Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-107
District Docket Nos. XIV-2019-0250E
and VC-2020-0900E

In the Matter of	:
Pamela Martha Cerruti	:
An Attorney at Law	:

Decision

Argued: September 15, 2022

Decided: December 7, 2022

Amanda Figland appeared on behalf of the Office of Attorney Ethics.

Michael P. Ambrosio appeared on behalf of respondent.

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

This matter was before us on a recommendation for a three-month suspension filed by the District VC Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.2(d) (counseling or assisting a client in conduct that the attorney knows to be

fraudulent); RPC 1.4(d) (failing to advise a client of the limitations of the lawyer's conduct, when a client expects assistance not permitted by the Rules); RPC 2.1 (failing to exercise independent professional judgment and render candid advice to a client); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons set forth below, we determine that a reprimand is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1988 and has no disciplinary history. She maintains a law practice in Montclair, New Jersey.

On January 23, 2018, Hena Singh and Gyanendra Singh divorced.[1] Although the Singhs were scheduled to proceed to trial and had, in fact, commenced Hena's testimony the day prior, the parties, through counsel, had come to an agreement with respect to equitable distribution of their marital assets, which was the sole remaining issue in their divorce proceeding. At that time, Georgia B. Barker, Esq., represented Hena, and Thomas Sidoti, Esq., represented Gyanendra. During the hearing, counsel for the Singhs placed the negotiated agreement on the record verbally and expressed an intent to reduce the agreement to writing. However, the agreement was never reduced to writing

[1] To prevent any confusion, this decision will refer to Hena Singh as Hena and Gyanendra Singh as Gyanendra.

and, thus, the transcript is the only available source of what Hena and Gyanendra agreed to regarding the equitable distribution of their marital assets.

Among the terms of the agreement, Hena agreed to assume the mortgage for the marital residence, and to refinance that mortgage within ninety days of the date of the agreement. Additionally, during their marriage, Hena and Gyanendra acquired an apartment in Surat, India (the Property). Per their settlement agreement, the parties agreed to sell the Property and equally divide the net proceeds.

The Honorable Jodi Lee Alper, J.S.C., who was presiding over the divorce proceedings, suggested that the parties could "attempt to agree on the process by which the realtor will be chosen. If you can't and you want to come into court on that, then I can call it or a mediator can call it [. . . .]" Judge Alper did not want the settlement to be delayed by the realtor selection process when the parties already "did the hardest thing, which is decide what to do with the Property and decide how to divide it." Sidoti pointed out that "the only problem is [. . .] that a [counsel fee] payment that Mr. Singh is going to make to Mrs. Singh is tied to this Property getting sold, with a deadline that he owes it even if it doesn't get sold." On the record, the parties agreed to each select a local realtor familiar with the Indian real estate market, and the two local realtors would decide upon a realtor in India who would list and sell the Property.

Gyanendra testified that, although he agreed with the process suggested by Judge Alper, he had a problem with how the selection of a realtor would affect his counsel fee payment to Hena. Gyanendra stated that he was:

> intending to pay that with the sale of [the Surat] property. And I'm fine with – up to that point. If – as long as the – the amount we pay here is triggered after the sale of the property, I'm fine with that. The – the insistence is that there be a – in addition to that, be a six-month time limit to me paying that amount. So here I'm – if I agree to that, then I'm walking into a process where I don't know how much time it may take for these – for these initial steps to – to happen, while the clock is ticking on me for my obligation.
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> [1T19-1T20.][2]

The parties agreed that, within ten days of the hearing, each would select a local realtor with ties to India. Thereafter, "there is a 30-day window for [the] co-vice-real estate agents here to pick the person in India. And from that point in time is when the six-month time period by which Mr. Singh has to pay his counsel fee payment to Mrs. Singh runs." Gyanendra agreed to pay Hena the $50,000 counsel fee payment "upon the sale of the Surat property [. . .] with that six-month timetable." Barker then clarified that "it's going to be whichever first

[2] "A" refers to respondent's verified answer, dated November 2, 2020.
"1T" refers to the transcript of the Singh's divorce trial, dated January 23, 2018. "2T" refers to the transcript of the OAE's demand interview with respondent, dated August 15, 2019.
"P" refers to the presenter's exhibits that were admitted during the ethics hearing.
"HPR" refers to the hearing panel report, dated April 11, 2022.
"Rbb" refers to respondent's summation brief to the Board, dated August 1, 2022.

occurs. If the [. . .] Surat property sells, the $50,000 is owed right away. If the Surat property is not sold within six months of the date that the Indian realtor is picked, that $50,000 becomes due and owing to Ms. Singh." Gyanendra agreed.

On March 19, 2018, Sidoti sent Barker a letter, stating that the local realtor Hena selected was not responding to the local realtor Gyanendra selected. Sidoti reiterated that he did not wish to delay the sale of the Property, "especially considering that the offer [he] previously advised [Barker] about may still be on the table."[3] In an April 18, 2018 letter to Amanda Yu, Esq.,[4] Sidoti suggested that the parties agree to use Coldwell Banker, which has an office in Surat, India, as the realtor. Approximately one month later, on May 21, 2018, Sidoti again sent Yu a letter, arguing that Hena was deviating from the agreed-upon procedure to sell the Property. Then, in a June 1, 2018 letter, Sidoti alleged that Hena had been delaying the sale of the Property since the January 23, 2018 hearing and stated that "there is no way Mr. Singh can make the $50,000 counsel fee payment without the funds from Surat." Sidoti urged Yu to impress upon Hena the importance of her selected realtor communicating with Gyanendra's selected realtor, and cautioned that, if they did not speak during the following

[3] The record does not contain any information about what the offer was or when it was made.

[4] Barker had represented Hena while Barker was with Lesnevich, Marzano-Lesnevich, Trigg, O'Cathain & O'Cathain, LLC. When Barker left the Lesnevich firm, Yu, another associate at the Lesnevich firm, replaced her as counsel of record.

week, Sidoti would file an enforcement motion. Sidoti again offered the use of Coldwell Banker if Hena's realtor could not, or would not, speak to Gyanendra's realtor.[5]

Gyanendra then terminated Sidoti's services and, on September 19, 2018, retained respondent. The retainer agreement provided that respondent would represent Gyanendra in post-judgment divorce matters. Accordingly, on December 4, 2018, respondent filed on Gyanendra's behalf a notice of motion pertaining to the selection of a parenting coordinator.

Following the January 23, 2018 hearing, Hena also retained new counsel – Robert M. Rich, Esq., and Stephen E. Samnick, Esq. On February 1, 2019, after receiving Gyanendra's motion, Rich filed a notice of cross-motion on Hena's behalf. Among other forms of relief sought, the cross-motion sought an order compelling Gyanendra's payment of the $50,000 in counsel fees. In her certification, Hena explained her understanding that Gyanendra was obligated to pay her $50,000 "either on the earlier of the happening of the sale of our property in Surat, India, or within six months of January 23, 2018."

In the February 20, 2019 reply certification respondent prepared for Gyanendra, he expressed his understanding that his $50,000 payment to Hena was "conditional upon the sale of the Surat, India property." Gyanendra

[5] If Barker or Yu replied to Sidoti, those letters were not included within the record.

explained that he and Hena had selected local realtors to facilitate the Property sale process. However, Gyanendra stated that, after their selection of local realtors, there was a thirty-day period for the two selected local realtors to meet and select an Indian realtor and "that was when the six (6) month period by which I was to pay the counsel fees started to run. That person has still not been selected and as such my 6-month period has not started to run." Gyanendra alleged that the local realtor Hena selected had failed to communicate with the local realtor Gyanendra selected.

Gyanendra accused Hena and her selected realtor of being the:

> singular cause for the delay in the sale of the India property. There is absolutely no reason why her agent does not speak to my agent to select an India real estate agent, especially when I have heard from my brother, who has been managing the property, that there are buyers willing to purchase the property as we speak.
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> [P-4.]

Consequently, Gyanendra requested that the court allow him to "proceed as 'attorney in fact' to appoint a realtor in Surat [. . .] only then will this Property be sold, and [Hena] will receive her $50,000. The goal here is to sell this Property as soon as possibly [sic] while there are still buyers willing to purchase the Property."

On March 1, 2019, respondent and Rich participated in argument on Gyanendra's motion and Hena's cross-motion before the Honorable Richard T.

Sules, J.S.C.[6] During the hearing, Judge Sules agreed to identify a realtor in India himself.

On March 14, 2019, Gyanendra sent an e-mail to respondent regarding the Property. Gyanendra informed respondent that his brother urged an expeditious sale of the Property due to damage and disrepair. The next day, respondent sent a letter to Judge Sules inquiring whether the court had located a realtor in India "so we can get this matter concluded."

Thereafter, on March 21, 2019, respondent sent a letter to Rich to "provide urgent information regarding the Surat, India property." Respondent's letter, except for changed pronouns, was a verbatim recitation of an e-mail Gyanendra had sent to respondent on March 14, 2019. Respondent wrote that there had been water damage to the Property, and the electricity had been stolen.

Regarding the Property's value, respondent wrote:

> the fair market value is assessed at approx. INR[7] 6 million (aka INR 60 lacs). Of this, it is estimated the 1.5 to 2 million will be in cash (a/k/a under the table, or "black money"), and will NOT be reflected in the official sale documents. All taxes. [sic] levies etc., to the government are on the "white" or above-the-table portion only, though realtor fees are based on total sale amount.

[6] The record does not include a transcript for the March 1, 2019 hearing.

[7] "INR" is an acronym for the Indian rupee. A "lac" or "lakh" is 100,000 Indian rupees.

> Only the "white" portion of the proceeds can be deposited in a bank account, as the banks will need documentation of source of funds.
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> [P-7.]

Respondent informed Rich that Hena would need to open a bank account in India so that she could receive the "white money" portion of the sale proceeds. For the "black money" portion of the sale proceeds, respondent informed Rich that Hena "will need to have a person in India duly authorized to receive her portion of the cash. For liability reasons, no one who is not duly authorized by her will handle her portion of the cash."

Respondent explained in her letter that:

> the process of sale in India is different from the US. A lot of it is based on trust, though there is official paperwork drafted for the white portion of the sale. Due to the fact that things are not written down till much later in the process, usually the buyer and seller negotiate face to face.
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> [Ibid.]

Because neither Hena nor Gyanendra would be in person in India for the sale of the Property, respondent stated the parties would "need to provide a Power of Attorney to a person in India to act as their person, who will be authorized to negotiate on their behalf, and authorized to receive the initial 'Token Deposit,"' which respondent described as a portion of the Property's listing price used to "weed out non-serious offers."

Respondent suggested that Gyanendra's brother was "well placed to play the [Power of Attorney] role and is willing to do this in order to move the Property quickly." Respondent noted that Gyanendra's brother was related to Hena's extended family, who lived in India, "so, the likelihood of him defrauding Ms. Singh is non-existent; he is bound by personal and familial ties to act honestly."

Respondent added that Gyanendra's brother stated that there was interest in the Property and an offer could be obtained quickly. Thus, respondent urged Rich to move quickly through this process because "if we have process delays along the way, it will be perceived in the local market as the sellers are not serious about selling."

Rich sent a reply to respondent's letter the same day, via facsimile, stating he had received respondent's letter and that "[his] client cannot even consider this transaction in the manner in which you have described it. We reject the proposal."

On March 25, 2019, Rich sent another letter to respondent informing her that his client was "not willing to enter into the form of transaction described" by respondent in her March 21, 2019 letter. However, Rich proposed a process by which Gyanendra would buy out Hena's interest in the Property. Rich noted that "this is the only manner that I can recommend to my client to resolve the

outstanding payments due to my client from Mr. Singh and to resolve any of the suggestions made in your recent letter."

Respondent presented Rich's proposal to Gyanendra, who informed respondent that the "idea of [him] buying her out of the Surat property was much debated during financial negotiations, and was not concluded. Hence, we agree [sic] on selling the Property and dividing proceeds. Its [sic] not possible at this time to go back to that proposal, as many facts have shifted." Gyanendra also told respondent that his brother was "mulling making an offer on the Property," and that he was going to speak with his brother soon about getting an offer on the Property.

On April 4, 2019, Gyanendra again sent respondent an e-mail about the Property. Gyanendra included an offer on the Property from Pramod Malpani. Malpani agreed to purchase the Property, for 6.8 million rupees, with 3.2 million rupees paid by check, which Malpani wrote "shall be paid as a Property registration amount of our sale agreement and balance amount will be paid per your convenience. However, we are open to discuss and mutually agree on the registration amount."

Gyanendra also included a proposed General Power of Attorney, in which he and Hena would authorize Gyanendra's brother to serve as their Power of Attorney in connection with the sale of the Property.

On April 9, 2019, Gyanendra sent another e-mail to respondent, wherein he stated that, "based on our conversation last evening, I hope we have started movement on the [Property]. You said you will get back to me on this today." Attached to the e-mail was a different Special Power of Attorney, by which he and Hena would appoint Gyanendra's brother to serve as their Power of Attorney for the sale of the Property.

Consequently, on April 10, 2019, respondent sent Rich another e-mail, copying, verbatim, Gyanendra's April 4, 2019 e-mail to her, changing only the pronouns. Respondent wrote that Gyanendra's brother had located a buyer for the Property and that:

> the buyer is genuine and very interested in the apartment due to its location. His offer of INR 6.8 million is above the FMV [fair market value] which is closer to INR 6.2 million. In addition, he is offering to pay the INR 3.2 million in the form of a check (white money) and the remainder INR 3.6 million in cash (black money).
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> [P-14.]

Respondent added that the "ratio of white vs black money comports with how [Hena and Gyanendra] paid for the Property when they purchase [sic] it." Respondent also added her own thoughts in her e-mail to Rich, stating that "this seems like an excellent opportunity for the parties." Attached to her e-mail,

respondent included the General Power of Attorney that Gyanendra had provided.

The same date, Rich sent respondent a letter, via facsimile, informing respondent that he had spoken with Hena and that he could not participate in respondent's proposed transaction. Specifically, Rich wrote that:

> the concept of over the table money (white money) and under the table money (black money) is unacceptable. I believe that I made this clear in my letter to you of March 21, 2019. We believe that this is a transaction which is illegal in India (although it may be traditional). It is impossible for us to advise our client to give a third party carte blanche to engage in such an illegal transaction in her name.
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> [P-15.]

Rich referenced his offer to respondent that Gyanendra buy out Hena's interest in the Property so that Gyanendra could proceed as he desired. Rich added that "as for our client, Hena Singh, and her attorneys, we cannot participate in an underhanded transaction."

On April 12, 2019, respondent again sent an e-mail to Rich to inform him that "the prospective buyer reached out and [she was] providing [Rich] an updated POA for [his] review." Respondent requested that Rich contact her because "this is emergent." Attached to the e-mail, respondent included the Special Power of Attorney that Gyanendra had provided to her.

The same date, Rich sent respondent a reply via e-mail. Rich expressed that he was "in a state of shock that I have received an email from you forwarding a new Power of Attorney with regard to a transaction which you have outlined and which we have rejected on three separate occasions." Rich reiterated his belief that the transaction respondent proposed was "illegal and improper. We believe it would be unethical were our client to enter into such a transaction with consideration being paid above the table and under the table." Rich requested that respondent "refrain from involving either Mr. Samnick, my client or I with such an improper and questionable transaction."

Six days later, on April 18, 2019, respondent sent a letter to Judge Sules, informing him that she was "pleased to inform [him] that Mr. Singh received an offer, in writing, to sell the Surat, India apartment." Respondent stated to Judge Sules that real estate transactions in India were different from real estate transactions in the United States because buyers usually did not reduce their offers to writing. However, respondent wrote that Gyanendra's brother located a buyer who was very interested in the Property and that the buyer's offer was "INR 6.8 million is above the fair market value which they believe is INR 6.2 million; he is also offering to pay INR 3.2 million in the form of a check and the remainder INR 3.6 million in cash. This appears to be the norm in the local market." Respondent added that the "ratio of check to cash comports with how

the parties paid for the Property." Respondent's April 18, 2019 letter to Judge Sules did not make mention of "black money" or "white money," however, respondent included Malpani's written offer with the letter.

Finally, respondent informed Judge Sules that she had twice communicated with Rich and Samnick and "they refuse to even read the offer because they don't like how the transaction is formatted for lack of a better word. However, as I have indicated this is how they do business in India." Therefore, respondent requested a telephone conference with Judge Sules, the attorneys, and "my client who can explain how they do transactions in India and why this is a very good offer and will resolve the selling of this apartment and will also avoid having to pay real estate commissions."

On April 24, 2019, respondent sent a follow-up letter to Judge Sules reiterating her request for a telephone conference to facilitate the sale of the Property. Also in the letter, respondent informed Judge Sules that she had been "authorized by my client to file an Order to Show Cause on this issue."

The next day, Rich sent a letter to Judge Sules indicating that he had not received respondent's April 18, 2019 letter. Rich informed Judge Sules that he had communicated with respondent about the Property and felt constrained to send Judge Sules copies of the letters he had exchanged with respondent. Rich wrote that he and Samnick had:

> researched this offer and our best research leads us to believe that this is an illegal transaction in India. The concept of above the table money (white money) and under the table money (black money) is clearly a tax avoiding scheme. The fact that everyone engages in such a scheme in India does not make the scheme proper or ethical.
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> [P-21.]

Rich further explained that he believed the transaction that respondent proposed also was fraudulent and that he had a problem with "entrusting Mr. Singh's brother, as well as the manner in which untaxed capital gains from India, in the form of cash, will be transferred to the United States." Rich informed Judge Sules that he and Samnick had consulted with "numerous other attorneys" about respondent's proposed transaction and had come to the conclusion that it was a "transaction which should never have been proposed in the Superior Court of New Jersey and a transaction to which neither my client, Mr. Samnick nor I can ethically be involved in."

On April 25, 2019, Judge Sules held a telephone conference regarding the letters he received from respondent and Rich. Rich testified that, during the call, respondent advocated for Gyanendra's position regarding the "black/white money" and Rich expressed his belief to Judge Sules that the transaction would be fraudulent and illegal.

Later, on April 29, 2019, Rich wrote a letter to Judge Sules informing the court that he had contacted Susheela Verma, Esq., an attorney admitted to practice law in both New Jersey and India. Verma suggested to Rich that the court appoint Sandeep Aneja, "a sophisticated and experienced attorney" in Delhi, India, to serve as a court-appointed agent for the purpose of selling the Property legally. Rich echoed Verma's suggestion to Judge Sules and included an e-mail from Verma concerning respondent's proposed transaction.

In the e-mail, Verma informed Rich that Aneja would be able to sell the Property and that:

> The key issue is the realty transfer fee because of which often people in India pay part of the consideration in cash. Of course it is illegal as it gets done to violate the law and avoid payment of stamp duty owed to the government. I do not recommend going through this path as this will be against Indian law as well as New Jersey law.
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> [P-22.]

