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

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

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

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

The facts recited in the majority opinion are based on a "Joint Stipulation of Facts" entered into by respondent and the presenter and are undisputed. They are accurately discussed in the majority opinion. My disagreement with the majority is primarily with the degree to which it recommends enhancing the sanction due to respondent's poor ethics history. The majority would enhance the sanction for the current ethics violations from what it acknowledges would otherwise be a reprimand to a 3-month suspension. I believe, under the circumstances of this case, his sanction should be enhanced from reprimand to a censure.

Because the facts are thoroughly discussed in the majority opinion, I recount only an abbreviated version. After respondent was retained by Larry Wood ("Wood") in November 2012 to help him obtain "legal control" over a home (the "Property") owned by his grandmother, Ellen Brandon ("Brandon"), consistent with her wishes, respondent met with Brandon several times to ascertain her wishes. The transfer was somewhat delayed for Woods' own financial reasons and this delay worried respondent because Brandon was elderly and in poor health. Anticipating that she might lose the ability to communicate, he instructed her to squeeze his fingers to communicate with him should that be necessary in the future.

After Brandon had a stroke and was hospitalized, respondent and Wood visited her at the hospital on December 21, 2012. In response to respondent's question and in front of two disinterested relatives, Brandon squeezed his fingers, confirming that she still wanted to transfer the Property to Wood. Accordingly, to effectuate the transfer, respondent presented Brandon with a deed and other documents but instead of assisting her to sign the documents or having her sign with an "X" as would have been necessary because she was too weak to hold a pen, respondent signed Brandon's name to four documents. He also notarized them, thereby falsely attesting that Brandon had signed them. Two disinterested

relatives witnessed the signing and also signed as witnesses. Brandon died a month later.

Wood subsequently filed a complaint seeking to evict other family members from the Property (the "Wood litigation") and in court testified consistently with respondent's description above of the December 21st hospital meeting.

During the ethics investigation begun after a referral by the judge in the Wood litigation, respondent explained as follows in a letter to the presenter dated September 15, 2014:

> Respondent never intended to mislead the parties involved in the transfer of title, but given their lack of sophistication with respect to the law, respondent wanted the Deed to have the appearance of optimal legal validity and thus opted not to use the symbolic X. It was not Respondent's intent to deceive, but to assist with a smooth and unequivocal transfer of ownership interest.

A substantively identical statement was contained in paragraph 16 of the Joint Stipulation of Facts.

In deciding on the appropriate sanction to be imposed for the violations to which respondent stipulated, we consider several significant factors. **First**, respondent had Brandon's consent to sign her name, as she told him orally and later confirmed by squeezing his fingers in a pre-arranged signal. **Second**, respondent signed Brandon's name to facilitate her wish that Wood, her grandson, have ownership of her house. **Third**, respondent did not

benefit by signing and notarizing the documents and had no selfish or fraudulent motive in doing so. **Fourth,** Brandon and other witnesses were present when respondent signed and notarized the documents and he never attempted to hide or conceal what he had done. **Fifth,** the hearing panel found that respondent fully cooperated from the very beginning of the investigation, admitted his actions, accepted responsibility, and showed genuine remorse.

The majority itself (at pp. 13-14) says that, "[t]here 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." The majority also recognized that other than receiving a minimal legal fee, "no evidence [suggests] that respondent benefitted." Respondent described at the DEC hearing the actions he took to assure himself of Brandon's true wishes before the documents were executed to effectuate transfer of the Property. (Hearing Tr. 22:24-35:19).

I recognize that the above five factors do not rectify or negate the ethics violations committed by respondent. After all, Brandon's family members and the court would have been deceived into believing that the signatures were genuine had the judge in the Wood litigation not questioned Wood and discovered that the

signatures were not genuine. But these factors should put the RPC violations in perspective, mitigating respondent's culpability.

As the majority states, the sanction for the improper execution of jurats is usually an admonition or a reprimand, e.g., In the Matter of Nicholas V. DePalma, DRB 12-004 (February 17, 2012); In the Matter of Richard C. Heubel, Docket No. DRB 09-187 (September 24, 2009), and even if there are aggravating factors such as harm to the parties or the attorney's personal stake in the transaction, the usual discipline is a reprimand. See, e.g., In re LaRussa, Jr., 188 N.J. 253 (2006); In re D'Alessandro, 169 N.J. 470 (2001). The usual sanction for making a false statement of material fact is also a reprimand. See, e.g., In re Walcott, 217 N.J. 367 (2014); In re Chatterjee, 217 N.J. 55 (2014); and In re Liptak, 217 N.J. 18 (2014). These cases are each discussed in the majority decision.

As the majority itself says further (at p.18), respondent's conduct is similar to that of the attorney in In re Spagnoli, 89 N.J. 128 (1982), where an attorney was reprimanded for preparing three affidavits, signing the client's name to them and filing them with the court in a divorce matter, but who did not do so for personal gain, being motivated mainly by expediency.

But despite its acknowledgement that a reprimand would normally be imposed for these very same violations, the majority

nonetheless recommends that respondent be suspended for three months.[1] It seems to me that while a prior ethics history must be considered and indeed the Court has said that progressive discipline should be imposed for repeat violators, In re Kivler, 193 N.J. 332 (2008),[2] nonetheless a sanction should be primarily designed to suit the ethics violation at hand, albeit as appropriately enhanced by prior ethics violations.

Bumping up a reprimand two "levels" to a three-month suspension is not called for here. Respondent's response to the ethics system has been respectful and fully cooperative. He admitted the material facts, entered into a stipulation saving the system, as the presenter said at the DEC hearing (Tr. 19:13-25), time and effort that otherwise would have been necessary to prove his infractions, and he has been remorseful "from the beginning."

Most important, as mentioned above, while respondent used poor judgment, his actions were not motivated by personal gain but

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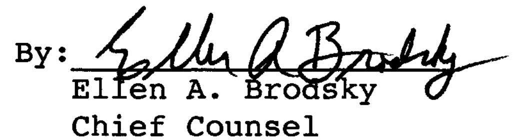
[1] While respondent agreed that he committed multiple ethics violations, he committed them at one time as part of one "signing" episode and all were based on the same misjudgment.

[2] Kivler "recognized that a prior disciplinary record will generally call for an increase in the penalty that would ordinarily be appropriate for the same behavior," 193 N.J. at 342, but enhanced the sanction primarily because that attorney had ignored the ethics authorities repeatedly, showing a "significant lack of regard for the disciplinary process in general and for this Court in particular." Id. at 343. In short, Kivler had treated the disciplinary system contemptuously at all levels. That factor is absent in the instant case.

seem to have been motivated by a desire to help his client, Wood, and to effectuate the wishes of Wood's grandmother, Brandon, in what he saw as the most efficient manner. No harm was done, respondent forthrightly and immediately acknowledged what he did, and should not, I believe, be suspended for what is best described as a mistake in judgment.

In short, if it were not for respondent's poor ethics history, I would favor a reprimand, as is consistent with the precedent in matters of this type. However, because of that history, I recommend that respondent be censured, but not suspended.

Disciplinary Review Board
Anne C. Singer

By: 
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