SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-222
District Docket No. VIII-02-041E

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

Decision

Argued: September 15, 2005

Decided: October 27, 2005

William G. Brigiani appeared on behalf of the District VIII Ethics Committee.

Robert Zullo, Jr. 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 based on a recommendation for discipline filed by the District VIII Ethics Committee ("DEC").

Although the procedural history is not set forth in the record with particular clarity, it appears that there was a July 2003 "hearing" in this matter, the parties intending that the case proceed as a motion for discipline by consent. The

"hearing" was an opportunity for the grievant to address specific concerns she had about the underlying matter.

Following the July 2003 proceeding, the stipulation for discipline by consent was rejected, presumably by the Office of Attorney Ethics, as untimely, due to a delay apparently attributable to the DEC.

The presenter then filed an amended complaint eliminating some allegations that apparently had been clarified in the interim. Respondent filed an amended answer in which he admitted the allegations of the amended complaint, with the exception of certain erroneous factual statements contained in the amended complaint. These errors are discussed below.

On April 7, 2005, the parties reconvened for a hearing on the charges of the amended complaint. A review of the fifteen-page transcript shows that there was no hearing per se. Indeed, except for the DEC's request that respondent clarify an admission made in his answer, the few other questions posed to respondent were of a procedural nature. The remainder of the "hearing" was confined to the parties' opening statements. Both parties made it clear to the hearing panel that there were no genuine disputes of material fact.

The presenter recommended to the DEC that a reprimand be imposed. The DEC issued a hearing panel report agreeing with

that measure of discipline and then submitted the matter for our review. Although the DEC did not mention R. 1:20-6(c)(1), we deemed the matter submitted under that rule, which provides:

> (c) Hearings Involving Unethical Conduct; When Required.
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> (1) When Required. A hearing shall be held only if the pleadings raise genuine disputes of material fact, if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in aggravation. In all other cases, the pleadings, together with a statement of procedural history, shall be filed by the trier of the fact directly with the Board for its consideration in determining the appropriate sanction to be imposed.

Because (1) there is no dispute of material facts, (2) respondent's answer advanced the mitigation factors that he wished to be considered, (3) the presenter did not request to be heard on any aggravating circumstances, and (4) there was no hearing in the usual sense, we reviewed the matter under R. 1:20-6(c)(1).

The amended complaint charged respondent with violating RPC 4.1(a)(1) (false statement of material fact to a third party), RPC 8.4(a) (violating the Rules of Professional Conduct) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The complaint also charged that respondent "engaged in conduct prejudicial to the administration of justice," but did not charge a violation of RPC 8.4(d). In

respondent's answer, he admitted his violation of RPC 4.1(a), RPC 8.4(a) and RPC 8.4(c). He did not refer to RPC 8.4(d). The panel report makes no mention of RPC 8.4(d). Even though the language of the rule appears in the complaint, such language is insufficient notice to respondent if, in fact, the DEC intended to so charge respondent. The rules properly at issue, thus, are RPC 4.1(a)(1), RPC 8.4(a) and RPC 8.4(c).

This matter arose out of respondent's improper acknowledgment of his clients' signatures in a real estate transaction.

Respondent was admitted to the New Jersey bar in 1990.[1] He has no history of discipline.

Respondent represented Joseph and Marie Iovino in the sale of real property. The grievant in this matter is Iovinos' daughter. During the relevant time, Marie Iovino suffered from Alzheimer's disease. Respondent admitted that, in connection with the real estate transaction, he acknowledged the signatures of the Iovinos on several documents "when they did not appear before him."[2] In addition, Joseph Iovino had signed Marie

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[1] The hearing panel report mistakenly states that respondent was admitted to the bar in 1999.

[2] The complaint mistakenly alleged that respondent improperly certified the signatures of Richard Iovino and Charlene Iovino. Those signatures were, in fact, acknowledged by a notary public and are not at issue.

Iovino's name, a circumstance of which respondent was aware.

In mitigation, respondent's counsel noted that (1) respondent's motivation was to assist an elderly couple with a transaction that had been pending for twenty-three months, rather than pecuniary gain; respondent's fee for this matter was $450; (2) there was no financial harm to the Iovinos; (3) respondent has no disciplinary history; and (4) respondent cooperated fully with the DEC investigator.[3]

The DEC found that respondent violated RPC 4.1(a)(1) and RPC 8.4(a) and RPC 8.4(c).[4] As to the basis for its finding, the DEC stated:

> Respondent certified that Richard Iovino and Charlene Iovino "personally came before me" and personally executed a Deed of Sale when in fact the Respondent admits that Richard Iovino and Charlene Iovino did not personally appear before him.
>
> Respondent did prepare a Certification for the Internal Revenue Service reporting the sale as a principal residence; however, Joseph Iovino did

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[3] Respondent's counsel advised Office of Board Counsel that the Iovinos had suffered no harm from respondent's derelictions. At oral argument before us, counsel represented that funds owed to the Iovinos, which had apparently been held by the attorney for the buyers, had been turned over to the Iovinos.

[4] In the final paragraph of its report, however, the DEC stated that respondent violated RPC 4.1(a)(1) and, mistakenly, RPC 8.1(a), rather than RPC 8.4(a). There is no mention of RPC 8.4(c).

sign the Certification. Respondent did not comply with required procedure for taking the jurat.

[HPR2-HPR3.][5]

As noted in footnote 2, supra, those are not the signatures in question. Rather, the signatures of Joseph and Marie Iovino were at issue. It appears that this was a typographical error by the DEC. Those are the factual mistakes that respondent properly corrected in his amended answer.

The DEC recommended the imposition of a reprimand.

Upon a de novo review of the record, we are satisfied that the record clearly and convincingly establishes that respondent's conduct was unethical. In fact, respondent admitted having violated each of the rules cited in the amended complaint.

The level of discipline in cases dealing with the improper execution of jurats, without more, is ordinarily an admonition or a reprimand. When an attorney witnesses and notarizes a document that has not been signed in the attorney's presence, but is signed by the legitimate party, the discipline is usually an admonition. See In the Matter of Robert Simons, DRB 98-189 (July 28, 1998) (admonition imposed where the attorney signed a friend's name on an affidavit, notarized the "signature," and then submitted that document to a court); and In the Matter of

[5] HPR refers to the hearing panel report, dated June 25, 2005.

Stephen H. Rosen, Docket No. DRB 96-070 (1996) (admonition where the attorney witnessed and notarized the signature of an individual on closing documents signed outside his presence; in addition, he failed to cooperate with disciplinary authorities). In 1990, we imposed a private reprimand – now admonition – on an attorney who witnessed and notarized a client's signature on a deed signed outside his presence. In a 1989 case, a private reprimand, too, was imposed where the attorney executed a jurat on an affidavit not signed in his presence, after he read the contents of the affidavit to the affiant and inquired whether he had signed the document in the presence of a third party.[6]

If there are aggravating factors, such as, for instance, the attorney's signing of the party's name, the direction that a secretary sign the party's name on a document that the attorney then notarizes, or the attorney's knowledge that the party has not signed the document, then the appropriate discipline is a reprimand. See, e.g., In re Uchendu, 177 N.J. 509 (2003) (reprimand where the 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) (reprimand where the attorney forged the signature of his client on a medical

[6] Because private reprimands are confidential, the identity of those respondents has not been disclosed in this decision.

record release form; the attorney then forged the signature of a notary public to the jurat and used the notary's seal); In re Reilly, 143 N.J. 34 (1995) (reprimand imposed for an attorney who improperly witnessed a signature on a power of attorney and then forged a signature on a document); In re Weiner, 140 N.J. 621 (1995) (reprimand for excessive delegation of authority to non-lawyer staff and for condoning his staff's signing of clients' names on documents); In re Buckner, 140 N.J. 613 (1995) (reprimand for attorney who engaged in a misrepresentation by signing the name of a client to a deed without also indicating the attorney's name and representative capacity and based only on the oral authorization of the client); In re Robbins, 121 N.J. 454 (1990) (reprimand for attorney who signed a deed purporting to bear the signatures of the parties in interest, completed the acknowledgement, executed the jurat and submitted the deed to a planning board for the purpose of accomplishing the memorialization of a land sub-division; the attorney claimed that he intended to "white-out" the illegitimate signatures and obtain proper signatures prior to recording the deed; there was no clear and convincing evidence that the attorney's acts were undertaken with the grantor's acquiescence); In re Spagnoli, 89 N.J. 128 (1982) (public reprimand where the attorney signed his client's name on three affidavits, which he then conformed and filed with

the court); In re Rinaldo, 86 N.J. 640 (1981) (public reprimand where an attorney permitted his secretaries to sign two affidavits and a certification in lieu of oath, in violation of R. 1:4-5 and R. 1:4-8); and In re Conti, 75 N.J. 114 (1977) (public reprimand where the attorney's clients told his secretary that it was impossible for them to come to the attorney's office to sign a deed and instructed her to do "whatever had to be done" to record the deed; the attorney had the secretary sign the clients' names on the deed; he then witnessed the signatures and took the acknowledgment).

Where the improper acknowledgment reveals a pattern of such practice or is accompanied by other unethical conduct, the discipline generally is more severe. In In re Lolio, 162 N.J. 496 (2000), the Court imposed a three-month suspension on an attorney who had witnesses attest as being present during the testators' signatures of wills. In fact, the witnesses had not observed the testators signing the wills. More than 200 wills were at stake.

In In re Just, 140 N.J. 319 (1995), the Court also ordered a three-month suspension where the attorney facilitated a conveyance that was questionable because of the grantor's apparent lack of competence and affixed a jurat to a signature that he did not witness. More severe discipline also resulted in

In re Surgent, 79 N.J. 529 (1979). In that case, the attorney received a six-month suspension for taking an improper jurat for various clients who had signed a verified complaint and affidavits filed with the court. In addition, he entangled his personal business relationship with clients and acted against a corporation in a matter substantially related to his former representation of the corporation. In another serious case, In re Friedman, 106 N.J. 1 (1987), the attorney entered a guilty plea to three counts of falsifying records for improperly affixing his jurat to three affidavits subsequently submitted to an insurance company. The Supreme Court found that the attorney's conduct had not been an aberrational act done with the purpose of benefiting a client, but a pattern of practice that would undoubtedly have continued if not for the criminal prosecution; the Court's discipline was "time served" (the attorney had been temporarily suspended for more than one year).

Guided by the above case law, we find that a reprimand is the appropriate measure of discipline for respondent's infractions. An admonition would have been sufficient were it not for respondent's awareness that Joseph Iovino had signed his wife's name, without a power of attorney.

Vice-Chair O'Shaughnessy did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Carl D. Gensib
Docket No. DRB 05-222

Argued: September 15, 2005

Decided: October 28, 2005

Disposition: Reprimand

Members	Suspension	Reprimand	Admonition	Disqualified	Did not participate
Maudsley		X			
O'Shaughnessy					X
Boylan		X			
Holmes		X			
Lolla		X			
Neuwirth		X			
Pashman		X			
Stanton		X			
Wissinger		X			
Total:		8			1

Julianne K. DeCore
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Chief Counsel