SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-132
District Docket No. IIIA-2008-01E

IN THE MATTER OF

NOLA TRUSTAN

AN ATTORNEY AT LAW

Decision

Argued: September 17, 2009

Decided: December 3, 2009

Michael Nolan appeared on behalf of the District IIIA Ethics Committee.

David H. Dugan, III appeared on behalf of respondent.

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

This matter came before us on the recommendation of the District IIIA Ethics Committee ("DEC") for the imposition of a six-month suspension, as a result of respondent's violations of multiple RPCs. The DEC found that she had violated RPC 3.3(a)(1)

(knowingly making a false statement of material fact or law to a tribunal), RPC 3.3(a)(4) (knowingly offering evidence that the lawyer knows to be false), RPC 3.3(a)(5) (knowingly failing to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal), RPC 3.4, presumably (b) (falsifying evidence or counseling or assisting a witness to testify falsely), and RPC 4.1, presumably (a) (knowingly making a false statement of material fact or law to a third person), when she submitted to the court, in a post-judgment custody action, a case information statement ("CIS") that she knew to be false.

The DEC also found that respondent had violated RPC 1.8, presumably (a) (conflict of interest by entering into a business transaction with a client in the absence of certain pre-conditions) and RPC 1.8(e)(1) (providing financial assistance to a client in connection with pending litigation), when she purchased a house in her name, with the intention that her client, her client's children, and her client's mother would reside in the home, upon the belief that the mother would be able to purchase the house from respondent in the future.

Finally, the DEC found that respondent had violated RPC 1.6, presumably (a) (revealing information relating to the

representation of a client without the client's consent), RPC 1.9(c) (using information relating to the representation of a former client to the former client's disadvantage or revealing information relating to the representation), RPC 8.1 (failing to cooperate with disciplinary authorities), and RPC 8.4(d) (conduct prejudicial to the administration of justice) when, after the termination of her representation of her client, she engaged in an email exchange with her former client's ex-husband (the grievant in this matter) in an attempt to persuade him to withdraw his grievance.

For the reasons set forth below, we determine to impose a three-month suspension, with conditions.

Respondent was admitted to the New Jersey bar in 1982. At the relevant times, she maintained an office for the practice of law in Toms River. She has no disciplinary history.

In addition to the charges identified earlier in this decision, the formal ethics complaint charged respondent with having violated RPC 8.4(a) (violating or attempting to violate the RPCs) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). These alleged violations were not addressed in the DEC's hearing panel report.

The DEC conducted a one-day hearing on January 29, 2009, where it received the testimony of respondent; her client's former husband, Todd Hirsch ("Hirsch"); respondent's Alcoholics Anonymous ("AA") sponsor, Erin Cowley; and her paralegal, Gloria Danelson. At the hearing, respondent admitted all the allegations of the complaint.

Respondent's misconduct arose out of her attorney-client relationship with Hirsch's former wife Kimberly. Hirsch and Kimberly were married in 1991 and divorced ten years later. They had two sons. The children have always resided with Kimberly.

In 1999, the court designated Kimberly as the parent of primary residence. Since then, Hirsch made at least fifteen motions for either a change in custody or an increase in visitation. Hirsch's testimony suggests that the basis of his motions was that Kimberly could not provide a stable home environment for their children.

In 2004, respondent became Kimberly's lawyer in the custody and child support matters. Respondent testified about the circumstances leading to her representation of Kimberly.

Respondent and Kimberly's mother, Sharon Bressman ("Bressman"), went to high school together. They lost touch

with each other until 2003 or 2004, when Bressman came to respondent's office and asked her to represent Kimberly. Respondent agreed. The representation began sometime in 2004 and ended in September 2005. Respondent considered Bressman to be her friend.

Respondent testified that, when the attorney-client relationship between her and Kimberly was formed, Kimberly was in her thirties and suffered from multiple sclerosis. Bressman and Kimberly and the children lived together. Respondent testified that Bressman and Kimberly were "attached at the hip." It was Bressman's desire for Kimberly and the children to have their own home. Thus, in February 2004, Bressman began to give money to respondent to hold for safekeeping, as Bressman and Kimberly had "a tendency to spend every penny in their pocket." Respondent placed the funds in her personal savings account, as Bressman was not her client, and this was "a private deal." In total, Bressman gave respondent about $35,000.

On May 13, 2005, respondent entered into an agreement of sale for the purchase of a residential property located at 139 Mount Lane in Toms River ("the Toms River property") for the price of $310,000. At the closing, she paid $57,939.16 in cash.

A $11,000 down payment had already been paid. Respondent obtained a $248,000 mortgage from Wachovia Mortgage Corporation.

In addition to the Wachovia mortgage, respondent used between $65,000 and $75,000 of a $100,000 home equity loan that she had taken against her personal residence to pay the cash due at closing and to move cherry kitchen cabinets and other items from her mother's million-dollar waterfront home to the Toms River property. Respondent did not apply any of Bressman's funds to the purchase or upgrade of the Toms River property.

Respondent explained why she had purchased the Toms River property, instead of Bressman:

> The plan was that [Bressman] was going to buy the house, but she couldn't and Kim couldn't because both of their credits are shot, so [Bressman] gave me money to hold for her so she wouldn't spend it and that was to go towards the down payment on the house. She gave me approximately $32,000, $35,000, something like that, in the thirties, thousand dollars, because if you have to put down ten percent, that's the amount that you need on a $310,000 home, but since it was being purchased in my name, it was considered a commercial property because I wasn't going to live there and so twenty

percent had to be put down and that required me to get some money to do that.

[T114-17 to T115-5.][1]

The plan envisioned that, eventually, Bressman would become the owner of the residence. At the time of the purchase, respondent understood that Bressman was awaiting a settlement from a pending personal injury suit, which Bressman believed would be sufficient to purchase the house from respondent outright.

