SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-198

IN THE MATTER OF :
:
JOHN BLUNT :
:
AN ATTORNEY AT LAW :

Decision

Argued: December 20, 2001

Decided: May 15, 2002

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

Frank P. Lucianna appeared on behalf of respondent.

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

This matter was originally before us on May 17, 2001 as a recommendation for an admonition filed by the District IIB Ethics Committee ("DEC"), at which time we determined to bring it on for a hearing. The complaint charged respondent with a violation of RPC 1.2(d) (counseling a client in conduct the attorney knows is illegal, criminal or fraudulent), arising out of a real estate matter.

Respondent was admitted to the New Jersey bar in 1988. He maintains an office for the practice of law in Fairview, Bergen County. In 1992 he was appointed a municipal court judge in Fairview. He has no history of discipline.

In or about May 1997 Rene R. Paneque retained respondent to assist him in enforcing three court orders directing a neighbor to remove encroachments on Paneque's property. Paneque had been represented by other attorneys, who had been unsuccessful in getting the neighbor to comply with the court orders.

In or about July 1997 Paneque met Michael Murad, a friend of respondent and a real estate broker. Murad was asked to find a buyer for the property. In November 1997 Murad obtained an appraisal of the property for $135,000. In January 1998 a third party offered to purchase it for $120,000. That price was unacceptable to Paneque, who thought that the property was worth more than the appraisal figure.

On February 9, 1998 Murad and Paneque signed a contract for Murad's purchase of the property for $140,000. The purchase was conditioned on the removal of the encroachments on the property. The circumstances leading to that contract form the basis for the allegations against respondent.

According to Paneque, prior to the contract respondent had suggested that, if there was a contract for the sale of the property requiring the removal of the encroachments as a condition of sale, respondent could use that contract in an application to the court to enforce the prior orders for the encroachments' removal. Paneque testified that Murad was present at

that meeting and had offered to be a party to the contract. Paneque believed that the contract was not enforceable and that Murad would continue to attempt to sell the property to other buyers even after the contract was executed.

Antonio Gonzalez, who accompanied Paneque to meetings with respondent as an interpreter, testified that he was present when respondent suggested the preparation of a non-enforceable contract and when Murad offered to be a party. Gonzalez heard Paneque tell respondent that he did not intend to be bound by the contract with Murad.

Murad, on the other hand, testified that Paneque had suggested the contract to him and that respondent was not in the room at the time. Murad opined, however, that Paneque might not have thought up the contract on his own. Murad drafted the contract. Murad stated that, although he was willing to carry out the contract and buy the property, on the date of its signature he believed that the contract was not meant to be binding. Murad understood that the contract was to be used in court to facilitate the removal of the encroachments. According to Murad, he told respondent that, although he was willing to follow through with the contract, Paneque did not intend to be bound by it and believed that it was to be used solely for presentation to the court.

Respondent, in turn, testified that he was not present when the contract was signed and that Murad had brought the signed contract to him in mid- to late February 1998. Respondent testified that, although neither party had told him that the contract was not binding, he suspected that it was not. Respondent recalled having mentioned to Paneque that,

if he had a contract conditioned on the removal of the encroachments, they could then determine whether the contract was a sufficient basis for the court to reconsider its order for the payment of damages as an alternate relief. Respondent stated that, in the past, whenever he had made suggestions to help Paneque's case, "miraculously things would come back." Therefore, respondent stated, when the contract was presented to him he became suspicious about its validity, particularly because Murad was still attempting to sell the property and, in fact, had extended the listing agreement after the contract had been signed.

According to respondent, although Murad initially intended to buy the property, he had told respondent in May or June 1998, about three weeks before the closing date, that the purpose of the contract was to "help ease the situation." Murad also told respondent that he wanted to purchase the property and that he would work out the terms with Paneque. Respondent testified further that, although Paneque never stated to him that the contract was not binding, Paneque told him that he was not satisfied with the purchase price and wanted to work out the deal with Murad. According to respondent, Paneque told him to use the contract as evidence of damage to the value of his property, as a result of the encroachments.

Respondent denied any intention of using the contract to commit a fraud on the court and pointed out that he did not present it to the court. Respondent added that appearing again before the judge that had signed the last of the three previous orders would not produce the relief desired by Paneque, that is, the removal of the encroachments.[1]

[1] It is unclear what respondent planned to demonstrate to the court, if he did not intend to use the Paneqe/Murad contract.

On this topic, Gonzalez testified that respondent did not want to go before the same judge who had issued the earlier order and was observing the judges' rotation, before going back to court. Similarly, Paneque testified that respondent was waiting for a different judge, before returning to court.

By letter dated October 26, 1998 Paneque terminated respondent's services and demanded the return of the $750 he had paid respondent. Paneque was dissatisfied because respondent had not taken any action to promote the resolution of the matter. Paneque's letter stated as follows:

> A great injustice has been committed against me, Ms. Rondan and to the fact that I obtained [sic] a sales contract for the purchase of the property in question necessary to prove to the court that the removal of the encroachment in my property was a must, notwithstanding the need to present my case to a different judge.

