SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-318
District Docket No. XIV-03-293E

IN THE MATTER OF	
JOEL A. MOTT, III	
AN ATTORNEY AT LAW	

Decision

Argued: January 12, 2006

Decided: February 22, 2006

Walton W. Kingsbery, III, appeared on behalf of the Office of Attorney Ethics.

Joseph H. Kenney appeared on behalf of respondent.

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

This matter was before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). For the reasons expressed below, we agree with the OAE that a

reprimand is the appropriate form of discipline for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1979. He has no disciplinary history.

This case arises out of conduct similar to what is known as the "Ocean City practice," whereby an attorney who has an interest in a title insurance company prepares a contract for the sale of Ocean City real estate on behalf of a prospective buyer at no charge. Typically, the contract requires the buyer to purchase title insurance from the company in which the attorney holds an interest. In re Poling, 184 N.J. 297 (2005); In re Gilman, 184 N.J. 298 (2005). In Poling and Gilman, the Supreme Court concluded that the "Ocean City practice" violates RPC 1.4(b), RPC 1.7(b), and RPC 1.8(a). In re Poling, supra, 184 N.J. at 297 (law firm partner who also owned a title agency and engaged in the "Ocean City practice" violated RPC 1.4(b), RPC 1.7(b), and RPC 1.8(a)); In re Gilman, supra, 184 N.J. at 298 (associate at law firm in which partner owned a title agency who engaged in the "Ocean City practice" at partner's direction violated RPC 1.4(b) and RPC 1.10(a)).

The stipulation between respondent and the OAE provided as follows. "At all relevant times," respondent was an owner and

president of Ocean Abstract Company, an agent for Lawyers Title Insurance Corporation. Prior to April 1, 1997, respondent had been a partner in the Ocean City law firm of Mott, Vernon and Mott. The firm was located at 8th Street and Asbury Avenue.

In early February 1997, respondent read a New Jersey Law Journal article reporting that the New Jersey Supreme Court had ruled that "an attorney who owned an interest in a title insurance company engaged in a conflict of interest in representing real estate purchasers who obtained title insurance from that title insurance company." In early April 1997, respondent withdrew from the partnership of Mott, Vernon and Mott and took full ownership of Ocean Abstract. He moved the location of Ocean Abstract to the third floor of the Bourse Building on Asbury Avenue, Ocean City.

When respondent left the Mott, Vernon and Mott partnership in 1997, he began to wind down his law practice. He obtained his own letterhead and malpractice insurance, and changed the location of his law practice to the same address as that of Ocean Abstract, albeit on another floor.

From April 1997 through 1999, respondent derived most of his income from Ocean Abstract. However, he continued to handle

a decreasing caseload related to the practice of law, admittedly from the location of Ocean Abstract.

In early June 1999, respondent moved to Florida and, since then, has continued to operate Ocean Abstract from that state, while visiting Ocean Abstract's New Jersey office approximately five days per month. In addition, since June 1999 and continuing up through the present, respondent practices law in New Jersey from his Florida home, albeit on "an extremely limited basis." Nevertheless, he continues to claim that he is winding down his law practice, which has generated less than four percent of his annual income.

Over the years, respondent has handled several estate matters and provided "miscellaneous legal services" to several long-time clients and friends of prior clients. He has not opened a new file since August 2004. As of October 2005, he was "still working on tideland grants for four clients which are files that have been opened for years." According to the parties, these types of case are "noted to take an inordinate amount of time to resolve."

Despite respondent's reading of the February 1997 article, up through 2002, he continued to prepare an unknown number of contracts on behalf of buyers of real estate in matters where

Ocean Abstract provided title insurance. In a July 2004 telephone call with a representative of the OAE, respondent stated that he had prepared real estate contracts that named Ocean Abstract as the location of settlement. He ended this practice at the time of the call.

Moreover, he told the OAE representative that it was, and always had been, his practice to review with his clients all real estate contracts prepared by him and to disclose to the clients his interest in Ocean Abstract in matters where the company produced the title insurance for the clients. Finally, respondent admitted that, from 1995 through 2002, he prepared an unknown number of real estate contracts for client-purchasers who also obtained title insurance from Ocean Abstract.

Respondent stipulated to having violated RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), RPC 1.7(b) (representation of a client when the representation was materially limited by the lawyer's own interests, absent a reasonable belief that the representation would not be adversely affected and absent the client's consent after full disclosure of the circumstances and consultation), RPC 1.8(a) (business transaction with a client), N.J. Advisory

Comm. On Prof'l Ethics Opinion 532, 107 N.J.L.J. 544 (1984) (hereinafter, Opinion 532) (requiring an attorney who creates another business to keep the business and the law firm "entirely separate"), and N.J. Advisory Comm. On Prof'l Ethics Opinion 682, 143 N.J.L.J. 454 (1996) (hereinafter, Opinion 682) (prohibiting an attorney from participating in a bar-related title insurance company owned and managed by lawyers, who do not receive compensation for their services, but do retain a portion of the title insurance premium as part of their fee for representing the buyer). Factually, respondent stipulated that he did not advise his clients of the desirability of seeking, or give the clients a reasonable opportunity to seek, the advice of independent counsel. He also stipulated that he "did not obtain a written waiver of the conflict of interest from the clients."

The parties further stipulated that there were no aggravating factors. Mitigating factors were respondent's previously-unblemished professional record of twenty-six years and his cooperation with the OAE's investigation.

In the stipulation, respondent reserved his right to advance additional mitigating evidence before us and to argue that a lesser form of discipline was appropriate. In this regard, he submitted to us a brief identifying and discussing

what he believed to be the following additional mitigating factors: (1) the lack of injury to any client; (2) his cessation of what he understood to be the misconduct after the OAE had informed him of the grievance; (3) his admission of wrongdoing; (4) circumstances showing little likelihood of repeat offenses; (5) the fact that he no longer practices law; and (6) his community service. Accordingly, he argued, an admonition was the appropriate form of discipline for his misconduct.

Following a review of the record, we find that the facts recited in the stipulation clearly and convincingly establish that respondent's conduct was unethical. Respondent violated RPC 1.7(b), which provided, in pertinent part, at that time:

> A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
>
> (1) the lawyer reasonably believes the representation will not be adversely affected; and

> (2) the client consents after a full disclosure of the circumstances and consultation with the client . . . .[1]

In this case, although respondent claimed that he disclosed his interest in Ocean Abstract to his client-purchasers, he admitted that he lacked a reasonable belief that the representations would not be adversely affected by his interest in Ocean Abstract. For this reason alone, respondent violated RPC 1.7(b). More significantly, however, the practice of representing client-purchasers who obtain title insurance from the attorney's title insurance company is an impermissible conflict of interest under N.J. Advisory Comm. On Prof'l Ethics Opinion 495, 109 N.J.L.J. 329 (1982) (hereinafter, Opinion 495) (prohibiting an attorney who has an interest in a title insurance agency from representing a buyer who obtains title insurance from the agency).

Respondent also violated RPC 1.8(a), then in effect, which provided:

> A lawyer shall not enter into a business transaction with a client or

---

[1] Although former RPC 1.7(b) required the client's consent, it did not require written consent. Thus, respondent's failure to obtain the clients' written consent, in and of itself, would not have constituted a violation of the rule, so long as he obtained their oral consent.

> knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in manner and terms that should have reasonably been understood by the client, (2) the client is advised of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel of the client's choice on the transaction, and (3) the client consents in writing thereto.

Again, while respondent disclosed his interest in Ocean Abstract to his client-purchasers, he stipulated that he did not advise his clients of the desirability of seeking, or give them the opportunity to seek, independent counsel, and did not obtain a written waiver of the conflict of interest from them.

We do not find, however, that respondent violated RPC 1.4(b). That rule requires a lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Respondent reviewed the contract terms with all clients and disclosed his interest in Ocean Abstract when Ocean Abstract "produce[d] the title insurance for a client." Moreover, there is no evidence that he failed to inform the clients that they could obtain title insurance form sources other than Ocean Abstract. See,

e.g., In the Matter of Cory J. Gilman, supra, Docket No. 04-434 (DRB March 30, 2005) (slip op. at 5-6); In the Matter of Raymond L. Poling, Docket No. 04-435 (March 30, 2005) (slip op. at 6-7) (in both cases, attorneys violated RPC 1.4(b) by failing to review contract with purchaser-clients, disclose interest in title company, and advise them that title insurance could be obtained through companies other than the attorney-owned company).

In addition to having violated the RPC's, respondent violated Opinion 532 when he operated his law firm and Ocean Abstract in the same office. He also violated Opinion 682 when he purchased title insurance from Ocean Abstract on behalf of his real estate clients. In such a situation, even full disclosure and the client's consent would be "insufficient to 'cure' the conflict and permit the representation." Kevin H. Michels, New Jersey Attorney Ethics, § 19:3-2(b)(1) at 420-21 (2006).

There remains the determination of the appropriate quantum of discipline to be imposed for respondent's misconduct. In this regard, we rely upon Gilman and Poling. In both cases, we cited In re Berkowitz, 136 N.J. 134, 148 (1994), and acknowledged that, "absent egregious circumstances or serious

economic injury to clients, a reprimand is the appropriate discipline in conflict of interest situations." In the Matter of Cory J. Gilman, supra, Docket No. 04-434, slip op. at 6; In the Matter of Raymond L. Poling, supra, Docket No. 04-435, slip op. at 9. Admonitions are imposed infrequently. See, e.g., In the Matter of Frank J. Jess, Docket No. 96-068 (DRB June 3, 1996) (admonition for violation of RPC 1.8(a) when attorney, who represented fianceé's parents in mortgage refinancing, borrowed $30,000 of the refinance proceeds from his clients without complying with the conditions of the rule; we considered the attorney's lack of disciplinary history in mitigation); In the Matter of R. Tyler Tomlinson, Docket No. 01-284 (DRB November 2, 2001) (admonition for violation of RPC 1.7(b) when attorney, who represented the plaintiffs in a contract matter, did not discuss defendant's settlement offer with clients and conditioned resolution of the matter on the defendant's parents' withdrawal of a grievance that had been filed against the attorney, which prevented settlement from being reached; in mitigation, we considered one of the client's affidavits in which she stated that, under *no* circumstances, would she have agreed to settle the case unless the grievance were dismissed,

and that the she had discussed the case with the attorney on numerous occasions).

There were no egregious circumstances or harm to the clients in either Gilman or Poling. Attorney Poling received a reprimand. Attorney Gilman received an admonition because, among other things, (1) it was his first encounter with the disciplinary system; (2) he cooperated fully with the OAE's investigation; (3) he had been a member of the bar for only three years; and (4) he was merely an associate of the partner who actually owned the title company. In the Matter of Cory J. Gilman, supra, Docket No. 04-434, slip op. at 7. Although, in Poling, the attorney had been disciplined in 1989 as a result of a criminal conviction arising out of a real estate transaction, we considered the prior discipline "too remote in time to form the basis for enhanced discipline." Id. at 10.

As to mitigating factors in this case, the stipulation mentions respondent's lack of disciplinary history and his cooperation with the OAE. His brief also cites the following additional factors: (1) the lack of injury to any client; (2) his cessation of what he understood to be the misconduct after the OAE had informed him of the grievance; (3) his admission of wrongdoing; (4) circumstances showing little likelihood of

repeat offenses; (5) the fact that he no longer practices law; and (6) his community service.

The first two factors were insufficient to reduce the discipline in Poling. So, too, here. Likewise, the additional factors offered by respondent are insufficient to reduce the standard form of discipline from a reprimand to an admonition.

Respondent's claim that he took remedial measures upon the filing of the grievance fails to account for his continued representation of clients without complying with the applicable conflict-of-interest rules, following his reading of the 1997 New Jersey Law Journal article, years before the grievance was filed. Furthermore, respondent's ready admission of wrongdoing appears to be the product of his desire to put this matter behind him rather than contrition.

We also are unable to accept respondent's claim that he is no longer practicing law. Although his practice has been reduced substantially, he nevertheless continues to represent clients in legal matters. The remaining factors, such as the unlikelihood of repeat violations and respondent's community service, are insufficient to warrant a reduction from a reprimand to an admonition.

To be sure, respondent's conduct, in some respects, was not as serious as that of attorney Poling, who received a reprimand. For instance, unlike the contracts in Poling,[2] the contracts prepared by respondent did not "pre-provide" that Ocean Abstract would issue title insurance. Poling, supra, Docket No. 04-435, slip op. at 3. Furthermore, unlike the attorney in Poling, respondent did, in fact, disclose to his clients his interest in Ocean Abstract and reviewed the contracts with them. These circumstances, however, do not warrant downgrading a reprimand to an admonition. Unlike attorney Gilman, respondent is not a young, inexperienced lawyer. Unlike attorney Gilman, respondent owns Ocean Abstract; and, unlike attorney Gilman, respondent gained a significant monetary benefit from the representations. Finally, respondent engaged in this misconduct for many years, encompassing an unknown number of clients.

For respondent's violation of RPC 1.7(b), RPC 1.8(a), Opinion 532, and Opinion 682, we determine that he should be reprimanded.

---

[2] Because the attorney in Gilman worked for Poling, we rely on the facts of the Poling case.

Vice-Chair O'Shaughnessy and Member Pashman voted to impose an admonition. Chair Maudsley recused herself. Members Lolla and Stanton did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By:_____
Julianne K. DeCore
Chief Counsel

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joel A. Mott, III
Docket No. DRB 05-318

Argued: January 12, 2006

Decided: February 22, 2006

Disposition: Reprimand

Members	Disbar	Admonition	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley					X	
O'Shaughnessy		X				
Boylan			X			
Holmes			X			
Lolla						X
Neuwirth			X			
Pashman		X				
Stanton						X
Wissinger			X			
Total:		2	4		1	2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel