SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-311
District Docket No. XIV-04-2E

IN THE MATTER OF

WARREN W. HOMAN

AN ATTORNEY AT LAW

Decision

Argued: January 17, 2008

Decided: April 17, 2008

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

William B. McGuire appeared on behalf of respondent.

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

This matter came before us on a recommendation for a reprimand filed by special master Marvin N. Rimm, J.T.C. (retired), based on respondent's fabrication of a promissory note, his forgery of the witness's signature, and his failure to

admit these misdeeds to the OAE during its investigation. The OAE requested that respondent receive a one-year suspension, while the respondent urged us to impose the reprimand recommended by the special master. For the reasons expressed below, we determine to impose a three-month suspension on respondent.

Respondent was admitted to the New Jersey bar in 1966. He maintains an office for the practice of law in Carneys Point. He has no disciplinary history.

The first count of the three-count ethics complaint charged respondent with falsifying evidence (RPC 3.4(b)), knowingly making a false statement of material fact to disciplinary authorities (RPC 8.1(a)), committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects (RPC 8.4(b)), and conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)). The charges arose out of respondent's fabrication, forgery, and failure to admit these misdeeds to the OAE during its investigation.

The second count of the complaint charged respondent with engaging in a conflict of interest (RPC 1.8, presumably (a)), as a result of his failure to reduce to writing the terms of a

client's "loan" to him and his failure to advise her to seek the advice of independent counsel prior to making the loan. Finally, the third count of the complaint charged respondent with violating RPC 8.4(c) as a result of his alleged misrepresentation, on a MorganStanley "household relationship form" that his client was a parent in respondent's household.

At the hearing before the special master, the testimony and evidence provided to the OAE during its investigation revealed the following factual information.

In the fall of 2002, Julia Chamberlain contacted respondent and informed him that she held a power of attorney for Ada Leap, who was living in a Carneys Point nursing home. Respondent had met Chamberlain in a social context "once or twice over the years." He had known Leap for many years, both through church and through their fathers, each of whom had owned a shop in town.

Chamberlain told respondent that she was having difficulty managing Leap's affairs and that Leap had stated that, if Chamberlain could no longer continue to act as the attorney-in-

fact, she wanted respondent to take over.[1] Chamberlain asked respondent if he would take over for her. He declined because he had heart problems and because he was trying to cut back on his work. Thereafter, Chamberlain continued to call respondent every week to ten days. Each time, he declined to take over the power of attorney for her.

At some point, respondent offered to assist Chamberlain in carrying out her duties under the power of attorney. For example, he offered to contact the realtor that had listed Leap's house for sale. In response to Chamberlain's complaints that she was having difficulty getting a good return on Leap's investments, respondent suggested that Chamberlain contact a financial adviser and offered to provide her with some names.

In December 2002, respondent and Chamberlain discussed a proposed line of credit, which respondent would draw down against Leap's assets. He explained how the idea had come about:

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[1] Respondent learned through another attorney that Leap had named him alternate executor under her will. He speculated that this could have been why she wanted to grant him a power of attorney.

> Well, leading up to that, one of my telephone conversations with her, when she said that she was only able to get, like, 1 to 2 percent return on the CDs that she had, I had told her that I had been in the process of contacting a bank about obtaining a loan or a line of credit myself and they were paying – their interest rate was 4-1/2 to 5 percent. And I was explaining to her that's how the bank makes its money. She puts it in at 1-1/2 and they loan it out for 4-1/2.
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> In passing comment I said, you ought to be the bank, loaning that kind of money instead of on the CDs. That led on to the next conversation when she called back and she asked me if I would borrow the money from her or from Mrs. Leap and pay her the 4-1/2 to 5 percent. And I thought about it. And on our next conversation I told her that I would, in fact, when I needed the money, to [sic] call her and consider borrowing the money from her.
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> [1T199-16 to 1T200-9.[2]]

When one of Leap's CDs came due that same month, Chamberlain called respondent and wanted to loan him money. Respondent initially declined, stating that he did not want any money at that time and did not want to pay interest on money that he did not need. When Chamberlain balked, claiming that

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[2] "1T" refers to the hearing transcript dated April 17, 2007.

respondent was backing out of what she believed to have been their agreement, he arranged to meet with her personally to further discuss the matter.

The meeting also took place in December 2002. Respondent told Chamberlain that he was interested in the line of credit and explained how it worked, namely, that draws are made against it over a period of time and that interest begins to accrue on the date of the draw. Respondent had a yellow writing tablet with him at the time and wrote on the paper that he would pay "5 percent on an amount up to $100,000, payable within one year." According to OAE investigator Gary K. Lambiase, the five percent rate "was generous on [respondent's] part given the interest rates at that time."

Respondent also counseled Chamberlain that what she needed for Leap was long-term loans, not short-term loans. Moreover, she needed some financial assistance in developing a plan for taking care of Leap's expenses on a long-term basis.

Upon the conclusion of the meeting, respondent left the yellow piece of paper with Chamberlain, but did not make a copy for himself. Instead, he told Chamberlain that, when he actually borrowed the money, he would "put it in a more formal note." He never did prepare a formal note.

As of December 2002, respondent did not know the value of Leap's estate. He, however, was not in financial difficulty. According to Lambiase, respondent had "[m]ore than adequate funds" with which to repay the loan. In fact, at the time, respondent testified, he had $2.5 million in securities and could have borrowed against that asset. His net worth was approximately $5 million.

