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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-400
District Docket Nos. XIV-01-485E
and IIIB-03-900E

IN THE MATTER OF
JOHN P. DOYLE
AN ATTORNEY AT LAW

Decision

Argued: January 20, 2005

Decided: March 16, 2005

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Kevin H. Michels appeared for respondent.

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

This matter was before us on a recommendation for discipline (reprimand) filed by the District IIIB Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1967.

On December 31, 1985, respondent received a private reprimand for a conflict of interest situation. In that matter, respondent accepted an engagement to represent a buyer of real

estate at the same time that he represented the seller/developer in the conveyance. While respondent made adequate disclosure of the dual representation, he failed to disclose the existence of an unresolved riparian claim asserted by the State of New Jersey against a portion of the property. Respondent was aware of the pendency of the claim at the time of the transaction. In the Matter of John P. Doyle, Docket No. DRB 85-341 (December 31, 1985).

On November 22, 1996, respondent was suspended for six months for engaging in a series of conflicts of interest, in violation of RPC 1.7, arising out of his representation of an elderly and infirm client with a substantial estate. Respondent simultaneously represented other members of her family interested in accessing the assets of her estate. He also entered into an impermissible business transaction with the elderly client, when he purchased one of her properties for his own benefit, without taking the precautions required by RPC 1.8. In re Doyle, 146 N.J. 629, 643 (1996).

On November 18, 2004, prior to the DEC hearing, respondent entered into a disciplinary stipulation of facts with the OAE regarding ARC Properties, Inc. ("ARC"), which sought to develop a site in Brick Township. ARC's Brick Township site abutted a Lakewood Township parcel owned by Lakewood Township. ARC sought

to obtain a right of way from Lakewood Township for an auxiliary entrance to the proposed store. Respondent represented ARC before the Lakewood Township Committee, although ARC had matters pending in Brick Township, where respondent was the attorney for the Planning Board. In the stipulation, respondent admitted the following:

1. Prior to May 28, 1999, Stephan R. Leone, the managing member of respondent's law firm, had business dealings with ARC Properties, Inc. (ARC). As a result, beginning in January 1998 when respondent became the attorney for the Planning Board of Brick Township (PBBT), he recused himself in connection with all ARC applications to the PBBT. Thereafter, the PBBT in turn retained special counsel in all ARC applications.
2. On May 28, 1999, ARC applied to the PBBT for site approval for a 200,000 square foot shopping center project. Respondent also recused himself from this application. ARC was represented before the PBBT by King Kittrick, Jackson and Tronccone in connection with this application.
3. In August 1999, ARC formally retained respondent's firm, through Leone, to assist it in acquiring a Right of Way easement through property owned by the Township of Lakewood, adjacent to the Brick property. If granted by Lakewood Township, the Right of Way easement would allow an alternative access to the shopping center project.
4. Respondent, at Leone's request, provided assistance to ARC by communicating with the client, the Lakewood Township Committee, and appeared before the Lakewood committee and appeared before relevant Lakewood citizen's Groups to urge the adoption of an ordinance that would establish a bidding process for

the sale of the right of Way easement by Lakewood.

5. The owner of a nearby shopping center in Lakewood appeared before the Lakewood Township Committee as an objector to the Right of Way easement.¹ That shopping center was also an objector to the pending ARC application before the PBBT and had objected to prior ARC applications. Nevertheless, the Lakewood Township Committee introduced the requested ordinance on first reading on August 3, 2000. Shortly thereafter, the attorney for the nearby shopping center entered an objection based upon a conflict of interest.
6. Thereafter, through legal research, Leone and respondent learned the scope of relevant court decisions, such as In re A and B, 44 N.J. 331 (1965), In re Dolan, 76 N.J. 1 (1978) and also considered the Advisory Committee on Professional Ethics Opinions 70, 90, 538. Leone and respondent had not been previously aware of the scope of these cases and opinions as they relate to the facts of this case.
7. After reviewing the cases and opinions with members of the firm, respondent and the firm realized that the governing law appeared to prohibit the firm's representation of ARC in any matter. As a result, on August 23, 2000, respondent and the firm immediately withdrew from representation of ARC in all matters and waived the payment of any fees, including a \$25,000 contingent fee. (Attachment A).
8. On August 24, 2000, the Lakewood Township Committee gave final approval to the ordinance establishing the bidding process

¹ ARC sought to construct a home improvement store at this location. The objector was the owner of a nearby competing home improvement center.

for a public sale of the Right of Way easement. The firm and respondent did not participate in this action in any way.

9. On September 14, 2000, Leone after consultation with and at the urging of respondent, on behalf of the firm advised the Office of Attorney Ethics of the matter and stated that the firm had not intentionally violated the applicable ethics rules. He also advised that the firm's actions had been promptly and fully corrected. (Attachment B).
10. During its investigation of this matter, the OAE interviewed respondent, respondent's law partner Stephan Leone, Esq., Ronald Gasiorowski, Esq. (Mr. Gasiorowski was the attorney who objected to respondent's appearance before the Lakewood Township Committee. See Stipulation paragraph 5 above) and Judy Fox Nelson, the secretary for the Planning Board of Brick Township.

[S11-S110.]²

Respondent argued, through counsel, that he learned for the first time during the within ethics investigation that, since the 1965 Supreme Court decision in In re A and B, 44 N.J. 331 (1965), a municipal attorney is prohibited from representing a client in municipal matters in any municipality, if that client has a matter pending in the municipality where the attorney serves as the municipal attorney. Further, the Advisory Committee for Professional Ethics ("ACPE") issued an opinion as early as 1966 prohibiting this type of practice. See Advisory

² S refers to the Stipulation of facts.

Comm. Op. 90 (April 21, 1966), ruling that a municipal attorney may not represent a private client in connection with a variance application in a different municipality when the client is also involved in a project that may require municipal approvals in the attorney's municipality.

Respondent stipulated, and the DEC found, that his conduct in this matter violated RPC 1.7 (b) (conflict of interest) and then-applicable RPC 1.7(c) (conflict of interest/appearance of impropriety).³

The DEC recommended a reprimand.

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

It is well-settled that, absent egregious circumstances or economic injury to clients, a reprimand constitutes sufficient discipline for engaging in a conflict of interest situation. See In re Berkowitz, 136 N.J. 134, 148 (1994) (conflict of interest found between clients of partners in the same law firm, due to proximity of first client's commercial property to second client's proposed residential development); In re Porro, 134 N.J. 524 (1993) (conflict of interest for attorney who

³ Effective January 1, 2004, the appearance of impropriety standard was eliminated from the Rules of Professional Conduct.

represented a developer operating in a municipality where the attorney was both the municipal attorney and the attorney for the sewer authority, represented those entities at the same time while an associate in the attorney's firm served as counsel to the planning board that approved the developer's subdivision, and represented the municipality in a lawsuit in which the sewer authority was a co-defendant); In re Doig, 134 N.J. 118 (1993) (conflict of interest where an attorney undertook the dual representation of two individuals in a business/real estate transaction without obtaining their consent after full disclosure; attorney also engaged in a misrepresentation and had a prior private reprimand); and In re Woeckener, 199 N.J. 273 (1990) (conflict of interest where an attorney represented his wife in connection with city development at the same time that he was the city attorney). Here, the circumstances are not egregious and there is no evidence of economic harm to the parties.

In aggravation, respondent received a private reprimand in 1985 for an RPC 1.7 violation, and a six-month suspension in 1996 for violating RPC 1.7 and RPC 1.8.

In mitigation, respondent immediately returned the retainer to ARC in this matter upon learning of the conflict and reported his misconduct to the Office of Attorney Ethics. We also gave

weight to respondent's significant efforts during the representation itself to avoid a conflict of interest. Finally, we considered letters from various people attesting to respondent's good character. Under all of the circumstances, we determine that a reprimand is sufficient discipline for respondent's misconduct. Member Ruth Lolla did not participate.

We also require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

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

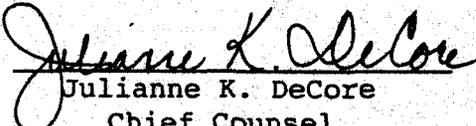
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Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley			X			
O'Shaughnessy			X			
Boylan			X			
Holmes			X			
Lolla						X
Pashman			X			
Schwartz			X			
Stanton			X			
Wissinger			X			
Total:			8			1


Julianne K. DeCore
Chief Counsel