SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-083
District Docket No. XIV-99-157E
(formerly IIA-04-901E)

IN THE MATTER OF	:
EVANS C. AGRAPIDIS	:
AN ATTORNEY AT LAW	:

Decision

Argued: May 18, 2006

Decided: July 19, 2006

Lee Gronikowski appeared on behalf of the Office of Attorney Ethics.

Respondent, through counsel Alan Zegas, 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 recommendation for discipline filed by the District IIA Ethics Committee ("DEC"). The complaint charged respondent with violating RPC 7.2(c) (giving something of value for recommending the lawyer's services); RPC 7.3(d) (providing compensation for recommending the lawyer's services); RPC 5.4(a) (splitting fees with a non-

lawyer), and RPC 8.4(d) (conduct prejudicial to the administration of justice), based on his payments of referral fees to non-lawyer employees. Respondent admitted the allegations against him.

Respondent's law partner was originally charged with the same misconduct. During the DEC hearing, however, the presenter advised the hearing panel that the partner was unaware of the payments. The presenter moved to dismiss the allegations against the partner. The DEC recommended dismissal of the complaint as to respondent's partner. We agree with that action.

Respondent was admitted to the New Jersey bar in 1983. He has no history of discipline. For the reasons expressed below, we determine to reprimand respondent.

This matter came to the attention of the Office of Attorney Ethics ("OAE") after an investigation into insurance fraud, conducted by the Hudson County Prosecutor's Office. The case was referred to the OAE following allegations that respondent's law firm used runners.

Specifically, in 1997, 1998, 1999, and 2000 respondent paid twelve referral fees to his non-lawyer employees for referring cases to his law firm ("the firm"). The referral fees totaled $20,000. Nine non-lawyer employees received fees ranging from

$90 to $10,210.00. The amount of the referral fee was based on a percentage of the legal fee ultimately received by the firm. The policy was not firm-wide and not all employees were paid a referral fee.

Respondent paid the fees through the firm's payroll. Taxes were deducted. Records of the payments were kept in the ordinary course of business. IRS 1099 forms were issued to those employees who received the fees.

Respondent was unaware that the practice of sharing fees with non-lawyer employees violated the Rules of Professional Conduct. He considered the payments as "bonuses." Respondent discontinued the payments prior to the OAE investigation, when he read about a somewhat similar practice in a legal periodical and recognized that sharing fees with his office staff was questionable. He denied any intent to violate the RPCs.

The OAE recommended either a reprimand or a censure.

As the DEC noted, respondent testified that he learned of the impropriety of such arrangement when he saw a similar practice reported in a newspaper. The DEC, however, found respondent "not completely credible in this area." Although respondent's counsel stated that respondent would admit the allegations in the complaint, the DEC noted that "nonetheless his testimony fell short of a remorseful admission and he chose

to testify in reliance on his ignorance of the Rules of Professional Conduct."

The DEC found respondent guilty of each of the charged violations and recommended a reprimand.

Upon a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. Given the sufficiency of the evidence and respondent's admission of guilt, the only issue before us is the appropriate quantum of discipline.

This is not a case where an attorney paid a runner to generate business. Rather, respondent paid existing employees a percentage of the fee his firm received for cases referred by the employees. His conduct is akin to that found in In re Gottesman, 126 N.J. 376 (1991), where the attorney received a (public) reprimand for dividing his legal fees with a non-lawyer paralegal, who also acted as a runner. The attorney 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. See also In re Carroll, 118 N.J. 437 (1990) (reprimand imposed for attorney who waived his fee in exchange for a referral; the attorney was also guilty of other unrelated

misconduct); and In re Weinroth, 100 N.J. 343 (1985) (reprimand for attorney who agreed to return to a client a portion of his legal fee, knowing that the monies would be paid to the non-lawyer who recommended the client to the attorney).

The facts here do not implicate respondent in the greed or hardened disregard for the rules that we all too frequently see. This case is about ignorance of the rules. Clearly, respondent was not concealing his conduct: he kept records of the payments from his business account in the ordinary course of business, and he provided 1099 forms to the employees receiving the payments. Moreover, although the practice went on for four years, respondent made only twelve such payments. Nevertheless, the payment of referral fees to non-lawyer employees is serious misconduct and a practice that must be stopped.

> The prohibition of the Disciplinary Rule is clear. It simply forbids the splitting or sharing of a legal fee by an attorney with a lay person, particularly when the division of the fee is intended to compensate such a person for recommending or obtaining a client for the attorney. The policy served by this Disciplinary Rule is to ensure that any recommendation made by a non-attorney to a potential client to seek the services of a particular lawyer is made in the *client's* interest, and not to serve the business impulses of either the lawyer or the person making he referral; it also eliminates any monetary incentive for transfer of control over the handling of legal matters from the attorney to the lay person who is responsible for referring in

> the client. [Citations omitted.] The Disciplinary Rule also serves to discourage overzealous or unprofessional solicitation by denying compensation to a lay person who engages in such solicitation on behalf of a lawyer, or even as to another lawyer unless the latter has also rendered legal services for the client and the fee that is shared reflects a fair division of those services.
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> [In re Weinroth, supra, 100 N.J. at 349-350.]

This case is comparable to Gottesman, where the conduct had taken place at least eleven and as much as sixteen years earlier. Mitigating factors in that case included the attorney'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. Indeed, in some respects, respondent's conduct is less serious than that of Gottesman because the latter used an employee as a runner and aided in the unauthorized practice of law. Gottesman sent his employee out into the world to seek out clients for him. Respondent, on the other hand, rewarded his employees for suggesting his services to their friends and relatives. Respondent, however, does not have the mitigating factor of the passage of time.

It seems clear from the record that respondent had no knowledge that his conduct was in violation of the Rules of Professional Responsibility. He stopped the practice when its

questionable nature became apparent to him. Although we are aware that ignorance of the rules is no excuse, In re Berkowitz, 136 N.J. 134, 147 (1994), we have considered respondent's lack of intent in determining the appropriate measure of discipline for his infractions.

We unanimously determine that, on balance, respondent's misconduct is no worse than Gottesman's and that the same discipline – a reprimand – is appropriate here.

Members Baugh and Boylan did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for costs incurred in connection with the prosecution of this matter.

Disciplinary Review Board
William O'Shaughnessy, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Evans C. Agrapidis
Docket No. DRB 06-083

Argued: May 18, 2006

Decided: July 19, 2006

Disposition: Reprimand

Members	Suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy		X			
Pashman		X			
Baugh					X
Boylan					X
Frost		X			
Lolla		X			
Pashman		X			
Stanton		X			
Wissinger		X			
Total:		7			2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel