SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-152
District Docket Nos. XIV-2007-0631E
and IIIA-2009-900E

IN THE MATTER OF	:
DONALD W. BEDELL, JR.	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 22, 2010

Decided: October 6, 2010

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

Joseph J. Garvey appeared on behalf of respondent.

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

This matter was originally before us at our April 15, 2010 session, on a recommendation for an admonition filed by the District IIIA Ethics Committee (DEC), which we determined to treat as a recommendation for greater discipline. R. 1:20-15(f)(4). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1991. He has no disciplinary history.

On April 9, 2009, the Office of Attorney Ethics (OAE) filed a formal ethics complaint against respondent, charging him with having violated RPC 1.1(a) (gross neglect), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). On September 23, 2009, the DEC conducted a hearing, attended by respondent and the grievants. Only respondent testified.

On August 29, 2004, grievants Holly Malzone and Kevin Hibberd were injured in a South Carolina automobile accident. They were passengers in one of the cars involved in the accident. In September 2004, they retained respondent to represent them.

In early June 2007, Adam Walker, of Progressive Insurance Company, offered $17,500 to settle Malzone's case and $15,000 to settle Hibberd's. According to the clients, they never granted

respondent authority to settle their case. Respondent claimed that, due to a miscommunication between him and his secretary, he mistakenly believed that the clients had accepted Progressive's settlement offers.

On June 11, 2007, respondent prepared individual releases for both clients, reflecting the above amounts. He signed the clients' names, attempting to mimic their signatures. Respondent also signed his own name, as a witness to the signature on each release, knowing that neither client had signed it. In addition, he took the jurat on both releases, falsely indicating that his clients had personally appeared before him and signed the documents.

On that same date, respondent sent the releases to Walker. Several days later, he "became aware that the [clients] had rejected the settlement offers." Respondent then spoke with Walker, who increased the Malzone offer to $18,500, but kept the offer to Hibberd at $15,000.

On June 18, 2007, respondent met with Malzone, Hibberd, and their mothers, at which time the clients confirmed their rejection of the settlement offers. Respondent did not inform them that he had sent to Progressive the executed releases on

which he had forged their signatures, witnessed their signatures, and affixed jurats.

On June 21, 2007, respondent wrote to Walker and advised him that the Malzone and Hibberd cases were, in fact, not settled. He explained that "[t]here was some confusion as the [sic] whether or not the respondent actually received settlement drafts from Progressive." Nevertheless, "settlement drafts were never negotiated."

In July 2007, Malzone and Hibberd retained new counsel in New York, the other driver's home state. They did not become aware of the releases submitted by respondent to Progressive until August 2007, when Progressive filed a motion to enforce the settlements in New York.

Respondent appeared in a New York court to explain what had transpired with the initial "settlement." Presumably, the New York court denied Progessive's motion, as the "settlements" obtained by respondent were not enforced. Ultimately, New York counsel settled Malzone's and Hibberd's cases for $19,000 and $17,500, respectively.

At the DEC hearing, respondent testified that he had suffered from significant health problems at the time of the

alleged unethical conduct. He provided documentation to support his assertion.

The DEC noted that, in respondent's answer to the formal ethics complaint and in his testimony, he "largely admitted the allegations" against him. "[A]lthough with some concern regarding the respondent's level of diligence," the DEC found that "a miscommunication occurred between the respondent and his office staff that led to the respondent's mistaken belief that the settlement offers were accepted by the grievants."

The DEC also found that respondent had acted in a timely fashion to correct the "mistaken" settlements by meeting with the clients in his office and notifying Progressive, in a June 21, 2007 letter, that there was no settlement. Finally, the DEC noted that no settlement checks were ever negotiated by respondent.

The DEC concluded that the "crux" of respondent's unethical conduct was his "purposeful act of forging his client's [sic] signatures on the releases and taking the jurats for same" and that he "knew, without any question, that his client's [sic] did not sign the releases and his witness was false." Based on its findings, the DEC unanimously concluded that respondent had violated RPC 8.4(c). The DEC remarked that respondent's

"admitted conduct of forging his client's [sic] signatures and taking a false jurat cannot be condoned or excused under any circumstances."

In mitigation, the DEC considered the following factors: respondent's admission of wrongdoing; his acceptance of responsibility for his actions; his expression of sincere contrition and genuine remorse; his apology to Malzone and Hibberd; his "serious health problems" at the time (cavernous transformation of portal and splenic vein with established thrombosis), which necessitated at least two surgeries; the unlikelihood that his conduct would be repeated; the isolated nature of the incident; the absence of personal gain; the lack of injury to the clients; and the lack of a disciplinary record.

The DEC unanimously dismissed the RPC 1.1(a), RPC 1.4(b), and RPC 1.4(c) charges:

> All evidence suggests that the Grievants were properly and diligently represented throughout the litigation until the issues arose regarding the settlement. In fact, the final settlement figures obtained by the Grievants were not much more than the settlement amounts the Respondent achieved. As noted above, the Panel finds that the miscommunication between the Respondent and his staff is where the problems arose. The Respondent endeavored to correct that

> mistake by contacting Progressive and notifying them that there was no settlement. Unfortunately, the Respondent's unethical act of fraudulently executing the releases eliminated his ability to simply correct a mistake. A mistake can be forgiven; a purposeful fraudulent act cannot. The ethical lapse(s) of the Respondent in this case emanate directly from his act(s) of fraudulently executing the releases.
>
> [HPR¶32.][1]

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

Respondent represented two clients in connection with injuries sustained in an automobile accident. He then settled the personal injury claims with the insurer, but without the clients' knowledge or authority. Thereafter, he prepared releases for their signatures, but did not present them to the clients. Instead, he forged the clients' signatures on the releases, signed his own name as a "witness," and affixed his jurat to them. He then sent the releases to the insurer, with a cover letter falsely stating that the releases had been executed by his clients. His several misrepresentations violated RPC

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[1] "HPR" refers to the January 11, 2010 hearing panel report.

8.4(c). He also failed to inform his clients that he had settled their claims, in violation of RPC 1.4(b) and (c).

Like the DEC, however, we determine to dismiss the gross neglect (RPC 1.1(a)) charge, as not supported by clear and convincing evidence.

The procedure surrounding the execution of jurats and the taking of acknowledgments must be met in all respects. In re Surgent, 79 N.J. 529, 532 (1979). Five steps are involved in notarizing documents:

> (1) the personal appearance by the party before the attorney;
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> (2) the identification of the party;
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> (3) the assurance by the party signing that he is aware of the contents of the documents;
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> (4) the administration of the oath or acknowledgment by the attorney; and
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> (5) execution of the jurat or certificate of acknowledgment by the attorney in presence of the party. [Jurats and Acknowledgments, Disciplinary Review Board Notice to the Bar, 112 N.J.L.J. 30 (July 14, 1983).]
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> [In re Friedman, 106 N.J. 1, 7-8 (1987).]

The sanction for the improper execution of jurats is ordinarily either an admonition or a reprimand. When the

attorney witnesses and notarizes a document that has not been signed in the attorney's presence, but the document is signed by the legitimate party or the attorney reasonably believes it has been signed by the proper party, the discipline is usually an admonition. See, e.g., In the Matter of William J. Begley, DRB 09-279 (December 1, 2009) (as a favor to an acquaintance, attorney witnessed and notarized a real estate deed and affidavit of seller's consideration that were already signed, trusting the acquaintance's story that the signatures were those of his parents, who were too infirm to attend the closing; the son was actually perpetrating a fraud upon his sickly parents at the time; the attorney, who received no fee, had no prior discipline in thirty-five years at the bar); In the Matter of Richard C. Heubel, DRB 09-187 (September 24, 2009) (attorney prepared a deed for an inter-family real estate transfer and mailed it to the signatory; the deed was returned signed but not notarized; the attorney then notarized the signature outside the presence of the signatory); In the Matter of Martin G. Margolis, DRB 02-166 (July 22, 2002) (attorney notarized loan documents signed by client outside of the attorney's presence; the attorney also failed to utilize a written fee agreement); and In the Matter of Stephen H. Rosen, DRB 96-070 (1996) (attorney

witnessed and notarized the signature of an individual on closing documents signed outside of his presence; he also failed to cooperate with disciplinary authorities.

However, if, as here, an attorney improperly signs a party's name, the appropriate discipline is a reprimand. See, e.g., In re Uchendu, 177 N.J. 509 (2003) (attorney signed clients' names on documents filed with the Probate Division of the District of Columbia Superior Court and notarized some of his own signatures on these documents); In re Giusti, 147 N.J. 265 (1997) (attorney forged the signature of his client on a medical record release form; the attorney then forged the signature of a notary public to the jurat and used the notary's seal); and In re Reilly, 143 N.J. 34 (1995) (attorney improperly witnessed a signature on a power of attorney and then forged a signature on a document). But see In the Matter of Robert Simons, DRB 98-189 (July 28, 1998) (admonition for attorney who signed a friend's name on an affidavit, notarized the "signature," and then submitted the document to a court; extensive mitigation considered).

In mitigation, we considered the numerous factors cited by the DEC, with the exception of the offered medical condition.

Respondent provided no proof that it played a role in his unethical behavior.

Finding this case similar to Uchendu and Giusti (reprimands), where, as here, the attorneys forged clients' names on documents and then affixed jurats to them in an attempt to "legitimize" the documents, we determine that a reprimand, too, is the appropriate sanction in this case.

Member Clark 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Donald W. Bedell, Jr.
Docket No. DRB 10-152

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Decided: October 6, 2010

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark						X
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8			1

Julianne K. DeCore
Chief Counsel