SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-042
District Docket No. XIV-2014-0334E

IN THE MATTER OF	:
WILSON SOTO	:
AN ATTORNEY AT LAW	:

Decision

Argued: June 16, 2016

Decided: November 15, 2016

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

Respondent did not appear for oral argument, despite proper service.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13, following respondent's conviction for the criminal misdemeanor of false affidavits in violation of New York Election Law § 17-108(2)(AM). Based on his conviction, respondent subsequently received a censure in New York for violating the New York equivalents of New Jersey RPC 8.4(b) (criminal act); RPC 8.4(c)

(conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice). The OAE seeks a three-month suspension. For the reasons expressed below, we determine to grant the motion and impose a reprimand.

Respondent was admitted to the New Jersey bar in 1998. In 1999, he was admitted to the New York and Connecticut bars. He has no history of discipline.

Respondent's license to practice law in New Jersey was revoked on August 25, 2014 for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection for seven consecutive years.

On December 17, 2009, respondent was arrested and charged with a felony complaint. Count one alleged an offering of a false instrument for filing in the first-degree, a violation of New York Penal Law PL 175.35, and count two, the offense of illegal voting, a violation of Election Law § 17-132(3).

On March 11, 2011, respondent was charged under a superseding misdemeanor criminal complaint alleging an offense of False Affidavits, in violation of New York Election Law § 17-108(2)(AM). The complaint alleged that respondent falsely stated on his affidavit that his home address was 279 South Broadway, Yonkers, New York. By falsely stating his home address,

respondent illegally voted, on September 15, 2009, at the polling site for Ward 4, Election District 6, which falls within County Legislative District 17 and the Yonkers City Council District.

On March 15, 2011, respondent entered a guilty plea to the superseding misdemeanor criminal complaint and promptly so notified the New York disciplinary authorities. He failed, however, to inform the OAE.

On October 3, 2011, respondent was sentenced to three years' supervised probation, a $250 fine, and mandatory surcharges of $200.

At the time, New York Election Law § 17–108 (False affidavits; mutilation, destruction or loss of registry list or affidavits) provided that:

> An applicant for registration who shall make, incorporate or cause to be incorporated a material false statement in an application for registration, or in any challenge or other affidavit required for or made or filed in connection with registration or voting, and any person who knowingly takes a false oath before a board of inspectors of election, and any person who makes a material false statement in a medical certificate or an affidavit filed in connection with an application for registration, is guilty of a misdemeanor.

On April 19, 2012, the Grievance Committee for the Ninth Judicial District in New York filed a formal petition against

respondent, charging him with violations of New York Rules of Professional Conduct 8.4(b), 8.4(c), and 8.4(d), in connection with the false election affidavit. Respondent entered into a stipulation of facts and testified about mitigating circumstances.

During his testimony, respondent detailed his extensive military service prior to attending college and law school. After graduation, he returned to Yonkers, New York, to serve the community where he had spent his formative years, a community he saw as underserved by the legal profession. Respondent previously had served as a City Councilman in Yonkers and was still extensively involved in community organizations there.

At the outset of the disciplinary hearing, respondent reminded the hearing panel that all of the charges against him related to the 279 South Broadway, Yonkers address. In 2001, he began renting a studio apartment at that address. That residential building shared a wall with the building in which he opened his solo practice. Respondent's father owned three businesses, including the family restaurant, on that street. Eventually, respondent upgraded to a two-bedroom apartment in the same building.

Respondent testified that he would regularly spend time away from his apartment, typically living with his girlfriend at

the time, but always eventually returning to his "home base." In 2007, however, he began dating his current girlfriend, Yolanda. Through 2009, he spent most of his time living with Yolanda at her home in Brewster, New York, and eventually, at the home she purchased in Yonkers. In the spring of 2009, respondent terminated his lease at 279 South Broadway.

On September 15, 2009, the day of the primary election, respondent went to the polling location at which he had voted for each of the prior eight years. He recalled thinking it was "weird" that his name was not on the rolls. Nonetheless, when the polling supervisor handed him the affidavit and provisional ballot, he listed 279 South Broadway as his domicile. In respondent's view, just like the absentee ballots he affirmed while in the military, his domicile was the place he considered his "home base".

