SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-080
District Docket No. VA-2013-0012E

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| IN THE MATTER OF | |
| VINCENT E. BEVACQUA | |
| AN ATTORNEY AT LAW | |

Decision

Argued: July 16, 2015

Decided: October 13, 2015

David M. Puteska appeared on behalf of the District VA Ethics Committee.

Thomas R. Ashley appeared on behalf of respondent.

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

This matter was before us on a recommendation for a one-year suspension filed by the District VA Ethics Committee (DEC). At the DEC hearing, respondent stipulated to four violations of RPC 4.1(a)(1) (false statement of material fact to a third person) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) by signing the grantor's name on four legal

documents associated with the transfer of real property, including the deed. He also stipulated to three violations of RPC 4.1(a)(1) and RPC 8.4(c) by attesting to the grantor's signature on three of the documents. We determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1990. In 2002, he was reprimanded for misconduct in three matters, including gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to explain matters to the extent reasonably necessary to permit clients to make informed decisions about the representation, failure to set forth in writing the basis or rate of his fee, failure to promptly return a client's file, and assistance in the unauthorized practice of law (respondent allowed a lawyer not admitted in New Jersey to conduct a deposition in New Jersey). In re Bevacqua, 174 N.J. 296 (2002).

On June 15, 2004, respondent was suspended for six months for recordkeeping violations, which resulted in the negligent misappropriation of client funds; respondent also made false statements of material fact to the Office of Attorney Ethics in its investigation; in another client matter, respondent engaged in a conflict of interest by representing the driver and passenger in an automobile accident. In re Bevacqua, 180 N.J. 21 (2004).

Effective December 15, 2004, respondent was suspended for three years. He had visited a K-Mart store posing as someone else

and attempted to purchase electronics items valued at $519, by using fraudulent credit cards and signing as one "Vincent Jones."[1] The MasterCard account that he used belonged to an entity, "Dunhill & Jones." When K-Mart security personnel asked respondent for identification, he claimed to be Vincent Jones, producing a wallet with numerous credit cards for Vincent Jones, and Dunhill & Jones. The wallet also contained a phony New Jersey driver's license bearing respondent's picture and the name "Vincent Jones." While detained, respondent attempted to slip a second wallet to an unidentified man next to him, but security personnel intercepted it. Respondent later admitted that he was Vincent Bevacqua and was placed under arrest. In re Bevacqua, 185 N.J. 161 (2004).

On January 23, 2008, respondent was reinstated to the practice of law. In re Bevacqua, 185 N.J. 161 (2008).

On September 17, 2014, the DEC and respondent entered into a joint stipulation of facts (S), whereby he admitted the salient facts, as well as the ethics charges against him.

In November 2012, Larry Wood retained respondent to represent him to gain legal control over the property and finances of his

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[1] The police were also advised that, two days earlier, on November 28, 2001, respondent had attempted to purchase electronics products at the same K-Mart, using "fabricated credit cards." Because the credit transaction was declined, respondent left the store that day without completing the purchase.

grandmother, Ellen Brandon. Brandon's primary asset was her Newark house, in which Wood resided. Multiple other family members, including several of Brandon's children, also resided in the house.

On November 10, 2012, respondent and Wood met with Brandon, at which time she told respondent that she wished to transfer title to the Newark house to Wood. For financial reasons, Wood asked respondent to delay the preparation of a deed from Brandon to himself. At the meeting, because respondent became concerned that Brandon's age and "various health conditions" might soon impair her ability to communicate her intentions regarding her assets, he taught Brandon to squeeze his finger as a means of communication in the event that she suffered a loss of "lucidity" or "mental capacity."

In his answer to the ethics complaint, respondent stated that, at some point during the following month, he again visited Brandon at her home, this time without Wood present. He left satisfied that she was not being pressured by her grandson to transfer the property.

On December 14, 2012, Brandon suffered a serious stroke and was taken to the hospital. Because the stroke had "significantly impacted [Brandon's] physical and mental capacity" and she did not "look well," Wood contacted respondent, who told him that "they would have to go to the hospital."

On December 21, 2012, respondent visited Brandon at the hospital. The stipulation does not state whether Wood was present that day. Because Brandon was "incapacitated" by the stroke, respondent asked her to squeeze his finger, if she wished to transfer the Newark house to Wood. She then squeezed his finger, affirming to respondent that she assented to the property transfer. During the meeting, respondent executed several legal documents that he had drafted, transferring the Newark property and granting Wood general power of attorney over Brandon's affairs.

The deed that respondent prepared transferred the Newark house to Wood for $1.00 and was signed "Ellen Brandon," with an attestation by her niece, Ellen Wood. The deed also contains respondent's jurat, by which he attested to the authenticity of the signature as Brandon's own.

Respondent prepared a seller's affidavit of consideration for the transaction, reflecting the transfer of the property from Brandon to Wood for $1.00. The affidavit is signed "Ellen Brandon" and contains respondent's December 21, 2012, notarization as to the authenticity of Brandon's signature.

The third and fourth documents prepared by respondent were a seller's residency certification/exemption, as well as a general power of attorney, both signed "Ellen Brandon."

The power-of-attorney document bears the signatures of Ellen Wood and Bari Sherif, a nephew, as witnesses, and respondent's jurat, the latter in identical fashion as contained in the deed.

Brandon passed away on January 29, 2013.

Shortly thereafter, Wood filed a pro se action to remove the other family members residing in the Newark house. A hearing on the removal proceeding was held on April 25, 2013, before the Honorable Michael E. Hubner, J.S.C., in Superior Court, Essex County. Respondent was unaware of the hearing and did not participate in it.

Wood presented the deed and related documents to the judge to prove his ownership of the Newark property. Based on Wood's testimony, which was "consistent with the facts surrounding the hospital meeting and execution of the Deed and related documents" stipulated above, Judge Hubner referred the matter to ethics authorities.

Respondent stipulated that he, not Brandon, had signed the four documents at issue, using Brandon's name, without any indication that the signatures were not genuine. In a written reply to the DEC, he stated as follows:

> [b]y the time I returned [to the hospital where Ms. Brandon was admitted], Ms. Wood [sic] was only able to use the symbolic hand squeeze to express her wishes... When she squeezed my hand symbolizing her desires remained the same, her lucidity had slipped, but I was,

> by then clear as to her intentions and Larry had been verified [sic].
>
> [S¶15.]

Respondent provided the following explanation for his failure to indicate, on the legal documents, that Brandon's signature was not genuine:

> [k]nowing that Mr. Wood was going to require the property Deed in his name to evict the family members, I did not want to execute the Deed with an iconic X, because I assumed the family members, unsophisticated in the law, would be suspicious of the iconic X signature, so I prepared Ms. Brandon to give me nonverbal communication before her condition deteriorated in order to ensure that her name could appear on the deed while I did a background check on Mr. Woods.
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> [S¶16.]

At the DEC hearing, respondent was asked to clarify certain aspects of the matter. In response to the panel's specific question, respondent indicated that Bari Sherif and Ellen Wood, who had executed the documents as witnesses, were in Brandon's room when she squeezed respondent's finger in approval and when he signed the documents. Respondent had told Wood, at some point previously, that he would not visit the hospital, unless other family members and witnesses were present for the signatures. Respondent also recalled that the witnesses, Ellen Wood and Bari Sherif, were Brandon's niece and nephew, but they were not among those who lived in, or had an interest in, the Newark house.

Respondent stipulated that, by signing Brandon's name to the deed, affidavit of consideration, power of attorney, and the seller's residency certification/exemption, he was guilty of four violations of RPC 4.1(a)(1) and RPC 8.4(c). When attesting to the truthfulness of the signatures that he had placed on those documents, respondent again violated RPC 4.1(a)(1) and RPC 8.4(c).

At the DEC hearing, the presenter acknowledged that certain mitigating factors weighed in respondent's favor:

> [Respondent] fully cooperated. He accepted responsibility for his actions.
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> While we likely could have proven what had occurred, it would have involved interviewing witnesses and a number of resources that the committee didn't have to expend. Mr. Bevacqua showed remorse on behalf of his actions from the beginning, and you know, provided the same--basically the same stipulation he agreed to today in our investigation as to the nature of the conduct . . . .
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> [T19-14 to T20-1.][2]

In aggravation, the presenter focused on the potential consequences of respondent's misconduct. He further attributed to respondent an "intent to deceive" members of the household who might have challenged Brandon's deed to Wood.

In a September 15, 2014, letter to the DEC, which he discussed at the hearing two days later, respondent urged the panel to

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[2] "T" refers to the transcript of the September 17, 2014, DEC hearing.

consider that he "never intended to mislead the parties involved in the transfer of title." Rather, because the other Brandon family members were unsophisticated, respondent "wanted the Deed to have the appearance of optimal legal validity." Therefore, he did not employ "the symbolic X." He acted not to deceive, "but to assist with a smooth and unequivocal transfer of the ownership interest." In the letter, respondent asked for permission to issue a new deed, along with his affidavit, in hopes of being "pardoned for the mistake without discipline."

At the DEC hearing, the presenter recommended a reprimand for respondent's misconduct, citing various cases involving false jurat cases. However, after learning of respondent's ethics history following conclusion of the hearing, by letter dated September 26, 2014, the presenter changed his recommendation to a one-year suspension.

In part, the presenter's letter stated:

> As a threshold matter it is disconcerting that Respondent did not reveal his significant ethics history either in response to my written disciplinary recommendation in which I clearly stated that I assumed that he had *no* disciplinary history or, at the very least, during the hearing on this matter when I again stated on the record that my recommendation was based upon Respondent not having a disciplinary history.
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> [Ex.H1.]

In support of the imposition of progressive discipline, the letter cited In re Kivler, 193 N.J. 332 (2008), where the Court "recognized that a prior disciplinary record will generally call for an increase in the penalty that would ordinarily be appropriate for the same behavior." Id. at 342. The presenter also cited respondent's motive (avoidance of a deed challenge) and the fact that he had "learned little from the progressive discipline imposed in previous [disciplinary] matters," as the basis for his departure from the earlier reprimand recommendation. Finally, although respondent appeared to express genuine remorse at the hearing, given his ethics history, the presenter could no longer be certain that "such misconduct would not reoccur."

In an October 8, 2014, reply, respondent apologized for not having revealed his prior history at the hearing, explaining that he "did not know [he] was under obligation to provide this information at any prior stage of the process." [3]

Respondent also distinguished his actions from Kivler, which he considered more serious than his own. Respondent urged the panel to consider that:

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[3] Respondent has no such duty to disclose prior discipline. In fact, the hearing panel chair cautioned the parties, at the inception of the hearing, that only after a finding of guilt would the panel contact the Office of Attorney Ethics for information about prior discipline.

> I am an attorney who seeks to assist those in need and simply made an error in effectuating a Deed for a client who was poor and in need of assistance. My error was not motivated by deception or greed. I desired to clarify an ownership interest and assist in the transfer of property so that a poor old woman could obtain the goal she clearly intended – that her grandson continue to control her property upon her death. Not only was there an absence of greed and self-interest, I earned a minimal fee which was hundreds less than the amount I could have earned based on the time and expense I exhausted to secure that her needs were met. As I explained in the hearing, I met with the grantor on several occasions at her home and in the hospital and thoroughly investigated the grantee to ensure that the correct result was effected. The fee I charged ($400) was de minimus [sic] under the circumstances. There is no evidence that I have been unable or unwilling to adhere to the rules governing the practice of law . . . .
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> [Ex.I5.]

Finally, respondent offered an explanation for each of his prior sanctions, as described in more detail below.

The DEC found that respondent violated both RPC 4.1(a)(1) and RPC 8.4(c) by his improper signing of Brandon's name to the deed, the affidavit of consideration, the power of attorney and the seller's residency certification/exemption. The DEC also found respondent guilty of three additional violations of those rules for affixing his jurat to the deed and the power of attorney and for notarizing the affidavit of consideration.

According to the hearing panel report:

> [r]espondent apologized for not disclosing his prior history, but claimed not to have been required to do so. He further provided additional information regarding

> extenuating circumstances surrounding his prior disciplinary history. Respondent attributed the initial Reprimand in 2002 to "inexperience while a partner in my first firm." Id. He further noted that the next violation, two years later, was caused by his partner, who failed to pay a debt that resulted in liability to all the individual partners. See id. at page 2. Respondent claims that the financial issues caused by his prior partner, which indebted him to the Internal Revenue Service, the pending ethics investigation and the serious health issues of his wife and her family members led him to engage in the use of fraudulent credit cards, which led to the three-year suspension effective December 14, 2004. See id. at 3. Respondent urged the Panel to use this history and the fact that he fully cooperated with the investigation and that the errors in this instance were to aid a client that was "poor and in need of assistance" as mitigating circumstances.
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> [HPR¶19.][4]

The panel cited a number of cases in support of a suspension, but focused on two, both involving the imposition of significant suspensions, In re Silberberg, 144 N.J. 215 (1996) and In re Weston, 118 N.J. 477 (1990). In analyzing and applying those cases to the misconduct in this matter the DEC concluded that the "forgery," of itself, required the imposition of a suspension.

Thus, in recommending a one-year suspension, the DEC stated:

> In the present case, Respondent has stipulated that he forged the signature of his client's grandmother and attested to that signature on four separate occasions. Pursuant to *Weston and Silberberg,* these facts alone would suggest that suspension is the appropriate discipline. Respondent's transgressions did not result in any personal gain to him and he cooperated in the

[4] "HPR" refers to the January 16, 2015 hearing panel report.

> investigation. These are mitigating factors. However, Respondent's lengthy prior ethical history, which involves a three-year suspension for fraudulent use of credit cards is a significant aggravating factor.
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> [HPR¶30.]

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

Respondent stipulated that he signed Brandon's name to four legal documents that he had prepared, without indicating that the signatures were other than Brandon's own. It is important to note, however, that respondent had Brandon's consent to sign her name, as indicated by the finger-squeezing. Respondent signed the documents to facilitate Brandon's wish that Wood, her grandson, be responsible for her financial affairs and the ownership of her house. Respondent then attested the signatures, albeit with witnesses present, in order to complete the transfer.

Respondent admitted his wrongdoing and stipulated to a total of seven infractions of RPC 8.4(c) and RPC 4.1(a)(1). Four violations related to the signing of the documents and the other three to his attestations on three of them.

There is no evidence whatsoever in the record that respondent was involved in fraud upon Brandon or anyone else. To the contrary, respondent stated that, out of caution, he had performed a

background check on Woods and had met privately with Brandon about the transfer before taking action. There is also no evidence that respondent benefitted in any way, other than receiving a minimal legal fee.

Nevertheless, respondent specifically sought to prevent any suspicion on the part of the soon-to-be-evicted family members that the deed and related documents were not genuine. Moreover, when Woods presented the documents in an Essex County eviction matter, that court was nearly misled that the documents were authentic. Only by questioning Wood did the judge discover that respondent, not Brandon, had signed them. Although respondent was not aware of that particular litigation, he knew that Wood intended to use those documents if an eviction proceeding were necessary to remove family members from the property.

The Court has consistently found that attorneys who take improper jurats or who sign the names of others, even with authorization, are guilty of misrepresentation, in violation of RPC 8.4(c). See In re Hock, 172 N.J. 349 (2002). The improper execution of jurats, without more, ordinarily has resulted in the imposition of an admonition or a reprimand. An admonition generally is appropriate when the attorney witnesses and notarizes a document that has not been signed in the attorney's presence, but was signed by the legitimate party. See, e.g., In the Matter of Nicholas V.

DePalma, DRB 12-004 (February 17, 2012) and In the Matter of Richard C. Heubel, Docket No. DRB 09-187 (September 24, 2009).

If there are aggravating factors, such as directing that a secretary or another person sign the party's name on a document that the attorney then notarizes, harm to the parties, or the attorney's personal stake in the transaction, then the appropriate discipline is generally a reprimand. See, e.g., In re LaRussa, Jr., 188 N.J. 253 (2006) (attorney improperly directed a wife to sign a husband's name to a release in a personal injury action and then affixed his jurat to the document); In re D'Alessandro, 169 N.J. 470 (2001) (attorney witnessed and notarized an executed deed and notarized two affidavits of title, purportedly signed by four individual sellers, three of whom had not signed the documents in the attorney's presence; the signatures had been forged and the three sellers were unaware that their property was being sold); and In re Spagnoli, 89 N.J. 128 (1982) (attorney who represented a client in a divorce action prepared and filed three affidavits in connection with that matter; the affidavits purported to be signed by the client and witnessed by the attorney, when, in fact, the attorney signed his client's name to the affidavits; the attorney's actions were due to inexperience (five years at the bar) and expediency; the attorney had allowed himself to become

overinvolved with the client's emergent situation; no personal gain to the attorney).

Knowingly making a false statement of material fact to a third person ordinarily results in a reprimand. See, e.g., In re Walcott, 217 N.J. 367 (2014) (reprimand for attorney who misrepresented to a third party, in writing, that he was holding $2,000 in escrow from his client as collateral for a settlement agreement; violation of RPC 4.1(a)(1) and RPC 8.4(c)); In re Chatterjee, 217 N.J. 55 (2014) (attorney, for a five-year period, misrepresented to her employer that she had passed the Pennsylvania bar examination, a condition of her employment; she also requested, received, but ultimately returned, reimbursement for payment of the annual fee required of Pennsylvania attorneys; compelling mitigation); In re Liptak, 217 N.J. 18 (2014) (attorney misrepresented to a mortgage broker the source of the funds she was holding in her trust account; the attorney also committed recordkeeping violations; compelling mitigation); In re Lowenstein, 190 N.J. 58 (2007) (attorney failed to notify an insurance company of the existence of a lien required to be satisfied from the settlement proceeds; the attorney's intent was to avoid the satisfaction of the lien); and In re Agrait, 171 N.J. 1 (2002) (attorney, despite being obligated to escrow a $16,000 deposit in a real estate transaction, failed to collect it but

caused it to be listed on the RESPA as a deposit; the attorney also failed to disclose a prohibited second mortgage to the lender).

In re Silberberg, supra, 144 N.J. 215, and In re Weston, supra, 118 N.J. 477, both cited by the DEC in support of its suspension recommendation, involved misconduct far more serious than that in this matter. In Silberberg, the Court imposed a two-year suspension on an attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower. Silberberg then witnessed and notarized the "signature" of the co-borrower, knowing that the co-borrower was deceased. After the ethics grievance was filed against him, Silberberg falsely stated that the co-borrower had attended the closing. On another occasion, he sent a seven-page certification containing false statements to the district ethics committee to conceal his improprieties.

In Weston, the Court suspended the attorney for two years for engaging in fraudulent misconduct by signing a deed and affidavit of title, in the name of a client/seller, without authorization, and then misrepresenting to the purchaser's attorney that the documents were genuine. In imposing the suspension, the Court was particularly concerned by the attorney's steadfast and ongoing misrepresentations to the buyer's attorney, who questioned the veracity of the signatures. Specifically, rather than acknowledge

his misconduct, the attorney then sent the buyer's attorney a letter insisting that the signatures were genuine. The buyer was compelled to retain a writing expert to establish the truth.

Respondent's conduct in this matter is similar to that of the attorney in Spagnoli (reprimand), who prepared and filed three affidavits in connection with a divorce matter, after signing his client's name to them. Like Spagnoli, respondent signed Wood's name to a deed and three other documents, purportedly signed by her and attested by respondent. Unlike Spagnoli, respondent cannot claim "inexperience and expediency," even though he, too, had allowed himself to become "overinvolved" in Wood's emergent situation. As in Spagnoli, respondent did not personally gain from the transaction.

With a reprimand as the baseline for respondent's misconduct, we turn to the aggravating circumstance of his prior discipline. Respondent must have known that even a modest ethics slip-up on his part could have significant disciplinary ramifications. We do not consider this a modest slip-up. After all, questions of respondent's fitness of character permeated his prior six-month and three-year suspension cases. We find respondent's continued use of very poor judgment alarming, especially when viewed against his very checkered disciplinary past.

We also considered mitigation. Respondent cooperated with ethics authorities; readily admitted his guilt by entering into a stipulation with the DEC, thus saving precious disciplinary resources; expressed remorse for his actions; and was not motivated by personal gain.

Respondent should make no mistake about it – had his own ill motive or involvement in a nefarious scheme been a proven part of this case, we would have considered much harsher discipline, up to the ultimate sanction.

We find intolerable respondent's willingness to resort to misrepresentations and forgery to achieve an otherwise legal end. We determine that a three-month suspension is required. Member Singer voted for a censure and has filed a separate dissent. 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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Vincent E. Bevacqua
Docket No. DRB 15-080

Argued: May 21, 2015

Decided: October 13, 2015

Disposition: Three-month suspension

| ***Members*** | Disbar | Three-month Suspension | Censure | Dismiss | Disqualified | Did not participate |
|---|---|---|---|---|---|---|
| Frost | | X | | | | |
| Baugh | | X | | | | |
| Clark | | | | | | X |
| Gallipoli | | X | | | | |
| Hoberman | | X | | | | |
| Rivera | | X | | | | |
| Singer | | | X | | | |
| Zmirich | | X | | | | |
| Total: | | 6 | 1 | | | 1 |

Ellen A. Brodsky
Chief Counsel