In reply, on May 9, 2019, respondent sent a letter to Judge Sules including the closing documents from the Singh's purchase of the Property. Respondent also informed Judge Sules that the Singhs had purchased the Property utilizing '"black money and white money' as originally described in my letter to the court dated April 18, 2019."[8] Respondent requested that the parties follow the

[8] Respondent did not mention "black money" or "white money" in her April 18, 2019 letter.

procedure adopted at the January 23, 2018 divorce hearing regarding the selection of a local realtor.

Furthermore, respondent informed Judge Sules that:

> the court needs to know that in the event the parties do not transact and sell this property utilizing the Indian procedure of 'black money and white money' as they did when they purchased this property, there will be a significant reduction in proceeds. [. . .] Since Ms. Singh is blocking the ability to sell this property with the current buyer that has been identified and utilizing the Indian procedure of 'black money and white money' attorney's fees should be substantially reduced. Perhaps we need to file another motion dealing with this specific issue.
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> [P-23.]

Thereafter, on May 29, 2019, Judge Sules entered an order addressing the December 4, 2018 and February 1, 2019 motions filed by the parties. Included within the order, Judge Sules granted Hena's application for Gyanendra to pay her $50,000 upon the sale of the Property or within six months from March 1, 2019, whichever occurred first. Judge Sules also appointed a realtor to facilitate the sale of the Property.

On April 15, 2019, Rich sent a letter to the Office of Attorney Ethics (the OAE), informing it of the e-mails respondent had sent regarding the suggested Property transactions. The OAE docketed the matter for investigation and, on June 27, 2019, respondent sent the OAE her reply to the ethics grievance.

In her reply, respondent asserted that, after Hena filed a cross-motion for enforcement of the $50,000 payment, "the court was now involved in the issue pertaining to the sale of the Surat Property." Respondent maintained that, because the court was involved regarding the "methodology as to the sale of the Surat Property," after Gyanendra sent his March 14, 2019 e-mail, she contacted the court to inquire whether Judge Sules had appointed a realtor.

Respondent further stated that, because Gyanendra explained to her that real estate transactions in India differed from real estate transactions in the United States, he requested that respondent communicate his information, "in its totality, to Ms. Singh's counsel, which I did." Also pursuant to Gyanendra's request, respondent "provided the 'exact same information' my client provided to me, verbatim to [Rich] on March 21, 2019." Respondent stated she detailed the components regarding "black/white money" because she was unfamiliar with Indian real estate transactions.

After Gyanendra sent an e-mail to respondent on April 4, 2019, and again on April 10, 2019, respondent asserted that she told Gyanendra she "would not move forward without court intervention. I then forwarded the information he gave me to Mr. Rich."

After respondent received Rich's letter, wherein he expressed his "state of shock," respondent asserted her belief that Rich mistakenly assumed all her

communications concerned a singular buyer;[9] in turn, respondent assumed that there were multiple buyers presented by Gyanendra. Nevertheless, respondent maintained that she "was simply providing documentation from Mr. Singh to Ms. Singh, through counsel. I was not 'brokering a deal' as Mr. Rich would have you believe."

Thus, respondent claimed that she told Gyanendra she was going to write a letter to Judge Sules regarding the Property because she did "not want to be involved in any transaction that was deemed to be 'illegal."' Respondent asserted that she "wrote a candid letter to the court on April 18, 2019 [. . .] specifically detailing what I was told about the transaction. I wanted to be totally candid with the court as they were now involved." Respondent maintained that, in her letter, that she "set forth the exact offer that Mr. Singh had provided to me."[10]

Respondent referenced the April 25, 2019 telephone conference with Judge Sules wherein "it was decided that no one was to continue with this

[9] There is no evidence in the record to demonstrate that respondent took any action to correct what she believed to be Rich's misunderstanding.

[10] There is no indication in the record that respondent's April 18, 2019 letter to Judge Sules referred to "white money" or "black money," or that only a portion of the purchase price would be reported to the Indian government for tax purposes, and that the rest of the seller's payment would be under the table so as to avoid reporting it to the Indian government. Respondent also failed to attach to her letter to Judge Sules copies of the letters that she and Rich had exchanged.

transaction. I agreed and we requested the court to continue with appointing a realtor."

Respondent asserted that she did not assist Gyanendra with an illegal transaction because she "communicated information requested by my client to his wife, through counsel. I always communicated with the Court to let Judge Sules know what was going on, which I believe was appropriate conduct for an attorney."

After receiving respondent's reply to the ethics grievance, the OAE scheduled a demand interview. On August 15, 2019, respondent appeared at the OAE's office, without counsel, to explain her conduct regarding the Property.

During the interview, respondent maintained that she had never discussed the Property with Gyanendra prior to filing her December 4, 2018 motion, and that the only reason the sale of the Property became an issue was because Hena requested payment of the $50,000 in her cross-motion.

Although respondent conceded that the sale of the Property was a post-judgment issue in the Singh's divorce, for which Gyanendra retained her services, respondent maintained that she was never going to be involved in the sale of the Property because she was not a real estate attorney. Respondent explained that she was simply providing Rich with information about how business was conducted in India, and that she did not offer Gyanendra any legal

advice concerning the Property other than to explain that the court ordered the Property to be sold a certain way, so that procedure needed to be followed.

Additionally, respondent asserted that, as an attorney, she was concerned about Gyanendra's description of "white money" and "black money" because she did not know what it meant, and there was "a possibility that this transaction may not be on the up and up [. . .] is the way I said it to my client." Respondent further explained that she "absolutely" was concerned about tax consequences in the United States were the transaction, as proposed by Gyanendra, to occur. Nevertheless, Gyanendra told respondent that no money from the sale of the Property would enter the United States because Hena would need to receive the money in India "because you couldn't bring it into the United States without there being a tax consequence. So, that's what he told me. And I said, I don't really care how you – what you're doing in India, all I know is I want the Court involved to know what's going on." Respondent clarified that she knew Hena could not have returned to the United States with $50,000 "because that would be illegal [. . .] If there's a cash transaction, you can't bring the cash into the United States. It – it's illegal." Respondent asserted that she "of course" expressed to Gyanendra that his proposed real estate transaction was illegal. Respondent claimed that she even spoke with an attorney who shared office space with her to express her reservations about the legality of the transaction.

Notwithstanding her contemporaneous knowledge that Gyanendra's proposed transaction was illegal, she sent his proposal verbatim to Rich with no qualifying language that she was merely providing information from her client. Respondent told the OAE that she did not expect Rich to accept the proposed transaction because "it wasn't a proposal. It was simply a description of a business transaction in India. That's all it was." Respondent did not answer the OAE's question about whether it was clear from respondent's March 21, 2019 letter that respondent personally did not support the transaction. Instead, respondent later maintained that she wanted "to stay neutral because I had a client who was wanting this information given to the other side. I didn't think it was appropriate to give it to the other side. I told my client that. He said, I want this information relayed. I said, I would relay the information."

After Gyanendra sent respondent the offer from Malpani, respondent told Gyanendra that it was "great" that he received an offer, and that she would do her best to move the sale along, but that she needed to contact Judge Sules because there was still not a realtor in place. Then, respondent passed along the information to Rich.

Respondent maintained that she included within her April 10, 2019 e-mail to Rich her opinion that the offer was an excellent opportunity for the parties, even if it was illegal, because:

> there was also the opportunity that they wouldn't do it this way; right? I mean, I was hoping that, perhaps, [Malpani] would buy the property and not – not do it this way. I mean, obviously, they could have done it legally. But, if the person wanted the property enough, this could have been a good transaction for them; right? I mean, that's kind of how I saw it.
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> [2T56-2T57.]

Ultimately, respondent conceded that she wished she had never sent Gyanendra's information to Rich and, instead, had told Gyanendra "to just sit and wait." However, respondent also expressed that she believed she was doing her job by sending the information to Rich.

Respondent denied that she conducted any type of research into the legality of Gyanendra's proposal, even after Rich told her he believed the transaction to be illegal. Nevertheless, respondent asserted that she "was not going to get involved in a transaction that involved anything having to do with black and white money because, obviously, from the United States standpoint that's – that's illegal."

Respondent asserted that, during the April 25, 2019 telephone conference, Judge Sules told the parties that they could not proceed with a "black/white money" transaction. Respondent maintained that she "probably" told Judge Sules that she was concerned about the legality of the transaction, but:

> there was no transaction. I mean, I – I feel very strongly about, you know, that the – the providing of

> documentation to show that there was an offer was something that I – I thought, legally, I had to do. I was under, you know, the rules to have full disclosure. And I felt that providing all of this documentation and providing all of the information to the Court and to Mr. Rich was the proper way to proceed.
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> [2T98.]

Regarding the tax consequences for Hena, respondent acknowledged that the transaction would have been problematic for Hena in the United States but emphasized that "the whole thing from the beginning was not something that I think anybody was going to get involved in; right? I mean, who was going to get involved with something that said black and white."

Respondent did not answer the OAE's question about why she did not express to Rich that Gyanendra provided the information contained in the March 21 and April 10, 2019 letters and e-mails, but "you can see from the e-mail transaction that I gave [. . .] that it was, like, he sent it to me and, boom, I hit forward and just sent it to [Rich]. You know, not realizing that he was going to think of that as yet another transaction."

In her verified answer to the OAE's formal ethics complaint, respondent admitted that she drafted the letters and e-mails to Rich and only changed the pronouns. Further, respondent viewed Malpani's offer as an invitation to negotiate "what portion of the 'deal' would be registered with the Indian government." Respondent denied that she considered or made a judgment

regarding the import of Malpani's negotiation offer. Respondent also denied that she exercised independent judgment when she advocated for Gyanendra's position during the April 25, 2019 telephone conference with Judge Sules.

Respondent further denied that she postured, in her May 9, 2019 letter to Judge Sules, that there would be a significant reduction in sale proceeds if Hena and Gyanendra did not utilize the "black/white money" method of transaction. Respondent asserted that she included this information because Gyanendra wanted the court to review the $50,000 counsel fee award and would file another motion to modify the counsel fee payment.

Furthermore, respondent denied that she advocated for any transaction to the court, either in her letters or during the telephone conference. Respondent maintained that, rather, she "provided the information to the court that was before her which was the letter offer of Malpani and how Mr. Singh wanted the transaction to proceed."

Ultimately, respondent asserted that she did not consider or make a judgment that if the sale of the Property did not utilize the "black/white money" procedure that there would be fewer funds available for Gyanendra to pay Hena $50,000.

Nevertheless, respondent conceded that she:

> knew it would be illegal for the Singh's [sic] or their agents to misrepresent the terms of a real estate

> transaction to the Indian government. [. . .] Respondent knew that based upon the position of Mr. Rich on behalf of his client that neither he nor the court would ever accept terms that did not involve a full property registration, thereby not allowing a misrepresentation of the transaction to the Indian government.
>
> [A¶80.]

Furthermore, respondent conceded that "it would be illegal for the Singh's [sic] and their agents to return to the United States with untaxed cash from any real estate transaction." Contrary to her prior statements to the OAE, in her verified answer, respondent stated that "there was no illegal real estate transaction and further states she never discussed nor considered the event of the Singh's [sic] or their agents returning to the United States with untaxed cash." Nevertheless, respondent conceded that she knew it would be illegal for the Singhs to bring undeclared cash into the United States. Ultimately, respondent admitted that the "black/white money" procedure urged by her client, which she adopted in her letters to Rich, would have violated laws and regulations in the United States.

Indeed, respondent admitted that she advised Gyanendra that the "black/white money" procedure he wanted to utilize to sell the Property was illegal but asserted that she "brought all documents before the court to allow the court to decide the appropriate process to be used for the sale of the Surat Property. Respondent states that she believed that by being in the role as Mr. Singh's advocate she had a duty to communicate the information he requested."

In mitigation, respondent claimed that the allegations in the OAE's complaint arose out of respondent's role as an advocate, not a transactional lawyer. Thus, according to respondent, the Rules of Professional Conduct she was charged with violating:

> are rules of general application that apply to lawyers engaged in the role of advisor and counsel in a non-litigation or transactional setting. The constraints of the RPCs in a litigation context differ from those in a non-litigation or transactional setting to meet the requirements of the adversary system. The advocate is permitted some latitude where there is argument by opposing counsel in an adversarial proceeding as in the instant case.
>
> [A,pp26-27.]

Respondent did not cite to any legal authority to support this position.

Respondent also asserted that she exercised professional judgment "as a litigator" to present the "black/white money" proposal to Rich and the Superior Court because she knew "her adversaries would argue that the proposals before the court would violate the laws of India and the United States."

Finally, respondent asserted in mitigation that, from February through May 2019, she was very busy preparing for two complicated cases, one of which had three days of trial and the other had seventeen, non-consecutive, days of trial. Respondent also noted that she had served in various roles in the family law bar, including as a member of the Executive Board of the Essex County Bar

Association's Family Law Section; Executive Committee of the New Jersey Bar Association's Family Law Section; as a Barrister for the Arthur T. Vanderbilt Chapter of the American Inns of Court; the Chair of the Essex County Fee Arbitration Committee; and a member of an Essex County District Ethics Committee. Respondent also cited her pro bono work for the New Jersey Center for Women and the Senior Care Center of Montclair.

The Ethics Proceedings

On a date not set forth in the record,[11] but before the scheduled August 18, 2021 ethics hearing, respondent filed a motion to dismiss the ethics complaint. In her motion, respondent asserted that the facts of the matter were "essentially undisputed" but argued there was no clear and convincing evidence that she violated any of the charged Rules of Professional Conduct.

Respondent asserted that she had been an advocate in the Singh matter and that there was a difference "between the nature and scope of the duties of an advocate in litigation and those of a transactional lawyer." Without citation to authority, respondent argued that the "Rules of Professional Conduct adopted by the Supreme Court, effective September 1984, are divided into rules of

[11] Based upon the OAE's opposition to respondent's motion to dismiss, it appears likely that respondent filed her motion in June or early July 2021.

general application and rules applicable to the specific roles or functions lawyers perform, including adviser and advocate." Respondent asserted, again without citation, that, because she had been an advocate for Gyanendra, and not a transactional attorney, the charged RPC violations were inapplicable to her. Likewise, because respondent was an advocate for Gyanendra, she argued that she "did nothing wrong" and was not dishonest because, according to respondent, advocates have different duties to adversaries and courts.

Respondent also accused Rich of improperly reporting her conduct to the OAE, claiming that Rich failed to comply with RPC 8.3 (a lawyer who knows another lawyer has violated the Rules of Professional Conduct shall inform the OAE of the violation). Respondent argued Rich did not "know" that respondent violated the Rules of Professional Conduct. Indeed, in her motion to dismiss, respondent accused Rich of violating RPC 3.4(g) (threatening to present criminal charges to obtain an improper advantage in a civil matter) by referring her conduct to the OAE during the Singh litigation and before Judge Sules appointed a realtor.

Respondent argued that she acted in good faith and "within the bounds of the law and in accord with her obligations as an advocate to her client, her adversary, and the court." Respondent cited to the absence of an ethics referral from Judge Sules as proof that her conduct had been ethical.

Respondent also asserted that she was not required to form an independent professional judgment about the customary sale of real estate in India because she was not retained to participate in the sale of the Property.[12] Respondent reasoned that, because she did not advise Gyanendra regarding the legality of the real estate transaction in India, she had no duty to render an independent professional judgment regarding the customs and laws of India.

Ultimately, respondent argued that, even if she did have a duty under the Rules of Professional Conduct regarding the sale of the Property, she discharged her duty by disclosing to Rich and the court the procedure her client desired to utilize for the sale of the Property. In that regard, respondent asserted that her conduct was in accord with RPC 3.3(a)(2) (disclosing a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal, or fraudulent act by the client).

Although, in her motion to dismiss, respondent disavowed herself of any responsibility to render an independent professional judgment, she argued that she reasonably inferred from the language of the Malpani offer that the parties

[12] In our view, respondent's position does not accord with her retainer, in which Gyanendra retained respondent to address post-judgment divorce issues. The sale of the Property and the payment of $50,000 in counsel fees were unquestionably post-judgment divorce issues in the Singh matter.

could negotiate to complete the real estate transaction within the bounds of Indian law.

Respondent asserted that Rich wrongly assumed that respondent advocated for fraudulent conduct because she would not have been able to act on the sale of the Property without the approval of the court. Thus, respondent's involvement of the court, according to respondent, "supports a strong inference and the inescapable conclusion that Respondent never intended to assist a fraud and acted within the bounds of the law."

On July 12, 2021, the OAE filed a letter brief with the hearing panel opposing respondent's motion to dismiss.

Initially, the OAE argued that the motion was untimely filed on the "eve of trial" and eight months after respondent filed her verified answer. Additionally, the OAE asserted that respondent's motion was deficient because it failed to address the facts and theories set forth in the OAE's complaint. See, Printing Mart-Morristown v. Sharp Electronics, 116 N.J. 739, 746 (1989) (holding that the test for determining the "adequacy of a pleading is whether a cause of action is 'suggested' by the facts; on a motion to dismiss, a court need not be concerned with the plaintiff's ability to prove the allegations set forth in the complaint because they are entitled to each reasonable inference of fact).

The OAE argued that, even if respondent intended to file a motion for summary judgment,[13] instead of a motion to dismiss, the motion was still defective because it lacked a certified statement of facts from respondent and failed to reference any exhibits, as required by R. 4:46-2(a).[14]

In summary, the OAE argued that the formal ethics complaint provided a sufficient factual basis which, if true, would establish by clear and convincing evidence that respondent violated RPC 1.2(d); RPC 1.4(d); RPC 2.1; and RPC 8.4(c).

In an August 4, 2018, decision and order, the hearing panel chair denied respondent's motion to dismiss. The panel chair found that respondent's motion "rests on somewhat unsettled procedural grounds and lacks a proper reference to the record that would enable the Hearing Panel Chairperson to make findings of fact and conclusions of law." The panel chair also noted the untimeliness of the motion, which he did not find to be a determinative factor. However, the chair admonished respondent and her counsel, noting that the hearing panel was

[13] Pursuant to R. 1:20-5(d), motions for summary judgment are not a form of relief available in ethics proceedings.

[14] R. 4:46-2(a) requires that "the statement of material facts shall set forth in separately numbered paragraphs a concise statement of each material fact as to which the movant contends there is no genuine issue together with a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted. The citation shall identify the document and shall specify the pages and paragraphs or lines thereof or the specific portions of exhibits relied on. A motion for summary judgment may be denied without prejudice for failure to file the required statement of material facts."

constituted of volunteers whose time was as important as that of the presenter and respondent's counsel. The panel chair warned that future failures to comply with the prehearing orders entered in the matter could result in the denial of the application or the preclusion of evidence.

Finally, the panel chair found that respondent had failed to satisfy her burden to obtain a dismissal because her arguments, although appropriate in a closing statement or summation, were insufficient for consideration on a motion to dismiss, because the complaint and the exhibits appended thereto were the only sources of information that can be used on a motion to dismiss. The panel chair determined that the legal sufficiency of the OAE's complaint survived the low threshold of a motion to dismiss.

