

**STATE OF WISCONSIN
IN THE SUPREME COURT**

**IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST JOSEPH W. WEIGEL,
ATTORNEY AT LAW;**

OFFICE OF LAWYER REGULATION,

CASE NO. 10 AP 1523-D

Complainant,

JOSEPH W. WEIGEL,

Respondent.

COMPLAINT

NOW COMES the Office of Lawyer Regulation (“OLR”) by its undersigned Designee and Retained Counsel, and for its complaint for discipline against the respondent in this matter, Attorney Joseph W. Weigel, alleges as follows:

PARTIES AND PROCEDURAL BACKGROUND

1. Effective October 1, 2000, the Office of Lawyer Regulation (“OLR”) was established as an arm of the Wisconsin Supreme Court to assist in the discharge of the court’s constitutional responsibility to supervise the practice of law and protect the public from professional

misconduct by attorneys licensed to practice law in Wisconsin. This Complaint is filed pursuant to Supreme Court Rule ("SCR") 22.11.

2. The respondent, Joseph W. Weigel (herein, "Weigel"), is an attorney duly licensed to practice law in the state of Wisconsin. Weigel was admitted to the practice law in Wisconsin on June 6, 1960. Weigel lists his address with the State Bar of Wisconsin as 3732 West Wisconsin Ave., Suite 300, Milwaukee, Wisconsin 53208-3153.

3. Weigel has been previously disciplined, by private reprimand imposed by the Wisconsin Supreme Court on January 26, 1979, in Matter No. 7811438, for professional misconduct in violation of DR6-101(A)(3), for failing to promptly notify a client of the adverse result in her damages action against an opposing party and insurance company.

**EISENBERG GRIEVANCE
BACKGROUND ALLEGATIONS**

4. In 1975, Attorney Alvin H. Eisenberg organized the law firm of Alvin H. Eisenberg, S.C. ("Firm") as a service corporation. At that time, Eisenberg was the sole shareholder of the Firm.

5. In or about August 1990, Weigel, along with Attorneys David Blau, John Carlson, Chris Clemens, Jeffrey Reitz and William Weigel, each

acquired 5 shares of stock in the Firm. Eisenberg remained the majority shareholder, owning 76% of the shares (95 of 125 issued shares).

6. On August 22, 1990, the Firm changed its name to Eisenberg, Weigel, Carlson, Blau, Reitz & Clemens, S.C.

7. By an agreement dated February 26, 1999, Eisenberg conveyed 6 shares of stock in the Firm to Weigel. After that conveyance, Eisenberg owned 89 shares of stock, and Weigel owned 11 shares.

8. Prior to March 1, 1999, the Firm redeemed the shares of stock owned by William Weigel, Reitz and Carlson, leaving a total of 110 shares issued and outstanding. The Firm was then known as Eisenberg, Weigel, Carlson, Blau & Clemens, S.C.

9. From its inception to the present, the Firm has concentrated its practice in representing injured persons in personal injury matters.

10. The Firm has had a high volume practice and relies heavily on advertising.

11. By agreement dated March 11, 1999, but effective March 1, 1999 ("Stock Redemption Agreement"), the Firm redeemed Eisenberg's remaining 89 shares of stock. As a result, Weigel became the majority shareholder of the Firm, owning 11 of 21 issued and outstanding shares. Blau and Clemens each owned five shares.

12. Pursuant to the Stock Redemption Agreement, upon the sale and redemption of the shares of stock, the Firm agreed to “employ Eisenberg strictly as an employee” pursuant to an Employment Agreement.

13. Paragraph 1 of the Employment Agreement states the Firm was to employ Eisenberg “as an attorney” and that Eisenberg was to perform “professional duties” as described in the agreement and to “report directly” to Weigel as President and Senior Partner of the Firm.

14. The Employment Agreement was a month-to-month agreement. Either party had the right to terminate the agreement on thirty days written notice to the other.

15. Paragraph 11 of the Employment Agreement, entitled “Covenant Against Competition,” states that:

During Employee’s employment hereunder and for a period of six months after he ceases to be employed by Employer or March 1, 2001, whichever is later, Employee shall not, practice law in the Greater Milwaukee Area (other than with Employer). It is agreed, however, that these restrictions shall not apply, should Employer terminate its business, cease to exist, or cause an Event of Default as defined in the Stock Redemption Agreement calling for this Employment Agreement, or breach any of the agreements called for by the Stock Sale Agreement.

16. The Stock Redemption Agreement also provides that the Firm would lease an office and related space from Accommodating Building Co.,

Inc., an entity controlled by Eisenberg, located at 2228 West Wells Street, Milwaukee, Wisconsin, including an addition and an adjacent parking lot ("West Wells Office"). The Firm executed a lease for the West Wells Office ("Lease").

17. At all times since the effective date of the Stock Redemption Agreement, Weigel served as President and managing shareholder of the Firm. In that capacity, Weigel was personally responsible for directing the conduct of the Firm as described in this complaint.

18. From March 1999 through 2004, the Firm employed Eisenberg, and Eisenberg performed services for the Firm as an attorney pursuant to the Employment Agreement and issued paychecks to him as a salaried employee.

19. On or about January 24 and 25, 2005, without prior notice to Eisenberg, the Firm moved its office location from 2228 West Wells Street, Milwaukee, Wisconsin, to a new location at 3732 West Wisconsin Avenue, Suite 300, Milwaukee, Wisconsin ("West Wisconsin Office").

20. In our about late January 2005, and no later than February 8, 2005, Eisenberg employment with the Firm was terminated.

21. From on or about January 24, 2005 through the fall of 2005, the Firm arranged to park a truck on a public street in Milwaukee near the

West Wells Office. Mounted on both sides and the back of the truck were large placards, clearly visible to the naked eye, stating:

Eisenberg, Weigel, Carlson, Blau & Clemens, S.C.
Attorneys at Law
HAVE MOVED TO
3732 W. Wisconsin Ave., Suite 300
Milwaukee, WI 53208

22. On January 31, 2005, Weigel executed a letter for the Firm sent to Firm clients and bearing the salutation "Dear Client." The letter stated:

We have MOVED our offices to 3732 West Wisconsin Avenue, Suite 300 Milwaukee, Wisconsin 53208. Everything else remains the same! The same friendly, dedicated staff to help you – including the same attorneys; medical doctor, engineer, paralegals; specialists; investigators and support staff! Our "numbers" remain the same: phone numbers of (414) 342-1000 and (800) 486-0106 fax number of (414) 342-5060. We all invite you to stop in and see our bright, newly remodeled (all on one floor) offices.

23. On January 31, 2005, Weigel executed a letter for the Firm sent to Eisenberg, stating it would remodel and refurbish office space for him at 807 North 23rd Street, in Milwaukee, a location separate from the West Wisconsin Office and located about a mile from the new office.

24. The office telephone numbers for the Firm described in the "Dear Client" letter of January 31, 2005, did not operate at the office to be

located at 807 North 23rd Street, which was designed only for Eisenberg and a secretary.

25. By letter from his counsel dated and hand delivered to the Firm on February 8, 2005, Eisenberg gave a formal Notice of Termination of the Employment Agreement. The February 8, 2005 letter also demanded that the Firm “immediately cease and desist using Mr. Eisenberg’s name in the name of [the Firm] and/or any advertising or promotional material.”

26. By letter dated February 10, 2005, Eisenberg, through his counsel, reiterated his demand that the Firm immediately discontinue using his name.

27. By letter dated February 11, 2005, Eisenberg, through his counsel, again reiterated his demand that the Firm immediately cease and desist using his name, and asked for a written response.

28. After receiving no response from the Firm, by letter dated February 14, 2005, Eisenberg’s counsel again reiterated his demand that the Firm immediately cease and desist using the name of Alvin H. Eisenberg in answering the telephone, on its letterhead, and in promotional materials. Counsel’s letter asserts that the Firm’s continuing use of the name violated SCR 20:7.5 and SCR 20:7.1.

29. By letter dated February 16, 2005, the Firm's counsel responded and stated that the Firm had a right to use Eisenberg's name for at least thirty (30) days after termination of his employment, and that if Eisenberg's letter and notice of February 8, 2005, was assumed to constitute notice and was interpreted most favorably to Eisenberg, as of March 10, 2005, the Firm "would be legally required to cease using the name of Alvin H. Eisenberg."

30. By letter dated February 17, 2005, counsel for Eisenberg disputed the Firm's assertions relative to the continued use of the name of Alvin H. Eisenberg, and repeated Eisenberg's demand that the Firm "cease and desist" using Eisenberg's name in the Firm name.

31. Counsel for Eisenberg received no response to his letter dated February 17, 2005. By letter dated February 28, 2005, Eisenberg's counsel asserted that the Firm's continued use of the name of Alvin H. Eisenberg was misleading the public in violation of Supreme Court Rules.

32. On March 3, 2005, Weigel, for the Firm, entered into a written agreement with Attorney Donald S. Eisenberg ("Of Counsel Agreement") pursuant to which Donald S. Eisenberg agreed to be "of counsel" to the Firm in exchange for a payment of One Thousand Five Hundred Dollars (\$1,500) per month.

33. At the time Donald S. Eisenberg and the Firm entered into the Of Counsel Agreement, Donald S. Eisenberg was already engaged in an “of counsel” relationship with a separate law firm, Eisenberg Law Offices S.C., 308 E. Washington Ave., P.O. Box 1069, Madison, WI 53701-1069, not affiliated with the Firm in any way.

34. Throughout the time the Firm was affiliated with him, Donald S. Eisenberg maintained his “of counsel” status with Eisenberg Law Offices S.C.

35. Throughout the time the Firm was affiliated with him, Donald S. Eisenberg listed the address of Eisenberg Law Offices, and not that of the Firm, as his Wisconsin office address with the State Bar of Wisconsin.

36. Throughout the time the Firm was affiliated with him, Donald S. Eisenberg lived in Orlando, Florida, where he owned and operated several corporations providing services to the public, Investigative Legal Services, Inc., a private detective agency, and Investigative Process Service, Inc., a private process server.

37. Throughout the time he was affiliated with the Firm, the services performed by Donald S. Eisenberg for the Firm consisted of referring nursing home cases to the Firm and performing asset search and

performing skip tracing services for the Firm, through the corporations he controlled.

38. Throughout the time he was affiliated with the Firm, the Firm paid Donald S. Eisenberg as an independent contractor rather than as an employee, issuing him a monthly check in the gross sum of \$1,500.00 per month, without making payroll deductions for federal or state income taxes, or for Social Security and Medicaid taxes.

39. After the Firm entered into Of Counsel Agreement with Donald S. Eisenberg, Weigel sent a memo to staff at the Firm instructing them that if clients called asking to speak with Alvin Eisenberg, staff should inform the clients that Alvin Eisenberg was retired and the Firm now had Donald Eisenberg.

40. On March 10, 2005, Eisenberg sent a letter to Don Hoepfner of the Firm's Payroll Department enclosing five uncashed checks payable to him, including payroll checks for the period after January 24, 2005. The letter asserts that Eisenberg's employment with the Firm terminated as of January 24, 2005.

41. The Firm affixed a name plate stating "Mr. Eisenberg" on an office door at the West Wisconsin Office and kept possession of certain items of Eisenberg's personal property, including a framed photo of former

Green Bay Packers football player Reggie White, signed "Happy Birthday Alvin Eisenberg," which was hung on the wall behind the front desk in the waiting room at the West Wisconsin Office. In addition, a framed photo of Eisenberg with Olympic athlete Esther Jones was also hung on a wall at the West Wisconsin Office.

42. The Firm continued to maintain the Eisenberg name plate on an office door at the West Wisconsin office after Eisenberg demanded that the Firm stop using his name.

43. The Firm continued to display the framed photos of White and Jones in places visible to Firm clients at the West Wisconsin Office after Eisenberg demanded return of the photos.

44. Shortly after the Firm contracted with Donald S. Eisenberg, the Firm sent a letter to clients announcing an open house and stating that Alvin H. Eisenberg had been listed as "retired" from March 1999 to February 2005.

45. On March 14, 2005, Weigel filed a grievance with the Office of Lawyer Regulation. In that grievance, Weigel asserted that Eisenberg was engaging in direct solicitation of Firm clients and was disseminating false and misleading advertising materials in violation of the Rules of Professional Conduct for Attorneys. In support of his grievance, Weigel

asserted that Eisenberg's status was "retired," even though Eisenberg has not retired, and Weigel relied on the non-compete covenant in asserting that Eisenberg's conduct was in violation of the Rules of Professional Conduct.

46. On April 7, 2005, Eisenberg filed a civil action in the Circuit Court for Milwaukee County, Alvin H. Eisenberg v. Eisenberg, Weigel, Carlson, Blau & Clemens S.C., et al., Case Number 05-CV-2731 ("Civil Action"). The defendants in the lawsuit included the Firm, Weigel and other shareholders of the Firm.

47. Eisenberg's complaint in the Civil Action, as later amended, alleged a number of claims, including but not limited to breach of contract, unfair competition, false advertising, invasion of privacy, and tortious interference with contract, arising out of, among other things, the Firm's refusal to cease and desist using Eisenberg's name in the name of the Firm.

48. On November 28, 2005, the Firm aired a television ("TV") for the Firm twice on Channel 49 in Milwaukee. In the TV advertisement, the Firm used the name Eisenberg in the Firm name. The TV advertisement described the Firm's change of office location and stated that "everything else remains the same."

49. The Civil Action was resolved by a settlement pursuant to which, among other things, the Firm ceased using the name Eisenberg in the Firm's corporate name and letterhead.

50. Further, in accordance with the settlement of the Civil Action, on January 17, 2007, the Firm filed an amendment with the Wisconsin Department of Financial Institutions changing the Firm's corporate name to Weigel, Carlson, Blau & Clemens, S.C.

COUNT ONE:
SCR 20:5.6(a) (2005)

51. By causing the Firm to enter into the employment agreement effective March 1, 1999, with Alvin H. Eisenberg that included a non-compete covenant, as part of the Stock Redemption Agreement providing for the sale of Eisenberg's interest in the Firm, Weigel violated SCR 20:5.6(a).¹

COUNT TWO:
SCR 20:7.1(a)(1), SCR 20:7.5(c) and SCR 20:8.4(c) (2005)

52. By causing the Firm to continue to use the name "Eisenberg" in the Firm name Eisenberg, Weigel, Carlson, Blau & Clemens, S.C. after

¹ SCR 20:5.6(a) (2005) provides, "A lawyer shall not participate in offering or making ... (a) a partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement"

Alvin H. Eisenberg resigned employment with the Firm and objected to the continued use of his name, by representing to Firm clients and the public that “nothing had changed” after Eisenberg resigned employment and started another firm, and by engaging in other conduct with the intent to mislead clients and the public that Eisenberg was still affiliated with the firm, Weigel violated SCR 20:7.1(1),² SCR 20:7.5(c)³ and SCR 20:8.4(c) (2005).⁴

**BRADLEY GRIEVANCE
BACKGROUND ALLEGATIONS**

53. For a third claim for relief, arising out of a grievance filed by Attorney Joseph Bradley, OLR reincorporates as if fully set forth herein the allegations of paragraphs five (5) through seventeen (17) above.

54. Throughout the time Weigel has served as President of the Firm, personal injury clients were not assigned to individual attorneys.

2 SCR 20:7.1(a)(1) (2005) provides, “A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.”

3 SCR 20:7.5(a)(2005) provides, “A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1.”

4 SCR 20:8.4(c)(2005) provides that it is professional misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

Rather, they were clients of the Firm, and their legal matters were assigned to one or more teams of attorneys and paralegals.

55. The teams assigned to a particular client functioned by processing a client's file through four stages: an intake stage; a preparation stage; a settlement stage; and a litigation stage. (App. A3-4; B51-58.)

56. Eleonor Voloshin ("Voloshin") has been employed by the Firm as a paralegal assistant since approximately 1990.

57. At all times material to this matter, Voloshin worked at the Firm in its personal injury practice as part of a group of lawyers and non-lawyer assistants referred to as the "Weigel Team." In that capacity, she provided services to the Firm at the file preparation and settlement stages. Respondent Attorney Weigel supervised the Weigel Team.

58. Some of the non-lawyer personnel employed by the Firm, including paralegal assistants, including but not limited to Voloshin, are compensated on an "incentive" or "bonus" system.

59. Starting before Weigel became the majority shareholder of the Firm, and continuing to the present, Voloshin has been compensated for her services under the "bonus" system as follows: She is paid a base hourly wage (\$7.00 or \$7.50 per hour) plus overtime pay for work in excess of 40 hours per week and on weekends, as mandated by federal law (the Fair

Labor Standards Act). In addition to her base pay, Voloshin receives two forms of bonus compensation: (1) thirty cents per thousand dollars (three-tenths of one percent) of the gross recoveries from personal injury cases she worked on; and (2) a quarterly bonus consisting of \$1,500.00 plus \$250.00 per thousand (twenty-five percent) of the difference between the average (computed quarterly, over 13 weeks) of the gross recoveries from personal injury cases she worked on and a weekly goal of \$127,500 per week.

COUNT THREE:
SCR 20:5.4(a)

60. By compensating a non-lawyer legal assistant on the basis of a bonus system which uses clients' gross recoveries as a factor in the bonus computation, Weigel violated SCR 20:5.4(a).⁵

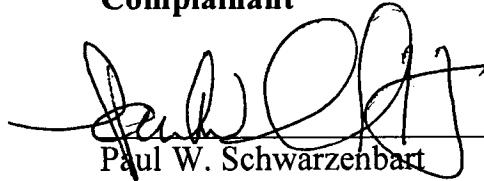
WHEREFORE, the OLR requests that this court enter judgment as follows:

- (A) Suspending respondent's license to practice law for a period of not less than sixty (60) days, and
- (B) Awarding OLR the costs of this proceeding.

⁵ SCR 20:5.4(a) provides, "A lawyer or law firm shall not share legal fees with a nonlawyer,"

Dated this 21st day of June 2010.

**OFFICE OF LAWYER REGULATION
Complainant**

A handwritten signature in black ink, appearing to read 'Paul W. Schwarzenbart', written over a horizontal line.

Paul W. Schwarzenbart
State Bar No.: 1002789

Designee and Retained Counsel

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