

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 12-360  
District Docket No. XIV-2010-0374E

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IN THE MATTER OF  
BRUCE K. WARREN, JR.  
AN ATTORNEY AT LAW

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Decision

Argued: February 21, 2013

Decided: April 4, 2013

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Marc Garfinkle appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was previously before us, at our October 2012 session, on a recommendation for an admonition filed by the District IV Ethics Committee (DEC), which we determined to treat as a recommendation for greater discipline. R. 1:20-15(f)(4).

The complaint charged respondent with violating RPC 1.7(a)(2) (a lawyer shall not represent a client if the representation involves a concurrent conflict of interest), RPC 3.5(c) (conduct intended to disrupt a tribunal), and RPC 8.4(d) (conduct prejudicial to the administration of justice). Respondent's conduct stemmed from his sexual relationship with a client.

We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 2002 and to the bar of the Commonwealth of Pennsylvania in 2003. He has no history of discipline. During the relevant time, he served as the conflict public defender in the Township of Cherry Hill. As of the date of the DEC hearing, he was serving as the public defender for the Borough of Pine Hill.

In May 2010, respondent was appointed to represent Laura Casa in a matter in Cherry Hill Municipal Court, involving allegations of theft made by her mother. Respondent and Casa spoke once, before their first meeting at her June 7, 2010 court appearance. Respondent requested an adjournment, after the judge suggested beginning the trial that night and continuing at a future date. The matter was continued to August 13, 2010.

Respondent drove Casa home that evening, after her court appearance.

During their initial meeting, Casa told respondent that she had attempted suicide the prior year. Respondent did not conclude, however, that Casa was "emotionally vulnerable" at the time of their conversation. At some point, respondent also learned that Casa was going through methadone withdrawal.<sup>1</sup>

Although respondent was married, he and Casa developed an intimate relationship that lasted approximately six weeks. The relationship involved sexual contact, but not intercourse. In addition to in-person contact, they exchanged phone calls and numerous text messages, many of which were sexual in nature. Many of the messages described their personal feelings for each other. Respondent also gave Casa money for various personal expenses.

Casa did not think that respondent's representation and their sexual relationship were dependent on each other. She believed that he was "legally bound" to represent her.

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<sup>1</sup> Casa was given pain medications, after being hit by a truck and suffering serious back injuries.

According to Casa, respondent told her that, if anyone learned of their relationship, he would face disciplinary charges.<sup>2</sup> During questioning by the presenter, respondent testified as follows:

A. My -- the thing I brought up was that I can't have sex with a client, and that was my ethical dilemma. And so that's what I said on more than one case and -- you know, more than one occasion.

Q. You told her that it was unethical for you to have sex with a client?

A. Yes, sir.

Q. Okay. And by that you meant sexual intercourse?

A. In my mind, yes, sir.

Q. Okay. But anything short of sexual intercourse was okay?

A. I didn't say that, but that was -- my thought process was, yes.

[T92-12 to T93-1.]<sup>3</sup>

Casa offered to plead guilty to the charges against her so that their attorney/client relationship would end. Respondent

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<sup>2</sup> According to Casa, respondent told her he could be "disbarred" because of their relationship and explained the disciplinary process to her.

<sup>3</sup> T refers to the transcript of the DEC hearing.

discouraged that course of conduct, believing that the case against her would be "easily defeatable."

At the DEC hearing, Casa testified that she was involved in a custody battle with her ex-husband and that respondent was helping her with that problem as well. She stated that her former husband is a millionaire and comes to court with two or three attorneys. She, in turn, comes without counsel and is unable to represent herself as well as her husband is represented.

Casa's testimony differed from respondent's as to how many times they discussed the custody issue and what respondent offered to do to help her. Casa testified that of her numerous discussions with respondent the custody matter was the primary topic on approximately three occasions. Respondent testified to the contrary -- that the custody matter was discussed once.

According to Casa, respondent advised her that the municipal court matter should be resolved before the custody issues and that he would represent her in the custody matter. Casa told the hearing panel that respondent's offer of help in the custody matter was not tied to their sexual relationship; they were already involved, before he offered to help her.

However, during her interview by the OAE, Casa had the following exchange with an OAE attorney:

Kingsbery: Let me ask this. Not from, not from your standpoint but from his do you feel that [respondent] was leading you on with promises of representation in order to get you to date him?

Casa: . . . So, yes, at some point, I felt like I better behave or one, I liked him and he would leave me or two, he could screw me in court and not represent me all the way, you know, slack off a little bit or make me relive the loss of my child and, but he never said it like [sic], but do you understand why I felt it?

. . .

He never said you better be with me or I'm not gonna do that. He didn't say that.

[Ex.3 at 41-2501 to 42-2574.]<sup>4</sup>

Respondent, in turn, denied having offered to handle Casa's custody case, explaining that he does not practice family law. Rather, he claimed, he offered to assist her in completing a pro se package.

In mid-July 2010, respondent's wife learned of his relationship with Casa. Respondent then broke off the relationship. According to Casa, respondent told her that he would no longer represent her or help her with the custody

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<sup>4</sup> Exhibit 3 is the transcript of the OAE's interview with Casa.

matter, although she wanted him to continue with the representation.

At some point, respondent resigned from his position as the conflict public defender in Cherry Hill.

Respondent testified that, despite his relationship with Casa, he had not thought that he should seek to be relieved as counsel because, by the time her case would have been heard, August 2010, he would no longer have been the public defender. Cherry Hill was eliminating its night court, prior to Casa's court date, and he was unable to appear during the day, due to his private law practice. He did not tell Casa that he was planning to resign. He testified, later in the hearing, however, that he resigned from his position because of Casa's disclosure of their relationship and as a "gesture" to his wife.

In July 2010, Casa reported her relationship with respondent to the Municipal Court Clerk for Cherry Hill Township. During that conversation, Casa expressed her opinion that respondent's conduct was unprofessional. As she told the hearing panel:

I was just venting. You know, this was just overwhelming, I mean to be picked up and then dropped by somebody emotionally and then, you know, professionally, legally, he had my case in his hands. He had my life

essentially in his hands because if I am found guilty of this, this is a negative thing, it could also negatively impact my situation with my son. It was a domino effect.

[T46-8 to 16.]

The Cherry Hill Township solicitor reported respondent's conduct to the OAE. Casa's matter, which was transferred to Pennsauken Township Municipal Court, was pending as of the date of the DEC hearing. Respondent could not explain why the case was still pending.

The DEC concluded that respondent violated RPC 1.7(a)(2) by engaging in a personal relationship with Casa, while serving as her court-appointed attorney. In the DEC's view, the nature of the relationship created "a significant risk" that respondent's representation of Casa would be materially limited by his own interests. The DEC pointed to State v. Lasane, 371 N.J. Super. 151, 163-164 (App. Div. 2004), certif. den. 182 N.J. 628 (2005), where a criminal defense attorney had a sexual relationship with his client's mother and where the court stated:

After the sexual encounter, defense counsel had a professional interest in terminating his relationship with defendant and his family as soon as possible. As already noted, in criminal matters 'the trust between attorney and client has enhanced importance [and] special vigilance is



required because an attorney's divided loyalty can undermine a defendant's Sixth Amendment right to effective assistance of counsel.' It is 'incumbent on the courts to ensure that defendants receive conflict-free representation,' and '[a] defense attorney's representation must be 'untrammelled and unimpaired,' his loyalty undivided. Furthermore, '[t]he Rules of Professional Conduct are designed to assure that, in representing a client, counsel's judgment is not impaired by divided loyalties or other entangling interests' and 'to further a broader societal interest - the integrity of the trial process itself.' [Internal citations omitted.]

[HPR¶IV8.]<sup>5</sup>

The DEC also noted In re Liebowitz, 104 N.J. 175 (1985), where an attorney assigned to represent a client pro bono in a matrimonial matter attempted to engage in a sexual relationship with the client. The attorney received a reprimand. Although pointing out that the facts of Liebowitz are distinguishable from this matter, the DEC found the Court's ruling and analysis applicable. There, the Court noted the special master's findings that the client

was emotionally involved in a custody fight relating to her children. Not unreasonably she relied on appropriate professional treatment by an attorney assigned to her as

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<sup>5</sup> HPR refers to the hearing panel report.

an indigent by the Court to represent her on a pro bono basis.

Her perspective as to the attorney's role and position must be considered. He was obviously in a superior position as her assigned attorney and at least to her or someone in her position there was an inherent element of coercion in his conduct towards her.

Thus she cannot be said to have truly consented to [Respondent's] sexual advances. That such inherent coercion was present is clear from the evidence, including her resistance to such advances.

[HPR¶IV8.]

The DEC recognized that, unlike in Liebowitz, Casa made no allegations of criminal misconduct or non-consensual sexual activity against respondent. However, even though Liebowitz was exonerated of all criminal charges and even though the sexual encounter there was presumed consensual, he was reprimanded.

Here, the DEC noted that respondent was assigned as a public defender to represent Casa in a criminal or quasi-criminal case, creating the "inherent element of coercion" the Liebowitz Court recognized exists in such matters. Respondent told Casa that he had an "ethical dilemma" preventing him from having sex with a client. Casa offered to plead guilty to charges against her to eliminate the "dilemma." Although respondent asserted that he had advised against such action, the

DEC found that "the conflict had already been created in light of the competing interests to continue or 'grow' the relationship as opposed to effective representation which could have resulted in a prolonged attorney-client relationship." A majority of the hearing panel found that respondent had violated RPC 1.7(a)(2).

A majority of the panel did not find a violation of RPC 3.5(c) (conduct intended to disrupt a tribunal) or RPC 8.4(d) (conduct prejudicial to the administration of justice). As to RPC 3.5(c), although the presenter argued that respondent's conduct caused a delay in the resolution of Casa's case, the DEC found insufficient evidence that respondent intended to delay or disrupt the proceedings. The DEC found no evidence that the disposition of Casa's case had been delayed as a result of respondent's conduct.

With regard to RPC 8.4(d), in the DEC's view, "the Court reserves such a violation to cases in which the Respondent's conduct was 'flagrantly violative of accepted professional norms' such as failure to cooperate with disciplinary authorities, nonconsensual sexual contact, taking the bar examination for another candidate, etc." The DEC concluded that respondent's misconduct did not rise to the level of the Court's

examples, that there was no evidence on whether Casa's matter was resolved and what led to the delay, and that, although there was a suggestion of another conflict of interest requiring that the case be transferred to Pennsauken, the nature of the conflict was not clear. Thus, the DEC could not conclude that the case would have been resolved in August 2010, but for respondent's conduct.

In short, the majority of the hearing panel found a violation of RPC 1.7(a)(2), dismissed the charged violations of RPC 3.5(c) and RPC 8.4(d), and recommended an admonition, in light of "the minor nature of the offense," the fact that the relationship between respondent and Casa was consensual, and the lack of evidence of harm to Casa or the court. The hearing panel report indicates that the attorney member of the panel dissented from the recommended discipline and, presumably, from the findings, but it does not explain the basis for the dissent or what the dissenting member recommended by way of discipline.

Following a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

RPC 1.7(a)(2) states that a conflict of interest exists if "there is a significant risk that the representation of one or

more clients will be materially limited . . . by a personal interest of the lawyer." Casa testified that she thought that respondent's actions were unprofessional and that she had been "dropped" emotionally and then professionally. Respondent was well aware of his "ethical dilemma." He knew that his actions were wrong and, indeed, knew that he could face disciplinary charges because of them. Respondent's assessment of his conduct was correct. Clearly, there was a significant risk that his representation of Casa would be materially affected by his personal interest in her. Yet, he began and then continued his relationship with Casa.

If respondent had not had a personal interest in Casa, he would have told her earlier that he was not going to be able to represent her at her August 13, 2010 proceeding on the theft charge. He could have assisted her in obtaining new counsel. Moreover, there is an indication that there was an additional conflict of interest that would have necessitated the removal of Casa's case to another court, where another public defender would have assumed her defense. Knowing that, respondent could have had the case removed far sooner and, thus, resolved far sooner. Instead, because of respondent's interest in maintaining their relationship, he told Casa at the eleventh

hour that he would not represent her. His conflict of interest was clear, a violation of RPC 1.7(a)(2).

We also agree with the DEC's conclusion as to RPC 3.5(c). There was no evidence that respondent took any action or intended to disrupt the tribunal. That charge is, thus, dismissed.

The DEC was, however, incorrect with regard to RPC 8.4(d). Even accepting the possibility that Casa's case had to be transferred to another court because of a different conflict of interest, as respondent contended, his actions were improper. He should have withdrawn from the representation when he knew that he would be unable to see the matter through to its conclusion and should have allowed Casa to find new counsel to represent her. His failure to withdraw stemmed from his desire to maintain his relationship with Casa, regardless of its effect on her and on the processing of her case. He, therefore, violated RPC 8.4(d).

In determining that respondent is guilty of unethical conduct, we look to In re Liebowitz, supra, 104 N.J. 175, which stands for the proposition that, although an attorney's sexual relationship with a client is not per se unethical, the relative positions of the parties must be scrutinized to ascertain

whether the relationship was prohibited. As the Court noted in Liebowitz, in adopting our decision, "[t]he gravamen of the offense is the opportunistic misconduct toward [the attorney's] *pro bono* client." Id. at 180. In Liebowitz, as in this matter, the attorney was in a superior role, with an assigned client who "could reasonably infer that a failure to accede to the [attorney's] desires would adversely impact on her legal representation." Id.

We also find guidance in In re Rea, 128 N.J. 544 (1992). In Rea, we were faced with a case of "he said/she said" with regard to whether there had been a sexual relationship between the attorney and an assigned client. The client testified that she refused Rea's sexual advances, even though he had threatened to "frustrate" her case, if she refused him. In the Matter of James J. Rea, DRB 91-395 (April 20, 1992) (slip op. at 2 to 4). Rea, on the other hand, testified that he and the client developed a sexual relationship and that she had never refused his advances. Id. at 6. He denied threatening to harm her case. Id. at 5. Rea testified that he ended their relationship when he became aware that the client had psychological problems. Id. at 6.

We found in Rea that, under the circumstances, the attorney "should have exercised more sound judgment, knowing that he was in a relationship with an assigned client who had a history of mental health problems, and who may well have felt that a failure to accede to his sexual advances would have an adverse effect on her legal matters." Id. at 10. Although, in light of the diametrically opposed testimony, we were unable to determine with certainty whether a sexual relationship had existed, we found that, under either scenario, Rea's conduct was unethical. If the client's version of the facts was accurate, then Rea was guilty of unethical conduct, in that he threatened to jeopardize her case if she did not agree to a sexual relationship with him. If Rea's version of the facts was accurate, then he was guilty of conduct of the sort that Liebowitz sought to prevent. His client was either not in a position to freely consent to a sexual relationship with him because of her position as an assigned client or, because of her past history and mental health, she lacked the capacity to consent.

The essential factor in the case before us, as in Liebowitz and Rea, is that the client was assigned. Casa and respondent were not on an equal playing field and she was not in a position to freely consent to the relationship. In addition, respondent

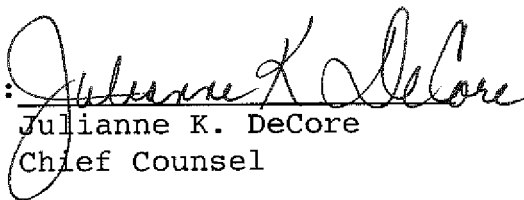


became sexually involved with her, knowing that she had attempted suicide the prior year, was involved in a heated custody battle, and was going through treatment to end her drug dependence. He had to know that she was emotionally vulnerable to his advances. We, therefore, conclude that a reprimand, the same discipline imposed in Rea, is appropriate here.

Member Gallipoli would impose a censure.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board  
Louis Pashman, Chair

By:   
Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Bruce K. Warren, Jr.  
Docket No. DRB 12-360

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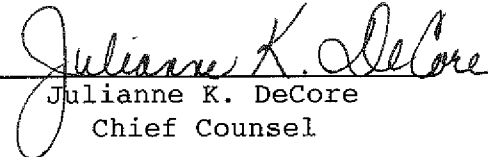
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Argued: February 21, 2013

Decided: April 4, 2013

Disposition: Reprimand

<i>Members</i>	Disbar	Suspension	Reprimand	Censure	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli				X		
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8	1		

  
Julianne K. DeCore  
Chief Counsel