On July 19, 2021, the OAE filed a motion in limine to bar the testimony of Gyanendra and Carrie Gonzalez, who was respondent's paralegal. The OAE argued that, on October 2, 2020, it had requested discovery from respondent. In a July 13, 2021 e-mail to the OAE, counsel for respondent, Michael Ambrosio, Esq., advised for the first time that he was going to call Gyanendra and Gonzalez as witnesses.

The OAE asserted that R. 1:20-5(b)(2) requires both the presenter and respondent in an ethics proceeding to "file a report disclosing the name, address and telephone numbers of each person expected to be called at hearing" five

days prior to the first prehearing conference. Thus, in this matter, the OAE and respondent were required to submit their witness information by February 20, 2021.

In its February 19, 2021 prehearing memorandum, the OAE advised that it would call the disciplinary investigator and respondent as witnesses at the hearing. Respondent did not disclose any witnesses she intended to call, but at the February 25, 2021 prehearing conference, Ambrosio explained that this matter was "straightforward and would largely be told through the exhibits to the complaint and by Respondent and her testimony." Therefore, all parties agreed that the ethics proceeding would require only one day of hearing. By letter dated March 1, 2021, the OAE advised the parties that it amended its witness list to include Judge Sules.

Approximately one month later, the OAE produced discovery to Ambrosio. Pursuant to the first prehearing order entered in this matter, Ambrosio was required to notify the OAE and hearing panel within ten days of receipt of the OAE's discovery how much time he required to produce respondent's discovery. Ambrosio both failed to produce discovery and failed to produce a list of witnesses he intended to call.

However, on May 24, 2021, during the second prehearing conference held in this matter, Ambrosio indicated that he "might" retain an expert and that the

hearing may last more than one day. Consequently, the panel chair entered a second prehearing order stating "the parties shall identify their fact and expert witnesses by July 7, 2021; in so doing they shall state generally the proposition for which each expert is being proffered." Although Ambrosio contemplated retaining an expert at the prehearing conference, he did not indicate that he intended to call any fact witnesses except for respondent.

On June 3, 2021, Ambrosio provided the OAE with a list of exhibits he intended to introduce at the hearing. On July 8, 2021, the OAE wrote a letter to the panel chair, noting that it was not familiar with many of the exhibits referenced on the list, and requesting the production of the documents. Consequently, the panel chair set a deadline of July 14, 2021 for Ambrosio to produce the documents to the OAE. Respondent produced the documents.[15]

On July 13, 2021, respondent produced her witness list, which did not include an expert, but did include Gyanendra and Gonzalez. The OAE argued that the untimely notification that respondent would be calling Gyanendra and Gonzalez as witnesses would prejudice the OAE because, had the OAE known respondent intended to call these witnesses, it would have requested from

[15] On July 27, 2021, the OAE filed another motion in limine to exclude, as irrelevant, certain exhibits Ambrosio provided. On August 7, 2021, the panel chair noted that, by e-mail dated August 4, 2021, Ambrosio had agreed to withdraw the contested exhibits. Thus, the panel chair entered an order barring the exhibits.

respondent discovery related to the proposed witnesses. Alternatively, the OAE asserted that, if the panel chair was not inclined to bar the testimony of Gyanendra and Gonzalez, it required four distinct categories of discovery from respondent and requested that it also be permitted to contact Gyanendra and Gonzalez to take brief statements after discovery was produced.

In a July 19, 2021 e-mail to the OAE and respondent's counsel, the panel chair stated that, if respondent failed to provide the discovery the OAE requested by the close of business on July 23, 2021, he would bar the witnesses from testifying at the hearing.

Respondent failed to produce any discovery. Therefore, by order dated July 26, 2021, the panel chair granted the OAE's motion in limine and barred Gyanendra or Gonzalez from testifying.

At the August 18, 2021 ethics hearing, Judge Sules testified that, prior to the April 25, 2019 telephone conference with respondent and Rich, it was not clear to him that the transaction that respondent had proposed was illegal. However, Judge Sules also testified that he did not review the letters submitted by counsel because he does not "litigate by letter." Nevertheless, after hearing from the parties, Judge Sules told them he would not order anyone to do anything illegal.

Rich also testified at the ethics hearing. He maintained that he communicated with respondent only by letter or e-mail because she did not wish to speak to him. He testified that, when he received respondent's April 10, 2019 letter proposing that Gyanendra's brother serve as Power of Attorney, he believed the proposed transaction would be a fraud upon the Indian government. Furthermore, Rich believed the transaction would pose problems for Hena because it would be difficult to legally remove the sale proceeds from India to the United States as a declared capital gain for tax purposes.

Rich testified that respondent's letters made it seem as though her advocacy for Gyanendra was an urgent matter because respondent wanted to ensure the Property was sold. However, Rich testified he wrote the letter proposing that Gyanendra buy out Hena's interest in the Property as an effort to avoid respondent's proposed "black/white money" transaction, while also allowing for the sale of the Property.

Rich was very troubled by respondent's April 18, 2019 letter to Judge Sules because she did not fully incorporate the language of her proposed transaction into the letter, which Rich believed should have been conveyed to Judge Sules, especially after Rich warned respondent that the transaction was illegal. Rich also was troubled that respondent represented to Judge Sules that

she was prepared to move forward with an order to show cause to proceed with the illegal transaction.

Regarding the April 25, 2019 telephone conference with Judge Sules, Rich testified that, during the call, respondent advocated for the way Gyanendra wanted the real estate transaction to proceed. According to Rich, respondent did not tell Judge Sules that she wanted him to stop the deal so that her client would stop pressuring her. To the contrary, Rich testified that respondent seemed comfortable with the position she advocated. Indeed, after the telephone conference wherein Judge Sules told the parties he would not order anything illegal, respondent continued to advocate for the "black/white money" transaction because, if the Property were sold any other way, there would be less money available for Gyanendra to satisfy his obligation to pay the $50,000 in counsel fees. Respondent then threatened to file a motion to modify the counsel fee payment if Judge Sules rejected the "black/white money" proposal. Finally, Rich denied that respondent offered an alternative, legal real estate transaction after he rejected respondent's "black/white money" proposal.

Respondent testified that she believed that her client was concerned that nothing was being done to sell the Property, so he wrote her an e-mail to urge its sale. Respondent denied reading the e-mail in detail and asserted that she instructed her paralegal to copy and paste Gyanendra's e-mail in a letter to

Rich.[16] Respondent testified that, after Rich rejected the proposal, she told Gyanendra that the transaction was "not on the up and up" and that no one would accept it. Respondent did not explain how she would have known the transaction was not on the "up and up" if she had not read the proposal.

Nevertheless, respondent testified that, after Rich rejected the first proposal, she had a conversation with Gyanendra about how a transaction that dealt in "black/white money" was not going to happen. Respondent testified that she assumed the Malpani offer did not involve "black/white money."

Respondent denied that she was going to file an order to show cause as she had threatened to do in her April 24, 2019 letter. However, when given an opportunity to explain what she meant when she wrote "I have been authorized by my client to file an Order to Show Cause on this issue," respondent simply testified "because that's how I wrote it."

Throughout the ethics proceeding, respondent maintained that the information she sent to Rich was only informational and never amounted to a transaction or a proposal. Yet, respondent also testified that "I still don't think that that transaction – that offer is illegal, as I sit here today."

[16] In our view, respondent's testimony at the ethics hearing was contrary to the statements she made to the OAE during the August 15, 2019 demand interview and in her verified answer.

In respondent's undated post-hearing summation, she argued that the OAE's complaint should be dismissed in its entirety because "when viewed as a whole Respondent's disclosures to her adversaries and the court impeded rather than assisted any intention her client may have had to commit tax fraud."

Respondent again argued that she was an advocate for Gyanendra and asserted that the "functional classification of Rules, RPCs 3.1 to 3.9, which are specifically applicable to lawyers performing as advocates." Yet, respondent argued that, as Gyanendra's advocate, she was never able to assist in his perpetuation of fraud because "anything Respondent proposed was subject to adversary argument and the scrutiny and approval of the court." Respondent asserted that, at its worst, her conduct was no more "than a mistake in judgment as an advocate in forwarding information she received from her client to her adversaries without careful consideration of its content."

Respondent again accused Rich of erroneously concluding that the proposed transaction was illegal because, according to respondent, it was not a transaction, but rather, an explanation about the customary practices of real estate transactions in India. Respondent asserted that Rich should have known that the Malpani offer she sent to him "did not propose under-the-table payments." Further, respondent maintained that she held a reasonable belief that

the "Malpani offer could be the basis for a lawful transaction in which all taxes would be paid."

Additionally, respondent argued that there was no clear and convincing evidence she advocated for an illegal transaction because the transaction was never completed.[17] Next, respondent argued that "for some inexplicable reason the OAE never interviewed Respondent's client, Mr. Singh, as part of its investigation and objected to Respondent's effort to include Mr. Singh as a witness, on purely technical grounds."[18] Finally, respondent asserted that she exercised independent professional judgment as an advocate "within the wide latitude permitted an advocate." Nevertheless, respondent maintained that she had advised Gyanendra that she could not assist him with the perpetration of a fraud.

In its post-hearing summation, the OAE argued that respondent violated RPC 1.2(d) by repeatedly assisting Gyanendra in his attempt to sell the Property utilizing an illegal and fraudulent procedure. The OAE asserted that, in

[17] Respondent did not reconcile this argument with her previous statements that she advocated for the "black/white money" transaction because she knew her adversary would argue that it was illegal.

[18] In our view, the panel chair gave Ambrosio an opportunity to cure his technical deficiencies which would have allowed respondent to present Gyanendra and Gonzalez as witnesses. Ambrosio chose not to cure his deficiencies and, as discussed more fully below, the panel chair properly excluded their testimony pursuant to R. 1:20-5(a)(6) and R. 1:20-5(c).

respondent's first letter to Rich, she clearly explained that a portion of the purchase price for the Property would be under the table and, thus, not reflected in official sale documents – in other words, hidden from the Indian government. The OAE also argued that respondent clearly explained that taxes and levies would only be paid on the "white money," or the above the table payment.

The OAE argued that, after Rich rejected the initial "black/white money" offer, Gyanendra did not redefine the terms and respondent again copied Gyanendra's language in her e-mails to Rich. The OAE rejected respondent's attempts to reconsider the clear definitions of "white money" and "black money" that Gyanendra repeatedly used in his communications. Indeed, the OAE maintained that respondent's continued advocacy for a "white money" and "black money" transaction was proof that she continued to assist her client in his attempt to commit a fraud upon the Indian government.

Regarding respondent's suggestion that the Malpani offer could be negotiated, the OAE argued that neither Judge Sules nor Rich recalled respondent stating that the offer could be negotiated during the April 25, 2019 telephone conference. Moreover, the OAE asserted that any intent to negotiate the Malpani offer was absent from respondent's letters.

Ultimately, the OAE argued that "by telling Judge Sules that this was how things were done in India, [respondent] was attempting to downplay and 'normalize' what the offer was suggesting."

Additionally, the OAE asserted that respondent violated RPC 1.4(d) and RPC 2.1 by failing to advise Gyanendra of the limitations of her representation and, instead, simply following Gyanendra's instructions to pass along information about the procedure he wanted to use to sell the Property. Similarly, the OAE argued that respondent violated RPC 8.4(c) by advocating for a fraudulent real estate transaction in India.

In aggravation, the OAE maintained that, as an attorney who had been practicing law for nearly thirty years, and who admitted she knew – during her first conversation with Gyanendra about the Property – that he wanted to engage in an illegal transaction, she should have known better than to repeatedly advocate for the illegal transaction on behalf of her client. Additionally, the OAE viewed respondent's refusal to admit any wrongdoing as an aggravating factor.

In mitigation, the OAE noted that respondent has no disciplinary history and has served on various family law committees.

Therefore, the OAE recommended that respondent receive either a reprimand or a censure for her misconduct.

THE DEC'S FINDINGS

After reviewing the evidence and testimony presented at the ethics hearing, the DEC concluded that respondent violated RPC 1.2(d); RPC 1.4(d); RPC 2.1; and RPC 8.4(c).

After summarizing the aforementioned facts, the DEC noted that In re Opinion 710, 193 N.J. 419 (2008), provided the panel with guidance regarding respondent's obligations under RPC 1.2(d). The DEC determined that, under Opinion 710, the "black/white money" transaction that respondent proposed would have been legal if the parties had the intent to pay the proper taxes and fees to the Indian government, notwithstanding the check and cash nature of the transaction. However, in this matter, the DEC found that respondent knew she was advancing an illegal transaction because Gyanendra had expressed his desire to avoid paying the full registration fee due to the Indian government.

The DEC also found that respondent's letters to Rich lacked any explanation that the full value of the Property would be recorded and used to calculate the taxes and registration in India. The DEC rejected respondent's attempt to argue that the Malpani offer was open to negotiation to ensure it was lawful because it found the final sentence, wherein Malpani stated that he was "open to discuss and mutually agree on the registration amount," dispositive. The DEC reasoned that, if Malpani had intended to comply with Indian law and

register the full sale amount of the Property, he would not have needed to include the last sentence.

Consequently, the DEC found it:

> incredible that an attorney of Respondent's years of practice would have read both (1) the statement in the initial discussion of the offer that the payment of taxes would be based only on the 'white money' portion of the transaction, and (2) the discussion concerning how much the registration amount should be yet would not have understood its portent as an arrangement where the buyer would make an 'under the table' cash payment for the purpose of avoiding a payment of taxes on the full amount of the transfer.
>
> [HPR,p22.]

Additionally, the DEC determined that respondent's statements to Gyanendra, that the transaction was not on the "up and up," did "not save Respondent here because the evidence establishes a significant divergence from what Respondent claims to have told her client compared to Respondent's outward-facing actions toward Mr. Rich and to the Court." The DEC cited to the lack of any contemporaneous evidence that respondent, after learning Rich rejected the "black/white money" proposal, attempted to assure her adversary that any transaction to sell the Property would include a full payment of the registration amount.

The DEC was troubled by the language respondent used in her April 18, 2019 letter to the court because she attempted to portray Rich's rejection of the

proposal as a "formatting" issue that could have been resolved when, in fact, Rich had expressly rejected the proposal due to his concerns about the legality of the transaction.

The DEC noted that, prior to the disciplinary hearing, respondent did not claim that she explained to the court that the Malpani offer could be executed legally. Rather, when asked an open-ended question by the OAE about the April 25, 2019 telephone conference with Judge Sules, respondent failed to explain that she told the parties the Malpani offer could be executed legally. The DEC found that "that example is not the only example of Respondent's hearing testimony being different from prior evidence she gave."

Indeed, the DEC determined that respondent's testimony at the hearing – that she did not know whether Gyanendra and Hena paid taxes on the full purchase price of the Property – conflicted with her testimony during the demand interview, where she admitted that she knew the Singhs originally had purchased the Property by paying a portion of the sale price under the table.

The DEC recounted the multiple occasions in which respondent advocated for the acceptance of the "black/white money" deal and found her testimony that she viewed the transaction as a dead issue after Rich initially rejected it "rings hollow." Indeed, respondent's continued advocacy of the "black/white money" procedure:

> gave the Panel the overwhelming impression that despite Mr. Rich's belief and her knowledge about the specific 'white money/black money' proposal on the table (i.e., a proposal in which the registration a mount [sic] would be subject to further 'discussion' for a 'mutual agreement' on the registration amount), Respondent nonetheless believed that if she could get the Court to sign off on the deal, it would bear the imprimatur of legitimacy.
>
> That Respondent's persistence was accompanied by a less than full disclosure to the Court regarding the nature and effect of the Malpani Offer in which the registration amount remained open to further discussions casts a grim pall over her credibility.
>
> [HPR,p27.]

The DEC further found that the Rules of Professional Conduct make no distinction in their applicability to advocates or transactional lawyers and rejected respondent's argument regarding her immunity in her role as an advocate. The DEC noted that it found no support – and respondent offered no legal authority – to support her argument that "a lawyer can simply advocate for a proposition regardless of its legality and face no consequences as long as someone else's objections (those of either an adversary or the Court) prevents the scheme from being adopted." Thus, the DEC found that respondent violated RPC 1.2(d).

Similarly, the DEC found that respondent's own testimony established, by clear and convincing evidence, that she violated RPC 1.4(d). Specifically, the

DEC determined that respondent, even if respondent had told Gyanendra that the transaction was not on the "up and up," she advocated for his position anyway, conduct which fell far short of advising her client that RPC 1.4(d) prohibited her from advocating for the "black/white money" transaction. Furthermore, the DEC found that respondent's threats to file an order to show cause or a modification motion in order to proceed with the real estate transaction using a "black/white money" procedure "militates convincingly against the notion that she ever told her client that RPC 1.4(d) prohibited her from advocating for the court to adopt a scheme to defraud the Indian government of tax revenue."

Likewise, the DEC found that respondent's statements that she simply forwarded information from Gyanendra regarding the "black/white money" transaction and that she viewed herself as "a mere conduit of information" were not credible, which, in turn, established clearly and convincingly that respondent violated RPC 2.1. The DEC noted that Gyanendra clearly explained what he meant by "white money" and "black money" when he explained that "black money" was a payment made under the table. The DEC found that any attorney, even one without an understanding of Indian law, would know that an under the table payment was designed to avoid the payment of taxes or other required fees.

Further, citing In re Chidiac, 120 N.J. 32, 36-37 (1990) (holding that an attorney has an affirmative duty to refuse to follow a client's instructions that, if followed, would violate the Rules of Court), the DEC held that Gyanendra's desire to structure the sale of the Property to avoid paying taxes on the sale price did not give respondent the ability to merely pass that information along, finding that "counsel must be more than a potted plant or a witless courier; nor can counsel stand by to aggressively advocate for a position the client wants but the attorney knows is illegal or unethical."

Finally, the DEC found that respondent violated RPC 8.4(c) because she assisted Gyanendra in advocating for a "black/white money" real estate transaction which she knew would have permitted Gyanendra to defraud the Indian government.

In aggravation, the DEC found that respondent aggressively advocated for the adoption of the "black/white money" procedure through the use of misleading communications to the court and threats to file motions. The DEC was particularly troubled that respondent threatened motion practice even after Rich unequivocally opposed the illegal transaction.

In mitigation, the DEC found that respondent had more than thirty years of practice without disciplinary involvement.

Thus, the DEC determined that a three-month suspension was the appropriate quantum of discipline to be imposed for respondent's misconduct.

In her submission to us, respondent argued that the DEC improperly drew negative inferences against her when, according to respondent, the DEC could have interpreted the facts in her favor. Respondent stressed that the DEC ignored the lack of "any transaction, no operative offer and no agreement on terms and conditions of sale." Respondent also argued that, because she "proactively sought and relied on the intervention of Judge Sules . . . Respondent acted in good faith and lacked any wrongful intent."

Furthermore, in her submission to us, unlike her submission to the DEC, respondent conceded that she "failed to communicate clearly and made improper judgments in her efforts to help her client, including failure to recognize and address the possible implications of the term black money in emails from her client and in her correspondence with her adversary, Mr. Rich." Respondent also conceded that she sent Gyanendra's proposal to Rich "without giving it proper consideration." Nevertheless, just as she did before the DEC, respondent argued that she represented Gyanendra as an advocate, and not a transactional attorney. Thus, according to respondent, the DEC improperly concluded that:

> there is no reason to even consider the difference between the role of an advocate and the role of a transaction lawyer in her application of the Rules of Professional Conduct. Respondent submits that the

> New Jersey Rules of Professional Conduct are based on the ABA Model Rules functional classification of the rules according to the separate roles or functions that lawyers' [sic] perform.
>
> [Rbb5.]

Respondent cited to RPC 3.1 through RPC 3.9 as Rules which, in her view, are specifically applicable to advocates.

Further, respondent also faulted Rich for not realizing that her letters were "simply information" that she was providing because "Rich had to know that it was Respondent's client, and not Respondent, who sought the use of the customary procedure with under-the-table payments. Mr. Rich also knew or should have known that the Malpani offer did not propose under-the-table payments and was unrelated to the March 21, 2019 email."

Moreover, respondent argued that the DEC gave too much weight to respondent's multiple references to "black/white money" and gave no weight "to the evidence that Respondent never intended to represent her client in the sale of real estate in India." Nevertheless, respondent stated that her conduct was "negligent and unprofessional but not morally reprehensible so as to warrant discipline." Respondent argued that, after Judge Sules rejected her effort to pursue the Malpani offer, she "had no further involvement in the matter." Respondent did not address her May 9, 2019 letter to Judge Sules imploring the

use of "black/white money" so that more funds would be available to her client to pay the $50,000 counsel fee award to Hena.

Additionally, respondent asserted that she was engaged in another matrimonial matter that was quite contentious, and she, consequently, was not prepared to deal with Gyanendra's demands. Thus, she created an appearance of impropriety. Finally, respondent again lamented that the panel chair had barred the testimony of Gyanendra and Gonzales because she "failed to comply with an arbitrary deadline for submitting discovery requested by the OAE."

At oral argument before us, counsel for respondent implored us to accept Judge Sules' testimony – that he did not view respondent's conduct as unethical – as "highly persuasive," although not legally binding. Respondent contended that she did not consider whether the proposals she sent to her adversary were illegal; yet, respondent also argued that, by sending her adversary and the court the illegal proposals, she intentionally placed the proposal in front of Judge Sules so that he could rule on the issue, because she knew she had a losing hand.

Respondent denied that her May 9, 2019 letter contained a threat that, unless the court proceeded with the "black/white money" transaction, she would file a motion to reduce counsel fees in the Singh matter. Instead, respondent argued that her letter did not state that she would file a motion if the court did not proceed with the "black/white money" transaction and asserted that lawyers

should be forgiven for their mistakes.

Additionally, respondent contended that our attorney disciplinary system only disciplines attorneys whose conduct is "morally reprehensible"[19] and, because respondent's conduct was not "morally reprehensible," she should not be disciplined. Moreover, respondent, in contradiction to her statements to us concerning Judge Sules' opinion regarding the ethics of respondent's conduct in the Singh matter, asserted that Judge Sules' opinion that respondent did not commit misconduct was "dispositive" in this matter. Furthermore, without explanation, respondent also accused Rich of being biased against her.

Finally, respondent denied that New Jersey's Rules of Professional Conduct have general applicability. Rather, according to respondent, the American Bar Association (the ABA) has determined that there are different Rules applicable to attorneys who fulfill different roles, and presumably, the ABA's decision transfers to our own Rules of Professional Conduct.

The OAE did not provide a submission for our consideration. However, during oral argument before us, the OAE emphasized that, by virtue of the matrimonial proceeding, New Jersey had jurisdiction over the sale of the

[19] In our view, respondent is incorrect in her assertion. As just one example, attorneys are routinely disciplined for recordkeeping violations, which is not necessarily "morally reprehensible" conduct.

Property and that the proposals respondent sent to her adversary and the court were violative of the Indian Stamp Act.[20]

The OAE also asserted that, had the transaction proposed by respondent gone forward, it would have been a fraud on the Indian government and would have implicated the capital gains that the Singhs were required to report on their United States taxes. Nevertheless, the OAE argued that the lack of a completed transaction did not negate respondent's misconduct. To the contrary, the OAE contended that the focus of respondent's misconduct was not on the fraudulent tax returns the Singhs may have prepared in the event of a completed real estate transaction but, rather, was her repeated advocacy of a transaction that would have defrauded the Indian government of proceeds it was entitled to under the Indian Stamp Act.

Following a de novo review of the record, we determine that the DEC's determination that respondent violated RPC 1.2(d); RPC 1.4(d); RPC 2.1; and RPC 8.4(c) is fully supported by clear and convincing evidence.

As a threshold issue, we determine that Ambrosio's attempt to call Gyanendra and Gonzalez as witnesses was properly barred by the panel chair

[20] The Indian Stamp Act of 1899, Section 27, provides that "the consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein." Furthermore, the Indian Registration Act of 1908 penalizes individuals for "making false statements" on property registration filings.

under R. 1:20-5(a)(6) and R. 1:20-5(c).[21] The panel chair gave Ambrosio an opportunity to belatedly provide the OAE with discovery, which would have enabled him to call Gyanendra and Gonzalez as witnesses. Ambrosio, however, chose not to provide discovery, which resulted in an order properly barring those witnesses from testifying. Although respondent complained in her post-hearing summation to the DEC – and again to us – that her witnesses were barred on a procedural basis, there is no indication in the record that the procedure violated her due process rights. To the contrary, notwithstanding his previous noncompliance with the discovery timeline as set forth in R. 1:20-5(b)(2), Ambrosio was given additional time to provide discovery on behalf of his client after he provided untimely notice of two witnesses. He chose not to provide discovery and respondent chose to continue to the ethics hearing with Ambrosio as her attorney, knowing her desired witnesses had been barred from testifying. Respondent, an attorney who has been practicing law for thirty-four years, is not

[21] R. 1:20-5(a)(6) provides that "any discoverable information that is not timely furnished either by original or supplemental response to a discovery request may, on application of the aggrieved party, be excluded from evidence at hearing. The failure of the presenter or respondent to disclose the name and provide the report or summary of any expert who will be called to testify at least 20 days prior to the hearing date shall result in the exclusion of the witness, except on good cause shown."

R. 1:20-5(c) provides that the "hearing panel chair or special ethics master shall make and enforce all Rules and orders necessary to compel compliance with this Rule and may suppress an answer, bar defenses, or bar the admissibility of any evidence offered that is in substantial violation of the case management order, discovery obligations, or any other order."

an unsophisticated client and determined to proceed, including before us, with Ambrosio as her counsel. Thus, we do not hesitate to impose discipline on this record.

Turning to the facts of this matter, respondent violated RPC 1.2(d) by repeatedly assisting Gyanendra in his attempt to sell the Property through illegal and fraudulent means. There is no question that Gyanendra clearly explained in an e-mail to respondent that he desired to sell the Property in a way that only a portion of the proceeds – the "white money," or the money paid above the table – was recorded with the Indian government for tax purposes. Respondent then unhesitatingly advocated for Gyanendra's fraudulent scheme in letters she prepared and sent to Rich and Judge Sules.

Furthermore, the Malpani offer also clearly indicated that only a portion of the sale proceeds would be disclosed for Property registration purposes. Respondent's subsequent attempts to massage propriety into Malpani's statement – her claims that he was "open to discuss and mutually agree on the registration amount" – miss the mark. Just as respondent attempted to construe Malpani's statement as an invitation for a legal transaction (which is inconsistent with the plain language of Malpani's offer), it is just as likely that his statement invited a negotiation to reduce the funds recorded as the Property registration.

However, even if we were to accept respondent's position that she believed Malpani was inviting an opportunity to purchase the Property legally, her position drastically contradicted the position she took in her May 9, 2019 letter to Judge Sules (after he had already told the parties he was not going to order anything illegal). In that letter, respondent was unwavering in her argument that the Property needed to be sold utilizing the illegal "black/white money" transaction. In fact, she was so adamant, that she threatened to file a motion to reduce the $50,000 counsel fee payment Gyanendra had previously agreed to pay in connection with the divorce settlement if the transaction was not completed accordingly.

Indeed, respondent's own statements demonstrate that, at the time Gyanendra sent his first e-mail to her, she knew that he was proposing a fraudulent and illegal real estate transaction. She nevertheless sent five separate letters to either Rich or Judge Sules advocating for the scheme she knew to be illegal, in clear violation of RPC 1.2(d).

Similarly, because respondent knew Gyanendra's proposed procedure to sell the Property was illegal, she had an affirmative obligation to advise him that she could not assist him in advocating for the "black/white money" transaction. As the DEC correctly found, respondent's own statements clearly and convincingly establish that she failed to discharge that duty, in violation of RPC

1.4(d). Respondent repeatedly testified that she told Gyanendra that his proposal was not on the "up and up," but she advocated for the proposal anyway, even after Judge Sules told her that he was not going to order anything illegal in the matrimonial matter. Thus, it is clear that respondent failed to advise Gyanendra that she could not propose a fraudulent and illegal transaction to her adversary and the court – had she done so, she would not have sent multiple letters advocating for a fraudulent and illegal transaction on behalf of her client.

Furthermore, according to respondent, she sent out the illegal proposal, hoping that her adversary or the court would put an end to Gyanendra's requests that she pursue the issue. That position misses the mark under RPC 1.4(d). Informing a client that an attorney cannot pursue an illegal or fraudulent scheme is not the responsibility of external parties. It is the responsibility of the attorney, no matter how difficult the conversation may be.

Likewise, respondent's own statements clearly and convincingly demonstrate that she failed to exercise independent professional judgment, in violation of RPC 2.1. Respondent admitted that, when she received Gyanendra's e-mails containing the fraudulent real estate proposals, she copied and pasted their contents onto her own professional letterhead and sent them to her adversary. Respondent claimed that Gyanendra was persistent in his demands that she advocate for the "black/white money" transaction. Although that may

be true, that does not excuse respondent's failure to function as an attorney and provide her client with proper legal advice. Respondent's failure to do so is intertwined with her failure to advise Gyanendra that she could not assist him with perpetuating a fraud on the Indian government.

Additionally, there is no question that, by advocating that the Singhs fraudulently report the sale proceeds of the Property to the Indian government, respondent violated RPC 8.4(c). Furthermore, respondent's April 18, 2019 letter to Judge Sules clearly misrepresented the nature of the real estate transaction. Respondent was deliberate with the language she included in the April 18, 2019 letter, characterizing the sale using terms such as "cash" and "check," with no mention that the "cash" payment would be under the table to avoid recording the whole purchase price with the Indian government.

Finally, contrary to respondent's position that Judges Sules' testimony – that, in his view, respondent did not act unethically in the Singh matter – was dispositive of the issue, Judge Sules clearly testified that he did not litigate by letter. Thus, his determination following the telephone conference that he was not going to order anything illegal clearly represents that he believed respondent's proposal was illegal.

Nevertheless, the New Jersey Supreme Court, not the Superior Court, is the arbiter of attorney discipline. Indeed, Article VI, Section II, Paragraph 3 of

the 1947 Constitution "vest[s] exclusive authority over the regulation of the Bar in the State's highest court." In re LiVolsi, 85 N.J. 576, 596 (1981). "[T]he Superior Court lacks jurisdiction over the regulation of the Bar and matters that intrude on the disciplinary process." Robertelli v. N.J. Office of Attorney Ethics, 224 N.J. 470, 482 (2016). Therefore, we reject respondent's assertion that Judge Sules' testimony was "dispositive" in the disciplinary matter and find, for the aforementioned reasons, that respondent's conduct in her representation of Gyanendra was unethical.

In sum, we find that respondent violated RPC 1.2(d); RPC 1.4(d); RPC 2.1; and RPC 8.4(c). The sole issue remaining for our determination is the appropriate quantum of discipline for respondent's misconduct.

Attorneys who assist their clients in conduct the attorney knows to be illegal, criminal, or fraudulent have received sanctions ranging from a reprimand to a three-year suspension. See, e.g., In re Blunt, 174 N.J. 294 (2002) (reprimand for an attorney who counseled his client to enter into a sham contract of sale that was ultimately used as an exhibit to an affidavit that he contemplated submitting to a court, in an attempt to have encroachments removed from his client's property); In re Kernan, 118 N.J. 361 (1990) (three-month suspension for an attorney who, in his own matrimonial matter, failed to inform the court that he had transferred real property for no consideration, a property he had previously

certified to the court as an asset; the attorney also made a false certification; prior disciplinary history); In re McDevitt, 231 N.J. 126 (2017) (six-month suspension for an attorney who counseled and assisted his clients in their administration of an estate, despite the client never having been lawfully appointed as an administrator; the attorney also instructed his client to forge a name on two real estate closing documents); In re Kress, 177 N.J. 226 (2003) (one-year suspension for an attorney who attempted to create a sham transaction to deceive a trustee's attorney that a mortgage had been assigned for bona fide consideration); In re Soriano, 232 N.J. 457 (2018) (two-year suspension for an attorney who falsified a HUD-1 statement in a real estate closing in an attempt to conceal the fact that he intentionally had failed to disburse mortgage loan proceeds as the lender required; instead, the attorney improperly disbursed the loan proceeds to his client and the client's mother); In re Lowell, 178 N.J. 111 (2003) (three-year suspension for an attorney who counseled her matrimonial client to lie on a certification and to disobey a court order; the attorney also prepared a false certification in support of a pendente lite motion and elicited false testimony from a witness during a divorce trial).

There have been four cases in which we have found that an attorney was guilty of having violated RPC 1.4(d). See, e.g., In the Matter of David G. Polazzi, DRB 13-252 (January 28, 2014) (admonition); In re Rosen, 209 N.J.

157 (2012) (reprimand); In re Feldhake, 222 N.J. 10 (2015) (censure); In re Bernstein, 249 N.J. 357 (2022) (two-year suspension).

In Polazzi, the attorney's supervisor had him prepare, as the attorney for the buyer, provisions for the use of lender funds that were not disclosed to the lender and that resulted in adjustments and credits that did not appear on the HUD-1 closing statement. The attorney was found guilty of assisting in conduct that he knew was fraudulent (RPC 1.2(d)), without advising the client about the limitations on his conduct (RPC 1.4(d)).

In Rosen, the Court found the attorney guilty of violating RPC 1.4(d) and RPC 1.2(d) for handling real estate closings in which he had prepared written instruments that contained terms that he knew were expressly prohibited by law (shifting the payment of realty transfer fees from the seller to the buyer). The Court found that the attorney had failed to inform his client of the limitations on his conduct, knowing that his client expected assistance not permitted by the RPCs.

In Feldhake, the Court found the attorney guilty of violating RPC 1.4(d), RPC 4.4(a), and RPC 8.4(d) for issuing improper subpoenas in order to circumvent a judge's order.

Finally, in Bernstein, the Court found the attorney guilty of violating RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 1.4(d); RPC 1.5(a); RPC 3.3(a);

RPC 4.1(a); RPC 5.5(a); RPC 8.4(b); RPC 8.4(c); and RPC 8.4(d) after he agreed to represent multiple clients in jurisdictions where he was not admitted to practice. Bernstein also lied about his disciplinary history on multiple pro hac vice applications.

Attorneys found guilty of misrepresentations to third parties, in violation of RPC 8.4(c), generally have received reprimands. See, e.g., In re Walcott, 217 N.J. 367 (2014) (attorney misrepresented to a third party, in writing, that he was holding $2,000 in escrow from his client as collateral for a settlement agreement; violations of RPC 4.4(a)(1) and RPC 8.4(c)); In re Chatterjee, 217 N.J. 55 (2014) (attorney misrepresented to her employer, for five years, that she had taken steps to pass the Pennsylvania bar examination, a condition of her employment; compelling mitigation present); In re Liptak, 217 N.J. 18 (2014) (attorney misrepresented to a mortgage broker the source of the funds she was holding in her trust account; attorney also committed recordkeeping violations; compelling mitigation present).

Although each of the four matters in which we previously found an RPC 1.4(d) violation were fact specific regarding each of the client's expectations of legal assistance not permitted by the Rules of Professional Conduct,

respondent's misconduct is most similar to the misconduct we found in Polazzi, where an admonition was imposed.

Polazzi prepared real estate documents that did not properly disclose the use of funds, at the behest of a supervisor. Here, respondent disseminated an offer to engage in a fraudulent real estate transaction at the behest of her client. Although respondent has practiced law for over thirty years and is a certified matrimonial attorney, she failed to advise her client, Gyanendra, of her prohibition in assisting with an illegal scheme.

In our view, based upon the above precedent, a reprimand constitutes the minimum quantum of discipline appropriate for the totality of respondent's misconduct. However, to craft the appropriate discipline in this case, we also must consider mitigating and aggravating factors.

In mitigation, respondent is active in the family law bar and provides pro bono legal services. Additionally, respondent has been practicing for thirty-four years with no disciplinary record. However, the duration of that practice cuts both ways. Respondent is a certified matrimonial attorney. There is no question that divorces involve the distribution of marital assets, including property. Thus, based upon respondent's experience as a certified matrimonial attorney, she should have had a heightened awareness of the importance of counseling clients

toward legal transactions. See In re Hasbrouck, 186 N.J. 72 (2006) (we found, in aggravation, that Hasbrouck was an experienced matrimonial attorney).

In further aggravation, respondent was less than candid during the ethics investigation and ethics proceeding, and the DEC found her testimony non-credible.

Thus, on balance, and consistent with disciplinary precedent, we determine that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Chair Gallipoli and Member Campelo voted to recommend the imposition of a censure.

Vice-Chair Boyer voted to impose an admonition in light of his conclusions based upon the record that: (1) respondent has no prior history of discipline in thirty-four years of active matrimonial practice; (2) there was (and still is, in Vice-Chair Boyer's view) an open issue as to what Indian law requires with respect to the use of "black/white money" in real estate transactions in India, and no competent evidence of what Indian law provides in that regard was presented;[22] (3) there was no misrepresentation to the court in the letter

[22] The majority opinion cites to an isolated section of an English translation of an Indian statute without the benefit of the context and surrounding provisions. It is respectfully submitted that what is or is not required by Indian law in connection with an Indian real estate transaction is not an issue that should be determined by having a hearing panel or the Board read and interpret an English translation of an isolated section of India's statutory scheme relating to real estate transactions.

forwarding the Malpani offer, given that the offer itself was included with the letter; (4) the proposed Malpani offer was presented to and considered by the court after notice to and an opportunity to be heard by opposing counsel and did not go forward; and (5) an admonition was imposed in Polazzi, the case cited in the majority opinion, which even the majority agrees is closest to the facts of this case.

Member Joseph was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Pamela Martha Cerruti
Docket No. DRB 22-107

Argued: September 15, 2022

Decided: December 7, 2022

Disposition: Reprimand

Members	Reprimand	Censure	Admonition	Absent
Gallipoli		X		
Boyer			X	
Campelo		X		
Hoberman	X			
Joseph				X
Menaker	X			
Petrou	X			
Rivera	X			
Singer	X			
Total:	5	2	1	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel