SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-457

IN THE MATTER OF

CLARK PEASE

AN ATTORNEY AT LAW

Decision

Argued: March 16, 2000

Decided: September 18, 2000

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Carl D. Poplar appeared on behalf of respondent.

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 Special Master David H. Dugan, III. The formal complaint charged respondent with violations of *RPC* 5.3(c) (failure to supervise nonlawyer employee), *RPC* 7.2(c) (giving something of value to a person for recommending the lawyer's services), *RPC* 7.3(b)(1) (contacting a prospective client to obtain professional employment knowing that the physical, emotional or mental state of the person was such that the person could not exercise reasonable judgment in employing a lawyer), *RPC* 7.3(b)(4) (directly contacting a prospective client concerning a specific event when such contact has pecuniary gain as a significant motive), *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* 7.3(f) (accepting employment when the lawyer knows or it is obvious that the person who seeks the lawyer's services does so as a result of conduct prohibited under this Rule) and *RPC* 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another).

Respondent was admitted to the New Jersey bar in 1984. Respondent is also admitted to the Pennsylvania bar. He is a partner with Blumstein, Block & Wease, which maintains offices in Philadelphia, Pennsylvania and Merchantville, New Jersey. Respondent has no disciplinary history.

* * *

The facts in this matter are not disputed. Respondent acknowledged that, from August through November 1989[1], he paid William Whiting, a tow-truck operator whom he labeled "investigator," for the referral of personal injury cases to his law firm. Respondent and the Office of Attorney Ethics ("OAE") entered into a stipulation of facts. The remaining evidence was adduced through the testimony of respondent and his "character witnesses." The stipulation of facts recites as follows:

> In contemplation of the ethics hearing to be conducted in the above-captioned matter, this Stipulation is made and entered into by and between Walton W. Kingsbery III, Esq., Deputy Ethics Counsel, on behalf of the Office of Attorney Ethics and Teri S. Lodge, Esq., on behalf of the respondent.

[1] As explained below, due to protracted civil litigation, the ethics proceedings were substantially delayed.

THE PARTIES DO HEREBY STIPULATE AND AGREE, AS FOLLOWS:

1. Respondent, Clark Pease, was admitted to the bar of the State of New Jersey in 1984.

2. At all relevant times herein, respondent practiced law in a partnership under the name of Blumstein, Block & Pease with New Jersey law, offices at 220 North Centre Street, Merchantville, New Jersey 08109.

3. Respondent is also admitted to the bar of the State of Pennsylvania.

4. In or about August 1989, respondent's brother-in-law, Bill Palo, recommended one one [sic] William Whiting a/k/a John Whiting, Jr., William Cope, Jr., William S. Whiting and William S. Whiting, Jr., as an investigator to respondent's law firm. Mr. Palo was a family member and trusted advisor to Mr. Pease. Respondent and his partners agreed to utilize Mr. Whiting's services.

5. During the months of August, September, October and November, 1989, Whiting referred at least twelve personal injury cases to respondent and/or his firm.

6. After each such referral to the firm, Whiting was paid by attorney business account checks authorized by either respondent, Bloch or Blumstein.

7. In general, Whiting would ascertain the names, claim and insurance information of the victims and then telephone or visit respondent to give him the information.

8. Respondent would then telephone the accident victims, mention that Whiting had provided their name to him and set up an appointment to have a retainer agreement signed.

9. In some cases, respondent would travel to meet the accident victims; in other cases, prospective clients came to respondent's office.

10. The following table indicates the client name, date of accident, date of retainer agreement, date of payment to Whiting and attorney business account check number of the check issued to Whiting, of eleven clients which Whiting referred to respondent and/or his firm:

CLIENT NAME	ACCIDENT DATE	RETAINER SIGNED	WHITING PAID	CHECK NUMBERS	AMOUNT TO WHITING
LENOIR	10/11/89	10/19/89	10/20/89	2506	$1,000
REYES [sic][2]	unknown	unknown	10/20/89	2505	$2,750
			10/23/89	2507	
JONES	10/24/89	10/27/89	11/06/89	2596	$1,500
UNGERER	10/24/89	11/02/89	11/03/89	2595	$1,000
BERGMAN	10/05/89	undated	10/06/89	2419	$ 500
CONSALO	09/14/89	09/20/89	09/22/8§	2322	$ 750
TIANO	09/06/89	undated	09/15/89	2266	$ 500
BULL	10/04/89	10/10/89	11/10/89	2665	$ 750
HAMILTON	08/06/89	undated	08/25/89	2155	$ 750
CASTANEDA	10/18/89	10/25/89	10/26/89	2542	$3,000
				2543	
				2544	
COLLINS	09/24/89	09/26/89	09/28/89	2351	$ 500

11. The checks to Whiting in the Hamilton and Castaneda cases include the memo notation 'Outside Services'.

12. In addition, on August 31, 1989, Whiting was paid $1,000 by attorney business check number 2188 marked 'outside services'.

13. Two further $500 attorney business account checks marked 'T. Brilland' were issued to Whiting on October 12 and 13, 1989.

14. The sum of the attorney business account checks payable to Whiting, noted above, totaled $15,000, which was the amount reported on a 1099 tax form the firm provided to Whiting for 1989.

15. During the period of time in which respondent and his firm utilized Whiting's services, Whiting received payment only in those cases which he referred to the firm.

16. There was no written agreement between respondent or respondent's firm and Whiting.

17. A twelfth matter which Whiting referred to respondent and/or his firm was the Derik Chambers personal injury case.

18. On or about November 13, 1989, Patricia Joyce's minor son, Derik Chambers was hit by a car while riding his bicycle near his home in Blackwood, New Jersey.

19. Chambers sustained bodily injuries and was taken to Cooper Medical Center in Camden where he was admitted.

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[2] The correct spelling is Rayes.

20. On November 15, 1989, Whiting telephoned respondent and indicated that he had spoken with Patricia Joyce and that she was interested in retaining respondent to represent her and her son.

21. Respondent telephoned Ms. Joyce at Cooper Medical Center and asked if she would like respondent to meet with respondent.

22. Ms. Joyce agreed and, on the next day, respondent went to Cooper Medical Center and Joyce retained respondent by executing a written contingency fee agreement.

23. On November 17, 1989, respondent issued Whiting an attorney business account check in the amount of $750 with the memo notation: 'D. Chambers'.

24. On the same day, [an attorney] contacted respondent and advised that Patricia Joyce had retained him to represent her son, Derik Chambers, and that respondent was no longer their attorney.

25. On November 20, 1989, respondent wrote Whiting and asked him to reimburse the $750 'or any unused amount of the investigation fees paid to date'.

26. Respondent and his firm severed their relationship with Whiting after [the attorney] notified respondent that he had improperly solicited Chambers' case.

27. In addition, respondent made a personal loan to his client Collins on November 11, 1989.

28. Collins signed a note for a $300 personal loan from the respondent which provided that the $300 loan would be deducted from the settlement proceeds from Collins' personal injury case or by Collins personally.

29. Collins' settlement sheet reflects that respondent was repaid upon settlement of the personal injury case.

IT IS FURTHER UNDERSTOOD AND AGREED that the foregoing stipulation is not a comprehensive stipulation of the facts of this matter. At hearing, respondent and/or the Office of Attorney Ethics may seek to introduce such other evidence, not inconsistent with the facts stipulated herein, as each of them may deem appropriate.

The following facts were gleaned from the testimony and documents offered at the ethics hearing.

The first matter that Whiting referred to respondent was an automobile accident case in which George Hamilton was the client. Hamilton signed a contingent fee agreement shortly after the August 6, 1989 accident. Whiting received a $750 check from respondent's firm dated August 25, 1989. The "memo" column of the check contained the phrase "outside ser.," an abbreviation for "outside services." On Hamilton's client ledger card, the check to Whiting was reflected in the "fees" column. The "costs" column of the ledger card also listed a $354 check paid to Frank Martino Investigations on September 7, 1989. In an August 22, 1989 letter to respondent, Frank Martino stated that, pursuant to respondent's request, he had visited Hamilton, obtained his signature on paperwork (presumably the contingent fee agreement) and ordered the police report. Thus, although respondent paid Whiting $750, he also hired and paid Martino, another investigator, who actually performed investigative services. At the ethics hearing, respondent explained the firm's relationship with Whiting as follows:

> Q. I guess my question is, why did you pay Mr. Whiting after you had already retained Mr. Martino to commence his investigation in the matter?
>
> A. Well, part of this, I believe this was one of the first cases that came to us from Mr. Whiting. Part of what he presented to us was that he was brand-new at this and wanted to open up a business, wanted to hire employees, wanted to start an office in Chester. He asked for money up front. He asked for – he didn't necessarily say to me or to anybody in the firm, give me X amount of dollars for X case. He was coming in saying, I need this amount of money. He would give us an amount of money. This particular case, I guess it was $750. It looks like this was the very first one. He had all sorts of ideas about what he was going to be doing, and he spoke with all of us about that, start-up, expenses, and what have you. As part and parcel of that, we had an expectation that he would also do investigative work. In this particular case, he may have done something but he did not do investigation to justify that $750 payment . . .
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> Q. Are you telling me that even as of the first case that he brought in, you had still hired another investigator to do the investigations?
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> A. We did, but again, I'm not telling you that he came in and said to me, give me $750 so I can investigate the George Hamilton case. What he

said to me was . . . I need $750 to begin. I have men that work for me. I'm going to be opening up an office in Chester. I need up-front money that in time, I will have done the work for. So, it was an odd beginning. It was different. We knew him to be someone who could also get us business, frankly. As part of that, we took a step which turned out to be a misstep.

Q. Are you saying that you never expected Mr. Whiting to do any investigation for you on this file?

A. Not necessarily on this file. He still could have given us something that would have contributed to the file. But to justify a $750 payment, no.

Q. Did the fact that he was referring cases to the office figure in the amount of his payment?

A. Not in the amount of the payment, but in the beginning of the relationship with him. . . [W]e were aware that he had the ability to refer cases. I don't think we would have considered this situation at all had that at least not been a part of it, and it was a part of it.

Q. You were aware as of the beginning of the relationship then that he was going to be referring cases to you?

A. We believed that he would be a source of additional work, yes.
[IT156-159][3]

In two other cases, the *Tiano* and the *Bull* matters, respondent's firm paid Whiting $500 and $750, respectively, in addition to hiring and paying Frank Martino for investigative services.

In general, the payments to Whiting were not treated as expenses, as were the payments to Frank Martino. For example, the payments either did not appear on the client ledger card or were entered as "fees." Also, they did not appear on schedules of distribution upon settlement of the cases. Moreover, the checks to Whiting usually contained the name of the client in the "memo" column, although several checks bore the designation "outside services."

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[3] IT refers to the May 10, 1999 hearing before the special master.

Between August and November 1989 Whiting referred numerous personal injury cases to respondent as follows:

Client	Accident Date	Retainer Date	Whiting Paid	Whiting Fee	Respondent's Fee
Hamilton	08/06/89	Undated	08/25/89	750	13,320
Unknown	Unknown	None	08/31/89	1,000	None
Tiano	09/06/89	Undated	09/15/89	500	4,600
Consalo	09/14/89	09/20/89	09/22/89	750	5,000
Collins	09/24/89	09/26/89	09/28/89	500	2,880
Bull	10/04/89	10/10/89	11/10/89	750	33,330
Bergman	10/05/89	Undated	10/06/89	500	8,580
Brilland	Unknown	None	10/12-13/89	1,000	None
Lenoir	10/11/89	10/19/89	10/20/89	1,000	None
Rayes	Unknown	Unknown	10/20/89	2,750	None
Castaneda	10/18/89	10/25/89	10/26/89	3,000	115,777
Jones	10/24/89	10/27/89	11/06/89	1,500	33,267
Ungerer	10/24/89	11/02/89	11/03/89	1,000	Unknown
Unknown	Unknown	None	11/10/89	750	None
Chambers	11/13/89	11/16/89	11/17/89	750	None

Respondent received no fee in the following matters and for the following reasons:

- Brilland and Rayes chose not to retain respondent.[4]
- In *Lenoir*, a workplace injury case, there was no recovery.
- In two "unknown" matters in which Whiting was paid a fee, the prospective clients chose not to retain respondent. The matters cannot be identified because the names of the clients were not noted on the check to Whiting.

