SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-160
District Docket No. VC-09-015E

IN THE MATTER OF

CHARLES X. GORMALLY

AN ATTORNEY AT LAW

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-161
District Docket No. VC-09-014E

IN THE MATTER OF

CATHY C. CARDILLO

AN ATTORNEY AT LAW

Decision

Argued: September 15, 2011

Decided: November 23, 2011

Steven R. Irwin appeared on behalf of the District VC Ethics Committee.

Michael R. Griffinger appeared on behalf of respondent Gormally.

Respondent Cardillo appeared pro se.

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

These two matters were before us on recommendations for reprimands filed by the District VC Ethics Committee (DEC), along with a recommendation that a third attorney, Sean Smith, receive an admonition.[1] The matters, which were heard together, arose from essentially identical complaints that charged Gormally and Cardillo with violating RPC 5.6(b) (a lawyer shall not participate in offering or making an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties). Cardillo admitted her violation of RPC 5.6(b). Gormally denied any misconduct.

We determine to impose a reprimand on both respondents.

Cardillo was admitted to the New Jersey bar in 1997. She maintains an office in Jersey City, New Jersey. She has no history of discipline.

Gormally was admitted to the New Jersey bar in 1979. He is a member of the firm of Brach Eichler, LLC, with an office in Roseland, New Jersey. He has no history of discipline.

[1] In the Matter of Sean A. Smith, DRB 11-159, District Docket No. VC-09-016E, has been remanded to the Office of Attorney Ethics (OAE) for further proceedings.

Cardillo's legal expertise is in landlord-tenant law. The principals of Bloomfield 206 Corp., or related entities, owned thirty-two multi-family dwellings in Hoboken. Cardillo represented tenants against these landlords or related entities on a number of occasions.

In February 2007, Cardillo filed a civil action captioned Rubinstein et al. v. Bloomfield 206 Corp. (the Rubinstein litigation). The plaintiffs alleged that their landlords, the defendants, had overcharged them for rent over a number of years and were liable for approximately $150,000 in compensatory damages. The complaint contained a consumer fraud count seeking treble damages and legal fees. The litigation arose after a determination by the Rent Control Board that the rent charged to the Rubinsteins was too high.

Gormally and Smith, counsel for Bloomfield 206 Corp., filed a motion to disqualify Cardillo, on the basis that she had a conflict of interest in the Rubinstein litigation. The alleged conflict stemmed from Cardillo's 2000 representation of Liberty Realty, LLC, and its member Joseph Covello, as well as related advice that she had provided to Steven Silverman, a principal in

Bloomfield 206 Corp. There is some overlapping in the principals of the two corporations.

Cardillo opposed the motion, denying any conflict of interest and arguing that the allegation of a conflict had been made solely for strategic purposes and to induce a settlement. As seen below, the issue of whether Cardillo should have been disqualified in the Rubinstein litigation was never decided.

On August 28, 2007, the Rubinsteins and Silverman, on behalf of Bloomfield 206 Corp., entered into a settlement agreement ending the Rubinstein litigation (the Rubinstein agreement). The tenants settled in exchange for $150,000 in cash and rental credits. The terms of the settlement were to remain confidential.

On August 29, 2007, Cardillo and Silverman signed a second agreement, precluding Cardillo from representing any future plaintiff against Bloomfield 206 Corp., Silverman, and James Stathis (another principal), or related individuals or entities (the Cardillo agreement). The Cardillo agreement stated, in relevant part:

> WHEREAS, Cardillo, Stathis, Silverman and Bloomfield 206 are involved in various disputes in New Jersey, including the matters known as Rubinstein et al. v.

Bloomfield 206 Corp., Docket No.: HD-L-921-07 and Bloomfield 206 Corporation v. City of Hoboken, et al., Docket No.: HUD-L-3112-07.

WHEREAS, Stathis, Silverman and Bloomfield 206 have made various allegations against Cardillo arising out of a potential attorney-client relationship and an impermissible conflict of interest.

WHEREAS, Cardillo denies the aforementioned allegations and the existence of an impermissible conflict of interest.

. . .

Stathis, Silverman and Bloomfield 206 waive any conflict of interest which may exist or arose by Cardillo's representation of any parties in the actions known as Rubinstein, et al. v. Bloomfield 206 Corp., Docket No. HUD-L-921-07 and Bloomfield 206 Corporation v. City of Hoboken, et al., Docket No.: HUD-L-3112-07; and any other action or matter entered into prior to the full execution of this Agreement.

Upon execution of the within Agreement by Cardillo, Stathis, Silverman and Bloomfield 206 agree to withdraw any pending applications before the Court asserting a conflict of interest against Cardillo.

Cardillo expressly agrees not to take any position adverse to, represent or participate in the representation of any party in any future action against Stathis, Silverman, Bloomfield 206 or any corporation, limited liability company or other legal entity in which Stathis or Silverman has an existing ownership interest, at the time of her initial

> representation or participation in the representation of any party.
>
> [Ex.J3.]

Cardillo was required to keep information about the agreement confidential. In a later, related Superior Court proceeding, the judge asked who had drafted the Cardillo agreement. Gormally replied that it had been "pass[ed] back and forth" and that it had been "mutually drafted."[2]

As mentioned previously, the question of Cardillo's disqualification was never decided. Rather, Gormally and Smith withdrew the disqualification motion, after the Rubinstein litigation was settled and the Cardillo agreement was signed.

The Cardillo agreement was negotiated concurrently with the Rubinstein agreement. In an August 2, 2007 email sent to Gormally before the two agreements and copied to Smith, Cardillo stated, in relevant part:

> Please do not attempt to "create" a conflict of interest by conditioning "no future representation against Silverman or any of his assets" – on a settlement with my clients. This behavior is unacceptable. I will negotiate, however, separately. Thus, under a

[2] The DEC concluded that Smith had drafted the agreement.

> separate agreement, I will agree not to represent anyone against Silverman **after 40 days from a fully signed and executed agreement on both Docket nos. HUD-L-921-07** [the Rubinstein litigation] **and 3112-07.** Consequently, it is in Silverman's interest to settle quickly to reduce his exposure. If he would like to have no restriction – he is welcome to buy my house, so I can retire early.
>
> [Ex.J20.]

On August 22, 2007, Cardillo sent another email to Gormally, this time stating, in relevant part: "my agreement is separate, and I do not believe that we have a problem there." In an August 23, 2007 email under the subject "Rubinstein v. Bloomfield 206 and other settlement discussions," Smith outlined to Cardillo the financial terms of the settlement of the Rubinstein litigation and then stated:

> Also, as discussed, under your separate agreement, you must (1) cease representing anyone adverse to Silverman, Stathis, or entity that they maintain an ownership interest in; (2) agree not to represent in the future anyone adverse to Silverman, Stathis or entity that they maintain an ownership interest in; and (3) not assist anyone in taking a position adverse to Silverman, Stathis or entity that they maintain an ownership interest in.
>
> [Ex.J22;Ex.C17.]

By way of reply, Cardillo first discussed the terms of the Rubinstein settlement and then stated:

> Again, you are mixing are [sic] the two separate agreements -- I do not like them "grouped" together, however, this also does not reflect what I said. I agree to take no "new" tenant clients in matters where 206's principals have an existing ownership interest in the property (I have none as of this writing) -- from the point of the execution of the agreement. So the sooner the agreement is fully executed, the better it is for your guys. What do [sic] mean "assist" -- too vague and open ended; so needs to go. One does not assist as an attorney, one represents (as you know, even if it is for free) and even if it is as co-counsel.
> Do not forget that I need the written form of this agreement by Monday morning -- otherwise we will be doing depositions, etc. Please do not let this get hung up of [sic] the form either -- keep it simple!!
>
> [Ex.J23;Ex.C18.]

On August 27, 2007, Smith sent Cardillo an email, attaching the proposed agreement to settle the Rubinstein litigation. A second email attached the Cardillo agreement. On August 28, 2007, Cardillo sent an email to Smith, stating: "From my research, I do not know how you can get past RPC 1.6, 4.1 and in some respects 5.6." The message went on to discuss confidentiality issues. Smith replied the following day,

providing an amendment to the agreement addressing the confidentiality issue, but made no mention of the RPCs.

The Rubinstein settlement agreement was executed on August 28, 2007. The Cardillo agreement was executed on August 29, 2007.

Cardillo testified that, when she entered into the Cardillo agreement, she had been planning to retire and move to Portugal, a circumstance that figured into her thinking about the impact of the agreement on her. She thought that entering into the agreement "made no difference." Ultimately, her house sale fell through; she, therefore, did not move to Portugal.

In addition, she claimed, she was unaware that such restrictions violated RPC 5.6(b).[3] Although recognizing that this was not an excuse, Cardillo contended that she did not fully understand RPC 5.6(b). She contended that it was not until after the agreement was executed and she obtained

---

[3] Cardillo noted that, in another matter, she had been advised by her own counsel to enter into a similar agreement. Advice of counsel is no defense to charges of unethical conduct, however.

information from the American Bar Association (ABA) that she "learned the full gravamen of [her] error."

In January 2009, Cardillo initiated a proceeding to have the court void the Cardillo agreement. She alleged that the agreement was unenforceable as a matter of public policy, because it violated RPC 5.6(b), and that it impeded the right to counsel of choice of her prospective clients.[4] During an order to show cause hearing, the following exchange took place between Gormally and the court:

> THE COURT: Correct. And, and it — I apologize for interrupting, Mr. Gormally, but you know that that's my nature and — from past experience. What was the consideration for the agreement?
>
> MR. GORMALLY: The consideration for the agreement, Judge, is that there was an argument being mounted and a motion filed to disqualify Ms. Cardillo from representing any interests that were adverse to Bloomfield 206, its principals, in, in the underlying prerogative writ case, as well as in the Rubenstein [sic] case, Judge.
>
> THE COURT: What was the consideration that ran to her?

---

[4] By that time, Cardillo had been approached to represent another group of tenants against the principals of Bloomfield 206 Corp.

MR. GORMALLY: Withdrawal of that objection, Judge.

THE COURT: And if the withdrawal was not – if the objection – if the application to disqualify her were not withdrawn, and it were granted, what would be the benefit, what would be the benefit or the detriment to her? The detriment would have –

MR. GORMALLY: I'm sorry, Judge, if it wasn't withdrawn and it was granted?

THE COURT: It would – and it was granted, she wouldn't be collecting a fee.

MR. GORMALLY: Correct, she would be out of the case.

THE COURT: So in effect, it was tied into the settlement. It had to be.

MR. GORMALLY: It really wasn't, Judge. It was a separate –

THE COURT: Oh, of course it was, because she couldn't, she couldn't be a party to the settlement on behalf of the Rubensteins [sic] if you were to basically continue with the motion and have the motion granted. She would have been disqualified from representing them and she wouldn't have been entitled to a fee. –

MR. GORMALLY: I'd say –

THE COURT: -- That was the consideration to her for backing out.

MR. GORMALLY: I'd say the consideration was that it eliminated an ethical issue that she would have by in fact

consummating a settlement in the face of a conflict. It eliminated that problem. That settlement would have occurred without regard to Ms. Cardillo's agreement.

THE COURT: How do we know that? Because, quite frankly, --

MR. GORMALLY: It was a separate agreement, Judge. And we know that because we could —

THE COURT: Well wait a minute, wait a minute, wait. So basically what we did was we wiped under the rug a potential conflict of interest between her and her clients, --

MR. GORMALLY: We, we —

THE COURT: -- the Rubensteins [sic] —

MR. GORMALLY: -- waived it, which the client could do, Judge.

THE COURT: Well use my terminology. We wiped it under the rug basically by virtue of this separate agreement made a day after, coincidentally, the settlement with the Rubensteins [sic] as the plaintiffs. So that we could basically have Ms. Cardillo, on behalf of her clients, consent to the settlement. That's not making them part and parcel, one of the other, hand in hand?

MR. GORMALLY: There's nothing to suggest a connection between those two, other than the one Your Honor just made. —

THE COURT: Well okay. —

MR. GORMALLY: -- There's nothing on the document themselves, Judge.

> THE COURT: Of course there's nothing on the documents. If there was anything on the documents themselves, quite frankly, it would be indicative right at – on its face of a violation of the RPC, and it would make them unenforceable. I would never expect it. And you know we would never expect to see it on the face of the documents.
>
> [Ex.10 at 15-19 to 18-21.]

The judge found that the Cardillo agreement was unenforceable, concluding that the Cardillo agreement and the Rubinstein agreement were obviously intertwined: "You'd have to be deaf, dumb and blind not to appreciate it. That this is violative of RPC 5.6." The judge went on to state:

> I find that the agreement [Ms. Cardillo] entered, in fact, clearly violates RPC 5.6(B) [sic] because the agreement that you entered, any reasonable person looking at it, I think must come away with the idea that it was part of the settlement of the controversy between the landlords and the Rubinsteins. There's just -- you just can't come away from it in any other way.
>
> [Ex.J10 at 29.]

Thereafter, Gormally and Smith filed a motion for reconsideration, which Cardillo opposed. The judge denied the

motion and affirmed his prior order.[5] Gormally and Smith appealed that decision on behalf of 206 Bloomfield Corp. The Appellate Division affirmed the judge's findings. Cardillo v. Bloomfield 206 Corp., Stathis and Silverman, 988 A.2d 136 (2010). The judge referred this matter to ethics authorities.

Cardillo admitted her violation of RPC 5.6(b), but denied having engaged in a conflict of interest. She testified that, her intent was to keep the two agreements separate, but acknowledged that they were not. She contended that Smith had conditioned any settlement in the Rubinstein litigation on the restriction on her practice. The DEC found that testimony credible.

Gormally testified that his clients were aware of the Superior Court's holding in Witkowski and Mauro v. White, 102 Park Ave. LLC, Liberty Realty, LLC., and Gess, HUD-DC-12242-00 (2001), where Cardillo had been disqualified from a case because of her prior representation of Covello, and 201 Garden Street,

[5] Cardillo proceeded to represent another tenant against Silverman, which resulted in another disqualification motion. Because the case settled, the motion was dismissed as moot. As of the date of Cardillo's brief to us, July 25, 2011, a disqualification motion was pending in another case.

LLC v. Hoboken Rent Leveling and Stabilization Board, et al., HUD-L-3729-06 (2007), where the court had approved an agreement that prohibited Cardillo from representing anyone against Covello or any entity in which he had an ownership interest. The agreement had been incorporated into the order of settlement in the underlying case. Gormally stated that Silverman had sought the same arrangement.

Gormally testified that he had examined RPC 5.6(b) but had never discussed it with Cardillo. He argued that her emails, however, reflected that she was "sensitive to the issue" and that two separate agreements were required. He testified that the purpose of the Cardillo agreement, which he called the "conflict agreement," was not to restrict Cardillo's practice and not to reach an agreement in the Rubinstein litigation. Rather, the agreement was intended to resolve the conflict of interest issue "going forward." He noted that the Rubinstein agreement remains in place, despite the judge's decision to void the Cardillo agreement, demonstrating that the Cardillo

agreement was never considered part of the Rubinstein settlement.[6]

According to Smith, the consideration for the Cardillo agreement was "a resolution of a disqualification motion and a resolution of a going forward for both parties having to be involved and continually engaged in disqualification motion after disqualification motion."[7] Smith admitted that he was aware of RPC 5.6(b), but considered the Cardillo agreement an attorney "conflict agreement." Separate documents were used for the two agreements because of RPC 5.6(b) concerns, he claimed.[8] He denied that the settlement agreement was contingent on the Cardillo agreement.

---

[6] The hearing panel stated that "[t]o the extent they are inconsistent with this Report, this Panel does not agree with, and does not find credible, the assertions of Mr. Gormally."

[7] Gormally testified that all of Smith's actions were under his direction. The hearing panel found this statement credible.

[8] Although not entirely clear, it appears that Silverman showed the mediator in the Rubinstein litigation the settlement in 201 Garden Street and asked for a similar resolution. The mediator rejected that request. Thereafter, it was decided that the agreements had to be two separate documents.

Respondents Gormally and Smith brought in Frederick Dennehy, Esq., as an expert witness on the question of whether their participation in the Cardillo agreement had violated any RPC. Dennehy opined that it had not. In his view, the Cardillo agreement was not a restriction on her practice. Rather, the agreement settled a controversy under RPC 1.9.[9]

In a letter to counsel for Gormally and Smith, Dennehy wrote:

> The agreement does not negatively affect Ms. Cardillo's ability to represent another client in a matter involving the 206 Bloomfield principals or their entities because Ms. Cardillo is prohibited, pursuant to RPC 1.9(a), from representing clients in actions that are adverse to the Bloomfield 206 defendants by virtue of her prior representation of those defendants in 2000. The Agreement is nothing more than Ms. Cardillo's acknowledgement of this inherent conflict and the Bloomfield 206 defendants'

---

[9] RPC 1.9 states, in relevant part: "A lawyer who has represented a client in a matter shall not thereafter represent another client in the same or a substantially related matter in which that client's interests are materially adverse to the interests of the former client unless the former client gives informed consent confirmed in writing."

> refusal to provide consent to such future representations.
>
> [Ex.B.]

At the DEC hearing, Dennehy testified as follows:

> I would express it as ratifying an agreement between the parties that there is a disqualification motion pending, a potential conflict of interest pending, and the parties have decided to resolve that dispute by prohibiting Ms. Cardillo from certain representation in the future, so it's a ratification of a controversy.
>
> [T118-19 to 24.][10]

In Dennehy's view, there was "a reasonable basis" for filing a motion to disqualify Cardillo and "a reasonable basis" for Gormally and Smith's clients to avoid such motions, in subsequent litigation. He testified that, had they entered into a settlement agreement in which the Cardillo agreement was a part of the settlement, "it would have passed muster," but they were "extremely cautious" and used two agreements to conform to RPC 5.6(b).

After Dennehy concluded that Gormally and Smith did not violate "any ethical duty" in participating in the Cardillo

---

[10] T refers to the transcript of the DEC hearing on January 5, 2011.

agreement, the panel chair asked if Dennehy's opinion was the same as to Cardillo. Dennehy replied that he had "not examined the case from Ms. Cardillo's point of view" and did not know what was in the back of her mind, when she entered into the agreement.

The DEC concluded by clear and convincing evidence that the Cardillo agreement was a restriction on Cardillo's practice, that it was part of the settlement of "a controversy between private parties" [the Rubinstein litigation], and that all three respondents had violated RPC 5.6(b). The DEC found that the Rubinstein and Cardillo agreements were conditioned on each other - "unless both were agreed to, neither would be agreed to."

The DEC noted that several RPCs, including RPC 5.6(b), were mentioned in Cardillo's email to Smith. In the DEC's view, "the respondents were aware of, but chose to disregard, the RPC 5.6(b) implications." The DEC concluded that RPC 5.6(b) had been violated regardless of whether there was a conflict of interest and "*even if* it is determined someday that a conflict of interest exists, and *even if* Ms. Cardillo moves to Portugal someday."

The DEC disagreed with Dennehy's opinion that the Cardillo agreement was not a restriction on her practice, finding his conclusions "not supported by the credible evidence." The DEC found that the Cardillo agreement was not a separate agreement but, rather, "one agreement, artificially made into two documents":

> The Cardillo Agreement **did** restrict Ms. Cardillo's ability to practice law *regardless* of any conflict of interest — real or imagined. RPC 5.6(b) **is not** vague. Any previous agreement, even if judicially approved, **does not** transform the instant unethical agreement into an ethical agreement, and does not vitiate any rule of professional conduct.
>
> [HPR16].[11]

The DEC noted Gormally and Smith's argument that the Law Division and the Appellate Division decisions were controlled by the civil preponderance of the evidence standard of proof and that the DEC was bound to render its decision by the more rigorous clear and convincing standard. The DEC made it clear that, although the members agreed with the findings of fact by

---

[11] HPR refers to the hearing panel report, dated February 22, 2011.

the Law Division and the Appellate Division, the DEC's fact finding and determination that respondents violated RPC 5.6(b) were made independently of the courts' findings and "by *overwhelming* clear and convincing evidence." Although the DEC acknowledged a prior judicial proceeding approving a settlement agreement restricting Cardillo's practice [201 Garden Street] and another matter in which she was disqualified for a conflict of interest [Witkowski], in the DEC's view, "[n]either decision is determinative of the issue in this Hearing. None of the respondents suggest that these decisions are *res judicata,* law of the case, or binding precedents."

The DEC concluded that, despite the physical separation of the Cardillo agreement and the Rubinstein agreement, the two agreements were "part and parcel of the same agreement" and that, therefore, the restriction on Cardillo's practice violated RPC 5.6(b).

The DEC noted the ABA's explanation for the reasons behind RPC 5.6(b):

> First, permitting such agreements restricts the access of the public to lawyers, who by virtue of their background and experience, might be the very best available talent to represent these individuals.

> Second, the use of such agreements may provide clients with rewards that bear less relationship to the merits of their claims than they do to the desire of the defendant to "buy off" plaintiff's counsel.
>
> Third, the offering of such restrictive agreements places the plaintiff's lawyer in a situation where there is a potential conflict between the interests of present clients and those of potential future clients. [ABA Formal Opinion 93-371 (1993)] [sic].
>
> [HPR16.]

In the DEC's view, Gormally and Smith "bought off" Cardillo for the $150,000 payment to her clients and for her resulting fee. The DEC remarked that the "confidentiality clause smacks of an effort to conceal the conduct and the Cardillo Agreement."[12]

In assessing the appropriate level of discipline, the DEC first considered In re Zaruba, 177 N.J. 564 (2003), the only New Jersey disciplinary case where an attorney was found to have

[12] According to the DEC, the record is silent as to whether the Rubinsteins knew about the Cardillo agreement. However, the December 30, 2010 affidavit of Jay Rubinstein (Ex.BC-1), indicates that they knew. "[Cardillo] also told us of her separate agreement, as prepared by Smith, to limit her practice against Silverman, since she was leaving and retiring anyway." Rubenstein also stated that the plaintiffs were "comfortable" with the settlement amount.

violated RPC 5.6(b). In Zaruba, the Court imposed a one-year suspension on corporate counsel for Warner-Lambert who essentially bribed two attorneys not to pursue future claims against the drug company, in exchange for the payment of $225,000. Zaruba's offering of the agreement placed defense counsel in a conflict of interest situation with their own clients, because the agreement contained a confidentiality clause that prohibited the attorneys from disclosing the full terms of the settlement to their clients. Those terms included an agreement not to sue or otherwise assert any claims on behalf of any parties against Warner-Lambert relating to the product in question and an agreement that the $225,000 payment was for reasonable fees and expenses for the litigation, with the clients receiving only a full refund for the defective product. The attorneys told their clients that they were abandoning claims against Warner-Lambert because they had not obtained a sufficient number of consumers that were willing to join the class action.

Zaruba violated RPC 5.6(b) by making an agreement in which a restriction on a lawyer's right to practice is part of the

settlement and violated RPC 8.4(a) by inducing or assisting others to violate the RPCs.[13]

In Zaruba, the attorney and the OAE asked that, in determining the measure of discipline, we consider that the attorney was retired from the practice of law; that he had a previously unblemished thirty-year legal career; that he was over seventy years of age and suffered from impaired vision in one eye related to an ongoing illness; that he did not intend to violate any ethics rules; that he regretted his violation; and that he agreed to accept any appropriate sanction. In the Matter of Karel L. Zaruba, DRB 03-098 (July 23, 2003) (slip op. at 4). We also considered that there were no cases in New Jersey addressing violations of RPC 5.6(b). We concluded, however, that the RPCs clearly prohibited that conduct. Id. at 10.[14]

---

[13] Dennehy distinguished Zaruba from this case, on the basis that Zaruba involved a mass tort litigation, the "archetypal" RPC 5.6(b) situation.

[14] We noted, in Zaruba, that, in other jurisdictions, the outcome of similar charges had ranged from requiring the attorney to complete ethics courses, to long-term suspensions. We further noted that one of the plaintiff's attorneys had received a one-year suspension in the District of Columbia.

In our decision, we cautioned the bar that "efforts to buy off plaintiffs' counsel by secret agreements of the kind present here will be viewed as extremely serious, warranting substantial suspensions."

In the case before us, the DEC acknowledged that "[t]his case is not *Zaruba*," but went on to state:

> However, agreements which violate RPC 5.6(b), such as the subject agreement, have the potential for extremely detrimental impacts on the public. And they must be secretive, and are thus insidious. Restrictions on the practice of attorneys connected to civil settlements can rarely come to light. If Ms. Cardillo retired, or moved to Portugal, or simply bowed to the Cardillo Agreement (and ceased representing tenants against Silverman, Stathis or their related entities) no review would fall on the conduct now scrutinized.
>
> [HPR17.]

The DEC considered several mitigating factors regarding each respondent. As to Cardillo, the DEC stated:

> Respondent Cathy C. Cardillo has been a member of the bar since 1997. Ms. Cardillo has no prior ethical violations. She is a zealous, tenacious and highly-skilled advocate of tenants' rights, which advocacy constitutes "almost 100%" of her practice. Ms. Cardillo is a sophisticated practitioner in the area of tenants' rights, particularly in Hoboken, Hudson County. Ms. Cardillo represents or has represented tenants and

> groups of tenants; from college students, to young families, to the elderly. She has represented tenants in cases from unsafe housing to illegal rent increases. Ms. Cardillo's character references (C-1) attest that she is highly regarded by clients and colleagues.
>
> [HPR¶6.]

As to Gormally, the hearing panel stated:

> Charles X. Gormally was admitted to the bar in 1979, and [sic] in his 32nd year of practice. Mr. Gormally is a Certified Civil Trial Attorney, and has been for the past 20 years. He is a court approved arbitrator, and a court approved mediator. He has been with Brach Eichler for most of his career. He has a general commercial practice, and he is the director of the firm's litigation department. . . Mr. Gormally has no history of any ethical violations.
>
> [HPR¶21.]

After consideration of all factors, particularly, the seriousness of the conduct, and "even assuming *arguendo* that Ms. Cardillo had a conflict of interest," the DEC recommended that Cardillo and Gormally be reprimanded and that Smith be admonished because of his subordinate role. The DEC remarked that it was "a close case here as to whether substantial license

suspension is warranted."[15] The DEC did not recommend suspension because of the mitigating factors and because of the public interest in Cardillo's continuation of her practice. The DEC noted our warning to the bar in Zaruba and added, "Finally, if it was ever determined that the disqualification issue was frivolous or a pretext to justify the voided restrictive agreement, then the more severe discipline would be recommended."

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that Gormally and Cardillo were guilty of unethical conduct is fully supported by clear and convincing evidence.

Unquestionably, the DEC's finding that respondents violated RPC 5.6(b) is supported by the record. Despite Gormally's argument that the DEC merely rubber-stamped the decisions rendered by the Superior Court Law Division and the Appellate Division, there is sufficient evidence before us to find by the more rigorous clear and convincing standard that Gormally's and

---

[15] It is unclear if the DEC was referring to Gormally, Cardillo or both.

Cardillo's conduct in connection with the Cardillo agreement was unethical.

Dennehy, Gormally's expert witness, maintained that the Cardillo agreement did not restrict her practice because she was already prohibited from representing clients against Silverman and Bloomfield 206 Corp. by RPC 1.9. The counter-argument is that, even if the adversaries thought that she was conflicted out of the Rubinstein case under RPC 1.9, that was not their call to make or to remedy under RPC 5.6(b). Whether she had a conflict of interest had to be determined by a neutral party - a judge - on a motion. That the motions were repetitive, costly, and time consuming is of no moment. Furthermore, just because one court disqualified her from a representation (the Witkowski case), does not mean the decision was correct and would be universally applied. Finally, the disqualification appears to have been based on more than just Cardillo's former representation of Covello.[16] Therefore, the argument that the

---

[16] According to the court's letter-opinion in Witkowski, (Exhibit J15), Cardillo contacted Covello "and discussed with him the issues contained in this type of lease" that was the subject of the lawsuit that had been or was about to be filed against Liberty Realty. She sent him a follow-up letter, after the

(footnote cont'd on next page)

Cardillo agreement essentially memorialized a prior restriction on her practice (due to the conflict of interest) fails.

So, too, the argument that the Cardillo agreement and the Rubinstein agreement were not related is specious for several reasons: 1) the agreements were negotiated simultaneously and in the same emails; 2) in one email Cardillo stated, "Do not forget that I need the written form of this agreement [the Cardillo agreement] by Monday morning -- otherwise we will be doing depositions [presumably in the underlying Rubinstein litigation]"; 3) the agreement states that Bloomfield 206 Corp. and its principals "waive any conflict of interest which may exist or arose by Cardillo's representation of any parties in the actions known as Rubinstein et al. v. Bloomfield 206 Corp. . . .;" and 4) the agreement states that, on Cardillo's

---

(footnote cont'd)

complaint had been filed. She requested $75 for her advice, which payment she subsequently declined. She later contacted Covello to complain about the counter-claim filed on behalf of Liberty Realty and to question his counsel's decision not to file cross-claims against co-defendants. In the court's view, RPC 1.9 came into play, as did RPC 1.7 (conflict of interest), and RPC 4.2 (communicating with an individual represented by counsel.

execution of the agreement, the pending conflict-of-interest motion in the Rubinstein litigation would be withdrawn.

As indicated previously, there is only one New Jersey disciplinary case addressing a violation of RPC 5.6(b). In re Zaruba, supra, 177 N.J. 564. As set out above, Zaruba involved counsel for a corporation essentially bribing two attorneys not to pursue claims against the corporation, in exchange for a cash payment. The attorneys then misrepresented the terms of the agreement to their clients.

For several reasons, the DEC was correct in its conclusion that "this case is not Zaruba." First, there was no harm to any of respondents' clients, stemming from the Cardillo agreement. Gormally's client, Silverman, sought the agreement and Cardillo's client, Rubinstein, stated, in his affidavit, that he was satisfied with the settlement in the litigation. Second, unlike Zaruba, there was no misrepresentation to the parties involved. The clients on both sides of the equation clearly had knowledge of the agreement. Third, in Zaruba the attorneys benefitted financially, by agreeing not to pursue the class action suit. Here, although it is true that Cardillo received her fee from the Rubinstein litigation, there were more fees to

be had if she continued to pursue litigation against Bloomfield 206 Corp. and its principals. True, she would have been subject to motions to disqualify her in those future cases, but the motions could have been decided in her favor, given the remoteness in time and apparent brevity of the prior representation.

Thus, if this case is not Zaruba and, therefore, does not merit Zaruba's one-year suspension, what does it merit? As noted earlier, there are no other New Jersey cases dealing with RPC 5.6(b). There are few disciplinary cases in other jurisdictions related to violations of RPC 5.6(b). The discipline imposed by other jurisdictions for similar misconduct has ranged from simply requiring the attorney to complete ethics courses to long-term suspensions.

In Adams v. BellSouth Telecommunications, Inc., 2001 WL 34032759 (S.D. Fla. 2001), one of the attorneys for the plaintiffs in an employment discrimination case against BellSouth suggested to BellSouth's attorneys that, in exchange for a settlement of the case, the plaintiffs' attorneys would agree not to represent "any current or former employee of BellSouth against the company for a period of one year."

BellSouth's attorneys replied that a settlement was contingent upon such an agreement.

During the subsequent negotiations, one of the plaintiffs' attorneys opined that such an agreement was unethical. They then decided that BellSouth would enter into a consulting agreement with the plaintiffs' attorneys. Although plaintiffs' counsel took the position that BellSouth would have to allot additional monies for the consulting agreement, BellSouth's attorneys insisted that the consulting monies be taken from the settlement proceeds. Of the $1,600,000 settlement amount, $505,275 was allocated for the consulting agreements and the plaintiffs' attorneys' fees and costs.

The plaintiffs were not told of the consulting arrangement, the amount of the plaintiffs' attorneys' fees or the total amount of the settlement. Instead, each plaintiff was told the amount he or she would receive under the settlement. At least one of the plaintiffs was coerced to accept the settlement, when her attorney threatened to withdraw from the representation, if she did not agree to settle.

The Florida court found that BellSouth's attorneys had been "motivated by a desire to protect their client's interest in the

face of reprehensible legal tactics from the other side which bordered on the extortionate" and that they "did not act for self-gain unlike opposing counsel." Nevertheless, the court held that Bellsouth's attorneys had violated the Florida counterpart to our RPC 5.6(b). No discipline was imposed on the attorneys. The court ordered them to complete at least five hours of ethics courses, prior to their reappearance in the United States District Court for the Southern District of Florida.

With respect to the plaintiffs' attorneys, the court found that they violated the Florida rules analogous to our RPC 1.4, RPC 1.7(b), RPC 5.6(b), and RPC 8.4(c). The most culpable of the attorneys was suspended from practicing before the district court for three years. None of the other plaintiffs' attorneys were suspended. The sanctions included continuing legal education courses, pro bono service, and the return of their fees.

Unlike Adams, here the attorneys did not use "reprehensible" tactics and the clients were not harmed. Thus, it provides little guidance as to the appropriate measure of discipline.

In In re Conduct of Brandt, 10 P.3d 906 (Or. 2000), the Supreme Court of Oregon suspended two attorneys for violating Oregon's counterpart to our RPC 5.6(b), as well as other disciplinary rules. William Brandt and Mark Griffin represented Eric Bramel and forty-eight other hand-tool distributors, in their claims against Mac Tools, Inc., a manufacturer of hand tools. Brandt and Griffin, along with other lawyers who represented clients with claims against Mac Tools and its parent company, The Stanley Works (Stanley), met with Stanley's representative to discuss a global settlement.

During the negotiations, Stanley's representative insisted that there be a "linkage" between the settlement and a future agreement that Stanley retain the plaintiffs' lawyers to avoid future litigation involving those lawyers. The plaintiffs' lawyers were concerned about the propriety of the settlement agreement. The mediator in the settlement discussions proposed that the plaintiffs' lawyers sign individual retainer agreements with Stanley and give them to the mediator to hold in escrow, until the clients signed the settlement agreement, the settlement amounts had been paid, and all pending actions had been dismissed. According to the mediator, if any of the

clients did not consent to the retainer provision, none of the retainer agreements would go into effect.

Before Brandt and Griffin agreed to the mediator's proposal, Griffin spoke with the Oregon bar's general counsel. There was a dispute as to what bar counsel told Griffin. In any event, the court found that advice of bar counsel did not provide a defense to disciplinary violations.

In Brandt and Griffin's letter to Bramel, enclosing the settlement agreement, they told Bramel that, after Stanley had agreed to the settlement, Stanley had made "a separate offer to hire [their law firms] to work for [Stanley] in the future," that they had agreed to provide legal advice to Stanley "on improving their distribution recruitment practices," and that they would be unable to pursue claims against Stanley in the future. They also advised Bramel to seek "independent legal advice," because "this situation may appear to create a conflict of interest."

The court found that Brandt and Griffin violated Oregon's counterparts to our RPC 5.6(b), RPC 1.7(b) (conflict of interest), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The court suspended Griffin for

twelve months and Brandt for thirteen months (Brandt had a prior admonition for a conflict of interest). The decision does not state whether Stanley's attorney, who apparently was not admitted in Oregon, was disciplined for her role in the settlement. Nor is there a reported decision concerning Stanley's attorney.

The case before us is not Brandt. There, the attorneys misrepresented to their clients the relationship between the settlement agreement and the offer to hire the law firms. Here, the parties knew the terms of the settlement. There was none of the deceit of Brandt. Brandt, too, provides little guidance on the question of the appropriate measure of discipline.

Cardillo stated that, at the time that she entered into the Cardillo agreement, she was leaving the country and that, thus, the agreement really had no impact on her practice. She is correct that, at that time, for all practical purposes, the agreement had no "teeth".[17] It was after her house sale fell through and after she was approached to represent clients

---

[17] Of course, had Cardillo returned from Portugal in the future and sought to resume her legal career, she would have been faced with the restrictions on her practice.

against Bloomfield 206 Corp. that she learned the error of her ways and sought to have the agreement voided. Simply stated, the Cardillo agreement kept from her a major source of income and she needed a way out of it. Her manipulation of the judicial system and her waste of its resources are troubling.

Gormally argued that the DEC adopted the Superior Court's conclusion that they violated RPC 5.6(b) and that we should not follow suit. Along the same line, they should not have simply adopted the court's conclusion in 201 Garden Street that the agreement restricting Cardillo's practice was permitted. A court's approval of an unethical agreement does not make it ethical. Their argument that they had seen a court incorporate into a settlement an agreement like the Cardillo agreement and, thus, thought it was an acceptable practice may go to mitigation, but it is not a defense to unethical conduct.

There was some very creative lawyering undertaken by these respondents, both to achieve the agreement and to void the agreement. That all being said, what is the appropriate discipline for their misconduct?

As to Gormally, as stated previously, another court's adoption of an unethical agreement does not make it ethical.

Even if the parties sought the agreement and if it did not negatively affect the Rubinstein litigation, it still violated RPC 5.6(b). Taking into account Gormally's previously unblemished career and, arguably, his misplaced reliance on the 201 Garden Street agreement, the reprimand recommended by the DEC is appropriate.

Cardillo's case is more complex. She gave no thought to the ethics ramifications of her agreement. Rather, she saw the agreement as harmless to her, because she was leaving the country. When her plans changed, she played the "ethics card" to manipulate the legal system to avoid her previously-considered good deal and to restore her ability to continue her practice.

On the other hand, a similar agreement in the 201 Garden Street case was ruled proper and that agreement, unlike this one, was actually part of the main settlement in the case. Also, like Gormally, she has no prior disciplinary history, since her admission to the bar, in 1997. Although her conduct, when compared to that of Gormally, seems more serious, given the absence of harm to the clients, their knowledge of and

acquiescence to the terms of the agreement, and her clean record, we deem a reprimand to be appropriate for her as well.

Members Stanton and Clark did not participate.

We further determine to require respondents 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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Charles X. Gormally
Docket No. DRB 11-160

Argued: September 15, 2011

Decided: November 23, 2011

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark						X
Doremus			X			
Stanton						X
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			7			2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Cathy C. Cardillo
Docket No. DRB 11-161

Argued: September 15, 2011

Decided: November 23, 2011

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark						X
Doremus			X			
Stanton						X
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			7			2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel