SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-006
District Docket Nos. XIV-2011-0309E and XIV-2012-0539E

IN THE MATTER OF	:	
CARL D. GENSIB	:	Dissent
AN ATTORNEY AT LAW	:	

The majority has recommended that respondent be suspended from the practice of law for three months. We dissent from that recommendation for the reasons that follow and recommend that respondent be reprimanded.

We start with the recognition that respondent has a lengthy and serious disciplinary history, although most of this ethics history is based on incidents that occurred after the events out of which the instant allegations arose. He is now charged with ethics violations in three cases, none of which, absent his history, would individually justify more than an admonition. None of the three involved dishonesty and each were minor in nature, causing no client or anyone else harm.

As already stated, this matter grows out of three separate and different incidents. First, respondent is charged with gross neglect for failing to request identification from a person whom he did not know before notarizing her signature on a deed. Although the person who inexplicably appeared at the appointed time at respondent's office to sign the deed was an impostor for Webster, the person whose signature was needed, the appearance of an impostor under the circumstances described in the record and discussed by the majority was unexpected and surprising and the record does not suggest any reason why respondent should have known that the person who appeared in his office was not Webster. Webster's execution of this deed was needed as a precaution to cure a technicality requested by a title insurer four years after the property had been transferred at a 2006 closing handled by respondent. Webster's signature on a corrective deed was requested when the 2006 buyer wanted to sell the property because Webster had been mistakenly listed as purchaser of the property on a first version of the 2006 deed. Here, there was no claim by the real Webster that she would not have signed the corrective deed and no reason why she would not have done so since she had been mistakenly noted on a deed as

the buyer in the 2006 transaction and since she never had an ownership interest in the property and did not claim one.

Respondent's mistake was not requesting identification from the person who came to his office to sign the deed. He is required to request identification under such circumstances and obviously should have done so since he did not know Webster. However, he had no reason to believe, when he notarized the impostor's signature, that the person appearing at his office, after leaving a voice message that Webster was coming to sign, was not actually Webster. This is not a case where respondent benefited from his failure to request the signer's identification or where any harm was done.

The majority notes that improper execution of jurats ordinarily results in an admonition or reprimand and that it is usually an admonition where the attorney "reasonably believes it has been signed by the proper party." Examples of aggravating factors justifying a reprimand noted by the majority are: (1) the attorney directs a secretary or other person to sign the party's name, or he signs it himself, and then notarizes the signature; (2) harm to the parties; (3) the attorney's personal stake in the transaction; or (4) discipline for prior violations. When an attorney directs someone to sign for a

party or executes a document himself for someone else, he knows that the legitimate party has not signed but deliberately falsely notarizes the document. Here, no clear and convincing evidence established that respondent knew that the signature he was notarizing was a forgery. Indeed, respondent's secretary provided a certification to the OAE describing the woman who appeared to sign the deed, stating that she was Webster.

None of the first three aggravating factors listed above exist here. However, respondent does have a prior violation involving false jurats. In re Gensib, 185 N.J. 345 (2005). In that case, where respondent was reprimanded, signatures of a husband and wife had been placed on several documents outside of respondent's presence that he then notarized and, in addition, he knew that the husband had placed his wife's signature on the documents. While that prior case and this one both involve false jurats, they are very different in nature, as this case does not involve a knowingly false jurat.

Based on the evidence in the record, we do not believe that respondent violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). However, by failing to

request identification, he was guilty of gross negligence, in violation of RPC 1.1(a), because that oversight did lead him to notarize an impostor's signature.

Second, respondent is charged with violating RPC 7.1(a) for using a misleading letterhead that contained the name of an associate five years after she had left his firm for maternity leave and it was clear after so long that she would not be returning. The majority recognizes that an admonition is usually imposed for using a misleading letterhead. Indeed, all three cases cited by the majority imposed only admonitions for such conduct – although in all three, there were aggravating factors that do not exist here such as, in one, naming two sitting judges who had never been associated with the firm on the attorney's letterhead as "of counsel," a letterhead surely more likely designed to mislead the public than, as here, retaining on respondent's letterhead the name of a publically unknown associate. If an admonition in that case, In the Matter of Raymond A. Oliver, DRB 09-368 (May 24, 2010), was sufficient discipline, no more should properly be imposed on respondent here.

Third, in the Dressner matter, the crux of the grievance is that respondent did not respond to his former client's many inquiries about the release of $4,000 that had been escrowed after a January 5, 2010 real estate closing in which respondent represented Dressner, the buyer. These funds had been held in the trust account of the seller's attorney, Gassaro, to pay a plumber, once repairs on the property were completed. Gassaro released $2,111 of the escrowed funds to the plumber and sent $1,889 to respondent for his client, in July 2010, after the plumbing issues were resolved. However, respondent either did not receive that check or did not know he had received it. In any event, that check was never cashed and, over the course of about two subsequent years, Dressner, thinking it was respondent who was holding the escrowed funds, periodically inquired about the release of the money.

Dressner testified that he was satisfied with respondent's handling of his purchase of the property, but filed the ethics grievance because he had not received the balance of the escrowed funds and at some point no longer got responses from respondent to his inquiries. Once the ethics complaint was filed and the ethics investigator contacted Gassaro, Gassaro verified that he still had the $1,889 in his trust account and

sent a check to Dressner. Although the real estate closing occurred on January 5, 2010, Gassaro did not send the $1,889 to Dressner until September 26, 2012. Gassaro confirmed to the DEC investigator that respondent and he had spoken quite a few times about this matter, in getting the plumbing issue resolved.

While it does seem that the confusion over distribution of this money should have been cleared up by respondent more quickly, this is not a case where any harm was done. The delay in release of the funds, which respondent, after the closing, had facilitated by assisting in working out the issue of how much the plumber was to receive, was at least partly due to the fact that Gassaro's original check was lost. As time passed with Dressner's continuing sporadic inquiries, respondent's lack of responsiveness to those inquiries crossed the line and he became guilty of lack of diligence and failure to communicate with his client. But with no harm done, respondent's offense is a "mild" version of RPC 1.3 and 1.4(b) violations. We do not agree with the majority's characterization of respondent's actions when it says that respondent "grossly mishandled the Dressner matter."

The majority acknowledges that such violations normally result in an admonition. Moreover, the cases it cites where an admonition was imposed involve more serious inaction than here. Each involves an attorney's failure to file a promised complaint or petition along with failure to communicate with the client, In the Matter of John David DiCiurcio, DRB 12-405 (July 19, 2013), and In the Matter of Edward Benjamin Bush, DRB 12-073 (April 24, 2012), or to take necessary action in an ongoing litigation matter, causing the client's complaint to be dismissed. In the Matter of Rosalyn C. Charles, DRB 08-290 (February 11, 2009).

Lastly, we note again, that, although respondent has a serious ethics history, only one ethics violation occurred prior to these violations and that one violation resulted in a reprimand.

In conclusion, respondent committed ethics violations in three cases, each of which normally justifies an admonition. None involved dishonesty or an intentional misrepresentation, caused a client or any other person harm, or benefitted respondent. We do not believe that three minor admonition-type violations add up to a three-month suspension, where the attorney's only prior violation resulted in a reprimand.

Because there were three different cases implicating the ethics rules and because respondent has an ethics history, we would impose a reprimand.

Disciplinary Review Board
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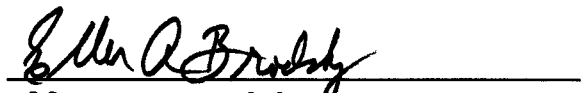
By: 
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