

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 98-328

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IN THE MATTER OF  
WILLIAM MAIONE,  
AN ATTORNEY AT LAW

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Decision

Argued: October 15, 1998

Decided: December 8, 1998

Jeffrey S. Charney appeared on behalf of the District XII Ethics Committee.

Robert A. Giegerich appeared on behalf of respondent.

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

This matter was before the Board based on a recommendation for discipline filed by the District XII Ethics Committee ("DEC"). A two-count complaint charged respondent with violations of RPC 1.7 (conflict of interest) (count one) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (count two).

Respondent was admitted to the New Jersey bar in 1982. He maintains an office in Scotch Plains, New Jersey. Respondent has no history of discipline.

The facts are not in dispute. They were culled from the grievant's affidavit and respondent's affidavit and testimony. The grievant, Mary Basile, was unable to attend the DEC hearing because of her poor health and age; she was eighty-two at the time.

Respondent had a long-term relationship with the Basile family. Respondent had been a good friend of Eugene Basile, Mary's son, for approximately twenty-five years. Through this friendship, respondent came to know Mary Basile and Christine Naimo, Eugene's sister. At the relevant time, Christine was employed as respondent's secretary. Prior to the conduct in question, respondent had provided legal services to Eugene's family, including drafting a will for Mary sometime before 1987, representing Christine in one or two real estate transactions and preparing her will.

In or about 1987, Eugene sought advice from respondent about obtaining money for a business venture. Mary agreed to assist Eugene by conveying her house to herself and her two children, Eugene and Christine, and then using the house as collateral to obtain a \$70,000 loan for Eugene. Eugene was to be responsible for repayment of the loan. Prior to the conveyance, there were no liens or encumbrances on Mary's property.

Respondent drafted the deed conveying the property and assisted Eugene in obtaining the loan.

Sometime in 1994 when Eugene's business venture failed, he fell behind in the loan payments. To stave off foreclosure proceedings on the house, Mary and Eugene decided to

refinance the mortgage. A new mortgage was obtained in March 1995 in the amount of \$100,000. That amount was needed to satisfy the existing mortgage, closing costs, lien creditors and collection creditors. Respondent also represented Mary and Eugene in connection with the refinancing. In none of the three transactions did respondent explain the risks involved in the multiple representation and the desirability of seeking independent counsel or obtain their consent to the transaction and to the representation after full disclosure of the risks involved.

Once again, Eugene was unable to make the loan payments. According to respondent's affidavit, Mary contacted him again to help her obtain new financing, which she was unable to get. To avoid foreclosure proceedings, Mary listed the house for sale. The house was sold in August 1996 for \$190,000. Respondent represented Mary in the sale of the house, from which Mary netted approximately \$42,000.

Respondent's testimony about whether he discussed with his clients the issue of the existence of a conflict of interest was confusing. Perhaps because of the passage of time and his close relationship to the family, he was unable to recall specifically whether he had, at any time, discussed the conflict with them. Although respondent believed that he had discussed it with the family in 1987, he could not recall such discussions to an absolute "certainty." Thus, respondent admitted that in all three transactions — the initial transfer of title, the mortgage loan and the loan refinancing — he failed to advise his clients of the desirability of consulting with separate counsel and failed to obtain their consent to the representation after full disclosure of the circumstances.



As to the refinancing, the complaint alleged that, as a condition to the refinancing, title to the property had to be put in Eugene's name. Respondent, therefore, prepared a new deed transferring title to Eugene. The document required the signatures of Mary, Eugene and Christine. Even though Mary did not sign the deed in respondent's presence, respondent improperly notarized her signature, in violation of RPC 8.4(c).

In his behalf, respondent testified that, at the time of the refinancing, Christine was working as his secretary. Therefore he had asked Christine to obtain Mary's signature on the deed, which he then notarized. Respondent stated that they were acting under pressure to avoid a foreclosure and that he had "tried to do things quickly as opposed to correctly."

Respondent conceded that the close friendship he had with Eugene, as well as his relationship with Mary and Christine, clouded the way he handled the matter. According to respondent, he assumed that his clients knew whether they needed to seek independent counsel, since Christine had done so on a prior occasion. Respondent contended that his motives in representing all three parties had been good and prompted by his desire to help Mary to keep her house. Respondent pointed to the absence of personal gain from the representation and to the fact that this was an isolated incident in his seventeen years of practice.

Subsequently, respondent personally made restitution to Mary, in an amount that he believed to be just. Indeed, in her affidavit Mary Basile indicated that she had been satisfactorily reimbursed for her losses. She also stated that she attributed her losses to respondent's joint representation of her son and herself. Mary recognized that her son had



also contributed to her problems because of his relationship with respondent.

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The DEC found clear and convincing evidence that respondent violated RPC 1.7 in his simultaneous representation of Mary, Eugene and Christine in the above transactions, without advising them of the conflict or of the desirability of seeking independent counsel. The DEC also found clear and convincing evidence that respondent violated RPC 8.4(c) by notarizing the signature of Mary Basile as if it had been executed in his presence.

In mitigation, the DEC considered that respondent had made adequate restitution to Mary and that he had been a long-time friend of Eugene and Mary. The DEC further noted that respondent had expressed regret for his conduct. The DEC found that the representation had been undertaken to benefit both Mary and Eugene and that the improper jurat had been taken as a convenience to Mary. The DEC concluded that these factors, coupled with respondent's prior unblemished record, his admission of wrongdoing, his cooperation with the investigation and the absence of personal gain, should all be considered in imposing discipline. Based on the foregoing, the DEC determined that a reprimand was appropriate discipline. The DEC also recommended that respondent take twelve hours of ICLE courses on professional responsibility, to be completed within twenty-four months.

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

Respondent's representation of multiple parties with competing interests violated RPC 1.7 and the taking of a false jurat violated RPC 8.4(c).

RPC 1.7(b) prohibits the representation of a client if, among other things, the representation may be materially limited by the lawyer's responsibilities to another client, unless the lawyer reasonably believes that the representation will not be adversely affected and the client consents after a full disclosure of the circumstances and consultation with the client. When representation of multiple clients in a single matter is undertaken, the consultation must include an explanation of the implications of the common representation and the advantages and risks involved.

Here, Eugene's interests were adverse to those of his mother and sister. Respondent represented all three and failed to comply with the requirement of RPC 1.7(b). Respondent's conduct caused financial harm to Mary, who was forced to sell her house to avoid foreclosure proceedings. Although the record discloses that respondent made monetary restitution to Mary, she will never be adequately compensated for having to sell her residence. Christine was also harmed by the multiple representation in that she lost, at a minimum, her interest in the house.

Respondent's notarization of a deed signed out of his presence was also improper. Notwithstanding that he was motivated by his desire to accommodate Mary, he had a duty

to comply with all of the requirements regarding the execution of jurats, including Mary's personal appearance before him. In re Barrett, 88 N.J. 450 (1982), In re Surgent, 79 N.J. 529 (1979); and In re Conti, 75 N.J. 114 (1977).

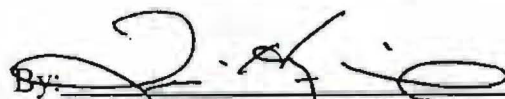
Where there is a conflict of interest, absent economic harm or egregious circumstances, a reprimand is the appropriate level of discipline. In re Berkowitz, 136 N.J. 134 (1994). Similarly, a reprimand is usually imposed for taking an improper jurat. See In re Coughlin, 91 N.J. 374 (1982) (reprimand for completing acknowledgment and executing a jurat on a deed without witnessing its signing by the grantor).

In mitigation, it appears that respondent was motivated by his misguided desire to help his long-time friends. Respondent received no financial benefit from the transaction. In fact, respondent lost money from the transaction when he reimbursed Mary Basile for her losses. Also, respondent readily admitted his wrongdoing and cooperated fully with the DEC. Finally, respondent has an otherwise unblemished record.

After consideration of the relevant circumstances, including the fact that, although Mary and Christine were financially harmed by respondent's conduct, respondent made some form of restitution to Mary, the Board unanimously determined that a reprimand is adequate discipline for respondent's ethics offenses.

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

Dated: 12/2/98

By:   
LEE M. HYMERLING, Chair  
Disciplinary Review Board