In 2009, the election was very close and operatives for both campaigns scrutinized the votes. People familiar with respondent saw his ballot and filed a complaint to have it invalidated. Eventually, the Board of Elections sustained respondent's vote and it counted in the election. By that time, however, the criminal investigation already had begun.

Respondent readily acknowledged that he misrepresented his address on the affidavit. He denied, however, that he intended

to do so; argued that he had nothing to gain financially or otherwise, by his actions; and reasoned that, if he had intended to commit some type of fraud, he simply could have used his father's home address in that same neighborhood, or, his office address on the same street.

The Special Referee filed a hearing report finding respondent guilty of all of the charged violations of the New York Rules of Professional Conduct. Thereafter, on May 14, 2014, the Supreme Court, Appellate Division, Second Judicial Department, entered an Opinion and Order affirming the fact-finding and conclusions of the report of the Special Referee, and determined that respondent be publicly censured.

The OAE urges a three-month suspension, relying on several cases: In re Alampi, 172 N.J. 32 (2002) (three-month suspension for conviction in connection with a federal misdemeanor offense of election campaign finance fraud; we observed, "[c]onvictions for federal misdemeanors have generally resulted in lesser discipline"); In re Convery, 166 N.J. 298 (2001) (six-month suspension where attorney improperly attempted to influence zoning board's decision in favor of his client, by promising to assist the son of a member of the town council to obtain permanent employment with the county, in violation of the Hatch Act, 18 U.S.C.A. § 600 [federal misdemeanor for promising

employment or other benefits for political activity]); In re Leahey, 118 N.J. 578 (1990) and In re Chester, 117 N.J. 360 (1990) (six-month suspensions for willful failure to file income taxes in violation of 26 U.S.C.A. § 7203); and In re Poreda, 139 N.J. 435 (1995) (three-month suspension for misdemeanor in the first degree where attorney was convicted of forgery and/or possession of a forged insurance identification card; the Court considered numerous compelling mitigating factors which weighed heavily in the attorney's favor).

The OAE acknowledges that, compared to the more egregious circumstances presented in Alampi, respondent's conduct would warrant a censure, as imposed in New York. The OAE argues, however, that respondent's failure to notify it of the criminal charge against him should enhance the discipline to a three-month suspension, citing In re Sica, DRB 14-301 (March 26, 2015) (failure to notify the OAE of criminal charges is an aggravating factor that ordinarily increases the appropriate level of discipline).

Preliminarily, we recognize that, although respondent's New Jersey license has been revoked, we retain jurisdiction over this matter, pursuant to R. 1:28-2(c), because respondent's misconduct took place prior to that revocation.

Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that rule, a criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Specifically, the conviction establishes a violation of RPC 8.4(b). Pursuant to that rule, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer." Hence, the sole issue before us is the extent of discipline to be imposed on respondent for his violation of RPC 8.4(b). R. 1:20-13(c)(2); In re Magid, supra, 139 N.J. at 451-52; In re Principato, supra, 139 N.J. at 460.

In determining the appropriate measure of discipline, the interests of the public, the bar, and the respondent must be considered. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." In re Principato, supra, 139 N.J. at 460 (citations omitted). Rather, we must take into consideration many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy

conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse the ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 167, 173 (1997). The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect the attorney's clients. In re Schaffer, 140 N.J. 148, 156 (1995). "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). Thus, offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, will, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995).

Respondent's criminal act of falsifying an affidavit in violation of New York's election law constitutes a violation of RPC 8.4(b) and (c). His conduct, however, did not implicate the courts, or matters pending before the courts, and therefore, we find that RPC 8.4(d) is inapplicable.

The only remaining issue is the appropriate quantum of discipline for respondent's conduct.

As previously discussed, the OAE cites several federal misdemeanor cases, some involving election fraud and some implicating other types of offenses. These cases, however, are not necessarily analogous to respondent's conduct. They involved campaign finance fraud (Alampi), an attempt to influence votes in exchange for future considerations (Convery), willful failure to file income tax returns (Leahey and Chester), and forgery of an insurance identification card (Poreda). Here, respondent affirmed a document with an incorrect address that was used to verify that he was voting at the proper polling location. This misrepresentation was not made for financial or personal gain, or to defraud the government. Indeed, the Board of Elections upheld his ballot, indicating that there was no injury to any candidate, party, or institution.

