SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-236
District Docket Nos. XIV-2006-586E
and IV-2010-009

IN THE MATTER OF	
NELSON DIAZ	
AN ATTORNEY AT LAW	

Decision

Argued: October 20, 2011

Decided: December 19, 2011

Melissa Czartoryski appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a recommendation for discipline (reprimand) filed by the District IV Ethics Committee (DEC). The complaint charged respondent with violating RPC 5.1(c)(1) (failure to supervise a lawyer employee), RPC 5.3(c)(1) (failure to supervise nonlawyer employee), RPC 8.4(a)

(violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). Respondent admitted that he violated each of the charged RPCs. We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1987. He has no history of discipline.

Prior to the DEC hearing, the parties entered into a stipulation of facts, as follows:

Shapiro & Diaz is part of a national network of law firms owned or controlled by two Illinois attorneys. Shapiro & Diaz is primarily engaged in the business of processing mortgage loan defaults through foreclosures and related bankruptcy matters. During the relevant time period, respondent was the managing attorney of the Marlton, New Jersey, branch of Shapiro & Diaz. The firm's partnership agreement called for respondent to manage the day-to-day operations of the firm and to supervise subordinate lawyers and staff.

From at least 2000 to October 18, 2005, Shapiro & Diaz engaged in the practice of using pre-signed certifications in

support of ex parte applications for relief or motions for relief in bankruptcy court. The pre-signed certifications were on file with Shapiro & Diaz, in advance of the preparation of the substance of the document to which the certification was appended. The signatories on the certifications were not, in many instances, the client-providers of the information contained in the certifications and they did not actually review and attest to the accuracy of the certifications, before they were filed with the United States Bankruptcy Court.

As to one signatory, Amirah Shahied, her pre-signed certification was appended to the end of accountings of default in mortgage payments and filed with the court by Shapiro & Diaz, approximately 251 times, after she had left the employ of the mortgage servicing company responsible for providing stay relief data.

Although the individual certifying to the accuracy of the information had no knowledge at all of the data contained in the certifications, there is no evidence that the information was not accurate in all other respects. New staff members, both attorneys and paralegals, were trained in the practice of using on-file pre-signed forms by Rhondi L. Schwartz, the firm's principal bankruptcy attorney and an associate member of the

firm.[1] Respondent did not file any of the documents attaching the pre-signed certifications in bankruptcy court, although he was aware of the practice used by the firm. Most were filed by Schwartz, over whom respondent had supervisory responsibility.

On September 12, 2005, the Honorable Morris Stern, United States Bankruptcy Judge, sua sponte issued an order to show cause to address "anomalies" in a certification of default that Shapiro & Diaz had filed in a Chapter 13 case. On October 18, 2005, a hearing was held.[2] A submission by Shapiro & Diaz, prior to the hearing, was an unambiguous admission that pre-signed client signature pages for certifications were being used by the law firm. A pre-hearing conference was held on November 30, 2005. An additional and final hearing date was held on December 14, 2005.

As a result of Judge Stern's inquiry, as of October 18, 2005, Shapiro & Diaz had destroyed the pre-signed signatory

[1] Schwartz was admonished, in 2010, for her actions in connection with this practice, a violation of RPC 8.4(c) and RPC 8.4(d). In mitigation, we considered her previously unblemished career of over twenty years and her lack of dishonest intent. In the Matter of Rhondi L. Schwartz, DRB 10-049 (July 1, 2010).

[2] The hearing was adjourned because, at a break in respondent's testimony, he had asked for time to speak with counsel. Schwartz made a similar request, when called as a witness.

forms and instituted a change in the firm's procedure, whereby the final form of certification to be filed with the court would be presented to the servicer's representative, who would sign it contemporaneously with the review of the contents of the certification.

On May 25, 2006, Judge Stern entered an order and rendered an Opinion Regarding Rule 9011 Penalties and Permanently Enjoining Certain Practices, which permanently enjoined Shapiro & Diaz and its firm members from reverting to the use of the pre-signed certifications. Pursuant to the order, Shapiro & Diaz was to pay a $125,000 penalty; Schwartz was to pay a penalty in the amount of $500; and respondent, Schwartz, and Shapiro & Diaz were referred to the Chief Judge of the District for purposes of disciplinary investigation or referral.

Respondent also represented mortgage lenders in foreclosure matters in Superior Court. From approximately 2002 to October 2003, respondent similarly used and filed pre-signed certifications in default matters, specifically with regard to Certifications of Amount Due, in support of entry of final judgment, under R. 4:64-2 and R. 1:4-4(b). Respondent estimated that he had processed between ten and thirty default matters per month, during this time frame, using pre-signed certifications.

Respondent admitted that he violated RPC 5.1(c)(1) and RPC 5.3(c)(1), conceding only that he had ratified, not ordered the unethical conduct. He also admitted that he violated the first prong of RPC 8.4(a), in that he violated the Rules of Professional Conduct through the acts of another, without knowingly assisting or inducing the misconduct. In addition, he conceded a violation of RPC 8.4(c), only as to misrepresentation. Finally, he admitted a violation of RPC 8.4(d).

In mitigation, respondent's counsel noted that respondent has no history of discipline. The Office of Attorney Ethics (OAE) noted, also in mitigation, that the practice of using the pre-signed certifications stopped before the referral was made to the OAE, that respondent cooperated fully with disciplinary authorities, and that the practice ended six years ago.[3]

The OAE argued that, because respondent had supervisory responsibilities, he violated more RPCs than Schwartz, who was admonished. Thus, his misconduct warranted a reprimand. In

[3] In its report, the DEC also noted the lack of "serious effect" on respondent's clients.

turn, respondent's counsel argued that an admonition was sufficient discipline.

The DEC concluded that a reprimand was the appropriate measure of discipline for respondent. The DEC believed that, because of respondent's supervisory responsibilities, his violations rose to a higher level than Schwartz' and that a reprimand was appropriate.

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

The facts set forth in the record support a finding that respondent violated the charged RPCs. The use by his subordinates of the pre-signed certifications misrepresented to the bankruptcy court and to the world that the documents to which the certifications were appended had been reviewed by the signatory. Respondent violated RPC 8.4(a), RPC 8.4(c), and RPC 8.4(d) in connection with the use of the certifications by Shapiro & Diaz.

It was not until the Schwartz matter that we addressed a fact pattern akin to this one. There, we noted that the facts bore some resemblance to those cases involving lack of candor to a tribunal. Schwartz (like respondent) was not charged with

violating RPC 3.3, the applicable rule. We, thus, analogized the matter to those cases where attorneys have taken improper jurats.

The Court has consistently found that attorneys who have taken improper jurats or signed the names of others, even if with authorization, are guilty of misrepresentations, in violation of RPC 8.4(c). In re Hock, 172 N.J. 349 (2002). To the extent that the administration of justice is affected, RPC 8.4(d) is violated as well.

The sanction for the improper execution of jurats, without more, is ordinarily either an admonition or a reprimand. When the attorney witnesses and notarizes a document that has not been signed in the attorney's presence, but the document is signed by the legitimate party or the attorney reasonably believes it has been signed by the proper party, the discipline is usually an admonition. See, e.g., In the Matter of William J. Begley, DRB 09-279 (December 1, 2009) (as a favor to an acquaintance, attorney witnessed and notarized a real estate deed and affidavit of seller's consideration that were already signed, trusting the acquaintance's story that the signatures were those of his parents, who were too infirm to attend the closing; the son was actually perpetrating a fraud upon his

sickly parents at the time; the attorney, who received no fee, had no prior discipline in thirty-five years at the bar); In the Matter of Richard C. Heubel, DRB 09-187 (September 24, 2009) (attorney prepared a deed for an inter-family real estate transfer and mailed it to the signatory; the deed was returned signed but not notarized; the attorney then notarized the signature outside the presence of the signatory); In the Matter of Martin G. Margolis, DRB 02-166 (July 22, 2002) (attorney notarized loan documents signed by client outside of the attorney's presence; the attorney also failed to utilize a written fee agreement); and In the Matter of Stephen H. Rosen, DRB 96-070 (1996) (attorney witnessed and notarized the signature of an individual on closing documents signed outside of his presence; he also failed to cooperate with disciplinary authorities).

If there are aggravating factors, such as prior discipline, or the direction that a secretary or another person sign the party's name on a document that the attorney then notarizes, or harm to the parties, or the attorney's personal stake in the transaction, then the appropriate discipline is a reprimand. See, e.g., In re Russell, 201 N.J. 410 (2010) (attorney notorized a signature on a mortgage that she did not witness;

previous admonition); In re LaRussa, Jr., 188 N.J. 253 (2006) (attorney improperly directed a wife to sign a husband's name to a release in a personal injury action and then affixed his jurat to the document); In re D'Allessandro, 169 N.J. 470 (2001) (attorney witnessed and notarized an executed deed and notarized two affidavits of title purportedly signed by four individual sellers, three of whom had not signed the documents in the attorney's presence; the signatures had been forged and the three sellers were unaware that their property was being sold); In re Spagnoli, 89 N.J. 128 (1982) (attorney signed his client's name on three affidavits, which he then conformed and filed with the court); and In re Conti, 75 N.J. 114 (1977) (attorney's clients told his secretary that it was impossible for them to come to the attorney's office to sign a deed and instructed her to do "whatever had to be done" to record the deed; the attorney had the secretary sign the clients' names on the deed and then witnessed the signatures and took the acknowledgment).

None of the aggravating factors in those cases are present here. Thus, were it not for respondent's supervisory role, an admonition would have been sufficient here.

Cases involving a failure to supervise junior attorneys (RPC 5.1(c)(1)) are often combined with other violations, such

as gross neglect, lack of diligence, and failure to communicate with clients, and ordinarily result in a reprimand. See, e.g., In re DeZao, 170 N.J. 199 (2001) (reprimand for failure to supervise an attorney; the attorney's associate sent a letter to the court indicating that he would not oppose a motion to dismiss the client's complaint; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate with a client, and failure to explain a matter to the extent necessary to permit the client to make an informed decision about the representation); In re Rovner, 164 N.J. 616 (2000) and In re Rovner, Allen, Seiken & Rovner, 164 N.J. 617 (2000) (reprimand imposed on both a law firm and the partner in charge for failure to supervise attorneys; in one matter, the Appellate Division characterized the neglect of a matter as "blatant and totally unprofessional;" in another matter, a client, whose complaint was dismissed, successfully sued the firm for malpractice; the Court also found gross neglect, lack of diligence, and failure to communicate with a client); and In re Daniel, 146 N.J. 490 (1996) (reprimand imposed for failure to supervise an attorney employee; the attorney did not monitor an inexperienced associate's handling of a litigation matter, resulting in an order granting summary judgment against the

client based on a failure to reply to discovery requests; the Court also found a lack of diligence and failure to communicate with the client). But see In re Macias, 159 N.J. 516 (1999) (three-month suspension imposed on attorney who failed to supervise a junior attorney assigned to a personal injury case, who neglected the matter, resulting in the dismissal of the client's complaint for failure to serve two of the defendants and for failure to pursue a judgment against a third defendant; we found that, because the attorney failed to take any remedial action to correct the junior attorney's mistakes, the attorney violated RPC 5.1(c)(2); the attorney had received two prior reprimands).

Attorneys who fail to supervise nonlawyer staff (RPC 5.3(c)(1)) are typically admonished or reprimanded. See, e.g., In the Matter of Brian C. Freeman, DRB 04-257 (September 24, 2004) (attorney admonished for failing to supervise his paralegal, who also was his client's former wife, which resulted in paralegal's forging the client's name on the retainer agreement and later on a release and a $1000 settlement check in one matter and on a $2,771.10 settlement check in another matter; the funds were never returned to the client; mitigating factors included the attorney's clean disciplinary record and

the steps he took to prevent a reoccurrence); In the Matter of Lionel A. Kaplan, DRB 02-259 (November 4, 2002) (attorney admonished for failure to supervise his bookkeeper, which resulted in recordkeeping deficiencies and the commingling of personal and trust funds; mitigating factors included the attorney's cooperation with the OAE, including entering into a disciplinary stipulation, his unblemished thirty-year career, the lack of harm to clients, and the immediate corrective action that he took); In re Bergman, 165 N.J. 560 (2000), and In re Barrett, 165 N.J. 562 (2000) (companion cases; attorneys reprimanded for failure to supervise secretary/bookkeeper/office manager who embezzled almost $360,000 from the firm's business and trust accounts, and from a guardianship account; the attorneys cooperated with the OAE, hired a CPA to reconstruct the account, and brought their firm into full compliance with the recordkeeping rules; a bonding company reimbursed the losses caused by the embezzlement); In re Moras, 151 N.J. 500 (1997) (reprimand where attorney failed to adequately supervise a secretary, who stole $650 in client funds, failed to maintain required records, and failed to safeguard client funds; the attorney made restitution); In re Klamo, 143 N.J. 386 (1994) (reprimand where the attorney failed to maintain required

records, commingled personal and client funds, failed to adequately supervise a paralegal, who embezzled at least $14,345, exhibited gross neglect, and failed to cooperate with the OAE; numerous mitigating factors were noted); and In re Pressler, 132 N.J. 155 (1993) (public reprimand where attorney permitted numerous instances of negligent misappropriation during a period of more than one year; in one instance the attorney's former employees had stolen funds from the attorney as well as from clients; other misappropriations resulted from errors made by the attorney or his employees). But see In re Stransky, 130 N.J. 38 (1992) (one-year suspension where the attorney completely delegated the management of his attorney accounts to his wife/secretary/bookkeeper, including authorizing her to sign trust account checks, which led to her embezzling $32,000 in client funds).

As previously discussed, respondent's associate, Schwartz, received an admonition for her misconduct. The DEC correctly noted that respondent's misconduct was more egregious than Schwartz', because of his supervisory responsibilities. Indeed, respondent allowed the certifications to be utilized for years, in numerous cases. However, in light of the mitigating factors, including respondent's lack of prior discipline, the lack of

harm to the clients, the firm's cessation of the practice, and the passage of six years since the certifications were used, we are persuaded that a reprimand is sufficient discipline.

Members Stanton and Yamner did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Nelson Diaz
Docket No. DRB 11-236

Argued: October 20, 2011

Decided: December 19, 2011

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton						X
Wissinger			X			
Yamner						X
Zmirich			X			
Total:			7			2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel