SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-216
District Docket Nos. XIV-01-108E

IN THE MATTER OF :
HOWARD A. GROSS :
AN ATTORNEY AT LAW :

Corrected Decision

Argued: October 20, 2005

Decided: December 20, 2005

Nitza Blasini appeared on behalf of the Office of Attorney Ethics.

Joel B. Korin appeared for respondent.

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

This matter was before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics ("OAE").

Respondent was admitted to the New Jersey bar in 1992. On May 10, 2004, the Court suspended him for three months, effective June 1, 2004, based on his guilty plea to conspiracy to possess cocaine, a violation of N.J.S.A. 2C:5-2, a crime of the third degree. In re Gross, 179 N.J. 510 (2004).

On May 5, 2004, respondent received an admonition for gross neglect, lack of diligence, failure to communicate with the client, and practicing law while ineligible for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection ("CPF"). In the Matter of Howard A. Gross, Docket No. DRB 04-059 (May 5, 2004).

On June 28, 2005, respondent entered into a disciplinary stipulation with the OAE, which is summarized below. The complaint alleged that respondent violated 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).

In December 2000, Allstate Insurance Company, Inc. ("Allstate"), in an action then pending in Camden County Superior Court, conducted a deposition of an individual named David Garcia, regarding his involvement in a widespread scheme to defraud Allstate through claims for automobile accident-related injuries. The matter was later brought to the OAE's attention by Allstate.

In the Camden litigation, Garcia revealed that he had been employed by respondent as a paid "runner." Garcia was part of a one-hundred-person network that monitored Camden

area radio traffic using a "CB radio," for news of traffic accidents.

According to Garcia, he would rush to accident scenes and, once there, give accident victims a copy of respondent's business card, which he obtained from respondent for that purpose. Garcia received from respondent $300 for each accident case steered to respondent's law office in this manner.

On February 23 and August 27, 2004, the OAE interviewed respondent regarding the Garcia claims. The latter interview was tape-recorded.

Respondent admitted that, from 1998 to 2000, he had employed Garcia as a runner for Gross and Gross, the law firm that respondent and his father shared as partners.

Respondent stipulated that he had paid Garcia $300 on at least fifty separate occasions, between 1998 and 2000, for cases generated by Garcia. In order to facilitate the payments to Garcia, respondent wrote checks from Gross and Gross's business account, which he made payable to himself, with the notation "Client Development." Respondent then cashed the checks and gave the cash to Garcia.

Respondent also stipulated that he had utilized other runners, in addition to Garcia. However, the record contains

no details about those individuals, or the extent of respondent's involvement with them.

Respondent produced a statement of mitigation for his misconduct. He asserted that he had practiced law in Texas prior to his 1992 return to New Jersey to join his father's personal injury law firm, Alvin Gross and Associates.

In the OAE interview, and again in the stipulation of mitigation, respondent recalled that runners were a part of his life from an early age, when his father had invited "the runners" to respondent's Bar Mitzvah.

The statement of mitigation recites that

> [i]t was Alvin Gross who has [sic] hired David Garcia to act as a runner for his practice.
> Howard Gross was a salaried associate from 1992 until 1997 and had no financial interest in the firm other than that of an associate.
> It is undisputed that the use of runners stopped in 1999.
>
> [SM2.][1]

Respondent stipulated that his conduct violated RPC 7.3(d), which prohibits an attorney from giving anything of value to a non-lawyer in exchange for the procurement of clients. From 1997, when respondent began signing checks to

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[1] SM refers to respondent's statement of mitigation.

his runner, through 1999, when he ceased the practice, he repeatedly violated that rule.

The OAE recommended the imposition of a three- to six-month suspension.

After an independent review of the record, we are satisfied that the stipulation contains clear and convincing evidence of unethical conduct.

The only remaining issue is the appropriate quantum of discipline. Historically, paying runners to generate clients has resulted in discipline ranging from a suspension to disbarment. In an early case, 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). The payments to the runner constituted the runner's primary source of income. In imposing a two-year suspension, the Court noted that Canon 28 itself provided that the attorney may be disbarred. However, Frankel was the first attorney prosecuted for this type of violation, and had a previously unblemished record. In imposing a two-year suspension, 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. 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 360. The Court imposed 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 476. From memory, he was able to reconstruct a list of some thirty referrals made by the runner. Ibid. The Court noted 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. Ibid.

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. Id. at 438. 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. Ibid.

More recently, 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. He used a runner to solicit clients, shared 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) 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. 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. 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 sharing fees with the runner, Pajerowski 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. The Court stated 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 upon 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. He had not been previously disciplined, and had performed a significant amount of community service. In re Pease, Docket No. DRB 99-457 (September 18, 2000) (slip. op. at 20).

See also In re Maran, 80 N.J. 160 (1979) (six-month suspension where the attorney misused trust funds – the clients did not suffer any losses and overdrafts were covered by large sums of legal fees left in the attorney's trust account; compensated a doctor for the referral of patients to the law firm, the full extent of which is not known; and violated the terms and purpose of the contingent fee rule) and In re Moeller, 177 N.J. 511 (2003) (one-year suspension for multiple ethics infractions, including assisting in the unauthorized practice of law by rendering legal services to a corporation involved in providing living trusts to clients, engaging in conflicts of interest, accepting compensation from one other than the client, failing to reasonably explain matters to his clients, compensating others for securing clients for him, making misrepresentations to the Committee on Attorney Advertising, and publishing false and misleading ads

in connection with the living trusts). But see In re Gottesman, 126 N.J. 376 (1991) (public reprimand where the attorney divided his legal fees with a nonlawyer paralegal, who also acted as a runner, and aided in the unauthorized practice of law by allowing the paralegal to advise clients on the merits of claims and by permitting the paralegal to exercise sole discretion in formulating settlement offers).

We find that the facts here do not implicate respondent in the type of widespread misconduct for which Pajerowski was disbarred, or the greed and hardened disregard for the rules displayed by Introcaso and Frankel, each of whom received long-term suspensions.

On the other hand, respondent's conduct is more severe than that committed by Gottesman, where the conduct had occurred between sixteen and eleven years earlier. Mitigating factors in that case included Gottesman's rejection of a demand for payment after the professional relationship with the runner had terminated, and his belief that the practice was permissible, having first observed it at another law firm.

We find that respondent's misconduct is more akin to that displayed by the attorneys in Bregg and Pease, each of whom received three-month suspensions. In fact, respondent, like Bregg, used runners for about two years, kept no records of the transactions, and made the runner payments in cash.

Respondent also has a prior three-month suspension for possession of cocaine and an admonition for gross neglect, lack of diligence, failure to communicate with the client, and practicing law while on the CPF's ineligible list of attorneys. However, we note that respondent's cocaine possession, for which he received a three-month suspension, occurred in 2003, long after the runner phase of respondent's law practice. Therefore, we do not consider it an aggravating factor.

In mitigation, respondent inherited a system already in place in his father's firm. So, too, respondent fully cooperated with the OAE in its investigation of the matter, and was candid and remorseful.

Nevertheless, respondent's transgressions were serious, and were undertaken in such a way as to prevent detection. Because the misdeeds were numerous (over fifty payments to Garcia), we determined to impose a three-month suspension. Due to the passage of time (six years since respondent ceased the inappropriate practices), we voted to suspend the suspension. See In re Verdiramo, 96 N.J. 183 (1984) (suspension imposed retroactively to the date of attorney's temporary suspension, due to the "special circumstances" present in the case - the length of time he had been temporarily suspended and the passage of time). See also In re Alum, 162 N.J. 313 (2000),

(suspended suspension imposed upon attorney where mitigating factors were present, such as the attorney's candor, contrition, the passage of time, prior service to the community, and lack of prior discipline). Member Boylan did not participate.

We also require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

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

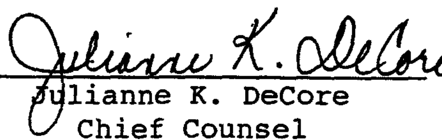
In the Matter of Howard A. Gross
Docket No. DRB 05-216

Argued: October 20, 2005

Decided: December 20, 2005

Disposition: Three-month suspended suspension

Members	Disbar	Three-month suspended 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
Chief Counsel