SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-067
District Docket No. I-06-0003E

IN THE MATTER OF	:
JOHN P. MORRIS	:
AN ATTORNEY AT LAW	:

Decision

Argued: May 15, 2008

Decided: July 8, 2008

Willis Flower appeared on behalf of the District I Ethics committee.

Vincent Pancari appeared on behalf of respondent.

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

This matter originally came before us in February 2008, on a recommendation for an admonition filed by the District I Ethics Committee (DEC). We determined to bring the matter on for oral argument. It stems from charges of violations of RPC 1.7(a)(2) (conflict of interest – the representation of one or

more clients is materially limited by the lawyer's personal interest) and RPC 1.16, no subsection cited, presumably (a) (failure to terminate the representation). Following oral argument, we determine to reprimand respondent.

Respondent was admitted to the New Jersey bar in 1974. He maintains a law office in Bridgeton, New Jersey.

In 1996, respondent received an admonition for gross neglect, lack of diligence, and failure to communicate with a co-executor/beneficiary in an estate matter. In the Matter of John P. Morris, DRB 95-444 (February 20, 1996). In 1998, on a motion for discipline by consent, respondent was reprimanded for gross neglect in another estate matter. He failed to take any substantial action for a period of eleven years, including failing to prepare or file an inheritance tax return, opening an estate account, and depositing checks forwarded to the estate. Ultimately, he made restitution to the estate for its losses, which totaled more than $8,000. In re Morris, 152 N.J. 155 (1998).

The New Jersey Lawyers' Fund for Client protection report shows that respondent was on the ineligible list four times (in 2000, 2003, 2005, and 2007), each time for only a day or two, for failure to timely pay the annual attorney assessment.

The facts are as follows:

In September 2003, grievant Vicki Sutton and respondent's then-wife, Tara Dickson, met while enrolled in a nursing school program. Afterwards, Sutton stayed with respondent and Dickson at their home, for periods of time.

Prior to February 11, 2004 and as early as December 2003, Sutton and respondent had several discussions about Sutton's legal problems – a criminal matter charging her with providing false information to the State Police and an employment action filed by her employer, the New Jersey Department of Corrections, pending with the Office of Administrative Law (OAL). By February 11, 2004, respondent had agreed to take over Sutton's representation from attorney Kevin McCann in both matters. Respondent forwarded substitution of attorney forms to McCann on that date. Respondent declined to represent Sutton, however, in pending personal injury and federal discrimination cases.

In February 2004, Sutton and Dickson became involved romantically. On March 15, 2004, respondent discovered their relationship for the first time, when he found the two engaging in "sexual acts" in the marital home bathroom. Notwithstanding this discovery, respondent continued to represent Sutton. On March 27, 2004, he presented her with formal fee agreements for both matters. Sutton executed the fee agreements on March 29, 2004.

Prior to entering nursing school, Dickson had served as respondent's paralegal from October 1993 to early 2003. As a result, she believed that respondent's fee agreements for Sutton provided for amounts greater than his normal fees. According to Dickson, respondent had earlier told Sutton that he was not going to charge her, because he knew she did not have the funds to pay him; she had been unemployed for some time. Dickson believed that respondent had coerced Sutton into signing the fee agreements by presenting her with them shortly before the OAL hearing, and telling her that, if she did not sign them he would not represent her at the hearing. Dickson testified that, in respondent's presence, she had informed Sutton that it was not a good idea to sign the fee agreements or to continue to have respondent represent her. She recommended that Sutton have the fee agreements reviewed by another attorney, before signing them. According to Dickson, respondent then called her a "dumb bitch," stated that she was "not a lawyer," and told Sutton to disregard Dickson's advice and sign the agreements, which she did.

After March 15, 2004, respondent's and Dickson's relationship became strained and continued to deteriorate progressively from March 2004 through June 2004. Respondent told Dickson that her relationship with Sutton was wrong; that she

needed to seek psychiatric counseling because she was a lesbian; that he would get custody of their children because of it; that her conduct was morally reprehensible; and that she was a sick individual. Respondent added that Sutton's mother was a very negative person and, therefore, so was Sutton, and that Sutton had been raised by "white trash and critters." Notwithstanding these comments, respondent continued to represent Sutton.

Near the end of March or mid-April 2004, and admittedly against her better judgment, Dickson contacted respondent to help Sutton in connection with Sutton's arrest for leaving the scene of an accident. The police had detained Sutton on the side of the road and Dickson knew of no one else to call. Sutton did not have the means to retain another attorney and could not contact McCann, whom she had already discharged, but she needed an attorney to represent her at the hearing.

On June 24, 2004, Dickson obtained a temporary restraining order (TRO) against respondent, prohibiting him from having any contact with her and his children.

Sutton's version of the events was that she had stayed at respondent's and Dickson's home from time to time, but did not move in with them. The arrangements varied from week to week.

Sutton had been suspended from her position as a senior corrections officer at the South Woods State Prison, after being

charged with a potentially indictable offense. Sutton testified that she was in a very desperate situation. She was out of work and had just been accepted to nursing school. She needed to work and go to school, both on a full-time basis. One of her friends mentioned that Dickson had spoken very highly about her then-husband, an attorney. Sutton subsequently contacted Dickson, who offered to discuss Sutton's legal problems with respondent.

At some point, Sutton and respondent began discussing her problems. According to Sutton, respondent had made disparaging comments about her former attorney's legal abilities, which comments caused her concern. She, therefore, terminated that attorney's services and retained respondent. Sutton had no money to retain anyone else, but understood that she would pay respondent either once she was reinstated at her job or had obtained an award for back pay.

One week after the March 15, 2004 incident with Dickson, Sutton spoke to respondent about the affair. Sutton told him that "[i]t was a horrible situation and I was embarrassed and I felt bad and I apologized to [respondent]. I told him I didn't blame him nor did I think it was appropriate for him to remain my attorney. I didn't feel comfortable and I don't know how he could." Respondent assured her that "he would not let anything interfere with his representation of [her]." He told her "shit

happens, this is my license, I can do this. I'm grown. I've been through one marriage."

At least once between March 15, 2004 and March 29, 2004, when Sutton executed the fee agreement, and once or twice after its execution, she told respondent that she was not comfortable with his continued representation. Each time respondent assured her that he would not let anything affect his representation, that she could not afford to hire any one else, and that, even if she could, she would not get anyone better than him. According to Sutton, she tried calling other attorneys, but had no file to show them, time was short, and the attorneys did not want to "touch" her cases because of respondent's fee lien.

After Dickson filed the TRO against respondent, things became very "adversarial" between Dickson and respondent and, as a result, between Sutton and respondent. Whenever Sutton tried to call respondent's office, his secretary would give her the "run-around." It got to the point that she did not know whether respondent was still representing her.

For his part, respondent testified that he began representing Sutton on February 11, 2004, when he mailed the substitutions of attorney to Kevin McCann, but had begun talking to Sutton about her cases as early as December 2003. He did not discover Sutton's and Dickson's affair until March 15, 2004. When

he did, he assured Sutton that he could "separate the two things." He believed that Sutton had been badly treated by her employer and the State police and that he could represent her effectively. He assured Sutton that he could help her, that he did not have a problem representing her, and that it would not make a difference in terms of his representation because it was "the stuff [they had] been talking about all along any way." According to respondent, Sutton agreed to his continued representation and raised no further concerns about it.

Although, at the DEC hearing, Sutton denied seeking respondent's assistance in any additional matters, respondent submitted a copy of an April 19, 2004 letter to her, confirming his fee to represent her in two additional matters involving motor vehicle tickets.

Respondent did not view his continued representation after the March 15, 2004 "bathroom incident" as a conflict of interest. He believed that he could continue to competently represent Sutton because he had already developed his strategy in the cases, prior to the incident. He did not blame Sutton for the affair or the breakdown of his marriage and believed that the affair did not affect his ability and efforts to represent Sutton.

Respondent would not concede that Sutton had deceived him about their relationship. He claimed that, even though he

considered her and Dickson's relationship to be inappropriate, it was Dickson that had lied to him; Sutton was merely "another pawn in the game," being used by Dickson. He viewed Dickson as the instigator. He stated that, even though Sutton was engaged in an intimate relationship with Dickson, it did not occur to him that it would affect his representation of Sutton or his duty of undivided loyalty to her.

According to respondent, he continued to live with his wife and children after the bathroom incident. Sutton, too, lived with them until April 2004. She moved out briefly and then, after being detained by the police, moved back into their home, where she stayed until June 24, 2004.

On June 24, 2004, the Bridgeton Police served respondent with a TRO, prohibiting him from having contact with his wife and children and requiring him to stay away from the marital home, except to retrieve his clothing with a police escort.

Respondent stated that, after the March 15, 2004 incident, both he and Dickson had retained attorneys to work out amicable property settlement and custody agreements. Once he was served with the TRO, however, he knew that he would have to file for divorce; the settlement discussions between them had broken down.

On June 30, 2004, respondent filed a divorce complaint naming Sutton as a co-respondent and seeking damages from her.

Respondent admitted that he should have withdrawn from Sutton's cases, once he filed the divorce complaint, because there was a conflict of interest at that point. He acknowledged that he could have filed for divorce as of March 15, 2004, and could have named Sutton as a co-respondent at that time, but claimed that, until late June 2004, it had not occurred to him that Sutton would be named in the divorce complaint.

Respondent downplayed any negative feelings that he may have had toward Sutton. He claimed that, when he first learned that Sutton and Dickson were involved in a sexual relationship (March 15, 2004), he was shocked. He explained that he had not objected to Sutton remaining in the house after he had learned about the relationship because he believed that the best way to protect his children was to pretend that everything was fine. He believed that Sutton had "been taken in by" Dickson. He testified that he did not feel any anger towards Sutton.

On July 2, 2004, respondent's matrimonial attorney notified him that Sutton would be a witness against him in the final restraining order and that his continued representation of her would be a conflict of interest. After researching the issue, on July 3, 2004, respondent dictated a letter to Sutton, advising her that he could no longer represent her in any of her pending matters. However, he claimed that, when his matrimonial attorney

first named Sutton as a co-respondent in the divorce complaint, it did not occur to him that a conflict of interest existed. He and his attorney had discussed filing the complaint on either June 25 or June 28, 2004.

Sutton filed the grievance against respondent on August 12, 2004. At that time, the hearing on the final restraining order was scheduled for September 9, 2004.

On May 4, 2005, respondent executed a certification in support of his cross-motion in the matrimonial matter for, among other forms of relief, "unsupervised parenting time." Respondent's certification detailed his feelings at the time that he discovered Dickson's and Sutton's affair. It stated, in relevant part, that he had no idea that Dickson and Sutton had been secretly engaging in sexual relations in his home. On March 15, 2004, however, he had discovered the two showering together and engaging in sexual intimacy. He continued:

> That scene is seared into my memory. I stopped short. I felt a thickness swelling into my throat, had difficulty breathing and thought I was having a heart attack. I became light-headed, my heart was beating rapidly and I felt a tingling radiating feeling coursing up and down my arms. . . . I was confused and mortified. . . . I reluctantly returned to the master bedroom and started down the hallway. I stopped. I turned around. . . . I tried to speak but I could not. I felt the same type of throat paralysis one feels when having a nightmare during REM sleep and one tries to scream but

> no sound can be forced from one's throat. Ms. Sutton was out of the shower. . . . She slinked past me without saying a word. . . .
>
> I retreated to the master bedroom. My wife came in and informed me that she wanted a divorce. I cannot recall any more of what she said. I was having great difficulty focusing and concentrating. . . .
>
> I believe the defendant called my doctor to have her prescribe medication to help me handle the stress and shock. . . . The defendant gave me one or two of her prescribed Xanax pills to calm my nerves. The week that followed is basically a blur. I became despondent and actually contemplated suicide and the means to accomplish my death.
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> Sometime on March 18, 2004, I apparently did sign a piece of paper disclaiming all interest in the marital residence. . . . I was emotionally numb, confused and despondent since I had discovered my wife engaging in acts of intimacy with a woman whom I was told was at death's door.
>
> . . . .
>
> Our marital home is our most valuable remaining marital asset. It would be unfair and inequitable to give effect to a note scribbled while I was under severe psychological and emotional strain and certainly not in my right mind. . . .
>
> [Ex.DE7¶33-¶40.]

The DEC determined that respondent's failure to withdraw from Sutton's representation, once he became aware that Sutton would be named as a co-respondent in his divorce complaint and

against whom he was seeking money damages, gave rise to a conflict of interest in late June 2004. The DEC found that respondent had violated RPC 1.7 and RPC 1.16.

The DEC did not find that a conflict of interest arose when respondent discovered that his wife and client were having an affair. In any event, the DEC stated, its recommendation for an admonition would have remained unchanged, even if that had been the case.

The DEC did not find that respondent's representation of Sutton up until the time he withdrew from the matter was anything but competent. Finally, the DEC concluded that respondent's ethics violations were inadvertent and that "[t]here was no proof submitted to the Panel of any prior unethical conduct."

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

Unquestionably, respondent engaged in a conflict of interest, thereby violating RPC 1.7(a)(2), which states, in relevant part:

> a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> . . . .

> (2) there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer.

Paragraph (b) of the rule provides that, even in the presence of a concurrent conflict of interest, the attorney may represent the client if the attorney obtains informed consent by the client, after full disclosure and consultation that is confirmed in writing. Clearly, that was not the case here. Sutton approached respondent on more than one occasion about her discomfort over his continued representation of her interests. Rather than withdraw, respondent repeatedly convinced her that his judgment remained unaffected by his knowledge of her relationship with his wife. The only area of dispute is when the conflict arose. The DEC and respondent thought that the conflict emerged only after the divorce complaint was filed, naming Sutton as a co-respondent. We disagree. Once respondent found out that his wife and Sutton were engaged in a relationship, he should have withdrawn from the representation. At that point, his duty of fidelity to Sutton became compromised. Even assuming that respondent truly did not recognize the conflict of interest, Sutton's discomfort over his continued representation should have raised a red flag. Moreover, respondent's certification to the court, describing his emotional state after discovering Sutton's

and Dickson's affair, casts strong doubt about respondent's alleged conviction that he could have represented Sutton with the utmost loyalty. We, therefore, conclude that respondent's continued representation, after March 15, 2004, placed him in a serious conflict of interest situation, in violation of RPC 1.7(a)(2).

We do not find, however, that such conduct also violated RPC 1.16. Subsumed in the requirements specified in RPC 1.7(a)(2) was respondent's duty to withdraw from the representation once the conflict of interest arose.

We now turn to the proper quantum of discipline. It is well-settled that a reprimand is the proper discipline for attorneys who engage in conflicts of interest. In re Berkowitz, 136 N.J. 148 (1994). If the conflict involves "egregious circumstances" or results in "serious economic injury" to the client, then discipline greater than a reprimand is warranted. Id. at 148. See also In re Guidone, 139 N.J. 272, 277 (1994) (noting that, when an attorney's conflict of interest causes economic injury, discipline greater than a reprimand is imposed; Guidone, who was a member of the Lions Club and represented the Club in the sale of a tract of land, engaged in a conflict of interest when he acquired, but failed to disclose to the Club, a financial interest in the entity that purchased the land, and

then failed to (1) fully explain to the Club the various risks involved with the representation and (2) obtain the Club's consent to the representation; Guidone received a three-month suspension because the conflict of interest "was both pecuniary and undisclosed").

In special situations, we have imposed admonitions on attorneys who have violated the conflict of interest rules post-Berkowitz and Guidone. See, e.g., In the Matter of Cory J. Gilman, 184 N.J. 298 (2005) (imputed conflict of interest (RPC 1.10(b)), among other violations, based upon attorney's preparation of real estate contracts for buyers requiring the purchase of title insurance from a company owned by his supervising partner; in imposing only an admonition, we noted the following "compelling mitigating factors": this was the attorney's "first brush with the ethics system; he cooperated fully with the OAE's investigation; and, more importantly, he was a new attorney at the time (three years at the bar) and only an associate"); In the Matter of Frank Fusco, DRB 04-442 (February 22, 2005) (violation of RPC 1.7(a); we noted that the attorney, who represented the buyer and seller in a real estate transaction without obtaining their consent, "did not technically engage in a conflict of interest situation" because no conflict ever arose between the parties to the contract; special circumstances were

(1) the attorney did not negotiate the terms of the contract but merely memorialized them; (2) the parties wanted a quick closing "without lawyer involvement on either side;" (3) the attorney was motivated by a desire to help friends; (4) neither party was adversely affected by his misconduct; (5) the attorney did not receive a fee for his services; and (6) he had no disciplinary record); In the Matter of Carolyn Fleming-Sawyerr, DRB 04-017 (March 23, 2004) (among other things, attorney engaged in a conflict of interest (RPC 1.7(b)) when she collected a real estate commission upon her sale of a client's house; in mitigation, we considered the attorney's unblemished fifteen-year career, her lack of knowledge that she could not act simultaneously as an attorney and collect a real estate fee, and the passage of six years since the ethics infraction); In the Matter of Anton Muschal, DRB 99-381 (February 4, 2000) (attorney represented a client in the incorporation of a business and renewal of a liquor license and then filed a suit against her on behalf of another client, a violation of RPC 1.7 and RPC 1.9(a)(1); in imposing only an admonition, we noted the attorney's unblemished twenty-four-year career); and In the Matter of Jeffrey E. Jenkins, DRB 97-384 (December 2, 1997) (attorney engaged in a concurrent conflict of interest by continuing to represent husband and wife in a bankruptcy matter

after the parties had developed marital problems and had retained their own matrimonial lawyers; in imposing an admonition, we noted the attorney's lack of malice, the lack of a pattern of improper conduct, his thirteen-year untarnished disciplinary record, and his cooperation with disciplinary authorities).

Here, we find no mitigating circumstances to justify a departure from the threshold discipline, a reprimand, announced in Berkowitz. This respondent was not a novice attorney. He had been a lawyer for thirty years when his misconduct occurred. In addition, he is no stranger to the ethics process because he was disciplined twice before: an admonition in 1996 (gross neglect, lack of diligence, failure to communicate in an estate matter) and a reprimand in 1998 (gross neglect over an eleven-year period). Although it cannot be said that respondent failed to learn from prior mistakes because the instant violations are substantively different, and although his prior matters occurred almost ten years earlier, these factors are not sufficiently compelling to warrant imposing less than a reprimand, the threshold discipline in conflict of interest cases.

Members Boylan and Doremus voted for an admonition. Members Baugh and Clark did not participate.

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
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 John P. Morris
Docket No. DRB 08-067

Argued: May 15, 2008

Decided: July 2, 2008

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Disqualified	Did not participate
Pashman			x			
Frost			x			
Baugh						X
Boylan				X		
Clark						X
Doremus				X		
Lolla			X			
Stanton			X			
Wissinger			X			
Total:			5	2		2

Julianne K. DeCore
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Chief Counsel