

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel

Case No. 2007-1090

Relator,

Board No. 06-077

v.

Scott R. Roberts

Respondent.

BRIEF OF RESPONDENT SCOTT R. ROBERTS

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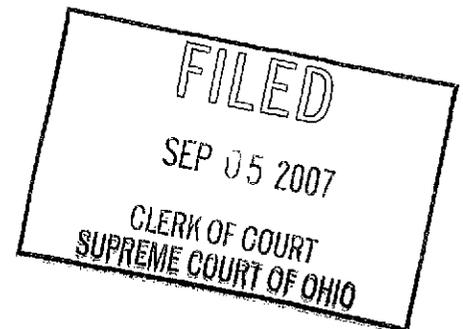


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INTRODUCTION

Respondent, Scott R. Roberts, hereby responds to Relator Office of Disciplinary Counsel's (ODC's) Objections to the Findings of Fact, Conclusions of Law & Recommendations of the Board of Commissioners on Grievances & Discipline (The Board). The Board's decision is attached as Appendix A.

STATEMENT OF THE CASE

On October 9, 2006, Relator ODC initiated this case against Respondent Scott Roberts. This case arises out of Mr. Roberts' representation of Elmer Carter, and his wife, Suzanne Carter, in a personal injury case.

Respondent Scott Roberts has always admitted his mistakes in this matter, and he has always taken 100% of the responsibility for his mistakes. Therefore, in order to put this embarrassing matter behind him, and reduce his attorney fees, Mr. Roberts entered into a discipline by consent agreement pursuant to Gov. Bar Rule V, Section 11. The Board rejected this agreement, and the case was returned to the Hearing Panel. Gov. Bar Rule V, Section 11(D).

Respondent Scott Roberts has always admitted, and the Hearing Panel and the Board found, that Mr. Roberts violated the following sections of the Code of Professional Responsibility:

1. DR 1-102(A)(4) (No lawyer shall engage in conduct involving dishonesty, fraud, deceit or misrepresentation); and

2. DR 1-102(A)(6) (A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law).

Because of the specific facts of this case, Mr. Roberts' willingness to admit his mistakes and accept full responsibility for them, and the abundance of the multiple mitigating factors over the one aggravating factor, the Hearing Panel, and the Board, "finds that a public reprimand will be a sufficient sanction for his actions * * *." Findings, p. 7.

Relator ODC has appealed this sanction, claiming that the sanction in this case should be "A six-month suspension, stayed in its entirety * * *." ODC's Brief, p. 11.

Therefore, it is respectfully submitted that the only issue in this case is whether Mr. Roberts should receive: 1) a public reprimand (as recommended by the Hearing Panel and the Board); or 2) a six-month suspension, stayed in its entirety (as requested by the ODC).

STATEMENT OF FACTS

On January 3, 2004, Elmer Carter, an over-the-road truck driver, was injured in a motor vehicle accident. Findings, p. 2. Shortly thereafter, Mr. Carter's wife, Suzanne, called Mr. Roberts. Trial Tr. 22. Mr. Roberts agreed to make the approximately 400 mile trip from Columbus, Ohio to the Carters' home in Baldwin, Michigan. Trial Tr. 24; 27. Baldwin is in a very remote part of Michigan. Trial Tr. 28.

Mr. Roberts met with Mr. & Mrs. Carter on January 14, 2004, and at that time, the Carters hired Mr. Roberts to represent them. Trial Tr. 27-28; 56.

Mr. & Mrs. Carter had no health insurance, Trial Tr. 23, and from the very start, they told Mr. Roberts that this accident was causing them very serious financial problems. Trial Tr. 22-28. For example:

1. As indicated, the Carters had no health insurance. Trial Tr. 23.
2. Because they had no health insurance, Mrs. Carter had to drive Mr. Carter about 1,000 miles per week to get medical care on credit. Trial Tr. 24-25; 28-29. This caused the Carters to incur significant gasoline expenses.
3. As of just January 2004, Mr. Carter's accident-related medical bills were over \$18,000.00. Trial Tr. 29.
4. Because Mr. Carter could not work, and because Mrs. Carter had to drive him long distances to get medical care, she had to quit her job. Trial Tr. 29. Therefore, the Carters had no income. Trial Tr. 29.
5. Despite the fact that Mr. & Mrs. Carter had no income, they were still incurring debt, not only for their accident-related medical bills, but for the standard costs of living, such as food, shelter (their mortgage), utilities and so on.

As a result of their desperate financial situation, Mr. & Mrs. Carter were scared to death. Trial Tr. 29. Throughout the course of this case, the Carters substantial financial anxieties were communicated to Mr. Roberts. Trial Tr. 25-26.

When the Carters hired Mr. Roberts, Elmer Carter specifically told Mr. Roberts that his wife, Suzanne, would be the contact person with Mr. Roberts' office. Trial Tr. 76. As far as Mr. Roberts could tell, Mr. Carter was of sound mind, and he and Suzanne were happily married. Trial Tr. 76.

About 30 days after he was hired, Mr. Roberts called the Carters. Trial Tr. 32. Mrs. Carter answered the phone, and Mr. Roberts said that he wanted to speak to her husband, Elmer. Trial Tr. 32.

When Elmer came to the phone he, again, expressly told Mr. Roberts that he wanted his wife, Suzanne, to be the contact person with Mr. Roberts. Trial Tr. 33. Therefore, Mr. Roberts thereafter communicated with Mrs. Carter about the case. However, Mr. Roberts never did anything to discourage Mr. Carter from communicating with him, Trial Tr. 77, and Mr. Roberts would have been happy to talk with Mr. Carter if Mr. Carter had been willing to talk with him. Trial Tr. 75-76.

There was nothing at all unusual about the arrangement whereby Mr. Carter wanted Mr. Roberts to direct his communications to Mrs. Carter. Trial Tr. 77. Indeed, this is how married couples typically handle these situations. Trial Tr. 77.

Throughout the entire course of this case, Mrs. Carter routinely told Mr. Roberts, in several phone conversations, that she and her husband were in "dire financial straights," that they were being hounded by creditors, and that the Carters desperately needed money in order to survive. Findings, p. 2-3. As the ODC has stated,

“Respondent was aware that Mr. & Mrs. Carter were experiencing significant financial difficulties during the representation.” ODC Brief, p. 3.

As the Hearing Panel, and the Board found, at page 3:

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 to cover his injuries. Respondent was ultimately able to obtain settlement from both companies on behalf of his client.

Mr. Carter also had Personal Injury Protection (PIP) coverage, that was roughly similar to workers' compensation coverage, in that it provided the Carters with lost wage insurance that they could receive while their liability claims remained pending. By way of contrast, the Carters could not recover on their liability claims from Geico and Cincinnati unless and until they gave these companies a covenant not to sue, or a full release.

A. Mr. Roberts Admits His First Mistake:

On March 5, 2004, Mr. Roberts sent Mr. Carter a release for wage information from the PIP carrier. Findings, p. 3. Mr. Roberts told Mr. Carter to sign the release, have his signature notarized, and return the release directly to the PIP carrier to expedite the PIP lost wages recovery. Mr. Carter signed the release, did not have it notarized, and returned it to the PIP carrier. Findings, p. 3. Since the release was not

notarized, the PIP carrier returned it to Mr. Roberts. Id. According to the Hearing Panel, and the Board, at page 3:

* * * Respondent phoned the client and was advised by Mrs. Carter that it [the release for wage information] was not notarized because they did not have money for gas to go into town to have it notarized.

Mr. Roberts then made the first of his two mistakes. Rather than return the release to the Carters for a properly notarized signature, Mr. Roberts notarized the signature. Findings, p. 3.

Mr. Roberts explained why he did this at pages 36-37 of the trial transcript:

So I called Suzanne, and I said, "Suzanne, why didn't you have Elmer notarize this?" She says, "We don't have gas to go into town to find a notary." I remember that conversation vividly.

I never had somebody say that to me. They're so poor, and they are up here in no-man's land. They can't * * * - she said, "We don't have money to get into town to have it notarized," and she asked me to notarize it. This signature [is Elmer's] you sent it to us. I said, "I can't." I was reluctant. It is my fault and, you know, again, I say this not by way of an excuse, because I come from a family where if somebody is hurt, you try to do something about it. I lost focus of the proper legal procedure here and said, "Okay. I will notarize it." [And I did]. * * *.

* * *

I'm 100 percent responsible for that. I rue that mistake every day. I am disappointed in myself to be here before this Board. * * *. This, and my divorce, is probably the most humiliating phase of my life, and I'm 55. (Emphasis added).

On about April 19, 2004, Mr. Roberts was able to get the Carters \$8,312.00 (eight thousand three hundred twelve dollars) from the PIP carrier for lost income, which was the first money the Carters received in the case. Trial Tr. 41. Although Mr. Roberts could have charged a professional fee for this recovery, he did not. Trial Tr. 45. Mr. Roberts did not charge a fee because the Carters were barely keeping their financial heads above water, and they desperately needed all of the money. Trial Tr. 45.

B. Mr. Roberts Admits His Second Mistake:

On September 13, 2004, Mr. Roberts settled the Carters' liability claims, with Geico, for \$100,000 (one hundred thousand dollars). Mr. Roberts sent a check, made payable to Elmer and Suzanne Carter, a net recovery check in the amount of \$39,313.89 (thirty-nine thousand three hundred thirteen dollars and eighty-nine cents). Findings, p. 3-4.

On October 26, 2004, Mr. Roberts admits he made his second mistake. He obtained a \$47,500 (forty-seven thousand five hundred dollars) settlement from Cincinnati Insurance. According to the Hearing Panel, and the Board, at 4:

* * * In order to conclude this settlement as quickly as possible, he signed the names of Mr. & Mrs. Carter to a "Release of All Claims" from Cincinnati Insurance Company. He believed 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 he relied on, however, was for Geico and not Cincinnati Insurance. * * *

After Mr. Roberts settled the Carters claims with the liability insurance carriers, he sent appropriate settlement checks to his clients. They were made out to Elmer and

Suzanne Carter. Tab 14 and 16, Exhibits of Scott Roberts. Trial Tr. 76-78. According to Stipulated Fact #19, Mrs. Carter received the settlement checks, forged her husband's signature, and deposited the checks into a joint account she shared with her husband. Eventually, Mrs. Carter stole the settlement proceeds from her husband. Then, she left him.

Mr. Roberts had absolutely no reason to foresee that Mrs. Carter was going to steal her husband's money. Trial Tr. 77.

C. Mitigating and Aggravating Facts:

The only aggravating fact, in this case, is that Mr. Roberts admitted to making two mistakes. Findings, p. 5.

The Hearing Panel, and the Board, found multiple mitigating facts. Findings, p. 5. They were:

1. The absence of any prior disciplinary record. Findings, p. 5.
2. The absence of any selfish motive by Mr. Roberts. Findings, p. 5. Indeed, the Hearing Panel, and the Board, expressly found, " * * * in fact, Respondent was responding to his client's wishes to move as quickly as possible. His reaction, although totally inappropriate, was not selfish." Id.

3. Mr. Roberts made full and free disclosure to the Hearing Panel, and the Board, and had a cooperative attitude toward the disciplinary proceedings. Findings, p. 5.

4. Mr. Roberts is a person of good character and good reputation. Findings, p.

5.

The Hearing Panel, and the Board, was particularly struck with Mr. Roberts' willingness to accept complete responsibility for his two mistakes. Findings, p. 5.

Hearing Panel Chair Christian asked Mr. Roberts why he made the two mistakes.

At trial transcript 60-61:

Q: Do you believe that notarizing signatures that you actually signed yourself resulting in your being before the Disciplinary Panel today is attached to the proper completion of the forms?

A: No, ma'am. I think it was an incredibly stupid thing for me to do.

Q: Do you believe that the law is wrong here for asking you to account for the notary?

A: No, not at all. I mean, the point of the Disciplinary Counsel certainly to protect clients from attorneys who steal money or that are drunk or have drug problems, don't do legal assignments they're supposed to do and so the Disciplinary Counsel and the Supreme Court need to protect the integrity of the legal system and toward that end, statements under oath are important. And its part of the integrity of our legal system.

I mean, it was very stupid, stupid. I mean, it was - I admit it. I was stupid. * * *

Q: Do you believe what you referred to as being stupid is simply a technical violation?

A: No. I think it goes to protecting the integrity of the legal system.

Q: Do you believe the fact that people [Mr. & Mrs. Carter] needed the money, in any way justifies what you do?

A: No. * * * No, not at all. I think that is chaos. When the end starts to justify the means, we're in trouble.

A further review of the record will further show that Mr. Roberts has always admitted his two mistakes, he has always taken 100% of the responsibility for his two mistakes, he is sincerely sorry for his two mistakes, and he has explained how and why he will avoid making these mistakes in the future. Trial Tr. 62-64.

ARGUMENT

A Lawyer Who Admits He Engaged In Misleading Conduct Will Not Be Suspended From The Practice Of Law Where The Lawyer Freely Admits His Misconduct, Takes Full Responsibility For His Misconduct, Shows A Cooperative Attitude Toward The Disciplinary Proceedings, And Where The Mitigating Factors Of Gov. Bar Rule V, Section 10 Substantially Outweigh The Aggravating Factors Of That Rule.

The only dispute between the parties is whether Mr. Roberts should receive a public reprimand, as recommended by the Hearing Panel and the Board, or a six-month suspension, stayed in its entirety, as suggested by Relator ODC.

It is respectfully submitted that this is a question of fact, and not law. That is because some Ohio cases say that a lawyer who engages in misrepresentation should be publicly reprimanded, and other Ohio cases say that a lawyer who engages in misrepresentation should be suspended from the practice, although it can be appropriate to stay the suspension.

The cases turn on a balancing of the aggravating and mitigating factors listed in Gov. Bar Rule V, Section 10. When the aggravating factors outweigh the mitigating factors, a suspension is warranted. When the mitigating factors substantially outweigh the aggravating factors, a public reprimand is appropriate.

In its brief, the ODC admits that not all cases, involving attorney misrepresentation, warrant an actual suspension from the practice of law. Relator's Brief, p. 4-5. The ODC goes on to argue that this case warrants a six-month suspension, with the entire suspension stayed. The ODC says that "Respondent's misconduct closely parallels that of Howard Joel Freedman." Disciplinary Counsel v. Freedman (2006), 110 Ohio St. 3d 284. Relator's Brief, p. 7.

In truth, the facts of this case are significantly different from the facts in Freedman. That is because Freedman signed documents without authority and with a dishonest motive. Disciplinary Counsel v. Freedman (2006), 110 Ohio St. 3d 284, 853 N.E. 2d 291, 293.

In the case at bar, there is absolutely no evidence that Mr. Roberts acted with any dishonest or selfish motive. In fact, the Hearing Panel, and the Board, expressly stated that Mr. Roberts acted with no selfish motive. Mr. Roberts was trying, admittedly by improper methods, to rush assistance to his clients who were straining hard to keep their financial heads above water, and who were in real danger of losing everything. Further, there is clear and convincing evidence showing, that at the very least, Mr.

Roberts always had a reasonable good faith belief that he was acting with the fully informed consent of his clients.

The cases that are factually analogous to this case are Columbus Bar Association v. Dougherty (2005), 105 Ohio St. 3d 307 and Cleveland Bar Association v. Russell (2007), 114 Ohio St. 3d 171.

In Dougherty, a lawyer notarized an affiant's signature without having actually witnessed the signature. Relator Cleveland Bar Association argued that the lawyer should be suspended from the practice of law for 18 months, with 12 months stayed. This Honorable Court held that since this was an isolated situation that did not manifest a deceptive course of conduct, that a public reprimand was the appropriate sanction. In the case at bar, Mr. Roberts has not engaged in any deceptive course of conduct, there is no evidence to show that he engaged in a deceptive course of conduct, and he acted with no dishonest or selfish motive.

In Cleveland Bar Association v. Russell (2007), 114 Ohio St. 3d 171, the lawyer fraudulently notarized multiple (apparently two) deeds, freely admitted he exercised poor professional judgment and admitted his misconduct. Further, the lawyer assured the Hearing Panel that this would not happen again. This Honorable Court, relying on Columbus Bar Association v. Dougherty (2005), 105 Ohio St. 3d 307, and Gov. Bar Rule V, Section 10's aggravating and mitigating factors, held that a public reprimand

was the appropriate sanction. Russell is factually analogous to the case at bar, and is the controlling legal authority that should be applied in this case.

Relator has argued at page 9 of its brief:

* * * As to whether respondent's actions caused an actual or potential injury, had respondent not so willingly foregone 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. (Emphasis added).

In response, it needs to be stated that there is no evidence, in the record, to support the above-quoted statement. It is nothing but pure conjecture, and it puts Mr. Roberts in the impossible position of trying to prove a negative (i.e. the total inaccuracy of the above-quoted statement). There is absolutely no evidence in the record to show that anything Mr. Roberts did, or failed to do, caused any harm to anybody.

There is no evidence in the record of when and why Suzanne stole the money out of the joint account she maintained with her husband, and there is virtually no evidence as to how she stole the money, although we know she stole it. It is respectfully requested that this Honorable Court not make its decision based upon speculation, or conjecture, but that it hold Relator to the appropriate burden of proof, which is proof by clear and convincing evidence. Gov. Bar Rule V, Section 6(J).

For all we know, Elmer Carter was fully, totally and completely aware of all relevant facts, right up until the time his wife stole his money.

CONCLUSION

Respondent Scott Roberts respectfully requests that this Honorable Court adopt the sanction recommended by the Hearing Panel, and by the Board, which is a public reprimand.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was sent, by regular U. S. mail, to the following on the 5th day of September 2007:

Stacy Solochek Beckman
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250 Civic Center #325
Columbus, OH 43215-7411



William Mann (0024253)

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

In Re:	:	
Complaint against:	:	Case No. 06-077
Scott R. Roberts Attorney Reg. No. 0023364	:	Findings of Fact, 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,

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

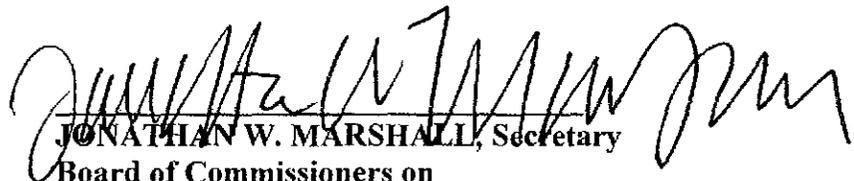
done out of self interest); *Cincinnati Bar Assn v. Thomas*, 93 Ohio St. 3d 402, 2001-Ohio-1344 (Verbal permission given by client; done to expedite divorce proceedings).

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 *Daughtery* 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

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

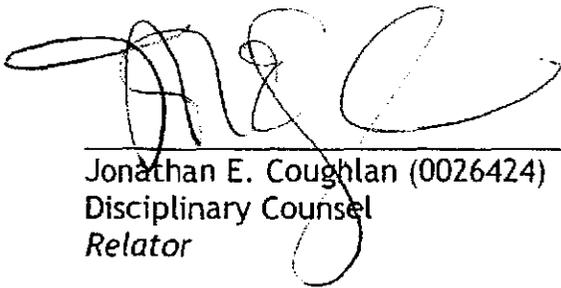
Relator and respondent stipulate that respondent's conduct involved the following mitigating factors as listed in BCGD Proc. Reg. § 10 (B)(2):

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

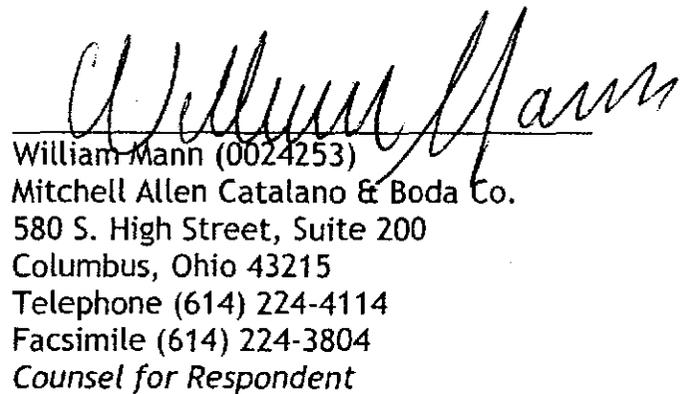
- (d) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; and,
- (e) character and reputation.

CONCLUSION

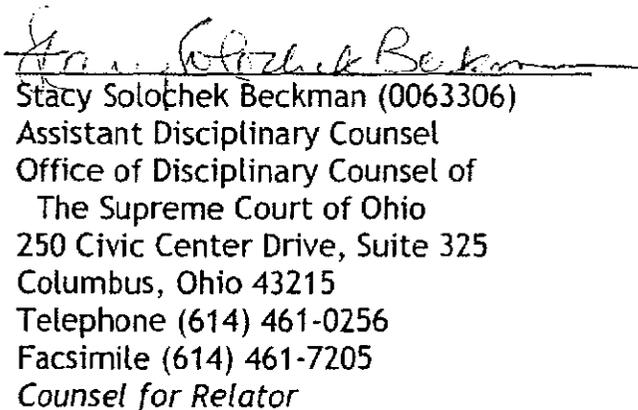
The above are stipulated to and entered into by agreement by the undersigned parties on this 13th day of March 2007.



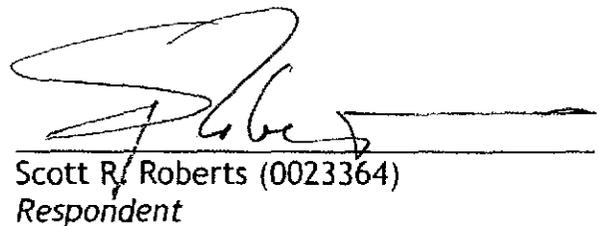
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Scott R. Roberts (0023364)
Respondent