SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-200
District Docket No. XIV-2013-0530

IN THE MATTER OF	:
STEPHEN ALTAMURO	:
AN ATTORNEY AT LAW	:

Decision

Argued: September 15, 2015

Decided: March 4, 2016

Jason D. Saunders appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance at 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 a reprimand filed by the District IV Ethics Committee (DEC). The complaint charged respondent with violations of RPC 3.3(a)(4) (lack of candor to a tribunal), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). We determine to impose a reprimand.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1985. He has no prior discipline.

The salient facts are largely undisputed, respondent having admitted almost all of them in his answer to the formal ethics complaint and by his testimony at the DEC hearing.

In April 2012, Travis Collins retained respondent to assume his representation from the public defender's office in a Camden County criminal matter in which Collins was charged with burglary, possession of a weapon (imitation firearm), and several drug-possession charges. Joaquin Garcia, Collins' friend and a former client of respondent, had referred Collins to respondent.

On November 23, 2012, Garcia told Collins that, when Collins returned from a night out, he could stay at Garcia's house. When Collins returned that night, he was "completely wasted" and, when trying to enter Garcia's house, mistakenly entered the house immediately next door to it. According to respondent, Collins was so inebriated that he had no idea that he was entering the wrong house. When police arrived, Collins was found to be in possession of an imitation firearm and illegal drugs.

During the discovery phase of Collins' criminal case, respondent informed the prosecutor, Leo Feldman, that he had a

witness, Garcia, who would provide a written statement to the effect that Collins had been invited to stay at Garcia's house and that he had intended to enter Garcia's house, but mistakenly entered the house next door. Because the case had been listed for trial for the third or fourth time, respondent believed that the trial judge would soon set a firm trial date, after which Collins might no longer be able to enter into a plea agreement.

Therefore, on June 10, 2013, the date of the next conference in the case, respondent prepared a statement for Garcia's signature. Respondent awakened Garcia with his call and asked if he could deliver the statement to Garcia at his home. Instead, Garcia asked respondent to read the statement to him over the telephone, after which he told respondent that he agreed with the statement, "would authorize [respondent] to sign his name," and directed respondent to "go ahead and sign" it.

After signing Garcia's name to the statement, respondent gave it to Feldman that same day (June 10, 2013). Respondent believed that he "was authorized to sign it and that — that Garcia was going to stand by that statement." Respondent conceded that the statement did not indicate that he, not Garcia, had signed it.

The matter was thereafter scheduled for another conference on July 29, 2013. At some point prior to that date, Garcia

called respondent to recant his statement because he and Collins had been "in a fight" and he no longer wanted to testify on Collins' behalf. Respondent suggested that he wait a few days to see if things worked out. About five days later, Garcia telephoned respondent and told him that he still wanted to recant his statement. Because respondent had prior commitments that prevented him from doing so immediately, he agreed to reach out to the prosecutor shortly about the issue. After Garcia insisted that it be done immediately, respondent directed Garcia to call Feldman to let the prosecutor know:

> that you're withdrawing your statement as a witness and that you want no parts of it, and Mr. Garcia called me the next day, told me he spoke to the prosecutor's office, told him that they were withdrawing the statement, that he didn't want them to use the statement, that he had not signed the statement, but he did tell them that he had authorized me to sign the statement, but he told them that they shouldn't be able to use the statement because that wasn't his signature on it. And all that information was given to them and he told me the very next day that he had told them all of that information and that they were fully aware of the fact that he hadn't signed it and that he was withdrawing it and he would not testify.
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> [T62-23 to T63-11.][1]

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[1] "T" refers to the transcript of the April 14, 2015 DEC hearing.

In his testimony before the DEC, Feldman confirmed that respondent had given him Garcia's written statement on June 10, 2013. According to Feldman, however, respondent did not tell him at the time that he, not Garcia, had signed the document. A month later, on July 10, 2013, Garcia called to recant his statement. At that time, Feldman learned that respondent had signed the statement, albeit with Garcia's permission.

According to respondent, at the July 29, 2013 conference, he met with Feldman to discuss Garcia's statement:

> [Feldman] was aware of it from before I went to tell him and he was aware from me telling him that day. But again, whether Leo is -- doesn't recall or doesn't remember, he definitely knew from both Garcia and me on the 29th when he made the plea offer of probation. Again, I remember specifically that the offer was made, and I'm pretty sure that we waited a week because I now had to reconcile all of this with Travis Collins, the fact that the statement was given, the statement was withdrawn, the statement hadn't been signed and whether that in any way was going to make him not want to accept the probation, although I was recommending highly that he accept the probation, because he was previously being offered, I think it was a one- or two-year flat sentence, jail time.
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> [T63-22 to 64-11.]

Feldman denied that respondent ever told him about signing Garcia's name to the statement. Rather, he recalled that, at Collins' August 5, 2013 plea hearing, respondent told him only that Garcia had "backed off" of his written statement.

Although respondent and Feldman recalled events differently, respondent and the presenter agreed that, had Garcia testified at the DEC hearing, he would have told the panel that he sought to recant his statement and contacted respondent, who advised him to call the prosecutor and tell him that: (1) he was recanting; (2) he had not signed the statement; and (3) the statement should not be used at all because it did not contain his signature.[2]

On August 5, 2013, Collins pleaded guilty to one count of possession of a controlled dangerous substance with intent to distribute within 1000 feet of a school zone. In September 2013, he was sentenced to two years' probation.

Respondent admitted that signing Garcia's name to the written statement amounted to misrepresentation:

> So I signed it and I turned it in to the prosecutor. And you know, all those facts are true, and again, that says that technically I'm guilty of misrepresentation, and I can't deny it. I have never denied it. I didn't deny it in my statement when I was investigated by the

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[2] Garcia was present at the DEC hearing, prepared to testify, but was called away unexpectedly to attend to a family matter. In order to streamline the proceedings, the presenter and respondent stipulated that Garcia would have testified to certain facts.

> state. I didn't deny it when I was called by the prosecutor's office. I told him flat out that I signed the statement.
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> [T23-12 to 18.]

Respondent did not contest that his conduct also constituted lack of candor to a tribunal (RPC 3.3(a)(4)). He denied, however, that he engaged in conduct prejudicial to the administration of justice (RPC 8.4(d)), arguing that Garcia's written statement had not affected the outcome of the case. Specifically,

> [T]he only other thing I will point out is that I don't really think there's been sufficient proof about a violation of 8.4(d). I don't think justice was affected in any way. I think the prosecutor had already made his decision and I don't think this statement in any way altered what the final offer was for Mr. Collins. So I don't think there was a violation of 8.4(d). I do acknowledge that my signing it based on the case law's [sic] a violation of 8.4(c).
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> [T105-2 to 10.]

Respondent urged the imposition of an admonition, citing In the Matter of Nelson Diaz, DRB 11-236 (December 19, 2011), which provides that:

> 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.
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> Id. at 8.

Diaz had permitted his staff to file clients' pre-signed certifications with bankruptcy courts.

The DEC found that, by signing the written statement for Garcia, without any indication that it was not Garcia's signature, respondent violated RPC 8.4(c).

The DEC dismissed the RPC 3.3(a)(4) charge of offering false evidence, concluding that Garcia's unsworn statement might not have been "evidence" for purposes of that rule. Moreover, the panel noted, the statement was not substantively false and respondent's testimony – that he had told Garcia to inform the prosecutor that the signature was not his own – was unrefuted.

Finally, the DEC dismissed the RPC 8.4(d) charge, concluding that respondent had no intention of "subverting" the judicial process, because the statement was "an accurate account of Garcia's observations and opinions relating to the Collins criminal case," and because respondent had the authority to sign Garcia's name.

Although the panel acknowledged that there need not be actual prejudice to the justice system to establish a violation of RPC 8.4(d), it observed that the prosecutor's office had determined that the burglary charge was weak and that a plea

agreement for probation was appropriate, even before respondent gave Garcia's statement to Feldman. Moreover, the prosecutor's office had offered probation to Collins, even after learning that Garcia had recanted the statement and had not signed it. Thus, because the statement was never "a precondition for the plea bargain that was ultimately reached," the DEC dismissed the RPC 8.4(d) charge.

The DEC recommended a reprimand for respondent's violation of RPC 8.4(c).

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

When signing Garcia's name to the witness statement, albeit with Garcia's authorization, respondent admittedly misrepresented that the signature belonged to Garcia and that he intended for the prosecutor to believe that Garcia had signed it himself, a conceded violation of RPC 8.4(c).

We agree with the DEC's conclusions that respondent was not guilty of violating RPC 3.3(a)(4). RPC 3.3, titled "Candor Toward the Tribunal," provides that (a) "a lawyer shall not knowingly (4) offer evidence that the lawyer knows to be false." Respondent, however, did not offer the statement to a tribunal. Garcia's unsworn statement may have had evidentiary value if

offered later at trial, but the Camden County Prosecutor's Office is not a tribunal. Just as important, the statement was not false – its contents were, by all accounts, true and accurate. For these reasons, we dismissed the RPC 3.3(a)(4) charge.

We also agree with the DEC's determination that, by signing the witness statement, respondent did not engage in conduct prejudicial to the administration of justice, in violation of RPC 8.4(d). First, the written statement was an accurate account of Garcia's version of events. Second, the prosecutor's office long before had determined that the burglary charge was weak and that probation would be appropriate for Collins, even before respondent gave Garcia's statement to Feldman. In fact, the prosecutor's office still offered Collins probation, even after learning that Garcia was recanting and had not signed the statement. Because Garcia's statement was never a component in the plea bargain that the parties reached, the administration of justice was not affected. Therefore, we dismissed the RPC 8.4(d) charge for lack of clear and convincing evidence.

Respondent, thus, is guilty of a sole violation of RPC 8.4(c).

Attorneys found guilty of misrepresentations to third parties generally have received reprimands. See, e.g., In re

Walcott, 217 N.J. 367 (2014) (attorney misrepresented to a third party, in writing, that he was holding $2,000 in escrow from his client as collateral for a settlement agreement; violations of RPC 4.4(a)(1) and RPC 8.4(c)); In re Chatterjee, 217 N.J. 55 (2014) (attorney misrepresented to her employer, for five years, that she had taken steps to pass the Pennsylvania bar examination, a condition of her employment; she also requested, received, but ultimately returned, reimbursement from the employer for payment of the annual fee required of Pennsylvania attorneys; compelling mitigation); In re Liptak, 217 N.J. 18 (2014) (attorney misrepresented to a mortgage broker the source of funds she was holding in her trust account for a real estate transaction; the attorney also committed recordkeeping violations; compelling mitigation); In re Lowenstein, 190 N.J. 58 (2007) (attorney failed to notify an insurance company of the existence of a lien that was required to be satisfied out of the settlement proceeds; the attorney's intent was to avoid the satisfaction of the lien); and In re Agrait, 171 N.J. 1 (2002) (attorney listed $16,000 on a RESPA as a deposit required to be held in escrow, despite never having collected those funds for the closing; the attorney also failed to disclose a prohibited second mortgage to the lender). But see In the Matter of Rhondi L. Schwartz, DRB 10-049 (July 1, 2010), where the

attorney received an admonition for misrepresentations to a court. Schwartz was an associate attorney in a law firm handling bankruptcy matters. The bankruptcy court found anomalies in one of the firm's certifications, filed on behalf of a lender/client. The firm and lender/client had agreed to use pre-signed signature pages for certifications submitted to the bankruptcy court in stay-relief motions. Often, the pages were pre-signed by employees who had no knowledge of the body of the certification and who had not reviewed them prior to filing. Schwartz and the law firm had taken steps, however, to ensure the accuracy of the information in the certifications, an effort that the bankruptcy court noted in its own investigation. We found violations of RPC 8.4(c) and RPC 8.4(d), but noted that the attorney (and the firm) were motivated by a desire to increase efficiency and to streamline bankruptcy court filings.

Here, respondent's misconduct was limited to a single misrepresentation about the authenticity of the signature on a witness statement that was otherwise substantively accurate. Like the attorney in Schwartz, who took action to ensure that the content of the certifications was accurate, respondent had taken steps to ensure that the witness statement by Garcia was truthful in content. In contrast, however, attorney Schwartz was found to have lacked a dishonest motive, while respondent

admittedly sought to deceive the prosecutor that Garcia had signed the statement.

Respondent's actions, thus, were comparable to the conduct of the attorneys in the reprimand cases, Walcott, Chatterjee, Liptak, Lowenstein, and Agrait, all of which also involved a single misrepresentation.

In aggravation, respondent's misconduct would likely never have been discovered had Garcia not recanted his statement. In mitigation, respondent admitted his wrongdoing and has no prior discipline in thirty years at the New Jersey bar.

Based on the totality of the circumstances, particularly respondent's intent to deceive the prosecutor, we conclude that a reprimand is warranted.

Member Singer voted for an admonition.

Vice-Chair Baugh and Member Clark 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
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Stephen Altamuro
Docket No. DRB 15-200

Argued: September 15, 2015

Decided: March 4, 2016

Disposition: Reprimand

Members	Disbar	Admonition	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh						X
Clark						X
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer		X				
Zmirich			X			
Total:		1	5			2

Ellen A. Brodsky
Chief Counsel