Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-193
District Docket No. XIV-2016-0421E

In the Matter of	:
Thomas Frank Verrastro	:
An Attorney at Law	:

Decision

Argued: September 19, 2019

Decided: January 10, 2020

Eugene A. Racz appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a recommendation for an admonition filed by the District XII Ethics Committee (DEC). We determined to treat the matter as a recommendation for greater discipline, in accordance with R. 1:20-15(f)(4). The formal ethics complaint charged respondent with violating RPC 7.1(a)(1) and (2) (making false or misleading communications about the lawyer, the

lawyer's services, or any matter in which the lawyer has or seeks a professional involvement); RPC 8.4(a) (knowingly assisting another in violating the RPCs); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 2001 and has no history of discipline. He maintains an office for the practice of law in Scotch Plains, New Jersey.

On November 4, 2015, former New Jersey attorney Richard Roberts was suspended for three months, effective December 4, 2015. In re Roberts, 223 N.J. 347 (2015).[1] Respondent, who claimed to serve as "counsel" to Roberts' office, sent solicitation letters to Roberts' clients. The correspondence stated, in relevant part:

> Re: In the Matter of Richard M. Roberts
>
> . . .
>
> This office has served as Counsel to the Law Offices of Richard M. Roberts & Associates, LLC. As you are aware, Mr. Roberts has been temporarily suspended for three (3) months, beginning on December 4, 2015 and ending on or about March 4, 2016. During that period of time, Mr. Roberts will not be able to represent you;

[1] On August 7, 2019, the Court disbarred Roberts, by consent, for unrelated misconduct. In re Roberts, ___ N.J. ___, 217 A.3d 1157 (2019).

> however, I would like to extend the option of serving as your attorney during his brief suspension.
>
> I have worked closely with Mr. Roberts on several matters for some time and have extensive experience as a litigator and trial lawyer in both criminal and civil matters pending in the State of New Jersey. Significantly, my background includes having served as a law clerk in the Essex County Criminal Division, where a significant amount of Mr. Roberts' practice is focused.
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> In order to make this temporary transition more convenient, I will be available to serve the needs of Mr. Roberts' former clients at his current office location [in Newark, New Jersey].
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> [Ex.3.][2]

In respect of respondent's experience in criminal matters, he majored in criminal justice in college and interned in the victim witness unit at the Union County Prosecutor's Office. After his graduation from law school, respondent clerked for two Essex County criminal law judges. According to respondent, rather than manage a "traditional criminal docket," the two judges managed only criminal trials "back-to-back." Respondent assisted in the adjudication of the criminal trials. He opened his own law practice in 2013.

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[2] "Ex.3" refers to four nearly identical letters written to four individual clients of Roberts. Each letter was dated November 30, 2015.

Prior to Roberts' suspension, respondent had handled criminal and quasi-criminal matters in state and municipal court. He had an affiliation with the firm of Kochanski, Baron and Galfy, where then-partner and now Office of Administrative Law Judge Andrew Baron had accepted several criminal cases, and then relied on respondent to handle them, including appearances in various New Jersey municipal courts.

Respondent's relationship with Roberts preceded Roberts' suspension by approximately a year to a year-and-a-half, during which time he assisted Roberts with three or four civil litigation matters. Roberts also regularly consulted with respondent on matters that were primarily civil in nature. Respondent was not involved in Roberts' criminal matters.

Respondent described Roberts' practice as "robust," with approximately fifty to sixty active cases, ranging from simple to complex criminal matters. Prior to taking over twenty-five to thirty cases from Roberts, respondent had represented a "handful" of his own clients in Superior Court criminal matters, as well as some of Baron's criminal cases. He conceded, however, that, other than his experience as a criminal law clerk from 2001 through 2002, he had not been involved in any criminal trials during the course of his practice.

Respondent admitted that, at the time he sent the letters to Roberts' clients, he had not tried a single criminal case. He believed, nevertheless, that his

background and experience justified the representations in the solicitation letters, and that his qualifications "far exceeded the minimum required standards for pro bono representation set forth in Madden vs. Delran." Thus, in his view, he was more than qualified to handle criminal matters. Respondent also asserted that he had tried numerous civil cases, was counsel to the litigation department of one of the world's largest law firms (Edwards Wildmand & Palmer) and oversaw the national defense strategy of Lucent Technologies.

When respondent sent the solicitation letters to Roberts' clients, he did not know whether he would be retained, and if so, by whom; when he would be retained; or the complexity or substance of the cases he would take over. After a client contacted respondent, he would obtain the file from Roberts' office and confer with Roberts about the status of the case, sometimes on the way to the courthouse. Roberts' pending cases were in Essex, Passaic, Hudson, and Mercer Counties. Respondent and Roberts discussed conversations that Roberts previously had with prosecutors about resolving the cases, and pertinent strategy issues. Because Roberts was a solo practitioner, he was the only resource available to respondent for information on the status of each case.

In his answer to the complaint, respondent expanded on his communications with Roberts, as follows:

> At my request, we also discussed his thoughts on the direction a given case could take. These discussions

> were extraordinarily brief and frequently occurred as I was literally on my way to a given court house, due to the extreme brevity of time between being contacted by a client and their next scheduled court appearance. They consisted of entirely garden variety, mundane issues that I thought needed to be addressed, such as: "Did you receive discovery?" "What was the State's last offer?" "Is there a basis for a suppression motion?" These conversations were not conducted for the purpose of furthering Mr. Robert's [sic] practice of law. They were conducted for the sake of expedience and in the interest of providing continuity of representation, which I believe serves to advance a given defendant's Sixth Amendment right to a speedy trial. To me it seemed manifestly unfair that a given client's criminal case should be delayed because a new attorney does not have access to a case history or discovery as the result of the suspension of the prior attorney on an entirely unrelated matter.
>
> [A¶18.][3]

Although respondent's office was in Scotch Plains, he was available to meet with the prospective clients at Roberts' office, which Roberts had vacated when his suspension took effect. Thereafter, respondent paid Roberts' secretaries, had access to Roberts' office to retrieve files and meet with clients, and honored Roberts' payment plans with the clients, sometimes working on a "gratis basis." Respondent maintained that it was "absolutely necessary" for Roberts' secretaries to be involved in this process, as it benefited the clients.

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[3] "A" refers to respondent's July 6, 2017 answer to the formal ethics complaint.

Respondent denied that he had taken the cases for Roberts' benefit, but rather

> because of the Constitutional concerns that I had with regard to his client base and what I perceived to be an unfairness or injustice to individuals, many of whom who [sic] had been incarcerated, to have to wait another three months, or however long it took, for him to be reinstated. To me, it seemed as if -- considering the order with regard to a three-month suspension, to me, it seemed like a short enough time where there was not going to be a mechanism for those individuals to have representation. . . . I was aware that no trustee had been appointed to oversee his practice. He was essentially a solo practitioner and I did not think that it was fair to his client base to have to wait out his suspension.
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> [T35-19 to T36-19.] [4]

Respondent contended that Roberts' suspension threatened his former clients' entitlement to a speedy trial under the Sixth Amendment to the U.S. Constitution, and claimed that his conduct was driven by new legislation relating to bail reform and speedy trials. He represented some of Roberts' clients pro bono "in the interest of advancing the court's calendar" and to avoid unnecessarily delaying the adjudication of the matters.

During a May 4, 2016 Office of Attorney Ethics (OAE) interview, the following exchange occurred between respondent and the OAE:

> Q. [W]hen you would have discussions in regard to your

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[4] "T" refers to the transcript of the September 27, 2018 DEC hearing.

final plea offer or a change in the plea offer or . . . just kind of negotiations of what's going on, in those type cases, would you speak to Mr. Roberts about that?

A. There would be - - yeah. There would be times when I would discuss . . . here's where we're at, here's . . . what the offer is. And . . . we would have conversations about those.

Q. Okay. Basically . . . getting the benefit of his experience - -

A. Exactly.[5]

. . . .

Q. Would you say that happened in all of the cases that you - -

A. Well . . . it's been an evolving process. At the beginning I would . . . try and get his . . . thoughts about things. And as time went on I came to a comfort level. And as time went on my relationships with the clients . . . obviously it took time to cultivate relationships with the clients. So as my comfort level improved, my need to reach out to him became less and less and less.

[Ex.4;p.37-l.22 to p.38-l.24.][6]

Although Roberts had been suspended for three months, effective December 4, 2015, respondent was still conferring with him a week before the

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[5] At the DEC hearing, respondent explained that a "more accurate expansion of that statement" was that, to the extent there was information that a subsequent attorney needed to know about a case, he needed to "have a dialogue with the last lawyer that had it."

[6] "Ex.4" refers to the transcript of respondent's May 4, 2016 OAE interview.

May 4, 2016 OAE interview, because some of Roberts' cases had been adjourned, by the court, "sua sponte," and were adjourned again for several months because the judges were aware that respondent had not yet been reinstated.

Although respondent and Roberts discussed the status of the cases and how Roberts believed the cases would be resolved, respondent maintained that Roberts' comments did not necessarily guide his ultimate advice to the client. Respondent emphasized:

> [T]o the extent that I had had dialogue with Mr. Roberts, it was in the interest of continuity of representation and in the interest of economy. My discussions with Mr. Roberts were for those purposes, to advance the clients' cases in a way that was simple and straightforward and also mindful of what the history of any given case was.
>
> As I'm certain you're aware, in any simple or complex matter, there is information that is uniquely within the head of a criminal defense attorney. That information may be the result of a privileged communication that he has had with his client. That may be a result of an investigation that the attorney undertook on behalf of the client. And in the absence of an ability to have an [sic] dialogue with Mr. Roberts, there's no way I could have known whether any of those situations existed. It was an absolute necessity for me to have a dialogue with him about the status of his . . . cases.
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> [T68-9 to T69-5.]

During the OAE interview, respondent related that, during a conversation

with Roberts, he had admitted that he "did not have an extensive criminal background," but added that he had clerked in the criminal division in Essex County. Respondent admitted making the statement, explaining "my thought in offering that statement was in comparison to Mr. Roberts, a 40-year practitioner of criminal law, I had less experience. I don't dispute that at all."

The DEC found credible respondent's testimony that he had conferred with Roberts for the limited purpose of being "brought up to speed" on the background of the matters for which he was assuming responsibility, and not for the purpose of seeking legal advice or direction from Roberts. The DEC, therefore, did not find clear and convincing evidence that respondent violated RPC 8.4(d) by helping Roberts practice law or provide legal services while suspended. Likewise, the DEC did not find clear and convincing evidence that Roberts was practicing law while suspended when he communicated with respondent about the status of the cases that respondent had undertaken. Therefore, the DEC found no "triggering of an RPC 8.4(d)" violation for aiding a suspended attorney in the unauthorized practice of law (RPC 5.5(a)(2)).[7]

The DEC found that, because respondent did not have "extensive experience as a trial lawyer in criminal matters," he made material

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[7] The hearing panel report later referred to the violation correctly as RPC 8.4(a).

misrepresentations in the solicitation letters to Roberts' former clients. The DEC also found that the letters were likely to create an unjustified expectation about the results that respondent could achieve. The DEC, therefore, found clear and convincing evidence that respondent's conduct violated RPC 7.1(a)(1) and (2). Finding neither aggravating nor mitigating factors to consider, the DEC recommended the imposition of an admonition.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence. Like the DEC, we find that respondent made material misrepresentations in the letters that he sent to Roberts' former clients for the purpose of assuming their legal representation following Roberts' suspension. Specifically, respondent misrepresented that he had "extensive experience as a litigator and trial lawyer in both criminal and civil matters."

RPC 7.1(a)(1) and (2), provide, in relevant part:

> (a) A lawyer shall not make false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement. A communication is false or misleading if it:
>
> (1) contains a material misrepresentation of fact or law . . . ;
>
> (2) is likely to create an unjustified expectation about results the lawyer can achieve . . . .

In our view, the statement "I . . . have extensive experience as a litigator and trial lawyer in both criminal and civil matters" was false, as respondent admitted that he had not yet been involved in a single criminal trial at the time he disseminated the letters. Moreover, during his OAE interview, respondent admitted that he had informed Roberts that he did not have an extensive background in criminal cases. Respondent's letters to prospective clients, therefore, misled them about his experience in criminal matters and, thus, the results he could achieve. Therefore, we find that respondent violated RPC 7.1(a)(1) and (2).

Whether respondent assisted Roberts in violating R. 1:20-20(b)(1) and (3), a violation of RPC 8.4(d), and aided Roberts in the unauthorized practice of law (RPC 5.5(a)(2)),[8] a violation of RPC 8.4(a), is not as clear. R. 1:20-20(b)(1) provides that a suspended attorney "shall not practice law in any form either as principal, agent, servant, clerk or employee of another, and shall not appear as an attorney before any court, justice, judge, board, commission, division or other public authority or agency." A violation of R. 1:20-20(b)(1) is a violation of RPC 8.4(d).

[8] The complaint did not charge respondent with a violation of RPC 5.5(a)(2).

R. 1:20-20(b)(3) prohibits a suspended attorney from providing legal services, giving an opinion concerning the law or its application or any advice with relation thereto, or suggesting in any way to the public an entitlement to practice law, or draw any legal instrument. A violation of this Court Rule constitutes a violation of RPC 5.5(a)(2). Thus, an attorney who aids a suspended attorney in the unauthorized practice of law violates RPC 8.4(a).

In our view, there is insufficient evidence to conclude that Roberts violated R. 1:20-20(b)(1). As to section (b)(3), the record lacks clear and convincing evidence that Roberts provided legal services, gave "an opinion concerning the law or its application or any advice with relation thereto," or suggested to the public that he was entitled to practice law. Rather, as respondent testified, Roberts, as a solo practitioner, was the only available source for information about the status of the cases he undertook from Roberts. Respondent admitted (1) discussing the status of the cases with Roberts, including conversations that Roberts had had with the prosecutors; (2) requesting information on any "issues of strategy that [he] needed to be made aware of;" (3) requesting thoughts on the direction a given case should take; (4) discussing issues, such as, whether there was "a basis for a suppression motion;" (5) discussing "here's where we're at, here's . . . what the offer is;" and (6) discussing how Roberts believed the case would be resolved. Notwithstanding

respondent's statements, he maintained that these conversations were conducted for "the sake of expedience and in the interests of providing continuity of representation" to advance the clients' right to a speedy trial and that Roberts' comments did not necessarily guide respondent's ultimate advice to the clients.

Clearly, respondent was required to familiarize himself with the clients' cases. The DEC found credible his testimony that he had conferred with Roberts for the limited purpose of being brought "up to speed" on the cases. We give deference to the DEC's finding in this regard, as the DEC had the opportunity to observe respondent's testimony. Dolson v. Anastasia, 55 N.J. 2, 7 (1969) (a court should defer to a tribunal's findings with respect to those intangible aspects of the case not transmitted by the written record). Accordingly, in the absence of clear and convincing evidence of a violation of RPC 8.4(a) or RPC 8.4(d), we dismiss these charges and find only that respondent violated RPC 7.1(a)(1) and (2).

In sum, respondent violated RPC 7.1(a)(1) and (2). We dismiss the allegations that respondent violated RPC 8.4(a) or RPC 8.4(d). The only remaining issue is the appropriate quantum of discipline to impose on respondent for these infractions.

Admonitions and reprimands have been imposed on attorneys who, in their quest to solicit clients, make false or misleading communications in their

general advertising campaigns. See, e.g., In the Matter of Jean D. Larosiliere, DRB 02-128 (March 20, 2003) (admonition for allowing the name of a law school graduate to appear on the letterhead in a manner indicating that the individual was a licensed attorney, and allowing a California lawyer not admitted in New Jersey to sign letters on the firm's letterhead with the designation "Esq." after the attorney's name; the attorney also lacked diligence and failed to communicate with a client); In the Matter of Ernest H. Thompson, Jr., DRB 97-054 (June 5, 1997) (admonition for misleading statements in a targeted direct mail solicitation flyer sent to an individual whose residence was about to be sold at a sheriff's sale); In the Matter of Bryan F. Ferrick, DRB 97-307 (October 28, 1997) and In the Matter of Ronald Kurzeja, DRB 97-308 (October 28, 1997) (companion cases; admonitions for attorneys who sent targeted direct-mail solicitation letters to residential property owners to solicit tax appeal clients; the letters contained a number of false and misleading statements, which created an unjustified expectation about the results the attorneys could achieve on the prospective clients' behalf); In re DiCiurcio, 212 N.J. 109 (2012) and In re DiCiurcio II, 212 N.J. 110 (2012) (companion cases; reprimands for attorneys who sent direct mail solicitation letters that violated RPC 7.1(a)(1); one misled a recipient that she could lose her driver's license for a traffic violation, and three other letters failed to include language required by

the Attorney Advertising Guidelines and an opinion from the Committee on Attorney Advertising); In re Mennie, 174 N.J. 335 (2002) (reprimand for attorney who placed a Yellow Pages advertisement that listed several jury verdict awards, including one for $7 million, even though that award had been set aside as "grossly excessive;" attorney placed similar ads, a week apart, in the Asbury Park Press, which misrepresented the combined number of years that the attorney and one of his partners had been practicing law); In re Kubiak, 165 N.J. 595 (2000) (reprimand imposed on attorney who ran misleading advertisements for "Divorce Center"); In re Garces, 163 N.J. 503 (2000) and In re Grabler, 163 N.J. 505 (2000) (companion cases; attorneys reprimanded for making false and misleading statements in a Yellow Pages advertisement that included the designation certified civil and criminal trial attorney, when neither attorney was so certified; the ad also included the statement "largest recovery in the shortest time," in violation of RPC 7.1(a)(1) and RPC 7.1(a)(2) and (3)); and In re Caola, 117 N.J. 108 (1989) (reprimand for attorney who sent a targeted direct-mail solicitation letter misrepresenting the number of years he was in practice, his status in the law firm, and the number and types of cases he handled).

In In re Rakofsky, 223 N.J. 349 (2015), a much more serious case, a censure was imposed on an attorney who committed multiple advertising violations. Although the attorney essentially had no experience when he opened

a law firm, he stated on the firm's website and in a "Yahoo Local advertisement" that he was experienced, had federal and state trial experience, and had handled many more matters than it would have been possible to handle in a single year. In the Matter of Joseph Rakofsky, DRB 15-021 (August 27, 2015) (slip op. at 13). Rakofsky misrepresented that he had worked on cases involving murder; embezzlement; tax evasion; civil RICO; securities, insurance, and bank fraud, among other serious criminal matters, as well as drug offenses, including drug trafficking. Id. at 5. We found these statements to be outright lies, as the attorney did not merely inflate his credentials, but fabricated them, and conveyed the impression that he was a "super lawyer." Id. at 25. Further, his firm's letterhead failed to indicate that two of the firm's attorneys were not licensed to practice law in New Jersey. Rakofsky also failed to provide a client with a writing setting forth the basis or rate of the fee and failed to maintain a file for the matter. Id. at 17, 24. Notwithstanding his lack of an ethics history, inexperience and youth, the immediate withdrawal of the offending advertising, the correction of his misleading letterhead, and the lack of harm to his clients, the Court agreed with our imposition of a censure. Rakofsky, 223 N.J. 349.

Because respondent's conduct was much less egregious than Rakofsky's, we determine to impose a reprimand on him for his violation of RPC 7.1(a)(1) and (2). In our view, respondent has demonstrated a refusal to admit

wrongdoing, and he has no remorse.

In respondent's brief, he parses words and boldly asserts that there is "no clearly delineated line between an attorney with some experience, experience, or extensive experience." Instead, he claims, the only clearly delineated line is between "those who are Certified Criminal Trial Lawyers and those who are not." In his view, thus, absent the claim that he was a certified criminal trial lawyer, respondent was entitled to make any representation about his level of experience based on his own opinion. He also claimed that, when compared to the recipients of his letters, who were not lawyers, he did have extensive experience in the area of criminal law.

In addition to respondent's argument that he can say anything he wants about his level of experience based on his subjective belief, he argues that his professional background does substantiate his claim of "extensive experience" as a "litigator and trial lawyer in both criminal and civil matters." First, he cites his clerkship in 2001 and 2002, followed by the "rhetorical question for [our] consideration: 'What is a judicial clerkship to be considered if not legitimate experience?'"

Second, respondent argues that, prior to the solicitation of Roberts' clients, he had represented "criminal and quasi-criminal defendants," individually, and through his affiliation with the Kochanski firm. In this regard,

he claims that the representation of a defendant during the pre-trial phase of a criminal proceeding is no different from representing a defendant during the trial. Thus, even though the criminal and quasi-criminal matters in which he had represented the defendants did not go to trial, "he was the criminal trial attorney to those clients."

Respondent concludes his brief by stating that his "extensive experience" claim was not inaccurate or misleading when taking into account the totality of his experience and practice history. If doubt remains, his representation about the clerkship "substantively clarifies that paragraph when read in its entirety and does not serve to mislead the reader."

At oral argument before us, respondent repeated his representations about his experience, drawing particular attention to his clerkship. He informed us that all but one of the twenty-five to thirty matters he assumed from Roberts were resolved by way of plea agreement. He claimed that one matter went to trial, but he did not inform us of the outcome. He claimed that, in each and every case, the judge made the determination that respondent had represented his client competently.[9]

We are troubled by respondent's refusal to acknowledge the falsity of his

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[9] Presumably, respondent was referring to the standard guilty plea colloquy that New Jersey Courts employ, whereby defendants are routinely asked whether they are satisfied with their counsel.

claim that he had "extensive experience as a litigator and trial lawyer in both criminal and civil matters," even though he had never tried a criminal case. In our view, it is self-evident that a lawyer cannot claim extensive experience when there is none. We, thus, determine that a reprimand is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Petrou voted to impose an admonition. Member Boyer 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
Bruce W. Clark, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Thomas Frank Verrastro
Docket No. DRB 19-193

Argued: September 19, 2019

Decided: January 10, 2020

Disposition: Reprimand

Members	Reprimand	Admonition	Recused	Did Not Participate
Clark	X			
Gallipoli	X			
Boyer				X
Hoberman	X			
Joseph	X			
Petrou		X		
Rivera	X			
Singer	X			
Zmirich	X			
Total:	7	1	0	1

Ellen A. Brodsky
Chief Counsel