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Professional Responsibility: Duties Owed to a Unrepresented Party

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PROFESSIONAL RESPONSIBILITY: DUTIES OWED TO AN UNREPRESENTED PARTY*

The Florida Bar v. Belleville, 591 So. 2d 170 (Fla. 1991)

The Florida Bar appealed a Referee's recommendation[1] that the Respondent, a Florida attorney, was not guilty of alleged ethical violations arising from the Respondent's role in a real estate transaction between the Respondent's client, the buyer, and an unrepresented seller.[2] The seller paid the Respondent attorney's fee from the seller's proceeds at closing.[3] The Florida Bar argued that because the seller had paid this fee, the Respondent had represented the seller.[4] The

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*Dedicated to the memory of Lorraine K. Hazzard, who taught by example that an education is worth pursuing at any age.

Editor's Note: This case comment received the *George W. Milam Outstanding Case Comment Award* for Spring 1992.

1. When a complaint is made against a member of the bar, the grievance committee for the local judicial circuit holds a preliminary hearing to determine whether probable cause exists of a violation of Florida's Rules of Professional Conduct. The Florida Bar Re Rules Regulating The Florida Bar, 494 So. 2d 977, 1008 (Fla. 1986) (Rule 3-7.4). If the committee finds probable cause, The Florida Bar, after review and approval of the committee finding, files a formal complaint. *See id.* (Rule 3-7.4(c)). A Referee is appointed to hear the complaint, determine the facts, and make a recommendation regarding guilt and discipline to the Florida Supreme Court. *Id.* at 1008-11 (Rule 3-7.5). If the Referee's report recommends no discipline for the charges, the report becomes final if not appealed. *Id.* at 1011 (Rule 3-7.6(a)(3)).

2. The Florida Bar v. Belleville, 591 So. 2d 170, 171 (Fla. 1991). The seller was 83 years old and had a third-grade education. *Id.* at 171. The court noted that the seller had substantial experience selling real estate when he was younger. *Id.* The Referee was more specific, noting that the seller had sold at least 25 properties during his life. Referee's Report at 2, The Florida Bar v. Belleville, Sup. Ct. Case No. 75,116 (1991) (Cycmanick, Ref.).

3. *Belleville*, 591 So. 2d at 171. The Respondent was paid a $625 fee at closing by the seller pursuant to a contract term stating that the seller would pay all closing costs. Referee's Report, *supra* note 2, at 2.

4. *See Belleville*, 591 So. 2d at 172. The contract provided that the buyer would purchase the seller's apartment building for $125,000. Referee's Report, *supra* note 2, at 1. The buyer executed an unsecured promissory note for $100,000 at 10% interest amortized over 25 years. *Id.* An addendum to the contract provided that the note would become void on the death of the 83-year old seller. *Id.* The buyer suggested and the seller agreed that the buyer's attorney would prepare the closing documents. *Id.* The buyer then retained the Respondent to prepare the documents and handle the closing. *Id.* at 2. The buyer provided the Respondent with a legal description of the property which included both the apartment building and the seller's personal residence located across the street. *Id.* The seller had no intention of selling his home and was unaware that it was included in the transaction. *Id.*

Referee found that the Respondent had no contact or dealing with the unrepresented seller[5] and therefore had no duty or obligation to the seller as an attorney.[6] The Florida Supreme Court asserted jurisdiction under Article V, section 15, Florida Constitution[7] and HELD, that the Respondent violated two ethical duties owed to the unrepresented seller: a duty to explain that the Respondent attorney represented an adverse interest in the transaction and a duty, when presented with such a one-sided transaction, to explain the material terms of the closing documents to the unrepresented party so that he "fully understood their actual effect" and the "possible detrimental effect of the transaction."[8]

While representing a client, an attorney regularly interacts with many other parties.[9] The Model Rules of Professional Conduct[10] (the Rules) protect these other parties from overreaching by an attorney.[11] Specifically, the Rules provide protection for a party already represented by another attorney,[12] for a party unrepresented by counsel,[13] and in instances where a single attorney represents multiple parties.[14]

When both parties are represented by counsel, the Rules strictly prohibit contact between either attorney and the respective adverse

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5. *See Belleville*, 591 So. 2d at 171. The Respondent did not attend the closing, which took place at the seller's home. Referee's Report, *supra* note 2, at 2. The Respondent sent his paralegal to serve as a notary. *Id.* Neither the Respondent nor anyone from his office explained the closing documents to the seller. *Id.*

6. Referee's Report, *supra* note 2, at 3.

7. *Belleville*, 591 So. 2d at 171.

8. *Id.* at 172. The court suspended the Respondent from the practice of law for 30 days. *Id.*

9. CHARLES W. WOLFRAM, MODERN LEGAL ETHICS 610 (1986).

10. Florida adopted the Model Rules of Professional Conduct, as modified, effective on January 1, 1987. *See Rules*, 494 So. 2d at 978, 1021-79 (Chapter 4: Rules of Professional Conduct). For purposes of this comment, Rules will mean the Model Rules of Professional Conduct as adopted in Florida unless the context clearly requires that Rules refers to the Model Rules themselves.

11. WOLFRAM, *supra* note 9, at 610.

12. *See Rules*, 494 So. 2d at 1065 (Rule 4-4.2) (prohibiting communication with a party known to be represented by another lawyer without the consent of the other lawyer).

13. *See id.* at 1066 (Rule 4-4.3) (lawyer should not state or imply to an unrepresented party that the lawyer is a disinterested authority on the law and should correct any misunderstanding that the unrepresented party may have concerning the lawyer's role).

14. *See id.* at 1036-37 (Rule 4-1.7) (lawyer should not represent a client with interests directly adverse to another client's interests without a reasonable belief that the lawyer's representation will not adversely affect the other client and without the consent of both clients after thorough consultation).

party without permission of the adverse party's counsel.[15] In *The Florida Bar v. Teitelman*,[16] an attorney representing a buyer had direct contact with a represented seller at a real estate closing.[17] The Florida Supreme Court determined that it was improper for the Respondent, the buyer's attorney, who also represented the mortgage company in the transaction, to charge the seller a fee for preparation of closing documents.[18]

The Respondent in *Teitelman* conducted a high-volume real estate "closing mill,"[19] representing a mortgage company and sometimes the buyer as well.[20] He routinely prepared a package of forms for execution by the seller at closing and charged the seller $25.00 for the package and his efforts in its preparation.[21] In the closing that gave rise to the disciplinary action, the seller's attorney sent a law clerk to the closing, along with documents which the seller's attorney had prepared for the seller to execute.[22] The Respondent told the seller that the seller's attorney's documents were unacceptable and that the package documents should be used.[23] Because the seller was already paying an attorney, the seller protested the Respondent's additional charge of $25.00 for document preparation.[24] However, the seller proceeded with the closing and signed the package documents under protest after the law clerk assured the seller that the seller's attorney would take care of any problems later.[25]

The *Teitelman* court ruled that the Respondent's preparation of documents for the seller combined with his charging a fee for this service amounted to representation of the seller.[26] The court found no justification for the Respondent's charging a fee to the represented

15. *See id.* at 1066 (Rule 4-4.3); WOLFRAM, *supra* note 9, at 611. The concern with contact in this situation is apparently that the offending lawyer might exploit the represented party through contact outside the presence of counsel. *Id.*

16. 261 So. 2d 140 (Fla. 1972).

17. *Id.* at 142.

18. *Id.* at 143.

19. *Id.* at 142. The Respondent indicated that he had closed approximately 300 loans per year for several years. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* at 143.

seller, absent an agreement between the parties to allow the charge.[27] Although the Referee determined that the proper discipline for the Respondent was a private reprimand,[28] the court held that a reprimand was unwarranted.[29] However, the court stated that the Respondent should immediately incorporate the announced principles into his practice.[30]

The dangers of an attorney overreaching while zealously representing a client are even greater when the opposing party is unrepresented.[31] The Fourth District Court of Appeal considered this issue in *Tenneboe v. Tenneboe*.[32] In *Tenneboe*, the wife's attorney in a divorce proceeding prepared a property settlement agreement and presented it to the unrepresented husband, who signed it.[33] The husband later challenged the agreement, contending that he was unable to make the payments it required.[34] The appellate court set aside the agreement based on overreaching by the wife and her attorney.[35]

The lower court heard testimony concerning a conversation between the wife's attorney and the husband which occurred when the

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27. *Id.*; *see also* Committee on Professional Ethics of The Florida Bar, Opinion 64-56 [hereinafter Opinion 64-56], *reprinted in* SELECTED OPINIONS OF THE COMMITTEE ON PROFESSIONAL ETHICS OF THE FLORIDA BAR 1959-1967, at 237, 237-38 [hereinafter SELECTED OPINIONS] (stating that it is not proper to charge the seller a fee in the absence of an agreement between the attorney and the seller, but that it is not improper for a buyer's attorney to collect a fee for his services from the seller if the seller has agreed with the buyer to pay all of the buyer's closing costs and the fee is part of those costs).

28. *Teitelman*, 261 So. 2d at 141.

29. *Id.*

30. *Id.* at 145.

31. GEOFFREY C. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING: A HANDBOOK ON THE MODEL RULES OF PROFESSIONAL CONDUCT 746 (1991).

32. 558 So. 2d 470 (Fla. 4th DCA 1990).

33. *Id.* at 472.

34. *Id.* at 471-72.

35. *Id.* at 474-75. The court found that, after his payments to the wife for both alimony ($340 per week) and child support ($60 for each of six children per week totalling $360), the husband, an electrician, would be left with slightly more than $110 per week from which to live and pay his debts, assuming he worked seven days per week and took only one day off per month. *Id.* at 471, 474. The court noted that the husband could not even afford to become ill. *Id.* at 472. In addition, the wife was to receive the full equity in the marital home, amounting to $30,000, and the family's van. *Id.* at 474. The husband was to assume all marital debts and pay $750 toward the wife's attorney's fees. *Id.* He was to keep a car worth about $500, the rights to his employer's pension plan, and a credit union account — property with a total value of $10,500. *Id.*

parties signed the agreement at the attorney's office.[36] The attorney claimed that he advised the husband to retain counsel.[37] The wife and the husband both testified that the discussion involved the possibility of a future modification to the support provisions.[38] The husband claimed that the attorney told him the agreement could be subsequently modified, but never explained this would require a change in the husband's financial circumstances.[39] The attorney could not recall a discussion about the modification of the support payments, but said that if he had discussed a modification, he would have advised the husband about the need for a substantial change in financial circumstances.[40]

The appellate court set aside the property settlement agreement, noting that if the wife's attorney did tell the husband that he could have his payments reduced without showing a substantial change in his financial circumstances, then the attorney had misinformed the husband.[41] The court called the advice given to the unrepresented husband "at best, an oversimplification."[42] The court also called attention to the comment to Rule 4-4.3[43] which states that, other than initially advising the adverse party to retain an attorney, an attorney representing one party should not advise an unrepresented adverse party on legal issues.[44]

The Rules recognize that two clients with different interests may desire concurrent representation by a single attorney.[45] In determining whether or not to represent clients with a potential conflict, an attorney must initially decide if representation of one party will adversely

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36. *Id.* at 473.

37. *Id.* at 473 n.3.

38. *Id.* at 473.

39. *Id.* at 474 n.5. However, the wife said that the attorney did tell her husband that the agreement could not be modified without a substantial change in the husband's financial circumstances. *Id.* at 473 n.4.

40. *Id.* at 473 n.3.

41. *Id.* at 473-74.

42. *Id.* at 474.

43. *Rules*, 494 So. 2d at 1066 (Rule 4-4.3 cmt.).

44. *Tenneboe*, 558 So. 2d at 474 n.6; *see Rules*, 494 So. 2d at 1066 (Rule 4-4.3 cmt.). The comment states that "[d]uring the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel." *Id.*

45. *See* WOLFRAM, *supra* note 9, at 349.

affect the attorney's duties to the other client.[46] If the attorney believes that proper representation of both clients is possible, the attorney may represent both if each client consents to the dual representation after thorough consultation.[47]

Interpretation of the conflict of interest rule has evolved primarily through motions to disqualify counsel filed during litigation, rather than through bar disciplinary procedures.[48] In *Fox v. Pollack*,[49] however, unrepresented parties on one side of a real estate exchange accused the adverse party's attorney of malpractice when the documents they signed, which had been prepared by the attorney, did not conform with the oral agreement reached between the parties to the transaction.[50] The unrepresented parties asserted that the attorney had a duty to inquire about their circumstances and to advise them regarding their participation in the transaction.[51]

In disposing of the claim, the California appellate court stated that it was obvious that an attorney's duty to a party depends on the existence of an attorney-client relationship.[52] The court cautioned that placing the asserted duty on the attorney would create a conflict of interest and destroy the attorney-client relationship with the existing client.[53] According to the court, the unrepresented parties could not unilaterally create an attorney-client relationship.[54] Public policy favoring the fidelity and duty of the attorney toward the existing client weighed heavily against the imposition of a duty in favor of the unrepresented parties.[55] Therefore, the court refused to impose on the attorney a duty that would automatically present a conflict of interest and affirmed dismissal of the malpractice claim.[56]

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46. *Rules*, 494 So. 2d at 1036 (Rule 4-1.7(a)(1)).

47. *Id.* at 1037 (Rule 4-1.7(a)(2)); *see also* WOLFRAM, *supra* note 9, at 349-50 (maintaining that joint representation of parties with differing interests is permitted in the interest of an "appreciation of the values of party autonomy" where there is proper consent and the interests of the parties are not too antagonistic).

48. *See* HAZARD & HODES, *supra* note 31, at 222.

49. 226 Cal. Rptr. 532 (Cal. Ct. App. 1986).

50. *Id.* at 533-34.

51. *Id.* at 534, 536.

52. *Id.* at 534.

53. *Id.* at 536.

54. *See id.*

55. *Id.* at 535-36.

56. *Id.* at 537.

Although Rule 4-4.3 specifically addresses an attorney's interaction with unrepresented parties,[57] in the instant case the Florida Supreme Court ignored Rule 4-4.3 and relied instead on the conflict of interest provisions of Rule 4-1.7.[58] The Referee had concluded that the Respondent owed no duty to the unrepresented party.[59] The instant court noted that a Referee's factual determinations are upheld unless clearly erroneous.[60] However, the court said that in the instant case the facts were undisputed and pointed out, somewhat sarcastically, that even the Respondent's brief acknowledged that the unrepresented party did not receive "a particularly good deal as a result of his negotiations" with the Respondent's client.[61] The court disagreed with the Referee's legal conclusion that the Respondent had not violated any ethical obligations,[62] and instead found that the Respondent owed two duties to the unrepresented party.[63]

While noting that the Respondent had never met or spoken to the unrepresented party, the court ruled that the Respondent owed the unrepresented party a duty to explain that the Respondent represented an adverse interest in the transaction.[64] In addition, because of the one-sided terms of the transaction, the court ruled that the Respondent owed a duty to ensure that the unrepresented party understood the possible negative effects of the transaction.[65] To avoid serious disruption within the real estate bar, the court limited its holding to the facts of the instant case.[66] Presumably, the court recog-

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57. *Rules*, 494 So. 2d at 1066 (Rule 4-4.3).

58. *See* The Florida Bar v. Belleville, 591 So. 2d 170, 170-73 (Fla. 1991). The court referred to the seller as an unrepresented party, yet never mentioned Rule 4-4.3, the unrepresented party rule, in its decision.

59. *Id.* at 171.

60. *Id.*

61. *Id.*

62. *See id.* at 172.

63. *Id.*

64. *Id.*; *see supra* note 44 and accompanying text. Although the court did not cite a Rule corresponding to this duty, the language appears to come from Rule 4-4.3 entitled "Dealing with unrepresented persons." *See Rules*, 494 So. 2d at 1066 (Rule 4-4.3).

65. *Belleville*, 591 So. 2d at 172. The court cited Rule 4-1.7 following its description of this duty. *Id.* However, Rule 4-1.7 does not mention unrepresented parties. *Compare id.* (duty to explain adverse effects of transaction to unrepresented party) *with Rules*, 494 So. 2d at 1036-37 (Rule 4-1.7) (duty to refrain from joint representation unless both parties have consented after consultation). *See also supra* note 15 (attorney must refrain from making contact and, hence, explanation of one-sided terms to represented party).

66. *See Belleville*, 591 So. 2d at 172.

nized that this second duty might cause a significant change in the procedures of those members of the bar involved in real estate closings where one or more parties are unrepresented. The court disclaimed any intention to require that an attorney who prepares documents for a real estate closing attend the closing to explain the terms of the documents to the unrepresented party.[67]

Finally, the instant court distinguished the *Teitelman* case, which The Florida Bar had relied on in bringing the complaint.[68] The instant court agreed with the Referee's position that *Teitelman* did not hold that the party who pays an attorney's fee becomes a client of the attorney merely by virtue of the fee payment.[69] The court held *Teitelman* applicable only to the extent that it required an attorney to avoid the appearance of dual representation of adverse interests, particularly when the unrepresented party in the transaction might be unfairly induced to rely on the attorney's skills and advice in preparing the closing documents.[70]

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67. *Id.* at 172 n.2; *see* Opinion 89-5, PROFESSIONAL ETHICS OF THE FLORIDA BAR 1315 (Apr. 1991). In 1989, the Bar, at the request of the Unlicensed Practice of Law Committee, reversed a 1973 opinion which maintained that, while it was permissible for an attorney to have a legal assistant prepare closing documents under supervision, it was not permissible for the assistant to attend closings without a member of the firm being present. *Id.* Under the revised view, a paralegal or other trained employee may conduct a real estate closing without a lawyer in attendance provided that a lawyer supervises and reviews all work done prior to the closing; the lawyer determines that the closing will be merely ministerial because the client understands all documents in advance of the closing; the client consents to the closing being conducted by a nonlawyer; and the lawyer is available by phone or in person should legal advice be required. *Id.*

68. *Belleville*, 591 So. 2d at 172; *see supra* note 3 and accompanying text.

69. *Belleville*, 591 So. 2d at 172; *see* Opinion 64-56, *supra* note 27; Committee on Professional Ethics of The Florida Bar, Opinion 65-34 [hereinafter Opinion 65-34], *reprinted in* SELECTED OPINIONS, *supra* note 27, at 297. These opinions present the same view from opposite sides of the real estate transaction. In Opinion 64-56, the bar stated that it was not improper for a mortgage company attorney to collect his fee from the seller where the seller agreed to pay all closing costs and the fee was part of the closing costs. Opinion 64-56, *supra* note 27. In Opinion 65-34, the bar stated that a seller's attorney was not entitled to collect his fee from the buyer unless the buyer contracted to pay the fee. Opinion 65-34, *supra*. The bar did not suggest in either opinion that paying the attorney's fee created an attorney-client relationship between the payor and the attorney. *See* Opinion 64-56, *supra* note 27; Opinion 65-34, *supra*.

70. *Belleville*, 591 So. 2d at 172. Although the court cites to Rule 4-1.7, the language comes from Rule 4-4.3 which states that in dealings with an unrepresented party, an attorney should not imply or claim to be disinterested. *Rules*, 494 So. 2d at 1066 (Rule 4-4.3). The comment to Rule 4-4.3 explains that an unrepresented party, especially a party without much experience with the law, might think of an attorney as a disinterested authority on the law who is neutral in the transaction, despite the lawyer's representation of the unrepresented party's adversary. *Id.* (Rule 4-4.3 cmt.).

The second duty outlined by the instant court directly conflicts with the caution given in the comment to Rule 4-4.3.[71] That comment states that an attorney should not give advice to an unrepresented party beyond the advice to seek independent counsel.[72] The duty for the Respondent's attorney to explain the terms of an agreement to an unrepresented party created by the instant court is reminiscent of the ill-fated attempt by the wife's attorney to advise the unrepresented husband in *Tenneboe*.[73] The *Tenneboe* decision suggests strict adherence to Rule 4-4.3 as the best means of protecting the unrepresented party.[74] The instant court took the opposite approach and attempted to protect the unrepresented party by assigning the attorney an affirmative duty to act.[75]

Rule 4-4.3 prevents attorney overreaching by limiting contact between an attorney and an unrepresented party.[76] Conversely, the duty created by the instant court appears designed to prevent overreaching by the represented client by mandating contact between counsel and the unrepresented party.[77] As such, an attorney who follows the court's decision in the instant case risks running afoul of the duties mandated in Rule 4-4.3.

By requiring contact with the unrepresented party beyond giving advice to seek independent counsel outlined in Rule 4-4.3, the instant court's decision raises the duty owed to an unrepresented party to the level of direct representation.[78] The instant court's language mirrors the language of Rule 4-2.1, which describes the lawyer's role in representation as an advisor who should exercise professional judgment and give candid advice to the client.[79] The instant court said the

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71. *Compare Belleville*, 591 So. 2d at 172 (duty to explain transaction to unrepresented party) *with Rules*, 494 So. 2d at 1066 (Rule 4-4.3 cmt.) (duty not to give advice to unrepresented person).

72. *Rules*, 494 So. 2d at 1066 (Rule 4-4.3 cmt.).

73. *See supra* text accompanying notes 37-44.

74. *See Tenneboe*, 558 So. 2d at 474.

75. *Belleville*, 591 So. 2d at 172.

76. *See Rules*, 494 So. 2d at 1066 (Rule 4-4.3).

77. *See Belleville*, 591 So. 2d at 172.

78. *See id.*

79. *Rules*, 494 So. 2d at 1053 (Rule 4-2.1). The Rule states that "[i]n representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation." *Id.* The comment to Rule 4-2.1 reminds a lawyer that candid advice may not always be pleasant, though couching advice in terms designed to bolster a client's morale is permitted. *Id.* at 1053-54 (Rule 4-2.1 cmt.).

Respondent had an ethical duty to explain the terms and review the detrimental effects of such a one-sided transaction with the unrepresented party.[80] By its holding, the court requires the attorney to exercise his professional judgment, thereby thrusting representation of the unrepresented party on the attorney, contrary to the intent of Rule 4-4.3.[81]

The representation duty created by the instant court also causes a problem for the attorney in complying with Rule 4-1.7, which regulates conflicting client interests. Under that rule, an attorney must evaluate the potential for conflict between two possible clients and, if the attorney believes that both clients can be represented adequately, the attorney may do so only with the consent of each client after consultation.[82] Apparently, the instant court dispensed with both the judgment element and the consultation element of Rule 4-1.7 by assigning a duty of representation on behalf of the previously unrepresented party. At a minimum, the right of the initial client to object and withhold his consent to dual representation is eliminated by this decision.

The instant court recognized the need to sanction the Respondent for his failure to recognize the unconscionability of the transaction and his silent participation in it through the documents he prepared.[83] In

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80. *Belleville*, 591 So. 2d at 172.

