SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-434
District Docket No. XIV-03-295E

IN THE MATTER OF	
CORY J. GILMAN	
AN ATTORNEY AT LAW	

Decision

Argued: February 17, 2005

Decided: March 30, 2005

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

Katherine Hartman 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 disciplinary stipulation, filed by the Office of Attorney Ethics ("OAE").

Respondent was admitted to the New Jersey bar in 1997. He has no prior discipline.

At all relevant times herein, respondent was an associate attorney in the firm of Josephson, Poling &

Wilkinson.[1] Poling, a partner in the firm, was the owner of Shore title Agency, Inc. ("STA"), an agent for commonwealth Land Title Insurance Company.[2]

According to the stipulation,

> [t]he grievance alleged that beginning in approximately 1994, in Ocean City, New Jersey, respondent and other attorneys who held ownership interests in or were employed by title companies provided realtors with boilerplate real estate contracts, free of charge. The attorney-prepared contracts contained no 'three-day attorney review' provision. The realtors had the form contracts executed by prospective purchasers and sellers. By doing this, the three-day attorney review period was avoided and the sale was immediately 'locked up'. The attorneys did not charge a fee for preparing the contracts, but benefited because the form contracts provided that the title company with which the attorney was affiliated would be utilized for the closing. Typically, it was alleged, the contract purchasers were not advised of the benefits of the three-day review period and were not told that the attorneys held ownership interests in the title companies. This practice eventually became so widespread that it became known as "the Ocean City practice.'"

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[1] Although the stipulation referred to respondent as Poling's partner, at oral argument before us, respondent's counsel clarified that respondent was an associate at the firm.

[2] We considered, simultaneously with the within matter, a disciplinary matter against Poling, which arose out of the same facts.

[S1.][3]

Between October 2001 and July 2002, respondent prepared real estate contracts as the attorney for the buyers in ten real estate transactions. Respondent did not charge a fee for his representation, and relied on local realtors to obtain clients. The contracts provided that the buyers agreed to use STA as their title insurance provider. The practice became known as the "Ocean City practice."

After preparing the contracts, respondent would customarily "fax" them to the prospective buyer. In the alternative, the realtor would hand-deliver the contract to the buyer for review and execution.

Respondent would then discuss the contract with the buyer. However, respondent did so in only four of the ten matters below. Moreover, the contracts always named STA as the title agent.

In 2002, respondent ceased his participation in the Ocean City practice.

The ten matters in which respondent utilized the Ocean City practice are summarized in the chart below:

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[3] "S" refers to the December 6, 2004 stipulation of facts.

Client Name	STA Named in Contract	STA Utilized By Client	Respondent Reviewed Contract with Clients	Respondent Disclosed Interest in STA	Respondent Received Fee
Bagnell	Yes	Yes	Yes	No	Unknown
Darrows	Yes	Yes	Yes	No	No
Forte	Yes	Yes	No	Unknown	No
Gallo	Yes	Yes	No	Unknown	No
Hayes	Yes	No	No	Unknown	Unknown
Klacik	Yes	Yes	No	Unknown	No
Leopoldt	Yes	Yes	Yes	No	No
Reilly Real Estate	Yes	Yes	No	Unknown	No
Schroeder	Yes	Yes	Yes	No	No
Wahl	Yes	Yes	No	Unknown	No

Respondent stipulated that he failed to explain the transactions to his buyers/clients to the extent necessary for them to make informed decisions about the representation, in each case a violation of RPC 1.4(b).

Respondent also stipulated conflict of interest violations.

RPC 1.10(a) provides that:

> When lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by RPC 1.7 or RPC 1.9, unless the

> prohibition is based on a personal interest of the prohibited lawyer and does not represent a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

Respondent stipulated that his conduct violated that rule, insomuch as he knowingly represented buyers in real estate transactions when the conflict of interest provisions of RPC 1.7 prohibited his superior, Poling, from doing so. Poling was prohibited from doing so by virtue of his ownership of STA. In all ten matters, the contract called for the buyer to use STA for title insurance. In all but the Hayes matter, the clients used STA for their title insurance.

Respondent admitted that his participation in the Ocean City practice lasted "for several years, and involved numerous contract purchasers and prospective purchasers."

In mitigation, respondent has no prior discipline, was a relatively inexperienced associate attorney, and cooperated with the OAE during its investigation.

The OAE recommended the imposition of a reprimand.

Upon a de novo review of the record, we are satisfied that the stipulation clearly and convincingly establishes that respondent was guilty of unethical conduct.

In the Forte, Gallo, Hayes, Klacik, Reilly Real Estate and Wahl transactions, respondent did not even review the

contracts with his clients. Respondent also failed to advise his clients that title insurance could be obtained from sources other than STA. This failure hampered their ability to make informed decisions about their representations. Respondent, thus, violated RPC 1.4(b).

Additionally, the conflict of interest provisions of RPC 1.7 were imputed to respondent via RPC 1.10(b). They precluded him from representing the within buyer/clients, because of Poling's ownership of STA. Respondent's conduct in this regard violated RPC 1.10(a).

It is well-settled that, absent egregious circumstances or serious economic injury to clients, a reprimand is the appropriate discipline in conflict of interest situations. In re Berkowitz, 136 N.J. 134, 148 (1994). But see In the Matter of Anton Muschal, DRB 99-381 (February 4, 2000) (admonition imposed on attorney who 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); and In the Matter of Jeffrey E. Jenkins, DRB 97-384 (December 2, 1997) (admonition for attorney who engaged in a conflict-of-interest situation by continuing to represent husband and wife in a bankruptcy matter, although the parties had developed marital problems and had retained their own

matrimonial lawyers; it was found that, at times, the attorney advanced the interests of one client, while compromising the interests of the other).

Here, no egregious circumstances or harm to the clients are present. Moreover, this is respondent'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 at Poling's firm. In light of these compelling mitigating factors, we determine that an admonition, rather than a reprimand, is sufficient for respondent's involvement in the Ocean City practice. 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

In the Matter of Cory J. Gilman
Docket No. DRB 04-434

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Disposition: Admonition

Members	Admonition	Suspension	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
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Chief Counsel