SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-209
District Docket No. XIV-05-082E

IN THE MATTER OF	
VOLF ZEV BIRMAN	
AN ATTORNEY AT LAW	

Decision

Argued: September 15, 2005

Decided:

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE") following respondent's suspension in New York for one year.

Respondent was admitted to the New Jersey bar in 1998. He has no disciplinary history in New Jersey.

In May 2002, respondent pled guilty in New York Supreme Court, Queens County, to a misdemeanor charge of violating New York Judiciary Law §482. That statute provides:

> It shall be unlawful for an attorney to employ any person for the purpose of soliciting or aiding, assisting or abetting in the solicitation of legal business or the procurement through solicitation either directly or indirectly of a retainer, written or oral, or of any agreement authorizing the attorney to perform or render legal services.

Respondent was sentenced to a conditional discharge for one year and was required to pay a surcharge. New York Penal Law §65.05 provides:

> [T]he court may impose a sentence of conditional discharge for an offense if the court, having regard to the nature and circumstances of the offense and to the history, character and condition of the defendant, is of the opinion that neither the public interest nor the ends of justice would be served by a sentence of imprisonment and that probation supervision is not appropriate . . . .
>
> [W]hen the court imposes a sentence of conditional discharge the defendant shall be released with respect to the conviction for which the sentence is imposed without imprisonment or probation supervision but subject, during the period of conditional

discharge, to such conditions as the court may determine.

The record does not disclose the conditions, if any, imposed by the court.

Based on the above guilty plea, the Grievance Committee in New York filed a disciplinary petition on May 6, 2003, charging respondent with violations of Disciplinary Rule 1-102(A)(3) (22 NYCRR 1200.3(a)(3)); Disciplinary Rule 1-102(A)(7) (22 NYCRR 1200.3(a)(7)); and Disciplinary Rule 2-103(B) (22 NYCRR 1200.8(B)). According to the OAE, those violations are comparable to infractions of the following New Jersey rules: RPC 7.2(c) (compensating a person for recommending the lawyer's services); RPC 7.3(d) (compensating a person to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client); RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

In his May 27, 2003 answer to the New York ethics complaint, respondent admitted that he had employed a person to

assist him in obtaining clients, but denied that he had compensated that person for doing so.

On April 12, 2004, after a special referee found respondent guilty of all of the charged violations, the Supreme Court of New York, Appellate Division, Second Judicial Department, confirmed the special referee's report and ordered respondent suspended for one year, effective May 12, 2004.

The facts that gave rise to this matter are as follows: Respondent opened a New York law practice in June 1999, after being admitted to the New York bar in April 1999. He had worked as a paralegal at a law firm from October 1998 until April 1999, when he became a litigation associate in that firm. In early 2000, respondent hired Marina Goldshtayn, who operated an employment agency providing paralegal staff. The staff investigated personal injury cases, established claims, gathered medical records, and provided other services, in return for which respondent paid Goldshtayn $800 per file.

In November or December 2000, Goldshtayn indicated to respondent that she could solicit clients for him. Respondent did not give the matter much thought and agreed to the arrangement. Although Goldshtayn brought fifteen files to

respondent, respondent "dropped" all of the cases by May 2001, receiving no compensation for any of them.

At the New York disciplinary hearing, respondent admitted that he was guilty of employing an individual for the purpose of soliciting cases. His law firm pleaded guilty to the felony of engaging in enterprise corruption. Respondent testified that, from May 2002, when he entered a guilty plea, and continuing to July 11, 2003, the date of the New York disciplinary hearing, he had not worked because of the publicity surrounding his guilty plea.

At the New York disciplinary hearing, respondent presented mitigating evidence. Five individuals testified that respondent was held in high regard by the community for his integrity, honesty, and trustworthiness. Respondent testified that he had emigrated to the United States from the former Soviet Union due to religious oppression and persecution, that he was expelled from medical school for refusing to denounce his family after his mother had applied for permission to leave the Soviet Union, that his family's home was searched a number of times by the KGB, and that his family was permitted to leave the Soviet Union in 1988. Respondent further asserted that he accepted cases that

other attorneys refused because of the associated financial risks.

In its brief, the OAE contended that a six-month suspension was warranted in this matter, pointing out that respondent failed to notify the OAE of his New York suspension and that, according to the New Jersey Lawyers' Fund for Client Protection, he has been on the ineligible list since September 25, 2000.

As mentioned above, respondent received a one-year suspension in New York for compensating an employee for soliciting cases, engaging in criminal conduct, and engaging in conduct prejudicial to the administration of justice.

Following a review of the full record, we determined to grant the OAE's motion for reciprocal discipline.

Reciprocal discipline proceedings in New Jersey are governed by Rule 1:20-14(a)(4), which provides:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full

force and effect as the result of appellate proceedings;

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

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

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). With respect to subparagraph (E), a review of New Jersey case law reveals that, although attorneys guilty of misconduct similar to that of respondent have received suspensions of various lengths, a suspension shorter than one year is appropriate in this matter.

In In re Frankel, 20 N.J. 588 (1956), the attorney paid a runner twenty-five percent of his net fee to solicit personal injury clients. He was charged with violating the Canons of Professional Ethics that prohibited soliciting clients (Canon 28) and dividing fees with a non-attorney (Canon 34). Id. at 590. Frankel contended that the fees paid to the runner were in the nature of compensation for investigatory services. Id. at 592. Frankel paid the runner $6,303.53 in 1953, which constituted the runner's primary source of income. Id. at 593. In imposing a two-year suspension, the Court noted that, while Canon 28 itself provided that the offender may be disbarred,

Frankel was the first attorney prosecuted for this type of violation. Id. at 598. The Court also cited Frankel's previously-unblemished professional reputation. Ibid. The Court cautioned the bar that in the future more drastic measures could be expected for similar infractions. Id. at 599.

Two years later, in In re Introcaso, 26 N.J. 353 (1958), the Court addressed the issue of the use of a runner to solicit criminal cases. There, three clients testified that a runner solicited them to retain Introcaso. Id. at 354. The Court found overwhelming evidence that Introcaso employed a runner to solicit clients in all three matters, improperly divided legal fees, and lacked candor in his testimony. Id. at 359. In imposing a three-year suspension, the Court considered that Introcaso's behavior had occurred prior to its decision in Frankel, and that Introcaso had enjoyed an unblemished reputation. Id. at 361.

In In re Bregg, 61 N.J. 476 (1972), the Court imposed a three-month suspension where the attorney, for approximately two and one-half years, paid part of his fees to a runner from whom he accepted referrals. Bregg kept no records of the transactions and payments were made in cash. Id. at 478. From memory, he was able to reconstruct a list of some thirty referrals made by the

runner. Ibid. The Court commented that the attorney in Bregg lacked the "studied and hardened disregard for ethical standards, accompanied by a total lack of candor" present in both Frankel and Introcaso. Id. at 478-79.

In In re Shaw, 88 N.J. 433 (1982), the attorney was disbarred for representing a passenger in a lawsuit against the driver of the same automobile and representing both the passenger and driver in litigation filed against another driver, using a runner to solicit a client in a personal injury matter, purchasing the client's cause of action for $30,000, and subsequently settling the claim for $97,500. Instead of depositing the settlement check into his trust account, the attorney gave it to the runner, who forged the client's name on the settlement check, and deposited it into his own bank account. Id. at 438.

In a more egregious case, the Court disbarred an attorney who, for a period of almost four years, used a runner to solicit personal injury clients. In re Pajerowski, 156 N.J. 509 (1998). In Pajerowski, the attorney stipulated to numerous ethics violations. Id. at 510. He used a runner to solicit clients, split fees with the runner, and compensated him for referrals in eight matters involving eleven clients. Id. at 515. While

claiming that the runner was his "office manager," in 1994 the attorney compensated the runner at the rate of $3,500 per week ($182,000 per year) for the referrals. Ibid. In each case, the runner visited the prospective clients (all of whom had been involved in motor vehicle accidents), either at their homes or in hospitals on the day of the accident or very shortly thereafter. Ibid. He brought retainer agreements with him and tried to persuade the individuals to retain Pajerowski to represent them in connection with claims arising out of the accident. Ibid. In some cases, the runner instructed the prospective clients to obtain treatment from specific medical providers, despite the clients' protestations that they had not been injured. Id. at 511. Thus, the Court found that the attorney knew about and condoned the runner's conduct in assisting his clients' filing of false medical claims. Id. at 522.

By splitting fees with the runner, the attorney also assisted in the unauthorized practice of law. In addition, he advanced sums of money to clients in ten instances and engaged in a conflict of interest situation. In ordering the attorney's disbarment, the Court advised that

> [a]lthough the public needs to be protected from the solicitation of legal business by runners, we do not find that disbarment is called for in every 'runner' case. In determining the appropriate discipline to be imposed in prior 'runner' cases . . . we have considered the circumstances surrounding each case. We intend to adhere to that approach in such cases.
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> [Id. at 521-22.]

The Court disbarred Pajerowski, finding that he acted out of economic greed, took advantage of vulnerable individuals, condoned his runner's conduct in assisting clients to file false medical claims, and committed other less serious acts of misconduct. Id. at 522.

In In re Pease, 167 N.J. 597 (2001), the Court imposed a three-month suspension on an attorney who paid a runner for referring fifteen prospective clients to him and who loaned funds to one of those clients. The attorney's misconduct was limited to a four-month period more than ten years prior to the ethics proceeding, when the attorney was relatively young and newly-admitted. In re Pease, Docket No. DRB 99-457 (September 18, 2000) (slip. op. at 20). He had not been previously disciplined, and had performed a significant amount of community service. Ibid.

Here, in our view, respondent's misconduct differed from that of the above attorneys in one substantial respect. He compensated an existing employee (or employment service) for bringing new cases to the office. Although this conduct is serious and violates the Rules of Professional Conduct, it is less unseemly than hiring a "runner" for the sole purpose of soliciting clients. In mitigation, we consider that the wrongdoing occurred over a relatively short period (six or seven months, from November or December 2000 to May 2001) and that, at the time, respondent was a young, inexperienced lawyer who overcame challenging and difficult circumstances to become an attorney in this country.

This case does not involve conduct as blatant as that in Frankel (two-year suspension), where the attorney paid a runner twenty-five percent of his net fee, which was the runner's primary source of income, Introcaso (three-year suspension), where the attorney employed a runner to solicit clients in three matters, improperly divided legal fees, and lacked candor in his testimony, Shaw (disbarment), where the attorney, in addition to engaging in a conflict of interest situation, bought the client's cause of action, settled the case for more than three times the amount than he paid the client, and gave the

settlement check to the runner, who forged the client's name and deposited the check, or Pajerowski (disbarment), where the attorney compensated a runner at the rate of $3,500 per week for referrals, condoned the runner's involvement in filing false medical claims, advanced money to clients, and engaged in a conflict of interest situation. Respondent's conduct is more akin to that in Bregg (three-month suspension for paying a portion of his legal fees to a runner for approximately two and one-half years) and Pease (three-month suspension for paying a runner for referring fifteen prospective clients and loaning funds to one of the clients).

Based on the foregoing, we determine that a three-month suspension, to be imposed retroactively to May 12, 2004, the effective date of the New York suspension, is the appropriate discipline for respondent's violations of RPC 7.2(c), RPC 7.3(d), RPC 8.4(b), and RPC 8.4(d). Vice-Chair William O'Shaugnessy did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Volf Zev Birman
Docket No. DRB 05-209

Argued: September 15, 2005

Decided: October 28, 2005

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley		X				
O'Shaughnessy						X
Boylan		X				
Holmes		X				
Lolla		X				
Neuwirth		X				
Pashman		X				
Stanton		X				
Wissinger		X				
Total:		8				1

Julianne K. DeCore
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Chief Counsel