

Richard Galex, Esq., Presenter
150 Tices Lane
East Brunswick, NJ 08816
(732) 257-9100

DISTRICT VIII ETHICS COMMITTEE	:	SUPREME COURT OF NEW JERSEY
	:	DISTRICT VIII ETHICS COMMITTEE
	:	
Complainant,	:	DOCKET NO: VIII-02-032E
	:	
vs.	:	
	:	DISCIPLINARY ACTION
EDWARD C. DELANEY, ESQ.	:	
	:	FORMAL COMPLAINT
Respondent,	:	

GENERAL ALLEGATIONS

1. The respondent, Edward C. Delaney, is a member of the bar of the State of New Jersey, having been admitted in 1987.
2. Respondent, Delaney, maintains law offices at 3084 Route 27 North, Kendall Park, NJ 08824.

FIRST COUNT

3. On or about May 8, 2000 and for some time prior thereto, the respondent, Delaney, did represent Dawn M. Miller, the Complainant herein, and James E. DeAngelis as prospective purchasers for a single family house located at 60 Vineyard Avenue, Middletown, New Jersey.
4. Ms. Miller and Mr. DeAngelis signed a contract to purchase the property as tenants in common.
5. Subsequent to the signing of the contract, Miller and DeAngelis applied for a mortgage from the Chase Manhattan Mortgage Corporation in the amount of \$168,099.00.

6. On or about April 15, 2000, Chase Manhattan Mortgage Corporation issued a conditional credit approval for James DeAngelis.

7. On May 5, 2000 the respondent, Edward C. Delaney was notified by Mid Jersey Title Agency that the commitment for title insurance was amended to read "James DeAngelis" thereby removing Dawn Miller as a purchaser.

8. Respondent alleges that he notified both DeAngelis and Miller that the Deed from the Sellers could only be to James DeAngelis and not Dawn Miller despite the fact that he knew they were purchasing the house together.

9. Respondent alleges that when he received notice that the mortgage commitment was in the name of James DeAngelis only, he advised the parties that the Deed would be from the seller to DeAngelis only and that after the Deed was recorded, he would prepare a new Deed from James DeAngelis to James DeAngelis and Dawn Miller as tenants in common.

10. Respondent alleges that he prepared an Addendum to the Contract removing Dawn Miller as a purchaser of the property.

11. Attached hereto and made a part hereto as Exhibit A is the Addendum referenced herein.

12. Dawn Miller acknowledges that the signature which appears on the Addendum is, in fact, her signature.

13. The complainant, Ms. Miller, denies that she agreed to have her name removed from the Deed and she denies that she signed the

Addendum. Attached hereto as Exhibit B is a Certification signed by the complainant.

14. On May 8, 2000 a Deed was prepared from the Sellers, Edwin Lopez and Ann Lopez to James DeAngelis and Dawn Miller and presented to both DeAngelis and Miller and the respondent at the closing which allegedly took place on May 8, 2000.

15. Respondent forwarded the aforementioned Deed to the Monmouth County Clerk's Office for recording.

16. Respondent admits in a letter dated February 14, 2002 directed to this Committee that "the Deed, which was prepared by the sellers' attorney, was inaccurate as it did not reflect Mr. DeAngelis as the sole grantee, but instead included Ms. Miller as well. Unfortunately, this error did not come to my attention, and the erroneous Deed was inadvertently forwarded to the County Clerk's Office for filing".

17. Respondent further alleges that the Deed was returned to him by the Clerk's office because of a lack of an executed acknowledgment.

18. Once the Deed was returned by the Clerk's office to the respondent, he allegedly for the first time recognized the "alleged error" in the preparation of the Deed.

19. At that point the respondent, without notice to the complainant, who as of this date believed that she was a co-owner of the aforementioned property, whited out her name from the original

Deed, leaving only James DeAngelis as the grantee and again forwarded the Deed to the Clerk's office for filing.

20. Complainant alleges that at no time did she know that she was not the owner of the property until after the respondent changed the Deed and filed it with the Clerk.

21. Complainant further alleges that she was not told that she would not be a grantee on the Deed at the closing.

22. Complainant further alleges that at the closing she thought she was, in fact, a co-owner of the property.

23. Complainant further alleges that at no time did respondent tell her that he would only be representing James DeAngelis at the closing.

24. Complainant further alleges that respondent did not obtain her permission to remove her name from the Deed and refile it with the Clerk's office.

25. Complainant further alleges that at no time did the respondent advise her that she could and should have independent counsel so as to protect her rights in the transaction.

26. James DeAngelis is presently the sole grantee and owner of the aforementioned property.

27. Respondent's failure to keep Dawn Miller adequately and accurately informed and his deceit and misrepresentation of facts constitute a violation of RPC 1.4(a) and RPC 8.4(c).

28. Respondent's conduct in this matter when combined with other acts of neglect as alleged in this pleading, demonstrates a pattern of neglect in violation of RPC 1.1 (b)

29. Respondent's failure to remove himself from the representation of the complainant, Dawn Miller, and James DeAngelis created a conflict of interest in violation of RPC 1.7.

SECOND COUNT

30. At all times mentioned herein the respondent, Edward C. Delaney alleges that it was his intent to have James DeAngelis execute a new Deed after the passing of title naming both James DeAngelis and Dawn Miller as the grantees of the aforementioned property.

31. At all times mentioned herein the respondent, Edward C. Delaney, knew that Chase Manhattan Mortgage Corporation had lent the sum of \$168,099.00 to James DeAngelis, only.

32. The aforementioned mortgage issued by Chase Manhattan Mortgage Corporation to James DeAngelis included a clause commonly known as a "due on clause" which provided that in the event of a transfer of the aforementioned property, the mortgage holder had the right to accelerate all future payments of the mortgage.

33. Respondent never advised the complainant or James DeAngelis that by executing a new Deed he would be placing the mortgage in jeopardy of such an acceleration.

34. At no time did the respondent notify Chase Manhattan Mortgage Corporation of his intent to prepare a new Deed contrary to

the representations previously made to Chase Manhattan Mortgage Corporation so that his attempt to re-Deed the property was done with the specific intent to deceive Chase Manhattan Mortgage Corporation.

35. Respondent's conduct in this matter when combined with the other acts as set forth above, amount to specific acts of deceit and misrepresentation of facts in violation of RPC 1.4(a) and RPC 8.4(c).

36. Respondent's conduct in this matter when combined with the other acts of neglect as alleged in this Complaint, demonstrate a pattern of neglect in violation of RPC 1.1(b).

37. Respondent's conduct in representing both the complainant, Dawn Miller, and James DeAngelis constituted gross neglect in violation of RPC 1.1(a) and RPC 3.2.

WHEREFORE, respondent should be disciplined.

DISTRICT VIII ETHICS COMMITTEE

Dated: February 3, 2003 By: /s/ RICHARD GALEX, ESQ.

BRAUSE, BRAUSE & VENTRICE, L.L.C.
276 Main Street
CN - 4001
Metuchen, NJ 08840-4001
(732) 767-0044
Attorneys for Respondent

DISTRICT VIII ETHICS COMMITTEE	:	SUPREME COURT OF NEW JERSEY
	:	DISTRICT VIII ETHICS COMMITTEE
	:	
Complainant,	:	DOCKET NO: VIII-02-032E
	:	
vs.	:	
	:	DISCIPLINARY ACTION
EDWARD C. DELANEY, ESQ.	:	
	:	VERIFIED ANSWER
Respondent,	:	

Edward C. Delaney, Esq., by way of Answer to the Formal Complaint says:

GENERAL ALLEGATIONS

1. Respondent admits the allegations of paragraph 1.
2. Respondent admits the allegations of paragraph 2.

FIRST COUNT

3. Respondent admits the allegations of paragraph 3.
4. Respondent admits that Miller and DeAngelis signed a contract to purchase the property. However, the designation as tenants in common or joint tenants with right of survivorship had not yet been determined by the parties.

5. Respondent admits the allegations of paragraph 5.
6. Respondent admits the allegations of paragraph 6.

7. Respondent denies the allegations of paragraph 7, in that it was respondent that notified Mid Jersey Title Agency that Chase Manhattan Mortgage Corporation ("the Bank"), required that Dawn Miller be removed as a purchaser and requested an endorsement to that effect from Mid Jersey Title Agency.

8. Respondent admits that he notified both DeAngelis and Miller prior to closing that the Bank required that the Deed be issued solely to DeAngelis. The Bank, for whom respondent was an agent, required Miller to be deleted from the Contract before it would issue a mortgage.

9. Respondent denies the allegations of paragraph 9 in that when respondent received notice from the Bank requiring the removal of Miller from the Deed, respondent advised both Miller and DeAngelis that the Bank would not issue a mortgage commitment if Miller was involved in the Contract. Respondent advised Miller and DeAngelis that with the Bank's approval, he would prepare a new Deed from DeAngelis to Miller after their payment history with the Bank was established.

10. Respondent admits the allegations of paragraph 10.

11. Respondent admits the allegations of paragraph 11.

12. Respondent admits the allegations of paragraph 12.

13. Respondent denies the allegations of paragraph 13.

Respondent advised Miller prior to the closing and again at the time of closing that Miller would not be party to the purchase, because the

Bank refused to issue a mortgage to Miller. Miller signed the addendum to the contract removing her as a party to the contract for sale.

14. Respondent admits the allegations of paragraph 14.

15. Respondent admits the allegations of paragraph 15.

16. Respondent admits the allegations of paragraph 16.

17. Respondent admits the allegations of paragraph 17.

18. Respondent admits the allegations of paragraph 18.

19. Respondent denies the allegations of paragraph 19.

Respondent advised Miller prior to and at the time of closing that based upon the Bank's requirements she could no longer be a party to the Contract and could not be listed as an owner to the Deed. She was advised that she would have to appear at the time of closing to sign the addendum to effectuate the purchase of the property.

20. Respondent denies the allegations of paragraph 20 in that respondent specifically told Miller that she could not be a party to the purchase of the property and accordingly, Miller signed an addendum removing her from the Contract.

21. Respondent denies the allegations of paragraph 21 in that respondent advised Miller that she would not be a party to the Contract and would not be listed on the Deed.

22. Respondent denies the allegations of paragraph 22 as Miller was told at the closing and memorialized in writing that she would no longer be a party to the Contract for sale of the premises.

23. Respondent admits the allegations of paragraph 23.

24. Respondent denies the allegations of paragraph 24. Pursuant to the mortgage commitment issued by the Bank and the closing instructions sent to respondent, title could not close if Miller was included in the sale or on the Deed. The Deed that was prepared by the Seller's attorney erroneously included Miller as a record owner although all parties to the transaction were informed that Miller would not be a party to the sale. Thus, the correction to the Deed was ministerial to comply with the Bank's instructions and the intent of the parties.

25. Respondent denies the allegations of paragraph 25 in that Miller was not a party to the transaction.

26. Respondent admits the allegations of paragraph 26.

27. Respondent denies the allegations of paragraph 27 in that Miller was informed at all stages of the proceedings as to her rights and responsibilities and the consequences of the Bank's determination that she could not be a record owner of the property.

28. Respondent denies the allegations in paragraph 28.

29. Respondent denies the allegations in paragraph 29, as both parties had a common interest in purchasing the property for their family. If respondent refused to close the transaction without Miller on the Deed, title would not have closed, and the parties would not have been able to purchase and move into the premises.

WHEREFORE, respondent hereby demands judgment dismissing the Complaint.

SECOND COUNT

30. Respondent denies the allegations of paragraph 30, in that DeAngelis expressed his intent to subsequently execute a new Deed to encompass title in both DeAngelis and Miller's names.

31. Respondent admits the allegations of paragraph 31.

32. Respondent admits the allegations of paragraph 32, however respondent states that the "due on clause" is rarely exercised when a party adds another to a Deed when the mortgage is current. There was no anticipation that the Bank would have precluded the subsequent inclusion of Miller to the Deed provided the mortgage was current.

33. Respondent denies the allegations of paragraph 33. Respondent advised both DeAngelis and Miller that assuming the bank consented her name would have been added to the Deed. Respondent believed that he would be able to obtain the consent of the Bank.

34. Respondent denies the allegations of paragraph 34 in that he notified and received the Bank's approval to prepare a new Deed to include Miller.

35. Respondent denies the allegations of paragraph 35.

36. Respondent denies the allegations of paragraph 36.

37. Respondent denies the allegations of paragraph 37.

WHEREFORE, respondent hereby demands judgment dismissing the Complaint.

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a cause of action.

SECOND AFFIRMATIVE DEFENSE

Any loss or damage suffered by Miller was not as a result of the alleged misconduct of the respondent, but that of a third-party, DeAngelis, Miller's long time boyfriend.

FOURTH AFFIRMATIVE DEFENSE

The within proceedings deny the respondent his constitutional right to due process of law and fundamental fairness in that there are no articulated guidelines establishing the appropriate discipline for a particular act or acts of misconduct.

FIFTH AFFIRMATIVE DEFENSE

Respondent did not violate any Rules of Professional Conduct.

FIRST MITIGATING CIRCUMSTANCE

Respondent has been admitted to the practice of law in the State of New Jersey since 1987 and is a well respected member of the Bar, and has served his clients and the legal community in a competent and professional manner.

SECOND MITIGATING CIRCUMSTANCE

Respondent contributes to the support of his family and is well respected in his community.

THIRD MITIGATING CIRCUMSTANCE

Respondent received no monetary benefit as a result of his alleged misconduct.

FOURTH MITIGATING CIRCUMSTANCE

Miller is not precluded from maintaining an action against DeAngelis, the responsible party, as a result of any alleged loss suffered by her.

REQUEST FOR HEARING

Respondent hereby requests a hearing on all issues, including the charges and mitigation.

DESIGNATION OF TRIAL COUNSEL

Respondent hereby designates Pamela Lynn Brause, Esq. as trial counsel.

BRAUSE, BRAUSE & VENTRICE, L.L.C.
Attorneys for Respondent

Dated: February 24, 2003

By: /s/ PAMELA LYNN BRAUSE

VERIFICATION

1. I, Edward C. Delaney, am the respondent in the foregoing Answer.

2. The allegations and defenses set forth in the foregoing Answer are true to the best of my knowledge, information and belief. The said answer is made in truth and good faith for the defenses set forth therein.

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: February 26. 2003

/s/ Edward C. Delaney

DISTRICT VIII ETHICS COMMITTEE	:	SUPREME COURT OF NEW JERSEY
	:	DISCIPLINARY REVIEW BOARD
	:	
Complainant,	:	DOCKET NO: VIII-02-032E
	:	
vs.	:	
	:	HEARING REPORT
EDWARD C. DELANEY, ESQ.	:	
	:	
Respondent,	:	

TO THE HONORABLE CHAIR AND THE MEMBERS OF THE DISCIPLINARY REVIEW BOARD:

The District VIII Ethics Committee Hearing Panel respectfully shows:

I. PROCEDURAL HISTORY

1. Dawn Miller filed a formal grievance against Respondent on 11/29/01. The investigator for the Committee, Raymond DeMarco, Esq., recommended a dismissal. Dawn Miller filed a Notice of Appeal on 4/18/02. On July 8, 2002 the DRB reversed and remanded for further investigation and evaluation. A specific concern that prompted the reversal was the allegation that the complainant's signature had been forged on a legal document.

2. Respondent was admitted as a member of the Bar of New Jersey in 1987 and is engaged in the practice of law at 3084 Route 27 North in Kendall Park, New Jersey.

3. A Formal Complaint was filed against Respondent on or about February 3, 2003.

4. Respondent filed his Verified Answer on February 24, 2003.

5. A formal hearing was held on July 10, 2003 before a panel consisting of Ronald B. Grayzel, Esq. Chair: Jean Kushinsky and Peter Tu. Esq. The evidence was presented for the Committee by Richard Gale, Esq., and Respondent was represented by Pamela Brause, Esq.

II. SYNOPSIS OF ALLEGATIONS

6. The Formal Complaint made the following allegations against Respondent:

- The Respondent engaged in a conflict of interest by representing two parties with disparate interests in a real estate transaction, RPC 1.7;

- The Respondent failed to communicate to his client, Dawn Miller, that he was removing her name from the deed of the property subsequent to the real estate transaction, RPC 1.4(a);

- The Respondent perpetrated a fraud by inducing Dawn Miller to sign or affixing her signature to an Addendum to the Contract of Sale of the property removing her name from the document, RPC 8.4(c).

At the outset of the hearing, the Presenter advised the Panel that the complainant was not proceeding with the allegation that Respondent had committed a fraud, RPC 8.4(c), because "there is not sufficient proof" to support the contention. (T 7-8)¹ Dawn Miller acknowledged that this allegation was being withdrawn and agreed not

¹All references to T are to the Transcript of Hearing conducted on July 10, 2003.

to proceed with it. (T30-32; 35)

During the course of the Hearing, the Panel became aware that Respondent had formally acknowledged the signatures of the sellers on the deed subsequent to the closing without actually witnessing the event. (T 229-233; 239)

III. FINDINGS OF FACT AND CONCLUSIONS

7. A. Thirty-five exhibits were marked into evidence with consent of counsel. The exhibit list is contained at the beginning of the Appendix.

B. Stipulations and Findings of Fact:

- Edward C. Delaney, Esq. has been engaged in the practice of law since 1987 and maintains his office at 3084 Route 27 North in Kendall Park, New Jersey. Respondent concentrates his practice in real estate and performs 300-350 closings on an annual basis.

- Dawn Miller and James DeAngelis were involved in a relationship and decided to purchase a home together as tenants in common. DeAngelis worked as a union carpenter in New York City and earned over \$50,000 per year. Miller was a divorced mother of two daughters and worked "off the books" as a bartender at a local tavern. Miller and DeAngelis had lived together for approximately three years in a home owned by Miller's mother. The two were going to pool their resources to finance the purchase price and share household expenses. The parties testified that

the relationship was turbulent. This was not apparently known to Respondent during the relevant time period.

- DeAngelis and Miller executed a contract to purchase a home located at 60 Vineyard Avenue in Middletown, New Jersey on March 9, 2000. The sellers, Edwin and Ann Lopez, executed the contract on March 13, 2000. The contract survived attorney review.

- This was the first time that Dawn Miller had ever been involved in the purchase of a home.

- The real estate broker, Ron Ramone, of the Key Agency in Hazlet, New Jersey, recommended Edward Delaney, Esq. to represent the buyers in the closing.

- Miller and DeAngelis retained Edward Delaney, Esq. to represent them for the closing at or about this time. The legal fee was approximately \$675.00. No retainer was signed.

- Edward Delaney, Esq. represented Miller and DeAngelis at the closing and apparently agreed to continue the professional relationship subsequently in the execution of an agreement between the two. The Panel rejects the argument made by Respondent that the attorney-client relationship with Miller was abrogated when she executed the addendum to the contract.

- Both Miller and DeAngelis contributed moneys for the purchase of the home.

- Miller was actively engaged in preparing for the

closing, including arranging for inspections, tests, utilities and insurance.

- In the pre-closing period, there were periodic phone communications between counsel's office and his clients regarding the tasks that had to be completed before the closing. Counsel and his clients did not meet in person until the closing.

- DeAngelis and Miller applied for a mortgage through Chase Manhattan Mortgage. Chase offered certain benefits to union carpenters who obtained a mortgage through this institution. Chase approved DeAngelis for the mortgage but not Miller because she did not have an adequate source of income.

