

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Glenn Robinson, Esq.
PRP File No. 2013- 172

Disciplinary Counsel's Reply to Respondent's Memorandum of Law (2/26/2018)

Respondent cites *Suck v. Sullivan*, 1999 WL33437564 (Mich. App. 1999) that “an attorney may act on behalf of his own personal interests in a transaction involving an unrepresented person without violating Rule 4.3.” (emphasis added)

The primary issue in *Suck v. Sullivan* was whether there was “consideration” for an option agreement. The representative of the Anne Suck Estate asked the court to find an option to purchase land, held by Michael Sullivan, an attorney, was invalid because Ms. Suck had received no consideration for an option to purchase land. The Court affirmed the trial court's decision. The agreement between Sullivan and Ms. Suck required Sullivan to pay for a survey of land in question, regardless of whether, the option was exercised. The Court found that Sullivan had paid \$2,800 to have the land surveyed. The Court found further, that having the land surveyed was a benefit/ “consideration” that Ms. Suck received.

Significantly, the Court also found that “There is no evidence of any disparity in the relative bargaining power of the parties that would indicate Suck's options were limited when the agreement was executed.”

Plaintiff in *Suck v. Sullivan* had added a brief additional claim in attempting to invalidate the option, claiming a violation of Rule 4.3. The Michigan Appeals Court did little analysis in its brief opinion. It held only that there was no violation of Rule 4.3 on the facts of the case.

This Panel quoted the following passage from a Comment in its August 28, 2017 decision denying Respondents Motion to Dismiss (Decision): “(w)hether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur.” Decision, p.4

Respondent was representing himself¹. He was his own client. This case is indistinguishable in principle from the *Barrett v. Virginia State Bar*, 634 Se 2d. 341 (Va. 2006.) - the case relied on by the Panel in denying Respondent's original Motion to Dismiss.

¹ To the extent Respondent is attempting to avoid responsibility by claiming that he was represented by his brother, an attorney. Disciplinary relies on the US Supreme Court's holding in *Link v. Wabash RR*, 370 US 626, 633 - 34(1962):

“There is certainly no merit to the contention that dismissal of petitioner's claim because of his counsel's unexcused conduct imposes an unjust penalty on the client. Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected *634 agent. Any

This case is distinguishable from *Suck v. Sullivan*. Here, unlike *Sullivan*, there was a great disparity between Respondent and Ms. Binette. Respondent told Detective Burnham Ms. Binette had no legal skills. She was struggling with PTSD, she needed the job and Respondent had threatened to terminate her (DC 3, p.2) if she didn't start showing up for work. Respondent used his knowledge as a lawyer and his power as her boss to pressure her into an unconscionable agreement in which she gave up her right to sue Respondent for sexual harassment for his promise to continue to give Ms. Binette "latitude" for her agoraphobia, the condition that made it difficult for her to come to work on time.

Here Respondent went beyond giving Ms. Binette advice on the law. He cheated her out of a valuable legal right.

The Court in *Monsanto v. Aetna Casualty and Surety*, 593 A.2d 1013 (Del. Super. 1990) cited with approval, a treatise that explained the purpose of rule 4.3:

Professor Hazard in his treatise, *The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct*, comments on the disclosure required under Rules 4.2 and 4.3. Professor Hazard states:

"This short Rule is taken virtually verbatim from DR 7-104(A)(1) of the Code of Professional Responsibility. In tandem with Rule 4.3, it *prevents* a lawyer from *taking advantage of a lay person* to secure admissions against interest or *to achieve an unconscionable settlement* of a dispute. The scheme of the two Rules is that while Rule 4.3 prevents a lawyer from overreaching an unrepresented person, Rule 4.2 prevents a lawyer from nullifying the protection a represented person has achieved by retaining counsel. . ."

Hazard & Hodes, *The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct*, at 434 (Supp.1989)" (emphasis added)

593 A2d 1017

The result Respondent negotiated with Ms. Binette was unconscionable.

Dated at Burlington, Vermont on March 12, 2018.

Robert V. Simpson, Jr
Disciplinary Counsel

other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'