Respondent testified that the payment for the primary mortgage was $1905 and the home equity payment was approximately $700, for a total monthly mortgage payment of $2600. When asked why she had purchased the house for Bressman, respondent answered: "Because I love them and they needed a place – they needed a home to raise those boys and it was supposed to be a short-term situation because . . . [Bressman]'s . . . personal injury suit was pending."

By September 2005, two Hirsch matters were pending in the family court: Hirsch's motion to change custody and Hirsch's

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[1] "T" refers to the January 29, 2009 transcript of the DEC hearing.

prosecution for violating a restraining order that Kimberly had obtained against him. As will be discussed below, on December 14, 2005, Hirsch was convicted of violating the restraining order.

In the summer of 2005, Hirsch had filed a motion seeking a change in custody. Hirsch testified that the parties were given sixty days to file updated CISs. Argument on that motion was scheduled for September 30, 2005. The record does not state when Hirsch's CIS was filed. Kimberly's CIS and a reply certification were dated and filed on September 15, 2005.

According to Kimberly's CIS, she owned the Toms River property, which was valued at $350,000 and was subject to a $265,000 mortgage. Hirsch testified that, when he saw Kimberly's CIS, he believed that it was "absolutely impossible" that Kimberly owned a house. He had one of his friends conduct a title search on the property, which showed that respondent was the owner.

Hirsch identified Kimberly's September 15, 2005 reply certification, in which she stated, in part:

> On May 16, 2005, we moved to [the Toms River property]. My mother and I are in the process of purchasing that home. Because of my poor credit rating, caused in major part by the defendant keeping checks meant for

> medical providers, I could not purchase the residence in my name. I have, however, paid all closing costs, the deposit, and all carrying charges related to the home.
>
> [Ex.R2¶4.][2]

Respondent testified that, after oral argument on September 30, 2005, the judge ruled that a plenary hearing was necessary on the issue of custody, based on the contents of Hirsch's expert's report. According to respondent, the judge did not state that Kimberly's home ownership played a role in the determination that a plenary hearing was necessary.

The last day that respondent appeared in court on behalf of Kimberly was the September 2005 argument on Hirsch's motion. The plenary custody hearing took place two years later, in the fall of 2007.

Respondent went to that custody hearing with Bressman and Kimberly, who introduced her to Kimberly's new attorney. By this time, respondent had become very close with Bressman, Kimberly, and the children. She did not "want to be responsible for perhaps a change in custody."

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[2] "Ex.R2" is Kimberly's September 15, 2005 reply certification.

As stated previously, in December 2005, Hirsch was convicted of violating the restraining order. He testified before the DEC that, when Kimberly was confronted at that trial about her representation on the CIS that she owned the Toms River property, she stated that "we"[3] owned the house, and described how "they" had bought the house.

Respondent also testified at the 2005 domestic violence trial. A portion of the transcript containing her testimony was provided to the DEC. In it, respondent admitted that she had reviewed Kimberly's CIS prior to its submission to the court.

Respondent conceded, during her 2005 trial testimony, that Kimberly "technically" was not a homeowner. The following exchange took place:

> Q. You submitted this certification to the Court, knowing that she was not a homeowner; is that true?

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[3] As will be discussed below, "we" refers to Kimberly and her mother.

A. I didn't look at it that way. The home is in my name, but they pay all the bills on it and they are purchasing it from me.

[Ex.Plp.138-20 to 25.]

At the 2005 trial, respondent claimed that, in addition to the $35,000 that "they" had given to her toward the purchase of the home, she had a written agreement with Kimberly and Bressman that, essentially, required them to pay all bills associated with the house until respondent's home equity was paid in full. Thereafter, they would apply for a mortgage and the home would be transferred to their names.

Respondent also testified at the trial that Bressman and Kimberly were responsible for the mortgage payments. Respondent stated that she had given them "a book of deposit slips, and they deposit[ed the funds] into the account that [she had] set aside exclusively for this residence."

As it turned out, neither Bressman nor Kimberly purchased the house from respondent. The settlement that Bressman expected to be large enough for her to buy the Toms River property outright turned out to be a mere $22,000. Moreover, Bressman missed about twelve mortgage payments during the two-and-a-half years that she, Kimberly, and the children lived in

the house. On these occasions, respondent used the $35,000 in her savings account to make the payments.

Because Bressman and Kimberly could not afford living in the house, respondent asked them to leave. They vacated the premises in early 2008. As of the date of the DEC hearing, respondent still owned the house, which was then worth $100,000 less than what she had paid for it.

As a result of Hirsch's belief that Kimberly's 2005 CIS falsely asserted that she owned the Toms River property, respondent's testimony at the 2005 domestic violence trial, and other alleged improprieties on respondent's part, Hirsch filed a grievance against respondent, in November 2007. Hirsch explained:

> Well, I knew that documentation was being provided to the Court that was false. I knew that [respondent] entered into a situation with my ex to try to present themselves in a stable environment that was going to act adversely against my custody attempts, and the fact that she went ahead and blatantly lied on the stand in a trial. She was not acting — she wasn't acting in the best interest of — I don't know how to explain it. She just wasn't acting like an attorney should act.
>
> She was — there was a specific instance where she would use vulgarity in the courtroom against me in the hallway, and it was just not what was typical — listen, this

> was a very heavily litigated case. I've been involved with four other attorneys that represented myself. My ex-wife had three or four other attorneys that represented her. Never once was there a situation such as the events that took place since [respondent] took over.
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> [T31-25 to T32-19.]

On cross-examination, Hirsch admitted that, in September 2005, he had written a letter to respondent, telling her that she, Kimberly, and Bressman were a "group of liars, cheats, deceivers and manipulators." In response, respondent had called him an "F'ing asshole" in the hallway of the courthouse.

At the DEC hearing, respondent was questioned extensively about her purchase of the Toms River property and the contents of Kimberly's CIS. Respondent explained that fifty percent of her practice involved family law matters. It was her practice to give her clients a blank CIS form to fill out and return to her paralegal, who would prepare a computer-generated version for the client's signature. Respondent would then review the document, before it was submitted to the court.

With respect to Kimberly's CIS, respondent stated that her former paralegal, Donna DeRosa, had prepared the final version. Contrary to what she had described as her practice, as well as her testimony during the 2005 domestic violence trial,

respondent stated that she did not review Kimberly's CIS until "after it went out."

Respondent acknowledged that Kimberly's CIS identified the Toms River property as a real estate asset, valued at $350,000. When asked if that statement was true, respondent replied:

> [T]he plan was that it was to be [Bressman]'s house. Kim lives with [Bressman] — Kim lives with [Bressman] and the children, and that was the intent of the purchase, they were paying all of the expenses on the house initially, and although I was the legal owner, they had an equitable ownership in it.
>
> I mean, that was the point of getting this house, that they were going to buy it from me when [Bressman]'s case was settled.
>
> [T126-4 to 13.]

"Equitable owner," respondent explained, "meant that it was really . . . their house. It was their house." Respondent could not explain why she had not been identified in Kimberly's CIS as the owner of the Toms River property.

When asked why she had permitted the CIS to go out with this information, respondent replied:

> I reviewed it after it was filed with the Court. I guess if I had seen this prior to going out, I would have put some type of footnote, because they really were not tenants. They were never considered tenants. There's no section on here for an equitable

> owner. These were the expenses they were paying and I think that probably if I had seen it, I would have added some type of footnote indicating that, you know, what [that] actually was.
>
> [T128-8 to 16.]

Even though respondent had testified that the mortgage and the home equity payments totaled $2600, the CIS identified a single $2511 monthly mortgage payment as part of the housing expenses, which respondent testified was accurate when the first mortgage on the house was combined with the home equity mortgage on respondent's residence.

On cross-examination, respondent testified that her home equity loan, which was included in the mortgage payment amount identified on Kimberly's CIS, was not attached to the Toms River property but, rather, to her personal property. However, she would not agree that the mortgage payment identified in the CIS as $2511 was false, stating that it "was the total amount of the mortgage payment" for both loans. Thus, it was respondent's position that the CIS accurately reflected that the monthly mortgage payment on the Toms River property was $2511.

Even though Bressman and Kimberly pooled their money, respondent claimed that she was going to sell the house to Bressman. When asked if she had ever prepared a document

confirming their agreement, respondent stated that she had, but that it was never signed. She explained that a written document was not needed because Bressman and she were best friends. This testimony, too, was contrary to her testimony at the 2005 trial.

Respondent testified that, according to the CIS, Kimberly's monthly expenses totaled $5371. Kimberly received more than $4000 in alimony and child support and approximately $600 in Social Security payments. Bressman also contributed money to the household. Bressman's contributions, however, were not included on the CIS, even though it listed Bressman's debt as Kimberly's.

Respondent explained that she had valued the house at $350,000 on the CIS, just months after it was purchased at $310,000, because she had upgraded it with the cherry cabinets from her mother's home. Moreover, she had replaced the roof, water heater, and the dryer. When asked how that figure got to the CIS, respondent stated that the paralegal had probably asked her for it.

Regarding the $265,000 mortgage reported on the CIS, respondent testified that it did not include the home equity loan against her property, although it was included in the monthly mortgage payment identified on the CIS. According to

respondent, she could not list a mortgage against her house on someone else's CIS. Thus, the actual amount owed by Kimberly on the house valued at $350,000 was close to $365,000. Yet, respondent maintained, Kimberly still had an $85,000 equity interest in the house because "[t]hey were buying it."

Respondent testified that she did not notify the court of the errors on the CIS after she had reviewed it because she was probably not "thinking straight." In any event, she stated, the CIS accurately listed the amount of money that Kimberly expended per month. Respondent denied any attempts at deceiving anyone and added that the issue before the court was custody, not income.

Despite the fact that respondent had paid 100% of the deposit and closing costs when she purchased the Toms River property, she claimed that the statement, in Kimberly's reply certification, that Kimberly had paid all the closing costs and the deposit was not false because Kimberly had given her $35,000.

Respondent is presently a recovering alcoholic. At the DEC hearing, she testified about the role that her alcoholism played in the conduct underlying this disciplinary matter. According to respondent, as of September 15, 2005, she was actively

drinking. Moreover, she was probably drinking at the time that she drafted Kimberly's certification. Respondent drank every day. She even drank before she went to court, where she would appear under the influence of alcohol.

Near the Thanksgiving 2007 holiday, respondent was admitted to Father Martin's Ashley drug and alcohol addiction treatment center, where she remained for twenty-eight days. After she was discharged, at the end of 2007, she stayed sober for about a month and then began to drink again, in early 2008.

On April 11, 2008, respondent entered Endeavor House in Monmouth County, where she remained for another twenty-eight days. After her discharge from Endeavor House, she found an AA sponsor and joined a home group that meets seven days a week. She attends meetings at least five days a week and two meetings on Saturdays. She also tells her "story" to groups and chairs a meeting called "Living Sober." She works the twelve-step program.

As a result of the effort that respondent has put into her recovery since her discharge from Endeavor House, she has turned around her law practice and her life. She claimed that she has been humbled, stating "I guess that's what I needed." As of the

date of the DEC hearing, respondent had been sober for nine months.

Regarding the emails between respondent and Hirsch, Hirsch testified that, on December 31, 2007, he received an anonymous telephone call from someone who claimed that Kimberly and the children were living in "disgusting living conditions," that respondent had evicted them, and that they were moving out of the Toms River property. Hirsch and his present wife drove to the property, which was "in complete shambles, there was stuff on the front lawn, they were in [sic] apparent scramble to get ready to move."

Because Hirsch was unsuccessful in his attempts to reach either Kimberly or his children, he telephoned respondent and asked her if the family was being evicted. By this time, he had already filed a grievance against respondent. Hirsch testified that, in the call, he mentioned the grievance to respondent and stated that "you have to tell me whether or not they're being evicted." Respondent told Hirsch that the house was "an absolute pig sty," that she had given Kimberly and her family thirty days to vacate the premises, and that they were in the process of leaving.

Hirsh then told respondent that, if she helped him "do something to save my kids," he would consider dropping the grievance. Hirsch told respondent to get him pictures of the house. Respondent gave him her email address. According to Hirsch, respondent told him that she would talk to Kimberly and Bressman to "see what she could do." Hirsch estimated that the telephone call was no more than five minutes.

This was the only telephone conversation that Hirsch had with respondent. Thereafter, their communications were limited to emails.

Hirsch described what happened next:

> [A]nd it just transpired into, well, if you drop this, I'll get you pictures, if you do this, if you drop this, I'll give you information that you never had to get your kids back.
>
> And that was it. That was the straw that broke the camel's back. I said to myself, I can't believe that for the past six years, five years that this has been going on, that now all of a sudden the people that burned me for six years now just burned her and now she's going to try to get back at them to give me back my kids. It was just a whole big debacle of what happened, and to this day I still can't believe it.
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> [T25-7 to 20.]

The emails were admitted into evidence at the DEC hearing. On January 2, 2008, Hirsch sent the first email to respondent, informing her that Kimberly had denied that the family was moving. In the early afternoon of that date, respondent replied, stating that she was meeting with "them" that afternoon and that she would "know more then." The next day, January 3, 2008, Hirsch sent an email to respondent, asking her about the outcome of the meeting. Apparently, respondent did not reply to this email.

The next email in the record is from Hirsch to respondent, written on January 18, 2008. Hirsch wrote:

> I received a call from Claire today and a call from Beverly yesterday. If you want to help me then don't have them call me. Give me the evidence that will convince the judge to change custody. Both Claire and Beverly claim they will offer sworn statements. Claire also said she could get pictures. That wont [sic] be enough and you know it.
>
> These kids don't belong in these types of living conditions. Moving every year. They need to be safe and secure. That [sic] all I care about, and have cared about for the last 7 years. I will do what I said. You helped create this with [sic] web of lies with Sharon and Kim. Now undo it if you want my help.
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> [Ex.P8;T26-T27.]

The next email appears to have been written by respondent to Hirsch on February 12, 2008:

> Todd,
>
> I have the pictures which show the conditions that the boys were living in. I would have responded sooner but I was in the hospital for three weeks. I am trying to get Kim to dismiss the restraining order and should know more today. In addition [to] Claire testifying, so will Gloria, Robert, Chris (the guy doing the work, ie contractor) who said that these people should be taken out of here in hand cuffs.
> I do not know Beverly. If subpoenaed, I can also testify about the living conditions.
>
> I never lied to you. I told you that if I evicted them they would get a hardship stay thereby being allowed to stay until after March 1st.
>
> I stopped at their new house yesterday. Although the cars were there, they were not. I rang the bell and no one answered. However, the door was open so I went in and looked around. It's starting to look like a pig sty already.
>
> I will let you know about the restraining order, but if you truly want the boys, you have to dismiss the grievance.
>
> Further, you can not [sic] tell them that you have spoken with me. We should probably meet personally, with no tape recorder in your pocket.
>
> [Ex.P8.]

Later that day, Hirsch replied: "Forward me the pictures then we will talk. I am in the process of filing a motion as I write this." Respondent replied:

> Don't file the motion as it is premature. Claire took the pictures to make another copy. I also have not heard about the restraining order yet.
>
> I will exchange the pictures with you when you give me the letters to mail to the investigator and all other people on that list dismissing the grievance. Last time I spoke to you, you went directly to Sharon. Please don't do that again.
>
> [Ex.P8.]

Again, on February 12, 2008, Hirsch replied to respondent's email as follows:

> I never went to Sharon. I have not spoken to her at all during this. I am not dismissing anything without seeing the pictures. In due time she will be thrown out of this place too. I have waited this long. I have no reason to negotiate this. Time is on my side. The more time she has the more she screws up.
>
> [Ex.P8.]

There appears to be a final email from respondent to Hirsch, although there is no date or other information indicating whether or when it was sent. The email states:

> Todd, two sets of pictures are being made at this moment. If you would like to meet

tonight to view them, I can arrange my schedule accordingly. Perhaps you can volunteer to drop the kids off tonight and then we can meet.

Let me know.

Nola

[Ex. P8.]

Respondent admitted to the email exchange between her and Hirsch. She testified that the email written to Hirsch, on February 12, 2008, had come on the heels of Kimberly's departure from the Toms River property and respondent's receipt of the estimate from the contractor who was going to repair the damage. Moreover, respondent claimed, she was not sober at this time. She had "a lot on [her] plate and . . . this house is what sent [her] over the edge again."

When Kimberly, her children, and Bressman moved out of the house, the condition of the building was "deplorable," according to respondent. Eighteen dogs had been living there. As a result, the house "stunk to high hell." Obscenities had been graffiti-painted onto the walls of the finished basement. Respondent spent more than $20,000 to repair the damage.

Respondent testified that the pictures mentioned in her February 12, 2008 email to Hirsch were about one hundred

photographs of the damage to the house, including holes in every room of the house and dog feces smeared on the walls. Despite the contents of respondent's February 12, 2008 emails to Hirsch, she claimed that she had only informed him that she had the photographs showing the condition of the house. She did not offer to do anything with the pictures. She also claimed that it was Hirsch who had raised the issue of dismissing the grievance, not her.

Hirsch and respondent testified that she never gave any pictures to him. In fact, he stopped communicating with respondent, for fear that she was setting him up. According to Hirsch, as of the date of the hearing in this disciplinary matter, January 29, 2009, the children remained in Kimberly's custody. He had stopped pursuing a change in custody for financial reasons.

Upon the conclusion of her testimony, respondent admitted that she had violated the rules with which she was charged. Respondent explained: "I made a mistake because I was angry and it's something that I wouldn't have done had I not been drinking." By "mistake," she meant the email exchange with Hirsch. Respondent stated:

> [Bressman and Kimberly] beat me out of $100,000. The value of my house is $100,000 less. I have to keep the house. I can't even sell it. They really practically bankrupted me. My mother has been paying my bills for the last year. She put over $100,000 into my account because I wasn't able to pay my help and pay the mortgages, and I'm fortunate I have her and that she has the ability to do that.
>
> It's been a very humbling experience. I'm turning it around. She's not putting money into my account every week now. She's not even putting any money into my account once a month now. I'm making my overhead. I'm not floating in money, but I'm paying my bills mostly on my own. It's going to take me a while to get completely independent, but that's what I'm working on and that's what I need to do.
>
> [T143-1 to 17.]

Respondent's witness, Erin Cowley, a psychotherapist who practices in the "field of drug and alcohol," testified that she was respondent's AA sponsor and that she had known respondent for approximately three-and-a-half years. Respondent was not her client. Moreover, Cowley had no first-hand knowledge of respondent's condition in 2005.

Cowley knew of respondent's treatment at Father Martin's Ashley, in late 2007, and at Endeavor House, in 2008. When respondent was admitted to Endeavor House, Cowley was her sponsor.

Cowley testified about respondent's participation in AA. Cowley was confident that respondent had remained sober since her discharge from Endeavor House, in April 2008, because, when respondent had relapsed in the past, she stopped contacting Crowley and attending meetings. Over the past year, there had been "maybe five times" when respondent had not called her "on a regular basis." In addition, Cowley attended approximately two meetings per week with respondent. According to Cowley, respondent also was active in community service. Cowley estimated that respondent had relapsed three times, during the period that they had known each other. Respondent was in relapse between November 2007 and her treatment in April 2008.

Gloria Danelson testified that she had been employed by respondent as a paralegal since September 2006. During her employment, Danelson had observed respondent in a cycle of depression, drinking, and attempted rehabilitation, including her admission to Father Martin's Ashley and Endeavor House.

Danelson described her observations of respondent, since her discharge from Endeavor House, in April 2008:

> She's trying to remain sober. I see her going to her meetings. I see her meeting with — I can't schedule her appointments certain periods of time between 12:00 and 1:00 every day, sometimes she'll

> say to me, I'm going to the morning meeting, you can schedule me this day, but I see her going to the meetings.
>
> I see her actively trying to maintain her sobriety. Her health is much better than it was. There was a timeframe where I think everybody that knew Nola was concerned for her – on a personal note for her health. Not anymore. She's not pale, not drawn, she's not anything compared to what she was, no.
>
> [T186-4 to 17.]

Danelson did not have any awareness of respondent's drinking since her discharge from Endeavor House in April 2008. Based on Danelson's observations of respondent when she was drinking, Danelson believed that she would know if respondent were drinking now. For example, respondent goes into the office regularly. According to Danelson, "[w]hen Nola is drinking, Nola doesn't come to the office. She's home."

Danelson noted that the disciplinary matter had been very stressful for respondent, who had not "run" from the situation, as in the past. Danelson saw respondent face the situation and take steps to do what she needed to do, instead of hiding and drinking.

Respondent submitted brief "character" letters from four individuals: attorneys S. Karl Mohel, Stephen A. Pepe, and

James R. Ozol, and Thomas J. Barton, the president of Land Title Services Agency, LLC. Only one of these individuals acknowledged that respondent has an alcohol-abuse problem and that she has taken steps to treat her addiction. All of the letters, however, attested to her good character.

The DEC noted respondent's admission to having entered into an improper business relationship with her client and to having deceived the court, when she allowed her client to certify to a false CIS. The DEC also noted respondent's admission to having suggested to Hirsch, via email, that, if he dismissed the grievance, she would give him information showing that Kimberly was not providing appropriate care and housing for their children, in order to assist him in gaining custody.

According to the DEC, respondent's agreement to assist Hirsch in exchange for his dismissal of the grievance was based on her anger toward Kimberly, who had inflicted serious damage to the Toms River property, rather than a desire to correct prior misstatements and false filings.

The DEC found that respondent was in an impaired state during the time that her misconduct took place. However, the DEC noted, "the inescapable fact remains that she continued to

practice law to the detriment of her clients and this Grievant, when she should have sought additional intervention."

Nevertheless, the DEC considered respondent's admission of wrongdoing and her sobriety, since April 2008, in mitigation of her misconduct.

Finally, as much as the DEC was "impressed" with respondent's "regret at allowing her alcoholism to bring her down," it was "equally unimpressed by her lack of remorse that she had to a [sic] adversary litigant and to the fact she had perpetrated a fraud upon the Court and upon her adversaries in a proceeding of grave importance to the litigants."

For respondent's offering into evidence a CIS that she knew to be false, the DEC found that she had violated RPC 3.3(a)(1) and (a)(4). For her misleading a finder of fact, an opposing party, and opposing counsel, and for misrepresenting the truthfulness of a statement of others concerning ownership of the home, the DEC found that she had violated RPC 3.3(a)(5), RPC 3.4, and RPC 4.1.

The DEC also found that respondent had violated RPC 1.8, by entering into a business relationship with her client, and RPC 1.8(e), by providing financial assistance to the client in connection with pending litigation. Finally, the DEC found that

respondent had violated RPC 1.6, RPC 1.9(c), RPC 8.1, and RPC 8.4(d), when she sent emails to Hirsch to the detriment of her former client, in an attempt to persuade him to withdraw his grievance.

The DEC considered the totality of the circumstances, in addition to the testimony and letters of the "character" witnesses, and recommended that respondent be suspended from the practice of law for six months. In addition, the DEC recommended that respondent "continue to seek appropriate alcohol intervention program and to successfully complete an additional alcohol intervention."

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical was fully supported by clear and convincing evidence.

The disciplinary charges brought against respondent arose out of her conduct in purchasing the Toms River property, preparing and submitting Kimberly's CIS and reply certification to the court, and suggesting to Hirsch that she would provide him with information helpful to his custody claim, if he withdrew the grievance against her. We will address each action separately.

__The Purchase Of The Toms River Property__

Respondent purchased the Toms River property in her name, with her funds. In addition to the $11,000 cash deposit, she obtained a $248,000 mortgage on the property and raised an additional $100,000, by taking out a home equity loan on her residence.

Although respondent claimed that Bressman wanted to buy the house but was unable to do so because she had poor credit, there was no evidence that Bressman had the ability to purchase any house or that Bressman had any intention of buying the Toms River property. First, none of the $35,000 that Bressman had turned over to respondent, between February 2004 and May 2005, was used toward the purchase of the house, even though the very purpose of that money was to be used as a down payment.

Second, there was no evidence that Bressman had a source of regular income that would allow her to take on a mortgage at any time. Instead, she was going to use the proceeds of a personal injury settlement to buy the house. In fact, Bressman's financial situation was so unstable that she (and/or Kimberly) rarely paid the mortgage after they moved into the Toms River property, thereby requiring respondent to deplete the $35,000 "down payment" to keep the mortgage current.

Third, despite respondent's claim that either she and Bressman or she, Bressman, and Kimberly had entered into a written agreement for the purchase of the house from respondent, no such agreement was ever produced. There is, thus, insufficient proof to support respondent's claim that she had simply carried out a straw purchase of the Toms River property for the sole benefit of Bressman.

Respondent's counsel accurately pointed out, in his brief, that Bressman was not respondent's client and, therefore, respondent did not violate any RPCs when she purchased the Toms River property for Bressman's benefit. Yet, although Bressman was not respondent's client, when taken as a whole, respondent's testimony clearly and convincingly supports the finding that she purchased the property for Kimberly's benefit as much as for Bressman's.

As Kimberly's lawyer, respondent was well familiar with Hirsch's relentless pursuit of custody on the ground that Kimberly could not provide the children with a suitable home. Indeed, respondent testified that she purchased the property because she "loved them and they needed a place – they needed a home to raise those boys". Respondent testified that Bressman and Kimberly were "attached at the hip" and that they "pooled"

their money. Throughout much of her testimony before the DEC and at the domestic violence trial, respondent referred to Bressman and Kimberly as a couple, rather than as individuals. She claimed that "they" had an equitable interest in the house, that "they" were going to buy it from her, that "they" would apply for a mortgage, and that the title would be transferred to "their" names. Of course, the ultimate proof that respondent had purchased the house for the benefit of Kimberly is the CIS, which identified the property as having been owned by Kimberly, not by respondent and not by Bressman, either alone or together with Kimberly.

We find that respondent violated RPC 1.8(a) and RPC 1.8(e) when she purchased the house for the benefit of Kimberly, who was facing yet another of Hirsch's motions for custody, based on his claim that she was unable to provide their children with a suitable home. RPC 1.8(a) provides, in relevant part:

> (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in manner and terms that should have reasonably been understood by the client, (2) the

> client is advised of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel of the client's choice on the transaction, and (3) the client consents in writing thereto.

In this case, respondent agreed to purchase the Toms River property on behalf of Kimberly, but she failed to comply with any of the requirements of the rule. There were no "terms," other than that Kimberly and/or Bressman would somehow buy the property from respondent. The phantom terms certainly were not reduced to writing. Moreover, Kimberly was not advised to seek the advice of independent counsel and did not provide respondent with written consent. Unquestionably, thus, respondent violated RPC 1.8(a).

She also violated RPC 1.8(e), which prohibits a lawyer from providing financial assistance to a client in connection with pending or contemplated litigation, with the exception of advancing or paying court costs. Kimberly could not afford to purchase the Toms River property. Yet, either she or respondent or both believed that it was important for Kimberly to own a home. By purchasing the home on Kimberly's behalf, respondent provided her with financial assistance in connection with the

ongoing litigation between her and Hirsch, in violation of the rule.

Respondent's submission of the CIS and her testimony at Hirsch's 2005 domestic violence trial resulted in her violation of a number of RPCs. The CIS falsely asserted that Kimberly owned the Toms River property and that her monthly mortgage payment was $2511. By submitting the CIS to the court and to Hirsch (who was acting pro se), respondent violated RPC 3.3(a)(1), which prohibits a lawyer from knowingly making a false statement of material fact to a tribunal; RPC 3.3(a)(4), which prohibits a lawyer from knowingly offering evidence to a tribunal that the lawyer knows to be false; and RPC 4.1(a), which prohibits a lawyer from knowingly making a false statement of material fact to a third person.

Respondent defended these charges on two grounds: (1) she did not act "knowingly" because she neither prepared nor reviewed the CIS before it was submitted to the court, and (2) the representations regarding the Toms River property were not "material" because the ownership of the property was not material to the issue of custody. The DEC rejected these claims, as do we.

First, in addition to respondent's admitting to these violations, the evidence clearly and convincingly establishes that she knew full well that the CIS would contain false information. Respondent purchased the Toms River property in her name for the benefit of Kimberly, so that Kimberly could demonstrate to the court her ability to provide a suitable home for her children. According to respondent, Kimberly was, at the least, an equitable owner of the property, and she paid the mortgage. Thus, whether respondent reviewed the CIS or not, she had to know that Kimberly would list the property as an asset and would identify the mortgage payment as a monthly expense on her part.

More pointedly, however, respondent testified at the 2005 domestic violence trial that she had reviewed the CIS before it was submitted to the court. Moreover, it was she who had drafted Kimberly's reply certification, which falsely represented that Kimberly had paid the deposit and all closing costs incurred as the result of the purchase of the property.

The misrepresentation about Kimberly's ownership of the property in the CIS and during respondent's testimony was material. The point of Hirsch's motions was to gain custody of the children because Kimberly was allegedly unable to provide a

suitable home for the children. Without a doubt, Kimberly's home ownership showed some degree of stability.

We find that respondent knowingly submitted Kimberly's CIS to the court and to Hirsch, knowing that it contained false material information.

This conduct, however, did not constitute a violation of RPC 3.3(a)(5), inasmuch as that rule prohibits an attorney from knowingly "fail[ing] to disclose to the tribunal a material fact with knowledge that the tribunal may tend to be misled by such failure." RPC 3.3(a)(5) applies to acts of omission. Here, respondent's dereliction did not stem from her failure to disclose a fact. Rather, it arose out of the fabrication of a statement of material fact.

Moreover, respondent did not violate RPC 3.4(b), which prohibits an attorney from falsifying evidence, counseling or assisting a witness to testify falsely, or offering an inducement to a witness that is prohibited by law. Here, the CIS was not falsified; there was no proof that respondent counseled or assisted any witness to testify falsely, and there was no evidence that she offered an inducement to a witness that was prohibited by law.

THE EMAIL EXCHANGES

Respondent's report to Hirsch of the deplorable living conditions of the Toms River property and her offer to provide him with photographic evidence of those conditions was a vindictive and self-serving act of disloyalty to her former client, whom she had previously represented to defeat Hirsch's attempt to secure custody of the children. Respondent was well aware that Kimberly's living conditions were material to Hirsch's repeated assertion that Kimberly was incapable of providing a suitable home environment for the children. The information and the photographs could do nothing but help Hirsch and hurt Kimberly in a custody action based on that very claim.

RPC 1.6(a) prohibits an attorney from revealing confidential information relating to the representation of a client, unless the client consents, after consultation. RPC 1.6(a) is inapplicable here because respondent no longer represented Kimberly at the time that she discovered the damage to the property and evicted Kimberly and her family. We find that respondent violated RPC 1.9(c) instead.

RPC 1.9(c) prohibits an attorney from using information relating to the representation of a former client to the disadvantage of the former client or revealing information

relating to the representation of the former client. In this case, the information at issue was the deplorable state of the children's living conditions, which was the very subject of Hirsch's multiple custody motions over the years, including the 2005 motion in which respondent represented Kimberly, and which led respondent to buy Kimberly a house so that she could prove to the court that she had finally stabilized the children's living conditions. Thus, the information that respondent acquired about the living conditions related to the representation. Moreover, by entering into negotiations with Hirsch for the exchange of photographic evidence of the condition of the property, respondent sought not only to benefit Hirsch, but to harm Kimberly.

To be sure, prior to Hirsch's call to respondent, he had already learned of the living conditions and was calling respondent to confirm the veracity of what he had been told. However, RPC 1.9(c) is not limited to confidential information. It addresses any type of information. Moreover, while Hirsch had an idea of the living conditions, it was respondent who was positioning herself to give him proof.

Respondent also violated RPC 8.4(c), a charge that the DEC did not address. RPC 8.4(c) prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent violated this rule when she submitted the false CIS to the court and to Hirsch.

We find further that respondent violated RPC 8.4(d). Under RPC 8.4(d), it is unethical for a lawyer to engage in conduct that is prejudicial to the administration of justice. An attorney's attempt to persuade a grievant to withdraw a grievance is a violation of RPC 8.4(d). See, e.g., In the Matter of R. Tyler Tomlinson, DRB 01-284 (November 2, 2001) (admonition for attorney who improperly conditioned the resolution of a collection case on the dismissal of an ethics grievance filed against the attorney by the client's parents) and In re Mella, 153 N.J. 35 (1998) (reprimand imposed on attorney who communicated with the grievant in an attempt to have the grievance against him dismissed, in exchange for a fee refund and some additional remedial conduct; the attorney was also guilty of lack of diligence and failure to communicate with clients). In another case, an attorney received a private reprimand (now an admonition) for preparing a "Payment Affidavit

and Cash Receipt" intended to force his client to withdraw all ethics grievances against him.[4]

Finally, the DEC did not address the RPC 8.4(a) charge, which, we find, was sustained. That rule provides that it is professional misconduct for a lawyer to either violate or attempt to violate the RPCs. By virtue of respondent's violations of RPC 1.8(a), RPC 1.8(e), RPC 1.9(c), RPC 3.3(a)(1), RPC 3.3(a)(4), RPC 4.1(a), RPC 8.4(c), and RPC 8.4(d), she committed a per se violation of RPC 8.4(a).

There remains for determination the quantum of discipline to be imposed for respondent's troubling conduct in this matter. The Court has consistently imposed at least a reprimand for misrepresentations to clients, disciplinary authorities, and the courts. See, e.g., In re Kasdan, 115 N.J. 472, 488 (1989) (misrepresenting to a client the status of a lawsuit); In re Sunberg, 156 N.J. 396 (1998) (lying to the Office of Attorney Ethics about the fabrication of an arbitration award and also failing to consult with a client before permitting two matters

[4] Because private reprimands are confidential, the name of the attorney has not been identified.

to be dismissed; mitigating factors included the attorney's unblemished disciplinary record, the passage of time since the incident, the lack of personal gain and harm to the client, the aberrational nature of the misconduct, and his remorse); In re Powell, 148 N.J. 393 (1997) (misrepresenting to the district ethics committee that an appeal had been filed, as well as gross neglect, lack of diligence, and failure to communicate with the client); and In re Kantor, 165 N.J. 572 (2000) (misrepresenting to a municipal court judge that attorney's vehicle was insured on the date it was involved in an accident when, in fact, the policy had lapsed for nonpayment of premium; the attorney's girlfriend had misplaced the envelope containing the bill and the payment and consequently never mailed it).

In one particular case, however, an attorney who submitted a false CIS to the court received a three-month suspension. See, e.g., In re Kernan, 118 N.J. 361 (1990). There, the attorney, in his own divorce matter, submitted a CIS, identifying as one of his assets an unimproved lot. Four days before a hearing in the divorce matter, the attorney conveyed the lot to his mother for no consideration. The attorney failed to disclose the conveyance to the court, opposing counsel, and his former wife. He also failed to amend his CIS and failed to

disclose the conveyance at the settlement conference immediately preceding the hearing.

In Kernan, the attorney did not divulge the conveyance until he was directly questioned by the court at the hearing. At that point, he stated that his purpose in conveying the lot to his mother was to exclude the asset from the marital property that would be subject to equitable distribution. As with respondent in this case, Kernan's conduct was a violation of RPC 3.3(a)(1), RPC 8.4(c), and RPC 8.4(d).

The Supreme Court concluded that Kernan's misconduct called for a suspension from the practice of law. Notwithstanding the existence of a prior private reprimand (now an admonition) on Kernan's record, the Court limited the suspension to the minimum term of three months.

Kernan, a more serious case than the present one, would not justify a suspension solely for respondent's submission of Kimberly's CIS. See In re Sears, 71 N.J. 175, 202 (1976) (quoting the pronouncement in In re Greenberg, 21 N.J. 213, 225 (1956), that, in assessing the appropriate sanction to be imposed for an attorney's ethics violations, "each case must rest largely upon its own particular circumstances"). In Kernan, the attorney's misconduct was not simply the failure to

amend the CIS to reflect the conveyance. Rather, the conveyance itself was fraudulent, inasmuch as its purpose was to exclude the property from the assets subject to equitable distribution; the conveyance was for the attorney's personal gain; and, by conveying the property to his mother, without consideration, the attorney involved another person in his effort to defraud his former wife.

In this case, there is no evidence that respondent's purchase of the house was for the purpose of perpetrating a fraud. Moreover, the arrangement that she had with Kimberly and/or Bressman was not for personal gain.

However, there are additional violations that must be factored into the ultimate measure of discipline for respondent's unethical behavior. Respondent entered into a business transaction with Kimberly by purchasing the Toms River property for her, a violation of RPC 1.8(a) and RPC 1.8(e). As if that conflict of interest were not bad enough, the conflict that arose after respondent's representation of Kimberly had ended was an egregious act of disloyalty. Respondent not only sought to assist Hirsch but also sought to inflict harm upon her former client. Worse yet, respondent also sought to benefit herself by negotiating the dismissal of Hirsch's grievance

against her, in exchange for the photographs that she had in her possession, depicting the condition of the Toms River property.

Together, these violations would tend to justify the six-month suspension recommended by the DEC. In our view, however, there is sufficient mitigation to render a three-month suspension sufficient.

As a preliminary observation, we note that the purpose of disciplinary action is not to punish the attorney but rather to protect the public. In re Willis, 114 N.J. 42, 47 (1989). We recognize, too, that alcoholism is not a defense to disciplinary charges; it does not excuse an attorney's ethics transgressions. See, e.g., In re Wurth, 131 N.J. 453 (1993). Nevertheless, an attorney's battle with alcoholism and rehabilitation may mitigate the severity of the discipline imposed for those transgressions. See, e.g., In the Matter of John P. Yetman, Jr., DRB 92-305 (December 3, 1992) (slip op. at 18) (attorney's "battle with alcoholism" expressly recognized as a mitigating factor), aff'd 132 N.J. 157 (1993), and In the Matter of Beverly M. Wurth, DRB 92-280 (November 5, 1992) (slip op. at 17) (recognizing that the attorney's psychological problems could mitigate the severity of the discipline imposed and noting that she no longer appeared to be a danger to the public).

The record supports the conclusion that respondent's professional capacity and judgment were seriously affected by her alcohol abuse during the time in question. Her behavior, which was limited to this single client matter, was aberrant and bore a direct relationship to her uncontrolled alcoholism. She has been sober since her discharge from Endeavor House. She attends at least seven AA meetings per week. She "gives back" by sharing her experience with others. In short, she has made her sobriety a priority in her day-to-day life and appears to have been rehabilitated.

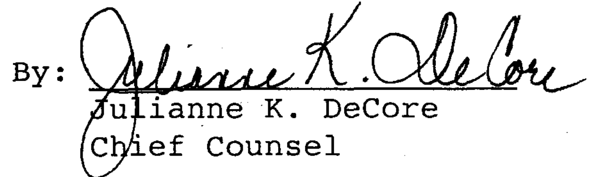
Respondent enjoys a good reputation among her colleagues, as attested by the character letters submitted to the DEC. It is unlikely that she will repeat this misconduct. Moreover, we note that, prior to respondent's involvement with the Hirsches, she had an unblemished disciplinary history.

For the totality of the circumstances, therefore, we determine to impose a three-month suspension on respondent. In addition, she must continue to attend weekly AA meetings until further order of the Court and, prior to reinstatement, must provide proof of fitness to practice law, as attested to by a mental health professional approved by the OAE.

Member Baugh did not participate.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

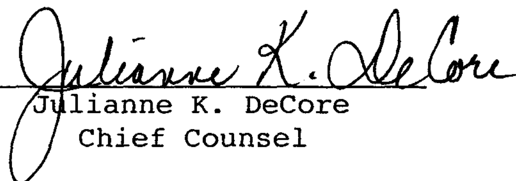
In the Matter of Nola Trustan
Docket No. DRB 09-132

Argued: September 17, 2009

Decided: December 3, 2009

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh						X
Clark		X				
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		8				
Total:						1



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