When respondent was asked why he would need the funds in the months ahead, he explained that his daughter was getting married that year, and that he had agreed to loan her and his son money to purchase a house. Respondent also was asked to explain why he wanted to borrow money, given his assets. Respondent testified:

> Well, at that time the market was at the bottom. I didn't have – let me go back.
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> I was in a period of transition at that time. I was ready to cut back on my practice. Mike and I had dissolved our partnership and we had sole proprietorships. My income was not going to be what it had been in the past. I had to, over the following year, to change assets around so that I could get into more income producing-type assets.
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> It was not a good time for selling anything because you would have gotten your rock bottom price for it. I didn't want to sell, number one, because the market was way

down. Number two, I would have had to pay tax, capital gains tax, on anything I sold.

So until I could get my transition or my assets in better shape for my coming semi-retirement, it was easier, not knowing exactly how much expense I was going to run into in that year, to borrow the funds so that by the end of the year I would be in better shape to turn around and pay that off.

[2T60-25 to 2T61-21.[3]]

Respondent's son Greg, who worked in the securities industry, testified that, regardless of how the market is doing, it is not unusual for someone with substantial assets to borrow money either directly or through a line of credit at a rate of interest rather than to simply pay the bills by selling off securities. If one has the ability to repay a loan or line of credit, then borrowing the money is "a smarter move."

In January 2003, Chamberlain called respondent and informed him that she had been diagnosed with cancer and that she "really needed [him] to take over as power of attorney for Mrs. Leap."[4]

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[3] "2T" refers to the hearing transcript dated April 18, 2007.

[4] The OAE did not challenge Chamberlain's competency.

Because Chamberlain stated that there was no one else who could take over, respondent agreed to do so.

On January 7, 2003, respondent met with Chamberlain and Leap. Chamberlain explained to respondent that Leap was competent and fully aware of the reason for the change in the power of attorney. Leap recognized respondent and had a discussion with him about her church and the minister. They also discussed Chamberlain's illness, with Leap expressing her sorrow that Chamberlain had to give up the power of attorney. Leap signed the power of attorney, which had been prepared by respondent.[5]

Respondent's secretary, Sharon Whittick, was present during this meeting. It was her perception that Leap was coherent. At the hearing before the special master, the parties stipulated that Leap was competent when she signed the power of attorney.

After the power of attorney was executed, respondent visited Leap regularly. During the first six months of the

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[5] The January 7, 2003 power of attorney was prepared by respondent, signed by Leap, and witnessed by respondent's secretary, Sharon Whittick. Whittick did not believe that respondent charged legal fees for the preparation of the power of attorney.

year, she did not show any signs of incompetence. However, after Chamberlain died in June 2003, Leap "start[ed] to go downhill" and "really started to lose it." Although Leap was never declared legally incompetent, her doctor believed that she had become incompetent in mid-2004. Leap died in January 2006.

Respondent and Whittick testified that, when respondent was given power of attorney, a law firm file was not created because Leap was not considered a client. Respondent personally handled the checking accounts for Leap. He accounted for every penny spent and every penny earned and every asset owned by Leap. Whittick had nothing to do with the Leap accounts and respondent did not discuss his personal finances with her.

According to respondent, when he first prepared the list of Leap's assets and showed it to her, Leap was surprised to learn the amount of money she had (almost $1.8 million). Respondent discussed with her the commission he would charge to handle her affairs as attorney-in-fact. Because the handling of Leap's assets did not entail legal work, he was not sure what he should charge. He suggested that he charge one percent because, he understood, financial managers received between one and two percent. Leap stated that one percent was a fair amount and agreed to it. Respondent discussed his commission with Leap

"[a] couple times a month, probably" until she could no longer understand him.

For the first year that respondent acted as Leap's attorney-in-fact (2003), he received $17,723 in commissions, which was just under one percent of the estate's value. In the year 2003, his duties as attorney-in-fact involved more than 200 hours of his time.

In addition to his visits with Leap, respondent undertook many duties after he became her attorney-in-fact. He obtained the keys to Leap's house, which remained unsold. Respondent inspected the house, where he found rotten food in the refrigerator and some clothes on Leap's bed, "as though she walked out the day before." He concluded that the house was not in the proper condition to be shown to prospective buyers. He spent the next few months getting the house into suitable condition.

Respondent's efforts ultimately led to the sale of Leap's house, which had been on the market for some time. He personally negotiated the $144,000 sale price, which was $19,000 more than the realtor's projection. Respondent represented Leap in the sale of her home in May 2003. He was paid $575 for his legal services.

Respondent took care of personal care matters for Leap. He obtained all of her financial records, and reviewed and paid her bills. His son arranged for him to meet with money managers for the purpose of creating a plan for investing Leap's funds.

Respondent's handling of Leap's assets resulted in an increase in their value, despite significant disbursements made on her behalf. When respondent became attorney-in-fact, in January 2003, Leap's assets totaled "slightly less than" $1.8 million. At the time of her death, in January 2006, Leap's assets totaled nearly $2 million, before taxes, notwithstanding the $17,000 commission taken in 2003 and the $100,000 to $150,000 annual cost of her care.

With respect to the credit line, respondent never gave a formal note to Chamberlain. He explained that, after she became ill, he did not want to disturb her and, in any event, "there was no reason for [him] to have gone back to her on the loan after [he] had taken it [the power of attorney] over."

It is not clear when respondent began to make draws against the line of credit. At his April 5, 2005 sworn statement to the OAE, respondent stated that he took the first draw in March 2003, in the amount of $15,000, and that all draws were taken within a nine-month period. When respondent began to draw down

the credit line, he did not provide Chamberlain or Leap with either a financial or a billing statement. He did not advise Chamberlain or Leap to seek legal advice from independent counsel.

Respondent explained to Leap how he would draw down the line of credit, stating that he received these payments "from time to time." Leap, who was competent at the time, was satisfied with the arrangement. The parties stipulated that respondent repaid the loan at five percent, which was a "fair rate of interest." The total amount borrowed was $96,416.40.

OAE investigator Lambiase testified that, in January 2004, a bank security officer had called the Salem County prosecutor's office after she had become suspicious of respondent's withdrawals from Leap's account. The prosecutor's office obtained copies of Leap's bank records and forwarded them to the OAE. The case was assigned to Lambiase, who investigated whether Leap's funds had been misappropriated.

The OAE stipulated that there was no clear and convincing evidence that respondent had misused or misappropriated Leap's funds. The Salem County prosecutor's office never charged respondent with a crime.

OAE investigator Alan Beck testified that, on January 14, 2004, the OAE sent a demand letter to respondent, scheduling an audit for January 20, 2004. In response to the letter, respondent forwarded to the OAE copies of the January 7, 2003 power of attorney and a December 2002 promissory note. The note was typed, signed by respondent, and the witness's signature purported to be that of Chamberlain. As detailed below, respondent had fabricated the note.

The date was not typed, but handwritten.[6] The note states, in pertinent part:

> FOR VALUE RECEIVED, the undersigned, WARREN W. HOMAN, promises to pay to the order of ADA M. LEAP, at Carneys Point, New Jersey, an amount not to exceed the sum of ONE HUNDRED THOUSAND DOLLARS ($100,000.00), on a line of credit, with interest at the rate of five percent (5.0%) per annum, payable as follows: if not sooner paid, interest and principal payable in full within one year from date of first advance.
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> [Exhibit 2.]

According to respondent, the promissory note reflected the actual terms of the credit line. At argument before us, counsel

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[6] The actual day is unknown, as the handwriting on the note is illegible.

for the parties represented that they had been unable to obtain the yellow paper from the executor of Chamberlain's estate, who informed them that all documents had been destroyed.

Beck testified that, on January 20, 2004 (presumably), he, OAE Deputy Ethics Counsel Walton W. Kingsbery, III, and OAE Assistant Chief Disciplinary Investigator William M. Ruskowski went to respondent's office to examine his computer to determine whether the power of attorney and the promissory note were created on the dates identified in the body of the documents. It is not clear what transpired at this particular meeting, inasmuch as Beck later testified about a February 6, 2004 date on which the OAE representatives also went to respondent's office to examine the computer, and Lambiase testified about an expert's examination of the computer on August 18, 2004. Neither Beck nor Lambiase testified about the expert's findings and conclusions.

Beck testified that, at the January 2004 visit, he talked to Whittick, who did not know when the promissory note had been created. Respondent, however, told Beck that the promissory note had been prepared on the handwritten date identified on the document itself, December 2002.

On February 20, 2004, Beck, Kingsbery, and Ruskowski interviewed respondent at the OAE's office. Respondent stated that the money he had removed from Leap's account, with her knowledge, was intended for the line of credit. According to Beck, respondent was asked whether any record produced for the audit had been prepared after he had received the audit notice. Respondent answered "no."

At this point, Beck's testimony turned to the subject of a document identified as the MorganStanley "household relationship form," as to which there was extensive testimony. The OAE contended that respondent had misrepresented on the form that Leap was a "parent" in the Homan household. In the end, however, the execution of the document and the resulting joinder of Leap's accounts with the accounts in the Homan household were not the dishonest or fraudulent act that the OAE claimed it to be. Therefore, we will not belabor this decision with the details of each witness's testimony on the issue. Rather, we amalgamate and summarize the testimony of all witnesses.

At the time that respondent became Leap's attorney-in-fact, his son, Greg, was a financial advisor at MorganStanley. Respondent, his wife, and Greg had assets with MorganStanley, which were managed under the umbrella of the "Judith G. Homan

household." During his October 7, 2005 OAE interview, Greg explained that a household relationship is the grouping of a number of individual accounts, which "allows for better pricing" and "added benefits," such as free checks and a discounted management fee. It is also a tool to permit the consolidation of assets that may be located at other brokerage firms.

When respondent became Leap's attorney-in-fact, he told Greg that he wanted to open a MorganStanley account for her. Gregg suggested that Leap's assets be placed in the Homan household account so that Leap would receive the benefits that came with the household arrangement.

At the hearing before the special master, Greg further explained:

> At the time we were consolidating the account, the account looked very small. In the brokerage business, it doesn't give you much room to maneuver in terms of pricing. I knew that the account was going to become a much larger account at some point in time, and I didn't want to hit her over the head with all the large fees that you incur when transferring accounts, and eventually I knew we were going to be writing checks out of the estate to take care of her.
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> [1T153-21 to 1T154-5.]

According to Greg, MorganStanley encouraged the use of the household relationship form and the joining of accounts.

However, an account could not be brought into the household unless it was approved by a manager. In fact, a MorganStanley manager approved the addition of Leap's account to the household.

To join a "household" for MorganStanley's purposes, there must be a familial relationship. The form completed by Greg identified two accounts as "Ada M. Leap, Attn: Warren W. Homan," with a post office box address in Carneys Point. On the same form, the relationship of the individual Leap account names to the household was identified as "parent." Respondent was identified on the form as "parent" because his name was on the Leap account, albeit as power of attorney, he managed her money, and he is Greg's parent. Greg did not identify Leap as the "parent."

Greg testified that the entire process of explaining the form to respondent and respondent's execution of the form took about ten seconds.

Respondent testified that he believed it was proper to include Leap's account under the umbrella, based on Greg's representations; that when he signed the form, it was not his intention to deceive anyone; and that he simply wanted to get a better rate for Leap.

When Leap's funds were joined to the household, they remained in her individual accounts and were not commingled with any other funds. According to Lambiase, Leap did not suffer any financial injury by virtue of the word "parent" on the household relationship form.

On October 22, 2004, at the OAE's request, respondent submitted a certification to the OAE that stated, in part:

> 1. I have no specific recollection as to the date I executed the Ada Leap promissory note, but it is my pattern and practice to sign and date documents contemporaneously.
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> 2. The Ada Leap Power of Attorney was prepared on the only computer used to prepare legal documents associated with Ms. Leap. That computer is the same computer that was analyzed as a part of the current OAE investigation.
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> [1T71.]

In late 2004, the OAE subpoenaed Whittick to appear for an interview, under oath, about the preparation of the promissory note. When Whittick told respondent about the subpoena, he was upset, as he was aware of a medical condition that she suffered, which was exacerbated by stress. At this point, respondent decided to admit to the OAE that he had fabricated the note and had forged Chamberlain's signature. On the day before

Whittick's scheduled interview, respondent's lawyer called Lambiase and told him that the promissory note was not "accurate."

At the hearing, and in his statement under oath to the OAE, respondent detailed what was going through his mind, both at the time that the note was fabricated, in January 2004, and at the time that Whittick was subpoenaed, in December 2004. Respondent testified that he had prepared the promissory note after the OAE had contacted him about the Leap matter. He had placed Chamberlain's name as a witness to the note and signed her name. Although respondent did not specifically recall the date when he signed the note, he did know that it was done after the OAE's letter had arrived.

Respondent explained what happened after the OAE requested him to produce documents in January 2004, and he realized that he did not have a writing to support the terms of the note:

> And I realized that while I had already paid back the loan, I didn't have anything. It stood out as a sore thumb to me that I didn't have anything to show them what the terms of that loan were of the 5 percent and up to $100,000 payable within one year. And I just panicked. I didn't have anything and I – at the time I gave my secretary this form to fill out so that I could include a document to show that I had

> complied with the agreement that I had had with Mrs. Chamberlain and Mrs. Leap.
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> [2T43-2 to 11.]

In his April 2005 statement under oath, respondent provided more detail:

> And I said, you know, I know that there's got to be something in the record to confirm what the terms I had agreed to, and that's when I had wrote [sic] out a note on yellow paper and gave it to my secretary and I said type up this note so I can confirm the terms on this, and that's what I did and when it came in, and then I submitted that along with all the other documents, and as time went on, you know, nothing happened. I never heard anything, and then after a while, when I heard from your office here again, there seemed to be some focus on the note. I hadn't had a good night's sleep since this whole project started and I eventually came to the conclusion, I said, you know, if that's going to be the focus, I have to tell them that, that's basically not done at the time that I had said it was done, it was done as an afterthought after the loan had been paid off. I did it to confirm the terms of it, and I knew also that Sharon was going to be coming up here, I know that she has the Shogun's [sic] disease and I wanted her to be open and truthful with you when she came in here without any obligation to loyalty to me, so that she wasn't under any stress and I told her that I'm changing what I had said before about the note, and so that, you know, don't feel that you have any qualms about indicating if you're asked about typing that note up. And I want her to feel free to do that as well. So you know, and I told Bill

[his lawyer] about it at that time, and we discussed, you know, I was told . . . .

I think I was told back at that time that I was going to be called back up here, it was when I was going to be telling you that what I had done in that regard, but it so happened before I was called up, Sharon was called up, and I wanted to make sure that she didn't have any problems in telling and being open with you on it, so.

[April 5, 2005 Statement under Oath, p.60,l.19 to p.62,l.8. See also 1T123-1T124;1T129;2T44-2T46;1T128-1T129;1T133-1T144.[7]]

Respondent told the OAE that, when Whittick typed the promissory note, at his direction, he did not tell her that he would be backdating the document. When asked if Whittick knew what she was doing for him, respondent answered "no."

Sometime after Whittick's January 19 interview, the OAE confronted respondent and his attorney with information that she had provided during the interview. On April 5, 2005, the OAE took respondent's statement under oath. There, he admitted that the promissory note had been backdated. According to Lambiase,

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[7] Whittick's testimony was consistent with respondent's statements to the OAE.

respondent told him that the signature of Julia Chamberlain on the promissory note was forged.

Respondent also admitted that he could have corrected this misinformation, when he met with the OAE on February 6 and 20, 2004, on August 2, 2004, when he received the subpoena, and on August 18, 2004, when Lambiase and Blasini and a computer expert went to his office to examine the computer. Finally, respondent admitted that the October 2004 certification he provided to the OAE was false.

Respondent was remorseful for his misconduct. He testified:

> I've been very embarrassed. First of the fact that I didn't have the note to begin with. I spent – there is not a day that I don't go to sleep at night thinking about it and how I ever got into this whole mess. And having to involve my secretary and my son, it's been a very humbling experience for me.
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> [2T47-11 to 17.]

He continued:

> Well, as I said, the worst penalty for me has been – I became paranoid, actually, when I was handling her affairs. I thought everybody was then watching over me, that I was going to cross the Ts and dot the Is. But, personally, you know, my wife and family have suffered along with me. I've just lost a lot of sleep over it. I keep

> hashing over in my mind exactly how it all came about. It has just been a very bad experience for me.
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> [2T49-16 to 24.]

Respondent's former law partner, Michael Mulligan, testified about the emotional toll that the fabrication of the note has taken on respondent. He testified that he and respondent were partners from approximately 1990 through the end of 2002. The dissolution of the partnership was amicable. Their split was the result of their "doing different things" and no longer wishing to "worry about each other's receivables, and billings, and payables, and such things." Even though the partnership dissolved, Mulligan and respondent continued to operate two solo practices and, thus, share office space in the same building, which was owned by respondent.

In late 2002, Mulligan and respondent had a conversation about how they were going to handle the financial aspect of operating solo practices. Mulligan told respondent that he had approached a local lender about obtaining a credit line secured by his home. Respondent told Mulligan that he, too, had secured a credit line, albeit from a private lender.

Mulligan testified about his understanding of respondent's misconduct and his remorse as follows:

> I recall his specific comments, and I'm more or less paraphrasing it . . ., but . . . he had . . . a gentleman's agreement, if you will, and in a panic, created a false document, I believe, in order to confirm what he knew existed, which was an underlying agreement. It ends up being a tragedy of sorts. And I've considered it a tragedy of sorts.
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> And he has been entirely remorseful ever since. It has brought significant grievous, I would submit, emotional stress on him in the period of time since this came around. Perhaps properly so, but it is a burden he has had to live with very much like the sword of Damocles hanging over his head ever since it occurred and ever since his admission occurred.
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> [1T180-2 to 18. See also 1T186;1T188-1T189.]

Many witnesses attested to respondent's good reputation in the community. Whittick testified that Carneys Point is a small community and that she and "[e]verybody" considered respondent to be "a very ethical person." During their twenty-four years together, Whittick never saw respondent commit an unethical act. Whittick's opinion with respect to respondent's truthfulness and good character was unchanged by his admittedly false certification and his forgery of Chamberlain's signature.

The parties stipulated that three witnesses, attorneys Alan Gould, Jay Greenblatt, and Herbert Butler, each of whom had

known respondent for twenty-five, thirty, and forty-five years, respectively, would testify that respondent has an outstanding reputation for honesty and integrity and that their opinions about such traits remained unaffected by his actions. The same was true for the following additional character witnesses: Reverend Douglas Strickland, who had known respondent for nine years; banker Duff O'Connor, who had known respondent for thirty years; and attorney Michael Mulligan, who had been respondent's partner for twenty years.

In his report, the special master rejected the OAE's assertion that the use of the word "parent" on the household relationship form was meant to mislead MorganStanley. He referred to the form as a "normal competitive brokerage device," and accepted Greg's testimony that "parent" referred to respondent as either his parent or a parent in the Homan household. Moreover, the special master observed, the consolidation of the Leap account with the Homan accounts benefited both Leap and MorganStanley. He, therefore, dismissed count three of the complaint.

With respect to the credit line, the special master found that, in December 2002, there was no attorney client relationship between respondent and either Leap or Chamberlain.

Thus, the credit line "was strictly a business transaction between two persons who had no prior relationship, personal, business or professional."

The special master found that respondent became Leap's attorney when he prepared the power of attorney, in January 2003. He noted that, in May 2003, respondent had billed Leap for legal services rendered to her in connection with the sale of her home that month. Nevertheless, he pointed out, these actions had taken place after the date of the credit line agreement. Although the special master recognized that an attorney who enters into a business transaction retains his responsibilities as an attorney and must act fairly and ethically, he concluded: "Given the evidence in this matter concerning the interest rate and the specified time for repayment, no one can fault the respondent for the loan transaction." He, therefore, dismissed count two (conflict of interest).

Based on respondent's admission that he had created the promissory note after the fact, backdated it, and forged Chamberlain's signature, the special master upheld the first count of the complaint. He determined that respondent had violated RPC 3.4(b), RPC 8.1(a), RPC 8.4(b), and RPC 8.4(c).

The special master found that respondent's execution of the October 2004 certification to the OAE was an aggravating factor. However, he also found that "the mitigating factors in this matter are overwhelming, and they literally mitigate [sic] against any harsh punishment." He identified the following mitigating factors: (1) respondent's cooperation with the OAE; (2) his "ready admission of wrongdoing" prior to Whittick's interview and his instruction to her to tell the truth; (3) his "real and palpable" remorse; (4) his good reputation and character; (5) the lack of injury to any client; (5) the lack of personal gain by respondent; (6) his unblemished disciplinary history; and (7) his extensive community service. In particular, the special master wrote:

> I believe the Respondent's testimony that at the time of his discussion with Chamberlain he wrote out the terms of a line of credit to be extended by Leap. The death of Chamberlain is an altogether logical explanation for the missing writing. The writing provided for repayment in a specified time and for an interest rate probably above market. The Respondent's uncontradicted testimony was to the effect that there were other sources for loans but that he acceded to Chamberlain's importuning to accept a line of credit from Leap. So from start to finish – an above market rate of interest and the repayment to Leap in full of the amount borrowed together with interest in full – there was absolutely no

> personal gain by the Respondent. The flip-side is that not only was there a lack of injury to Leap, but all of the Respondent's actions resulted in substantial benefit to her in at least three ways: she received interest on her money; the charges made by the Respondent for services rendered, and considered by him to be only those of an attorney-in-fact, were substantially less than he would have charged for the time spent for Leap if he had charged her fees as an attorney-at-law; and there was a significant increase in the value of the Leap assets as a result of the Respondent's work on her behalf as a financial advisor.
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> [June 22, 2007 report of the special master, p. 13.]

The special master recommended that respondent be reprimanded.

Following a <u>de novo</u> review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence. As respondent eventually admitted, he fabricated the promissory note, forged Chamberlain's signature, and gave it to the OAE, claiming that it was genuine and that it had been executed contemporaneously with its creation. In addition, throughout the OAE's investigation, respondent continued to mislead the OAE that the note was authentic.

Respondent's fabrication of the promissory note and the forgery of Chamberlain's signature violated RPC 3.4(b), which prohibits a lawyer from falsifying evidence, and RPC 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Moreover, his forgery of Chamberlain's signature on the note violated RPC 8.4(b), which classifies as professional misconduct an attorney's commission of "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." N.J.S.A. 2C:21-4(a) makes it a fourth degree crime to falsify or tamper with records. It matters not that respondent was neither charged with nor convicted of the crime. In re Gallo, 178 N.J. 115, 121 (2002) (the scope of disciplinary review is not restricted even though the attorney was neither charged with nor convicted of a crime). Finally, when respondent presented the fabricated promissory note to the OAE, he violated RPC 8.1(a), which prohibits a lawyer from knowingly making a false statement of material fact in connection with a disciplinary matter.

The special master rightly dismissed the second count of the complaint. There, the OAE charged respondent with a conflict of interest, based on his failure to reduce to writing

the terms of his line of credit with Leap and his failure to advise Leap to seek the advice of independent counsel. RPC 1.8(a) provides in pertinent part:

> A lawyer shall not enter into a business transaction with a client . . . unless (1) the transaction and terms . . . are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in manner and terms that should have reasonably been understood by the client, (2) the client is advised of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel of the client's choice on the transaction, and (3) the client consents in writing thereto.

Chamberlain and respondent agreed upon the terms of the line of credit in December 2002, which was prior to respondent's preparation of the power of attorney and his assumption of the role of attorney-in-fact, in January 2003, and his representation of Leap in the sale of her home, in May 2003. Because neither Chamberlain nor Leap was respondent's client at the time the agreement was reached and the terms were set, RPC 1.8(a) did not apply.

It is of no consequence that respondent did not make the first draw, against the credit line until March 2003, which was after he had acted as Leap's attorney (in preparing the power of attorney). The terms were set and the parties' rights and

responsibilities were agreed upon in December 2002. Thus, when respondent made the first draw in March 2003, he simply activated the pre-existing agreement. He did not strike a new deal. Accordingly, respondent did not engage in a conflict of interest vis-à-vis the credit line. The second count was, thus, rightly dismissed.[8]

Finally, the special master was correct in dismissing the third count of the complaint, which charged respondent with a violation of RPC 8.4(c) as a result of the alleged misrepresentation on the MorganStanley household relationship form that Leap was a parent in the Homan household.

As the special master determined, the use of the term "parent" on the household relationship form and the incorporation of Leap's accounts into the Homan household account did not violate RPC 8.4(c). Respondent and Greg explained that Leap's funds were incorporated into the Homan

[8] The OAE's reliance on case law from Arizona in support of its claim that an attorney-client relationship may be created simply because a person considers herself to be a client is misplaced. First, it is not the law in New Jersey. Second, there is no evidence that, as of December 2002, either Leap or Chamberlain considered herself to be respondent's client.

household for the purpose of obtaining certain benefits for Leap, most notably a discount in the management fee. The two Leap accounts that were opened with MorganStanley were named "Ada M. Leap, Attn: Warren W. Homan." Inasmuch as respondent was Leap's attorney-in-fact and also Greg's parent, the relationship of the account holder to the household was identified as "parent;" respondent signed the form above the "client signature" line. It is as simple as that. The OAE's claim that the document clearly identifies Leap as a "parent" in the Homan household is not supported by the evidence.

The transfer of Leap's assets to MorganStanely and their incorporation into the Homan household were not the result of deception on the part of respondent or Greg. Rather, it was a way to provide many benefits to Leap through a system devised by MorganStanley, which the firm encouraged its advisors to use. Indeed, a Morgan/Stanley manager approved the incorporation of Leap's accounts into the Homan household.

To conclude, respondent violated RPC 3.4(b) (falsifying evidence), RPC 8.1(a) (knowingly making a false statement of material fact to disciplinary authorities), RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in

other respects), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), when he fabricated the promissory note, forged Chamberlain's signature, produced the note to the OAE representing it to be genuine, and continued to lead the OAE to believe in the document's authenticity for nearly a year.

There remains the determination of the quantum of discipline to be imposed on respondent for his misconduct. Respondent's fabrication of the promissory note, the forgery of Chamberlain's signature, and his misleading of the OAE are similar to what occurred in In re Katsios, 185 N.J. 424 (2006) (two-year suspension for failure to safeguard funds, false statement to disciplinary authorities, criminal act that reflects on honesty, trustworthiness or fitness as a lawyer, and conduct involving dishonesty, fraud, deceit or misrepresentation). There, attorney Katsios represented some relatives in the sale of their liquor store. In the Matter of Demetrios Katsios, DRB 05-074 (July 21, 2005) (slip op. at 2). In March 2001, the buyer's attorney sent a $22,000 deposit to Katsios, instructing him to deposit the funds into his trust account. Ibid.

Katsios complied with the attorney's request. Ibid. Katsios also understood that the money was to remain in the trust account until the transaction was completed. Ibid.

In April 2001, which was prior to the date of the transaction, Katsios released the money to his relatives, albeit under pressure from them, but knowing that it was improper to do so. Id. at 2-3. The notation on the memo line of the check read "Loan to Corp." Id. at 3.

The sale of the liquor store fell through. Ibid. In December 2002, the buyer's attorney made several requests for the return of the deposit monies. Ibid. When his requests went unanswered, the attorney contacted the OAE. Ibid.

On January 3, 2002 – which was after Katsios had received the OAE's letter of inquiry – he obtained the funds from one of the relatives and returned the money to the buyer's lawyer. Ibid. Katsios, who was in a panic as a result of the OAE's inquiry, then altered bank statements and created false reconciliations, which he submitted to the OAE. Ibid. The altered bank statements and fabricated reconciliations misrepresented that the buyer's $22,000 deposit had remained in Katsios's trust account from March 2001 until January 3, 2002. Ibid.

The OAE conducted a demand audit in March 2002. Id. at 4. Katsios did not report that the documents submitted were either altered or fabricated. Ibid. He "assumed they knew at that point." Ibid. Seven months later, however, Katsios admitted to the improper release of the escrow funds and the alteration and fabrication of the documents. Ibid.

The special master concluded that Katsios had released escrow funds without authorization, in violation of RPC 1.15(a) and RPC 8.4(c). Ibid. He also concluded that Katsios presented to the OAE altered bank statements and false reconciliations, failed to inform the OAE of these actions, committed the criminal act of tampering with records, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of RPC 8.1(a), RPC 8.4(b), and RPC 8.4(c). Ibid. The special master recommended that Katsios be suspended for one year. Id. at 5.

In making his recommendation, the special master considered several aggravating and mitigating factors. In aggravation, he observed that Katsios had engaged in a continuing course of dishonesty and misrepresentation and lacked candor to disciplinary authorities. Id. at 4. In mitigation, he noted Katsios's "eventual cooperation" with the OAE, admission of

wrongdoing, contrition and remorse, good reputation and character, unblemished disciplinary history, lack of personal gain, and the absence of any loss to any client. Id. at 4-5. Nevertheless, the special master concluded that "the quantitative superiority of the mitigating circumstances" was outweighed by the fact that Katsios's misconduct "arose directly from the practice of law" and that his cover up and deception reflected adversely on his honesty and trustworthiness. Id. at 5.

In reviewing the matter de novo, we agreed that Katsios had released escrow funds without authorization and that he had fabricated evidence, which he then submitted to the OAE. Id. at 9. Although we acknowledged that Katsios panicked when the OAE contacted him, we also took into account that Katsios had embarked on a "calculated plan of repeated misrepresentations" to the OAE. Id. at 12. We observed that

> his cover up of his actions required a great deal of thought, planning, and time. Surely, his initial feeling of panic, had it been the only motivation for his actions, would have passed before the completion of the scheme. . . . As noted by the special master, however, this was truly an instance where the cover-up was worse than the crime.

[Id. at 11-12.]

We voted to suspend Katsios for six months, given his panic, "foolish[]" cover up, and the fact that his misconduct was motivated by the desire to accommodate a relative, rather than by personal gain. Id. at 15. The Supreme Court disagreed, and suspended Katsios for two years. In re Katsios, supra, 185 N.J. 424 (2006).

This case is similar to Katsios, in that respondent panicked and then fabricated a document to "prove" that he had entered into the credit line agreement with Chamberlain, gave it to the OAE, and then repeatedly misrepresented that the document was authentic. The same aggravating (continuing course of dishonesty and misrepresentation) and mitigating factors (eventual cooperation with the OAE, admission of wrongdoing, contrition and remorse, good reputation and character, lack of prior discipline, lack of personal gain, and lack of harm to any client) in Katsios are present here. Yet, there are striking factual differences between Katsios's and respondent's actions. In addition, there are more mitigating factors in respondent's favor.

Specifically, unlike Katsios's unauthorized release of escrow funds to a party not entitled to receive them, respondent's underlying conduct was not unethical. Respondent

entered into a credit line agreement with Chamberlain in December 2002. As previously stated, RPC 1.8(a) did not govern the transaction because neither Chamberlain nor Leap was his client at the time. Accordingly, respondent was not prohibited from entering into the transaction, not required to advise either of them to seek independent counsel, and not required to reduce to writing the terms of the agreement. In short, respondent's failure to reduce to a formal promissory note the terms of the agreement, which had been memorialized on a sheet taken from a tablet of yellow paper, was not a violation of any RPC.

Moreover, and related to the first point, when respondent received the document demand from the OAE and panicked, he panicked because of what he perceived to be professional sloppiness – that is, he never got around to formalizing the terms of the agreement that he had reached with Chamberlain in December 2002, which had been reduced only to the writing on the yellow sheet of paper. When the OAE contacted respondent in January 2004, he had already paid back the money borrowed at the agreed-upon interest rate, which, the OAE's own witness testified, was a "generous" rate of return at the time. Yet, in the absence of the yellow piece of paper, which was lost when

the executor of Chamberlain's estate destroyed all documents, respondent had nothing to support the propriety of what he had done. This was the reason why respondent had Whittick prepare the note. It was not for the purpose of avoiding discipline but, rather, to avoid embarrassment over his failure to memorialize his agreement with Leap.

In addition, respondent's panicked directive to Whittick to pull up the "form" note that she had on her computer and type up the terms was a single act that likely took minutes. Katsios, on the other hand, engaged in a detailed alteration of ten months of bank statements and then fabricated ten months of reconciliations to "prove" that monies that he had released in April 2001 had actually remained in his trust account from March 2001 until January 2002. As we observed in Katsios, his cover-up "required a great deal of thought, planning, and time." Id. at 11. Thus, "his initial feeling of panic, had it been the only motivation for his actions, would have passed before the completion of the scheme." Ibid. Here, respondent committed a single act, which took only minutes to complete. In our view, these important factual distinctions render respondent's misconduct less serious than that of Katsios.

In sum, respondent's conduct was distinguishable from Katsios's in many important respects. Respondent "covered up" a failure-to-act that was not unethical; his "cover-up" was a matter of avoiding professional embarrassment rather than discipline. Finally, the "cover-up" itself was a single momentary act, rather than the methodical, labor-intensive, and thought-out process undertaken by Katsios.

In addition to the factual differences between Katsios and this case, there are additional mitigating factors here that were not present in that matter. First, respondent was commissioned in the United States Army in 1962. He became a captain and was honorably discharged in 1968. Second, respondent has been involved in countless hours of community service. In addition to his service to community organizations, he served as president of the Salem County Bar Association, and was on the board of trustees of the New Jersey State Bar Association for six years.

Also, respondent was a trustee for the Memorial Hospital of Salem County for about fifteen years, the last four of which he spent as chairman; he served as secretary of the New Jersey Hospital Association, where he was a board member for six years; he sat on a regional policy board of the American Hospital

Association; in 1996, the New Jersey Hospital Association named respondent trustee of the year; and, finally, he was a founder of the Salem County Community College Foundation and served on the board of directors of the Woodland Country Day School.

Like the special master, we find that, out of kindness, respondent, who had adamantly refused to undertake the role of Leap's attorney-in-fact, finally relented when Chamberlain was diagnosed with cancer. As Leap's attorney-in-fact, he maintained regular contact with her, tended conscientiously to her affairs, worked diligently at preparing her house for sale, sold it for an amount that exceeded the realtor's projection by nearly fifteen percent, and increased the value of Leap's portfolio, notwithstanding the significant cost of her care.

Finally, we considered that respondent did not let his deceit trump Whittick's health or involve her in his dishonesty with the OAE. When respondent realized that Whittick would be called to give a statement under oath to the OAE, he decided to admit his misconduct, rather than have her health compromised by the stress of the OAE's questioning. He advised Whittick to tell the truth and assured her that she would not risk her job with him for doing so.

The essence of respondent's misconduct is his deceitful conduct toward the OAE. Three-month suspensions have been imposed on attorneys who engage in such misconduct toward disciplinary authorities. See, e.g., In re Bar-Nadav, 174 N.J. 537 (2002) (three-month suspension for attorney who submitted two fictitious letters to the district ethics committee in an attempt to justify his failure to file a divorce complaint on behalf of a client; he also filed a motion on behalf of another client after his representation had ended, and failed to communicate with both clients) and In re Rinaldi, 149 N.J. 22 (1997) (three-month suspension for attorney who submitted three fictitious letters to a district ethics committee in an attempt to show that he had worked on a client's case, did not diligently pursue the case, and made misrepresentations to the client about the status of the case). Given respondent's military service, extensive community service, unblemished forty-year career, and the serious differences between the facts of this case and the facts of Katsios, we determine to impose a suspension of three months.

Member Frost would have imposed a six-month suspension in light of respondent's silence and unrepentence until the time when he was at risk of having his deceit uncovered by the OAE.

Chair O'Shaughnessy and members Baugh, Lolla, and Neuwirth 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
Vice-Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

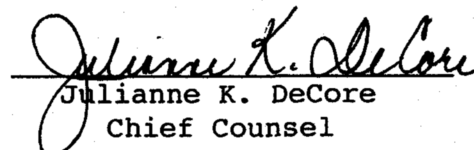
In the Matter of Warren W. Homan
Docket No. DRB 07-311

Argued: January 17, 2008

Decided: April 17, 2008

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Six-month Suspension	Reprimand	Admonition	Did not participate
O'Shaughnessy						X
Pashman		X				
Baugh						X
Boylan		X				
Frost			X			
Lolla						X
Neuwirth						X
Stanton		X				
Wissinger		X				
Total:		4	1			4



Julianne K. DeCore
Chief Counsel