint defendant Sherry Cohen (hereinafter "Cohen"), sued in her official and individual capacity, was upon information and belief, a citizen of the United States, residing in the State of New York. At all times relevant herein, defendant Cohen was employed by OCA as a DDC supervising attorney.

16. At all times relevant to this Complaint, defendant EVE MARKEWICH (hereinafter "Markewich"), is a lawyer who resides and practices in the Southern District of New York, and whose current business address is 8 East 41 Street, New York, New York 10017; and who during all relevant times was partner of Blank Rome LLP, a domestic professional service limited liability partnership, providing legal services to the public.

17. At all times relevant to this Complaint, defendant FRANK STRENG (hereinafter "Streng") is a lawyer who resides and practices in the Southern District of New York, and who is managing partner in McCarthy Fingar LLP, a domestic professional service limited liability partnership, providing legal services to the public, located at 11 Martine Avenue, White Plains, New York 10606-1934.

FACTUAL BACKGROUND

18. Thomas Carvel was renowned for the "Carvel" soft ice cream franchise system and his genius for in-house advertisements for "Carvel" products. "Carvel" innovations and advertisements are archived at the Smithsonian Institution's National Museum of American History. Tom's wife, Agnes, invested her time and money in the couples' joint business ventures that became the Carvel franchise systems. Agnes worked in every aspect of the business. Tom relied on Agnes' incomparable common sense approach to business problems to run the business for over 50 years. Bruce Carvel, Tom's older brother and Pamela's father, designed and built the first continuous soft ice cream freezers that became the Carvel franchise trademark. Bruce formulated the products that comprised the unique Carvel line of specialties. **Only the Carvels are denied benefit from the Carvels' life's work.**

19. On information and belief, the week before Thomas Carvel was found dead (in what are now identified as suspicious circumstances), Tom stated the Carvel family assets exceeded \$250 million. On information and belief, on Saturday, October 20, 1990, Tom unfortunately told the wrong people that on Monday he was firing his secretary Mildred Arcadipane, his lawyer Robert Davis, and that Tom was commencing investigations with his niece, Pamela, (a fraud investigator) into collusion between his employees and attorneys (collectively "employees") with "Investcorp", so-called "investment bankers" for Arab money that bought the stock of Carvel Corp. (the soft ice cream franchise system) on November 21, 1989.

20. Tom's alleged Last Will was stolen and concealed for six months, leaving the secretary, the attorney, and other usurpers in control by alleging to be corporate officers, directors and trustees, without any challenge to their power. Agnes as shareholder, officer, director, and assets owner, was not given notice of any of the culprits' acts. When an estate was eventually

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created at the end of February 1991, the only records to remain were altered or forged. Most records (personal and business) were stolen or destroyed.

21. On information and belief, Tom asserted that his employees' collusion resulted in the theft of over \$100,000,000 from the sale of the Carvels' jointly owned stock for Carvel Corp. (apparently substantiated by Pamela's subsequent investigations). Pamela was working in China as a fraud investigator for an Australian joint venture when her uncle, Tom, asked her to return home to assist him. Pamela didn't get back soon enough.

22. On October 21, 1990, the day Pamela left China, Tom was found dead at his home in Dutchess County, New York. On information and belief, Tom was found dead in bed, 11 months to the day after selling jointly owned Carvel Corp. stock, and the day before he was going to fire employees and beginning embezzlement investigations. Tom had an ominous premonition that his life would be cut short. Instead on being unemployed on Monday, October 22, the secretary and attorney were in complete control of everything the Carvels ever earned or owned for over 50 years – to the exclusion of Agnes Carvel and all other Carvel family!

23. Pamela recently discovered that Tom's death certificate was falsified to evade autopsy. The time of date was false. The date last seen by a doctor was false. No doctor ever determined the alleged "natural" cause of death. No doctor ever did so little as examine the body. The alleged certifying doctor, Dr. Athans, never saw Tom's body; never filled out the death certificate; never signed the death certificate! Dr. Athans' stated he never saw Tom unless there was a problem. Dr. Athans had not seen Tom for about a year before his death, and certainly not on October 19, 1990 as alleged by the death certificate. **The significant questions remains: Why totally falsify the death certificate if Tom really died of a "natural cause"???** Tom's possible murder-for-profit adds a new twist to the existing estate, trust, corporate, and tax frauds exceeding

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\$300 million, and that also caused the definite felony murder of Agnes Carvel by deliberately inflicted stress.

24. On information and belief, the week before he died Tom estimated the family wealth to be over \$250 million in jointly owned cash, real estate, and U.S. Treasury securities. On information and belief, the week after Tom was found dead, Agnes was told by a total stranger, lawyer Malcolm Wilson (partner in the law firm of Kent Hazzard et al), that there was less than \$40 million and that virtually none of it belonged to Agnes (although Agnes and Pamela knew everything was intentionally owned jointly with rights of survivorship to avoid probate).

25. Undisclosed and unbeknownst to Agnes, Wilson already purportedly became the "general counsel" to the alleged Thomas and Agnes Carvel Foundation, without Agnes' knowledge or consent as sole surviving Member, Director and Officer of the legitimate Thomas and Agnes Carvel Foundation. All Foundation records were stolen from the Carvels' home and business offices only to remerge in Wilson's office six months later riddled with forgeries and inconsistencies. The criminality against the Carvels by Wilson and his foundation-usurping clients progressed and increased exponentially from October 1990.

26. Agnes became mere chattel of Tom's estate thanks to the manipulations of the secretary, the attorney, and a ring of Westchester politicians including Wilson's law firm and the owners of Hudson Valley Bank, who forged and destroyed personal and corporate business documents and banking records. On information and belief, for personal profit and use of the "Carvel" name the culprits forged and destroyed documents to usurp the identity of the Thomas and Agnes Carvel Foundation and other Carvel founded and funded charities, as well as all entities controlling Agnes' money.

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27. Although Agnes was the sole beneficiary, NOT ONE PENNY was ever paid to Agnes from Tom's estate in the eight years she survived as widow. As fiduciaries, only Agnes and Pamela were deprived of payment of income, legal fees, and estate administrative expenses. Only the Carvels are denied benefit of the bounty from the Carvels' life's work. Over \$200 million "disappeared" while in the hands of attorneys and alleged fiduciaries acting as executors, trustees, corporate and charity officers and directors, with evidence of bank fraud and conversion.

28. As soon as Agnes and Pamela began to fight back with the assistance of the New York State Attorney General, Agnes was cut off from all sources of income. The foundation usurpers feared of losing control of misappropriated Carvel name and assets as stated in the foundation memo written on February 18, 1992 in the midst of the Attorney General's charity fraud investigations. The memo states that removing and discrediting lawyer Robert Davis and secretary Mildred Arcadipane **"provides family with opportunity to assume control of Foundation, Estate and Agnes' assets"** (Appendix A-1). Nothing could more clearly demonstrate the longstanding criminal intent to steal ALL Carvel assets and defraud the Carvels' legitimate charitable intentions. The Carvels' restricted donations, intended solely for the benefit of charity, became a slush fund and lawyers' annuity to perpetuate the cover-up of the theft of the Carvels' good name and assets.

29. Plaintiff found out years later that this conversion scheme was hatched around 1982 to steal control of all Carvel property by deceit, whether Tom and Agnes lived or died, by forcing Thomas Carvel into an "estate plan" to sell Carvel Corp. for cash and then divert the cash and control of all Carvel assets into the hands of the fraudsters. By legal and illegal means the secretary Arcadipane and attorney Davis became fiduciaries controlling everything. The duo illegally diverted every asset to their ultimate control by forging some documents and destroying others.

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Instead of being the surviving joint owner of 50 years' life partnership with Tom, Agnes was told she owned virtually nothing.

30. In the eight years Agnes survived Tom, as the sole income beneficiary of his estate purported to be less than \$40,000,000, **AGNES NEVER RECEIVE ONE PENNY** from Tom's estate or from stolen corporations and triple-net income producing real estate, in violation of the terms of Tom's alleged Last Will, thereby creating tax fraud by the fraudulent elections of QTIP and marital deductions (I.R.C. 2056, 2523; 18 U.S.C. Sec. 371, 641; 26 U.S.C. Sec. 7201 et seq).

31. On August 4, 1998, Agnes' death from stroke was procured deliberately by stress from the fraudsters who own Hudson Valley Bank and who stole control by forgery of charities that the Carvels founded and funded. Agnes' death was to silence Agnes' accusations against those politicians who may have conspired with defendants in the theft and conversion of Carvel assets, and the possible murder of Tom.

32. The unethical, if not illegal, tactics used by Wilson and his cohorts against Agnes are detailed (albeit anonymously) in the February 14, 2005 New York Law Journal article by lawyer Eve Markewich, "Getting Grounded in Ethical Dilemmas" (Appendix A-3). Markewich (whose firm Blank Rome was hired by executrix Pamela Carvel for Agnes Carvel's United Kingdom estate's interests in New York) failed to bring this information about unethical acts to Pamela's attention. With intimate knowledge of these unethical offenses, Markewich failed to assert any claims on behalf of Agnes or Pamela Carvel because Markewich entered into covert agreements with Wilson's clients, the foundation usurpers, agreeing that Markewich would receive \$3-4 million in legal fees without contest as long as Markewich obstructed all money from reaching Pamela or Agnes Carvel's estate in London, England. This incredible revelation of an illicit covert agreement was disclosed to Pamela by Leonard Ross (hereinafter "Ross"), New York

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ancillary administrator, when pressed for the reasons why Ross and Markewich refused to assert any demands for payment of Agnes' funeral expenses, debts and the executor's administrative expenses or the full value of claims against the Carvels' adversaries.

33. All this information about unethical acts was also known to lawyer Frank Streng (whose firm McCarthy Fingar was hired by Pamela Carvel as executrix and sole adjudicated Member of the Thomas and Agnes Carvel Foundation). McCarthy Fingar was hired to take action against the foundation usurpers abuses after Markewich reneged on her representation, to fully assert the Estate's interest, and to oppose Markewich's covert deals against Plaintiff and the Estate.

34. Frank Streng entered the picture only when the matters in Thomas Carvel's estate were going to trial before Surrogate Anthony Scarpino. Surrogate Scarpino failed to disclose a strong appearance of bribery through about \$400,000 in "loans" from Hudson Valley Bank, the Carvels' adversaries appearing before him -- the same foundation usurpers who own Hudson Valley Bank. On information and belief, Anthony Scarpino was given an undisclosed \$100,000 "loan" by Hudson Valley Bank prior to taking office. Neither Surrogate Scarpino, nor Markewich, nor Streng revealed to Plaintiff that the Carvels' adversaries who own Hudson Valley Bank gave Surrogate Scarpino another \$200,000 "loan" in October 2001 to coincided with commencement of the first trials in Thomas Carvel's estate. Neither Surrogate Scarpino, nor Markewich, nor Streng revealed yet another \$100,000 "loan" in December 2004 was given to Surrogate Scarpino by the Carvels' adversaries just prior to the commencement of trials in Agnes Carvel's estate.

35. Surrogate Scarpino also failed to disclose that Streng was employed as the Surrogate's advisor in a "transition committee" from Supreme Court to Surrogate's Court. Plaintiff later discovered that Streng openly advertised on the Internet that he maintained a close relationship with Surrogate Scarpino. Neither Surrogate Scarpino nor Streng disclosed in open

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court these two very obvious conflicts of interest, even after Surrogate Scarpino was compelled to recuse himself by Kevin McKeown because of Streng's appearance in the Estate of Margaret McKeown.

36. Streng withdrew McCarthy Fingar as Pamela's counsel when Streng refused to oppose Ross' ancillary accounting or Ross and Markewich's fee applications. Streng alleged he acquired a "conflict of interest" favoring Markewich and Ross against Plaintiff, his client, and would not oppose Ross and Markewich's fees. Streng made a motion to withdraw McCarthy Fingar from representing Plaintiff the day before a response opposing the accounting and fees was due, leaving Plaintiff without professional legal counsel and also without funds because of Streng's failure to reimburse Plaintiff for approximately \$900,000 cash advances.

37. Despite Surrogate Scarpino's previous recusal because of Streng in the McKeown case, Surrogate Scarpino refused to recuse himself from hearing Streng's motion to withdraw. Surrogate Scarpino also denied responsibility over Streng's unethical behavior and refusal to refund cash advances made by Pamela on behalf of Agnes' estate.

38. On information and belief, contrary to law, when Agnes died the Carvels' adversaries and Westchester Surrogate's Court did not stay all proceedings in which Agnes was party, but immediately sought court actions to encumber and obstruct money, property and claims before any motion to substitute a representative for Agnes' U.K. estate. On information and belief, all such acts and subsequent orders are null and void. Streng and Markewich remained silent on this apparent violation of the law.

39. **There has never been any disagreement about money in the Carvel family.** All litigation to waste and divert Carvel assets is generated exclusively by the foundation usurpers and their co-conspirators – strangers, mostly lawyers, acting against family, using family funds. Agnes

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never received one penny of income from Tom's estate as long as she lived. Not one penny is delivered to Agnes' estate to pay funeral expenses now **nine years old**. Not one penny is delivered to Agnes' estate to pay any debts or administrative expenses. Because of their political connections and Defendants failure to enforce the law, the **gross value** of Agnes' assets was distributed to the foundation usurpers, as mere alleged remainderman, before any legatees or creditors were paid. Defendants Markewich and Streng allowed all income payable to Agnes, and her successors in interests, to be fraudulently transferred by the foundation fraudsters, without payment of Agnes' funeral; debts, or estate expenses; without notice to Pamela, the estate's beneficiaries, or creditors; and without court approval.

40. The improper, fraudulent, apparently illegal activities in Carvel matters, and Plaintiff's assertions and evidence of such, are known to all the Defendants, who abrogated their official and professional responsibility to Plaintiff, the Carvels, and the People. On information and belief, these same defendants ignored the same or similar violations of law in other estates, trusts, and corporations. On information and belief, Defendants profited by the violation and obstruction of Plaintiff's guaranteed rights under U.S. laws.

The DDC

41. On information and belief, the DDC is a committee, within the New York State Unified Court System, responsible for investigating complaints and grievances against attorneys for alleged misconduct in the course of their representation of members of the public. The DDC maintains offices within the four departments of the New York State Supreme Court, Appellate Division, and as such, the DDC is part of the New York State judiciary.

42. On information and belief, the DDC is charged with protecting the public by investigating and adjudicating allegations of unethical activities and misconduct on the part of

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members of the legal profession. The DDC is required to adhere to the laws of the New York State, including the New York State Bar Association's Code of Professional Responsibility. Lawyers admitted to practice in New York State are required to adhere to these laws as well.

43. Plaintiff asserts that Defendants violate Plaintiff's rights under color of law. Defendants harm Plaintiff by violating the intangible right to honest services. On information and belief, Defendants entered into an enterprise of corruption to conceal wrongdoing, cover-up unethical activities, and intimidate State employees into "white-washing" complaints against certain attorneys.

Plaintiff's Complaint with the DDC

44. On or about August 30, 2005, Plaintiff filed a complaint with the DDC because of Markewich's persistent and increasing unethical activities in *ex parte* self-dealing, violations of Plaintiff's rights, and damages to the Carvels' best interests and intentions. Plaintiff's ethics complaint was based in good part on the assessment of ethical behavior as set out by Markewich's own writing for the New York Law Journal in her February 14, 2005 article. Markewich stated, "I became involved in an estate litigation." (A-3) Markewich was clearly writing from first hand knowledge, not literary license, even if her knowledge was of past events, she had an ethical duty to report unethical or illegal behavior by other lawyers. How could knowledge of matters of such significant ethical breaches and importance to Markewich's own client's litigation position be ignored by Markewich as a "professional" and officer of the court?

45. Plaintiff filed an ethics complaint with the DDC against Markewich complaining that Markewich violated the following Disciplinary Rules:

- a. DR 1-101 [1200.2] INTEGRITY & COMPETENCE
- b. DR 1-102 [1200.3] MISCONDUCT
- c. DR 1-103 [1200.4] DISCLOSURE TO AUTHORITIES

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- d. DR 1-104 [1200.5] SUPERVISORY RESPONSIBILITY
- e. DR 2-101 [1200.6] PUBLICITY & ADVERTISING
- f. DR 2-106 [1200.11] LEGAL FEES
- g. DR 5-101 [1200.20] CONFLICTS OF INTEREST
- h. DR 5-103 [1200.22] INTEREST IN LITIGATION
- i. DR 5-107 [1200.26] INFLUENCE OF OTHERS
- j. DR 6-101 [1200.30] FAILING TO ACT COMPETENTLY
- k. DR 7-101 [1200.32] ZEALOUS REPRESENTATION
- l. DR 7-102 [1200.33] REPRESENTATION WITHIN THE LAW

Plaintiff Discovers Corruption at the DDC

46. In a letter dated July 7, 2006, bearing a signature of defendant Cahill, the DDC advised plaintiff that "the same or related facts" alleged in Plaintiff's complaint against Markewich was the subject of "pending litigation" and that the DDC would be taking no further action. Plaintiff was stunned by the DDC advisement because, and upon information and belief there were never pending proceedings on any ethical matters, and Surrogates Emanuelli and Scarpino disavowed responsibility over attorney conduct by any attorney acting adverse to Plaintiff and the Carvels' interests; however these same Surrogate's threaten loyal Carvel advocates with sanctions, jail, and disbarment through the same Disciplinary Committees of the State.

The DDC's Sham Findings

47. The Markewich complaint was dismissed by alleging that the subject of the complaint would be decided by pending litigation. However, until now, there was no litigation addressing Markewich's unethical behavior and breaches of contract and duties before any court. Moreover, because of Markewich's unethical acts, Plaintiff was and still is compelled to appear *pro se* or allow Plaintiff's and the Carvels' claims to be lost by default. It is sadly true that our legal system is perpetuated and driven by legal fees – the more the money, the greater the justice. Conversely, no money, no justice.

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48. By letter to defendant Cahill dated July 19, 2006, Plaintiff requested DDC reconsider the complaint based on the untruthful representation that the same matter was in pending litigation. On information and belief, Plaintiff's complaint to the DDC was "white-washed" and dismissed by defendants Cohen and Cahill because of Markewich and Blank Rome's influential connections. Markewich's offenses are far more serious than just violations of ethical cannons. Markewich used her position of "authority" over Carvel claims to eradicate over \$200 million in claims by refusing to pursue recovery even after Plaintiff obtained successful corporate ownership determinations.

49. Markewich professes a specialty in estate and trust litigation. Markewich fancies herself a politico of influence in the Democratic Party. She is reported to be "a long-time Democratic district leader". Markewich unsuccessfully ran for judge of New York County Surrogate's Court in the Democratic primary. It is common knowledge that Surrogate's in New York are usually anointed in back-room deals and then unopposed in any election where the general public votes. It is horrifying that the People can be so easily deprived of substantive democracy by a handful of political hacks.

50. On Blank Rome's website, Markewich advertised "Ms. Markewich has extensive experience in trust and estates litigation; she has recently been involved in several trials pertaining to the Estates of Thomas Carvel (the ice-cream magnate) and his wife, Agnes, including an accounting trial which resulted in significant reallocation of estate assets." Markewich neglected to disclose that the "reallocation" of assets benefited only Markewich, NOT Agnes' London estate, its beneficiaries, or Plaintiff as primary fiduciary-creditor. It is significant that "Carvel" was the only client's name Markewich traded on in her advertising.

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51. Markewich knowingly, willfully, and repeatedly engaged in *ex parte* conferences, "stipulations", and verbal agreements to harm Plaintiff and the Carvels' claims against the adversaries who promised Markewich approval of \$3-4 million in fees. Streng refused to oppose such unethical tactics. Among other violations of ethics and law, Markewich and Streng acted to obstruct Plaintiff's rights and ability to be professionally represented. Markewich acted to steal Agnes' assets from Tennessee, far beyond the limits of the New York ancillary administrator whom she now purports to be her only client in Carvel matters. Markewich and Streng abrogated their duty to Plaintiff regarding all reimbursements, equal indemnification, and payment of administrative expenses owed Plaintiff.

Plaintiff Discovers Improperly Influenced DDC Affairs

52. When Plaintiff was compelled to represent herself *pro se* as a result of the unethical acts by defendants Markewich and Streng, Plaintiff began to discover a pattern of unethical behavior by the same parties that was repeated in other estates and trusts. Repeatedly, Plaintiff discovered numerous complaints filed against the same lawyers wherein the complaints were bounced between alleged court and DDC responsibility, until ultimately dismissed.

53. Plaintiff discovered matters now before the Southern District of New York (two of which are Anderson v. New York, et al 07-civ-01599-SAS; McKeown v. New York, et al 08-civ-2391-SAS) which disclosed specific first hand information by knowledgeable persons demonstrating a pattern of corruption to "white-wash, conceal, and cover-up complaints about certain "connected" lawyers.

54. Upon information and belief, and at all times relevant, defendants OCA, Cahill, Cohen, Markewich, Streng and Doe defendants wantonly, recklessly, knowingly and purposefully, acting individually and in concert with each other, by means of misrepresentation, fraud,

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harassment, manipulation of laws, rules, regulations, and while acting in bad faith, sought to deprive plaintiff of her Constitutional right to fair and impartial proceedings, competent and effective counsel, and the seeking of relief by OCA administrative and ethics offices, *inter alia*, without improper or undue influence.

55. Upon information and belief, all defendants conspired with each other and agreed with each other to act in concert to deny plaintiff of a fair review of her filed ethics complaints and to deny plaintiff her rights to due process and equal protection of the laws. Only now because of unfolding knowledge about the apparent "white-washing" and case manipulations by the DDC, the above acts represent but the most recent acts of corruption that tie together and relate back to many years of rights violations and corruption effecting the Carvels' individually, as well as their finances, assets, and businesses.

COUNT ONE

(All Defendants)

42 U.S.C. §1981, 1983

**DEPRIVATION OF RIGHTS and CONSPIRACY TO DEPRIVE RIGHTS
UNDER THE FIRST and FOURTEENTH AMENDMENTS**

56. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 55 as though fully set forth herein.

57. Defendants State, OCA, Cahill, and Cohen are also "state actors" under § 1983. As set forth above, the DDC is a division of the New York State Supreme Court, Appellate Division, First Judicial Department, and is therefore part of the New York State court system. As part of the New York State court system, the DDC is obligated to administer justice in a fair and honest manner. The DDC is also an arm of New York State and a "state actor" within the meaning of §1983. Plaintiff seeks injunctive relief against the state actors.

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58. Employees who engage in improper or illegal violations of their duties to the People chose to act in their individual capacity outside the legitimate authority of their official positions. Defendants Cahill and Cohen are individually liable for their acts.

59. Plaintiff has an intangible right to honest services, meaning a substantive constitutional right to a fair and honest judicial system, free from corruption and bias, with impartial arbiters of the law. Through the conduct set forth above, including but not limited to their conduct in denying plaintiff access to fair and honest legal representation, all defendants, collectively and each one of them individually, have engaged in actions and abuses which violate and deny plaintiff of her substantive Constitutional rights, including her rights to due process and equal protection of the law, as provided under the Fourteenth Amendment of the United States Constitution.

60. Through the conduct set forth above, including but not limited to their conduct in denying Plaintiff access to fair and honest legal representation in court proceedings, and by colluding in bad faith in various improper *ex parte* communications, all defendants, collectively and each one of them individually, engaged in actions and abuses which violate and deny plaintiff of her substantive Constitutional rights, including her right to petition the government under the First Amendment to the United States Constitution.

61. As a direct and proximate result of said acts, Plaintiff suffered and continues to suffer extreme loss of security in the legal system and judicial process, emotional pain and suffering, loss of enjoyment of life, and lost of trust of lawyers, who are charged to uphold ethical standards within the legal system, and in the court system.

62. As a result of Defendants denying Plaintiff's rights, Plaintiff suffered and continues to suffer loss of income, fear, anxiety, irreparable injury, severe monetary damages, defamation,

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mental anguish; loss of professional standing in business management consultancy and fraud investigation profession which is extremely narrow and interactive; financial and emotional distress, pain, and suffering; loss of her usefulness to family, business and public; and loss of enjoyment of life and good health. Plaintiff is entitled to damages in the amount of fifty million dollars (\$50, 000,000) as well as punitive damages, costs, and attorneys' fees for these violations.

COUNT TWO
(Defendants Markewich and Streng)
BREACH OF CONTRACT

63. Plaintiff repeats and reiterates the allegations set forth in paragraphs 1 through 62 as though fully set forth herein.

64. Upon information and belief, Plaintiff entered into legal and binding contracts with defendants' law firms Blank Rome and McCarthy Fingar for legal representation concerning her legal interests and involvement in Thomas and Agnes Carvel's estates, trusts, and corporations. Plaintiff met with defendants, partners in their respective law firms, for the purpose of pursuing her duties and interests in the Carvels' estates, trusts and corporations. Rather than properly representing Plaintiff, or giving timely notice of acquired conflicts of self-interest against Plaintiff, defendants Markewich and Streng knowingly, and with intentional deceit, in collusion with others involving improper *ex parte* communications, surreptitiously entered into *ex parte* agreements against Plaintiff, their own client. As the responsible or managing partners of their respective firms, liability for Markewich's and Streng's conduct is imputed to their respective firms.

65. By the actions set forth above, defendants Markewich, Blank Rome, Streng and McCarthy Fingar breached their contract to provide legal representation to Plaintiff, and are therefore liable to Plaintiff to refund all fees and expenses paid with interest thereon, for

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opportunity losses in excess of \$100,000,000, and for punitive damages in an amount to be determined at trial.

COUNT THREE
(Defendants Markewich and Streng)
BREACH OF FIDUCIARY DUTY

66. Plaintiff repeats and reiterates the allegations set forth in paragraphs 1 through 65 as though fully set forth herein.

67. As a client of defendants' law firms, each law firm and its partners owed plaintiff fiduciary duties of good faith, loyalty, and care.

68. When defendants Markewich and Streng knew about, negotiated, drafted, executed, agreed to, or filed *ex parte* agreements against their own client, the Plaintiff, both Markewich and Streng as well as their law firms breached their fiduciary duties to Plaintiff. As partners of their respective firms, liability for Markewich's and Streng's conduct is imputed to their firms. As a result, defendants Markewich, Blank Rome, Streng and McCarthy Fingar are liable to Plaintiff to refund all fees and expenses paid with interest thereon, for opportunity losses in excess of \$100,000,000, and for punitive damages in an amount to be determined at trial.

JURY TRIAL IS DEMANDED

69. Plaintiff demands a trial by jury on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment and an Order in favor of Plaintiff as follows:


- a. An injunction requiring defendants to correct all present and past violations of federal and state law as alleged herein; to enjoin the defendants from continuing to act in violation of federal and state law as alleged herein; and to order such other injunctive relief as may be appropriate to prevent any future violations of said federal and state laws;

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- b. Appointing a Federal Monitor to oversee the day-to-day operations of the "OCA" defendants for an indefinite period of time;
- c. Cause of Action Count One: in excess of fifty million (\$50,000,000.00) dollars as well as punitive damages, costs and attorney's fees;
- d. Cause of Action Count Two: refund of fees, expenses and interest therein, opportunity losses in excess of one hundred million (\$100,000,000.00) dollars as well as all legal fees paid to defendants, punitive damages, costs and attorney's fees;
- e. Cause of Action Count Three: refund of fees, expenses and interest therein, opportunity losses in excess of one hundred million (\$100,000,000.00) dollars as well as all legal fees paid to defendants, punitive damages, costs and attorney's fees;
- f. Awarding Plaintiff damages in the value of her opportunity losses, personal losses, and other investments;
- g. Awarding Plaintiff punitive damages against all individual defendants;
- h. A declaratory judgment stating that defendants willfully violated Plaintiff's rights secured by federal and state laws as alleged herein;
- i. Requiring all defendants as individuals pay their own legal fees or post a bond payable to refund the People and the Carvels when defendants' abuses are confirmed;
- j. An Order granting such other legal and equitable relief as the court deems just and proper.

Dated: Broward County, Florida
March 27, 2008

Respectfully submitted,

By: 
Pamela Carvel, appearing *pro se*
28 Old Brompton Road, Suite 158
London SW7 3SS England, U.K.
NY tel/fax fwd 1 212 751 6846

CONFIDENTIAL

THE THOMAS AND AGNES CARVEL FOUNDATION

**AG CONFERENCE
February 18, 1992**

- 1) Original basis for investigation resulted in substantially supporting Foundation position as to CEIC transaction - no impropriety; no sweetheart deal; no TC gift to his employees. Had AG accepted explanation given by RMD and MA at outset, the waste on both sides would have been avoided.
- 2) "Suitability" is a manufactured issue without any clear standards; if equivalent to removal for cause, we win. Practically, resignation of 2 Members plays into hands of family; counter-productive from AG viewpoint to impose family control on future operations of Foundation. Resignations of RMD and MA discredits them and provides family with opportunity to assume control of Foundation, or at least Estate and Agnes' assets.
- 3) Money recovery for CEIC price adjustment:
 - basis is totally artificial; no firm offer to Foundation in September which Foundation could have accepted.
 - in any event, practical difficulty of recovery from limited partners; will AG accept assignment of CEIC 11% in any escrow fund balance (i.e. \$1.0MM balance = \$110,000). Recovery from Estate is meaningless since Foundation is beneficiary of Estate.
- 4) Tuition payments:
 - Iona - MA has paid.
 - Pace - Foundation is seeking to recover from Pace or Chris, possibly from CEIC balance. (MA is considering guaranty of payment?)
 - St. Anthony's - Foundation will undertake recovery.
 - Amended 990PF will be filed - deficiency in distributions covered by excess distributions in subsequent years.

(1)

- 5) How to protect confidentiality of any settlement.
- 6) MA money payments:
 - Tuition - see above
 - Loans - Surrogate Court will decide
 - CEIC profit - no basis for recovery from her; her profit reduced by any price adjustment recovery. Her "profits" are small in relation to TC generosity in stock options.
 - Stock redemption profit - she would have made more if she didn't redeem.
- 7) MA resignations:
 - Retain Membership to prevent family control.
 - Designate her successor and she agrees to resign in 1993, or on Agnes' death.
 - Resign as director and officer.
- 8) Litigation will further waste Foundation funds. AG should wish to avoid.
- 9) CEIC sale benefitted Foundation:
 - excess business holdings
 - provided cash to fund mandatory distribution
 - sale at "fair value" when no other market available
- 10) Melfe to attend.
- 11) Successor Members:
 - Sal Molella
 - Ann McHugh's son
 - Jim O'Connor
 - Hudson Valley
 - Dave Malane
- 12) Amended 990 PF for 11/30/89
- 13) Revised budget - shortfall in grants for 1992 without reduction in legal expense.

The New York Law Journal

Getting Grounded On Ethical Dilemmas
Eve Rachel Markewich

Monday, February 14, 2005

A few years ago, I became involved in an estate litigation well after the will had been admitted to probate. It was astounding to me that none of the following issues had been raised in the probate proceeding:

- The will was drafted by an attorney who never met the decedent, or even spoke to him on the telephone. Rather, communications were between the decedent's corporate attorneys and the draftsman of the will.
- The will purportedly was part of a larger estate plan for the decedent and his wife, yet no attorney ever spoke to the wife, literally until the documents — including her mirror will — were executed.
- The wife was never advised to seek separate counsel, and never asked to consent to joint representation.
- The attorney supervising the execution of the documents was not an estates practitioner, and had not been involved in any of the estate planning discussions, yet he was charged with "explaining" the documents, which were not simple, to the wife.
- The wills named several executors, two of whom were corporate attorneys involved in the estate planning process, although they were not the ultimate drafters of the documents. One of these lawyers also was named as a beneficiary.

Although these events occurred several years ago, they serve as a useful jumping off point for a review of basic ethical precepts that should inform the day-to-day practice of estates practitioners. [1]

It is a truism that a lawyer must exercise independent professional judgment on behalf of a client, and may not be influenced by the interests of other people (DR 5-107; EC 5-21). At a minimum, one would think a lawyer has an obligation to speak to a client when performing personal services. Although actual client interaction is not required by the Disciplinary Rules, the Ethical Considerations and the Model Rules of Professional Conduct (MRPC) come close to mandating direct communication. See EC 7-8, which requires an attorney to "exert best efforts to ensure that decisions of the client are made only after the client has been informed of relevant considerations," and which encourages the attorney to initiate the decision-making process, and MRPC 1.4 directing the attorney to keep her client reasonably informed regarding the status of a matter and to provide explanation to the extent necessary to enable the client to make informed decisions.

Joint Representation

Despite the absence of a rule on point for basic representation, for a lawyer engaged in a joint representation, or representation of multiple clients with possible conflicts, person-to-person discussions are essential, at least for disclosure purposes. DR 5-105(C) requires that clients have "full disclosure of the implications of the simultaneous representation and the advantages and risks involved." DR 5-105(C) [§1200.24(C)]. [2]

DR 5-105(A) [§1200.24(A)] provides that "A lawyer shall decline proffered employment if the exercise of independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve the lawyer in representing differing interests." Although one does not, intuitively, think of mutual estate planning between spouses as implicating the conflict rules, to some extent, every time a couple approaches you for estate planning, the possibility must be considered. If the plan is essentially to follow the rules of intestacy, then no conflict exists. If the plan varies the intestacy rules, the issue of conflict must at least be addressed.

The American College of Trust and Estate Counsel (ACTEC) advises that when taking on a joint representation of spouses, the disclosure conversation should be had at the beginning of the client relationship, in order to give the clients the opportunity to define the scope and nature of the representation. See, ACTEC, Commentaries on the Model Rules of Professional Conduct, 3d Ed. 1999 (ACTEC Commentaries), Commentary on MRPC 1.2.

In joint representation, the understanding is that no confidences exist that may not be shared with the other spouse, or considered when making estate planning decisions. The ACTEC model retainer agreement for joint representation includes a form disclosure, and requires that the clients sign their consent. [3] Best practice rules include a review of the document with the client, specific advice that each client may utilize separate counsel, and in some situations even advising the clients to take the consent document home to consider the implications. Written consent not only helps to ensure informed consent, it also protects the lawyer — at a later date — from a claim of impropriety, and protects the ultimate documents from claims of overreaching.

Once written consent has been obtained, the attorney's obligation to ensure lack of conflict continues throughout the course of the representation. Thus, DR 5-105(B) [§1200.24(b)] precludes you from continuing multiple representation of clients "if the exercise of independent professional judgment in behalf of a client will be or is likely to be adversely affected by the lawyer's representation of another client, or if it would be likely to involve the lawyer in representing different interests . . ."

What sorts of situations, in estate planning, bring these rules into play? Potential drafting conflicts arise most often, but not solely, when one or more spouses has been previously married, or has children outside the marriage. They can also arise where one spouse owns

a close corporation or a partnership, or simply when one or the other has a close relationship with his or her family, or wants to ensure that family money does not go to the in-laws. Many lawyers forget to consider conflict issues when dealing with close friends or family, or long-term client relationships. That oversight should be avoided at all costs.

One issue that arises in the joint representation of spouses relates to gift-splitting. Let's say John, your long-term client, has been in the habit of gifting part of his business to his children on an annual basis, taking advantage of valuation discounts and the annual exclusion. He has always limited himself to the annual gift exclusion amounts under the Internal Revenue Code, so when he remarries, it seems to make sense to increase the amount of those gifts, and split them with Mary, even to the point of taking advantage of Mary's available unified credit allowance. John tells you he thinks this is a great idea, but he neglects to tell you that Mary has children of her own. However, if John follows your advice, Mary may be using up her available unified credit, which she may or may not have intended to use for future gifts to her own children, either during life or after death.

By preparing a gift-tax return for Mary's signature, you are, in effect, representing her. DR 5-105(C) [§1200.24(C)] requires "full disclosure of the implications of the simultaneous representation and the advantages and risks involved" in representing multiple clients. Certainly, under any situation involving gifts as tax and estate planning tools, the attorney must review these issues with both clients. Moreover, the attorney must ensure that the gist of the information is imparted to both parties, even though one may be far more fluent in the ins and outs of such matters than the other. If you never actually speak to one of the spouses until the date the instrument is to be executed, the opportunity to explore potential conflicts may be lost. Obviously, the same applies if the attorney's practice is to transmit documents like gift tax returns through one spouse, without explaining the implications to the other.

Executors and Beneficiaries

Estate lawyers surely spotted the *Putnam* and *Weinstock* issues in the scenario set forth at the top of this article, but for the uninitiated, a brief review is in order. [4] In *Matter of Weinstock*, the Court of Appeals denied letters testamentary to attorneys who had drafted a will for an 82-year-old woman, where the will nominated the lawyers as executors, although the testator's first interaction with the lawyers was when they drafted her will. The Court's reasoning was based on EC 5-6, which states that an attorney should not consciously influence a client to name the attorney as a fiduciary in an instrument.

In response to *Weinstock*, the Legislature enacted Surrogate's Court Procedure Act (SCPA) §2307-a in 1995, [5] requiring disclosure to the testator, prior to executing the will, regarding commissions and legal fees and requiring written acknowledgment by the testator, in the presence of a witness, of such disclosure. SCPA §2307-a was amended recently [6] to provide that the written acknowledgment be in an instrument separate from the will (although it may be attached to the will) and it must contain a provision that, absent execution of the acknowledgment, commissions are limited to one-half the commissions allowed by statute, thus eliminating any excuses by the attorney for failing to provide

disclosure to the client.

Matter of Putnam involved a bequest of the testator's residuary estate to her attorney, who was also the draftsman of the will. There, the Court of Appeals upheld the bequest, but admonished attorneys to have the will drawn by another attorney if their clients intend to leave a bequest to the attorney or the attorney's family. Underlying that admonition is the concern that, based on the confidential nature of the attorney-client relationship, in a situation where an attorney is named as a beneficiary in a will, he is "peculiarly susceptible to the charge that he unduly influenced or overreached the client." (EC 5-5)

Maintaining Confidences

Conflict issues often present a much more benign appearance than we imagine. Assume the following situation: Your 50 year-old client who is worried about his recently widowed 80-year-old mother asks you, with what appears to be the best intentions, to review Mom's will and update her estate plan. In particular, Sonny is worried that Mom's plan, which was a typical one mirroring Dad's — to spouse for life and then to children — does not adequately cover anticipated expenses for Sonny's sister's disabled daughter, Dolly, and has no tax-saving bells and whistles. Sonny tells you just to add the cost of services to Mom to his bill.

Sonny describes Mom as eccentric, and says she lives with 10 cats, but he stresses that she has all her marbles. Sonny also tells you that, although Mom understands that she is "rich," Dad always handled the family finances through his business accountant, and Sonny doubts whether Mom really understands the enormity of her \$15 million in assets. Sonny also says that Mom has become quite deaf, so he suggests you have the preliminary conversations with him, and then speak to Mom only later.

A number of issues could surface in this scenario, the first being addressed by DR 5-107(A), which prohibits an attorney to accept compensation for legal services from one other than the client, without consent after full disclosure. Accordingly, you send Mom a retainer agreement, with full disclosure of your representation of Sonny, and she signs it.

A week later, you meet with Mom. You follow all the rules. You meet with her alone. You tell her that the will you are proposing is essentially the same as the wills she and Dad did years ago, except that instead of leaving everything to Sonny and his sister, outright, you are creating sprinkle trusts for the children and grandchildren, with special provisions for Dolly. Mom looks at you and says "My children are wealthy. They don't need the money, and their children will be well provided for." She further explains to you that, although she went along with Sonny's suggestion that she retain you, she has already been to see her neighbor's lawyer-daughter, and executed a will leaving her estate to the Foundation for Homeless Cats. She tells you this organization is important to her, because it will take care of animals who may be the "brothers and sisters" of her own cats.

Besides addressing issues surrounding Mom's capacity to create a new will, what do you do? You may not reveal the estate plan to Sonny, or to anyone else. DR 4-101(B)

[§1200.19(B)] prohibits you from revealing a confidence or secret of a client, except under very specific circumstances not present here. Your obligation to Mom to hold her confidence is not tempered by the fact that you also represent Sonny, or even by the fact that you have ongoing estate planning discussions with Sonny, including aggressive gift planning for Sonny and his wife, premised on the expectation that they will succeed to a good share of Mom and Dad's wealth.

The situation, here, is markedly different from the case with John and Mary, where you also represent two parties. Why? Because with John and Mary you were engaged for a joint representation and, if you followed ACTEC's recommendation, you explained to them at the outset that you would consider all communications with each of them to be devoid of confidentiality with respect to the other, and you obtained signed consents from them to proceed on that basis. Here, in contrast, you represent Mom separately.

Nor are you relieved of your obligations of confidentiality because Sonny is picking up the bill for Mom. DR 5-107(B) prohibits an attorney to allow "a person who recommends, employs, or pays the lawyer to render legal service for another to direct or regulate his or her professional judgment in rendering such legal services, or to cause the lawyer to compromise the lawyer's duty to maintain the confidences and secrets of the client under DR 4-101(B)." If you feel you have learned something that impairs the interests of another client, you have the right to refuse the representation, or to withdraw, but the confidentiality requirement still exists. Even when it appears that breaching the confidentiality would do no harm, and would serve what you consider to be a better good, the attorney's obligation is to maintain the confidence.

Administration of Estates

Conflict situations arise in estates practice during the administration of an estate, as well. Returning to the case described at the beginning of this article, after the will was admitted to probate, during the early stages of administration of the estate, the income beneficiary of the testamentary trust was represented by the same lawyer who represented the remainder beneficiary, a not-for profit entity, and also was a director of the remainder beneficiary. Is this necessarily a precluded representation? Probably not, to start. Indeed, ACTEC notes that it is often appropriate for an attorney to represent multiple clients with common interests in estate or trust administration, emphasizing that estate administration is usually nonadversarial in nature. See, ACTEC Commentaries, Commentary on Rule 1.7. Assuming nothing unusual is happening, and the clients consent, this type of dual representation should be OK. However, in the case cited, the added wrinkle is that the lawyer is a director of the remainder entity. Therefore, the representation may implicate DR 5-101 [§1200.20] which states:

A lawyer shall not accept or continue employment if the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's own financial, business, property or personal interests, unless a disinterested lawyer would believe that the representation of the client will not be adversely affected thereby and the client consents to the representation after full disclosure of the implications of the lawyer's interest.

Here, there may have been a business interest the lawyer had, as director of the remainder, that was at odds with the income beneficiary's interest.

While one might take the position that the interests of income and remainder beneficiaries of a residuary trust are aligned, such is not always the case. Their interests may diverge, for example, if the executors and trustees retain underproductive property that is expected to greatly appreciate by the time the income interest terminates, but yields little or no income for the income beneficiary. Similarly, if the lawyer has an interest in the remainder, she may not fully scrutinize investment decisions of the trustee, in terms of whether there is an emphasis on income versus growth.

Notwithstanding that New York statutory law addresses a fiduciary's duty to all beneficiaries via the Principal and Income Act [7] and the Prudent Investor Act, [8] the focus here is on the attorney's ability (observed objectively) to exercise professional judgment on behalf of a client who has a different interest in the same subject matter in which the attorney has an interest. EC 5-3 states in part that "[t]he self-interest of a lawyer resulting from ownership of property in which the client also has an interest or which may affect property of the client may interfere with the exercise of free judgment on behalf of the client." The Ethical Considerations suggest that the attorney either decline or withdraw from representation unless the client consents after full disclosure. Another implication of this relationship is the requirement that an attorney "strive to avoid not only professional impropriety but also the appearance of impropriety." EC 9-6.

Although it may seem less substantive than actual impropriety, lawyers need always be alert to the appearance of impropriety. We need to ask ourselves, "if I were one of these clients, and I received an unwanted result, would I question the lawyer's integrity?" Moreover, when representing multiple clients, we must remind ourselves that the conflict analysis is not static, but must be reviewed regularly. If you find yourself in doubt, call for help. Most bar associations have ethics hotlines that will help you find your way.

Eve Rachel Markewich is a member of the Blank Rome litigation department. *Barbara MacGrady*, an associate with the firm, assisted in the preparation of this article.

Endnotes:

1. Reference is made to New York's Code of Professional Responsibility, adopted by the New York State Bar Association on Jan. 1, 1970. The Code contains Canons, which are the underlying precepts for conduct; Ethical Considerations (ECs), which serve as aspirational guides for attorneys; and Disciplinary Rules (DRs), which are rules to be observed and which provide a basis for disciplinary actions against attorneys who fail to follow them. New York has not adopted the Model Rules of Professional Conduct (MRPC) issued by the American Bar Association, but its Code has rules corollary to the MRPC.

2. Bracketed sections refer to the Disciplinary Rules of the Code of Professional

Responsibility promulgated as joint rules of the Appellate Division of the Supreme Court and set forth in Part 1200 of Title 22 of New York Codes, Rules and Regulations (NYCRR).

3. See, **ACTEC Engagement Letters: A Guide for Practitioners**, ch. I at <http://www.actec.org/publicInfoArk/comm/engltrch1.htm>

4. **Matter of Putnam**, 257 N.Y. 140 (1931); **Matter of Weinstock**, 40 N.Y.2d 1 (1976). It would behoove the uninitiated to familiarize themselves with these cases and their practical effect in dealings with the Surrogates' Courts.

5. L. 1995, ch. 421.

6. L. 2004, ch. 709, effective Nov. 16, 2004.

7. **Estates, Powers and Trusts Law (EPTL)**, art. 11-A.

8. **EPTL §11-2.3**.

Pamela Carvel

a member of the Association of Certified Fraud Examiners
28 Old Brompton Road, Suite 158 London SW7 3SS England
NY tel/fax fwd 1 212 751 6746

27 March 2008

Clerk of the Court
United State District Court
Southern District of New York
Foley Square
500 Pearl Street
New York, New York 10007-1312

RE: New Complaint; Explanation to related cases 07cv9599 & 08cv2391

Dear Sir/Madam,

This letter is pursuant to the Civil Cover Sheet request for "an explanation of why cases are deemed related".

My complaint is related because the defendants are substantially the same as are the underlying causes of action against those defendants, and the injunctive relief.

My complaint is also related because several facts in my case overlap and are based on these other complaints.

Only now, because of unfolding knowledge about other same and similar cases, the facts in my complaint demonstrate the most recent acts in a pattern of corruption that ties together and relates back to many years of rights violations effecting the Carvels' individually, as well as their finances, assets, and businesses.

By relating my *pro se* complaint there will be an economy of 1) review of fundamental underlying facts; 2) discovery efforts; 3) hearings; and 4) injunctive relief.

Thank you for your valuable assistance.

Your truly,



Pamela Carvel