

**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

07 - 1090

In Re: :

Complaint against: : **Case No. 06-077**

Scott R. Roberts : **Findings of Fact,**
Attorney Reg. No. 0023364 : **Conclusions of Law and**
: **Recommendation of the**
Respondent : **Board of Commissioners on**
: **Grievances and Discipline of**
Disciplinary Counsel : **the Supreme Court of Ohio**

Relator :

INTRODUCTION

This matter was heard on March 13, 2007, in Columbus, Ohio before a panel consisting of the Honorable John B. Street, Martin J. O'Connell, and Shirley J. Christian, Chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint. Attorney William Mann represented Respondent, Scott R. Roberts, and Stacy Solochek Beckman represented Relator, Disciplinary Counsel.

PROCEDURAL HISTORY

On November 6, 2006, a hearing panel was assigned in the above captioned case. The matter was submitted to the hearing panel as a Consent to Discipline pursuant to Section 11 of the Rules and Regulations Governing Procedure on Complaints and Hearings before the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio. The Consent was timely filed with the Board and was considered by the hearing panel. By entry of February 12,

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OF OHIO

2007, the panel rejected the Discipline By Consent Agreement and the matter was scheduled for hearing.

At the time of the hearing the parties filed the Agreed Stipulations and Exhibits attached as Exhibit A, which the panel accepted, and which are incorporated herein by reference.

FINDINGS OF FACT

Respondent, Scott R. Roberts, was admitted to the practice of law in the State of Ohio on November 2, 1979. At the time of the incidents referred to in the Complaint, he was a sole practitioner. Mr. Roberts was retained by Mr. Carter to represent him in a personal injury matter for injuries sustained in a motor vehicle accident on January 3, 2004. Mr. Carter was an over the road truck driver who lived with his wife Suzanne in Baldwin, Michigan. Respondent met with the client and his wife at their home in Michigan when he was initially retained. Thereafter, his communication with them consisted of letters to Mr. and Mrs. Carter and phone conversations with Mrs. Carter.

The Carters traveled anywhere from 130 to 150 miles one way from their home several times a week to obtain treatment by Mr. Carter's family doctor and chiropractor. They traveled this distance because they did not have health insurance or money to pay physicians and their family doctor and chiropractor would extend treatment to them on credit. The majority of their medical bills, however, were owed to a hospital in northern Michigan that would not extend credit to them.

Throughout his representation of Mr. and Mrs. Carter, Respondent would receive phone calls and made several notations regarding the clients' financial problems. The Carters were concerned that because Mr. Carter's injuries were serious and involved injuries to his pancreas that he would be out of work for some time and they had no income. They were concerned as

well that the truck Mr. Carter drove would be repossessed and they were being hounded by creditors. These were common themes conveyed to Respondent in several phone conversations. Respondent described his clients as being in "dire financial straights." He noted that they were very nice people and were "scared to death."

As a result of his clients' dire financial situation, Respondent proceeded very quickly to try to obtain a settlement through various insurance carriers. Mr. Carter had available to him a liability policy from Geico Insurance as well as a policy with Cincinnati Insurance Company to cover his injuries. Respondent was ultimately able to obtain settlements from both companies on behalf of his client.

On March 5, 2004, Respondent sent Mr. Carter a release for wage information to enable Respondent to obtain payroll records from Carter's employer. The release was signed by Mr. Carter and sent to the company. However, it was returned to Respondent because Mr. Carter's signature was not notarized. Respondent phoned the client and was advised by Mrs. Carter that it was not notarized because they didn't have money for gas to go into town to have it notarized. Rather than return the release to the Carters for a properly notarized signature, Respondent simply notarized Mr. Carter's signature and advised him that he had done so via a letter. He also changed the date of Mr. Carter's signature to the date of the notarization. Mr. Carter did not appear before him at the time he notarized the document. Mr. Carter's signature in fact had been placed on the form prior to the notarization. Respondent acknowledged that this was an error and that he "lost focus."

On August 27, 2004, Mr. and Mrs. Carter signed a Limited Power of Attorney permitting Respondent to settle their claim with Geico Insurance. This was done to speed up the process and get money to the Carters sooner. The claim with Geico was settled for \$100,000 on

September 13, 2004. A check made payable to Elmer and Suzanne Carter in the amount of \$39,313.89 was sent to them. Along with the check a disbursement sheet identifying the other distributions for the \$100,000 settlement was sent.

Thereafter, on October 26, 2004, Respondent admits that he made his second big mistake. He had obtained a settlement in the amount of \$47,500 from Cincinnati Insurance. In order to conclude this settlement as quickly as possible, he signed the names of Mr. and Mrs. Carter to a "Release of All Claims" from Cincinnati Insurance Company. He believed that he was assisting his clients and that he had their permission to sign their names because of his limited power of attorney. The power of attorney that he relies on, however, was for Geico and not Cincinnati Insurance. Respondent signed the release as if the Carters themselves had signed it; he did not make any indication that he was signing their names under authority of the power of attorney. He then notarized the purported signatures of his clients, once again falsely swearing that the Carters had personally appeared before him. He requested that his assistant act as a witness on the Release. Although his assistant signed as a witness, she obviously did not witness either Mr. or Mrs. Carter sign the Release.

Respondent received payment of the settlement proceeds and sent a check to the Carters for \$31,620.07. Suzanne Carter received the check, forged her husband's signature on the check, deposited it into their joint checking account, and eventually stole the money from Mr. Carter. Respondent was not aware of the theft by Mrs. Carter until several months later when he received a telephone call from Mr. Carter asking what had happened to the money.

CONCLUSIONS OF LAW

Respondent admitted, and the panel unanimously finds by clear and convincing evidence, that Respondent violated the following sections of the Code of Professional Responsibility:

DR1-102(A)(4) [Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation] and DR1-102(A)(6) [Engaging in conduct that adversely reflects on his fitness to practice law].

MITIGATION AND AGGRAVATION

The only aggravating circumstance found by the Panel is the fact that in his representation of the Carters Respondent committed multiple offenses. By way of mitigation, the Panel finds that Respondent presented evidence of the following:

- (1) Absence of a prior disciplinary record;
- (2) Absence of a selfish motive; in fact, Respondent was responding to his client's wishes to move as quickly as possible. His reaction, although totally inappropriate, was not selfish;
- (3) Full and free disclosure to Disciplinary Board and a cooperative attitude toward the proceedings;
- (4) Good character and reputation.

The Panel was particularly struck with Respondent's willingness to accept responsibility for his error. At various times during the hearing, Respondent testified as follows:

So I just lost my focus. I didn't follow the correct legal procedure on this Release Of All Claims. It wasn't my intent to defraud or deceive anyone. My intent was to help these people because they were suffering. Tr. at 47.

So I signed Elmer and Suzanne Carter's name and started with Elmer and Suzanne POA and took that hat off and put on my attorney hat and notarized the fact that those signatures were signed per power of attorney. That's what was going on in reality, but the paperwork doesn't reflect that and that's my fault. What I should have done is because there were at least six notary publics within 20 yards of us what I should have done is attached the power of attorney and indicated per POA and put my initials and gone to any one of the notary publics in my office. There are two attorneys and two paralegals. It's my fault. I just lost focus. Tr. at 46-47.

Later Respondent noted that the point of the Disciplinary Counsel and the Supreme Court is to protect the integrity of the legal system and that statements under oath are important and that is

part of the integrity of the legal system. Respondent noted “It was very stupid, stupid. I mean, it was – I admit it. I was stupid. I had notary publics all around me. I was stupid.” Tr. at 60-61.

Finally, it should be noted that although Respondent explained the circumstances under which he made the error, he clearly did not believe that the ends justify the means. He acknowledged his wrongdoing.

RECOMMENDED SANCTION

Relator recommended a six month suspension with the entire suspension stayed. Respondent stipulated to the imposition of that sanction. However, pursuant to Section 10 of the Board’s Rules and Regulations, the Panel considered all relevant factors including precedent established by the Supreme Court of Ohio and the virtual absence of any aggravating circumstances and presence of almost all of the mitigating circumstances outlined in the rules.

Specifically, the Panel relies upon the case *Columbus Bar Association v. Daugherty*, 105 Ohio St. 3d 307, 2005-Ohio-1825 for precedent. In that case, the Supreme Court held that the acts of Respondent did not constitute the more egregious infractions for which suspensions, actual or stayed, have been applied for notary related misconduct. The Court issued a public reprimand. For similar reasons, it is the recommendation of this Panel that Mr. Roberts receive a public reprimand. The Panel finds the explanation of circumstances and motivation in this case more factually similar to the following cases than to those where a suspension was recommended:

Mahoning County Bar Assn v. Melnick, 107 Ohio St. 3d 240, 2005-Ohio-6265 (Time constraints on respondent due to military obligations and signature verified by client); *Disciplinary Counsel v. Mezacapa*, 101 Ohio St. 3d 156, 2004-Ohio-302 (Signature verified; not

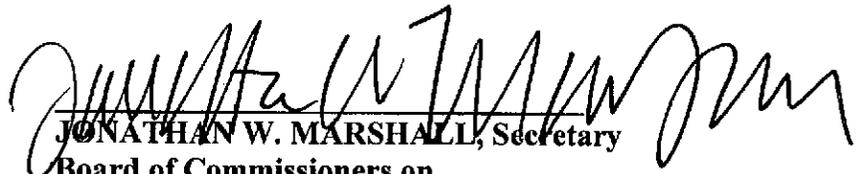
done out of self interest); *Cincinnati Bar Assn v. Thomas*, 93 Ohio St. 3d 402, 2001-Ohio-1344 (Verbal permission given by client; done to expedite divorce proceedings).

The Panel finds that Respondent's actions do not manifest a deceptive course of conduct. Additionally, there was no evidence that Respondent took his notary responsibilities cavalierly. This was the concern of the dissenting Justices in the *Daugherty* case. Rather, he was caught up in the unfortunate circumstances of his client. Moreover, Respondent has recognized his weakness for doing "whatever [he] can" to help persons in need and, therefore, no longer takes personal injury cases. He is genuinely embarrassed by his conduct. The Panel finds that a public reprimand will be a sufficient sanction for his actions and so recommends.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on June 8, 2007. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, Scott R. Roberts, receive a public reprimand. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.



JONATHAN W. MARSHALL, Secretary

**Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio**

**BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE OF
THE SUPREME COURT OF OHIO**

In re: :

Scott Richard Roberts :
Attorney Registration No. 0023364 :
1625 Bethel Road, Suite 102 :
Columbus, OH 43220, :

Respondent, :

v. :

Disciplinary Counsel :
250 Civic Center Drive, Suite 325 :
Columbus, OH 43215-7411, :

Relator. :

CASE NO. 06-077

**AGREED STIPULATIONS
OF FACT AND LAW**

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**BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE**

AGREED STIPULATIONS OF FACT AND LAW

Relator, Disciplinary Counsel, and respondent, Scott R. Roberts, do hereby stipulate to the admission of the following facts, mitigating factors, violations of the Code of Professional Responsibility and sanction as well as to the admission and authenticity of the attached exhibits. Respondent will testify at the hearing of this case for the purpose of providing the hearing panel with additional facts.

STIPULATED FACTS

1. Respondent, Scott Richard Roberts, was admitted to the practice of law in the state of Ohio on November 2, 1979. Respondent is subject to the Code of Professional Responsibility and the Rules for the Government of the Bar of Ohio.
2. On or about January 14, 2004, Roberts entered into a contingency fee agreement with Elmer Carter to represent Carter on a personal injury matter for injuries sustained

in a motor vehicle accident that occurred on January 3, 2004. Carter was working as a truck driver for Charles Rector at the time of the accident.

3. Respondent met Elmer and his wife, Suzanne, at their home in Michigan at the time that they hired him. Respondent did not meet with Mr. or Mrs. Carter on any other occasion during the representation.

4. There were potentially two separate liability policies available to Carter - a Geico Insurance policy as well as a policy with Cincinnati Insurance Company.

5. Immediately after respondent was hired by Carter, he began working with the insurance companies to obtain a sufficient settlement for his client. Respondent subsequently obtained a settlement from both Geico and Cincinnati Insurance on his client's behalf.

6. On or about March 2, 2004, respondent sent Carter a release for wage information that respondent had received from the PIP carrier. Carter executed the release, but did not have his signature notarized as respondent had instructed. Carter sent the release directly to the PIP carrier, which returned it to respondent because it was not notarized.

7. Respondent notarized Carter's signature on the release, changed the date on the release and returned it to the PIP carrier. Carter did not sign the release in the presence of respondent. Respondent believed that by notarizing Carter's signature outside of Carter's presence that he was assisting his client who desperately needed the PIP money.

8. On April 13, 2004, respondent wrote to Carter and Suzanne. In the letter, respondent indicated "[t]he release that you sent to Mr. Johnston was returned by his office (and sent to me) because Elmer did not have his signature notarized. I notarized

the document” Respondent also changed the date noted beside Carter’s signature on the release.

9. When respondent notarized the release, he falsely stated that the release was “[s]ubscribed and sworn to before me”.

10. On or about August 27, 2004, Carter and Suzanne signed a Limited Power of Attorney permitting respondent to settle their claim with Geico insurance.

11. Respondent settled Carter’s claim with Geico for \$100,000 on or about September 13, 2004.

12. On September 22, 2004, respondent sent Carter a check, made payable to “Elmer and Suzanne Carter”, in the amount of \$39,313.89 along with a disbursement sheet identifying the other distributions from the \$100,000 settlement.

13. On or about October 26, 2004, respondent obtained a settlement in the amount of \$47,500 from Cincinnati Insurance on behalf of Carter and Suzanne.

14. On October 26, 2004, respondent signed the names of Carter and Suzanne to a release of all claims in exchange for the settlement with Cincinnati Insurance Company. Nowhere on the release did respondent make an indication that he was signing Carter’s and Suzanne’s names. Respondent believed that he had his clients’ permission to sign their names to the release and that by doing so he was assisting his clients.

15. Respondent notarized the signatures on the release, falsely swearing that Carter and Suzanne had “personally appeared” before him and signed the release. Neither Carter nor Suzanne signed the release.

16. Respondent requested that his assistant, Carole A. Rees, act as a witness on the release. Although Rees signed her name as a witness, she did not witness either Carter or Suzanne sign the release.
17. On October 26, 2004, respondent sent Carter a check in the amount of \$31,620.07 along with a disbursement sheet identifying the other distributions from the \$47,500 settlement.
18. Respondent obtained settlements totaling \$147,500 on Carter's behalf.
19. Unbeknownst to respondent, when Suzanne Carter received the settlement checks from respondent, she forged her husband's signature on the checks, deposited the checks into the account she shared with her husband and stole the money from her husband.

STIPULATED EXHIBITS

- | | |
|------------|--|
| Exhibit 1 | Letter from Dennine L. Turner to Scott R. Roberts dated March 16, 2004. |
| Exhibit 2 | Letter from Scott R. Roberts to Elmer and Suzanne Carter dated April 13, 2004. |
| Exhibit 3 | Letter from Elmer Carter to Charles and Lisa Rector dated March 2, 2004 and notarized on March 21, 2004. |
| Exhibit 4 | Limited Power of Attorney dated August 27, 2004. |
| Exhibit 5 | Release of All Claims dated October 26, 2004. |
| Exhibit 6 | Letter from Scott R. Roberts to Nicholas M. Ewart dated October 26, 2004. |
| Exhibit 7 | Email transmission from Linda Carpenter dated November 13, 2006. |
| Exhibit 8 | Letter from Ed Rhine to William Mann dated November 1, 2006. |
| Exhibit 9 | Email transmission from Ron Clark Aguilar dated November 13, 2006. |
| Exhibit 10 | Email transmission from Alesia Jenkins dated October 22, 2006. |

- Exhibit 11 Letter from Carter W. Lewis to William Mann dated October 22, 2006.
- Exhibit 12 Email transmission from Wendy Olsen dated October 23, 2006.
- Exhibit 13 Letter from Patricia Elam dated October 24, 2006.
- Exhibit 14 Letter from Pat Pitula to William Mann dated October 24, 2006.
- Exhibit 15 Letter from Harry Robert Reinhart to William C. Mann dated October 24, 2006.
- Exhibit 16 Letter from Denny Dicke to William Mann dated October 24, 2006.
- Exhibit 17 Letter from Gerald T. Sunbury to William Mann dated October 25, 2006.

**STIPULATED VIOLATIONS OF THE CODE OF PROFESSIONAL
RESPONSIBILITY AND STIPULATED SANCTION**

Respondent admits that his conduct violated the Code of Professional Responsibility, specifically, DR 1-102 (A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation]; and, DR 1-102 (A)(6) [a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law].

Relator and respondent recommend that the board impose a six-month suspension, with the entire suspension stayed, against respondent.

STIPULATED MITIGATING FACTORS

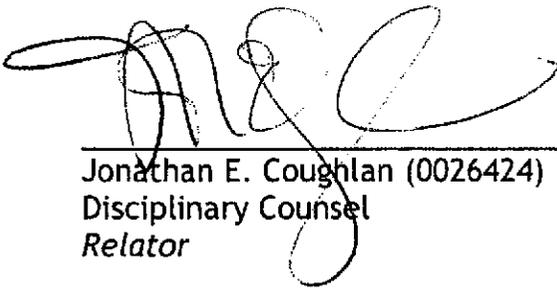
Relator and respondent stipulate that respondent's conduct involved the following mitigating factors as listed in BCGD Proc. Reg. § 10 (B)(2):

- (a) absence of prior disciplinary record;
- (b) absence of dishonest or selfish motive;

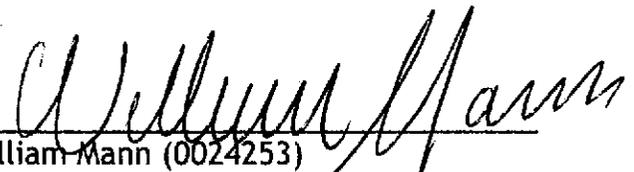
- (d) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; and,
- (e) character and reputation.

CONCLUSION

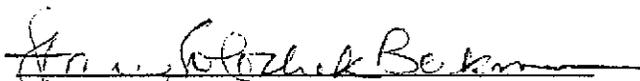
The above are stipulated to and entered into by agreement by the undersigned parties on this 13th day of March 2007.



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Relator



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Scott R. Roberts (0023364)
Respondent