[4] When respondent learned that Rayes would not be retaining him, respondent asked Whiting to return the $2,750 fee. Whiting failed to do so.

Only the *Consalo* and *Chambers* matters had New Jersey connections. The remaining cases arose in either Pennsylvania or Delaware. The jurisdictional issues are analyzed below.

The last matter that Whiting referred to respondent was *Chambers*. On November 13, 1989, Derik Chambers, a thirteen-year old boy, was riding his bicycle when he was hit by a car. He was taken to Cooper Medical Center. The next evening, November 14, 1989, Whiting telephoned respondent at home, telling him about the accident. Whiting informed respondent that he had spoken with Derik Chambers' mother, Patricia Joyce, that he had recommended respondent to her and that Joyce wanted respondent to call her. According to respondent, he called Joyce, who was in a temporary room at Cooper Medical Center, awaiting her son's surgery. (Presumably, Joyce's access to a telephone was limited.) Respondent met with Joyce the next day, November 15, 1989, and obtained her signature on a contingent fee agreement. Although the accident occurred in New Jersey, respondent inadvertently brought a Pennsylvania contingent fee agreement form that provided for a higher fee than is allowed in New Jersey. Respondent stated that Joyce was "lucid," asked pertinent questions, was accompanied by a male and appeared to understand their discussion.

On November 17, 1989, two days after Joyce had signed the fee agreement, Whiting received a $750 check from respondent's firm with the notation "D. Chambers." On that same day, respondent received a telephone call from a New Jersey attorney who announced that Joyce had discharged respondent and had retained him instead. Respondent described the attorney's tone as accusatory, threatening and menacing. According to respondent, the attorney asserted that respondent's solicitation of Joyce had been improper. Upset by the telephone call, respondent discussed the matter with his partners. They determined to sever their relationship with Whiting. Although the firm requested Whiting to reimburse the $750 or the unused portion of his fee for the *Chambers* matter, Whiting failed to do so.

During the ethics hearing, respondent acknowledged that Whiting was not an investigator and that his firm paid Whiting only for referrals. Respondent testified as follows about the firm's arrangement with Whiting:

> Q. Had there been any acknowledgment prior to that, either overtly or just in your own mind, that Mr. Whiting was, in fact, not performing investigations and that he was, in fact, expecting payment for the referral of cases only?
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> A. Yes, That was certainly in my mind. In fact, **I knew that these funds were being given to Mr. Whiting to get cases to come into the office.** Our intention when we sat down with Mr. Whiting, I remember he was introduced to us. I didn't go out to try to find Mr. Whiting. He was introduced to us. He came to our office, and I have two very good partners, two very honest partners, and I believe I am very honest, as well. The three of us sat down, met with this man and thought that there was some way that we could work together, do business together and do it properly. The problem, though, we knew there were problems when we sat down with him. We knew that there were worries and concerns that could affect our law firm. We made a very bad mistake to start up with this guy. But, we did think that somehow, by doing things a certain way, including getting reports from him, letting him do work for us, writing him checks, making him pay taxes, we thought, probably self-delusional thoughts, but we thought we could do something that was appropriate. Very early on, it was obviously not appropriate. Certainly to me, I knew it was not appropriate. However, I have to say that certain business was coming in. You know, I was handling personal injury at the time. Our firm has always struggled. We are not millionaires by any means. We do what we can do. All of a sudden, work was coming into my office. In some cases, types of cases that I would have never gotten before.
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> Q. The money was good?
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> A. It took a while for that to happen. I don't think any of these cases had settled by the time we cut Mr. Whiting out. I didn't know where the cases were going to go. But I did know enough about personal injury work to know that certain cases are better than others. There were some substantial injuries. My error, where I am totally wrong, is that somehow, by being blinded by that, I let this go too far. We had a situation that could have been stopped early on, and I didn't do it. Mr. Whiting, you know, while he was convincing in one way, he was sort of transparent in another, and we should have seen it. He came into our

> office and laid out a situation that, you know, if you sat in the room and listened to it, it sounded doable [sic]. It sounded possible. But, you know, three partners sat and talked about it, talked about it repeatedly. After the second or third meeting, for us to have spent that kind of time dealing with an investigator is a light bulb. First of all, you don't pay an investigator this kind of money. You don't pay an investigator before the work is done. You just don't do this. I did. However, when that phone call came from [the attorney], it rang true because a lot of the things that we had already talked about in our law firm, I mean, we had already had meetings on this. We had said, this is not good, something has to be done about this, but yet, the cases were coming in. That's, I guess, a mistake that I have to live with. We didn't cut it off when we should have. [The attorney] made it quite easy. When he called, he did this thing on the phone with me, which was more than startling. I hung up that phone call shaking because Mr. Whiting had no business being in my life and no business being in my firm's life. We are just not the kind of people that deal with this. [Emphasis added].
>
> [2T208-211][5]

With respect to Whiting's methods of obtaining clients, respondent testified as follows:

Q. Did you ever ask Mr. Whiting how he came by these cases?

A. I had my own ideas on that. I didn't directly ask him. I think I can figure it out.

Q. Where did your ideas come from?

A. Well, before he came to us, he was in the tow truck business. **Logic would tell me that he, somehow, through his tow truck business, had contacts, and/or witnessed accidents, and/or arrived at accident scenes. . . .**

Q. It was clear from the beginning that he was going to generate business?

A. Yes. That was one of the considerations when we sat down and met him, yes.

Q. With regard to any of the clients that were signed up as a result of Mr. Whitings' reports did you ask them how they came to be contacted?

A. No. Sometimes they would say that they had gotten a call from Mr. Whiting or met with Mr. Whiting. His name was always in the

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[5] 2T refers to the May 11, 1999 hearing before the special master.

beginning of the conversation, but in terms of specifics, what he said to them or where he met them, I never dealt with that at all.

Q. Was it your understanding that Mr. Whiting was the one who initiated the contacts with the clients?

A. That's my understanding. [Emphasis added].
[2T222-224]

On November 28, 1989 the attorney filed a complaint and an order to show cause in the *Chambers* matter against the driver of the vehicle, respondent, respondent's law firm, Whiting and several "John Doe" defendants. The complaint sought damages for improper solicitation of a client, violation of the Consumer Fraud Act, breach of fiduciary duty, violation of the *Rules of Professional Conduct*, violation of criminal statutes, racketeering and conspiracy. On October 25, 1993 respondent and his firm were granted summary judgment dismissing the complaint against them. The Appellate Division affirmed that order on October 27, 1995. On March 6, 1996 the Supreme Court denied the plaintiff's petition for certification. The judge who had reviewed and denied the order to show cause referred the matter to the OAE at the time that he heard the case. In addition, Joyce submitted a grievance against respondent in 1994. As stated earlier, this matter was delayed because the disciplinary proceedings abided the outcome of the civil litigation.

As mentioned in the stipulation of facts, respondent loaned $300 to Joseph Collins, one of the clients referred by Whiting. Although respondent could not recall the details, he lent personal funds to Collins based on "compelling" reasons. The loan was repaid upon settlement of Collins' personal injury matter.

Respondent argued that his loan to Collins for necessary living expenses constituted a permissible advance of litigation expenses, pursuant to *RPC* 1.8(e)(1). He maintained that, when the Court adopted the *Rules of Professional Conduct*, the Supreme Court Committee on the Model Rules of Professional Conduct (the Debovoise Committee) issued a report

recommending that the determination of whether an attorney's financial assistance to a client is improper should be made on a case-by-case basis. Respondent contended that, in some circumstances, particularly when a client is indigent, advancing funds for living expenses can be considered litigation expenses if, without the financial assistance, the litigation would not be possible.

In addition, respondent presented the testimony of sixteen "character witnesses," who praised respondent's honesty, integrity, character and service to the community. The witnesses included Daniel Ward, who was twelve years old when he met respondent through the "Big Brother" program. Ward testified that respondent spent a lot of time with him and had a big impact on his life, adding that respondent was very honest and an "all-around great guy." In addition, eight attorneys (including a federal prosecutor), a car rental company manager, a certified public accountant, a surgeon, a mortgage banker, a contractor, a former legal secretary who had worked for respondent and respondent's nephew appeared before the special master to extol respondent's good character. Respondent also submitted numerous awards that both he and his firm had received for their volunteer and community work, as well as twenty-two letters from various individuals, attesting to respondent's reputation for honesty and other positive attributes.

* * *

The special master found that respondent engaged in improper solicitation of twelve clients, in violation of *RPC* 5.3(c), *RPC* 7.2(c), *RPC* 7.3(b)(4), *RPC* 7.3(d), *RPC* 7.3(f) and *RPC* 8.4(a). The special master also found that the purpose of respondent's loan to Collins was for necessary living expenses, in violation of *RPC* 1.8(e), and not for litigation expenses.

The special master dismissed the charged violation of *RPC* 7.3(b)(1) (contacting a prospective client knowing that the physical, emotional or mental state of the person was such that the person could not exercise reasonable judgment in employing a lawyer), concluding that there was little or no evidence presented as to the physical, emotional or mental state of the solicited clients.

Finding that New Jersey had jurisdiction to consider the totality of respondent's actions, the special master recommended a one-year suspension.

* * *

Following a *de novo* review of the record, we are satisfied that the record contains clear and convincing evidence that respondent committed ethics violations. Respondent entered into an ill-advised and improper relationship with Whiting, a tow-truck operator, by which Whiting referred personal injury clients to respondent's firm in return for remuneration. The record reveals a pattern whereby Whiting referred cases to respondent and was paid very shortly after the clients signed contingent fee agreements. In most cases, respondent noted the name of the client on the check to Whiting. The payments to Whiting were either not entered on the client ledger card or designated as "fees," instead of "costs." Despite the reference to Whiting as an investigator, respondent's firm had no agreement with him outlining his expected investigative services or terms of payment. In fact, Whiting never submitted a written investigative report to the firm. Whiting did not have an office. When respondent required investigative services, he hired another investigator at much lower rates than Whiting was paid. In three of the cases that Whiting referred to respondent, another investigator was hired.

Undeniably, the referrals were lucrative, resulting in fees of more than $200,000 to respondent's firm. Respondent admitted that, through Whiting, he received substantial personal injury cases.

Respondent tried to convince himself that, by taking certain actions, such as referring to Whiting as an investigator, paying him by check and filing a W-2 form reporting the income paid to Whiting, he was acting within the bounds of the ethics code. Admittedly, however, respondent was aware that the arrangement was improper. As quoted above, respondent conceded that his payment of funds to Whiting for referral of clients was inappropriate.

As to the loan to Collins, respondent argued that it constituted a permissible advance of litigation expenses. We recently rejected a similar argument in *In the Matter of Vincent J. Ciecka*, DRB Docket No. 99-223 (2000). In that case, the attorney loaned funds to an indigent personal injury client as a humanitarian gesture, due to her dire financial circumstances. While acknowledging that the attorney's motives were altruistic, we nevertheless determined that the comments contained in the *Debevoise Report* were not incorporated in the *Rules of Professional Conduct*. We thus, imposed an admonition and referred the issue to the Professional Responsibility Rules Committee for its consideration. That matter is pending before the Court. Here, too, respondent's loan to Collins, while similarly motivated by altruism, violated *RPC* 1.8(e).

Although respondent did not raise this issue before us, he argued before the special master that New Jersey has jurisdiction to discipline him only for the two New Jersey cases and may not consider the other client solicitations or the loan to Collins because they took place outside of New Jersey. With respect to the issue of New Jersey's jurisdiction to consider respondent's conduct outside of this state, *RPC* 8.5 provides as follows:

> A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

Comment to RPC 8.5

> While the Debevoise Committee recommended against adoption of this rule, the Court has adopted ABA Model Rule 8.5 because, even though it had no counterpart in the former Disciplinary Rules, it codifies the existing New Jersey rule in the Rules of Professional Conduct. In its written comments submitted to the Court, the NJSBA had recommended inclusion of a jurisdictional RPC containing the pertinent provisions of R. 1:20-1.

In addition, *R.* 1:20-1 provides as follows:

> (a) Generally. Every attorney and business entity authorized to practice law in the State of New Jersey, including those attorneys specially authorized for a limited purpose or in connection with a particular proceeding, shall be subject to the disciplinary jurisdiction of the Supreme Court as set forth in the Constitution of 1947, Article 7, Section 2, Paragraph 3.

Based on the above, we find that attorneys licensed in New Jersey subject themselves to the disciplinary system of this state, even if they commit misconduct outside our borders. Moreover, there is no doubt that, had the disciplinary authorities in Pennsylvania and Delaware imposed discipline on respondent for his misconduct in their respective states, the OAE would have filed a motion for reciprocal discipline, pursuant to *R.* 1:20-14. The power of the ethics authorities in New Jersey to consider this matter is not dependent on whether another jurisdiction chooses to impose discipline.

In sum, in fifteen matters (including several in which he was not successful in obtaining the client), respondent paid a "runner" for referring prospective clients to him. Respondent also loaned funds to one of those clients.

Similar misconduct has resulted in discipline ranging from a reprimand to disbarment. 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). Frankel contended that the fees paid to the runner were in the nature of compensation for investigatory services. Frankel paid the runner $6,303.53 in 1953. The fees constituted the runner's primary source of income. In imposing discipline, the Court noted

that, while Canon 28 itself provides that the offender may be disbarred, Frankel was the first attorney prosecuted for this type of violation. The Court also cited Frankel's previously unblemished professional reputation. A five-member majority of the Court ordered Frankel suspended for two years, cautioning the bar that "[f]or such infractions in the future more drastic measures may be expected." *Id.* at 599.

In that case, Justice Brennan authored a dissent, joined in by Chief Justice Vanderbilt, advocating Frankel's disbarment. Justice Brennan predicted that similar misconduct in the future would result in disbarment: "The 'gravity of the offense' is conceded, and presumably will be deemed to warrant disbarment in the case of any lawyer hereafter guilty of similar misconduct, since it is said, 'For such infractions in the future more drastic measures may be expected.'" *Id.* at 605.

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. Noting that its "immediate impulse here is to strike respondent's name from the roll of members of the bar," the Court instead imposed a three-year suspension. *Id.* at 361. The Court took into account that Introcaso's behavior had occurred prior to its decision in *Frankel.* Because *Frankel* decided an issue of first impression and Introcaso had an unblemished reputation, the Court refrained from imposing disbarment.

Next, in *In re Bregg*, 61 *N.J.* 476 (1972), the Court imposed a three-month suspension on an attorney who paid part of his fees to a runner from whom he accepted referrals. 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 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. The attorney also used a runner to solicit a client in a personal injury matter. The attorney then "purchased" the client's cause of action for $30,000 and subsequently settled the claim for $97,500. Instead of depositing the settlement check in his trust account, he 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 was disbarred.

The Court imposed only a reprimand for improper solicitation in *In re Meaden*, 155 *N.J.* 357 (1998). In that case, after the attorney heard about a gas line explosion at an apartment complex, he drove to the area seeking clients. He went to a hotel where many of the victims of the explosion were temporarily residing and initiated contact with several prospective clients, including one who was visibly upset. The attorney handed out business cards and, several days later, sent letters to sixteen prospective clients whose names and addresses he had compiled while at the hotel.

Most 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. The attorney used a runner to solicit clients, split fees with the runner and compensated him for referrals in eight matters involving eleven clients. 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 the attorney 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. Thus, the Court found that the attorney knew about and condoned the runner's conduct in assisting his clients' filing of false medical claims.

In *Pajerowski*, 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. By splitting fees with the runner, the attorney assisted in the unauthorized practice of law. He also 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 stated as follows:

> Although 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, *supra*, at 518-521, 721 *A*.2d at 997-999, we have considered the circumstances surrounding each case. We intend to adhere to that approach in such cases.
>
> [*Id.* at 521-22]

Finding that Pajerowski 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, the Court imposed disbarment.

Recently, the New Jersey Legislature enacted two laws concerning the solicitation of accident victims. *N.J.S.A.* 2C:21-22.1, effective July 12, 1999, deems a person guilty of a crime of the third degree if a person knowingly acts as a runner or uses, solicits, directs, hires or employs another to act as a runner. In addition, Public Law 1999, Chapter 325, enacted on January 6, 2000, provides that an attorney who contacts an accident or disaster victim or such victim's relative, other than by written communication, to solicit professional employment for remuneration is guilty of a third degree crime. Respondent's conduct, thus, if committed today, would constitute a crime.

Here, respondent's misconduct fits in between the range of discipline imposed in the cases discussed above. Respondent did not exhibit a flagrant disregard for the Rules of

Professional Conduct or a total lack of candor, as did Frankel and Introcaso. At the time those cases were decided, the Canons of Professional Responsibility expressly forbade attorneys from soliciting business, whether directly or through runners. In addition, respondent did not misappropriate his client's settlement funds, direct a runner to forge his client's name on a check, or engage in a conflict of interest, as did Shaw. There was no evidence that either Whiting or respondent encouraged prospective clients to fabricate or exaggerate medical claims, as did Pajerowski. Respondent's misconduct was limited to a four-month period, while Pajerowski engaged in improper solicitations for almost four years. Nothing in this record supports a finding that either Whiting or respondent contacted any prospective client at a time when the client's physical, emotional or mental state was such that the client could not exercise reasonable judgment in employing a lawyer, as was proven in *Pajerowski*. Indeed, the special master properly dismissed the charged violation of *RPC* 7.3(b)(1), finding no evidence that the condition of the prospective clients was such that they could not exercise reasonable judgment in employing a lawyer. Respondent's misconduct was, however, more serious than Meaden's, whose solicitation took place over the course of several days, following an apartment building explosion.

Ordinarily, respondent's conduct would result in the imposition of an active term of suspension. However, we have considered the following compelling mitigating factors in fashioning the appropriate form of discipline in this case: (1) the misconduct occurred more than ten years ago, (2) the wrongdoing occurred over a short period of time, (3) respondent was a relatively young, newly admitted attorney at the time of the transgressions, (4) respondent has no disciplinary history and (5) respondent has performed a significant amount of community service. Based on the foregoing, a five-member majority determined to impose a one-year suspension, but to suspend the suspension and to impose a one-year probationary period, during which respondent must perform *pro bono* legal services equivalent to one day

per week. These services must be supervised by the OAE and performed on behalf of Legal Services or other similar agency approved by the OAE.

Recently, the Court imposed a suspended suspension under circumstances very similar to those here. In *In re Alum*, 162 *N.J.* 313 (2000), the attorney participated in a pattern of real estate transactions in which borrowers concealed from their primary lenders the secondary financing that they obtained from a different lender. The Court noted that the attorney had been candid and contrite, that he had been admitted for only five years when the misconduct took place, that eleven years had passed since the attorney's transgressions occurred, that his service to the community was exemplary and that his record as an attorney was otherwise unblemished. The Court, thus, imposed a one-year suspended suspension and placed the attorney on probation for one year, with the condition that he perform community service of one day per week. The same factors present in *Alum* are found here and justify the imposition of a suspended suspension, with the conditions noted above.

We emphasize that, despite the imposition of a suspended suspension, we consider respondent's misconduct to be serious. As much as he tried to make his relationship with Whiting appear proper, such as by referring to Whiting as an investigator, paying him by check instead of cash and filing a W-2 form showing his earnings, respondent knowingly engaged in the pernicious act of "ambulance-chasing". In doing so, he brought discredit to his profession. Respondent was motivated by financial benefit, admitting that Whiting was bringing in substantial personal injury cases. He discontinued his relationship with Whiting only after he received a telephone call from an attorney, accusing him of improperly soliciting clients. But for the mitigating factors described above, we would have imposed a one-year active suspension.

Four members voted for a three-month active suspension, finding that, if not for the mitigating factors, the discipline imposed would have been a one-year suspension. Those members filed a separate dissenting opinion.

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

Dated: 9/16/00

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD VOTING RECORD

In the Matter of Clark Pease
Docket No. DRB 99-457

Argued: March 16, 2000

Decided: September 18, 2000

Disposition:

Members	Disbar	One-year Suspended Suspension	Reprimand	Three-month suspension	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson		X					
Boylan				X			
Brody		X					
Lolla				X			
Maudsley				X			
O'Shaughnessy		X					
Schwartz				X			
Wissinger		X					
Total:		5		4			

Robyn M. Hill 12/22/00
Robyn M. Hill
Chief Counsel