SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-372
District Docket Nos. XIV-2006-399E, 104E, 120E, 119E, 504E, and XIV-2007-18E

IN THE MATTER OF

LAURENCE HECKER

AN ATTORNEY AT LAW

Corrected Decision

Argued: March 18, 2010

Decided: August 9, 2010

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

Donald S. Maurice, Jr. appeared on behalf of respondent.

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

These matters came before us on a recommendation for a two-month suspension filed by special ethics master Tina E. Bernstein, Esq., based on her finding that, in respondent's

capacity as attorney for a debt collection agency, he had engaged in misconduct involving three consumer debtors. For the reasons expressed below, we determine to impose a one-year suspension on respondent, who did not maintain a bona fide attorney-client relationship with the collection agency, but rather merely loaned his name to it, in exchange for a monthly payment. This arrangement violated RPC 5.5(a)(2) (assisting nonlawyers in the unauthorized practice of law) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation).

Respondent was admitted to the New Jersey bar in 1965. At the relevant times, he maintained an office for the practice of law at the former business premises of VCollect Global, Inc. ("VCollect"), in Princeton, and the business premises of APM Financial Solutions, LLC ("APM"), in Hamilton.[1] Respondent also maintains a private practice in Toms River, where he handles matters unrelated to VCollect and APM.

[1]"VCollect Global, Inc." is the name of the entity that entered into a "fee retainer agreement" with respondent, in late December 2004. When VCollect went out of business, in 2007, APM was formed. Many VCollect employees joined APM, which also entered into a "fee retainer agreement" with respondent.

In 1988, the Supreme Court suspended respondent for six months, as a result of multiple acts of misconduct committed during and after his tenure as the municipal attorney for Dover Township. In re Hecker, 109 N.J. 539 (1988). Among other things, respondent repeatedly overcharged the client; participated in transactions that created a conflict of interest between him and the Township; sued Township officials, prior to a general election, forcing them to re-hire him; failed to return Township files for sixteen months, after he had resigned from his position; and hid assets so that the Township could not collect a $110,000 judgment against him. Respondent was reinstated on November 9, 1988. In re Hecker, 113 N.J. 664 (1988).

In 2001, the Supreme Court suspended respondent for three months for gross neglect, lack of diligence, negligent misappropriation, failure to safeguard funds, failure to supervise a nonlawyer assistant, and recordkeeping violations. In re Hecker, 167 N.J. 5 (2001). Specifically, respondent re-hired a former nonlawyer, substance-abusing assistant who had stolen monies from him. After the assistant was released from prison, he again went to work for respondent. The assistant then proceeded to steal funds from the account of an estate

client of respondent. Respondent was reinstated on August 29, 2001. In re Hecker, 169 N.J. 476 (2001).

In this case, on December 10, 2007, the Office of Attorney Ethics ("OAE") charged respondent, in a six-count complaint, with having violated several RPCs, as well as two opinions issued by the Advisory Committee on Professional Ethics ("ACPE") and one opinion issued by the Committee on the Unauthorized Practice of Law ("CUPL"). On August 10, 2009, the special master dismissed counts four and five of the complaint, due to the death of the grievant in one matter and the age and poor memory of the grievant in the other.

In the remaining counts, respondent was charged with having violated RPC 4.4, presumably (a) (respecting the rights of third persons in the representation of a client), RPC 5.3(a) (failure of a lawyer to adopt and maintain reasonable efforts to ensure that the conduct of nonlawyer retained or employed by the lawyer is compatible with a lawyer's professional obligations), RPC 5.3 (b) (failure of a lawyer with direct supervisory authority over a nonlawyer, who is employed, retained, or associated with the lawyer, to make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the lawyer's professional obligations), RPC 5.3(c) (ordering or ratifying the conduct of a nonlawyer that

would be an RPC violation if engaged in by a lawyer), RPC 5.5(a)(2) (assisting nonlawyers in the unauthorized practice of law), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), Opinion No. 8 of the Committee on the Unauthorized Practice of Law, 95 N.J.L.J. 105 (1972) ("Opinion 8"), In re Opinion No. 259 of the Advisory Committee on Professional Ethics, 96 N.J.L.J. 754 (1973) ("Opinion 259"), and In re Opinion 506 of the Advisory Committee on Professional Ethics, 110 N.J.L.J. 408 (1982) ("Opinion 506").

In addition, the above complaint was consolidated with another complaint, which charged respondent with having violated RPC 8.1(b) (failure to cooperate with disciplinary authorities).

For proper context, we will summarize the Opinions just cited. In Opinion 8, the CUPL determined, among other things, that, when a collection agency sends a letter to a debtor demanding payment of the debtor's alleged indebtedness to the collection agency's customer and that letter contains "[t]he implied representation that [it] is the act of or is sent at the direction of an attorney, who does not sign the letter," the agency engages in the unauthorized practice of law.

In Opinion 259, which addressed an inquiry involving a very detailed arrangement between the attorney and the collection agency, the ACPE merely opined that it is a violation of former DR 1-102(A)(4), now RPC 8.4(c), for a "a lawyer to permit a client to send collection letters on his stationery."

Finally, in Opinion 506, the ACPE again considered a detailed scenario involving the use of form letters on an attorney's stationery. Without expounding on the details, the ACPE stated: "Where, however, the effect of the entire scheme is that the attorney is allowing his name to be used by his client to lend 'clout' to the collections and where the judgments are being exercised not by the attorney but by . . . the client, the practice is still disapproved."

The special master in this case presided over a six-day hearing, in August 2009. The following witnesses testified: attorney Ellen Schwartz, whom the District Ethics Committee VIII ("DEC") had assigned to investigate three grievances filed against respondent; OAE investigator Susan Perry-Slay; grievants Corey Antoniades, Woodrow Dent, and Susan Kinney; former VCollect president and director of operations, Larry Weil; former VCollect collector and unit manager, Richard Hrabinski; former VCollect general manager, Joseph Allia; and respondent.

At the conclusion of the hearings, the special master found that respondent had engaged in unethical conduct in all of the matters involving the individual consumer debtors. With respect to the first count of the complaint, which charged respondent with violations of several RPCs and all of the above Opinions, based on the nature of the business relationship between respondent and VCollect and APM, the special master's findings were not clear.

Before setting out the facts pertaining to the ethics charges, we will provide certain background information about respondent's method of practicing law, the formation of his relationship with VCollect, the operation of VCollect's business, and respondent's role in the operation.

Respondent testified that, after he passed the bar in 1965, he worked as an associate for another lawyer, until sometime in April 1967, when he opened a general practice office in Keyport. Two years later, respondent opened a satellite office in Toms River, where he continues to maintain a practice.

Respondent has always utilized available technology to make his practice more efficient. Over the years, he became more reliant on his nonlawyer staff to carry out certain duties. When he opened his first office, he relied on various "form books." He either used a form, as published, or he modified it to meet the needs of a particular client or a particular case. In the beginning, respondent dictated the information that needed to be on the form and assigned to his secretary the task of transferring the data to the form. Sometimes, however, he simply instructed his staff to complete the forms, although, "in almost every case," he reviewed a letter when he signed it. On occasion, his secretary would sign the letter and type "dictated but not read."

In 1973, respondent left his municipal position with Dover Township. He closed the Keyport office, but continued with the general practice in Toms River, which included the handling of collection matters. In his private collection practice,

respondent used computers to store different form letters, for use in particular circumstances.

Initially, respondent informed his secretary which particular letter he wanted to use, provided her with the data that needed to be incorporated into the letter, and asked her to prepare the letter and print it out. He then would "review it, sign it, and send it out." Eventually, his secretary simply took the information about a particular debtor, which was provided to respondent by the creditor, and inserted it into a particular form letter.

Respondent's shift in practice, from telling his secretary what information should be incorporated into the various forms to simply relying on her to make that determination herself, is just one example of his hands-off approach to the practice of law. More examples of his laissez-faire attitude were identified in our decision underlying his three-month suspension, in 2001.

According to that decision, in 1994, respondent employed a clerical employee, who issued a trust account check to himself, forged respondent's name, and cashed it. The employee served two years in prison, as the result of a conviction for an unrelated offense, bank robbery. Upon the employee's release,

respondent re-hired him, with the condition that he be prohibited from handling any financial records or accounts. At respondent's instruction, his secretary kept all trust and business account checkbooks, as well as his personal checkbook, locked in her desk drawer. However, the checkbook for an estate that respondent was handling was left in the estate file. The employee found the checkbook and "started passing [checks] out like candy."

In addition to this incident, respondent also negligently misappropriated client funds because he had not maintained his trust account records in accordance with the recordkeeping rules and had not performed quarterly reconciliations. Respondent denied that the deplorable condition of his office contributed to the recordkeeping violations, claiming that his books and records were maintained in his secretary's office, which, presumably, was not in a state of disarray.

The OAE's interview of respondent in this matter demonstrates that he remains uninterested in his recordkeeping duties. On February 27, 2007, respondent met with OAE Deputy Ethics Counsel Melissa A. Czartoryski and OAE investigator Perry-Slay. He was asked if he was familiar with the recordkeeping rules. He replied, "I'm familiar with the fact

that there are rules that goven [sic] record keeping." Respondent assumed that his bookkeeper was familiar with the recordkeeping rules, but, he said, "I can't tell you specifically but I believe so."

Respondent told the OAE that he had engaged the help of an accountant for his practice less than a year ago. He knew nothing about the man, except for his name. He stated, "My bookkeeper works with him. I really don't get very involved with him." He did state, however, that he, the accountant, and the bookkeeper perform monthly reconciliations together.

As will become evident, respondent continued his hands-off approach in his work with VCollect as well.

Respondent's limited practice in his Toms River office was due to a contractual relationship that he maintained first with VCollect and then with APM. On December 27, 2004, he and VCollect entered into a self-described "novel" relationship. This decision will refer to that agreement, which was effective January 1, 2005, as "the 2005 agreement."

VCollect's and respondent's offices were located within the same Princeton office space. In June 2007, when VCollect went out of business, this office was closed.

On July 1, 2007, respondent entered into a "fee retainer agreement" with APM. That same month, respondent opened a new office, in Hamilton, within APM's office. Although there was a significant amount of testimony about the similarities and differences between the VCollect and the APM agreements, this decision will focus mostly on the 2005 agreement, which was in effect during the period encompassed by the grievances filed against respondent.

Respondent described the work that he did at the Princeton and Hamilton offices as follows:

> Basically a collection practice. I took in some other cases on the side also, but not any involved in those because I didn't have the kind of office that attracted outside clients to an extent, but I would represent, for instance, employees [sic] of fee collectors who had personal legal problems. I'd go to court with them, also handle some personal injury claims, do some wills. It was just small things on the side. Other than that, it was mostly concentrated in the collection business.
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> [6T20-1 to 10.][2]

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[2] "6T" refers to the transcript of the hearing before the special master on August 19, 2009.

As of the date of respondent's testimony, he still maintained the Hamilton office. He also handled collection matters for other clients, at his Toms River office, but not to the extent that he did in Princeton and Hamilton.

The 2005 agreement contained a number of provisions that appear to have been designed to avoid the proscriptions of the RPCs. Pursuant to paragraphs one and two, VCollect provided respondent with an office and equipment, a phone, a secretary, and a receptionist, at its expense. VCollect agreed to provide its employees to respondent, so that he could "just do the work and collect [his] check," which was $5000 per month. Although VCollect paid the salary of respondent's "employees," they were under respondent's supervision. He considered them members of his VCollect law office staff.

Paragraph fourteen of the 2005 agreement provided that some of VCollect's employees also "shall perform services" for respondent, pursuant to a sublease arrangement. During the term of the sublease, these employees would be paid by VCollect. Respondent would "direct their activities and . . . have all supervisory powers and authority, including the right to discharge any employee who fails to follow instructions given to that employee by [respondent]." Respondent testified that there

never was a formal lease arrangement for the employees; VCollect simply let him "use them, free of charge."

Paragraph five of the 2005 agreement provided as follows:

> While performing services for vcollect, Attorney shall take his instructions and be under the direction of the President of vcollect, Lawrence Weil, and he shall follow the directions of no other employee or officer aside from Sanjeet Anand.[3]
>
> [Ex.OAE-7¶5.][4]

Respondent and Weil understood the meaning of this provision differently. At the hearing, they both acknowledged that this paragraph required respondent to take instructions from, and be under the direction of, Weil. Weil testified, however, that he was "[a]bsolutely not" above respondent in the VCollect chain of command. According to respondent,

> Yes, the client was Vcollect and so in terms of the way that we operated, just as with any client, we get instructions from Mr. Weil as to what bills he wanted collected, what parameters to use in settling cases without having to run back to him to get his approval. And so we provided that he be the

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[3] Sanjeet Anand was the owner of VCollect. According to Perry-Slay, neither Weil nor Anand were lawyers.

[4] "Ex.OAE-7" is the 2005 agreement.

> only one that I would have to deal with at vcollect other than eventually Sanjeet Anand who was . . . the real boss.
>
> [6T31-24 to 6T32-8.]

Paragraph nine of the 2005 agreement provided:

> Attorney shall prepare or authorize the preparation of correspondence in his name to be sent to debtors from whom vcollect is attempting to collect amounts vcollect [sic]. No letter may be sent that has not been authorized or reviewed by Attorney prior to mailing. All decisions concerning accounts receivable (meaning those accounts from or for which vcollect is attempting to collect payment) of a legal nature shall be made by no one other than attorney.
>
> [Ex.OAE-7¶9.]

Weil testified that all letters sent out by VCollect collectors were authorized and approved by respondent.

According to respondent, paragraph nine also "told anyone and everyone that [he] was running this collection practice." He explained:

> My clients didn't run the practice. I was an attorney, they had to stay out of it. Except for the things that they are to provide me with as outlined in the agreement. I was in charge of the collection process. I couldn't do anything less than that, that was mandatory. That was probably the most important provision in the agreement. Remember, I had a client representative who had been in the collection business himself, and I had to

> make sure that he didn't keep sticking his nose into my business. That was, until he got used to things, it was difficult at first, but he finally started learning.
>
> [6T35-3 to 15.]

By "he," respondent meant Weil, of whom he said: "He tended to view things as we and I had to keep reminding him it's not we. It's my name on the lawsuits, not yours, so butt out." According to respondent, at some point, Weil resigned as president and became a consultant. Actually, Weil performed the services of a manager, even though he did not hold that title.

Paragraph sixteen of the 2005 agreement gave respondent the right to "issue instructions governing the conduct of the employees" and required VCollect to "issue written copies of said instructions to the employees and have them acknowledge their receipt." However, if VCollect objected to an instruction, its implementation could be deferred for up to five days so that respondent and the company could discuss the objection. According to respondent, after five days, he could choose to implement the instruction, notwithstanding VCollect's objection. In practice, VCollect never objected to respondent's instructions.

Paragraph seventeen of the 2005 agreement stated:

> Vcollect shall insure that no employee contacting debtors, aside from a single fictitious name that must be brought to Attorney's attention, may use any name other than his own name, may not under any circumstances represent himself as Attorney or as an attorney, may not threaten to have somebody arrested or placed in jail for failing to pay a debt nor shall take any action unauthorized by law. Specifically, each employee shall follow and observe at all times the restrictions contained in the list attached as Schedule A. Schedule A may be amended from time to time, and in such case a copy shall be provided to each employee by vcollect.
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> [Ex.OAE-7¶17.]

Respondent described this paragraph as setting forth what the employees could and could not do as part of their job. He asserted that there was a list of things that employees could not do, which he "found essential in order to have the kind of supervisor role that [he] envisioned when [he] entered into the agreement." According to respondent, the employees had to know what they were permitted and were not permitted to do, as he could not have "rogue collectors out there."

In addition to the provisions of paragraph seventeen and Schedule A, respondent took other actions to prevent a collector from "going rogue." For example, he would walk up and down the aisles, "at least two or three times every day," and would talk

to one collector, while listening to another collector's conversation. If he heard something inappropriate in a collector's manner or words, he would immediately talk to the collector. If he did not talk to the collector, he would ask VCollect's then general manager, Joseph C. Allia, to do it. He also could hear a lot of the collectors from inside his office.

In addition, there was a training program at VCollect. Respondent testified that he actively participated in the training sessions because he "wanted to make sure that the directors were familiar with [him] as a person, knew who [he] was, knew they could [go] to [him] if [they] had questions."

Weil testified, however, that the training sessions were conducted by individuals who were experienced trainers in the field of collection work and that respondent conducted the new employee training sessions only sometimes. According to Weil, respondent interviewed prospective trainers, who, if selected, were employed by VCollect on a full-time basis and conducted the monthly re-education classes.

Finally, VCollect had a training manual that, among other things, described the debt collection business, explained what collectors could and could not do under federal law, and set

forth different scenarios that might occur during a telephone call between the collector and the debtor.[5]

Respondent drafted and approved the scripts in the training manual, "so that every collector has to give the same basic speech." He explained:

> Well, they have to comply with the requirements of the FDCPA [Fair Debt Collection Practices Act]. They have to state who they're calling from, calling from my office, what the purpose of the call is, they're calling about a debt, indicating how much is owed, who the original creditor is. Basically the same things we put into the mini-Miranda letter, DM-1 letter. So they make those disclosures and then at that point, they then make inquiries as to whether the debtor is amenable to entering into an arrangement for payment of the debt and it goes from there.
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> [6T121-7 to 17.]

The last two paragraphs of the 2005 agreement provided:

> 20. Even if repetitive, for emphasis vcollect assures Attorney that no letter shall be sent by vcollect to any debtor that has not been reviewed and approved/executed (one or the other) by Attorney.

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[5] The training manual produced by respondent to the OAE was that of a company called TJA & Assoc., which was formed by Weil and existed prior to VCollect.

> 21. Specific services to be performed by Attorney include authoring or drafting letters to debtors, drafting letters as required by the President, drafting agreements as required by the President, advising the President and vcollect employees, monitoring the activities of the debt collectors employed by vcollect, filing lawsuits against debtors owing money to vcollect and communicating with debtors directly as well as with governmental agencies supervising the activities of vcollect.
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> [Ex.OAE-7¶19-Ex.OAE-7¶20.]

According to respondent, the purpose of paragraph twenty was "to pound home the point" that VCollect had the obligation to make sure that respondent reviewed, approved, or executed "any letter that went out." Paragraph twenty-one emphasized that it was respondent who was "running the debt collection business" and that VCollect could not interfere with him in doing so. In particular, respondent was referring to Weil, who, as he suggested earlier, would "[try] to stick his nose in." According to respondent, he had to refer Weil to the retainer agreement on a number of occasions because "he still thinks he's a bill collector."

Although respondent maintained that he "supervised the staff at VCollect, gave them instructions, and told them what to do," he also stated that "[h]e still had [his] managers go

monitor them." He relied on the managers to ensure compliance with federal law governing debt collection.

Consistent with respondent's testimony, former VCollect general manager Joseph Allia testified that, during his employment with VCollect, he assisted respondent "in operating the office with the training, with the supervision of the floor, supervision of the other managers." As part of his duties, Allia met with respondent on a daily basis. They discussed office operations, compliance issues, and retraining issues. They also discussed settlements. Allia was not authorized to enter into settlements, which could only be done by respondent.

According to Weil, respondent was paid a monthly fee, in exchange for "supervising a collection floor," which respondent believed required him to be there "as much as he needs to be there . . . to supervise them properly." Respondent's role was to supervise the VCollect collectors to make sure that they adhered to the requirements of the FDCPA. Weil also stated that, "from time to time," respondent reviewed letters.

Respondent, who still maintained his Toms River practice, spent at least three days a week at his VCollect office. In the beginning, VCollect employed between twenty-five and thirty

individuals. At the time of its demise, there were approximately fifty employees.

The lynchpin of VCollect's business was a software program called "WinDebt." According to the training manual, WinDebt permitted the user to "set up calling campaigns, payment arrangements, program letter series, separate accounts for the best time to [sic] day to reach individual debtors, and manage all accounting procedures arising from the processing of payments." WinDebt also included a "real time activity log for performance monitoring." According to respondent, for every call, the collector had to document what transpired. WinDebt reflected every action taken by a collector on an account. For example, WinDebt identified the debtor's VCollect file number, the credit card number at issue, the current status of the collection process, payments made, the amount owed, personal information about the debtor, such as address and telephone number, and a history of telephone calls to and from the debtor. Thus, the system permitted anyone to pick up a file and know the status of the account. Although Allia testified that respondent was able to access and make changes within the WinDebt system, respondent testified that no one could go into the WinDebt system and change the data, except for WinDebt representatives.

The employee training manual identified nine different types of collection letters, including the so-called DM-1 and DM-2 letters, the settlement letter, the broken promise letter, the partial payment letter, the pre-litigation letter, the deposit notification letter, the returned check letter, and the paid-in-full letter. Respondent asserted that he had created the templates for each of these letters. According to Perry-Slay, even though respondent had created the templates, the collectors inserted the data on them.

The letters were mailed out from Texas, albeit on respondent's letterhead and under his "signature." Respondent told Perry-Slay that his signature on these letters was actually affixed by a stamp. Respondent also told Perry-Slay that VCollect serviced more than 100,000 accounts and that, as a result, thousands and thousands of letters were mailed to debtors. He agreed that, when an attorney's signature is affixed to a letter, the debtor is likely to take the letter more seriously, which is why it was done.

DM-1 and DM-2 were the first and second notice letters. According to respondent, the DM-1 and DM-2 letters were similar to what he used in private practice.

As noted previously, respondent drafted the template for DM-1, which was generated by WinDebt on respondent's letterhead and purportedly signed by him. The letter identified both a local and toll-free telephone number for respondent's office. Respondent stated that DM-1, called the "mini-Miranda" letter, had to be sent within five days of the first telephone contact, or future contact with the debtor was prohibited. The form of the letter produced at the ethics hearing read as follows:

> This office represents the above named client, who has placed the above-styled matter for collection. This is a demand for full payment because you have had ample time to pay your creditor. Sometimes we can arrange installment payments but you must contact this office for arrangements.
>
> NOTICE OF IMPORTANT RIGHTS
>
> UNLESS YOU, THE CONSUMER, WITHIN THIRTY DAYS AFTER RECEIPT OF THIS NOTICE, DISPUTE THE VALIDITY OF THE DEBT, OR ANY PORTION THEREOF, THE DEBT WILL BE ASSUMED VALID. IF ANY PORTION THEREOF, IS DISPUTED, WE WILL OBTAIN VERIFICATION OF THE DEBT OR A COPY OF A JUDGEMENT AGAINST YOU, THE CONSUMER, AND A COPY OF SUCH VERIFICATION OR JUDGEMENT WILL BE MAILED TO YOU BY OUR OFFICE. UPON YOUR WRITTEN REQUEST WITHIN THE THIRTY-DAY PERIOD, WE WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR.

Please contact our office at 1-800-884-0860.

/s/
Attorney at Law

This is an attempt to collect a debt. Any information obtained will be used for that purpose. You are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

[Ex.OAE-9.]

Respondent testified that, once the WinDebt system was loaded with the appropriate debtor-specific information, it automatically generated the DM-1 letter. Perhaps in an effort to establish that he actually provided a legal service in connection with the automatic generation of every DM-1 letter, respondent stated that he "approve[d]" the letter by having the debtor-specific information loaded into the WinDebt system with the knowledge that the system would automatically generate the letter at that time.

The "second demand letter" (DM-2) read:

> This office represents the above named client, VC GLOBAL INC, who has placed the above-styled matter or [sic] collection. This is a second demand for full payment because you have had ample time to pay your creditor. You have failed to respond to our

first letter. Sometimes we can arrange installment payments but you must contact this office for arrangements.

NOTICE OF IMPORTANT RIGHTS

UNLESS YOU, THE CONSUMER, WITHIN THIRTY DAYS AFTER RECEIPT OF THIS NOTICE, DISPUTE THE VALIDITY OF THE DEBT OR ANY PORTION THEREOF, THE DEBT WILL BE ASSUMED VALID. IF YOU THE CONSUMER NOTIFY US IN WRITING WITHIN THE THIRTY DAY PERIOD THAT THE DEBT, OR ANY PORTION THEREOF, IS DISPUTED, WE WILL OBTAIN VERIFICATION OF THE DEBT OR A COPY OF A JUDGEMENT AGAINST YOU, THE CONSUMER, AND A COPY OF SUCH VERIFICATION OR JUDGEMENT WILL BE MAILED TO YOU BY OUR OFFICE. UPON YOUR WRITTEN REQUEST WITHIN THE THIRTY-DAY PERIOD, WE WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR. IF YOU NOTIFY OUR OFFICE IN WRITING TO CEASE CONTACT BY TELEPHONE AT YOUR PLACE OF EMPLOYMENT, NO FURTHER SUCH CONTACT WILL BE MADE.

Please contact our office at 1-800-884-0860

/s/

Attorney at Law

This is an attempt to collect a debt. Any information obtained will be used for that purpose. You are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit

> reporting agency if you fail to fulfill the terms of your credit obligations.
>
> [Ex.OAE-6Ex.4.]

Allia testified that the DM-2 letter was generated automatically by WinDebt, if VCollect did not hear from the debtor, in response to DM-1, within thirty-five days. Respondent explained that, if there was no need to send the DM-2 letter, he instructed "collection" to make a notation in the WinDebt system, which would serve to "block" the letter from going out.

After VCollect's demise and the execution of respondent's 2007 agreement with APM, he modified the DM-1 letter to inform the recipient that no attorney had reviewed the account. The letter now expressly states that "no attorney with this firm has personally reviewed the particular circumstances of your account. However, if you decide not to contact this office, our client may consider all available remedies to recover on the balance due, which may include an attorney review of your account."

Respondent testified that he inserted this language into the letter in response to a federal appeals court decision, which held that an attorney would not be responsible for

"reviewing each and every letter as long as he put a disclaimer in his DM-1 saying that he hadn't particularly reviewed the file at that point in time." According to respondent, the decision "[b]asically recognized" that the DM-1 is a computer-generated letter that is ministerial in nature; no one has any discretion in whether or not the letter will be sent to the debtor.

Other template changes included the absence of respondent's signature on the letter and the representation that, upon written notice by the debtor, no calls would be made to the debtor's place of employment. The new DM-1 letter did not contain respondent's signature because, as he stated, if he did not review the letter, then he should not sign it.

Respondent maintained that he and the managers reviewed all communications received from debtors. The collectors' roles were to make telephone calls. The collectors' authority to settle cases was limited to eighty percent or more of the amount in collection. Even then, "most of those have to go to at least the unit manager for some sign off." Collectors did not send letters to debtors, as the system blocked them from generating any kind of written communication. Respondent was able to generate letters out of WinDebt, as were his co-managers, if he so directed.

Respondent testified about his role in the modification of form letters to fit the individual circumstances of a case. For example, in the case of the "broken promise" letter, the collector made the initial determination that there had been a breach of the debtor's agreement to make a payment, but it was respondent who, after a discussion with the collector and the managers, modified the letter to reflect the reason why the promise was broken and who sent the letter out.

Although respondent did not "necessarily push the button," he authorized this letter to be sent. He reviewed the facts that were inserted into the letters, before they were mailed, and he signed them.

We now turn to the specific grievances filed against respondent.

The Corey Antoniades Grievance

Grievant Corey Antoniades testified, via telephone from South Carolina, that he had never lived in New Jersey. In November 2005, he received an initial phone call "from the office of Mr. Hecker" in the form of a message left on his answering machine. The message stated that he had an

outstanding debt with Citibank for more than $2000 and requested that he return the call.

Because Antoniades had no recollection of any type of Citibank account, when he returned the call, he requested Citibank's contact information. The individual told Antoniades that he would get back to him with the information in twenty-four hours. Antoniades gave the man (whom he described as "very nice") his cell phone number, but requested that he not "abuse that number" because the cell service was provided by his employer. The man did not call him back.

Instead, Antoniades stated, within a couple of days, numerous calls from VCollect were made to his home, up to four and five times a day, with no message left. When collectors called Antoniades, they identified themselves by first and last name and stated that they were calling from respondent's law office.

On those occasions, when Antoniades's wife answered the phone, her conversation with the representative would "put her into tears," as "[t]hey were very abusive." Moreover, Antoniades began to receive calls on his cell phone from different representatives of VCollect, one of whom used the name "Alex Green."

Various individuals from VCollect called Antoniades over time. As for Green, Antoniades testified that he was very abusive, called Antoniades a deadbeat, and stated that he was going to drive from New Jersey to Antoniades's home and "kick [his] ass," because people like Antoniades were the reason why others have to pay higher taxes. According to Antoniades, Green also told him that he had access to Antoniades' criminal record, which showed his various addresses over the years. Antoniades testified that he did not have a criminal record.

After the conversation with Green ended, Antoniades called respondent's office and asked to talk to him. Antoniades spoke to an individual who claimed to be respondent and told him what had transpired with Green. Antoniades told the individual, presumably respondent, that he was going to file a complaint with the Federal Trade Commission. The individual stated that he would investigate what had happened.

After talking to the FTC, Antoniades concluded that his only recourse was to contact the OAE. In addition, on January 18, 2006, he sent a cease-and-desist letter to VCollect, which was delivered to respondent's office on January 23, 2006. On February 6, 2006, Antoniades again received a telephone call

from Green, who said that he was calling from respondent's office.

Antoniades called Citibank to obtain information about the alleged debt and was told that the company had no record of it.[6] Antoniades also obtained a copy of his credit report, which contained no record of a delinquent Citibank account.

Antoniades was shown an OAE memo and a transcript of an interview, presumably with the OAE, in which nothing of the "kick your ass" incident was mentioned.[7] Antoniades did not remember whether he had mentioned the incident to the OAE, during a conversation on May 22, 2006.

Respondent testified that, in connection with the Antoniades complaint about the VCollect caller, he interviewed VCollect collector Richard Hrabinski, the individual assigned to the Antoniades account. According to respondent, Hrabinski's version of what had happened was "nothing close" to the version put forward by Antoniades in his testimony. Hrabinski claimed

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[6] Respondent testified that, once a creditor sells a debt, it typically removes the information from its records.

[7] The memo and the transcript had been previously faxed to Antoniades who, as indicated earlier, testified by telephone.

to respondent that he had had an argument with Antoniades, who kept talking over him, abusing him, and who had finally hung up on him.

Respondent did not learn of the "kick your ass" allegation until Antoniades was deposed in this matter.[8] Moreover, he pointed out that this allegation was not in the grievance or the formal ethics complaint. Finally, in his cease-and-desist letter, Antoniades made no mention of any threat.

Respondent was not aware of any collector who used the name "David Green" or "Alex Green." He stated that VCollect did not employ anybody with either name. He added that, if a person using either name had made a telephone call to Antoniades, it would have been recorded in the WinDebt notes. Nevertheless, he claimed, the WinDebt notes made no mention of a person named Green or a threat to kick Antoniades' "ass." Moreover, contrary to Antoniades' testimony, the notes did not reflect multiple calls to Antoniades on any day.

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[8] Respondent's testimony suggested that his lawyer had gone to South Carolina and taken Antoniades' deposition.

Hrabinski testified that notes of his discussions with debtors were maintained on the WinDebt system. His alias was Tony Brewer, a name that appeared on the WinDebt notes for the Antoniades account. He never used the aliases Alex Green or David Green and did not know of any co-worker who did.

Hrabinski acknowledged having had one telephone conversation with Antoniades, on December 1, 2005. He denied having ever told Antoniades that he would "kick his ass." When Hrabinski made calls, he assumed that his conversations were recorded, as a debtor in the past had recorded a conversation where Hrabinski had told her to "go to hell."

Hrabinski never used criminal records, when investigating a debtor, although he explained that information "may pop up if there is some criminal activity." He stated that this kind of information was not available at the time he was in communication with Antoniades. Thus, Hrabinski doubted that he would have told Antoniades that he knew of Antoniades' criminal record.

With respect to Antoniades' January 2006 cease-and-desist letter, Hrabinski testified that, upon its receipt on January 23, 2006, the Antoniades account had been closed and that no further contact would have been made. Hrabinski explained that,

under federal law, if a debtor submitted such a letter, the collection agency would have to stop calling the debtor at home.

The Woodward Dent Grievance

Grievant Woodward Dent testified that, in 2006, he owed approximately $7200 to Chase Manhattan Bank. He also owed money to other creditors, as a result of high medical bills for the treatment of multiple sclerosis and other diseases.

In May 2006, Dent entered into a final settlement agreement with Richard Goldberg, from respondent's office, to settle the Chase debt. Although the confirmation letter was signed by respondent, Dent had never spoken to him. The letter stated, in pertinent part:

> This letter will serve as confirmation that Laurence A. Hecker, acting for VC GLOBAL, VIIII, is authorized to accept $4500.00 as full and final settlement of above referenced account.
>
> [Ex.OAE-17.][9]

[9] "Ex.OAE-17" refers to the May 4, 2006 letter from respondent to Dent.

The WinDebt notes for the Dent account reflect that, on May 4, 2006, Goldberg and Dent went back and forth on a settlement figure, finally agreeing to a $4500 settlement, which was approved by Weil. Ultimately, Dent raised the funds to pay the debt through a home equity loan from Beneficial, payable to Dent, his wife, and Chase. For some unknown reason, though, Beneficial issued a check in the amount of $6257, which the Dents endorsed and forwarded to VCollect.

On May 4, 2006, before Dent sent the check to VCollect, he unsuccessfully attempted to fax a letter to Goldberg, confirming that Goldberg had promised to refund the $1757 difference to him. Dent's letter complained of the "very nasty" way that he had been treated by respondent's law firm and stated that he would be contacting the "NJ Law Board." Although the fax did not go through, Dent sent a letter to Goldberg containing the same information, along with the Beneficial check.

In addition, under the Dents' endorsements on the Beneficial check, Dent inserted the following language: "By signing check, heckler [sic] law firm & Chase agree to $4,500 settlement and will mail refund $1757.00 to Woodward & Jeanette Dent." According to Dent, he endorsed the check and inserted

this language on the day he mailed the check, which was either May 4 or 5, 2006.

On May 17, 2006, respondent wrote to Dent and disputed his claim that the debt had been settled for $4500. The letter stated:

> Dear Mr. Dent:
>
> I am in receipt of your letter to Richard Goldberg concerning the above matter, and it causes me a great deal of concern.
>
> I sent you a letter dated May 4, 2006 agreeing to settle your account for $4500 but, as you will recall, the settlement was predicated on your representation that you were borrowing $4500 to finance the settlement and that you couldn't borrow any more money than that. Had I known that you could borrow more, I would never authorize a settlement for $4500. We relied on your representation as to how much you can borrow in setting this amount of the settlement.
>
> We subsequently learned, when we received the check from the financing agency, that you were able to borrow over $6000, and, indeed, we received a check for the higher amount.
>
> Our position is that we agreed to accept the amount that you could borrow in full settlement of the claim. The key term of the settlement was the amount that you could borrow, not $4500. Thus, by accepting and depositing the check that we received we are doing nothing more than fulfilling the key term of the settlement, which, as I have

> just said, is the settlement in the amount that you were able to borrow.
>
> You may call that harassing, but I call it making you live up to your duty to be honest in dealing with us. If I were to return the excess amount of over $4500 I would be permitting you to commit a fraud.
>
> I know from prior experience that you are not adverse to filing complaints when you believe that it is to your advantage to do so. I suspect that you will do so again. I have no problem with letting a third party determine the validity of our action because they will be compelled in doing so to evaluate your conduct, and I don't know how you could possibly say that your conduct hasn't been dishonest and inappropriate. You thought that you were going to keep the difference between what you borrowed and what you settled the case for. I don't have to be a rocket scientist to figure that out.
>
> If you have anything you wish to add to what has been said already, please feel free to write me. Otherwise, I will consider this matter closed.
>
> [Ex.OAE-20.][10]

Dent denied that the agreed-upon settlement was for whatever amount he could borrow. Indeed, Dent said that he had

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[10] "Ex.OAE-20" refers to the May 17, 2006 letter from respondent to Dent.

borrowed the money before the settlement had been reached. On May 17, 2006, Dent filed a grievance against respondent.

On May 26, 2006, Dent sent an email to respondent with some pages from the OAE's website. In a response on the same date, respondent wrote:

> What you seem to keep forgetting is that my client collected the money, not me. I don't have your money. You are looking in the wrong direction. You ought to pay attention to what I have said in my e-mails. You really should get legal advice.
>
> [Ex.OAE-21.]

Dent understood that respondent had a client, but he complained that his requests for the identity of the client were met with silence by respondent.

With respect to Dent, respondent repeated at the hearing that "it's not my money, I don't keep the money. The money goes to the client." However, respondent acknowledged that, in a May 4, 2006 letter, he confirmed that he was "authorized to accept $4500 as full and final settlement of above referenced account." Respondent conceded that the letter mentioned nothing of a representation by Dent that $4500 was all that he could obtain through a mortgage.

Respondent testified that, when he spoke to "the client" (Weil) about Dent's pursuit of the difference between the amount of the check and the $4500, "[t]he client basically said he didn't want to return the money."

On June 1, 2006, respondent wrote another letter to Dent, in which he stated, in part:

> Frankly, I am getting tired of reading and responding to your letters, and I am just about to the point where I won't even bother anymore. I have no personal animosity towards you, but I think that you are a royal pain in the behind who had his hand caught in the cookie jar and is now looking for a way out. I will let you explain to all the people to whom you have sent complaints how you sought to mislead Mr. Goldberg respecting the amount that you were able to borrow to reach a settlement.
>
> [Ex.OAE-22.]

According to Dent, in late July 2006, he received a refund for $1100, issued by VCollect.

Dent acknowledged that he had been diagnosed with short-term memory loss and that he was taking a number of prescription drugs. Although Dent had taken Aricept in the past, he was no longer taking it at the time of his testimony. According to Dent, he was not impaired mentally during his testimony. He

explained that the memory loss coincided with symptoms of his MS, which was in remission.

After respondent received Dent's grievance, he reviewed the WinDebt notes to see what had been agreed upon and talked to Goldberg, the collector handling the matter:

> I spoke to [the collector] to find out what happened and he explained to me that he thought Dent was acting fraudulently because Dent had made representation [sic] to him that the check that was coming in was a [sic] full amount of his mortgage proceeds, that he couldn't generate anymore money than that, and [the collector] said he agreed to a lower amount than they wanted only because of the representation made by Dent that, that was the full amount, the $4,500, that was the full amount they could get from the mortgage. When he saw the check come in, he said that is the amount, that's my deal, because I told him that I was going to settle only for the amount of the mortgage.
>
> [6T132-22 to 6T133-11.]

In respondent's view, Dent "used extortion terms in trying to get what he wanted." For example, he threatened to file complaints with the Attorney General, U.S. Senator Menendez, and "ethics." Respondent claimed to have received "constant barbs" from Dent.

The Susan Kinney Grievance

In approximately 2005, grievant Susan Kinney, an Ohio resident, allegedly owed approximately $16,000 to Discover card, which VCollect was trying to collect. Through her attorney, Christopher Freeman, the debt was settled for $5000. Kinney raised the money by refinancing the mortgage on her home.

On September 16, 2005, a settlement agreement between Kinney and respondent required her to pay $5000 "on or before October 1, 2005." Kinney did not see the agreement, prior to its execution by her attorney. It also required her to provide respondent "with her bank account and bank routing number . . . as a good faith gesture on the part of Kinney to solidify the agreement to settle this account for $5,000 and to provide assurance of payment of said amount."

The agreement further provided that, upon receipt of the $5000, "Hecker will not authorize or cause the withdraw [sic] of any funds from Kinney's bank account and shall destroy any information in Hecker's possession concerning said bank account number and bank routing number." Moreover, under the agreement, even if Kinney failed to pay the $5000, "Hecker shall not be authorized to withdraw the sum . . . from Kinney's bank account."

Kinney testified that her attorney was authorized to sign the agreement on her behalf. She provided the required bank account information to respondent, a circumstance that made her lawyer nervous.

Kinney testified about what happened next:

> The refinancing did go through and I went and picked up the checks. I did want to send them certified, so I took them to the post office and I had them certified and sent.
>
> But in the meantime Mr. Hecker's office had forged a check in my name for $5,000 and had presented it to my bank for payment, which totally devastated my account.
>
> Because it was a holiday weekend, it was a long weekend in October, which I believe is Columbus Day, and this check happened to hit the same weekend right as my paycheck had hit.
>
> I had my paycheck deposited on Friday, I thought I had all this money from my refinancing, everything was squared away, payments had been made, and then I realized on Tuesday when the banks reopened that it had been overdrawn and everything had bounced in the account.
>
> [3T131-19 to 3T132-11.][11]

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[11] "3T" refers to the transcript of the August 12, 2009 hearing before the special master.

The check from Kinney's refinancing was issued to VCollect, on September 30, 2005. On October 7, 2005, Kinney sent the check to VCollect, in care of respondent, via certified mail. The check was signed for on October 11, 2005.

Kinney identified a check issued against her bank account, on October 3, 2005, in the amount of $5000. The check was made payable to respondent, was signed by respondent, "as authorized signatory for SUSAN M. KINNEY," and was endorsed by respondent. Kinney knew nothing of these actions.

On October 13, 2005, Kinney's bank sent her a statement, notifying her that her account was overdrawn by $4,965.22, as a result of the check that respondent had issued to himself against the account. Because of this incident, Kinney incurred a number of service and overdraft fees. When the original $5000 check to respondent, which Kinney had received as a result of the refinancing of her home, was presented for payment, it bounced. It was at that point that Kinney saw the settlement agreement between respondent and her lawyer.

Kinney conceded that she never communicated with respondent's office about the "forged" check. According to Kinney, her lawyer claimed that he had contacted respondent's office on a number of occasions about the forged check.

However, when her lawyer returned the complete file to her, at the end of March 2006, it contained no copy of any communication between him and respondent.

Respondent testified about his understanding of the agreement with Kinney:

> The complaint was that we had taken $5,000 pursuant to an electronic check that she had authorized without waiting for her to send us a cashier's check. But the arrangement that I read about, when I looked through the notes, called for the authorization to be withheld until October 1st, and if the cashier's check wasn't received by October 1st, then the authorized check could be deposited into the client's account.
>
> [6T123-17 to 25.]

Respondent's review of the file revealed that Kinney was represented by a lawyer. Respondent claimed that neither Kinney nor her attorney had ever communicated with him about his conduct.

Respondent denied that he had signed the agreement with Kinney's attorney. He claimed that he knew nothing about the agreement, prior to his receipt of the grievance. On cross-examination, however, he conceded that, in his answer to the formal ethics complaint, he stated that he had reviewed and signed the agreement. He explained, however, that, upon his

review of his notes, as well as a conversation with Weil, he "remembered" that he "really had nothing to do with this transaction at all." He conceded that the stamped signature "looked like [his] signature."

Respondent undertook an investigation and learned that Weil had negotiated the agreement with Kinney, without respondent's knowledge, because "as the client, [Weil] felt he had the right to negotiate a settlement of the case because it's essentially his money." Although Weil operated under "the banner of VCollect," respondent considered Weil the client because "he really was the client for his own company." After respondent talked to Weil about what had happened, respondent "was definitely convinced that [he] had nothing to do with this matter at all."

According to respondent, he asked Weil why his signature appeared on the agreement. Weil "never really answered that question," but respondent "essentially inferred" that Weil had used the signature stamp. Respondent claimed that it was at this point that he learned of the signature stamp, which, despite his statement to the OAE about the routine use of a signature stamp, he claimed to have never authorized. Respondent took the stamp from Weil, had it destroyed, and told

Weil never to do that again or else their relationship would be terminated.

For his part, Weil testified that the collector assigned to the Kinney account likely negotiated the settlement. Weil stated that neither he nor the collectors drafted settlement agreements.

Respondent testified that, when the Kinney check was received by his office, it was transmitted to the "client," who, he understood, would deposit it. He noted in the WinDebt file that the debt had been paid. Respondent knew that the check had bounced, but only after "the cashier's check came in like a week and a half later, and they took the money from the cashier's check and settled the claim."

The Failure-to-Cooperate Charge

At the hearing, attorney Ellen Schwartz testified that she investigated, on behalf of the DEC, a September 2005 grievance filed against respondent by Heather L. Rodriguez. Rodriguez complained of respondent's repeated telephone calls to her and to a neighbor, which she characterized as having been for the purpose of intimidation.

On November 23, 2005, Schwartz sent a "standard letter" to respondent, enclosing a copy of the grievance, and requesting a written response within ten days. According to Schwartz, respondent did not reply to the grievance within the time prescribed, although she believed that, at some point, respondent had requested an extension of time.

By December 2005, Schwartz had received for investigation three grievances against respondent. In addition, her law partner, Cheryl Spilka, also had received three grievances. In light of the number of grievances, they agreed that it would be best to meet with respondent to discuss the "particular debt collection business" with which he was affiliated, as they "were not familiar" with it. The meeting took place on December 15, 2005, in Schwartz's office. By that time, respondent still had not replied to the Rodriguez grievance.

According to Schwartz, respondent appeared at the meeting with very little documentation. He told her that he did not have the Rodriguez file with him because he was having difficulty locating it.

On December 23, 2005, Schwartz wrote to respondent and informed him that, if he did not reply to the Rodriguez

grievance by January 6, 2006, she would complete the investigation and "file complaints if appropriate."

On December 27, 2005, respondent wrote a letter to Schwartz, stating that the backlog of cases in his office prevented him from submitting a timely reply to "ethics committees." Specifically, respondent told Schwartz that the Rodriguez file could not be located and that he was in the process of attempting to locate her "computer records." Respondent requested another copy of the grievance. Schwartz could not recall whether another copy was sent to respondent. Indeed, shortly after Schwartz received respondent's letter, the matter was transferred to the OAE, without the DEC's having received a written reply to the Rodriguez grievance.

On March 1, 2006, the DEC mailed to respondent a copy of the formal ethics complaint in the Rodriguez matter, charging him with failure to cooperate with disciplinary authorities, a violation of RPC 8.1(b). In respondent's answer to that complaint, he stated that the grievance had not been enclosed with Schwartz's November 23, 2005 letter. He also stated that the grievance had not been sent to him, in response to his December 27, 2005 letter to Schwartz. Thus, he claimed, he had

not ignored the grievance. Moreover, he noted that he had replied to the grievance received from Spilka.

Respondent explained that, after he had finally received the Rodriguez grievance, in March 2006, he searched for the file. He eventually learned that there was no Rodriguez file because, at the time that she was being pursued by VCollect, she was not married and used the surname Craig. Once respondent became aware of this fact, he was able to find WinDebt records for Craig.

At the conclusion of the ethics hearing, the special master found that the OAE had failed to establish by clear and convincing evidence that respondent had violated RPC 8.1(b). The special master noted that, on December 27, 2005, after respondent had received the DEC's December 23, 2005 letter, requesting a reply to the Rodriguez grievance, he had promptly asked for a copy of the grievance, stating that he could not find any file for Rodriguez. At the time, respondent did not know that Heather Craig had married and changed her name to Heather Rodriguez, the name under which she had filed the grievance.

The special master observed that the DEC was unable to refute respondent's testimony that he had never received the

grievance or a reply to his December 27, 2005 letter to Schwartz. Moreover, the special master noted that, although there was a "troubling" three-month gap between December 2005, the date of the last documented communication between respondent and the DEC, and March 2006, the date of the filing of the formal ethics complaint, respondent had voluntarily met with the DEC within a reasonable time after he had been initially notified of the grievance, had provided written proof to the special master that he had requested another copy of the grievance, and had filed a timely answer to the formal ethics complaint.

In the Antoniades matter, the special master found that the OAE had established, by clear and convincing evidence, that respondent had violated RPC 5.3(a), (b), and (c); RPC 5.5(a)(2); RPC 8.4(c); and Opinion 8, Opinion 259, and Opinion 506. The special master found that the OAE failed to meet its burden with respect to the RPC 4.4(a) charge.

According to the special master, although Hrabinski's testimony was "generally credible," it was based exclusively on the WinDebt notes. The special master found it unlikely that he could testify "with full recall about his interaction with a debtor who was one of thousands with whom he had a single

conversation years ago." Moreover, Hrabinski could not testify as to the conversations that other collectors may have had with Antoniades. In this regard, the special master found that the WinDebt notes, while helpful for factual data, did not amount to reliable evidence of "content or attitude conveyed or received during telephone communications with a debtor."

The special master also observed, however, that Antoniades' claims about the number of telephone calls were contradicted by his statements to the OAE. Thus, the special master concluded that Antoniades had likely "exaggerated the frequency and contents of his communications with the debt collectors in order to make his point, namely that the debt collectors were not backing down from their strenuous collection efforts despite Antoniades' no-doubt spirited assertions that he did not owe the debt they were seeking to enforce." Finally, the special master noted that the VCollect policy of permitting collectors to use an alias created confusion in determining the veracity of Antoniades' claims. The special master concluded, thus, that the OAE had failed to establish, by clear and convincing evidence, that respondent had violated RPC 4.4(a), which prohibits an attorney from engaging in conduct for the purpose of embarrassing a third person.

As indicated previously, the special master also found that respondent had failed to supervise non-lawyer staff in the Antoniades matter, in violation of RPC 5.3(a), (b), and (c) and RPC 8.4(c). In this regard, the special master considered whether the telephone scripts and the form letters threatened litigation against the debtor. She concluded that they did.

According to the special master, collection agents began calls to debtors by stating that they were calling from "Attorney Hecker's office." In addition, the form letters were on respondent's letterhead, "implying that a lawyer had reviewed the matter and was overseeing the debt collection activities and would use legal process to enforce the debt if not paid voluntarily," thereby adding "'clout'" to the collection activities. The special master continued:

> The nature of any debt collection effort contains an implied threat that if the money owed is not paid that [sic] further action will be taken against the debtor. However, when an attorney's name, letterhead and signature are used as part of the communications, the implied threat of legal process becomes real. "Threats of legal action by collection agencies constitute the unauthorized practice of law [cites

omitted]." Opinion 8 of the Committee on the Unauthorized Practice of Law.

[SMR§D¶3.][12]

The special master did not explain why her factual findings supported the conclusion that respondent had failed to supervise the VCollect employees. Presumably, however, her conclusion was based on the finding that these employees had engaged in the unauthorized practice of law, which would not have occurred if respondent had supervised them. These findings also would support the special master's conclusion that respondent violated RPC 5.5(a)(2), which prohibits a lawyer from assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Finally, the special master concluded that respondent had violated Opinion 259, Opinion 506, and RPC 8.4(c) in the Antoniades matter, stating:

> During the time in question in this complaint, the use of "Attorney Hecker's" name or the "Hecker law firm's" name in making the telephone demand calls, letters written on law firm letterhead and the fact that the letters appeared to have been

[12] "SMR" refers to the special master's report.

> signed by the attorney all lead to the conclusion that there was an impermissible, albeit implied threat of litigation involved in the communications with Antoniades which violated Opinion Nos. 259 and 506 of the Advisory Committee on Professional Ethics and RPC 8.4(c). . . .
>
> [SMR§D¶3.]

The special master noted that the modification of the DM-1 and DM-2 letters in 2007, which removed respondent's signature, bore no relation to the contents of the letters sent to Antoniades.

In the Dent matter, the special master found that the OAE had established, by clear and convincing evidence, that respondent had violated RPC 4.4(a); RPC 5.3(a), (b), and (c); RPC 5.5(a)(2); Opinion 8; and RPC 8.4(c). According to the special master, although Dent owed more than $7900 to VCollect, on May 4, 2006, respondent signed a letter confirming that he was authorized to accept $4500 in full satisfaction of the debt. The special master noted that the Beneficial check contained a restricted endorsement, clearly stating that respondent's firm and Chase had agreed to a $4500 settlement and would refund $1757 to Dent. Nevertheless, "[r]espondent, as lawyer for the creditor, failed to honor the agreement and refund the $1757 to the Dents," who, ultimately, received only $1100.