Research has revealed only one case in which we addressed an attorney convicted for violating New York's election law. In 2007, on a motion for reciprocal discipline, a New Jersey attorney received a reprimand for a similar misdemeanor violation. In re Denenberg, 191 N.J. 86 (2007). Denenberg received a ninety-day suspension from the practice of law in New York for his violation of New York Election Law §17-122(7). That law provides that taking a false affidavit as a subscribing witness to a petition for the designation or nomination of a

candidate constitutes a misdemeanor. In the Matter of David Warren Denenberg, DRB 06-337 (March 27, 2007) (slip op. at 1-3).

Denenberg was a Nassau County legislator running for reelection. After his campaign staff had collected signatures to place his name on the ballot, Denenberg signed a "statement of witness" on a particular petition containing eight signatures. All eight signatures were declared invalid. Id. at 2-3. During his allocution to the court, Denenberg explained that his violation was the result of carelessness on his part, and denied any nefarious intent or personal gain. Id. at 4. He was granted a one-year conditional discharge and relief from disabilities, and was surcharged $160. Id. at 4.

We determined that significantly less severe discipline than that issued in New York was warranted for Denenberg's misconduct. Id. at 15. We found the misconduct analogous to cases involving the improper execution of jurats. Id. at 17. Specifically, attorneys who affix a jurat on a document signed outside of the attorney's presence, relying on another's representation that the signatures are legitimate, receive reprimands. Id. at 19. We determined that Denenberg should receive a reprimand, emphasizing that he had neither forged any signatures nor instructed anyone to affix an invalid signature, he lacked knowledge that the signatures were illegitimate, he

had relied on his staff's claim that the signatures were valid, and there was no allegation by disciplinary authorities or the courts that he was motivated by personal gain. Id. 20-21.

Denenberg violated a section of New York election law that deemed his conduct to be the making of a false affidavit. Similarly, here, respondent's violation of New York election law, also a misdemeanor, is deemed as having made a false affidavit. As in the Denenberg matter, nothing in the record alleges that respondent sought any particular personal gain by intentionally falsifying the affidavit on the provisional ballot. Rather, it appears that respondent, like Denenberg, was simply careless.

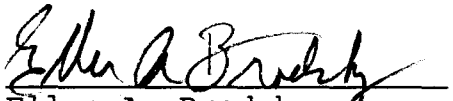
We note that, even if respondent's misrepresentation is considered outside of the context of a false affidavit, a reprimand still would be warranted. Respondent's misrepresentation of his address on this particular government document is no more severe than misrepresenting to the government on closing documents in a real estate transaction that the information included is complete and accurate. See, e.g., In re Barrett, 207 N.J. 34 (2011) (reprimand for attorney who falsely attested that the RESPA he signed was a complete and accurate account of the funds received and disbursed as part of the transaction).

Although the OAE correctly asserts that respondent's failure to report his conviction is an aggravating factor, there are mitigating factors that act as a counter balance. As stated, nothing in the record indicates that respondent's conduct was anything more than a mistake. He simply voted where he had in each election in the prior eight years, receiving no benefit from the misrepresentation. More significantly, however, when respondent's ballot was challenged just after the election, the Board of Elections determined to allow his vote to count. This sole fact highlights the de minimis nature of respondent's conduct. Hence, despite respondent's failure to report his conviction to the OAE, we determine that a reprimand is the appropriate quantum of discipline in this matter.

Members Gallipoli and Zmirich voted to impose a censure. Members Hoberman and Rivera 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Wilson Soto
Docket No. DRB 16-042

Argued: June 16, 2016

Decided: November 15, 2016

Disposition: Reprimand

Members	Reprimand	Censure	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman			X
Rivera			X
Singer	X		
Zmirich		X	
Total:	5	2	2

Ellen A. Brodsky
Chief Counsel