- The deal could not close with the Chase Mortgage if Miller remained on the contract or the deed.

- There is a dispute in the testimony about what Dawn Miller knew about her inclusion on the real estate documents. Miller was aware that she had not been approved for the mortgage. Miller testified that she was aware that she would not appear on the contract or the mortgage, but that her name would appear on the deed. Delaney testified that he advised Miller before the closing that her name would not appear on any of the closing documents. This version is supported by DeAngelis. Delaney and DeAngelis testified that Miller voluntarily signed an Addendum to the contract removing her name from all the documents in the transaction. Although Miller acknowledges the authenticity of her

signature, she protested that she did not know that she was signing away her rights to be an owner of the home.

- Respondent never informed Miller that a conflict of interest had arisen and that she should seek independent legal advice.

- The closing was conducted on May 8, 2000 at the Key Agency in Hazlet, New Jersey. There was conflicting testimony about whether or not the sellers were present. Delaney testified that he did not know the sellers, did not recall seeing them and that he had no personal interaction with them. The sellers' attorney, Andrew M. Newman, Esq., was present. The buyers attended with Edward Delaney, Esq. The broker was there. Miller signed the addendum to the contract.

- DeAngelis and Delaney testified that Miller was told at the closing that her name could be added to the deed at a later date. Delaney testified this could be accomplished months later after the mortgage company's primary interest in the property had been established. Delaney testified that he could obtain the consent of the mortgage company on a later occasion to the change in the deed. DeAngelis also testified that this would be subject to reaching an agreement with Miller on the sharing of expenses in the household.

- The closing proceeded, and the deal was consummated. Dawn Miller's name remained on the deed. The attorneys failed to

detect that Miller's name remained on the deed. A condition of the mortgage commitment was that Miller's name not be on the deed.

- Miller testified that she believed she was an "owner" of the home because her name was on the deed and she was listed as an owner on the tax and utility bills that she subsequently received in the mail at her new home.

- Miller and DeAngelis moved into the home and set up a household. For some period of time, the residents lived together in relative harmony and shared expenses.

- Respondent sent the deed with Miller's name to the Hall of Records in Freehold to be formally recorded. The deed was "kicked back" because the seller's signatures had not been formally acknowledged by their attorney.

- When the deed came back, Delaney observed that Miller's name was on the deed. Delaney testified that the Miller name had to be removed to comply with the conditions of the mortgage. Counsel testified that he called the seller's attorney to confirm that the sellers were present at the closing and had signed the papers. Respondent then acknowledged the signatures. The Panel finds that this method was not appropriate and that the document should have been sent back to the sellers' attorney to be properly acknowledged. Delaney also "whited out and initialed" Miller's name on the deed and sent it in to be formally recorded.

For reasons that were never adequately explained, the deed was not transmitted back to the Hall of Records in Freehold, New Jersey, until almost nine months later.

- Delaney never advised Miller that he was "correcting" the deed.

- The relationship between Miller and DeAngelis deteriorated to a point where they were unable to live together. DeAngelis was removed from the home in response to a protective order that was issued by a municipal court after the police responded to a complaint of domestic violence. The Miller children were subsequently removed from the premises because the environment had become unsuitable.

- In the course of the ensuing storm, DeAngelis apparently complained about being removed from a home that he was the sole owner of. Miller made some telephone calls to the Hall of Records and learned that her name was not on the deed. This "revelation" led to the ethics complaint.

- According to the testimony at the hearing, DeAngelis and Miller are now both residing in the home, and it is in foreclosure. DeAngelis testified that he recognizes that Miller has an interest in the home, and he is willing to retain counsel to include Miller on the deed if other disputes could be resolved.

- DeAngelis also testified that he urged Miller to go to

the lawyer with him to draft an agreement to resolve their differences on numerous occasions, but she has refused to do so.

C. Conclusions

The Panel finds that Edward Delaney, Esq. violated RPC 1.7 because he represented two parties to a real estate transaction that had conflicting interests. Although DeAngelis and Miller may have commenced the transaction without any apparent conflicts, this changed radically when Miller was not approved for the mortgage with Chase. At that point in time, Respondent represented one client with the ability to close on the property and one that did not. Miller clearly had a valid equitable interest in the property based on the arrangement she had with DeAngelis to purchase the home and the time and resources she had put into making the deal work. By structuring the deal to exclude Miller's name on the closing documents, Respondent was not protecting his client's right to have a legal interest in the property. Respondent's offer to modify the deed months after the closing was a solution he could not guarantee and the promise did not cure the conflict at the time. The Panel understands the pressures a lawyer faces under these circumstances to close a deal, but that does not justify ignoring the individual interests of the client that he represents simply because it may disrupt the sale of property.

At a minimum, Respondent should have insisted that Miller consult with her own attorney to obtain advice on how to proceed. It may be that Miller may have decided not to pursue the purchase if her rights

could not have been adequately protected. Another attorney may have been able to construct an agreement to protect Miller's rights while addressing DeAngelis' concerns about the fair division of expenses between the parties. Respondent should not have induced Miller to sign the Addendum to the contract at the closing because nothing was done to safeguard her rights. To his credit, Respondent now recognizes the problem and has constructed a form letter to address the problem.

The failure to recognize the conflict created a thorny problem that fanned the flames of personal conflict between the parties. The problem was exacerbated when counsel unilaterally changed the deed by whiting out Miller's name and resubmitting the document. Once this was accomplished, the clients had a deed in their possession with Miller's name on it, while the one at the Hall of Records did not. The Panel finds that Respondent violated RPC 1.4 in failing to disclose his action to Miller and also RPC 1.7 in not informing Miller to consult with her own lawyer at this time.

It is undisputed that Respondent did not witness the sellers affix their signatures to the deed at the time of the closing. Respondent could not formally acknowledge the sellers' signatures by later speaking to their attorney to confirm that the signatures were affixed to the document at the closing. It is an absolute legal requirement for the proper execution of a jurat or the taking of an acknowledgement that the affiant or acknowledging party swear under oath in person in the presence of the attorney. *In re Barrett*, 88 N.J.

450 (1982). The Respondent's failure to follow these procedures is a violation of R.P.C. 4.1 (a)(1) and R.P.C. 8.4 (c) [misrepresentation] In the matter of Coughlin, 91 N.J. 374 (1982).

IV. DETERMINATION

It is the Panel's conclusion that Respondent violated R.P.C. 1.7, 1.4, 4.1 (a)(1) and 8.4 (c). Counsel failed to recognize a conflict of interest and did not follow appropriate procedures to protect Miller's rights. Respondent improperly acknowledged the sellers' signatures on the deed.

There are a number of mitigating factors that exist in this case that should be factored into the decision on the penalty to be imposed. Respondent was cooperative and candid with the Presenter and the Panel. Counsel freely conceded that he now appreciates the problem caused by his actions, and he has altered his practice to deal with similar situations in the future. The problem here reflects radical changes in the real estate market that explain counsel's failure to recognize the problem when it occurred. As society has changed, the parties to a real estate transaction have broadened to include individuals in a variety of relationships that create potential conflicts that did not exist before. Market forces have increased the demands on attorneys in closings, while simultaneously reducing the levels of compensation to ridiculously low levels like this case. While it is not a justification for what occurred, the Panel recognizes that the opportunity for dispassionate analysis of conflict

situations does not readily exist in the cauldron of a closing where everyone wants to get the deal done quickly and at the lowest possible cost. Counsel has no prior disciplinary history. Affidavits from members of the Bar testify to his reputation for honesty in his field. It is the Panel's conclusion that Respondent's violations constitute Minor Misconduct, R.1:20-3(i)(2).

DISTRICT VIII ETHICS COMMITTEE

/s/ Ronald B. Grayzel
Hearing Panel Chair

/s/ Peter Tsu-Man Tu
Panel Member

/s/ Jeanne Kushinsky
Panel Member

Dated: September 16, 2003