SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-333

IN THE MATTER OF	:
MARK W. FORD	:
AN ATTORNEY AT LAW	:

Decision

Argued: February 19, 2009

Decided: June 26, 2009

Nitza Blasini appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a stipulation between respondent and the Office of Attorney Ethics ("OAE"), arising out of respondent's conflict of interest with his client. He admitted violating RPC 1.7(a)(2) (concurrent conflict of interest) and RPC 1.16(a)(1) (failure to withdraw from the representation). We determine to reprimand respondent.

Respondent was admitted to the New Jersey bar in 1983. He received an admonition in 2002 for lack of diligence and failure to communicate with the client. In the Matter of Mark F. Ford, DRB 02-280 (October 22, 2002). He received a reprimand in 1998, after he falsely certified at least ten times to the Division of Unemployment and Disability Insurance that he was entitled to unemployment benefits. In re Ford, 152 N.J. 465 (1998).

The facts that gave rise to the charges against respondent are as follows:

In October 1998, Domenic Volpe, now deceased, retained respondent to represent him in a personal injury matter against the Borough of Oaklyn and the Oaklyn Fire department. In December 1999, Volpe executed an agreement with Future Settlement Funding Associates, Inc. ("FSF"), in which FSF advanced $1,500 to Volpe. The agreement provided that 1) the $1,500 advanced to Volpe would increase by 15% each month, the equivalent of $225, until all amounts owed were paid; 2) respondent was required to acknowledge the agreement and disburse recovery monies in accordance with the agreement; and 3) if Volpe did not prevail in his lawsuit, he would owe FSF nothing. Respondent notarized Volpe's signature and signed an acknowledgment clause wherein he agreed to distribute any proceeds from the litigation in accordance with the agreement.

When the lawsuit did not settle quickly, Volpe became concerned about the amount of his accruing debt, $225 each month. In May 2000, respondent sent a letter to FSF, along with a check from Volpe for $1,725. In his letter, respondent advised FSF that the $1,725 represented full payment of the $1,500 advanced to Volpe and that the additional $225 represented the maximum interest rate that could be legally charged in New Jersey.

In June 2000, FSF's then-attorney, Gregory McClosky, replied to respondent's letter, advising that, since FSF's recovery of any funds from Volpe was contingent on his recovery from his lawsuit, the 15% monthly increment did not amount to usury. Respondent did not reply to Mclosky's letter. In July 2001, FSF's new attorney, Louis A. Colaguori, advised respondent that the check tendered had not been accepted. He requested that respondent advise him of any future settlement.

In May 2002, Colaguori sent respondent a draft civil action complaint, which he was prepared to file against Volpe and respondent within ten days, if respondent did not reply to his letter. The draft complaint put respondent on notice that his continued representation of Volpe would be materially limited by his own interest in the matter. On July 24, 2002, respondent replied to Colaguori and enclosed a brief, in which he asserted

that the interest rate Volpe was charged was usurious. One week later, Colaguori filed the complaint against Volpe and respondent. In the interim, on June 18, 2002, Volpe's case had settled for $47,500. The funds were deposited in respondent's trust account on July 27, 2002.

Sometime prior to August 2002, respondent tried to renegotiate the amount due to FSF by offering it $3,000. At that time, Volpe owed $8,025 to FSF. Respondent was holding $8,434.67 in his trust account on Volpe's behalf. In August 2002, Colaguori rejected the proposed settlement. Colaguori also cautioned respondent against disbursing the settlement funds that he was holding in escrow, pending resolution of the dispute between Volpe and FSF. In January 2003, respondent filed an answer in the civil matter on behalf of himself and Volpe. In September 2003, the court entered an order for summary judgment against respondent and Volpe, in the amount of $11,680.48.

Volpe refused to authorize respondent to settle the case for $8,250. By letter dated September 17, 2003, respondent advised Volpe that the September 2003 judgment had been entered against both of them and that he could no longer represent him. Thereafter, by letter dated September 22, 2003, respondent advised Colaguori that, in an effort to resolve the outstanding

judgment, he would file a motion to withdraw as Volpe's counsel and to compel the turnover of $8,269.67 in trust funds to FSF. Respondent stated that his offer was "contingent on the Motion to Vacate, returnable on September 26, 2003, [not being] granted." Respondent did not send a copy of the letter to Volpe. On September 25, 2003, respondent filed a motion for leave to withdraw as Volpe's counsel and to release trust funds.

On December 8, 2003, the court issued an order granting respondent's motion to withdraw as counsel and directing him to release the $8,269.67 remaining in his trust account to FSF, in partial satisfaction of the September 2003 judgment. Approximately two weeks later, on December 23, 2003, respondent issued a trust account check in the amount of $8,269.67 payable to "cash." He then purchased nine United States Postal Service money orders totaling $8,269.67, payable to FSF in satisfaction of the court's December 2003 order. In his letter accompanying the money orders, respondent requested that Volpe pay the outstanding $3,410.81 ($11,680.48-$8,269.67). FSF did not receive any additional funds from either Volpe or respondent.

On July 19, 2004, FSF obtained a levy on respondent's business account in the amount of $3,702.19, which included accrued interest, costs, and fees. Ten days later, Colaguori filed a notice of motion to compel respondent and Volpe to turn

over the balance of the funds to FSF. Respondent requested that FSF assign him the judgment on the outstanding debt due from Volpe. FSF refused.

On December 6, 2004, respondent wrote to Volpe, requesting that he begin monthly payments to respondent in the amount of $300. On December 15, 2004, respondent issued a check to FSF in the amount of $177.40 and requested that Colaguori send him a warrant to satisfy judgment. Colaguori did so in February 2005.

Respondent stipulated that he violated RPC 1.7(a)(2) and RPC 1.16(a)(1), based on the following: 1) he filed an answer to the civil complaint at a time when his interests were directly adverse to Volpe's; 2) he failed to advise Volpe that Volpe might have a claim against him for legal malpractice; 3) he failed to advise Volpe, in writing, to seek the advice of independent counsel; and 4) after he filed an answer to the civil complaint, he tried to negotiate separate settlements of the claim against him, to Volpe's detriment.

In mitigation, the stipulation noted that respondent cooperated with the OAE. In aggravation, the stipulation pointed to respondent's prior reprimand and admonition.

The OAE recommended that respondent receive a "reprimand-censure."

Upon a de novo review of the record, we are satisfied that the stipulated facts support a finding that respondent's conduct was unethical. Respondent stipulated that he violated RPC 1.7(a)(2) and RPC 1.16(a)(1) by continuing to represent Volpe when their interests were plainly adverse.

It is well-settled that, absent egregious circumstances or economic injury to clients, a reprimand is sufficient discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). In special situations, admonitions have been imposed on attorneys who have violated the conflict of interest rules post-Berkowitz. 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); 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); and 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).

Here, there are no mitigating circumstances to justify a downward departure from the threshold discipline, a reprimand, announced in Berkowitz. This respondent was not a novice attorney. He had been a lawyer for nearly twenty years when his misconduct occurred. In addition, he is no stranger to the ethics process, having been previously disciplined twice before: an

admonition in 2002, while the within matter was proceeding, and a reprimand in 1998. On the other hand, there are no egregious circumstances or economic injury to Volpe to warrant an upward departure from the threshold discipline. We, therefore, determine to impose a reprimand.

Members Boylan and Lolla 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 Mark W. Ford
Docket No. DRB 08-333

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Disposition: Reprimand

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

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel