SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-217
District Docket No. XIV-01-107E

IN THE MATTER OF	:
ALVIN GROSS	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 19, 2006

Decided: December 11, 2006

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

John T. Kelly appeared for respondent.

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

This matter came to us on a recommendation for discipline filed by Special Master Tina E. Bernstein. The complaint alleged that respondent engaged in the use of "runners" in the law practice he shared with his son, Howard Gross, who received a suspended three-month suspension in March 2006. In re Gross, 186 N.J. 157 (2006).

Respondent was admitted to the New Jersey bar in 1960. He has no prior discipline.

The complaint alleged violations of RPC 5.1 (a) through (c) (failure to supervise junior attorney), RPC 7.2 (c) (improper payment to persons to recommend 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), and RPC 8.4(a) through (c), cited only as "misconduct."

This case involves the same set of facts that gave rise to the disciplinary matter regarding respondent's son, Howard Gross ("Howard"). In March 2001, an attorney for Allstate Insurance Company, Inc. ("Allstate") contacted the Office of Attorney Ethics ("OAE"), aware of his duty, under RPC 8.3(a), to report to ethics authorities knowledge of possible ethics infractions committed by other attorneys.

The facts are as follows: in an action pending in December 2000 in Camden County Superior Court, Allstate deposed David Garcia regarding his involvement in a widespread scheme to defraud Allstate through claims for automobile accident-related injuries.

The Camden County litigation revealed that Garcia had been employed by Gross and Gross as a paid "runner." Garcia testified that he was part of a one-hundred person network that monitored

Camden area radio traffic, through the use of a "CB radio," for news of traffic accidents.

According to Garcia, he would typically rush to accident scenes. Once there, he would give accident victims Howard's business card, which he had obtained from Howard for that purpose. On at least ten occasions, Garcia staged accidents by switching the names of drivers, vehicles, and passengers, in order to generate income from doctors and attorneys. Garcia denied any direct participation in the accidents themselves.

In his answer to the complaint, respondent denied that he had paid runners to obtain cases. He claimed that Howard had hired Garcia and that he believed that Garcia's job was "to provide transportation to clients and [act] as an interpreter for the office."

At the hearing before the special master, Howard testified against his father. According to Howard, he joined his father's law practice in 1992, after a six-year stint as an attorney in Texas. At first, Howard considered himself an associate in his father's law firm. He received $500 a week until 1996 or 1997, when he believed he became a partner.

According to Howard, the runners were "no secret" to respondent. Among them, he claimed, Garcia was the only "full-time" runner.

As he did in his own ethics proceedings, Howard admitted that he had written at least fifty-eight checks to Garcia, in amounts ranging from $250 to $350, for cases referred in 1997 and 1998. Howard stated that, although he had written those checks, respondent was generally aware of the improper checks to Garcia, as well as improper cash payments to Garcia.[1] Howard acknowledged that "there were other runners that brought us less cases, but we didn't call them runners." He testified that

> [t]hey were like friends who had cases, you know. [Garcia] seemed to be the only one who was kind of making it full time, but other people, you know, if they – if they had a friend who had a case, Howard, can you help me out with a few bucks? Technically that still falls within the category of runners, but we didn't call them runners.
>
> [1T46-10 to 16.][2]

Howard was asked if he had ever discussed the business account checks with respondent, or if respondent had ever asked him why he had written so many checks to Garcia. He replied:

> Yes, but I don't remember when. I mean, you know, I did – ten years ago. So did he ask me about which check? Did he ask me about that check? He did not ask me about – I have no recollection of him asking me about check

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[1] In addition to his "running" activities, for a time Garcia performed other services for the firm, such as Spanish translation.

[2] "1T" refers to the transcript of the May 3, 2006 hearing before the special master.

1104. Did we discuss the checks in a whole? Yeah, sure. It was a lot of money.

[1T51-19 to 25.]

Howard was also asked about similar business account checks from respondent to other individuals: Carlos Molina, George Boyer, Confessor Vidro, Ernest Downey, and Oscar Rodriguez. Howard asserted that all of these individuals had been paid for bringing clients. In effect, he stated, they were runners. Howard did not, however, specifically testify about the extent of respondent's knowledge of the purpose of the checks.

Exhibit OAE2 at its unmarked third page generated considerable exchange at the hearing below. That document is a bank copy of the front and rear of business account check No. 10966, signed by respondent. The check, dated October 10, 1997, was made out to George Boyer for $350. The OAE had originally obtained it in Howard's matter and had given Howard a copy. On the exhibit, Howard had written the words "Dad's runner."

When asked, in these proceedings, about that notation, Howard explained that he had made it for his ethics counsel in his own disciplinary proceedings, and had never intended that it be seen by the OAE with that notation. Howard then acknowledged that he had made the notation because George Boyer was his father's, not his, runner. Later, on cross-examination by respondent's counsel, Howard again asserted that Boyer

> was a runner as in, only [Garcia] was, like full-time runner, but did George bring in cases, yeah? And did we pay him? Yes.
>
> [1T80.]

That testimony was consistent with statements in Howard's own matter, both during the OAE interview and in a stipulation of mitigation, to the effect that runners were a part of his life from an early age, and that his father had invited "them" to his Bar Mitzvah. The following quote, from Howard's statement of mitigation, is contained in our decision in that matter:

> [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.
>
> [In re Gross, DRB 05-216 (December 20, 2005) (slip. op at 4).]

When the special master asked Howard why he had made that statement, he countered, "'Cause I believed it to be true." When pressed, and asked how, at age thirteen, he knew what a runner was, he explained that he had not known that at the time. Rather, he stated,

> I base it on – I base it on my mom telling me that Collie Hairston and Apple Still used to run cases for dad at Campbell Soup and that dad would bitch to mom about them

asking for more money.

[1T86-1 to 4.]

Finally, Howard gave perspective to his statements to ethics authorities:

> Q. You told us that your father was aware and in fact paid runners, correct? Yes or no?
>
> A. Correct. Correct.
>
> Q. Why did you tell us that? Why did you tell the Office of Attorney Ethics that?
>
> A. Because it's the truth, and actually, you may recall, the first couple times you asked me I didn't, but you kept asking me, so finally I did, and the truth of the matter, whether you guys have all the checks there, I wasn't going to sit there and tell you — lie to you that I did all on my own [sic].
>
> . . . .
>
> Because I did it and I wasn't going to lie to you guys. I mean, you know, runners is bad enough . . . . I wasn't going to compound that by lying to the ethics people.
>
> [1T107-24 to 1T108-19.]

Respondent, too, testified at the May 3, 2006 hearing. For the first time since the 2001 ethics investigation began, he admitted that he was aware of, and participated in, payments to Garcia, between 1997 and 1998:

> A. I first became aware of David Garcia when he was spending a lot of time in the office, because I would come back from

worker's [sic] comp court and he would be sitting there. He would be there often. I became aware of him.

Q. What did you understand Mr. Garcia was doing?

A. I knew at that particular time that he was running cases for the office.

Q. When did you become aware of that?

A. I don't remember. Approximately '97, something like that.

Q. When you became aware of it, what did you do?

A. Well, the first thing is I accepted it because I knew without him being there there would be no work for Howard to do. So I accepted it and that's what happened.

[1T167-22 to 1T168-14.]

Respondent's practice had been primarily confined to workers' compensation cases, but that percentage changed with Howard's arrival at the firm in 1992. Howard began to take on personal injury cases.

When shown copies of checks to Garcia with his signature, respondent acknowledged that he had paid Garcia for the referral of cases:

Q. Do you know when was the first time [you ever saw Garcia?]

A. I just knew that he was a frequent person there all the time. I knew what he was doing . . . . and unfortunately I couldn't avoid him because he wouldn't go

home and I had to pay him or else he would have stayed overnight.

Q. When you say you had to pay him, did you know you were paying for him to bring clients?

A. No question about it.

[1T187-25 to 1T188-13.]

Respondent also knew about the other individuals whom Howard had classified as runners, and referred to them as Howard's runners.

With specific regard to checks that he had drafted to "Howard's" other runners, respondent acknowledged writing the following: (a) a December 3, 1997 check to Confessor Vidro for $300 with a notation "transportation"; (b) a check to Ernest Downey, dated October 28, 1998, and another dated April 12, 1999, totaling $700; and (c) two checks (each for $300) to Carlos Molina, dated January 5, 1997 and April 30, 1999. Respondent denied knowing of the purpose of the checks when he wrote them. He claimed that he had only a general recollection of their probable purpose.

For example, respondent recalled that Molina had been his own friend, a law enforcement officer who occasionally borrowed funds from him. Thus, he stated, those checks to Molina may have been loans. He added that other checks, including those to Vidro and Downey, which bore his written notation "Transportation,"

were for transportation of other clients, typically to and from doctor's appointments. Respondent had no explanation for the apparent high cost of transporting those local clients.

Respondent also testified about a group of checks to George Boyer that, on their face, appeared to be checks for running purposes. Boyer had been a close friend of respondent and the supervisor of public works in Camden, during the time period in question. Between 1997 and 1999, respondent wrote at least four checks to Boyer, totaling $1,450.

According to respondent, Boyer was not a runner, but ran errands for him, including transporting clients to and from appointments. Respondent vigorously denied the veracity of Howard's statements and of the notation "Dad's runner" on the OAE materials. Rather, he insisted, the payments were to a long-time friend for legitimate services. Respondent also recalled that, in addition to paying Boyer for those services, he made a loan to Boyer out of the business account.

Respondent reiterated that he had never paid anyone to bring cases into the office prior to Howard's arrival at the firm, and that Howard alone was responsible for bringing all of the runners into the office. Respondent also stated that he, not Howard, had put an end to the use of runners by closing out all

personal injury cases in the office around 1999 or 2000, before the ethics investigation began.

Finally, respondent testified about an agreement that he and Howard had with Allstate to settle its claims. That agreement, also a part of the record in Howard's ethics matter, called for Gross and Gross to pay Allstate $150,000, pursuant to the New Jersey Fraud Prevention Act (N.J.S.A. 17:33A-1, et seq.), in settlement of its claims in the Camden lawsuit.

The agreement, under which the parties did not admit guilt, specifically prohibited Howard from representing parties with claims against Allstate. Respondent, on the other hand, was not prohibited from doing so. The agreement also required that any discussion between Allstate and Gross and Gross about the agreement be handled by respondent, not Howard. Respondent offered this document as further evidence that Allstate's animus was pointed directly at Howard, and at curbing Howard's activities, not respondent's.

George Boyer testified on respondent's behalf, acknowledging that they had been friends for forty years. He recalled retaining respondent for at least four workers' compensation claims over the course of his career with the city. He stated that respondent had employed him occasionally over the years, but was adamant that his job was simply to run errands.

He claimed that he had taken vacation days from his city job to do so.

Respondent called several other witnesses to testify on his behalf. Kimberly Amanto, respondent's long-time secretary, testified that respondent never paid runners, but conceded that she did not have access to, or knowledge of, his dealings with the business account. Likewise, she was unfamiliar with personnel issues, stating that both respondent and Howard kept track of employees and their hours.

In addition, respondent presented several character witnesses, including Stephen Orlofsky, a former United States District Court judge, who testified that respondent was an honest, conscientious, hard-working, and ethical attorney, despite the charges against him. The witnesses unwaveringly portrayed respondent as a highly respected elder, with an unrivaled knowledge of workers' compensation law, and as an attorney who had shown dedication to the law and to his community over a forty-year legal career.

Respondent then offered mitigation for his actions. He expressed shame for having allowed Howard to use runners, acknowledging that he had known about it and should have stopped the practice sooner. He explained, however, that he had been a doting father to his three sons, of whom Howard was the eldest.

Respondent also testified that his middle son had died of cystic fibrosis at an early age, and that his third son had been diagnosed in 1966 with the same disease, at age four. That child's prognosis was poor. Doctors had given him only eight more years to live. Thankfully, respondent stated, the doctors were wrong, and that son survives to this day. So, he added, when Howard left his Texas law practice to come back to New Jersey in 1992, he had taken Howard in without asking any questions. Respondent was asked why, after he had become aware of Howard's earlier problems with ethics authorities, he had allowed him to continue at the law firm:

> Everybody knows why I do. Because he's my son and I know what he does. I know what he did. I observed it. I wish I was smarter, thrown it out faster, but I didn't, and he's still with me, because I know in my heart that no one else will take him because he has a strange lot of stuff.
> I don't know why he left Texas. I really don't know for sure, but when he came to me I didn't think he had a chance to go many places, even though he's a brilliant guy. He went to the best law school. Like a dopey guy, I think I have to take care of him.
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> [1T182-10 to 20.]

Finally, respondent was asked if he would take prompt action if he learned of future improprieties in the office. He stated, "I hope I'm matured, even though I'm 75. I hope I'm matured and that's all I can tell you."

The special master found respondent guilty of failure to supervise a junior attorney (RPC 5.1), providing something of value to a person for recommending his legal services (RPC 7.2(c)), and compensating a person as a reward for a successful recommendation (RPC 7.3(d)). The special master considered the RPC 8.4 violations subsumed in the other findings, rather than separate violations.

The special master recommended a four-month suspended suspension. The OAE urged us to impose a six-month suspension.

Upon a de novo review of the record, we are satisfied that the special master's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

This is a somewhat tragic tale of a father and son who took aim at each other in their respective hearings.

Notwithstanding Howard's testimony that runners were present in the office pre-1992, there is no clear and convincing evidence that it was so. In addition, this record does not clearly and convincingly establish that, if the office used runners prior to 1997, respondent knew about them. The evidence of a "culture of runners" prior to that time was unsubstantiated, having been based on Howard's recollections, in this and in his own ethics proceedings, that respondent used

runners long before 1997, even inviting them to Howard's Bar Mitzvah.

Importantly, however, Howard did not base his understanding of alleged earlier runners on any discussions with his father. Rather, his testimony was based on information from his mother, whom he also claimed "hated Dad."

As to Boyer, respondent claimed that, in their forty-year friendship, he had not once paid Boyer for the referral of cases. Rather, the payments were for legitimate errands for which his friend had charged a fee. On one occasion, respondent claimed, he had written a check to fund a loan to Boyer.

Boyer, too, claimed that, over the years, respondent had paid him for legitimate errands only, and that, on one occasion, he had made a small loan to him. Those checks from respondent to Boyer and others, including Molina, Vidro, Downey, and Rodriguez, totaled in the thousands of dollars. No records were kept regarding their purpose — a suspicious scenario to be sure. Indeed, the special master concluded that Boyer's testimony that he had a legitimate position in the office was not credible. She concluded that respondent's checks to him and the others included payments for running cases.

Nevertheless, we are unable to make the finding that respondent's payments to Boyer, Molina, Vidro, Downey, and

Rodriguez constituted compensation for referring cases to the office. Although it is possible that such payments were for improper purposes, the evidence in this regard does not rise to the level of clear and convincing.

Respondent's dealings with Garcia are a different matter. RPCs 7.2 and 7.3 prohibit the making of payments to persons for recommending the lawyer's services, or payments for successful referrals to a law firm. Respondent conceded that he had actively participated in "Howard's" running scheme by issuing several payments to Garcia himself. He admitted that, when he drafted the checks to Garcia, he knew that Garcia was a runner in the office. Respondent's payments to Garcia violated RPC 7.2 (c) and RPC 7.3 (d).

As to the charged violation of RPC 5.1(c), that rule states that:

> A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
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> (1) the lawyer orders or ratifies the conduct involved; or
>
> (2) the lawyer having direct supervisory authority over the other lawyer knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Howard was an associate in Gross and Gross from 1992 until about 1996 or 1997, when he claims, he became a partner. In 1997, they were the only two lawyers in the firm. Nevertheless,

respondent was, by all accounts, a seasoned, competent and conscientious elder attorney, clearly in the better position to guide the practices at Gross and Gross. He had a responsibility under the rule to stop the use of runners as soon as he learned about it – and certainly without participating in it. We determine that, under either a direct supervisory capacity as the senior partner (RPC 5.1(b)), or as Howard's co-equal partner (RPC 5.1(c)(1) and (2)), respondent had a duty to halt the practice of using runners as soon as he became aware of it. He admittedly did not do so.

A lingering question remains regarding the early employment of runners at Gross and Gross. Howard testified that it was respondent who introduced them to the firm (a significant mitigating factor, when we considered his disciplinary matter). Respondent claimed that it was Howard who did so. The record includes the contradictory testimony of a father and son, each pointing the finger at the other, hearsay statements attributed to the mother, and no competent evidence of pre-1997 runner activities at Gross and Gross. The proofs are in equipoise on this point.

Finally, with regard to the charged violations of RPC 8.4 (a) through (c), we find appropriate the special master's resolution to subsume the violation of RPC 8.4(a) in our

findings of violations of RPC 7.2 and RPC 7.3. The complaint did not specify what conduct of respondent, or which subsection, was violated. Nor was the issue litigated with any specificity. As to RPC 8.4(b) and RPC 8.4(c), nothing in the record supports a finding of violations of those rules.

Ordinarily, 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 only a two-year suspension, the Court cautioned the bar that, in the future, more drastic measures could be expected for similar infractions.

Two years later, in In re Introcaso, 26 N.J. 353 (1958), the Court addressed the issue of using 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. 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.

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. From memory, he was able to reconstruct a list of some thirty referrals made by the runner. 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.

In In re Shaw, 88 N.J. 433 (1982), the attorney was disbarred for 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. The attorney also represented a passenger in a lawsuit against the driver of the same automobile and represented both the passenger and driver in litigation filed against another driver.

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, split fees with the runner, and compensated him for referrals in eight matters involving eleven clients. Although he claimed 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. 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. 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.

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. The Court held 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 infractions.

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. He had not been previously disciplined, and had performed a significant amount of community service.

We also, necessarily, are mindful of the discipline imposed in Howard's case. There, we found that the facts did not implicate Howard 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.

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

Here, we cannot find misconduct by respondent prior to 1997. As in Howard's case, the record supports a finding that respondent condoned the use of runners for roughly two years.

In aggravation, only this respondent, as the senior member of this two-member firm, was in a position to halt the practice, or to "nip it in the bud." Moreover, as the leader of the firm, he benefited financially from the practice for the period of time he sanctioned it.

In mitigation, respondent is a seventy-five-year-old, well-respected attorney with no prior blemishes in a forty-five year career at the bar. He acted partially out of concern for his son. If, as respondent's counsel argued, Howard was the real culprit here, we may have been too lenient with him when we gave him considerable consideration for having been raised in a "culture of runners." If it is true that we were too lenient with Howard, we do not want to compound the error now by being too lenient with respondent. We, therefore, determine that general precedent and the overall circumstances require a prospective three-month suspension in this case. Member Neuwirth 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
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 Alvin Gross
Docket No. DRB 06-217

Argued: October 19, 2006

Decided: December 11, 2006

Disposition: Three-month suspension

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

Julianne K. DeCore
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Chief Counsel