According to respondent, Paneque refused to speak with him and was publicly stating that respondent had neglected the matter. Respondent was concerned about these statements, since he was up for judicial reappointment the following January. Respondent then drafted an order to show cause and an affidavit referring to the contract between Paneque and Murad. Respondent knew, when he drafted the documents, that the contract between Murad and Paneque was not bona fide. Respondent testified that he had no intention of either filing the documents with the court or obtaining Paneque's signature on the affidavit. He claimed that he wanted to use them merely to lure Paneque to his office so that he could speak with

him about the refund of the $750 and, at the same time, return the file to Paneque.[2]

As to the affidavit and order to show cause, Murad testified that, at respondent's request, he went to Paneque's house to ask him to go to respondent's office to sign documents that respondent had prepared and that were to be filed with the court. Murad stated that he did not have the papers with him at the time. Paneque refused to sign anything, however, because he had already terminated respondent's services.

Paneque confirmed that Murad had come to his house with documents for him to sign. Paneque did not see the documents. He thought that Murad wanted to renew their contract and, therefore, refused to sign any papers. Paneque later learned that the documents were to be filed with the court.

By way of explanation for his actions, respondent testified that, during the time in question, he had been diagnosed with hemochromatosis, a potentially fatal oversupply of iron in the blood. Respondent testified that his liver and kidneys were not functioning properly, that his heart had become enlarged and that he was suffering from fatigue. Until approximately October 2000, respondent had been treated twice a week with phlebotomy. Respondent stated that he was suffering from depression[3] and that, in addition, he was taking medication to try to conceive a child, which medication, unbeknownst to him, was exacerbating his hemochromatosis. According to respondent, his doctor asked him to go on disability. Rather than do so, respondent attempted to make his life less "hectic." Hence his

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[2]Respondent refunded the $750 with interest in 1999.

[3] Reports from respondent's treating psychiatrist and treating physician are part of the record.

desire to resolve his differences with Paneque.

* * *

By letter dated October 7, 1999 respondent complied with the DEC investigator's request for a reply to Paneque's grievance. Respondent's letter stated that, in early 1998, he had prepared an order to show cause to enforce the prior court order or to obtain monetary damages. The letter stated further that Paneque had expressed dissatisfaction with the progress of the case and had refused to sign the supporting affidavit.

Respondent was unable to produce the affidavit and order to show cause mentioned in his letter. He testified that the order to show cause had been a rough draft addressing the award for damages.

* * *

Eight character witnesses testified on respondent's behalf, several of whom were municipal court judges. The witnesses vouched for respondent's good character, concern for his clients and dedication as a judge. There was also testimony about the emotional and physical problems that plagued respondent.

The presenter recommended an admonition, noting that

> [respondent's] many serious, undiagnosed and untreated physical and mental problems during the period of his misconduct, his deep remorse, his unblemished and exemplary record of public service and the anguished circumstances under which his aberrant, misguided actions took place all lead to the same conclusion: mercy.

* * *

The DEC determined that respondent violated RPC 1.2(d). The DEC concluded that

> Mr. Blunt counselled Mr. Paneque to enter into a sham contract that he knew was a sham contract with the intent to use this contract ultimately as an exhibit to an Affidavit that Respondent contemplated submitting to the court in furtherance of an Order to Show Cause. The fact that the Affidavit was never submitted to the court does not disentangle the Respondent from RPC 1.2, it merely spares him and has spared him having to defend against a host of other RPC's that would have been implicated had the Affidavit actually been submitted to the court.

The DEC found that Murad and Paneque never considered the contract enforceable. The DEC also found that respondent had suggested, in Murad's presence, that a contract be signed for use in a judicial proceeding. The DEC rejected respondent's testimony that he thought that the contract was genuine, pointing to respondent's knowledge that the terms of the contract had not been fulfilled. The DEC also found that Murad was not a credible witness and that he was clearly attempting to assist respondent. The DEC concluded that, even if respondent had originally thought that the contract was bona fide, and later had ascertained that it was not and treated it as if it were, he would still be guilty of assisting a client in the preparation of a fraudulent document, in violation of RPC 1.2(d).

The DEC also found that respondent prepared the affidavit with the intent to have Paneque sign it to use as evidence before the court. The DEC rejected as incredible respondent's testimony that he would not have permitted Paneque to sign the affidavit. In the DEC's view, there was no reason for respondent to prepare documents that he never intended to show his client, but that were to be used as a vehicle to induce the client to come to his office. The DEC found that respondent "was concerned about his upcoming reappointment

as municipal court judge and he couldn't deal with the public bashing of his reputation."

As to respondent's reply to the grievance, the DEC concluded that there had been only one affidavit prepared, which (1) respondent knew contained false information, (2) referred to a contract respondent knew was not bona fide and (3) respondent presented, attempted to present or intended to present to Paneque.

The panel chair read the DEC's determination into the record, noting that the findings of fact had "been the result of sleepless nights" by the panel. The DEC called respondent's misconduct "an aberration largely related to the potentially fatal and extremely disabling condition suffered by the Respondent" and recommended an admonition. Indeed, the chair stated that he did not "believe for a second that, but for the medical and emotional condition under which Mr. Blunt was suffering, [ ] this conduct would have taken place, but that fact does not obviate the conclusion that the conduct took place."

* * *

Following a de novo review of the record, we found that the DEC's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence. We agreed with the DEC's finding that respondent counseled Paneque to enter into a sham contract. A number of factors surrounding the making of the contract led us to this determination:

- If the contract were legitimate, respondent would have either approved or expressed

disapproval of its terms during the attorney review period. Respondent stated that the contract was brought to him in mid- to late February 1998, when presumably the attorney review period had already expired. In that case, respondent should have communicated with Murad and sought to extend the attorney review period.

- Respondent did not follow up on any of the conditions of the contract. He knew that no title search or inspections had been performed, no mortgage application had been submitted and no deposit had been paid.

- When respondent received the October 26, 1998 letter from Paneque, he sent Murad to Paneque's house to have him sign the affidavit that portrayed the contract as bona fide. Even if it were true, as respondent contended, that he drafted the affidavit only to lure Paneque to his office—with no intention of filing it— his credibility was negatively affected by the existence of the affidavit. Attorneys who know that a contract is not enforceable do not draft an affidavit stating that it is.

Combined, the foregoing factors lead to a logical inference that respondent knew that the contract between Paneque and Murad was not above board. Despite respondent's denials, there is sufficient circumstantial evidence in the record to establish respondent's knowledge in this regard. In another context, the Court found that "circumstantial evidence can add up to the conclusion that a lawyer "knew" or "had to know" that clients' funds were being invaded." (Citation omitted). In re Davis, 127 N.J. 118, 128 (1992). Here, the totality of respondent's conduct supports a finding that he knew from the outset that the parties did

not intend to enforce the contract. We found, therefore, that respondent violated RPC 1.2(d) by inducing Paneque to enter into a contract that respondent knew was not genuine, a contract that he intended to introduce to the court in an attempt to have the encroachments removed from Paneque's property.

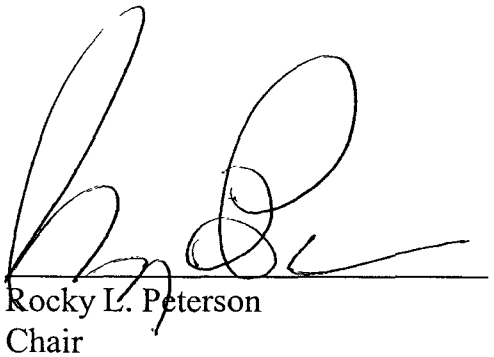
On the other hand, we found no clear and convincing evidence that respondent intended to file the affidavit, which Paneque never saw. We also found that the drafting of the affidavit did not amount to an independent ethics violation, but a factor that calls into question respondent's credibility.

There remains the issue of appropriate discipline. Generally, discipline ranging from a private reprimand (now an admonition) to a reprimand has been imposed for analogous conduct, such as failure to disclose secondary financing in a real estate transaction. See In the Matter of Rocco Santora, Docket No. DRB 93-326 (March 2, 1994) (private reprimand imposed for failing to disclose secondary financing in a real estate transaction); In re Spector, 157 N.J. 530 (1999) [reprimand imposed for concealing secondary financing from the primary lender in three real estate transactions by facilitating the use of dual RESPAs, in violation of RPC 8.4(c)]; In re Silverberg, 142 N.J. 428 (1995) (reprimand imposed for gross neglect, lack of diligence and misrepresentation for failing to make changes to an inaccurate RESPA utilized by his clients to conceal secondary financing; the attorney was unaware of his clients' scheme at the closing and neglected to change the RESPA once he became aware of it) and In re Blanch, 140 N.J. 519 (1995) (reprimand imposed for failure to disclose

secondary financing to a mortgage company, contrary to the company's written instructions). See also In re Doig, 134 N.J. 118 (1993) (reprimand imposed after the attorney altered a deed following closing, did not inform the bank of her action, misrepresented the reason for the inclusion of the additional name on the deed and engaged in a conflict of interest by the dual representation of parties with adverse interests).

We considered that respondent had been suffering from a serious medical condition that might have affected his judgment. Nevertheless, his conduct was serious. We, therefore, unanimously determined to impose a reprimand for his violation of RPC 1.2(d).

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



Rocky L. Peterson
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John Blunt
Docket No. DRB 01-198

Argued: December 20, 2001

Decided: May 17, 2002

Disposition: Reprimand

Members	*Disbar*	*Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson			X				
Maudsley			X				
Boylan			X				
Brody			X				
Lolla			X				
O'Shaughnessy			X				
Pashman			X				
Schwartz			X				
Wissinger			X				
Total:			9				

Robyn M. Hill 5/21/02
Robyn M. Hill
Chief Counsel