

IN THE SUPREME COURT OF OHIO

DISCIPLINARY COUNSEL, :  
Relator, :  
v. : CASE NO. 2007-1090  
SCOTT R. ROBERTS, : BOARD NO. 06-077  
Respondent, : RELATOR'S OBJECTION TO THE  
FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND THE RECOMMENDATION OF  
THE BOARD OF COMMISSIONERS ON  
GRIEVANCES AND DISCIPLINE OF THE  
SUPREME COURT OF OHIO

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CONCLUSIONS OF LAW AND THE RECOMMENDATION OF THE  
BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE  
OF THE SUPREME COURT OF OHIO

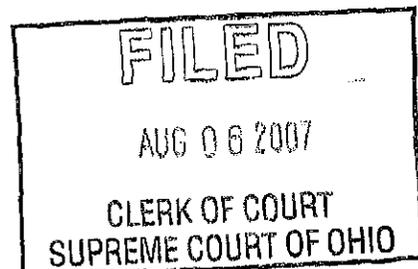
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SCOTT R. ROBERTS  
Respondent



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INTRODUCTION

Now comes relator, Disciplinary Counsel, and submits its Objections to the Findings of Fact, Conclusions of Law and Recommendations of the Board of Commissioners on Grievances and Discipline. Relator has attached the board's Findings of Fact, Conclusions of Law and Recommendation (the "Findings") hereto as Appendix A. See S. Ct. Prac. R. VI (2)(B)(5)(b).

STATEMENT OF THE CASE

On October 9, 2006, relator, Disciplinary Counsel, initiated a formal complaint against respondent, Scott R. Roberts, arising out of his representation of Elmer and Suzanne Carter in a personal injury matter. Although the parties initially submitted a consent-to-discipline agreement pursuant to Section 11 of the Rules and Regulations

Governing Procedure on Complaints before the Board of Commissioners on Grievances and Discipline, the panel rejected the agreement and held a hearing on this matter on March 13, 2007. The parties entered into Agreed Stipulations of Fact and Law that resolved all of the issues involved in relator's complaint and included a stipulated recommended sanction of a six-month suspension, stayed in its entirety.

In its findings, the panel adopted the agreed stipulations and determined that respondent 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 upon his fitness to practice law]. The panel declined to accept the parties' recommended sanction, however, and determined that a public reprimand was a sufficient sanction. The board adopted the panel's recommendation.

On June 28, 2007, the court issued a Show Cause Order. Pursuant to Gov. Bar R. V (8)(B), relator submits its objection to the findings and recommendations of the board.

#### STATEMENT OF FACTS

On January 14, 2004, respondent entered into a contingency fee agreement with Elmer Carter and agreed to represent Carter on a personal injury matter for injuries he sustained in a January 3, 2004 motor vehicle accident. Findings, p. 2. Carter was working as a truck driver at the time of the accident. Id. Respondent met Carter and his wife, Suzanne, at their home in Michigan when he was retained. This was the only time respondent met with either Mr. or Mrs. Carter during the

representation. Id. Generally, respondent communicated with Mr. and Mrs. Carter by telephone, usually speaking with Suzanne, or by written communications. Respondent was aware that Mr. and Mrs. Carter were experiencing significant financial difficulties during the representation. Id. at 3.

Shortly after he was retained, respondent began working with the insurance companies to obtain a sufficient settlement for his client. Id. There were two separate liability policies available - one with Geico Insurance and a second with Cincinnati Insurance. Id. Respondent ultimately obtained a settlement from both companies on his client's behalf. Id.

On March 2, 2004, respondent sent Carter a release for wage information that respondent had received from Carter's employer. Id. Carter executed the release, but did not have his signature notarized. Id. He returned the release directly to the company, which returned it to respondent because it was not notarized.

When respondent received the release, he notarized Carter's signature and changed the date of the signature on the form. Id. On April 13, 2004, respondent informed Carter of his actions by letter. Stipulated Exhibit 2. Carter did not appear before respondent at the time that respondent notarized the letter. Findings, p. 3.

On August 27, 2004, Carter and Suzanne signed a Limited Power of Attorney permitting respondent to settle their claim with Geico Insurance. Id. Respondent settled the case with Geico for \$100,000 on September 13, 2004. Id. On September 22, 2004, respondent sent Carter a check, issued to Elmer and Suzanne Carter, in the amount of \$39,313.89 along with a disbursement sheet identifying each of the distributions from the \$100,000 settlement. Id. at 4.

On October 26, 2004, respondent obtained a settlement in the amount of \$47,500 on Carter's behalf from the Cincinnati Insurance Company. Id. Respondent signed Carter's and Suzanne's names to a release of all claims in exchange for the settlement. Id. Nowhere on the release did respondent indicate that he had signed Carter's or Suzanne's names. Id. Respondent asked his secretary to witness the release, although she did not see either Carter or Suzanne sign the release. Id. Respondent notarized the signatures on the release, falsely stating that Carter and Suzanne had "personally appeared" before him and signed the release. Id. Respondent believed that he had Carter's permission to sign Carter's name to the release. Id.

Respondent sent a check to Mr. and Mrs. Carter in the amount of \$31,620.07. Id. Unbeknownst to respondent, Suzanne received the check, forged Carter's signature on the check, deposited the check into their joint checking account, and eventually stole all of the money from Carter. Id.

#### RELATOR'S OBJECTION

#### THE COURT SHOULD ADOPT THE SANCTION STIPULATED TO BY THE PARTIES AND SUSPEND RESPONDENT FROM THE PRACTICE OF LAW FOR SIX MONTHS, WITH THE ENTIRE SUSPENSION STAYED

It is well-settled that the appropriate sanction when an attorney engages in a course of conduct involving misrepresentation is an actual suspension from the practice of law for a period of time. *Disciplinary Counsel v. Fowerbaugh*, 105 Ohio St.3d 188, 1995-Ohio-1143, 824 N.E.2d 78. It is equally well-settled that, under certain circumstances, a departure from an actual suspension where an attorney violated DR 1-102 (A)(4) is warranted and the ordered sanction is something less than

an actual suspension. A departure as significant as that recommended by the board, to a public reprimand, is, however, inappropriate in this matter.

**A. WHERE A LAWYER IMPROPERLY NOTARIZED A SIGNATURE AND WHERE A LAWYER FORGED A CLIENT'S SIGNATURE AND SUBSEQUENTLY NOTARIZED IT AS THE CLIENT'S OWN A PUBLIC REPRIMAND IS AN INADEQUATE SANCTION**

In this matter, respondent engaged in two separate acts that violated DR 1-102 (A)(4) and DR 1-102 (A)(6). First, in April 2004, he notarized Carter's signature on the release for wage information despite the fact that Carter had not signed the release in respondent's presence. Second, in October 2004, respondent forged his clients' names to the release of all claims from the Cincinnati Insurance Company, caused his secretary to sign the release as a witness to the signatures, and notarized the signatures of Carter and Suzanne, despite the fact that neither Carter nor Suzanne had signed the release or appeared before respondent.

In the cases where this Court previously recommended that an attorney be publicly reprimanded, rather than suspended for either an actual or a stayed suspension, the attorney engaged in either a single instance of misconduct or the misconduct involved only the notarization of a signature by an attorney who did not witness the individual affix the signature and **did not** involve a forgery by the attorney. In this case and in recommending that respondent be publicly reprimanded, the board relied greatly on *Columbus Bar Assn. v. Dougherty*, 105 Ohio St.3d 307, 2005-Ohio-1825, 825 N.E.2d 1094. Unfortunately, this reliance is misplaced.

Gina Mary Dougherty, a Columbus, Ohio, attorney, notarized an affiant's signature on a client's liquor-permit application without actually witnessing the signature. *Id.* at 308. Although Dougherty believed that the signature of the affiant

was genuine, her client had actually signed a third party's name to the application without that third party's knowledge or permission. *Id.* Ordering that Dougherty be publicly reprimanded, this Court compared the matter to the matter of *Disciplinary Counsel v. Simon*, 71 Ohio St.3d 437, 1994-Ohio-11, 644 N.E.2d 309, and indicated, “[n]either lawyer, however, forged a signature, knew of a forgery, or engaged in deceit or other misconduct beyond failing to witness signatures as required.”<sup>1</sup> *Id.* at 310. “This distinction, coupled with mitigation and lack of any evidence establishing a course of conduct designed to deceive, permits a less onerous sanction for respondent’s violation of DR 1-102 (A)(4).” *Id.*

This Court recently recommended that James Frederick Russell, a Cleveland, Ohio, attorney be publicly reprimanded for notarizing a grantor’s signature on two deeds, although Russell had not witnessed the signatures. *Cleveland Bar Assn. v. Russell*, \_\_\_ N.E.2d \_\_\_, 2007 WL 2071544 (Ohio), 2007-Ohio-3603. The Court found that Russell committed the same infraction as Dougherty and that the mitigation in Russell’s case was likewise similar. *Id.* See, also, *Mahoning County Bar Assn. v. Melnick*, 107 Ohio St.3d 240, 2005-Ohio-6265, 837 N.E.2d 1203 (attorney publicly reprimanded for notarizing unwitnessed signatures on three affidavits); *Cincinnati Bar Assn. v. Reisenfeld*, 84 Ohio St.3d 30, 1998-Ohio-307, 701 N.E.2d 973 (attorney who improperly notarized clients’ affidavits on two occasions publicly reprimanded); and, *Columbus Bar Assn. v. Battisti*, 90 Ohio St.3d 452, 2000-Ohio-194, 739 N.E.2d 344 (attorney caused client to sign blank affidavit and then had signature notarized by

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<sup>1</sup> In *Disciplinary Counsel v. Simon*, the Court publicly reprimanded an attorney who notarized the signatures of two individuals on a deed, both of which had been representing as being genuine, although the attorney had not witnessed either individual actually sign the deed.

paralegal in his office). Unlike Dougherty's, Simon's or Russell's, respondent's misconduct went beyond failing to witness a signature as required. In addition to failing to witness Carter affix his signature on the release for wage information, respondent forged Carter's and Suzanne's signatures on the release from Cincinnati Insurance and then notarized the signatures as though Carter and Suzanne had appeared before him.

Respondent's misconduct closely parallels that of Howard Joel Freedman. *Disciplinary Counsel v. Freedman*, 110 Ohio St.3d 284, 2006-Ohio-4480, 853 N.E.2d 291. Freedman obtained a loan in 2002 that was secured by a second mortgage on certain property owned by Freedman and his wife, Rita Montlack. The loan required that both Freedman and Montlack sign both the mortgage and a quitclaim deed. Freedman signed both documents and requested that an associate attorney in his office notarize the signatures. *Id.* Subsequent to the associate's actions, Freedman signed Montlack's name on both documents. *Id.* at 285.

Although the parties in *Freedman* had jointly recommended a public reprimand, the panel, in its findings, noted that the precedent relied upon by the parties "had involved technical violations of a notary public's responsibilities, whereas respondent had intentionally had the mortgage and deed notarized improperly." *Id.* at 293. Agreeing with the panel, this Court indicated that "[r]espondent did not simply circumvent for convenience the notarization requirements. He ... consciously signed Montlack's name to the documents after they had been notarized." *Id.* at 294.

In *Disciplinary Counsel v. Shaffer*, 98 Ohio St.3d 342, 2003-Ohio-1008, 785 N.E.2d 429, this Court suspended Attorney John S. Shaffer for one year, with six-months stayed, after Shaffer counseled a client to forge the client's grandmother's signature on a power of attorney, backdated the power of attorney to a time before the grandmother became incapacitated, and then notarized the client's signature as genuine. The Court determined that a suspension, stayed in part, was warranted, despite respondent's good intentions in the matter.<sup>2</sup> "Respondent may have genuinely hoped to serve his client by helping him avoid the expense of establishing a guardianship; however, he nevertheless perpetrated a fraud on the court system and public by sidestepping safeguards in place to protect sellers and buyers of real estate." *Id.* at 344. See, also, *Disciplinary Counsel v. Maxwell*, 83 Ohio St.3d 7, 1998-Ohio-419, 697 N.E.2d 597 (attorney suspended for two years, with one year stayed, for, among other things, signing two minor children's names to a waiver of service and notarizing the signatures as genuine). In the instant case, respondent's conduct is much more akin to that of Freedman or Shaffer, where the attorney not only failed to comply with the requirements of a notary, but where the attorney forged a signature and then offered the signature as genuine. As such, a sanction greater than a public reprimand is warranted.

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<sup>2</sup> The client desired to transfer certain of his grandmother's property to assist with her current living expenses. *Id.*

**B. GIVEN THE MITIGATING FACTORS IN THIS MATTER, IT IS APPROPRIATE TO DEPART FROM *FOWERBAUGH* AND SUSPEND RESPONDENT FOR A PERIOD OF SIX-MONTHS WITH THE ENTIRE SUSPENSION STAYED**

In determining the appropriate sanction in a disciplinary matter, this Court looks to the duties violated, the actual or potential injury caused by the lawyer's conduct, the lawyer's mental state, the existence of any aggravating or mitigating factors and the sanctions imposed in other cases. *Disciplinary Counsel v. Connors*, 97 Ohio St.3d 479, 2002-Ohio-6722, 780 N.E.2d 567. In this matter, respondent not only failed to carry out his responsibilities as a notary in a proper manner, he forged clients' signatures on a release and caused his secretary to affirmatively state that she witnessed the signatures when, in fact, she did not. As to whether respondent's actions caused an actual or potential injury, had respondent not so willingly forgone his responsibilities as a notary and not signed his clients' names to the release from Cincinnati Insurance, Carter would have been more aware of what was happening and it may have been more difficult for Suzanne to abscond with all of Carter's money.

As to respondent's mental state, respondent explained during the hearing that he believed that he was truly helping a client in a dire financial situation. There is no question that respondent understood and acknowledged that in his efforts to help his client he exercised poor judgment. Findings, p. 5.

The panel found evidence of several mitigating factors in this matter. The panel noted that respondent had not been previously disciplined, that he lacked a selfish motive, had fully cooperated with relator's investigation and had offered evidence of a good character and reputation. *Id.* The only aggravating factor that the panel pointed to was that respondent committed multiple offenses. *Id.* Relator

does not disagree with the panel's assessment of which aggravating and mitigating factors are present in this matter. Relator considered each of these same factors when it agreed to and stipulated to a stayed suspension, rather than an actual suspension, of respondent.

This Court cited similar mitigating factors in *Disciplinary Counsel v. Heffter*, 98 Ohio St.3d 320, 2003-Ohio-775, 784 N.E.2d 693, where it suspended an attorney for six months, staying the entire sanction, for notarizing the signatures of two heirs in a probate matter outside of their presence. In mitigation, Heffter offered evidence of a lack of a prior disciplinary record, admitted the misconduct, fully cooperated in the disciplinary process, was not motivated by greed or dishonesty, and did not cause any actual loss. *Id.* at 321. Additionally, evidence relating to Heffter's good reputation was considered. In ordering the stayed suspension, the *Heffter* Court indicated that "[w]e have held in the past that an attorney who violates DR 1-102 (A)(4) will be actually suspended from the practice of law for an appropriate period of time. ... However, mitigating factors may warrant a lesser sanction in appropriate cases. ... In view of the mitigating evidence submitted on behalf of respondent, we adopt the recommendation of the board." *Id.*

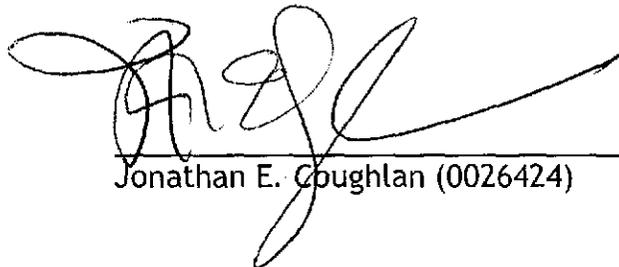
The same is true of respondent - respondent was not prompted by a dishonest or selfish motive, fully cooperated in the proceedings, and offered character and reputation evidence. In considering the duties violated, the harm caused by respondent's misconduct, respondent's state of mind and the mitigating and aggravating factors in this matter, relator asserts that respondent should be sanctioned to a lesser degree than an actual suspension. That being said, a deviation

to the extent recommended by the board, to a public reprimand, would be too great of a departure. A six-month suspension, stayed in its entirety, comports with this Court's precedent and contemplates each of the elements looked to in determining an appropriate sanction.

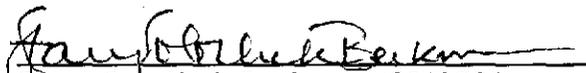
### CONCLUSION

Relator respectfully urges this Court to adopt the sanction stipulated to by the parties, a six-month suspension from the practice of law, stayed in its entirety, and to reject the board's recommendation of a public reprimand as the appropriate sanction where an attorney disregards his responsibilities as a notary and forges his clients' names to a legal document.

Respectfully submitted,



Jonathan E. Coughlan (0026424)

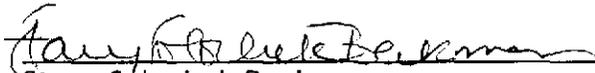


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CERTIFICATE OF SERVICE

I hereby certify that a copy of RELATOR'S OBJECTIONS TO THE FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO was served via U.S. Mail, postage prepaid, upon respondent's counsel, William Mann, Mitchell, Allen, Catalano & Boda, 580 S. High Street, Ste. 200, Columbus, Ohio, 43215, and upon Jonathan W. Marshall, Secretary, Board of Commissioners on Grievances and Discipline, 65 S. Front Street, 5<sup>th</sup> Floor, Columbus, Ohio 43215, this 6<sup>th</sup> day of August 2007.

  
Stacy Solochek Beckman  
Counsel for Relator

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

<b>In Re:</b>	:	
<b>Complaint against:</b>	:	<b>Case No. 06-077</b>
<b>Scott R. Roberts Attorney Reg. No. 0023364</b>	:	<b>Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio</b>
<b>Respondent</b>	:	
<b>Disciplinary Counsel</b>	:	
<b>Relator</b>	:	

**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,

**APPENDIX A**

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

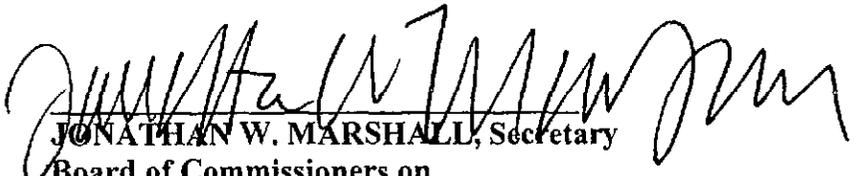
done out of self interest); *Cincinnati Bar Assn v. Thomas*, 93 Ohio St. 3d 402, 2001-Ohio-1344 (Verbal permission given by client; done to expedite divorce proceedings).

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

FILED

MAR 13 2007

BOARD OF COMMISSIONERS  
ON GRIEVANCES & DISCIPLINE

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AGREED STIPULATIONS OF FACT AND LAW

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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**

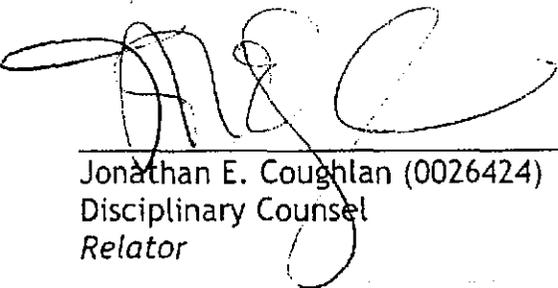
Relator and respondent stipulate that respondent's conduct involved the following mitigating factors as listed in BCGD Proc. Reg. § 10 (B)(2):

- (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.

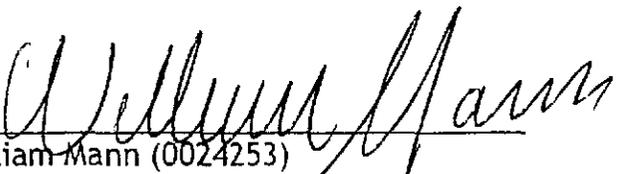
CONCLUSION

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



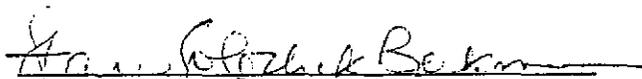
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Jonathan E. Coughlan (0026424)  
Disciplinary Counsel  
*Relator*



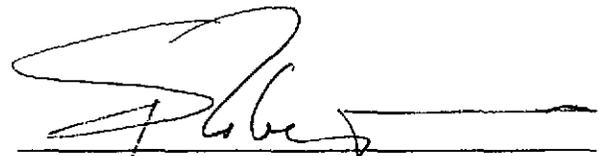
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*Counsel for Relator*



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Scott R. Roberts (0023364)  
*Respondent*