Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-118
District Docket No. IV-2019-0043E

In the Matter of	:
Christopher Joseph Macchi	:
An Attorney at Law	:

Decision

Argued: July 15, 2021

Decided: September 30, 2021

Robert N. Feltoon, Esq. appeared on behalf of the District IV Ethics Committee.

Robert N. Agre, Esq. appeared on behalf of respondent.

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

This matter previously was before us on a recommendation for an admonition filed by the District IV Ethics Committee (the DEC). On April 15, 2021, we determined to treat the admonition as a recommendation for greater

discipline, pursuant to R. 1:20-15(f)(4), and to bring the matter on for oral argument.

The formal ethics complaint charged respondent with having violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons set forth below, we determine to impose a reprimand.

Respondent earned admission to the New Jersey and Pennsylvania bars in 2015. He maintains a law practice in Swedesboro, New Jersey and has no disciplinary history.

The facts of this case are largely undisputed. On March 12, 2018, Eisenberg, Gold & Agrawal, P.C. (the Firm) hired respondent as an associate. Prior to joining the Firm, respondent had been a solo practitioner operating as the Macchi Law Group.

When respondent joined the Firm, he had a conversation with Janet Gold, Esq., a partner at the Firm, to discuss the filing of a substitution of attorney form (an SOA) for a matter he was bringing with him. Gold explained that, when the Firm hired respondent, it was aware of that pending case with the Macchi Law Group and agreed to assume the representation. Subsequently, Gold directed respondent to prepare and file an SOA to substitute out the Macchi Law Group and substitute in the Firm as counsel of record. In that context, respondent prepared the SOA as instructed, signed his name on behalf of his solo practice

as the exiting attorney and, with Gold's permission, signed his name as the incoming attorney on behalf of the Firm. While working for the Firm, respondent continued to handle several matters he brought with him, as well as matters he originated during his employment there.

On May 24, 2019, respondent went to the Firm's office, intending to provide the Firm's partners with notice that he had decided to leave the Firm and resume his solo practice. However, when respondent arrived at the office, no partners were present, so respondent told the office manager and another associate of his intent to leave. Respondent had planned to continue working at the Firm for an additional two to four weeks to ensure a smooth exit.

The office manager contacted Amar Agrawal, Esq., a partner at the Firm, and informed Agrawal of respondent's intent to leave the Firm. Agrawal asked the office manager to instruct respondent to remain in the office until Agrawal returned, but respondent had to leave to attend to a family matter. Later that day, Agrawal sent respondent an e-mail informing him that, due to his absence from the office over several days, respondent's employment was terminated, effective immediately. In his e-mail, Agrawal informed respondent the Firm would facilitate the transition of clients and asked respondent to provide proposed transition letters. Agrawal testified that the e-mail was designed to inform respondent that the Firm would cooperate in transitioning client files.

Later that evening, respondent used his key to return to the Firm's office. While there, respondent gathered his personal belongings, as well as twenty-seven client files that he had originated either prior to joining the Firm or during his employment there. Additionally, despite Agrawal's e-mail instructions to the contrary, respondent prepared SOAs for multiple client matters. Only two of those SOAs became the specific subject of the ethics hearing, involving: New Jersey Alternative Medicine, LLC v. Small Giants, LLC and Maacha J. LeBlanc (the New Jersey Alternative Medicine lawsuit), and George Sandau and Shannon Sandau v. Tyler Tate and Andrea Tate (the Sandau lawsuit).

For those two client matters, respondent used the same SOA template employed, with Gold's authorization, when he accepted employment with the Firm. However, in this context, he listed the Firm as the withdrawing attorney, signed for the Firm, and then signed for himself as the entering attorney on behalf of Macchi Law Group. Unlike when respondent joined the Firm, this time, no partner at the Firm had authorized respondent to sign on behalf of the Firm as the exiting attorney.

Respondent did not inform anyone at the Firm that he had prepared the SOAs and did not leave any copies in the Firm's office. Respondent conceded that he had no express authority from the Firm's partners to prepare the SOAs or to sign them on behalf of the Firm as the withdrawing attorney. Indeed,

respondent testified that he prepared the SOAs the evening of May 24, 2019, because he was angry that his employment with the Firm had been abruptly terminated, via e-mail. On May 29 and May 30, 2019, respondent filed with the Gloucester and Middlesex County Superior Courts the SOAs for the New Jersey Alternative Medicine and Sandau lawsuits.

Gold and Agrawal both testified that, even though respondent had left the Firm, they expected to have a conversation with him, followed by respondent handling the paperwork involved in formally transferring matters to him. However, the parties never held a discussion regarding how to facilitate respondent's departure from the Firm. Therefore, beyond Agrawal's May 24, 2019 e-mail, the Firm did not discuss its expectations with respondent in depth prior to his preparation and filing of the SOAs. Respondent asserted that the terms of his employment with the Firm lacked procedures to follow when handling client files in the event of his departure from the Firm.

Although respondent knew that the clients and files belonged to the Firm, he claimed a belief that it was acceptable to take the client files, maintaining that he "knew" the clients would desire that the matters be transferred to him, despite not having contacted the clients to ascertain their decision prior to taking the files.[1] Respondent also testified that he believed his preparation of the SOAs

[1] Although not charged in the complaint, respondent's unilateral decision to take the client

was going to make the transition of clients easier for all parties involved. Respondent asserted that his actions were "inconsequential" to the courts, the Firm, and the clients, because he believed, at the time he prepared the SOAs, that the clients would follow him to his new law firm.

Finally, six character witnesses testified on behalf of respondent. Each witness testified that they knew respondent to be an honest and ethical attorney.

Based on the above facts, the presenter argued that respondent violated RPC 8.4(c) when he executed and filed with the court SOAs in the New Jersey Alternative Medicine lawsuit and Sandau lawsuit, purportedly on behalf of the Firm, even though his employment at the Firm had been terminated. By doing

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files from the Firm without first discussing the matter with the clients is arguably a violation of RPC 1.4(c) (lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation). Respondent did not file the SOAs until at least five days after preparing them. The clients did not send letters to the Firm until June 10, 2019, advising that they wished to have respondent continue in his representation of them. Surely the lapse in time could have enabled respondent to receive the Firm's files through a more appropriate method, rather than removing them without permission after his employment was terminated on the basis of his assumption that the clients would wish to continue with his representation. Furthermore, the complaint did not charge respondent with having violated RPC 3.3(a)(1) (lawyer shall not make a false statement of material fact or law to a tribunal) or RPC 4.1(a)(1) (lawyer shall not make a false statement of material fact or law to a third person), even though respondent's knowing preparation of the SOAs was a false statement to the court, the Firm, and his clients that he had permission from the Firm to prepare the SOAs. Because the complaint did not charge respondent with violations of RPC 1.4(c), RPC 3.3(a)(1), and RPC 4.1(a)(1), we are precluded from making such findings. See R. 1:20-4(b) (which provides that the complaint shall "specify[] the ethical rules alleged to have been violated"). We may, however, consider respondent's conduct in aggravation.

so, the presenter argued that respondent falsely represented to the court that the Firm had authorized him to sign the SOAs, when he knew it had not.

After reviewing the evidence and testimony presented at the ethics hearing, the DEC concluded that respondent knew he was no longer an employee of the Firm after Agrawal terminated his employment; had no communication with the Firm regarding the SOAs; and, consequently, knew he was not authorized by the Firm to sign the two SOAs on behalf of the Firm as the withdrawing attorney. Hence, the DEC concluded that respondent knew the documents falsely indicated he was authorized to sign on behalf of the Firm as withdrawing attorney when he filed them with the court.

The DEC found that, by filing the SOAs he knew he was not authorized to sign, respondent made affirmative misrepresentations to the respective courts, in violation of RPC 8.4(c). The DEC also found that respondent intentionally chose not to leave copies of the SOAs he prepared in the Firm's office when he left, and failed take any action to inform the Firm he had prepared the documents in its name, despite no longer being an employee of the Firm. Although the DEC credited respondent's testimony that he was upset the day that the Firm terminated his employment, it rejected his assertion that his feelings were a mitigating factor for his misconduct. Rather, the DEC found that the time between when respondent prepared the SOAs and when he filed them should

have served as a cooling-off period for respondent to reflect on his actions. Nevertheless, respondent filed the misleading documents with the courts without first alerting the Firm, knowing the Firm would not receive electronic notice of his filings.

In mitigation, the DEC noted that respondent had no disciplinary history and that the witness testimony favorably described respondent, both personally and professionally. The DEC also found credible respondent's testimony that he thought he was "making it easy for everyone" by facilitating the transfer of the matters in which he was "sure" the clients would want to retain him as counsel.

The DEC concluded that, in a case of an affirmative misrepresentation, particularly concerning the false signing of a document, actual intent to deceive may be germane to the quantum of discipline imposed, but all that is required to establish a violation of RPC 8.4(c) is evidence that the respondent knew of the falsity of the signed document. The DEC distinguished In the Matter of Rhondi L. Schwartz, DRB 10-049 (July 1, 2010) from a later case, In the Matter of Stephen Altamuro, DRB 15-200 (March 4, 2016), In re Altamuro, 225 N.J. 602 (2016) to conclude that an admonition was the appropriate quantum of discipline.

At oral argument, the presenter argued that respondent intentionally misrepresented his ability to sign the SOAs on behalf of the Firm because he

knew he was no longer employed with the Firm at the time of their preparation and execution. Furthermore, respondent did not use the time between his preparation of the SOAs and their filing to reflect upon their false character or to mitigate his misconduct in signing them. Thus, the presenter argued that an admonition was the appropriate quantum of discipline.

In respondent's submission to us, he argued that he alone performed legal work on the files he originated with the Firm and, therefore, was justified in his belief that those clients belonged to him and not the Firm. Respondent emphasized that he believed he was further justified in preparing the SOAs because of Agrawal's May 24, 2019, e-mail, which stated "We [the Firm] will facilitate the transition of any clients that you need to inform regarding your departure from the firm and would ask that you send over transition letters immediately." Despite the language of the e-mail, respondent claimed a belief that Agrawal was inviting respondent to independently handle the transition of clients on behalf of both himself and his former firm.

Respondent argued that his preparation and filing of the SOAs must be viewed in context of his abrupt termination from the Firm. He argued that the transition "largely took place within 30 days and in all cases within 60 days." Thus, respondent argued that the grievance against him is a "triumph of form

over substance," given that the transition of files would have been effectuated in such a short time period regardless of his actions.

Respondent further argued that the record lacks clear and convincing evidence that respondent intended to deceive the courts and, therefore, requested that we reject the DEC's finding that he violated RPC 8.4(c). Respondent also argued that it was an error for the DEC to find that intent to deceive is not required under the Rule.

Respondent relied on In re Seelig, 180 N.J. 234 (2004), to argue that his actions were not deceptive. Respondent argued that, just as Seelig withheld information from the court because he believed he might later be able to raise a double jeopardy defense, respondent's actions in preparing and filing the SOAs constituted a good faith belief that the clients for whom the SOAs were prepared had an "in-name only" relationship with the Firm. Respondent argued "on the only other occasion when Mr. Macchi was required to notify the Court of his change of professional association his entire career, he did the very same thing but in reverse." However, respondent acknowledged that, in that scenario, the change in professional association was with the express authority of the Firm's partners. Respondent repeated many of these same themes during oral argument before us.

We conclude that respondent violated RPC 8.4(c) by improperly executing the SOAs on behalf of his former Firm, with no reasonable claim of authority to do so. When respondent did so, he knew that his employment had been terminated and that the Firm intended to discuss the transition of client files. Respondent's signature upon, and filing of, the forms constituted misrepresentations to the respective courts that he had authority to sign the SOAs on behalf of the Firm, when he knew he had no such authority. Indeed, when respondent joined the Firm, he, Gold, and Agrawal had a conversation about the Firm taking on clients from the Macchi Law Group. For that transition, the Firm ultimately granted respondent limited authorization to sign SOAs on behalf of the Firm. As respondent conceded in his submission to us, no such conversation or agreement occurred when respondent left the Firm.

Following our de novo review, we find that, although respondent initially denied the allegations in his verified answer to the complaint, it is clear from the testimony at the hearing that he admitted he prepared the SOAs on May 24, 2019, without the permission of the Firm, after his employment at the Firm had been terminated. Respondent did not leave any copies of the SOAs with the Firm after he prepared them and did not communicate with the Firm about the SOAs before he filed them because he was angry the Firm had terminated his employment. Moreover, respondent failed to speak with the relevant clients

prior to preparing and filing the SOAs. It is inconceivable to us that respondent did not intend to misrepresent his status as an attorney authorized to sign the documents on behalf of the Firm.

In sum, we find that respondent violated RPC 8.4(c). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

It is well-settled that attorneys found guilty of misrepresentations to third parties generally receive 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).

We also considered, by way of analogy, misrepresentations or lack of candor to a tribunal, which result in discipline ranging from an admonition to a long-term suspension. See, e.g., In the Matter of Richard S. Diamond, DRB 07-230 (November 15, 2007) (admonition for attorney who filed certifications with the family court making numerous references to attached psychological/medical records, which were actually mere billing records from the client's medical provider; although the court was not misled by the mischaracterization of the documents, the conduct nevertheless violated RPC 3.3(a)(1)); In re Schiff, 217 N.J. 524 (2014) (reprimand for attorney who filed inaccurate certifications of proof in connection with default judgments; specifically, at the attorney's direction, his staff prepared signed, but undated, certifications of proof in anticipation of defaults; thereafter, at the attorney's direction, staff completed the certifications, added factual information, and stamped the date; although the attorney made sure that all credits and debits reflected in the certification were accurate, the signatory did not certify to the changes, after signing, a practice of

which the attorney was aware and directed; the attorney was found guilty of lack of candor to a tribunal and failure to supervise non-lawyer employees); In re Duke, 207 N.J. 37 (2011) (attorney received a censure for failure to disclose his New York disbarment on a form filed with the Board of Immigration Appeals; the attorney also failed to adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who, among other things, submitted to the court a client's case information statement that falsely asserted that the client owned a home and drafted a false certification for the client, which was submitted to the court in a domestic violence trial); In re Forrest, 158 N.J. 428 (1999) (six-month suspension for attorney who failed to disclose the death of his client to the court, to his adversary, and to an arbitrator; the attorney's motive was to obtain a personal injury settlement); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); and In re

Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing). Although RPC 3.2 was not charged in this case, we consider those cases to be probative, persuasive authority informing our determination of the appropriate discipline for respondent's false and unauthorized filings with the court in two matters.

As noted above, the DEC relied heavily on the disciplinary precedent of Schwartz and Altamuro. In Schwartz, we imposed an admonition on an attorney who was an associate in a firm that was in the business of processing mortgage loan defaults through foreclosure and bankruptcy matters. During one proceeding, the court became aware there were anomalies in a certification filed by the firm on behalf of a mortgage company. Schwartz and the firm admitted that they had improperly used pre-signed signature pages that were on file in the preparation of substantive documents. In many instances, the signatories were not the providers of the information and did not review or attest to the accuracy of the information before Schwartz and the firm filed the documents with the court. Nevertheless, Schwartz and the firm took steps to ensure the accuracy of the filings. In imposing only an admonition, we noted that Schwartz had an

unblemished disciplinary history in twenty years at the bar and, importantly, her actions lacked dishonest intent.

In Altamuro, however, we imposed a reprimand on an attorney after finding that, although a document was substantively accurate, he attempted to mislead the Camden County Prosecutor's Office (the CCPO) by signing the document himself, purportedly on behalf of a witness. Altamuro had prepared a witness statement on behalf of his client's friend. After attempting to have the friend sign the statement, Altamuro read the statement to him over the phone, and after agreeing that the statement was accurate, the friend authorized Altamuro to sign his name. Altamuro then provided the statement to the CCPO, without disclosing to the agency the nature of the signature.

We found that, when Altamuro signed the friend's name to a witness statement, albeit with the friend's authorization, respondent admittedly misrepresented that the signature belonged to the friend and that he intended for the CCPO to believe that the witness had signed the statement, a violation of RPC 8.4(c). In imposing a reprimand, we found that Altamuro's misconduct was limited to a single misrepresentation about the authenticity of a signature on a witness statement, not filed with a court, that was an otherwise substantively accurate document.

Here, despite finding that respondent's case involved conduct in which he knew he expressly made a false statement to the court, the DEC relied upon Schwartz in recommending the imposition of an admonition. It deemed Schwartz analogous to the facts of respondent's matter, reasoning that cases involving reprimands involved more extreme ethical violations.

After reviewing the record in this case, we disagree with the DEC's conclusion that respondent's misconduct is most analogous to that in Schwartz. There, we imposed an admonition after finding that an attorney lacked dishonest intent and was merely motivated to expedite court filings and increase efficiency. We are far more troubled by respondent's dishonest conduct in this case, where he intentionally decided, partially out of anger at the Firm, to prepare the SOAs, purportedly on behalf of the Firm, even though he was no longer employed there and knew that the Firm had not authorized their preparation.

Although respondent acknowledged that the clients were the Firm's clients, and that they had signed letters of engagement with the Firm (and not him), he continued to assert that since he was the only attorney to have worked on the matters, they were his clients and, thus, the SOAs were not misrepresentations of fact. Respondent is wrong. He knew when he prepared the SOAs that the clients were the Firm's clients, not his clients alone. Therefore,

when he signed the SOAs on behalf of the Firm after his employment was terminated, respondent knew that he was committing a misrepresentation.

We weigh in further aggravation that respondent made the subsequent decision to file the documents with the respective courts with no notice to the Firm, more than five days later. Even after a cooling-off period, respondent failed to follow Agrawal's May 24, 2019 e-mail, and failed to discuss with Gold or Agrawal how to properly facilitate the transfer of clients. He also failed to consult with clients about their wishes. Respondent's misconduct is, thus, more akin to the misconduct addressed in Altamuro, where we imposed a reprimand. Moreover, unlike the attorney in Schwartz, respondent does not enjoy the mitigation of a twenty-year, unblemished disciplinary history.

Therefore, for respondent's misrepresentations in the preparation and filing of two SOAs on behalf of a Firm where he was no longer employed, we determine that a reprimand is the appropriate quantum of discipline to protect the public and to preserve public confidence in the bar.

Chair Gallipoli voted to impose a censure.

Vice-Chair Singer was recused.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Christopher Joseph Macchi
Docket No. DRB 21-118

Argued: July 15, 2021

Decided: September 30, 2021

Disposition: Reprimand

Members	Reprimand	Censure	Recused
Gallipoli		X	
Singer			X
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph	X		
Menaker	X		
Petrou	X		
Rivera	X		
Total:	7	1	1

Johanna Barba Jones
Chief Counsel