

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-337
District Docket No. XIV-05-035E

IN THE MATTER OF
DAVID WARREN DENENBERG
AN ATTORNEY AT LAW

Decision

Argued: February 15, 2007

Decided: March 27, 2007

Richard J. Engelhardt 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 came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), following respondent's ninety-day suspension in New York, which was based on his conviction of the misdemeanor offense of making

a false affidavit, in his capacity as a subscribing witness, on a petition for the nomination of a candidate, namely himself. The conviction was based on respondent's careless verification of eight invalid signatures on the election petition.

The OAE recommends that respondent be reprimanded. We agree with that recommendation.

Respondent was admitted to the New York bar in 1988 and the New Jersey bar in 1989. Presently, he practices law with Davidoff Malito & Hutcher, a New York law firm. Respondent has no disciplinary history in New Jersey or New York.

We now detail the acts of respondent's misconduct. On June 19, 2003, respondent, a Nassau County legislator running for re-election, signed a "Statement of Witness," located at the bottom of a "Democratic Designating Petition" containing eight individual signatures that he had purportedly obtained on June 15. The statement read:

I, David W. Denenberg state: I am a duly qualified voter of the State of New York and am an enrolled voter of the Democratic Party. I now reside at 2370 McCord Ave., Merrick, NY. Each of the individuals whose names are subscribed to this petition sheet containing 8 signatures, subscribed the same in my presence on the dates above indicated and identified himself to be the individual who signed this sheet. I understand that this statement will be

accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

[Staff #4, Sheet 12.¹]

At the time, New York Election Law § 17-122(7) (§ 17-122(7)) provided:

Any person who . . . [b]eing a notary public, commissioner of deeds or a subscribing witness to a petition, provided for in this chapter, for the designation or nomination of a candidate, or a petition for opportunity to ballot at a primary election, thereby makes a false statement or makes a false affidavit thereon . . . is guilty of a misdemeanor.

At some point after respondent signed the statement, all eight signatures on the petition were declared invalid. Consequently, the District Attorney of Nassau County, New York filed a misdemeanor complaint, charging respondent with violating § 17-122(7). The specific conduct underlying the charge was described, in part, as follows:

[T]he defendant, DAVID DENENBERG, on or about June 19, 2003, as a subscribing witness to a Democratic designating petition, sheet number 12, purporting to designate David Denenberg as a candidate for

¹ Staff Sheet #4, Sheet 12 refers to the particular Democratic Designating Petition at issue.

the party position of "Member of County Committee," stated falsely that signatures contained therein were signed in his presence by the named individuals, when in fact, named individuals had not signed their names to the petition in his presence nor had they signed this petition at all.

[District Court of Nassau County, First District, Criminal Part, Misdemeanor Complaint, Docket No. 000763.]

On January 11, 2005, respondent pleaded guilty to the misdemeanor charge and stated the following on the record:

Your Honor, I was on or about [June 19, 2003] or some point after that date when I was attesting to signatures, I was less than careful. I was careless when I was attesting to the designated petitions to that designated petition and that led to my signing that petition that contained invalid signatures.

I'm sorry that I was careless. I don't take this lightly and I'll ensure that I'll never let this happen again.

I just again want to just apologize to the Court and again, I'm sorry that I was careless and I wouldn't let that happen again.

[Transcript of Arraignment, January 11, 2005, 4-22 to 5-6; 5-23 to 25.]

Respondent was granted a one-year conditional discharge and relief from disabilities, and was surcharged \$160.

On May 9, 2005, the Supreme Court of the State of New York, Appellate Division: First Judicial Department (Appellate Division), issued an order deeming respondent's conviction a "serious crime" and referring the matter to a hearing panel for a hearing and the recommendation of an appropriate sanction. Prior to the hearing, the Departmental Disciplinary Committee of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department (Disciplinary Committee) and respondent entered into a stipulation setting forth their respective positions, rather than specifically agreed-upon facts. The stipulation established the following:

While respondent did not have independent knowledge of the district attorney's contention that all constituents identified on Sheet 12 had not signed the sheet, gave no one authority to sign their names, and were unaware that their signatures had been placed on the sheet, he "recognize[d] that the accusatory instrument to which he pleaded guilty charged, in pertinent part, that the 'named individuals had not signed their names to the petition in his presence nor had they signed this petition at all.'"

Respondent could not contest the district attorney's contention that, on all petitions submitted under Exhibit #4 where the signatures were noted as invalid, those signatures purported to be the signatures of individuals who never signed the petitions.

Respondent claimed that he did not know that the invalid signatures were false, and he did not aid, assist or encourage anyone to forge the name of another person.

Although respondent disputed the district attorney's claim that every petition submitted under Exhibit #4 bore his signature on the "Signature of Witness" section, he conceded that, with respect to those signatures of witness that he did sign, he understood that his signature was the equivalent of an affidavit and, if it contained a false statement of material fact, he would be subject to the same penalties as if he had been duly sworn.

Although respondent did not participate in or have knowledge of forgeries in ten specific petitions, he could not contest the district attorney's contention that all signatures on those petitions had been forged in full by one person.

[Pre-Hearing Stipulation, dated September 20, 2005, ¶4-¶7.]

On September 21, 2005, the hearing panel heard testimony in the New York disciplinary proceeding. Respondent first testified, on the issue of mitigation, that he belonged to numerous civic, public service, and historical organizations in his legislative district. He also worked with the community wellness centers in each community in his district, and assisted them in obtaining county funding.

Respondent was a past president of his synagogue and a current member of its executive board. As an attorney, he had handled several environmental matters on a pro bono basis.

In 1999, respondent was elected Nassau County legislator. He was re-elected in 2001 and 2003. Respondent described himself as a tireless, devoted representative, who held public meetings and funded his own district office.

Respondent detailed as follows the party nominating process at the time of his misconduct. After the party designated its candidates to run in an election, signatures were gathered so that the candidates' names could be placed on the ballot. Party activists collected the signatures, as could the candidates.

According to respondent, walking door-to-door collecting signatures was also a great way to campaign. When respondent canvassed for signatures, he also collected signatures on behalf of other party members.

When respondent collected signatures, he carried what was called an "election book," which contained the names of all registered voters. Typically, respondent's assistant carried the clipboard that held the petitions. Respondent explained how he obtained signatures:

So you go to a house, you ask, if it's a Democrat and we're carrying Democratic sheets, you would ask are you John Doe? I see you're down as John Doe. We're carrying petitions for the Democrats, please sign. And while they're signing, they would sign each sheet on the clipboard which would have five to seven different sheets three times over because obviously you only fit ten or fifteen on a sheet depending on the year, typically fifteen, and you'd go to more than fifteen houses, more than fifteen people. So you'd have about three sets, seven each.

And I would be talking to the people about an issue, if you would, while they're signing it, and the person carrying the clipboard would turn the pages at the same time I would have given the palm card, useful county numbers, and the magnet. And I'd be writing down what they're saying as we're talking.

. . . .

Then if there were more than one registered Democrat at the door, you would say is Mrs. Doe home, is Jane Doe home, is [sic] Bonnie and Sue, your daughters, can they sign too, can they come to the door? And a lot of times they would come, oh, Dave Denenberg, so I'd be talking to multiple people at the same time about issues while the people are signing the petitions. And almost always, I can't think of a time when the petition for me for legislator wasn't the top one, and we'd ask them to fill out the address on the petition for me for legislator.

But just due to two things, time constraints and wanting to hit more doors, as well as not wanting to annoy people, we

wouldn't ask them to fill out their address on five or six more petitions. So we'd have one, the top petition, the one for me for legislator would have the addresses filled out, and then the other ones were not.

[T94-9 to T95-1; T95-13 to T96-5.]²

After respondent finished collecting signatures for the day, his staff personally delivered them to party headquarters, where volunteers completed the petitions by filling in missing information, typically the signatories' addresses. Respondent did not verify the signatures before the petitions were turned into headquarters because his staff did not have time to complete the forms first, due to the high volume of signatures he collected. Respondent estimated that, during his years of public service, he had collected more than 10,000 signatures. Instead, respondent needed his staff to focus on constituent needs and the campaign. Thus, respondent relied upon party headquarters to complete the sheets.

After a petition was completed, which was about a day or two later, a headquarters representative either asked respondent to stop in and sign it or gave it to one of respondent's

² "T" refers to the transcript of proceedings before the hearing panel of the Departmental Disciplinary Committee, First Judicial Department, Supreme Court, Appellate Division.

representatives to obtain respondent's signature. After respondent signed the statement of witness, the form was returned to headquarters.

Respondent testified that he had never asked a person to sign for another person. He never saw a person sign for another. If respondent ever had a question about the signature on a petition, it would be crossed out.

Sheet 12 was the Democratic Designating Petition for the positions of county committee, district delegates, and alternate district delegates. Respondent and his wife were the candidates seeking the county committee position. Respondent also sought the position of county legislator. The Democratic Designating Petition for that position contained only his name.

Respondent never personally signed someone else's name on a sheet, including Sheet 12. Respondent knew all of the people whose signatures were on Sheet 12, and, when he signed the bottom of the sheet, he did not know that any of the signatures were invalid.

Respondent explained his practice with respect to his affixing his signature to Sheet 12:

When I get signatures back from, not signatures, I'm sorry. When there are sheets to sign, you know, and I'm stopping

in at Democratic headquarters to sign those, it could be a day or two, three, four even, sometimes a week after the event, I look, you know, I recognize the areas because I just walked those areas, and I give it a glance, and if it looks like where I walked and the people who, in general, I know well to very well, you know, I sign the witness statement at the bottom. I mean, this particular sheet lined up with ones that I collected for myself, for the county-wide candidates, county executives, Suozzi, for judicial candidates as well as for others, I think town-wide candidates in that particular year, you know, in the order that I walked the houses.

So I didn't think, when I signed it, I didn't think that there was anything invalid, and this particular sheet was for myself and my wife, a committee person, and we already had 30 signatures for committee person. You need eight in our district to be a committee person. Not eight, I'm sorry. Eight was the number there. You need five to be a committee person.

[T102-3 to T103-2.]

With respect to Sheet 12, respondent testified that he personally carried the petitions with him, when he canvassed for signatures at each house. He talked to every person identified on the sheet and asked each person to sign it. According to respondent, although he "witnessed people on that signing petitions," "[a]s it turns out," he did not witness each person sign the petition. Respondent did not know what had happened to

the signatures. He explained: "Somewhere along the line, someone or somehow these names got copied to this sheet from other sheets that they did sign on that day, and I witnessed this without knowing that that had occurred[]." "

Respondent asked some of the people whose signatures on Sheet 12 had been declared invalid, and who also happened to be his friends, about the signatures. Like respondent, his friends did not know who had forged their signatures.

Remedial measures have since been taken to ensure that this would not happen again. Instead of carrying separate petitions for each candidate, a candidate now carries one sheet that contains the names of all candidates. As for respondent, he no longer witnesses petitions. Instead, he is responsible for campaigning. Someone else is responsible for the petitions.

Respondent accepted responsibility for the fact that, by signing a petition with invalid signatures, he directly undermined the credibility and integrity of the particular petition, as well as himself, both as an attorney and a legislator. Respondent attributed his action in signing the petition to carelessness.

At the New York disciplinary hearing, four witnesses testified about respondent's integrity and good character. In

addition, twenty-three character letters were submitted on his behalf. Even the district attorney who prosecuted respondent submitted a letter to the disciplinary committee, requesting that respondent not be disbarred or suspended.

Upon the conclusion of the hearing, the hearing panel recommended that respondent receive a public censure.³ According to the panel, respondent admitted that he was careless, and there was no "expression of scienter . . . demanded by the Court or the People in the allocution upon the plea." Moreover, respondent testified that he did actually witness people sign the petitions in his presence. On the other hand, however, he did not compare the petitions and verify the signatures.

In mitigation, the panel considered the voluminous character evidence, including the letter from the district attorney, as well as respondent's tireless efforts on behalf of his community and his constituents. Finally, the panel

³ New York follows the Disciplinary Rules of the Code of Professional Responsibility. No rule was cited by the hearing panel. Rather, the panel relied upon NY CLS Jud § 90(4)(a), which requires the imposition of a suspension upon an attorney convicted of "a serious crime," as defined by the statute. In New Jersey, the commission of a crime is a violation of RPC 8.4(b).

expressed confidence in the remedial measures taken by respondent to avoid the re-occurrence of a similar incident.

On March 1, 2006, the Disciplinary Committee accepted the hearing panel's recommendation and requested that the Appellate Division confirm the panel's finding of facts and conclusions of law and impose a public censure. On August 16, 2006, the Appellate Division unanimously confirmed the hearing panel's findings of fact and conclusions of law. Nevertheless, the Appellate Division concluded that, "[w]hile respondent's misconduct may [have been] the result of carelessness, it remains that he was convicted of violating Election Law § 17-122(7), for which suspension is the appropriate sanction." Accordingly, respondent was suspended from the practice of law for ninety days.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

We are satisfied that the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). However, subparagraph (E) warrants different discipline because respondent's misconduct in New York warrants substantially different discipline in New Jersey, that is, a reprimand rather than a suspension.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state."

R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In this case, respondent's conviction of violating § 17-122(7) by carelessly verifying election petition signatures when, in fact, the signatures were not valid constituted a violation of New Jersey's RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects). In New Jersey, an attorney who commits a crime violates RPC 8.4(b). In re Margrabia, 150 N.J. 198, 201 (1997).

That respondent's offense did not relate directly to the practice of law does not negate the need for discipline:

In addition to the duties and obligations of an attorney to his client, he is responsible to the courts, to the profession of the law, and to the public[.] He is bound even in the absence of the attorney-client relation to a more rigid standard of conduct than required of laymen. To the public he is a lawyer whether he acts in a representative capacity or otherwise.

[In re Gavel, 22 N.J. 248, 265 (1956) (citations omitted).]

Accord In re Katz, 109 N.J. 17, 23 (1987).

The Signature of Witness signed by respondent stated that it was the equivalent of an affidavit. In analogous cases involving improper execution of jurats, the discipline is typically either an admonition or a reprimand. When an attorney witnesses and notarizes a document that has not been signed in the attorney's presence, but, nevertheless, is signed by the legitimate party, the discipline is usually an admonition. See, e.g., In the Matter of Robert Simons, DRB 98-189 (July 28, 1998) (admonition imposed on attorney who signed a friend's name on an affidavit, notarized the "signature," and then submitted the document to a court), and In the Matter of Stephen H. Rosen, DRB 96-070 (April 29, 1996) (admonition imposed on attorney who witnessed and notarized the signature of an individual on closing documents signed outside his presence; in addition, he failed to cooperate with disciplinary authorities).

If there are aggravating factors, such as the attorney's signing a party's name or directing a secretary to sign a party's name on a document that the attorney then notarizes, or the attorney's knowledge that the party has not signed the document, the appropriate discipline is a reprimand. See, e.g., In re Uchendu, 177 N.J. 509 (2003) (reprimand for attorney who signed clients' names on documents filed with the Probate

Division of the District of Columbia Superior Court and notarized some of his own signatures on these documents); In re Giusti, 147 N.J. 265 (1997) (reprimand for attorney who forged the signature of his client on a medical record release form; the attorney then forged the signature of a notary public to the jurat and used the notary's seal); In re Reilly, 143 N.J. 34 (1995) (reprimand imposed on attorney who improperly witnessed a signature on a power of attorney and then forged a signature on a document); In re Weiner, 140 N.J. 621 (1995) (reprimand for excessive delegation of authority to non-lawyer staff and for condoning his staff's signing of clients' names on documents); In re Rinaldo, 86 N.J. 640 (1981) (public reprimand for attorney who permitted his secretaries to sign two affidavits and a certification in lieu of oath); and In re Conti, 75 N.J. 114 (1977) (public reprimand for attorney whose clients told his secretary that it was impossible for them to come to the attorney's office to sign a deed and instructed the secretary to do "whatever had to be done" to record the deed; the attorney had the secretary sign the clients' names on the deed; the attorney then witnessed the signatures and took the acknowledgment).

A reprimand also is the appropriate measure of discipline when an attorney affixes a jurat on a document signed outside of the attorney's presence, relying on another's representation that the signatures are legitimate. See, e.g., In re D'Alessandro, DRB 01-215 (July 26, 2001), and In re Izzo, DRB 98-337 (October 19, 1998). In D'Alessandro, the attorney witnessed and notarized an already-executed deed and two already-executed affidavits of title, purportedly signed by four individuals who owned the property. However, at least three of the four grantors had not signed the documents in the attorney's presence. Later, it was learned that the signatures had been forged, and that the owners of the property had been unaware of its sale. In mitigation, we considered that, in notarizing the documents, the attorney had relied on the word of a friend, who was the person who presented the deed and the affidavits of title for his signature and misrepresented to the attorney that the grantees were the friend, his wife, and his parents.

In Izzo, the attorney prepared a deed on behalf of Ronald Vaughn, the grantee of real property. Vaughn subsequently returned the deed to the attorney and misrepresented to him that the grantor had executed the document. The attorney then witnessed the grantor's signature and notarized the deed. In

mitigation, we considered that the attorney had no disciplinary history, had no knowledge of the forgery, did not benefit from his misconduct, and that the property was reconveyed to the grantor.

This case did not involve the legitimate signature of someone who executed a document outside of respondent's presence. Rather, the signatures were determined to be forged, albeit unbeknownst to respondent. Thus, an admonition is not in order. Instead, respondent should be reprimanded for his careless execution of the Signature of Witness. Due to the substantial number of sheets that respondent's multitude of constituents signed, he and his staff did not have the time to return to the office and fill in the addresses for each and every signatory. Instead, the sheets were forwarded headquarters where they were completed by the staff who worked there. Respondent relied upon his party and its volunteers to do that correctly.

Because respondent did not forge the invalid signatures, did not instruct anyone to affix the invalid signatures, did not know who affixed or transferred the invalid signatures to the sheet, did not know that the signatures were illegitimate, and, instead, relied on staff at party headquarters to simply

complete the forms by inserting addresses next to the signatures, his conduct was similar to that of the attorneys in B'Alessandro and Izzo. Moreover, there was no claim that respondent personally gained from the invalid signatures. Indeed, he and another witness testified that candidates routinely seek more signatures than required, precisely because the validity of signatures is often challenged by the opposing party.

In view of the foregoing, we determine that a reprimand is the appropriate discipline in New Jersey for respondent's New York offense.

Members Boylan and Lolla 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
William J. O'Shaughnessy
Chair

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

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**


In the Matter of David W. Denenberg
Docket No. DRB 06-337

Argued: February 15, 2007

Decided: March 27, 2007

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy			X			
Pashman			X			
Baugh			X			
Boylan						X
Frost			X			
Lolla						X
Neuwirth			X			
Stanton			X			
Wissinger			X			
Total:			7			2


Julianne K. DeCore
Chief Counsel