According to the special master, respondent should have been involved in the settlement discussions with Dent. She found that his failure to know the contents of the discussions and the agreement was "an example of his failure to properly supervise his non-lawyer assistants," a violation of RPC 5.3 (a), (b), and (c). Moreover, respondent's "failure to stand by the original agreement after it was breached, in effect, was assisting non-lawyers in the unauthorized practice of law," in violation of RPC 5.5(a)(2) and Opinion 8.

Further, the special master ruled that respondent had violated RPC 4.4(a) and RPC 8.4(c), based on the following:

> Alternatively, by knowing of the settlement and failing to enforce it, Respondent violated RPC 8.4(c) engaging in dishonest conduct by failing to promptly return debtor's excess funds. Respondent certainly became aware of the circumstances related to this matter after Dent's fervent efforts to get back his money. . . . Instead of rectifying the matter promptly, Respondent was unnecessarily unprofessional and ingenuous [sic] in his correspondence with the debtor claiming that "he" did not have the funds that had been remitted to his attention and that it was his client who was refusing to return the money and claiming that Dent had lied about his ability to pay the full debt. . . . Respondent violated RPC 4.4(a) by engaging in conduct, through his written communications with Dent, aimed at embarrassing and harassing the debtor who was entitled to a return of the excess funds

he had remitted in good faith based on the settlements.

[SMR§D¶II.]

In reaching her determination, the special master noted that she did not give "great weight" to Dent's medical history or his prolific letter-writing campaign.

In the Kinney matter, the special master found that the OAE had established, by clear and convincing evidence, that respondent had violated RPC 5.3(a), (b), and (c); RPC 5.5(a)(2); and Opinion 8, but that the OAE had failed to carry its burden with respect to the RPC 8.4(c) charge.

According to the special master, the facts giving rise to the Kinney grievance "presented a very disturbing picture of the way VC operated and the control – or lack thereof – that Respondent had over VC's non-lawyer debt collectors in their day to day activities at the time of these matters." Notwithstanding the use of respondent's name throughout the settlement negotiations, he testified that he was not involved in those negotiations, the drafting of the agreement, or in the breach of the agreement. According to the special master, Weil's ability to negotiate the agreement and then stamp respondent's signature on it was "an example of Respondent's

failure, or possible inability to control the unauthorized practice of law by a VC employee over whom he allegedly had supervisory responsibility."

The special master did not explain her finding that respondent had not violated RPC 8.4(c).

With respect to respondent's relationship with VCollect, in general, the special master observed that it was unlikely that an attorney could ensure that a staff of fifty-to-sixty individuals, handling thousands or more accounts, would not violate applicable legal and ethics standards. Respondent "was obligated to manage VC's non-lawyer employees in such a way that they did not violate the rules governing debt collectors." Yet, she noted, in the case of Antoniades, Dent, and Kinney, he failed to do so. The special master explained:

> By allowing the use of his name, in some instances his letterhead and, in at least the Kinney matter, the use of a signature stamp, as part of VC's debt collection activities, respondent placed himself on the line for just those responsibilities. The testimony of all three complaining witnesses at the hearing demonstrated that all three debtors believed Laurence Hecker, Esquire, was directly connected with the collection efforts mounted by VC. Further, they believed that the agreements made with the non-lawyer

employees of VC were expected to be overseen and assured by the respondent.

. . . .

Opinion 259 and Opinion 506 of the Advisory Committee on Professional Ethics deal specifically with the responsibility of a New Jersey licensed attorney's lending his name and letterhead to a "volume" debt collection practice such as VC's. The bottom line question is whether respondent exercised his judgment in each and every instance. This was not the case in the matters being considered herein.

The Committee on Professional Ethics has ruled that the use of an attorney's name as part of a collection effort "implies" legal action will be forthcoming. This "threat of legal action" is not permitted unless the attorney, whose name is being used to add "clout" to the collection effort, has determined that such letters should go out in each instance. This may be an mpossibility [sic] and should be the reason that an attorney name and letterhead NOT be part of a volume collection practice where it would be impossible for a lawyer to know the details of each matter.

Opinion 259 states, ". . . it would be unethical for a lawyer to permit a client to send collection letters on his stationery. [cites omitted]" Opinion 506 contains the following language, "Where, however, the effect of the entire scheme is that the attorney is allowing his name to be used by his client to lend "clout" to the collections and where the judgments are being exercised not by the attorney but by "The National Collection Manager" or Mr. Doe" or the client, the practice is still

> disapproved. Opinion 259 remains the guide in this area."
>
> Respondent testified that routine, computer generated correspondence with debtors no longer is on his letterhead or above his signature as was the case in the complaints herein. Nevertheless, respondent's name and letterhead, and in the Dent and Kinney matters his signature, were used improperly by non-lawyer debt collectors who were under his supervision in all three matters.
>
> [SMR§E.]

In mitigation, the special master noted that the violations occurred three to four years ago; that respondent has since implemented "additional safeguards . . . to prevent some of the unacceptable activities . . . from happening in the future;" and that the use of respondent's name and letterhead and signature, in the Kinney matter, were without his knowledge and consent. In aggravation, the special master pointed out that respondent has been suspended twice and that one of those suspensions stemmed from his failure to supervise a nonlawyer assistant. In addition, the course of conduct, which spanned a period of years, "involved several individuals and was not an isolated incident."

As indicated previously, the special master recommended a two-month suspension for respondent's misconduct.

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence. Specifically, we adopt the special master's determination that respondent did not violate RPC 8.1(b) in the Rodriguez matter and RPC 4.4(a) in the Antoniades matter. However, we disagree with the special master's determination that respondent failed to supervise the VCollect employees. Finally, we find that respondent assisted VCollect in the unauthorized practice of law and that, by doing so, he engaged in deceitful and dishonest conduct.

RPC 8.1(b) prohibits an attorney from knowingly failing to respond to a lawful demand for information from a disciplinary authority. As the special master found, the OAE did not establish, by clear and convincing evidence, that respondent violated this rule. Although respondent never replied to the Rodriguez grievance before the formal ethics complaint was filed against him, he testified that the grievance had not been attached to the first letter from Schwartz and that she had not provided him with a copy, after he had requested one. Schwartz was unable to refute either statement. Moreover, respondent's efforts to locate Rodriguez's VCollect file were hampered by her

change in name from Craig (while pursued by VCollect) to Rodriguez (at the time that she filed the grievance).

We also agree with the special master's finding that respondent did not violate RPC 4.4(a) in the Antoniades matter. That rule prohibits an attorney from engaging in conduct for the purpose of embarrassing a third person. The number and nature of the calls that Antoniades purportedly received from VCollect were contradicted by the WinDebt notes. Although, as the special master found, a collector may withhold recording certain information on the WinDebt system and, therefore, the record may be incomplete or inaccurate, Antoniades did not disclose the collector's alleged threat to "kick his ass" in his grievance or during his interview by the OAE. Moreover, the number of telephone calls that he reported to the OAE was substantially fewer than the ones to which he testified. Thus, the record lacks sufficient evidence to substantiate the claim that Antoniades was harassed by VCollect employees.

We are unable to agree with the special master's conclusion that respondent violated RPC 4.4(a) in the Dent matter. The special master's finding that respondent's communications with Dent, during the dispute over the actual amount of the settlement, were designed for the purpose of embarrassing and

harassing him, was based on her determination that VCollect owed Dent the difference between the $6257 check from Beneficial and the $4500 settlement that Dent had entered into with VCollect.

As will be shown below, we agree that VCollect owed Dent the difference, that is, $1757. Thus, respondent was mistaken in his insistence that VCollect was entitled to the full amount of the Beneficial check. However, that respondent was incorrect does not render his letters to Dent a violation of RPC 4.4(a). Moreover, while unprofessional in many respects, respondent's letters contained no threat of legal action and the tone of respondent's letters did not constitute harassment. Rather, respondent was merely seeking to enforce an agreement that he mistakenly believed had been reached between VCollect and Dent. Thus, we determine to dismiss this charge.

We now turn to the remaining charges against respondent, as they apply to the relationship between him and VCollect and as they apply to each of the individual grievants. These charges are: RPC 5.3(a), which imposes on all lawyers the responsibility to adopt and maintain reasonable efforts "to ensure that the conduct of nonlawyers [retained by, employed by, or associated with the lawyer] is compatible with the professional obligations of the lawyer;" RPC 5.3(b), which requires a lawyer with direct

supervisory authority over the nonlawyer to make reasonable efforts to ensure that the person's conduct is compatible with the lawyer's professional obligations; RPC 5.3(c), which holds a lawyer responsible for the conduct of a nonlawyer employed, retained or associated with that lawyer, if the lawyer ratifies or orders the conduct, has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action, or fails to make a reasonable investigation of circumstances that would disclose past instances of misconduct, which demonstrate a propensity for such conduct; RPC 5.5(a)(2), which makes it unethical for a lawyer to "assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law;" and RPC 8.4(c), which prohibits conduct involving dishonesty, fraud, deceit or misrepresentation.

First, we set forth our findings as to the nature of respondent's relationship with VCollect. In making these findings, we were guided by Opinions 8, 259, and 506.

In Opinion 8, the CUPL considered whether certain actions of a collection agency constituted the unauthorized practice of law, when it carried out the following practices:

(1) communications to alleged debtors of customers of the agency which simulate legal process or court order; and

(2) communications, usually letters demanding payment of the debt allegedly owed by the addressee to the agency's customers and sent over the signature of an agency employee, which wrongfully imply that the document emanates from or is sent at the direction of an attorney and usually stating that legal consequences will flow from the nonpayment of the debt or from the institution of legal action to collect the debt.

[Opinion 8, 95 N.J.L.J. 105 (1972).]

With respect to these practices, the CUPL observed:

The collection agency practices referred to above are intended to and unquestionably frequently do cause a recipient of a document, such as one of those described, to believe either that some judicial proceeding has been commenced to collect the debt, that he is under some court direction to pay the money demanded by the agency from which the document came, or that there has been an evaluation by an attorney that proceedings to enforce the collection are warranted. Frequently there is an implication that an attorney is advising the alleged debtor of the consequences of nonpayment of the claim made. In each one of those situations, the intervention of a court or of an attorney is clearly implied.

. . . .

The implied representation that a letter demanding the payment of an alleged indebtedness of a debtor of a collection

agency's customer is the act or is sent at the direction of an attorney, who does not sign the letter, constitutes the unlawful practice of law [Citations omitted].

When a collection agency resorts to any one of the practices first stated above, it is unlawfully engaging in the practice of law. These practices are particularly offensive because they tend to bring into disrepute the entire administration of justice. They are clearly impermissible.

[Ibid.]

In Opinion 259, the ACPE considered the following inquiry:

An attorney has been requested by a client to collect overdue accounts, in volume, consisting of small amounts, less than $25. The client will submit directly, to an individual retained by the attorney as an "independent contractor," the list of accounts to be collected. This so called "independent contractor" is to type headings on four different types of form letters which will contain the usual collection language. The debtors are located throughout the United States. The stationery to be used is that of the inquiring attorney. After the form letters are prepared by the "independent contractor" they are to be returned to the client for mailing because the client has sophisticated mailing equipment. There is a "reply to" address which is not that of the attorney, but rather the address of an office adjoining the client's business address with a street number different from that of the client. The replies are opened and reviewed by the client's staff. Payments and replies asking for clarification of the account are handled by the client. No litigation is

> anticipated, but the form letters, however, indicate that if the debt is not paid, suit will be commenced by a referral to an attorney in the debtor's jurisdiction.

Notwithstanding the specificity of the facts before the ACPE, it merely opined that it is a violation of RPC 8.4(c) for a lawyer "to permit a client to send collection letters on his stationery."

Finally, in Opinion 506, the ACPE entertained an attorney's inquiry as to whether "a variation of the matters discussed in Opinion 259" would pass ethics muster. As a preliminary to its consideration, the ACPE stated:

> It is not this Committee's function to determine how close to the wind an attorney may sail in lending his name to a client in its collection world. He should not do so at all.

The ACPE then proceeded to identify the following proposed procedure:

> The procedure suggested in this inquiry, for example, proposes three form collection letters on the attorney's stationery representing increasing pressure to pay rising through various administrative levels of the client. The first threatens that if the account is not paid, the "National Collection Manager will be notified;" the second that the "National Collection Manager has received the account" and threatens that unless it is paid, it may "be judged uncollectible by Mr. Doe." The

> final letter states that the matter has been "referred to me for the purpose of assisting them in the collection," etc.
>
> All letters are intended to be bulk mailed by the client with return envelopes addressed, not to the attorney, but to the client. The inquirer states, however, that he will review the lists and accounts at each stage and maintain records and answer "all questions, phone calls and letters directly". We observe that this might not occur in practice since the return envelopes are addressed to the client.

The ACPE characterized the question before it as follows: "Could the client undertake the mailings by its bulk mail system and receive back the payments?" According to the ACPE, "as a general proposition . . . these elements taken in a vacuum may not be objectionable." However, the ACPE cautioned:

> Where, however, the effect of the entire scheme is that the attorney is allowing his name to be used by his client to lend "clout" to the collections and where the judgments are being exercised not by the attorney but by "The National Collection Manager" or "Mr. Doe" or the client, the practice is still disapproved.
>
> Opinion 259 remains the guide in this area.
>
> [Opinion 506, 110 N.J.L.J. 408 (1982).]

Guided by Opinions 259 and 506, we base our determination in this case on the intent and effect of the "entire scheme," rather than the propriety of individual procedures. We have,

thus, determined that "the effect of the entire scheme is that [respondent was] allowing his name to be used by [VCollect] to lend 'clout' to the collections" and that the judgments were not being exercised by respondent but, rather, by VCollect employees and managers.

As detailed below, we note that, by entering into the 2005 agreement with VCollect, respondent seemingly took what he believed to be the steps necessary to permit him to lend his name to VCollect, without running afoul of the specific proscriptions identified in Opinions 8, 259, and 506. However, we also note that, although these Opinions address specific factual scenarios, underlying the conclusions in each of them is the general principle that, whatever the specific arrangement between an attorney and a collection agency might be, if the net effect is that the agency continues to operate in a business-as-usual mode, albeit with the clout that the use of the attorney's name adds to its efforts, then the agency engages in the unauthorized practice of law and the attorney engages in conduct involving dishonesty, fraud, deceit or misrepresentation.

We do not find that respondent violated Opinion 8, which prohibits a collection agency from writing letters on its own stationery, which are signed by an agency employee, and which

imply that "the document emanates from or is sent at the direction of an attorney." The letters usually state that "legal consequences will flow from the nonpayment of the debt or from the institution of legal action to collect the debt." Here, the form letters were sent to debtors on respondent's stationery, under respondent's stamped signature, and did not threaten legal action. The letters simply demanded payment, while, at the same time, advising the debtors of their rights. We do not find that the arrangement between respondent and VCollect violated Opinion 8.

Opinions 259 and 506 are more pertinent to the facts of this case, for they address situations where collection agencies, in order to avoid violating Opinion 8, retain attorneys to purportedly collect on overdue accounts, while, at the same time, remain actively involved in the collections process with those same accounts. Perhaps mindful of the true purpose of these attorney-client relationships, the ACPE opinions gloss over the propriety of the specific conduct at issue, focusing instead on what is really going on, that is, the lending of the attorney's name to the collection agency, rather than the performance of services.

Opinion 259 considered a very detailed arrangement between the attorney and the collection agency, but limited its determination that the arrangement was unethical to the general principle that it is unethical for a lawyer to permit a client to send out collection letters in the lawyer's name or on the lawyer's stationery. The ACPE identified nothing else in the facts presented to it as problematic, including the use of form letters and the threat of litigation. Instead, the ACPE relied on a legal ethics treatise and an opinion of the American Bar Association Committee on Professional Ethics and Grievances, both of which clearly opined that it is unethical for an attorney to permit a client to send collection letters in the attorney's name or on his stationery. The ABA decision was in response to an inquiry involving not only the lawyer's stationery, but also the lawyer's signature.

Notwithstanding the broadness of the determination in Opinion 259, we are compelled to compare the specific facts in that matter to the specific facts in the matter before us. We note first that the procedure described in the opinion is similar to that employed by respondent and VCollect. The lawyer and the agency were in an attorney-client relationship. Form

letters were prepared and generated on the attorney's stationery and were bulk-mailed by the agency to the debtors.

Though there are some differences between the specific procedures identified in the opinion and those of respondent and VCollect, when we examine the reality of their arrangement, it is evident that their actions varied little from those at issue in the opinion. First, the reply address identified on the stationery of the attorney in the opinion was different from the location of the attorney's office, as well as that of the client. The reply address belonged to an office that was adjacent to that of the client. The implication is that the replies were not going to the attorney but, rather, to the client. Here, the reply address purportedly was that of respondent's office, but, in reality, he and VCollect devised a plan whereby VCollect's address would be respondent's office address for a few days a week. It should be remembered that respondent's office for the practice of law was in Toms River. Thus, the reply address on respondent's stationery was no more genuine than that of the lawyer in Opinion 259.

Second, the employees of the agency at issue in the opinion and the employees of VCollect opened and reviewed the replies to the letters and handled payments. The only difference in this

case is that the VCollect employees were "leased" to respondent, which we deem to be a fiction, given that VCollect staff was provided to him gratis on a daily basis and that he shared the same office space with VCollect.

Opinion 506 also considered a very detailed arrangement between an attorney and a collection agency. There, the client collection agency bulk-mailed to debtors up to three different form letters on the attorney's stationery, with return envelopes addressed to the client. The first letter threatened that, if the account were not paid, the agency's "national collection manager" would be notified. The second letter informed the debtor that the account had been referred to the manager and threatened that, if the account were not paid, "it may 'be judged uncollectible by Mr. Doe.'" The third letter stated that "the matter has been 'referred to me for the purpose of assisting them in the collection,' etc." Presumably, "me" referred to the attorney.

Although the collection agency client was in charge of issuing the letters, the attorney proposed to the ACPE that he would review the lists and accounts at each stage and maintain records and "answer 'all questions, phone calls and letters directly.'" The ACPE noted, however, that this proposal "might

not occur in practice since the return envelopes [were] addressed to the client."

In response to the specific question posed, that is, whether the client could undertake the mailings through its bulk mail system and receive the payments, the advisory committee suggested that, "as a general proposition . . . these elements taken in a vacuum may not be objectionable." However, as stated previously, in the committee's view, the key to the propriety of the arrangement turned on whether "the effect of the entire scheme is that the attorney is allowing his name to be used by his client to lend 'clout' to the collections and where the judgments are being exercised not by the attorney" but by an employee or representative of the client. If this is the case, "the practice is still disapproved."

Prior to the 2005 agreement between VCollect and respondent, the reality of the situation was that VCollect operated a collection mill, on a vast scale, involving 100,000 accounts and "thousands and thousands" of letters. After its 2005 agreement with respondent, VCollect continued to operate that collection mill, albeit under the guise of the "Law Offices of Laurence A. Hecker, Attorney at Law," which was located at the same Princeton address as that of VCollect. For several

reasons, we consider the arrangement a pretense and a lending of respondent's name to VCollect.

As stated previously, respondent's Princeton law office was in the same building as VCollect. When respondent's law office in Princeton was opened, he continued to maintain an independent office for the practice of law in Toms River. He neither closed that office nor relocated it to VCollect's Princeton headquarters. His Princeton letterhead did not identify the Toms River address as another office location.

In addition, respondent's Princeton office handled matters for only one client, VCollect, for which he was paid $5000 per month. While this arrangement, in and of itself, would not be improper, the organization of this particular law practice was problematic. Respondent did not lease the office space from VCollect. It was provided to him by VCollect, at no charge. Also, his secretary and receptionist were VCollect employees, who were paid by VCollect. Respondent did not hire employees to handle the VCollect collection matters. Instead, VCollect allegedly "leased" its own employee-collectors to him. In truth, however, respondent did not lease these individuals or compensate them in any fashion for their work. Instead, VCollect paid them. Why? Because they continued to function as

VCollect employees, working in the VCollect collection business on VCollect matters. They were beholden, not to respondent, but to their true employer, VCollect.

After the execution of the 2005 agreement, the only thing that really changed in the way that VCollect carried out its business was that, in exchange for the payment of $5000 per month to respondent, VCollect's general collection efforts were now undertaken by way of written communications on respondent's letterhead and telephone calls from VCollect employees, who represented to the debtors that they were calling from respondent's law office. In respondent's own words, VCollect's use of his letterhead with his name, on letters that were purportedly signed by him, and the ability of its employees to represent that they were calling from his law office, were intended to make the debtor take the collection effort "more seriously."

The DM-1 and DM-2 letters were generated on respondent's letterhead and were purportedly signed by respondent. However, respondent testified, he did not personally review or sign these letters. Instead, a signature stamp was used. Although respondent testified that he provided to the collectors the data that resulted in the generation of the letters, he never checked

to make sure that the letters were accurate in any sense. In short, he never saw the letters, and he never signed them. Moreover, the letters were not mailed from respondent's office. Rather, they were mailed from some sort of a clearing house in Texas.

In addition, while respondent described his work as operating and being in charge of a collection practice, VCollect representatives described him as supervising the "collection floor." This testimony points to the lack of clarity in the relationship between respondent and VCollect and the roles of respondent, VCollect management, and VCollect employees. Respondent was not operating a law firm, with VCollect as his only client, but was merely functioning as a compliance officer for VCollect. For example, a VCollect representative testified that he assisted respondent in "operating the office" and supervising the floor, as well as floor managers. Weil testified that respondent supervised the collection floor. Even respondent asserted that it was VCollect employees who received the payments from debtors.

Moreover, we question respondent's ability to handle 100,000 collection matters while he spent his days at VCollect walking up and down aisles, monitoring telephone conversations,

and running training sessions. These are the activities of a compliance officer, not an attorney with a busy collection practice.

In short, the lines of respondent's and VCollect's relationship were so blurred that it is impossible to conclude that it was a genuine attorney-client relationship. Rather, we find that respondent was paid $5000 a month to monitor the operation of Vcollect's business and that, as part of that arrangement, VCollect could use respondent's name.

In terms of whether, as Opinion 506 describes, it was the VCollect employees, not respondent, who exercised judgment in the collection, we note a number of such examples. First, the volume of the accounts absolutely precludes the finding that respondent exercised judgment in every case. As noted by the ACPE in the opinion, this likely did not occur in practice. Although he claimed that he was actively involved in each case, the telephone calls were answered by VCollect employees and the mail was opened by VCollect employees.

Second, we note two examples of VCollect representatives exercising judgment in the very matters before us. First, in the Dent matter, Goldberg, a collector, agreed to settle a $7200 debt for $4500, which was well below the eighty percent limit

supposedly imposed by respondent. The clear and convincing evidence established that respondent was not involved in the settlement negotiations until after the fact, when the settlement began to fall apart. Of course, an argument could be made that this was the action of a rogue collector, who, through no fault of respondent, simply acted on his own. In light of our finding as to the true nature of the relationship between respondent and VCollect, however, that argument must fail.

Another example of a VCollect representative's exercising judgment was Weil's settlement of the Kinney debt, without any knowledge on respondent's part. To be sure, Weil, as president of VCollect, should have had full authority to settle the claims of his own company. Yet, if respondent's testimony is to be believed, Weil was prohibited from doing so under the parameters of their attorney-client relationship. Moreover, we reject respondent's claim that, without his knowledge, Weil negotiated the settlement and affixed respondent's signature to the document by use of the signature stamp. Respondent made it clear to Perry-Slay that a signature stamp existed and that it was used by the VCollect collectors. His assertion that he was unaware of such a stamp at the time of Weil's actions is simply not credible.

Based on these facts, we find that, under Opinions 259 and 506, respondent loaned his name to VCollect, that VCollect employees exercised judgment in the thousands and thousands of collection matters and that, therefore, the VCollect employees were engaged in the unauthorized practice of law, which, in turn, necessitates a finding that respondent violated RPC 5.5(a)(2) and RPC 8.4(c). The latter finding is based on respondent's misrepresentation that he was acting as VCollect's attorney and that he was in charge of its collection work.

We now turn to the failure-to-supervise charges, particularly with respect to the Antoniades, Dent, and Kinney matters. In light of our finding that the relationship between respondent and VCollect was a sham and, therefore, there was no genuine attorney-client relationship, we cannot, like the special master, hold respondent accountable for failing to supervise VCollect's employees. For a failure-to-supervise charge to be applicable, there must be a legitimate employer-employee relationship. That was not the case here. We, therefore, dismiss these charges.

Our determination to dismiss notwithstanding, we would have found that, if there had been a true employment relationship between respondent and VCollect's employees, he would have

violated RPC 5.3(a), (b), and (c). Although it is true that respondent put several mechanisms in place to ensure that VCollect employees would not violate the FDCPA, such as the training manual and training sessions, those mechanisms were obviously inadequate for the staggering volume of VCollect's work. Examples of deficiencies in this context were the settlements in the Dent and Kinney matters: the first exceeded the permissible parameters and the second was accomplished with the use of respondent's signature stamp on the agreement.

In summary, respondent assisted VCollect in the unauthorized practice of law when he loaned his name to the company so that it could avoid the proscription against impliedly representing to the debtor that an attorney is involved in the debtor's account, a violation of RPC 5.5(a). Moreover, by loaning his name to VCollect and permitting it to send collection letters on his stationery, respondent violated RPC 8.4(c).

There remains for determination the quantum of discipline to be imposed for respondent's infractions. When an attorney assists a nonlawyer in the unauthorized practice of law, the discipline ranges from a reprimand to a lengthy suspension, depending on several factors, such as the seriousness of the

conduct, how pervasive it was, the presence of other RPC violations, and the tarnishing of the profession in the eyes of the public. See, e.g., In re Bevacqua, 174 N.J. 296 (2002) (reprimand for attorney who assigned an unlicensed lawyer to prepare a client for a deposition and to appear on the client's behalf; the attorney committed other violations, including gross neglect, pattern of neglect, and lack of diligence; multiple mitigating factors were considered, including the lack of disciplinary history, the attorney's inexperience, and conduct resulting from poor judgment, rather than venality); In re Ezor, 172 N.J. 235 (2002) (reprimand for attorney who knowingly assisted his father, a disbarred New Jersey attorney, in presenting himself as an attorney in a New Jersey lawsuit); In re Gottesman, 126 N.J. 376 (1991) (reprimand imposed on attorney who divided his legal fees with a paralegal and aided in the unauthorized practice of law by allowing the paralegal to advise clients on the merits of claims and permitting the paralegal to exercise sole discretion in formulating settlement offers); In re Silber, 100 N.J. 517 (1985) (reprimand for attorney who failed to inform the court that his law clerk had made an ultra vires appearance; contrary to the attorney's instructions, the law clerk took it upon herself to represent a client at a

hearing; although the attorney chastised the law clerk, he failed to advise the court of the incident; later, when the attorney received a proposed form of order showing the law clerk as the appearing attorney, the attorney failed to contact the court to correct the misrepresentation); In re Chulak, 152 N.J. 553 (1998) (three-month suspension for attorney who allowed a non-lawyer to prepare and sign pleadings in the attorney's name and to be designated as "Esq." on his attorney business account; the attorney then misrepresented to the court his knowledge of these facts); In re Gonzales, 189 N.J. 203 (2007) (three-month suspension for attorney who egregiously "surrendered every one of her responsibilities" to the office manager and bookkeeper by permitting the bookkeeper to use a signature stamp on trust account checks and the office manager/paralegal to interview clients, execute retainer agreements in the attorney's name, and prepare and execute pleadings and releases; the office manager/paralegal also attended depositions and appeared in municipal court on behalf of the attorney's clients, among other things; the attorney also compensated the office manager based on his work as "a lawyer;" once the attorney learned of the officer manager/paralegal's actions, the attorney contacted the proper authorities and participated in an investigation that led

to the employee's arrest); In re Cermack, 174 N.J. 560 (2003) (on motion for discipline by consent, attorney received a six-month suspension for entering into an agreement with a suspended lawyer that allowed him to continue to represent clients, though the attorney appeared as the attorney of record and handled court appearances; in some cases, the attorney took over the suspended lawyer's cases with the clients' consent and with the understanding that the cases would be returned to the suspended lawyer upon his reinstatement); In re Carracino, 156 N.J. 477 (1998) (six-month suspension for attorney who entered into a law partnership agreement with a non-lawyer, agreed to share fees with the non-lawyer, engaged in a conflict of interest, displayed gross neglect, failed to communicate with a client, engaged in conduct involving misrepresentation, and failed to cooperate with disciplinary authorities); In re Moeller, 177 N.J. 511 (2003) (one-year suspension for attorney who entered into an arrangement with a Texas corporation that marketed and sold living trusts to senior citizens; the attorney filed a certificate of incorporation in New Jersey on behalf of the corporation, was its registered agent, allowed his name to be used in its mailings, and was an integral part of its marketing campaign, which contained many misrepresentations; although the

attorney was compensated by the corporation for reviewing the documents, he never consulted with the clients about his fee or obtained their consent to the arrangement; he also assisted the corporation in the unauthorized practice of law, misrepresented the amount of his fee, and charged an excessive fee); and In re Rubin, 150 N.J. 207 (1997) (one-year suspension in a default matter for attorney who assisted a non-lawyer in the unauthorized practice of law, improperly divided fees without the client's consent, engaged in fee overreaching, violated the terms of an escrow agreement, and misrepresented to the clients both the purchase price of a house and the amount of his fee).

Based on the seriousness and pervasiveness of respondent's misconduct and the tarnishing of the profession in the eyes of the public, who are led to believe that a New Jersey lawyer is acting through the tactics of collection agents, we find that respondent's misconduct warrants a lengthy suspension.

An aggravating factor is respondent's pattern of failing to take responsibility for his obligations as a lawyer, as demonstrated by his disciplinary history. In a prior case, his failure to maintain his checkbooks in a safe place led to the theft of $15,000 in client funds by a former employee who, after he was re-hired, stole from respondent again because respondent

still would not take personal responsibility for the safety of the checkbooks, leaving that task instead to his secretary.

Also, when respondent was suspended in 2001, one of his infractions was his failure to maintain his records in accordance with the recordkeeping rules. Yet, by 2007, when he was interviewed by the OAE in this matter, he still did not take his responsibilities as a lawyer seriously, claiming that he knew only and that he assumed that his bookkeeper knew their requirements.

It is now obvious that respondent learned nothing from his past mistakes. He admitted as much to the OAE, in his 2007 interview in this matter. Given the magnitude of the VCollect operation with which respondent affiliated himself, the resultant misrepresentations made to debtors, the serious breaches of respondent's professional obligations in the Dent and Kinney cases, and his failure to learn from his prior mistakes, we determine to suspend him for one year.

Members Baugh and Clark voted to impose a six-month suspension. Members Wissinger and Zmirich 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