

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 00-364

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IN THE MATTER OF  
ROBERT D. ARENSTEIN  
AN ATTORNEY AT LAW

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Decision

Argued: February 8, 2001

Decided: June 20, 2001

Dennis W. Blake appeared on behalf of the District IIA Ethics Committee.

Michael L. Kingman appeared on behalf of respondent.

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

This matter was first before us on September 21, 2000, on a recommendation for an admonition. At that time we determined to bring it on for oral argument. The complaint charged respondent with violations of RPC 3.2 (failure to treat with courtesy and

consideration all persons involved in the legal process) (count one), RPC 3.4 (unlawfully obstructing another party's access to evidence) (count two), RPC 4.4 (in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person) (count three) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Respondent was admitted to the New Jersey bar in 1979. He is also admitted in New York, the District of Columbia and Florida. Respondent leases office space from an attorney in Teaneck, New Jersey. He has no history of discipline.

The charges in this matter stem from respondent's conduct during a deposition in a matrimonial matter. The complaint alleges that respondent removed the court reporter's hands from her stenographic machine to prevent her from transcribing a discussion between counsel.

Winifred Handel, the grievant, is a court reporter who works for the firm of Rosenberg & Associates Certified Shorthand Reporters & Videographers. At the request of one of respondent's associates, on November 16, 1998 Handel was sent by Rosenberg & Associates to transcribe a deposition at respondent's Teaneck, New Jersey office. Respondent was taking the deposition of Irene Kelleher, who was represented by Arthur Rose. According to Handel, she had not met either of the attorneys prior to the deposition. Present at the deposition were Handel, Rose, Mr. and Mrs. Kelleher, respondent and

respondent's former associate, Michielle Spector.

From the outset of the representation, there was tension between the two attorneys. Respondent claimed that the problems started when he took over William Kelleher's representation from another attorney. At that time, Rose opposed respondent's request for an adjournment of a pending motion.

Mrs. Kelleher's deposition started at 10:45 a.m. During the course of the deposition, a dispute arose between respondent and Rose as to whether a discussion relating to a document should be on or off the record. The following exchange took place:

MS. SPECTOR: Another fax came in.

MR. ROSE: What came in?

MS. SPECTOR: I didn't make a hard copy of it.

MR. ARENSTEIN: Off the record.

MR. ROSE: Okay. I would like the record to show that what Mr. Arenstein has just produced—

MR. ARENSTEIN: I haven't just produced it, and let's go off the record.

MR. ROSE: This is a - -

MR. ARENSTEIN: You can send him the bill for this. I'm not going to pay for this! I'm not going to pay on my deposition for Mr. Rose! Stop taking the deposition!

MR. ROSE: I'm not paying for this. You are.

MR. ARENSTEIN: I am going to adjourn this deposition and get another Reporter. I don't trust your Reporter.

MR. ROSE: She's not my Reporter.

MR. ARENSTEIN: I don't trust your Reporter. She is your Reporter.

MR. ROSE: [B\_.....t].

MR. ARENSTEIN: How did we get this outfit?

MS. SPECTOR: I called the company for the Reporter. Pat Ferrara recommended them.

MR. ARENSTEIN: Oh, that's why. I want this off the record. Go off the record. Will you stop writing.

(Whereupon, there was an off-the-record discussion.)

(The deposition recessed at 11:45 a.m.)

[Exhibit R-2 at 60-61]

According to Handel, during this exchange respondent was irate and accused her of being "in cahoots" with respondent. She testified that respondent leaned over her and grabbed both of her hands and pulled them off her machine. Handel explained that, although she was not hurt, she felt that she had to protect herself. "I did not want to give him the opportunity to either deck me or destroy my machine and I was in a protect-me

mode.” 1T19.<sup>1</sup> According to Handel, when she told respondent that she was required to continue transcribing, respondent threw her out” and obtained another reporter. The deposition continued that afternoon with the new court reporter.

According to Handel, since the time of the incident, she has not spoken to Rose. It was her idea alone to file the ethics grievance. She did so because she believed that respondent’s behavior was an assault and that his conduct was beyond the bounds of appropriate behavior for an attorney. Handel stated that she has been in many depositions when attorneys have argued, but she added that they found other ways to deal with their disagreements, other than physically assaulting the court reporter.

Handel stated that, at the conclusion of the deposition, she transcribed it from her notes. At the end of the transcript, she inserted the following passage:

[Respondent] who was standing over me and screaming at me, reached over and pulled my hands off my machine whereupon there was an off-the-record discussion. The deposition recessed at 11:45 a.m.

[Exhibit P-2]

Handel testified that she inserted her version of the events into the transcript because she wanted to make a record of what had occurred. Her statement was not included, however, in the original transcript.

Handel also testified that she has been a certified court reporter for thirty-eight years and that the custom and practice in the industry, when there is a disagreement between counsel about whether to go off the record, is to continue transcribing.

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<sup>1</sup> 1T denotes the transcript of the February 17, 2000 DEC hearing.

Handel expressed her anger at respondent, whom she described as “discourteous,” “abusive” and “disrespectful.” She stated that she is entitled to a safe environment at a deposition and that she should not be subjected to “physically abusive behavior by attorneys.” She added that, in her thirty-eight years as a court reporter, she has never had a similar experience.

Arthur Rose, an attorney for forty-three years, was subpoenaed to testify at the DEC hearing. Rose confirmed that he had not spoken to Handel either before or since the deposition. He explained that his relationship with respondent was somewhat hostile. It was Rose’s belief that respondent resented him for some reason. Rose and respondent knew each other from prior cases. Rose described his relationship with respondent before the deposition as somewhere between friendly and unfriendly.

Rose testified that, before the incident, the deposition had been “intermittently hostile.” According to Rose, at one point during the deposition there was an issue about some testimony, which the reporter was asked to read back. When the reporter did so, the testimony supported Rose’s position. Rose felt that afterwards respondent became angry with the court reporter. Rose indicated that the atmosphere was tense and that he had never before used profanity in a deposition. He stated that, in this instance, respondent’s accusation that he was in collusion with the court reporter led him to swear.

Rose saw respondent physically restrain the court reporter by pulling her arm off the machine. He recalled that it occurred very quickly. He believed that respondent had removed only one of Handel’s arms from the machine, but could not be more precise about

the details. Rose stated that “unfortunately” there was no doubt in his mind that respondent had physically touched the reporter.

Respondent’s client, William Kelleher, testified and signed a certification (Exhibit J-4) about the incident. At the DEC hearing, respondent was asked whether he believed Kelleher had a good recollection of the events, in light of Kelleher’s age and poor health. Respondent replied that he did not think that Kelleher had “every single recollection of everything that happened,” but believed that Kelleher’s testimony about the incident was accurate.

Kelleher testified that he could not recall the details of the certification he had signed or who had prepared it for his signature. Kelleher’s certification indicated that, at the deposition, respondent and Rose disagreed on many issues. It also stated that, every time respondent asked the court reporter to go off the record, she continued to type. In essence, the certification read as follows: At one point when the attorneys were in disagreement, respondent asked the court reporter to stop typing. He repeatedly asked her to stop typing his conversation with his associate and to be allowed to speak off the record. She refused to stop. At that point, the attorneys were screaming back and forth and respondent again asked the court reporter to stop typing. When she refused, respondent insisted that she stop typing and terminated the deposition. The certification also stated that Kelleher was sitting next to respondent throughout the entire morning deposition and did not see him touch the court reporter.

At the DEC hearing, Kelleher's testimony corroborated the contents of his certification. He stated that he had a clear view of the court reporter at all times and did not recall respondent getting up at any point during the deposition.

Respondent's former associate, Spector, who was unavailable to testify at the DEC hearing, submitted a certification in connection with the incident. Spector's certification stated that there were numerous disagreements between counsel about questions asked to Mrs. Kelleher, documents not produced, etc. As to the specific incident, Spector stated that the attorneys disagreed about a statement that Rose wanted to place on the record. According to Spector, respondent asked the court reporter to stop typing, but the court reporter continued typing Rose's remarks. At that point, respondent again asked the court reporter to stop typing, "to no avail and he terminated the deposition." Spector stated that she did not see what transpired during the time that respondent allegedly reached or touched Handel. Exhibit J-5.

In turn, respondent testified that Handel was transcribing a private conversation with his associate about a "fax" and that she refused to go off the record when requested to do so; he, therefore, decided to end the deposition. Respondent denied having removed Handel's hands from her machine. He admitted, however, that he was frustrated and had "lost his cool" during the deposition. Respondent added that he felt that Rose was trying to prevent him from obtaining necessary information and was badgering him about what was going on at the deposition. Respondent admitted that Rose's conduct had upset him.



Respondent testified that he had considered terminating the deposition because he felt that Rose had had a discussion with the court reporter beforehand and had instructed her to take down every word that was said. He believed this to be the case, even though he had not observed Rose and Handel conversing before the deposition. Respondent added that he did not trust Handel and viewed her as Rose's court reporter, even though respondent's office had retained her. Asked why Handel had thought there had been physical contact between the two of them, respondent replied that she was angry that the deposition was being terminated.

Respondent presented the character testimony of two attorneys. Thomas J. Costa, Jr. is an attorney from whom respondent rents office space. Costa was not in the room at the time of the incident and, therefore, could not shed light on what had occurred. Costa testified that he had known respondent for approximately twenty-five years and that he regards him as a knowledgeable, generally pleasant attorney. Costa stated that he has seen respondent in an excited state during stressful situations, but has never seen him take any physical action.

Another attorney, Barry Croland, testified that he has known respondent for more than fifteen years. He opined that respondent effectively, honorably and zealously represents his clients. He believed respondent to be personable, of unquestioned integrity, very zealous in representing his client's interests and not quiet or reserved. He could not form an opinion on whether he was surprised by the allegations against respondent.

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The DEC determined that Handel, a court reporter for over thirty years, was a very credible witness. Although respondent viewed Handel's ethics grievance as the product of her anger for being discharged, the DEC found that she filed the grievance because she believed that respondent's conduct was beyond the bounds of acceptable conduct for an attorney.

The DEC found clear and convincing evidence that respondent touched Handel in anger, by removing her hands from her stenographic machine. The DEC also found that, while the touching was brief and caused Handel no physical harm, it constituted an inappropriate behavior for attorneys.

The DEC, therefore, concluded that respondent violated RPC 3.2, in that his behavior did not comply with the requirement that an attorney treat all persons involved in the legal process with courtesy and consideration. It also concluded that respondent, reacting to anger that culminated in his physical removal of the court reporter's hands from her machine, violated RPC 8.4(d) (conduct prejudicial to the administration of justice). The DEC did not find violations of RPC 3.4 or RPC 4.4.

In recommending an admonition, the DEC reasoned that, although respondent's action was reprehensible, it occurred in the heat of the moment and was not likely to recur.

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

Key to this case is whether respondent actually made contact with the court reporter. The DEC had the opportunity to observe the witnesses during their testimony and to assess their credibility. The DEC was unequivocal in its determination that Handel was a "very credible witness." Moreover, the evidence in this matter weighs more heavily in favor of Handel's version of events than that of respondent.

Respondent argued that the court reporter insisted on transcribing his personal conversations with his associate. However, the transcript does not support his claim. At the time the deposition was terminated, Rose was discussing a "fax" that was brought into the deposition room. Respondent cut Rose off, in mid-sentence, while Rose was attempting to discuss what appeared to be potential evidence. Thereafter, respondent accused the reporter of being "Rose's reporter" and announced that he did not trust her. Handel testified that it is customary for a court reporter to continue typing when a disagreement between counsel erupts. Yet, the transcript ends abruptly on the following note:

MR. ARENSTEIN: Oh, I want this off the record. Go off the record. Will you stop writing.

[R-2 at 60]

The logical inference is, thus, that Handel was restrained from continuing to type.

In any event, we find that the record clearly and convincingly supports the DEC's conclusion that respondent removed the court reporter's hands from her machine. Obviously, the use of physical restraint is unacceptable behavior for attorneys. Respondent's conduct in this regard was, thus, a violation of RPC 3.2, in that he failed to treat Handel with courtesy and consideration. By prohibiting Handel from transcribing the deposition, he also violated RPC 8.4(d) (conduct prejudicial to the administration of justice). There is no evidence, however, that respondent violated RPC 3.4 or RPC 4.4. Those charges were properly dismissed by the DEC.


The only question left is the proper level of discipline. Handel did not file any civil or criminal charges against respondent. Although she accused him of assaulting her, he was not charged with or convicted of such an offense. There are no cases where an attorney has engaged in similar conduct by physically restraining a person involved in the judicial process from discharging the responsibility of his or her job. Cases involving more serious physical contact with individuals not affiliated with the judicial system or convictions for assault have resulted in reprimands. *See, e.g., In re Magid*, 139 N.J. 449 (1995) (Court imposed only a reprimand for violation of RPC 8.4(b) where the attorney physically assaulted a woman and was convicted of the disorderly persons offense of simple assault; the Court had not previously addressed the appropriate discipline to be imposed in cases involving convictions for acts of domestic violence); *In re Principato*, 139 N.J. 456 (1998) (reprimand for violation of RPC 8.4(b) where the attorney was convicted of simple assault on a client with whom he had become romantically involved; this case was considered within the same time frame as

Magid); and In re McAlevy, 69 N.J. 349 (1976) ("severe" reprimand where attorney was involved in a physical altercation with his adversary while in the judge's chambers; Court considered attorney's unblemished record and contrition).

Clearly, while the conduct in this matter was not as serious as in the above cases, in that respondent did not physically harm the court reporter, it is critical that the system protect court personnel in performing their duties. On that basis, six members of the Board voted to impose a reprimand. One member voted to dismiss the case against respondent, finding no clear and convincing evidence that any contact had occurred between him and Handel. Two members did not participate.

We further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 6/20/2001

By:   
ROCKY L. PETERSON  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of Robert D. Arenstein  
Docket No. DRB 00-364**

**Argued: February 8, 2001**

**Decided: June 20, 2001**

**Disposition: Reprimand**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			X				
Peterson			X				
Boylan							X
Brody			X				
Lolla							X
Maudsley			X				
O'Shaughnessy			X				
Schwartz			X				
Wissinger					X		
<b>Total:</b>			6		1		2

*Robyn M. Hill* 7/26/01  
Robyn M. Hill  
Chief Counsel