81. *Cf.* Fox v. Pollack, 226 Cal. Rptr. 532 (Cal. Ct. App. 1986) (unilateral acts of unrepresented persons cannot create duty of attorney to unrepresented persons); *see* discussion of *Fox*, *supra* text accompanying notes 49-56.

82. *See supra* note 14.

83. *Belleville*, 591 So. 2d at 172. The court stated that it was unclear whether the Respondent knowingly participated in the buyer's activities or merely followed the buyer's instructions. *Id.* at 171. However, the court noted that The Florida Bar did not charge the Respondent with any fraud-related activities. *Id.* at n.1. The Referee's Report indicates a belief that the Respondent merely followed the buyer's instructions. Referee's Report, *supra* note 2, at 2; *see also* Howard v. Diolosa, 574 A.2d 995 (N.J. Super. Ct. App. Div. 1990). In *Howard*, the court upheld the recision of an unconscionable real estate contract where sellers who could not afford the payments on their $22,000 credit card balance sold their unencumbered home worth over $150,000 to the buyer for $25,000. *Id.* at 997-99. The *Howard* court quoted approvingly from the lower court decision: "This does not mean that [the attorney] is entirely blameless. . . . He knew that the transaction was unconscionable. He had a moral and professional responsibility to refuse to participate unless the plaintiffs secured independent advice." *Id.* at 1002. The superior court, seemingly anxious but unable to review the attorney's role in the matter, concluded its decision with powerfully suggestive dicta, stating:

> We need not decide whether an attorney asked by a prospective client to represent him in a malodorous deal that would be revealed as unconscionable by a few pointed

so doing, however, the court created a duty to an unrepresented party which conflicts with other duties described in the Rules. The court could have sanctioned the Respondent for his handling of this situation by holding that the Respondent's participation in the unconscionable transaction was unbecoming a member of the legal profession.[84] Using a general sanction, the court still could have provided protection for the public while avoiding the confusion resulting from a holding imposing duties that conflict with existing duties outlined in the Rules. The court also could have reminded all members of the bar that the Rules do not "exhaust the moral and ethical considerations that should inform a lawyer."[85]

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> questions clears his skirts by having the unrepresented parties sign some disclaiming letters. We also need not decide if an attorney in such circumstances is liable along with his client for the harm purposely done by the client to the unrepresented parties.

Id. at 1002 (citation omitted).

84. *See Rules*, 494 So. 2d at 998 (Rule 3-4.3). This Rule suggests that the Florida Supreme Court is not limited by the offenses outlined in Florida's Rules of Professional Conduct. *See id.* Rule 3-4.3 states that bar members also are subject to discipline for any act contrary to honesty and justice committed when acting as an attorney or otherwise. *Id.*; *see* Initial Brief at 15, The Florida Bar v. Belleville, Sup. Ct. Case Co. 75,116 (1991). The Florida Bar suggested in its brief that the court could sanction the Respondent without finding a specific prohibition of his conduct in the Rules by holding that the Respondent's conduct reflected poorly on himself and on The Florida Bar. *Id.* at 15-16.

85. *Rules*, 494 So. 2d at 1022 (Chapter 4: Rules of Professional Conduct — Scope).

**Author's Note: Shortly after the closing, the buyer attempted to evict the seller from his residence. In a claim for recision of the contract brought by the seller in response, the seller prevailed. The court rescinded the contract and returned both properties to the seller. The court also allowed the seller to keep the buyer's $25,000 down payment and did not order any restitution by the seller to the buyer for improvements the buyer claimed he made to the apartment building across the street from the seller's residence. The court's decision was affirmed on appeal without opinion. Cowan v. Galloway & Bloch, Inc., No. 88-4159-CA-13-L (18th Cir. Seminole County, Fla., Oct. 5, 1990), *aff'd*, 583 So. 2d 693 (Fla. 5th DCA 1991).