SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-018
District Docket No. XIV-2010-0296E
and VII-2011-0900E

IN THE MATTER OF	:
MARA YOELSON, a/k/a MARA YOELSON OLMSTEAD	:
AN ATTORNEY AT LAW	:

Decision

Argued: April 19, 2012

Decided: July 16, 2012

Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics.

David H. Dugan, III 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 recommendation for discipline (reprimand) filed by the District VII Ethics Committee (DEC). Respondent was charged with having violated RPC 8.4(c)(conduct involving fraud, deceit, dishonesty or misrepresentation) and RPC 8.4(d)(conduct prejudicial to the

administration of justice). The Office of Attorney Ethics (OAE) recommended a reprimand to a short suspension. We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1994. She has no prior discipline. She retired from the practice of law in 2006.

The facts are largely undisputed. A Colorado magistrate contacted ethics authorities in New Jersey after respondent admitted during cross-examination in a Colorado custody/visitation hearing, that she had forged a New Jersey court order. The order purported to permit her son's use of her maiden name as his surname, when registering the son in a Colorado elementary school. The magistrate turned over to the OAE the second page of respondent's phony order, which had purportedly been signed by Jane Grall, J.S.C., a New Jersey Superior Court judge.

In respondent's answer and testimony, she admitted virtually all of the salient facts, a synopsis of which is contained in her August 16, 2010 reply to the OAE investigator. In that letter to the OAE, respondent wrote that in January 2000, she gave birth to her elder son, Zachary. She was

affianced to Zachary's father, Barry Angeline, at the time, but they never married. Zachary's birth certificate bore the last name "Angeline." Shortly after Zachary's birth, Barry Angeline moved to California. In 2002, he moved to Virginia. All the while, respondent and Zachary lived in Princeton.[1]

In 2002, respondent enrolled Zachary in pre-school in Princeton using her last name "Yoelson," as his last name. In 2005, she enrolled him for kindergarten in the Princeton regional school system, again using the last name Yoelson. Zachary continued to use his mother's last name through a new relationship that respondent entered into with Dean Olmstead, whom she married in 2005. Upon their marriage, she took the last name "Olmstead."[2]

The subject of Zachary's last name came up in the spring of 2007, when Angeline visited Zachary's Princeton school. At the

---

[1] It appears, from Angeline's testimony in the Colorado matter, that, despite his bi-coastal living situation, he unfailingly visited Zachary every other weekend, for the ten years discussed in the record.

[2] Dean passed away in 2010.

time, the principal informed Angeline that the school had made an administrative error, when enrolling Zachary with respondent's last name, and that, consistent with the birth certificate, the school should have registered him under the name "Angeline." Neither the school nor Angeline sought to change the school records to reflect Zachary's last name as Angeline. Therefore, his mother registered him for the 2007-2008 school year as Zachary Yoelson.

In 2008, while in the third grade, Zachary transferred to a charter school, in Princeton, still maintaining his mother's last name. Angeline again did not object to the use of the last name "Yoelson."

In 2009, respondent and her family moved to Colorado, where Dean had taken a new job. In her letter to the OAE, respondent explained the following:

> [Dean] had been commuting between New Jersey and Colorado for a year and a half while fighting late-stage cancer, and the commute was proving too much. We found a house in Colorado to rent, and I went to the Cherry Hill School District office a few days before the start of school to register Zack for 4th grade. As I had always done, I titled out his paperwork using the name "Yoelson", handed in his "Yoelson" records from his previous school and turned in his

Angeline birth certificate.

> The woman who reviewed the paper work looked at Zack's school records and his birth certificate and questioned the difference between the last names. I explained Zack's registration history and that he had always used the name "Yoelson," but she was insistent that it looked like I was registering two different students. She said that in order to register Zack, she needed an official document that connected Zachary Angeline and Zachary Yoelson, and that I should come back when I had one.
>
> [Ex.D,1 to 2.]

Respondent did not have a legitimate document that connected the two names:

> So in a new community, with a sick husband, with a few days before school, and at a loss for what to do, I drafted an order to be used for the sole purpose of registering Zack. I found a form on the internet, and I photocopied it using a judge's stamp I found on a document in my files. The order allowed Zachary Angeline to be known as Zachary Yoelson. I went back the next day, handed in the form, and successfully registered Zack.
>
> [Ex.D,2.]

Thereafter, Angeline became displeased that Zachary had been moved to Colorado, a place from which it was much more difficult for him to conduct bi-weekly visitation. So, Angeline

filed a legal action in Colorado and, for the first time, raised the issue of Zachary's last name.[3]

The OAE presented a transcript of the Colorado proceedings, conducted on May 26, 2010, before Magistrate Kara Martin, District Court, and County of Arapahoe. That transcript contains respondent's confession about the phony order:

> Q. But answer my question. Did you file something with the school in Greenwood Village, Greenwood Elementary saying that you changed his name to Zachary Yoelson. I'm sorry if I pronounced that wrong.
>
> A. Yes. (inaudible)
>
> Q. And did you submit something that was signed by a judge?
>
> A. Yes.
>
> Q. But, in fact, no judge ever changed the name did you [sic]?
>
> A. That's true.
>
> Q. So did you draft an order that you put a

[3] Apparently, up until that time, respondent and Angeline had always maintained a very good relationship with respect to visitation with Zach. Neither parent had ever sought a court order to establish visitation, nor had they set them down in writing.

signature line for a judge that was in fact not signed by a judge.

A. That's true.

Q. Okay. And you're an attorney, aren't you?

A. I am.

Q. And your [sic] licensed to practice law.

A. In New Jersey.

[Ex.C-6,68-1 to 18.]

Respondent, who was visibly distraught when testifying at the DEC hearing about her late husband, recalled the tremendous stresses in place in August 2009. She was trying to set up a new home in Colorado for her family, which now consisted of her husband Dean, her son Zachary, their toddler, Tyler, and Dean's three daughters, who spent summers with their father. Having to face the setback to her husband's health clouded her thinking. Respondent professed embarrassment by her actions, stating that she had never done anything like that in the past and would never do it again, but, rather, should have taken more time to follow proper procedure.

Regarding the pressure she faced, respondent testified as follows, at the DEC hearing:

THE WITNESS: So when we took the job in Colorado, we thought that we had beaten [the cancer]. So we packed up the house to go and all the boxes were there in the house. His scan came back, and it wasn't clean, it had metastasized into his lungs.

MR. DUFF [Panel Chair]: Ms. Olmstead, it's perfectly okay if you take a moment.

THE WITNESS: I just want to get through it, please.

MR. DUFF: Okay.

THE WITNESS: I'm sorry. Okay. So it had metastasized, but it was too late, everything -- we had already taken the house and the job, so we moved out to Colorado. And so when this registration was going on, you know, this whole thing —

MR. DUGAN: You're talking about the school registration?

THE WITNESS: School registration, right, it was at the end of the summer, and, you know, I was out there with all the boxes were [sic] now in the new house, and there were -- you know, I was getting a new doctor, new chemo for him, and there were five kids in the house at that point, it was

> my two and my three stepdaughters, and this was the last thing that I needed, you know.
>
> [T23-8 to T24-9.][4]

With Dean Olmstead's health quickly failing, the family moved back to Princeton, in July 2010, about a month after Zachary completed the fourth grade. Dean passed away three months later, in October 2010.

Respondent's counsel noted that the phony order was never presented to court to support the name change, that she intended it only for school officials, and Angeline, not she, presented it to the Colorado court.

The only exhibits that respondent introduced below were a June 1, 2010 "Parenting Time Order" from the Colorado court, containing no reference to Zachary's last name, and a March 4, 2011 stipulation order between respondent and Angeline, changing Zachary's last name to Yoelson-Angeline.

---

[4] "T" refers to the transcript of the September 13, 2011 DEC hearing.

In a March 7, 2012 brief to us (Rb), respondent's counsel argued that the RPC 8.4(d) charge had not been proven by clear and convincing evidence:

> Specifically, it is uncontested that C-2 [the New Jersey court order] was prepared and utilized by respondent for the sole purpose of enrolling Zachary in the Colorado school system. C-2 did not conflict with any prior court order. Respondent never presented C-2 to any court as evidence of anything. C-2 was introduced into the Colorado court proceedings by adverse counsel for the sole purpose of challenging respondent's credibility. In that context all parties concerned, including the court, recognized the document to be fictitious.
>
> [Rb7.][5]

Counsel urged us to impose an admonition, citing In re Lewis, 138 N.J. 33 (1994), where the attorney, a defendant/landlord in a municipal court matter, attempted to deceive the court by introducing into evidence a document falsely showing that a heating problem in an apartment that he owned had been corrected. He did so in order to avoid the issuance of a summons. The admonition was premised, in part, on

---

[5] "Rb" refers to respondent's counsel's brief to us.

the fact that the court saw through the attempt and was not misled by his actions.

The DEC found that respondent's fabrication of the New Jersey order violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The DEC dismissed the charged violation of RPC 8.4(d), concluding that respondent did not engage in conduct prejudicial to the administration of justice, because respondent did not submit the document to a judicial body.

In mitigation, the DEC accepted the factors cited by the OAE, specifically, respondent's ready admission of wrongdoing; the lack of prior discipline; the full cooperation with ethics authorities; and her retirement from the practice of law, with no intention of returning to it. The DEC rejected the aggravating factors advanced by the OAE, namely, that respondent's was a "continuing course of dishonesty" and that her conduct was part "of a pattern."

The DEC recommended the imposition of a reprimand, without citing specific case law to support its determination.

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

To her credit, when questioned by the Colorado judge about the circumstances of the New Jersey order, respondent was immediately forthcoming. Her fabrication of that document was an expedient, but dishonest and misguided, attempt to effect the change to her son's last name, in order to enroll him in a new school, in a new state, after moving the family to Colorado, in August 2009.

It is beyond dispute that, by her actions, respondent misled Arapahoe County school authorities that Zachary was legally permitted to use "Yoelson" as his last name. In doing so, respondent violated RPC 8.4(c). Unlike the DEC, we find also that respondent violated RPC 8.4(d). By affixing the signature of a New Jersey judge to the phony court order and then disseminating it to Colorado school officials as an authentic New Jersey document, respondent created a virtual New Jersey judicial matter out of thin air, for her own purposes.

The sanction imposed on attorneys who have fabricated (and/or forged) documents (usually to conceal their mishandling

of legal matters) has varied, depending on the specific facts of each case. The Court has considered the extent of the wrongdoing, the harm to the clients or others, and mitigating circumstances. See, e.g., In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award in order to mislead his partner; the attorney then lied to the Office of Attorney Ethics about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); and in a more serious case, In re Bosies, 138 N.J. 169 (1994) (six-month suspension for misconduct in four matters, including pattern of neglect, lack of diligence, failure to communicate with clients, failure to abide by discovery deadlines contained in a court order, failure to abide by the clients' decisions concerning the representation, and pattern of misrepresentations; for a period of five months the attorney engaged in an elaborate scheme to mislead his clients that, although he had subpoenaed a witness, the witness was not cooperating; to "stall" the client, the attorney prepared a motion for sanctions against the witness, which he showed the

client but never filed with the court; he then informed the client that the judge had declined to impose sanctions; thereafter, the attorney traveled three hours with his client to a non-existent deposition, feigned surprise when the witness did not appear, and then traveled to the courthouse purportedly to advise the judge of the witness' failure to appear at the deposition; although the attorney's conduct involved only four matters, the six-month suspension was predicated on his pattern of deceit). But see, In re Lewis, 138 N.J. 33 (1994) (admonition for attorney who attempted to deceive a court by introducing into evidence a document falsely showing that a heating problem in an apartment that he owned had been corrected, in order to avoid the issuance of a summons; the admonition was imposed in part because the court saw through the ruse, and was not deceived by the attorney's actions).

This case is more serious than the admonition case, Lewis, for the type of document crafted. Lewis created a heating and plumbing receipt. Here, respondent created a court order and affixed the signature of a sitting New Jersey judge to it.

Compared to Sunberg (reprimand), both respondent and attorney Sunberg fabricated documents for use outside the legal

system – respondent to register her son for school, and Sunberg to fool his law partner about his workload. Unlike respondent, Sunberg then lied to ethics authorities about his actions. Neither respondent nor Sunberg had prior discipline.

The suspension case, Bosies, is far and away more serious in number and scope of violations than this case. Thus, a suspension is not warranted.

We conclude that respondent's misconduct is closest to Sunberg's, where both attorneys' actions were for a personal purpose unrelated to a court matter. Here, respondent was engaging in a parental act – enrolling her child in school.

In aggravation, respondent fabricated no ordinary document. She created out of whole cloth, a fictitious New Jersey court order.

In mitigation, respondent was obviously under extraordinary pressure to act, with just days before the deadline to enroll her son in a new school, in a new state, while dealing with the terrible reality that her husband had not beaten his cancer, as had been hoped, but was terminally ill with it.

So, too, respondent has no prior discipline, readily admitted her wrongdoing, and expressed remorse for her actions.

Although not traditional mitigation, we note that respondent retired from the practice of law in 2006 with no intention of returning to the practice of law. There is no impediment, however, to her returning to the full practice of law, if she desires to do so.

Under all of the circumstances, we determine that a reprimand is the appropriate sanction.

Member Doremus voted to impose an admonition. Member Baugh 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 Mara Yoelson a/k/a Mara Yoelson Olmstead
Docket No. DRB 12-018

Argued: April 19, 2012

Decided: July 16, 2012

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh						X
Clark			X			
Doremus				X		
Gallipoli			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			7	1		1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel