Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-109
District Docket No. XIV-2019-0188E

In the Matter of	:
Sean Lawrence Branigan	:
An Attorney at Law	:

Decision

Argued: June 21, 2023

Decided: October 30, 2023

Jennifer L. Iseman appeared on behalf of the Office of Attorney Ethics.

Omar K. Qadeer 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 recommendation for a censure filed by the Committee on Attorney Advertising (the CAA), pursuant to R. 1:20-15(f) and R. 1:19A-4(f). The formal ethics complaint charged respondent with having violated RPC 5.3(a) (three instances – failing to supervise nonlawyer staff); RPC

7.1(a) (fourteen instances – engaging in false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional relationship); RPC 7.1(b) (three instances – using an advertisement or other related communication known to have been disapproved by the CAA); RPC 7.3(b)(5) (ten instances – engaging in improper, unsolicited, direct contact with a prospective client); RPC 7.4(a) (misrepresenting that the lawyer has been recognized or certified as a specialist in a particular field of law); and RPC 7.5(e) (two instances – using an impermissible firm name or letterhead).

For the reasons set forth below, we determine that a three-month suspension is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 2005. At the relevant times, he practiced law as the named partner and managing attorney of Branigan & Associates, LLC, which maintained offices in Montclair, West Orange, and Southampton, New Jersey.

On June 23, 2014, respondent received an admonition for failing to communicate with a client in connection with her matrimonial matter. In the Matter of Sean Lawrence Branigan, DRB 14-088 (June 23, 2014) (Branigan I). Specifically, respondent failed to reply to his client's repeated requests for

information about her matter and for an invoice detailing the amount she owed in legal fees, in violation of RPC 1.4(b) (failing to communicate with a client). In determining that an admonition was the appropriate quantum of discipline, we weighed, in mitigation, respondent's then lack of prior discipline and the fact that his misconduct may have resulted from a flood in his office, the hacking of his e-mail system, and the fact that his firm was undergoing changes in its process to track and bill for its time.

We now turn to the facts of this matter.

Between April 2016 and September 2019, Branigan & Associates, LLC (B&A) embarked upon an extensive advertising campaign throughout New Jersey to solicit clients via direct mail solicitation letters. Although respondent did not personally transmit the solicitation letters, he acknowledged his responsibility for the content of B&A's advertisements, given his status as the firm's managing partner. Specifically, respondent claimed that he assigned other B&A attorneys to oversee the mailing of solicitation letters with his "general oversight." In that capacity, respondent claimed that he took "reasonable steps to ensure quality control" by supervising his employees and by reviewing the templates of the solicitation letters before his staff sent them to prospective clients.

The April 16, 2016 Solicitation Letter Envelope (Count One)

On April 16, 2016, B&A sent a direct mail solicitation letter to a prospective client. The solicitation letter was sent in an envelope bearing the following printed return address:

BURLINGTON LEGAL CENTER
ATTORNEYS AT LAW
3111 ROUTE 38 Suite 11 #184
MOUNT LAUREL, NEW JERSEY 08054
YOURJERSEYLAWYER.COM

[P-1, OAE/0016.] [1][2]

In his amended verified answer to the formal ethics complaint, respondent admitted that B&A never operated under the trade name "BURLINGTON LEGAL CENTER." However, respondent denied having engaged in any misleading advertising by using the "BURLINGTON LEGAL CENTER" trade name because "that name was used to describe [B&A's] different branch location internally." Respondent also claimed that the exclusion of B&A's actual firm name was "a cost-saving measure" meant to reduce the expense associated with printing extra lines on the envelope.

[1] "P-1" through "P-6" and "P-13" and "P-15" refer to the presenter's exhibits. "OAE/#" refers to the bates numbered page of the presenter's exhibits.

[2] The solicitation letter accompanying the envelope is not included in the record before us.

During the ethics hearing, respondent claimed that, "at some point," he had planned to open a law firm by the name "New Jersey Legal Centers . . . and then have [a] Burlington . . . [C]ounty office." Respondent, however, conceded that he never opened such a law office and, thus, characterized the April 16, 2016 envelope as a "rogue print job."

The May 10, 2016 Solicitation Letter Envelope (Count Two)

On May 10, 2016, Christopher Fritz, Esq., an attorney employed by B&A, mailed a solicitation letter to an individual charged, in Elmwood Park Borough, with failure to obey traffic signals, signs, or directions, in violation of N.J.S.A. 39:4-215.[3] Fritz's letter contained the following letterhead:

BERGEN COUNTY LEGAL CENTER
ATTORNEYS AT LAW
370 W. PLEASANTVIEW AVENUE, SUITE 2-173
HACKENSACK, NEW JERSEY 07601
(973) 744-2223
www.yourjerseylawyer.com
ADVERTISEMENT

[P-1, OAE/0013.]

Fritz accurately identified B&A's website address and telephone number on the letterhead. The physical address, however, was not that of any B&A law

[3] As detailed below, on March 30, 2023, the Court reprimanded Fritz for his conduct in connection with the same May 10, 2016 solicitation letter, as well as for a separate, September 2, 2019 solicitation letter issued by B&A. See In re Fritz, 253 N.J. 373 (2023).

office, but rather that of a United Parcel Service (UPS) store. The letter did not specify whether B&A maintained space in the physical address by appointment only.

Additionally, the envelope enclosing Fritz's letter contained substantially the same letterhead, except that B&A's telephone number did not appear on the envelope. Moreover, the word "ADVERTISEMENT" did not appear on the envelope, as RPC 7.3(b)(1)(5)(i) requires.

Fritz's solicitation letter did not begin by advising the prospective client to disregard the letter if the individual already had retained counsel, as RPC 7.3(b)(1)(5)(ii) requires. Rather, the letter stated, in relevant part, that:

> We would like to help you achieve a downgrade or dismissal for your recent summons for 39:4-215 Failure To Obey Signals Signs Or Directions by Elmwood Park Borough[.]
>
> Dear Ms: [ ]
>
> If you are already represented by counsel in this matter, please disregard this advertisement. I have learned from court records that you have been charged with . . . Failure To Obey Signals Signs Or Directions by the Elmwood Park Borough.
>
> As you may know and I hope you understand that what happens in this proceeding may impact your driving record, driving privileges, insurance rates, and even your freedom. . . . As Elmwood Park Borough lawyers, we ask you [sic] let us handle the court personnel that will be prosecuting the case for Elmwood Park Borough, and the State of New Jersey.

> Even if your matter is tried at the Municipal level, a conviction could result in a driving or criminal record which can impact your insurance rates, which can go up thousands of dollars and or result in a loss of your driving privileges and even time in jail in some cases.
>
> My firm will help protect your rights. We appear in Elmwood Park Borough for matters like yours routinely and our office is located nearby for your convenience.
>
> [P-1, OAE/0013.]

The bottom of Fritz's letter contained the required RPC 7.3(b)(5)(iii) notice, which directs an attorney to state that: "Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision." Fritz's letter also contained the required RPC 7.3(b)(5)(iv) notice, which directs an attorney to state that any "inaccurate or misleading" statements contained in the letter could be reported to the CAA. However, Fritz's RPC 7.3(b)(5)(iv) notice failed to include his address, as that Rule requires.

During the ethics hearing, respondent conceded that the address identified in Fritz's letter was that of a UPS store. However, respondent asserted that B&A had attempted to purchase, from another attorney, a law firm located in Bergen County, which respondent had planned on naming "The Bergen County Legal Center" for "a very brief period of time." Respondent, however, admitted that he had "aborted" his "short-lived strategy" to open "County Legal Centers" and

that the plan "never came to fruition." Nevertheless, when queried by the Office of Attorney Ethics (the OAE) regarding whether anyone from B&A would have been present to receive clients at the UPS store address identified in the solicitation letter, respondent claimed, without any support, that B&A still "had a brick and mortar address in the county."[4]

In his amended verified answer, respondent admitted that, although the solicitation "letter may have been technically defective," he had "no intent to mislead anyone." Respondent also emphasized that there were "SEVERAL businesses at this location," including not only a UPS store, but also a "Great Expressions, [a] Labcorp[,] and even a dentist."

On May 24, 2016, the CAA sent Fritz a facsimile advising him that his May 10, 2016 solicitation letter contained an improper law firm name and falsely listed a UPS store address as B&A's location. The CAA directed Fritz to "take steps . . . to find out how this happened."

On June 23, 2016, the CAA sent Fritz a letter prohibiting him from distributing the May 10, 2016 solicitation letter and advising him that the letter violated the RPCs governing attorney advertising.

[4] During the ethics hearing, respondent claimed that B&A maintained "brick and mortar" offices in Montclair and West Orange, both of which are located in Essex County, New Jersey. B&A also maintained a "brick and mortar" office in Southampton, which is located in Burlington County, New Jersey.

Specifically, the CAA found that Fritz's solicitation letter violated RPC 7.5(e) because the firm name, "BERGEN COUNTY LEGAL CENTER," "ATTORNEYS AT LAW," failed to include the full or last name of one or more of the lawyers practicing in the firm.[5] Additionally, the CAA found that Fritz violated RPC 7.1(a) by (1) including a UPS store address as the location of B&A's law office, (2) stating that the prospective client could face jail time and a criminal record if convicted of a traffic offense, and (3) implying that Fritz and other B&A attorneys served as government lawyers by describing themselves as "Elmwood Park Borough lawyers." Finally, the CAA found that Fritz violated RPC 7.3(b)(5) by failing to include the word "ADVERTISEMENT" on his envelope and by failing to include his address in the required RPC 7.3(b)(5)(iv) notice in his solicitation letter.

The CAA requested that Fritz explain how B&A's website address appeared on both the May 10, 2016 "BERGEN COUNTY LEGAL CENTER" solicitation letter and on the separate April 16, 2016 "BURLINGTON LEGAL CENTER" envelope.

[5] Prior to September 9, 2020, RPC 7.5(e) required that law firm "trade names shall be accompanied by the full or last names of one or more of the lawyers practicing in the firm." Effective September 9, 2020, however, RPC 7.5(e) was amended to require, in relevant part, that "[w]here the law firm trade name does not include the name of a lawyer in the firm . . . any advertisement, letterhead[,] or other communication containing the law firm name must include the name of at least one licensed New Jersey attorney who is responsible for the firm's New Jersey practice or the local office thereof."

During the ethics hearing, respondent claimed that, whenever he received a letter from the CAA, he would submit a reply "affidavit advising that" he had complied "with their suggestions." Based on respondent's testimony, the CAA found, as fact, that respondent "had actual notice of [its] June 23, 2016 letter."[6]

On July 12, 2016, Fritz sent the CAA a letter explaining that B&A had "stopped using these" solicitation letters. Fritz, however, claimed that there "was nothing misleading" about the letters, given that B&A "had opted to use our nearby postal box for some correspondence" to avoid clients appearing at the office "unannounced." Fritz further claimed that B&A did "good work for a good price in these areas and maintain[ed] an office in Bergen close to the mailing address." Fritz, however, conceded that he failed to include the word "ADVERTISEMENT" on his envelopes. Fritz further maintained that the April 16, 2016 "Burlington County" letter was intended to "promote" B&A's "new location in [c]entral New Jersey[,]" where B&A "fully serve[d] clients there as well." Finally, Fritz conceded that the inclusion of the references to "jail" time and a "criminal record" were intended for "another letter and not meant for a traffic offense."

On October 31, 2016, the CAA sent Fritz another letter requesting that he explain why "Bergen County Legal Center" appeared as B&A's law firm name

[6] R. 1:19A-4(f) provides that we "shall accept the facts found [by the CAA] as conclusive."

on the May 10, 2016 solicitation letter. Neither respondent nor Fritz, however, submitted a reply to the CAA.

On April 25, 2017, the CAA filed an ethics grievance against B&A alleging that the firm's solicitation letters violated the RPCs governing attorney advertising.

The June 13, 2017 Solicitation Letter (Count Three)

On June 13, 2017, B&A sent a solicitation letter to an individual charged, in the City of Asbury Park, with failure to report an accident, in violation of N.J.S.A. 39:4-130. B&A's letter contained the following letterhead:

MONMOUTH COUNTY DIVISION
BRANIGAN & ASSOCIATES LAW FIRM
1739 ROUTE 2[0]6
SOUTHAMPTON, NEW JERSEY 08088
(609) 424-0234
www.YOURJERSEYLAWYER.com
ATTORNEY ADVERTISEMENT

[P-2, OAE/0026.][7]

B&A's solicitation letter stated, in relevant part, that:

> I have learned from court records that you have been charged with . . . Failure To Report Accident by the Asbury Park City.
>
> As you may know and I hope you understand that what happens in this proceeding may impact your

[7] B&A owned the property identified as the physical address in the letter. The Southampton property, however, was located in Burlington County, not Monmouth County.

> driving record, driving privileges, insurance rates, and even your freedom. . . . As Asbury Park City lawyers, we ask you [sic] let us handle the court personnel that will be prosecuting the case for Asbury Park City, and the State of New Jersey. Even if your matter is tried at the Municipal level, a conviction could result in a driving or criminal record which can impact your insurance rates, which can go up thousands of dollars and or result in a loss of your driving privileges and even time in jail in some cases.
>
> My firm will help protect your rights. We appear in Asbury Park City for matters like yours routinely and our office is located nearby for your convenience.
>
> [P-2, OAE/0026.]

Karla Ortega, a nonlawyer employed by B&A, signed her name on the letter. Beneath Ortega's signature, the letter contained the required RPC 7.3(b)(5)(iii) notice. However, immediately following that notice, the letter stated: "we aim to refer you to a top Attorney focusing on your area of Law." The letter failed to contain any portion of the required RPC 7.3(b)(5)(iv) notice.

On July 7, 2017, Matthew Jordan, Esq., an attorney employed by the Law Offices of Nelson, Fromer, Crocco & Jordan, sent the CAA a letter enclosing B&A's June 13, 2017 solicitation letter, which Jordan had received from a client of his law firm.

During the ethics hearing, respondent claimed that, although B&A was never formally re-named "Monmouth County Division, Branigan & Associates," the trade name that appeared in the letter stemmed from B&A's "idea . . . to call

ourselves like the Division or the County," an "idea" which respondent had abandoned. In respondent's view, the letter appeared to be "a draft . . . that made its way out."

In his amended verified answer, respondent claimed that the letter cited the applicable statutes and asserted "the truth." Specifically, although the individual to whom the solicitation letter was sent had been charged with failure to report an accident, in violation of N.J.S.A. 39:4-130, the penalty for which, by law, ranges from a $30 to a $100 fine, respondent maintained that an individual who unlawfully leaves the scene of an accident, in violation of N.J.S.A. 39:4-129, a completely different offense, can face a term of imprisonment. In respondent's view, although the letter was "unprofessional," he had no intention to mislead the solicited individual. Respondent further denied having failed to supervise Ortega because he claimed that he made "reasonable arrangements and even assigned an in-house lawyer each year to minimize defective letters such as this one."

The November 14, 18, and 20, 2017 Solicitation Letters (Count Four)

On November 14 and 20, 2017, B&A sent solicitation letters to two individuals – one charged, in Plumsted Township, with careless driving, in violation of N.J.S.A. 39:4-97, and the second charged, in the City of Perth Amboy, with operating a motor vehicle while in possession of narcotics, in

violation of N.J.S.A. 39:4-49.1. Depending on the county within which the charging municipality was located, B&A's solicitation letters contained the following letterheads:

OCEAN COUNTY DIVISION
BRANIGAN & ASSOCIATES LAW FIRM
1739 ROUTE 2[0]6
SOUTHAMPTON, NEW JERSEY 08088
(609) 424-0234
www.YOURJERSEYLAWYER.com
ATTORNEY ADVERTISEMENT

MIDDLESEX COUNTY DIVISION
BRANIGAN & ASSOCIATES LAW FIRM
350 MAIN STREET
WEST ORANGE, NEW JERSEY 07052
(973) 744-2223
www.YOURJERSEYLAWYER.com
ATTORNEY ADVERTISEMENT

[P-3, OAE/0030, 33.]

B&A's solicitation letters each stated, in relevant part, that:

> I have learned from court records that you have been charged with . . . [the applicable motor vehicle offense] . . . by the [applicable municipality].
>
> As you may know and I hope you understand that what happens in this proceeding may impact your driving record, driving privileges, insurance rates, and even your freedom. . . . As [the applicable municipality] lawyers, we ask you [sic] let us handle the court personnel that will be prosecuting the case for [the applicable municipality], and the State of New Jersey. Even if your matter is tried at the Municipal level, a conviction could result in a driving or criminal record which can impact your insurance rates, which can go up

> thousands of dollars and or result in a loss of your driving privileges and even time in jail in some cases.
>
> My firm will help protect your rights. We appear in [the applicable municipality] for matters like yours routinely and our office is located nearby for your convenience.
>
> [P-3, OAE/0030, 33.]

Ortega, B&A's nonlawyer employee, signed her name on each of the letters. Beneath Ortega's signature, the letters each contained the required RPC 7.3(b)(5)(iii) notice and the following statement: "we aim to refer you to a top Attorney focusing on your area of Law." The letters failed to contain any portion of the required RPC 7.3(b)(5)(iv) notice.

The envelope enclosing B&A's November 14, 2017 solicitation letter contained substantially the same "OCEAN COUNTY DIVISION" letterhead, except that B&A's website did not appear on the envelope. Moreover, the phrase "URGENT COURT MATTER!" appeared next to B&A's letterhead. The envelope enclosing B&A's November 20, 2017 solicitation letter is not included in the record before us.

On November 18, 2017, B&A sent an additional solicitation letter to an individual charged, in the City of Perth Amboy, with disorderly persons possession of drug paraphernalia, in violation of N.J.S.A. 2C:36-2. B&A's letter contained the following letterhead:

MIDDLESEX COUNTY DIVISION
BRANIGAN & ASSOCIATES LAW FIRM
1739 ROUTE 2[0]6
SOUTHAMPTON, NEW JERSEY 08088
(609) 424-0234
www.YOURJERSEYLAWYER.com
ATTORNEY ADVERTISEMENT

[P-3, OAE/0032.]

B&A's solicitation letter stated, in relevant part, that:

> I have learned from court records that you have been charged with . . . POSS OF DRUG PARAPHERNALIA by Perth Amboy City.
>
> Let our SuperLawyers maximize your chance of a downgrade or dismissal in this criminal case pending in Perth Amboy City Court. . . . We have former state attorneys and even former judges to assist you. Let us handle your case with experience [sic] professionalism and the utmost care affording your right to remain silent and maximizing you [sic] chances of a dismissal. . . .
>
> As you may know and I hope you understand that what happens in this proceeding may impact your criminal record, employment opportunities, and your freedom. . . . As Bergen County Criminal Defense Lawyers, we ask you [sic] let us handle the court personnel that will be prosecuting the case for the Township, and the State of New Jersey. A conviction could result in jail time, probation, or severe fines and punishment.
>
> This firm will help protect your rights. We appear in Perth Amboy City Municipal Court for matters like yours . . . routinely and know what it takes to defend and win a criminal case. Our former State Attorneys and Judges have been honored by our peers as a [sic] criminal defense SuperLawyers for the past four

> years.[8] As a result of our knowledge, experience, and training, our firm is equipped to handle your case and get you the best outcome for the best price.
>
> [P-3, OAE/0032.]

Jason Steinberg, Esq., an attorney employed by B&A, signed his name on the letter. Beneath Steinberg's signature, the letter contained the required RPC 7.3(b)(5)(iii) notice along with the following statement: "we aim to refer you to a top Attorney focusing on your area of Law." B&A's letter again failed to contain the required RPC 7.3(b)(5)(iv) notice. The envelope enclosing B&A's November 18, 2017 solicitation letter is not included in the record before us.

On February 7, 2018, the CAA sent the OAE a referral letter enclosing B&A's November 14, 18, and 20, 2017 solicitation letters.

During the ethics hearing, the 2019 demand interview, and in his amended verified answer, respondent maintained that B&A's "law firm name was never the same" and that B&A had internal "divisions" depending upon the county from which it received its "data" regarding individuals charged with offenses throughout New Jersey. Respondent also claimed that B&A had placed the "COUNTY DIVISION" heading at the top of his firm's letterheads to identify the applicable location for the firm and not "to make it seem as if the firm [was]

[8] Respondent claimed that he and other members of B&A had been "featured as rising stars and/or Super Lawyers" in "Super Lawyers Magazine." Respondent also noted that B&A had employed a former municipal court judge and several former state attorneys.

a government unit." In respondent's view, his "COUNTY DIVISION" letters were not "misleading" because "my county division handles that matter, and that's the way the State of New Jersey divides [its] territories, by counties."

Moreover, respondent denied having engaged in deception when he referred to jail time in the letter sent to the solicited individual charged with careless driving. In support of his view, respondent stressed that he never falsely advised the solicited individual that "you would go to jail for a careless driving ticket." (emphasis added). Finally, respondent noted that B&A's use of "technology to do mass mailings [was] imperfect," despite his "goal" "to have zero mistakes." Nevertheless, respondent emphasized that he "did not go to school to become a marketer and prefers to focus on the 'law' part of his business."

The Ten Solicitation Letters Issued Between December 17, 2016 and February 4, 2019 (Count Five)

On December 17, 2016, December 8, 2018, and January 5, 2019, B&A issued solicitation letters to three individuals – one charged, in Upper Township, with disorderly persons simple assault, in violation of N.J.S.A. 2C:12-1(a); the second charged, in Spotswood Borough, with disorderly persons shoplifting, in violation of N.J.S.A. 2C:20-11(b)(1); and the third charged, in Manalapan Township, with disorderly persons possession of marijuana, in violation of

N.J.S.A. 2C:35-10(a)(4). Depending on the county within which the charging municipality was located, B&A's solicitation letters contained the following letterheads:

CAPE MAY COUNTY DIVISION
BRANIGAN & ASSOCIATES LAW FIRM
1739 ROUTE 2[0]6
SOUTHAMPTON, NEW JERSEY 08088
(609) 424-0234
www.YOURJERSEYLAWYER.com
ATTORNEY ADVERTISEMENT

MIDDLESEX COUNTY DIVISION
BRANIGAN & ASSOCIATES LAW FIRM
1739 ROUTE 2[0]6
SOUTHAMPTON, NEW JERSEY 08088
(609) 424-0234
www.YOURJERSEYLAWYER.com
ATTORNEY ADVERTISEMENT

MONMOUTH COUNTY DIVISION
BRANIGAN & ASSOCIATES LAW FIRM
1739 ROUTE 2[0]6
SOUTHAMPTON, NEW JERSEY 08088
(609) 424-0234
www.YOURJERSEYLAWYER.com

[P-4, OAE/0037, 51, and 54.]

B&A's December 17, 2016, December 8, 2018, and January 5, 2019 solicitation letters each stated, in relevant part, that:

> I have learned from court records that you have been charged with . . . [the applicable disorderly persons offense] . . . by [applicable the municipality].

> Let our SuperLawyers maximize your chance of a downgrade or dismissal in this criminal case pending in [the applicable municipality]. . . . We have former state attorneys and even former judges to assist you. . . . This can impact your employment and future opportunity.
>
> As you may know and I hope you understand that what happens in this proceeding may impact your criminal record, employment opportunities, and your freedom. . . . As Bergen County Criminal Defense lawyers[9], we ask you [sic] let us handle the court personnel that will be prosecuting the case for the Township and the State of New Jersey. A conviction could result in jail time, probation, or severe fines and punishment.
>
> This firm will help protect your rights. We appear in [the applicable municipality] for matters like yours . . . routinely and know what it takes to defend and win a criminal case. Our former State Attorneys and Judges have been honored by our peers as a [sic] criminal defense SuperLawyers for the past four years. As a result of our knowledge, experience, and training, our firm is equipped to handle your case and get you the best outcome for the best price.
>
> [P-4, OAE?0037, 51, and 54.]

Marc Randall, a nonlawyer employed by B&A, signed his name on the "CAPE MAY COUNTY DIVISION" letter. Frank Dyevoich, Esq., an attorney employed by B&A, signed his name on the "MIDDLESEX" and

[9] B&A referred to its attorneys as "Bergen County Criminal Defense lawyers" in each of the solicitation letters.

"MONMOUTH" "COUNTY DIVISION" letters. Each of the letters contained the required RPC 7.3(b)(5)(iii) notice along with the following statement: "we aim to refer you to a top Attorney focusing on your area of Law." B&A's letters failed to contain the required RPC 7.3(b)(5)(iv) notice.

The envelope enclosing B&A's "MONMOUTH COUNTY DIVISION" solicitation letter contained substantially the same letterhead next to the phrase "URGENT COURT MATTER!" beneath which the word "Advertisement" appeared in much smaller font size, as RPC 7.3(b)(5)(i) and Attorney Advertising Guideline 2(c) prohibits. The envelopes bearing the "MIDDLESEX" and "CAPE MAY COUNTY" "DIVISION" letters are not included in the record before us.

Between July 17, 2018 and February 4, 2019 B&A issued solicitation letters to five individuals charged, throughout New Jersey, with various motor vehicle offenses, including careless driving, in violation of N.J.S.A. 39:4-97; failure to obey traffic signals, in violation of N.J.S.A. 39:4-81; driving without a license, in violation of N.J.S.A. 39:3-10; and operating a motor vehicle while in possession of narcotics, in violation of N.J.S.A. 39:4-49.1. B&A again modified its law firm name, in the following letterheads, depending upon the county wherein the individual was charged with the offense:

HUDSON COUNTY DIVISION
BRANIGAN & ASSOCIATES LAW FIRM
350 MAIN STREET
WEST ORANGE, NEW JERSEY 07052
(973) 744-2223
www.YOURJERSEYLAWYER.com
ATTORNEY ADVERTISEMENT

MIDDLESEX COUNTY DIVISION
BRANIGAN & ASSOCIATES LAW FIRM
350 MAIN STREET
WEST ORANGE, NEW JERSEY 07052
(973) 744-2223
www.YOURJERSEYLAWYER.com
ATTORNEY ADVERTISEMENT

UNION COUNTY DIVISION
BRANIGAN & ASSOCIATES LAW FIRM
350 MAIN STREET
WEST ORANGE, NEW JERSEY 07052
(973) 744-2223
www.YOURJERSEYLAWYER.com
ATTORNEY ADVERTISEMENT

MONMOUTH COUNTY DIVISION
BRANIGAN & ASSOCIATES LAW FIRM
1739 ROUTE 2[0]6
SOUTHAMPTON, NEW JERSEY 08088
(609) 424-0234
www.YOURJERSEYLAWYER.com

CUMBERLAND COUNTY DIVISION
BRANIGAN & ASSOCIATES LAW FIRM
1739 ROUTE 2[0]6
SOUTHAMPTON, NEW JERSEY 08088
(609) 424-0234
www.YOURJERSEYLAWYER.com

[P-4, OAE/0039, 41, 48, 52, and 56.]

B&A's solicitation letters each stated, in relevant part, that:

> I have learned from court records that you have been charged with . . . [the applicable motor vehicle offense] . . . by [the applicable municipality].
>
> As you may know and I hope you understand that what happens in this proceeding may impact your driving record, driving privileges, insurance rates, and even your freedom. . . . As [the applicable municipality] lawyers, we ask you [sic] let us handle the court personnel that will be prosecuting the case for [the applicable municipality], and the State of New Jersey. Even if your matter is tried at the Municipal level, a conviction could result in a driving or criminal record which can impact your insurance rates, which can go up thousands of dollars and or result in a loss of your driving privileges and even time in jail in some cases.
>
> My firm will help protect your rights. We appear in [the applicable municipality] for matters like yours routinely and our office is located nearby for your convenience.
>
> [P-4, OAE/0039, 41, 48, 52, and 56.]

Either Steinberg or Dyevoich signed the letters, which contained the required RPC 7.3(b)(5)(iii) notice followed by the statement "we aim to refer you to a top Attorney focusing on your area of Law." The letters failed to contain the required RPC 7.3(b)(5)(iv) notice.

The envelopes enclosing the "MIDDLESEX," "MONMOUTH," and "CUMBERLAND" "COUNTY DIVISION" letters each contained the phrase "URGENT COURT MATTER!" beneath which the word "Advertisement"

appeared in much smaller font size. The envelopes enclosing the "HUDSON" and "UNION" "COUNTY DIVISION" letters are not included in the record before us.

On October 23 and November 30, 2018, B&A issued solicitation letters to two potential personal injury clients who allegedly had sustained injuries in motor vehicle accidents. The letters each contained the following letterhead:

NEW JERSEY MOTOR VEHICLE ACCIDENT LITIGATORS
BRANIGAN & ASSOCIATES, LLC
ATTORNEYS AT LAW
350 MAIN STREET
WEST ORANGE, NEW JERSEY 07052
Tel (973) 744-2223
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www.YOURJERSEYLAWYER.com
ADVERTISEMENT

[P-4, OAE/0044, 49.]

B&A's solicitation letters did not begin by advising the potential clients that, if they already had selected an attorney, they should disregard the letter, as RPC 7.3(b)(5)(ii) requires. Rather, immediately after the salutation, B&A's letters each stated, in relevant part:

> NO FEES UNLESS WE WIN YOUR CASE. LET US FIGHT FOR YOUR RIGHTS!
>
> We would like to help you get the money you deserve for your recent accident. We are personal injury expert trial attorneys with over twenty years experience. We of course, wish you a speedy recovery

> and would like to help prepare you financially for the litany of medical bills that may be coming your way. . . . We keep the insurance companies honest and garner the highest settlements possible or we take them to trial.
>
> We are knowledgeable, experienced, and equipped to handle your case. In fact, our network of injury trial lawyers has recovered millions of dollars for people injured in accidents just like yours. Let us fight for you, protect your rights and get you the money you deserve. . . .
>
> **THIS IS A TIME SENSITIVE MATTER, SO PLEASE DO NOT WAIT, LET US FILE YOUR CLAIM NOW BEFORE THE TIME RUNS OUT! (973) 744-2223.**
>
> [P-4, OAE/0044, 49.]

Dyevoich signed his name on both letters, which contained the required RPC 7.3(b)(5)(iii) notice followed by the statement "we aim to refer you to a top Attorney focusing on your area of Law." The letters failed to contain the required RPC 7.3(b)(5)(iv) notice.

The envelope enclosing the October 23, 2018 solicitation letter contained the phrase "URGENT COURT MATTER!" above the word "Advertisement," which again appeared in much smaller font. The envelope enclosing the November 30, 2018 letter is not included in the record before us.

On March 1, 2019, the CAA sent the OAE the foregoing ten solicitation letters. In its accompanying memorandum, the CAA noted that it had "continue[d] to receive grievances regarding [B&A's] solicitation letters."

During the ethics hearing, respondent conceded that he never changed the name of B&A to "New Jersey Motor Vehicle Accident Litigators, Branigan & Associates," despite the presence of that trade name in his firm's October 23 and November 30, 2018 letters soliciting potential personal injury clients. Respondent claimed that these letters stemmed from his "brief campaign . . . to refer injury cases to the [law] firm Bramnick, Rodriguez, Grabas and Woodruff."

Additionally, respondent disputed the fact that his firm had sent to potential clients the ten solicitation letters, dated between December 17, 2016 and February 4, 2019, because he had no "personal first-hand knowledge that the letters were transmitted." However, in his amended verified answer, respondent did "not dispute" that B&A had "transmitted" the letters. During the ethics hearing, when the OAE confronted respondent with that admission, he claimed that he "would take back" that statement because he could not verify "the chain of custody of these documents." In respondent's view, if the OAE had informed him that the letters "were produced from a dumpster" or "found . . . in the recycling bin in the back of a Walmart," he "wouldn't know the difference," based on his claim that there was "no grievant" or "chain of custody." Respondent also emphasized that the solicitation letters were not "representative of my mailings" and that, despite the "admitted defects" in the

letters, he had not transmitted "a single defect[ive]" letter for "three years" prior to the November 19, 2022 ethics hearing.

In his amended verified answer, respondent claimed that he had no intention to generate misleading solicitation letters, which were subject to "drafting and redrafting and a metamorphosis" that "any small business" would undertake "to survive." Respondent also argued that the OAE did not "acknowledge the roles of other people involved" in B&A's advertising campaign "as well as their willingness to be careless." However, respondent noted that he "supervise[d], advise[d], and in fact assign[ed] counsel to oversee" B&A's advertising campaign.

The September 2, 2019 Solicitation Letter (Count Six)

On September 2, 2019, B&A issued to a potential personal injury client a solicitation letter containing the following letterhead:

NEW JERSEY MOTOR VEHICLE ACCIDENT LITIGATORS
BRANIGAN & ASSOCIATES, LLC
ATTORNEYS AT LAW
350 MAIN STREET
WEST ORANGE, NEW JERSEY 07052
Tel (973) 744-2223
Fax (973) 744-0719
www.YOURJERSEYLAWYER.com
ADVERTISEMENT

[P-5, OAE/0061.]

The letter did not begin by advising the potential client to disregard the letter if he or she already had selected an attorney, as RPC 7.3(b)(5)(ii) requires. Rather, immediately after the salutation, B&A's letter stated, in relevant part:

> NO FEES UNLESS WE WIN YOUR CASE. LET US FIGHT FOR YOUR RIGHTS!
>
> We would like to help you get the money you deserve for your recent accident. We are personal injury expert trial attorneys with over twenty years experience. We of course, wish you a speedy recovery and would like to help prepare you financially for the litany of medical bills that may be coming your way. . . . We keep the insurance companies honest and garner the highest settlements possible or we take them to trial.
>
> We are knowledgeable, experienced, and equipped to handle your case. In fact, our network of injury trial lawyers has recovered millions of dollars for people injured in accidents just like yours. Let us fight for you, protect your rights and get you the money you deserve. . . .
>
> **THIS IS A TIME SENSITIVE MATTER, SO PLEASE DO NOT WAIT, LET US FILE YOUR CLAIM NOW BEFORE THE TIME RUNS OUT! (973) 744-2223.**
>
> [P-5, OAE/0061.] (Emphasis in original).

Fritz signed the solicitation letter, the bottom of which contained the following notice, typed in smaller font than the body of the letter, in purported compliance with RPC 7.3(b)(5)(iii) and (iv):

> Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney

> is an important decision. If you have any questions or concerns, please contact Christopher Fritz, Esq. (973) 733-2223. And if the letter is inaccurate or misleading, report same to the [CAA], Hughes Justice Complex, CN 037, Trenton, New Jersey, 08625.
>
> [P-5, OAE/0061.]

The notice, however, failed to include Fritz's address or the correct address for the CAA, as RPC 7.3(b)(5)(iv) requires.

On September 19, 2019, the CAA sent the OAE B&A's solicitation letter, identifying several violations of the RPCs governing attorney advertising. In the CAA's accompanying memorandum, it stated that the envelope enclosing the letter contained the phrase "URGENT COURT MATTER!" The envelope, however, is not included in the record before us.

During the ethics hearing, respondent admitted that the solicitation letter implied that his firm would handle a personal injury matter on a contingent fee basis, without providing additional language concerning alternative fee options, as A.C.P.E Joint Opinion 666/C.A.A. Joint Opinion 14, __ N.J.L.J. __ (Oct. 12, 1992) requires.

In his amended verified answer, respondent denied having personally prepared the solicitation letter. Respondent also maintained that "[a]ny mistakes and scribner's [sic] errors made during a large direct mail campaign and an

evolution of a small business are subject to human error . . . staffing changes[,] and Murphy's Law."[10]

Respondent's Positions During the Demand Interview and His Presentation During the Ethics Hearing

During his September 2019 demand interview with the OAE, respondent claimed that B&A had conducted "direct mail" solicitation letters since 2005. Specifically, between 2005 and 2016, respondent had retained "companies" to prepare solicitation letters for his firm. However, beginning in 2016, respondent maintained that B&A began "experimenting with what would serve our clients and what would work." Specifically, B&A began purchasing data regarding individuals charged with "moving violations" throughout New Jersey. Although respondent conceded that "there were deficiencies at times," he claimed that the deficient solicitation letters comprised "less than . . . 0.1 percent" of the total letters sent by B&A. Respondent also claimed that, whenever he received a notice from the OAE or the CAA to "correct this verbiage," he would take appropriate action to attempt to "fix" the "deficiency."

Additionally, respondent claimed that he had begun "phasing out . . . my practice altogether" and allowing Fritz and the other B&A attorneys to "take the

[10] Murphy's Law is a facetious axiom standing for the proposition "that anything that can go wrong will go wrong." Oxford Dictionary of Phrase and Fable (2nd ed. 2006).

lead." Specifically, respondent claimed that Paul S. Grosswald, Esq., would assume complete responsibility for the content of B&A's solicitation letters.[11]

During the ethics hearing, respondent refused to "answer" whether B&A had transmitted the solicitation letters referred by the CAA to the OAE. In respondent's view, he did not "know where the defective" solicitation letters "came from" or if they had been "picked out of the garbage." Nevertheless, respondent claimed that he took "responsibility for everything that happen[ed], the way a true officer of the court should."[12]

Additionally, respondent claimed that he had no intent to mislead prospective clients in connection with B&A's advertising campaign. Rather, respondent accused the OAE of creating a "narrative . . . focusing on the few defects and not the . . . 990,000 letters that were fully compliant." Specifically, respondent claimed that, between 2016 and 2019, B&A sent between five and ten thousand solicitation letters to individuals throughout New Jersey each

[11] On December 1, 2021, Grosswald transmitted a solicitation letter to an individual charged with careless driving. The solicitation letter contained the law firm name: "Law Offices of Fritz, Grosswald & Walters, LLC." Respondent was listed as an attorney of that law firm. The OAE did not attempt to attribute the solicitation letter to respondent or B&A.

[12] Contrary to his testimony during the ethics hearing, in his amended verified answer, respondent admitted that B&A had transmitted each of the fourteen solicitation letters described in counts two, four, and five of the formal ethics complaint. Regarding the solicitation letter envelope described in count one and the remaining two solicitation letters described in counts three and six, respondent did not affirmatively state whether B&A had transmitted those documents. Rather, he disputed only the OAE's characterization of the content of those documents.

week. However, when queried why he had not offered a single compliant solicitation letter into evidence, respondent noted that he did not need to produce "an alibi letter" and that it was "not my job to prove that I'm innocent." Respondent also speculated that the "defect[ive]" solicitation letters were "from a questionable origin" and may even have been "manufactur[ed]" by B&A's "competitors."

In respondent's view, the OAE was "inferring the . . . facts in the most defamatory manner, that I'm doing something wrong by putting, perhaps[,] a defective piece of mail that I don't even know where it's from." Respondent, thus, characterized the disciplinary process as "unprofessional" and "almost outrageous." Similarly, respondent accused the OAE and the CAA hearing panel chair of being in an "unholy alliance" in light of the panel chair sustaining many of the OAE's objections to respondent's counsel's leading questions during the ethics hearing. Respondent's counsel even argued that there was a "bias against [respondent] that he's the only person who should be held accountable for this."

Respondent presented the testimony of Linda Nosiay, his nonlawyer employee who had worked at B&A since 2020. Nosiay claimed that respondent had an "excellent" reputation and was "a workaholic." Nosiay also noted that she observed respondent "supervising" and "overseeing the printing of the

[solicitation] letters." Finally, Nosiay claimed that respondent was "very professional" and "caring" towards his clients.

Additionally, respondent attempted to present the testimony of two expert witnesses to discuss "due process rights and [the] application about the Court Rules and conduct." The OAE, however, objected to the testimony of the proposed experts based on respondent's failure to produce any expert reports or curriculum vitaes attributable to the proposed experts. To determine whether respondent's proposed experts were qualified to testify pursuant to N.J.R.E. 702,[13] the CAA permitted the parties to conduct voir dire.

Tom Ward, respondent's first proposed expert witness, stated that, between 1974 and 1986, he taught ethics and firearms instruction for local, state, and federal law enforcement officers. Around that same timeframe, Ward also noted that he was "on the New Jersey Police Training Commission as an expert in the use of force." Finally, Ward noted that, for the past twenty-three years, he had been a realtor who taught ethics at various real estate organizations. Based on Ward's background in law enforcement and real estate, the CAA prohibited him from testifying as an expert, given that he had no relevant knowledge that

[13] N.J.R.E. 702 provides that "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise."

could have assisted the panel in determining whether respondent had violated the RPCs governing attorney advertising.

Anthony M. Werner, respondent's second proposed expert witness, stated that he "worked for health plans" and was an advertising consultant. Specifically, Werner worked in "both the medical and pharmaceutical space" to ensure that advertising materials complied with state and federal regulations. Werner, however, conceded that he had no knowledge of the Court Rules. Based on the lack of nexus between Warner's subject matter experience and the RPCs governing attorney advertising, the CAA prohibited Warner from testifying as an expert.

The Parties' Summations to the CAA

In respondent's summation brief to the CAA, he argued, through counsel, that the "[s]pirit of the Rules require[d]" that the formal ethics complaint be dismissed based on his view that there "was no misleading advertising whatsoever." Respondent also claimed that his testimony established that he "was actually quite thorough in compliance with the [R]ules themselves." Additionally, respondent noted that, although "there may have been some defects over a five-year period[,]" the "source" of the defective "letters and envelopes were of questionable origin and hearsay." In respondent's view,

"there was an overzealous campaign of selective enforcement [by the OAE] which ha[d] been an utter witch hunt against [him]."

Similarly, respondent baselessly accused the CAA of violating his due process rights and engaging in "bias" and "a conflict of interest" because it had declined to allow his proposed experts to testify as witnesses or to confront the purported competitors of B&A, who "may have complained" to the CAA regarding B&A's solicitation letters.[14]

Respondent also noted that he was "not responsible for the lack of inquiry into the actual source and quality of the letters," which, in his view, were "not the norm." Additionally, respondent claimed that "[t]here is no service or good that is free from defects" and that, "[o]n occasion, a new printer would upload a draft or the machine would format incorrectly or even skip stages. This does not demonstrate any intent to mislead." Respondent further maintained that there were "supervisory attorneys overseeing the mailroom" and that "any defects presumably were a combination and aberration of human error along with hardware and software technology glitches."

Regarding the solicitation letters containing the "COUNTY DIVISION" letterhead, respondent argued that "the way the State organizes the data is by the

[14] Notably, it does not appear that respondent ever attempted to call, as witnesses, B&A's purported competitors.

County and Municipality and the software uploaded accordingly. Even Artificial Intelligence makes errors." Respondent, thus, claimed that the use of "COUNTY DIVISIONS" helped to "reduce misleading communications of different sizes, each color-coded to its 95% margin of error, and sample size."

Respondent attempted to analogize his conduct to that of the attorney in In re Hyderally, 208 N.J. 453 (2011), whom the Court found did not clearly and convincingly violate RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

In that matter, following the attorney's request that a website designer create a website for his law practice, the website designer included the New Jersey Board of Attorney Certification emblem, in order to make the website "attractive and appealing," even though the attorney was not a certified civil trial lawyer. Id. at 455-57; In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011) at 3. The attorney was unaware of the emblem's placement on his website and, upon being told of its presence, had it removed immediately. Hyderally, 208 N.J. at 456. The attorney did not include the emblem on his letterhead or business cards, and he did not tell anyone that he was a certified civil trial attorney. Ibid. The Court, thus, found no clear and convincing evidence demonstrating that the attorney either knowingly included the emblem on his website or approved its continued presence. Id. at 461.

In respondent's view, like the attorney in Hyderally, his "violations were technical," which were "always caught and corrected," and he had no intent to mislead prospective clients.

Respondent argued, in mitigation, that he is an eighteen-year veteran lawyer who "was also selected to [Judge Advocate General] Officer US Army Reserve status in 2012." Respondent also emphasized that he has served "thousands of clients," none of whom suffered any ultimate harm from B&A's actions.

In the OAE's February 15, 2023 brief to the CAA, it urged the panel to recommend a reprimand or a censure based primarily on respondent's numerous violations of the RPCs governing attorney advertising.

Specifically, the OAE highlighted the fact that respondent sent prospective clients multiple direct solicitation letters, which referenced jail time and a possible criminal record for motor vehicle offenses for which neither incarceration nor a criminal record would have been a probable consequence.

The OAE also emphasized that respondent sent a prospective client the May 10, 2016 solicitation letter and envelope, each containing a letterhead listing, as B&A's address, a UPS store.

The OAE further stressed that respondent's solicitation letters did not include B&A's actual law firm name. Rather, in two letters, the OAE noted that

respondent falsely and prominently identified B&A's law firm name as the "BURLINGTON" or "BERGEN COUNTY" "LEGAL CENTER." The OAE also emphasized that the top line of many of B&A's solicitation letters stated the name of a county followed by "COUNTY DIVISION," regardless of whether B&A had maintained an office in the applicable county. Moreover, the OAE argued that many of respondent's solicitation letters improperly described B&A's attorneys as "personal injury expert trial attorneys." Similarly, the OAE observed that respondent's solicitation letters sent to the prospective personal injury clients referenced a contingent fee arrangement, without referencing any alternative fee options. Finally, the OAE noted that some of respondent's solicitation letter envelopes failed to include the word "ADVERTISEMENT," as RPC 7.3(b)(1)(5)(i) requires, and, instead, included the improper phrase "URGENT COURT MATTER!"

The OAE observed that each of respondent's direct mail solicitation letters may, individually, have warranted an admonition. However, the OAE argued that a reprimand or a censure was the appropriate quantum of discipline given that, during a three-year period, respondent had transmitted numerous direct mail solicitation letters and envelopes containing multiple violations of the RPCs governing attorney advertising.

The OAE urged, as aggravation, respondent's 2014 admonition in Branigan I for failing to communicate with a client; his prolonged failure to remediate the deceptive nature of his solicitation letters; and his total lack of remorse for characterizing the proceedings against him as a "witch hunt."

The CAA'S Findings

Regarding the April 16, 2016 solicitation letter envelope in Count One of the formal ethics complaint, the CAA found that respondent violated RPC 7.1(a) because the envelope falsely identified B&A's firm name as the "Burlington Legal Center." Similarly, the CAA found that respondent's use of the "Burlington Legal Center" firm name violated C.A.A. Opinion 5, __ N.J.L.J. __ (March 16, 1989), which prohibits a law firm from practicing law "under more than one name." Finally, the CAA found that respondent violated RPC 7.5(e), as it was drafted in 2016, because the "Burlington Legal Center" trade name failed to include the full or last names of one or more of the lawyers practicing at B&A.

Regarding the May 10, 2016 solicitation letter and envelope in Count Two of the formal ethics complaint, the CAA found that respondent violated RPC 7.5(e) by falsely listing B&A's firm name as the "Bergen County Legal Center."

The CAA further found that respondent violated RPC 7.1(a) by falsely listing B&A's address as that of a UPS store. The CAA observed that the inclusion of the UPS store address was "misleading," regardless of whether respondent had, at some point, intended to purchase a law firm in Bergen County in the vicinity of the UPS store.

The CAA found that respondent again violated RPC 7.1(a) by including, in the body of the solicitation letter, the following language: "[a]s Elmwood Park Borough lawyers, we ask you [sic] let us handle the court personnel that will be prosecuting the case for Elmwood Park Borough, and the State of New Jersey." In the CAA's view, such language implied that B&A consisted of government lawyers who could "handle court personnel."

Finally, the CAA found that respondent violated RPC 7.3(b) by failing to include (1) the word "ADVERTISEMENT" on the envelope; (2) the required instruction, at the outset of the letter, advising the prospective client to disregard the letter if he or she already had retained counsel; and (3) the required notice, at the bottom of the letter, listing the name and address of the attorney responsible for the content of the document.

Regarding the June 13, 2017 solicitation letter in Count Three of the formal ethics complaint, the CAA found that respondent violated RPC 7.1(a) by stating that the recipient of the letter could face jail time and a criminal record

for failing to report an accident, in violation of N.J.S.A. 39:4-130. The CAA observed that the reference to jail time was misleading because such an outcome was highly unlikely for an individual found guilty of committing a traffic offense.

The CAA found that respondent again violated RPC 7.1(a) by including language in the solicitation letter offering to "handle the court personnel" as "Asbury Park City lawyers." The CAA viewed such language as implying that B&A consisted of government lawyers employed by the City of Asbury Park.

Similarly, the CAA found that respondent violated RPC 7.1(a)(3) by including language in the solicitation letter offering to refer the prospective client to a "top" attorney. The CAA viewed such language as improperly comparing B&A's services with those of other lawyers.

Finally, the CAA found that respondent violated RPC 5.3(a) by failing to supervise Ortega, B&A's nonlawyer employee, who signed her name on the improper solicitation letter. The CAA emphasized that only attorneys are permitted to solicit potential clients under the strictures of RPC 7.3.

Regarding the November 14, 18, and 20, 2017 solicitation letters in Count Four of the formal ethics complaint, the CAA found that respondent violated

RPC 7.1(a) by including the "COUNTY DIVISION" headings within each of B&A's letterheads, reflecting an incorrect law firm name.[15]

The CAA also found that respondent violated RPC 7.1(a) by including, in the November 14, 2017 solicitation letter, an offer to "handle the court personnel" as "Plumsted Township lawyers." The CAA again expressed its view that such language implied that B&A consisted of government lawyers employed by Plumsted Township.[16]

Additionally, the CAA found that respondent violated RPC 7.3(b)(5)(iv), in each of the November 2017 solicitation letters, by failing to include the required disclaimer, at the bottom of those letters, stating that the recipient may, if the letter was inaccurate or misleading, report the letter to the CAA.

Finally, the CAA found that respondent violated RPC 5.3(a) by failing to supervise Ortega, who signed her name on the improper November 14 and 20, 2017 solicitation letters.

Regarding the ten solicitation letters issued between December 2016 and February 2019 in Count Five of the formal ethics complaint, the CAA found that

[15] Although the formal ethics complaint charged respondent with having violated RPC 7.5(e) by using the "misleading" "COUNTY DIVISION" letterheads, the CAA found that respondent was on sufficient notice that his conduct was encapsulated by the correct RPC 7.1(a) charge.

[16] The CAA did not address whether respondent violated another instance of RPC 7.1(a), as charged in the complaint, by including nearly identical language in the November 20, 2017 solicitation letter.

respondent violated RPC 7.1(a)(3) by including a notice, at the bottom of all ten letters, stating that "we aim to refer you to a top Attorney," language which, in the CAA's view, improperly compared B&A's services with those of other lawyers. The CAA also found that respondent twice violated RPC 7.3(b)(5)(i) by failing to prominently display the word "ADVERTISEMENT" and including the phrase "URGENT COURT MATTER!" on five of the envelopes enclosing the solicitation letters.[17]

Moreover, the CAA found that respondent twice violated RPC 7.1(a)(3) by stating, in the December 17, 2016, December 8, 2018, and January 5, 2019 solicitation letters, "Let our SuperLawyers maximize your change of a downgrade or dismissal in this criminal case" and "Our former State Attorneys and Judges have been honored by our peers as a [sic] criminal defense SuperLawyers for the past four years." The CAA noted that, when referring to an accolade or honor that compares the lawyer's services to those other lawyers, such an award that calls lawyers "super" must state that "no aspect of the advertisement has been approved by the Supreme Court," as RPC 7.1(a)(3) requires. The CAA stated that the name of the comparing organization and a

[17] Although the formal ethics complaint charged respondent with having violated RPC 7.3(b)(5)(iv) by failing to prominently display the word "ADVERTISEMENT" on the envelopes, the CAA found that respondent was on sufficient notice that his conduct was encapsulated by the correct RPC 7.3(b)(5)(i) charge.

description of the methodology on which the accolade is based must all be presented in a "readily discernable manner" and in proximity to the referenced accolade.

Additionally, the CAA found that respondent violated C.A.A. Opinion 22, 148 N.J.L.J. 1338 (June 30, 1997) by stating, in the December 17, 2016, December 8, 2018, and January 5, 2019 solicitation letters, that B&A had employed "former judges to assist you." Specifically, the CAA observed that respondent failed to note the years and location of service of the former municipal court judge employed by B&A, as C.A.A. Opinion 22 requires.[18]

The CAA also found that respondent violated A.C.P.E Joint Opinion 666/C.A.A. Joint Opinion 14, by stating, in the October 23 and November 30, 2018 solicitation letters to prospective personal injury clients, that B&A would charge "NO FEES UNLESS WE WIN YOUR CASE." The CAA noted that such language implied that B&A would handle the personal injury cases on a contingent fee basis, without informing the prospective clients of any alternative fee options, as A.C.P.E Joint Opinion 666/C.A.A. Joint Opinion 14 requires.[19]

[18] The CAA did not address whether respondent also violated RPC 7.1(a) by failing to comply with C.A.A. Opinion 22, as charged in the formal ethics complaint.

[19] The CAA did not address whether respondent also violated RPC 7.1(b) by failing to comply with A.C.P.E Joint Opinion 666/C.A.A. Joint Opinion 14, as charged in the formal ethics complaint.

Further, the CAA found that respondent violated RPC 7.3(b)(5)(ii) by failing to include an instruction at the outset of the October 23 and November 30, 2018 solicitation letters advising the prospective clients to disregard the letters if they already had retained counsel.

The CAA also found that respondent violated twice violated RPC 7.1(a) by utilizing the misleading "COUNTY DIVISION" letterheads in eight of the solicitation letters and on four of the solicitation letter envelopes issued between December 17, 2016 and February 4, 2019.[20]

Finally, the CAA found that respondent violated RPC 5.3(a) by allowing Randall, B&A's nonlawyer employee, to sign his name on the improper December 17, 2016 solicitation letter.

Regarding the September 2, 2019 solicitation letter to a prospective personal injury client in Count Six of the formal ethics complaint, the CAA found that respondent violated A.C.P.E Joint Opinion 666/C.A.A. Joint Opinion 14 by stating, in the letter, "NO FEES UNLESS WE WIN YOUR CASE," without referencing any alternative fee options.[21]

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[20] Although the formal ethics complaint charged respondent with having violated two instances of RPC 7.5(e) in connection with his use of the "COUNTY DIVISION" letterheads in the solicitation letters and envelopes, the CAA found that respondent was on sufficient notice that his conduct was encapsulated by the correct RPC 7.1(a) charges.

[21] The CAA did not address whether respondent also violated RPC 7.1(b) by failing to comply with A.C.P.E Joint Opinion 666/C.A.A. Joint Opinion 14, as charged in the formal ethics complaint.

The CAA also found that respondent violated RPC 7.4(a) and C.A.A. Opinion 45, __ N.J.L.J. __ (Nov. 8, 2018) by claiming that B&A consisted of "personal injury expert trial attorneys," given that neither the Court nor an American Bar Association (ABA) approved organization had bestowed such credentials on any B&A attorney.

The CAA further found that respondent violated Attorney Advertising Guideline 2(b) by allowing the font size of the RPC 7.3(b)(5)(iv) notice to be smaller than the font sized used in other portions of the September 2, 2019 solicitation letter.

Additionally, the CAA found that respondent twice violated RPC 7.3(b)(iv) by failing to include the address of the attorney responsible for the advertisement and including the incorrect address of the CAA in the notice at the bottom of the letter.

Finally, the CAA dismissed the charge that respondent violated RPC 7.3(b)(5)(i), which alleged that respondent had included the phrase "URGENT COURT MATTER!" on the envelope. Because the envelope was not presented as an exhibit during the ethics hearing or as an attachment to the formal ethics complaint, the CAA dismissed the charge.

In recommending the imposition of a censure, the CAA stressed that "[t]his is not a typical advertising case." Specifically, the CAA emphasized that,

although it had provided notice to respondent, in June 2016, of the improprieties in B&A's solicitation letters, respondent continued to send "enormous numbers of noncompliant solicitation letters for the following three years." In light of respondent's testimony that B&A had transmitted between five to ten thousand solicitation letters each week, the CAA "summarize[d] that the volume of noncompliant letters could number as many as a million," each contained within envelopes warning recipients that they had an "URGENT COURT MATTER!" The CAA found, incredible, respondent's claim that only "1%" of his solicitation letters contained "defects."

The CAA gave "some [mitigating] weight" to Nosiay's testimony that respondent had an "excellent" reputation. However, the CAA noted that respondent continued to employ Nosiay.

The CAA identified several aggravating factors, including respondent's 2014 admonition in Branigan I for failing to communicate with a client. However, the CAA found "more significan[t]" respondent's "belligeren[ce]" and attempts to "disparage" the disciplinary process. The CAA also emphasized that respondent was evasive and attempted to "shift responsibility" to other B&A lawyers or even B&A's "competitors," whom he accused of "manufactur[ing] noncompliant solicitation letters on [B&A's] letterhead." By contrast, the CAA found that respondent was "the managing attorney of [B&A]

and, as such, was responsible for its marketing activities . . . and the conduct of [its] nonlawyers."

Moreover, the CAA observed that, despite respondent's testimony that nearly all of B&A's numerous solicitation letters were complaint, respondent failed to produce a single complaint letter.

The CAA analogized respondent's misconduct to that of the censured attorney in In re Rakofsky, 223 N.J. 349 (2015), who, as detailed below, fabricated his credentials in his attorney advertising. The CAA noted that, although respondent did not fabricate his credentials, he "displayed a similar level of arrogance and disdain for the advertising rules by sending a million noncompliant solicitation letters over an extended period of time, after the [CAA] had notified [B&A] that the letters violated the Rules of Professional Conduct."

The Parties' Positions Before Us

At oral argument and in his brief to us, respondent, through counsel, largely reiterated his arguments made in his summation brief to the CAA. However, rather than recommend the outright dismissal of the formal ethics complaint, respondent urged us to impose a "warning" or an "admonition."

In support of his recommendation, respondent argued that, unlike the censured attorney in Rakofsky, he never fabricated his credentials. Respondent also emphasized that no clients ever have "complained that they were influenced to retain [him] as a result of receiving an advertisement letter."

Additionally, respondent baselessly accused the CAA of engaging in "bias[] and incompeten[ce] in its investigation." In support of his view, respondent argued that, during a seven-year timeframe, the CAA "stockpiled" his solicitation letters, which he claimed, "were explained and set aside as benign" before the letters were "lumped" "together as . . . if they were not explained and corrected in good faith." Moreover, respondent maintained that the CAA hearing panel chair "was biased and would not qualify [his] two expert witnesses . . . to testify in the form of an opinion at the hearing," which resulted in a violation of his "due process rights." Respondent also baselessly alleged that B&A's "competitors and colleagues who received tickets and criminal charges launched this mean-spirited and unwarranted attack," which respondent characterized as a "witch hunt."

Respondent further explained that he "accepted responsibility for [B&A's] marketing activities," although "other lawyers in the firm were responsible for mailing [the] solicitation letters." Respondent also claimed that the defective solicitation letters constituted "less than 1%" of the total volume

of his advertising campaign. In respondent's view, "[a] margin of error is fully acceptable and a consequence of doing even the noblest of activities."

Additionally, respondent argued that he "did not present any compliant solicitation letters [during the ethics] hearing [because] the [November 2022] hearing took place six years after" the OAE had commenced its investigation and, since March 2020, B&A had shuttered its offices and "stopped" "all mailings."

Regarding the CAA's finding that he had violated RPC 7.1(a) by referencing jail time in his June 13, 2017 solicitation letter sent to the individual charged only with failure to report an accident, in violation of N.J.S.A 39:4-130, respondent argued that municipal courts can refer matters to county prosecutors for any indictable offenses.

Respondent further argued that the OAE was required to prove, pursuant to the principles in In re Hyderally, 208 N.J. 453, that he had the intent to violate the RPCs by clear and convincing evidence. Moreover, unlike Fritz, who consented to discipline and received a reprimand for transmitting the May 10, 2016 and September 2, 2019 solicitation letters in this matter, respondent argued that he neither consented to discipline nor engaged in any "clearly and convincingly misleading" behavior.

Respondent also expressed his view that the OAE and the CAA held a personal animus towards him and sought to "punish" him simply for engaging in "arrogant" behavior. Finally, respondent argued that the OAE failed to establish a "chain of custody" for the solicitation letters, which contained only "minor errors."

At oral argument and in its letter to us, the OAE urged us to adopt the CAA's findings and determine that a censure is the appropriate quantum of discipline for what it described as respondent's "extraordinary" advertising misconduct, which spanned a three-year period. The OAE argued that respondent's misconduct was similar to that of the censured attorney in Rakofsky. Although respondent did not fabricate his credentials like Rakofsky, the OAE argued that respondent displayed a similar level of disdain for the RPCs governing attorney advertising.

Analysis and Discipline

Following our de novo review of the record, we determine that the CAA's finding that respondent's conduct was unethical supports most of the charges of unethical conduct by clear and convincing evidence.

By way of background, the CAA has "the exclusive authority to consider . . . ethics grievances concerning the compliance of advertisements and other

related communications with" "any duly approved advertising guidelines" and RPCs 7.1 through 7.5 governing attorney advertising. R. 1:19A-2(a). Generally, following its review of the grievance, the CAA "shall refer" to the OAE all cases where the CAA "concludes that the facts may demonstrate[,] by clear and convincing evidence[,] that unethical conduct has occurred." R. 1:19A-4(c).[22]

Following the filing of a formal ethics complaint by the OAE, the CAA conducts a hearing if there are "material controverted issues of fact." R. 1:19A-4(e). Thereafter, the CAA issues a report to us, and we review the matter de novo on the record. R. 1:19A-4(f) and R. 1:20-15(f). In connection with our de novo review, we are required to "accept the facts found [by the CAA] as conclusive. The sole issues to be determined shall be the legal conclusion reached by the [CAA] as to whether there is unethical conduct and the extent of final discipline to be imposed." R. 1:19A-4(f).

Here, as the CAA found, respondent was B&A's managing attorney and, thus, was responsible for its marketing activities. Moreover, during his 2019 demand interview, respondent accepted responsibility for the content of B&A's advertisements. During the ethics hearing, respondent admitted that he reviewed

[22] However, if the CAA finds "unethical conduct in the form of minor advertising violations, it may direct the lawyer to take immediate steps to discontinue use of the advertisement and to submit a revised advertisement for the [CAA's] review. If the lawyer has discontinued the use of the advertisement and the revised advertisement complies with the advertising [R]ules, the [CAA] may dismiss the grievance." R. 1:19A-4(b).

draft templates of the solicitation letters before B&A transmitted them to prospective clients. Consequently, although respondent neither personally signed nor directly transmitted the sixteen solicitation letters and nine envelopes that are the subject of this matter, we find that respondent was responsible for the content of those advertising materials.

As detailed below, respondent's prolonged advertising campaign resulted in numerous violations of the RPCs governing attorney advertising.

The April 16, 2016 Solicitation Letter Envelope (Count One)

RPC 7.1(a) prohibits a lawyer from 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. Under RPC 7.1(a)(1), a communication is false or misleading if it "contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading."

Additionally, RPC 7.1(b) prohibits an attorney from using an advertisement "known to have been disapproved by the [CAA], or one substantially the same as the one disapproved, until or unless modified or reversed by the [CAA]." In C.A.A. Opinion 5, the CAA prohibited law firms from practicing law "under more than one name."

Respondent violated RPC 7.1(a)(1) and the principles of C.A.A. Opinion 5 by including a false law firm name on B&A's April 16, 2016 solicitation letter envelope. Specifically, the envelope identified B&A's return address as: "BURLINGTON LEGAL CENTER[,] ATTORNEYS AT LAW[,]" without any reference to B&A's actual law firm name.

Effective September 9, 2020, RPC 7.5(e) provides, in relevant part, that:

> [w]here the law firm trade name does not include the name of a lawyer in the firm . . . any advertisement, letterhead[,] or other communication containing the law firm name must include the name of at least one licensed New Jersey attorney who is responsible for the firm's New Jersey practice or the local office thereof.

Prior to the September 9, 2020 amendment, RPC 7.5(e) provided, in relevant part, that "[law firm] trade names shall be accompanied by the full or last names of one or more of the lawyers practicing in the firm."

Respondent violated RPC 7.5(e), as it was drafted prior to the September 2020 Rule amendment, by issuing the April 16, 2016 solicitation letter envelope containing the false law firm trade name "BURLINGTON LEGAL CENTER[.]" Respondent, however, failed to have that trade name accompanied by the full or last names of one or more of the lawyers practicing at the firm.

The May 10, 2016 Solicitation Letter (Count Two)

In connection with the May 10, 2016 solicitation letter and envelope, respondent violated RPC 7.1(a)(1) by falsely listing B&A's address as the location of a UPS store. Respondent's deception was compounded by the fact that the false address appeared to be a legitimate firm business address, with an accompanying suite. Based on Fritz's statements in his July 2016 letter to the CAA, the UPS store, at best, may have accepted mail on behalf of B&A. However, even if that were true, the solicitation letter did not inform the recipient of that arrangement and, thus, was materially misleading.

Respondent also violated RPC 7.5(e), as it was drafted prior to the September 2020 Rule amendment, by utilizing the false and improper "BERGEN COUNTY LEGAL CENTER" trade name in both the solicitation letter and envelope. Similar to his April 16, 2016 solicitation envelope, respondent failed to have that trade name accompanied by the full or last names of one or more of the lawyers practicing at the firm, as RPC 7.5(e) required.

RPC 7.3(b)(5) prohibits a lawyer from making a communication to a prospective client "for the purpose of obtaining professional employment if . . . the communication involves unsolicited direct contact with a prospective client concerning a specific event . . . when such contact has pecuniary gain as a significant motive." However, RPC 7.3(b)(5) allows an attorney to send a letter

by regular mail to a prosecutive client provided that the letter:

> (i) bears the word "ADVERTISEMENT" prominently displayed in capital letters at the top of the first page of text and on the outside envelope, unless the lawyer has a family, close personal, or prior professional relationship with the recipient. The envelope shall contain nothing other than the lawyer's name, firm, return address and "ADVERTISEMENT" prominently displayed; and
>
> (ii) shall contain the party's name in the salutation and begin by advising the recipient that if a lawyer has already been retained the letter is to be disregarded; and
>
> (iii) contains the following notice at the bottom of the last page of text: "Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision."; and
>
> (iv) contains an additional notice also at the bottom of the last page of text that the recipient may, if the letter is inaccurate or misleading, report same to the Committee on Attorney Advertising, Hughes Justice Complex, P.O. Box 970, Trenton, New Jersey 08625-0970. The name and address of the attorney responsible for the content of the letter shall be included in the notice.

Here, respondent violated RPC 7.3(b)(5)(i) by failing to include the word "ADVERTISEMENT" on the envelope containing the solicitation letter. Moreover, respondent improperly listed B&A's website on the envelope, as that Rule prohibits.

Additionally, respondent violated RPC 7.3(b)(5)(ii) by failing to advise the recipient, at the outset of the letter, to disregard the letter if she already had retained counsel. Rather, respondent's letter began by informing the recipient that "we would like to help you achieve a downgrade or dismissal for your recent summons for 39:4-215 Failure To Obey Signals Signs Or Directions by Elmwood Park Borough[.]"

Finally, respondent violated RPC 7.3(b)(5)(iv) by failing to include the address for the attorney responsible for the content of the letter in the notice required by that Rule at the bottom of the letter.

However, we dismiss the second RPC 7.1(a)(1) charge. Specifically, the solicitation letter stated that, "[a]s Elmwood Park Borough lawyers, we ask you [sic] let us handle the court personnel that will be prosecuting the case for Elmwood Park Borough, and the State of New Jersey." As alleged in the complaint, the OAE argued that the "Elmwood Park Borough lawyers" statement implied that B&A attorneys were government lawyers. However, it appears that respondent was attempting to communicate simply that B&A attorneys regularly practiced law in Elmwood Park Borough. We, thus, find no clear and convincing evidence that respondent's "Elmwood Park Borough lawyers" statement was either false or misleading.

The June 13, 2017 Solicitation Letter (Count Three)

In connection with the June 13, 2017 solicitation letter, respondent violated RPC 7.1(a)(1) by making several false or misleading statements to an individual charged with failure to report an accident, in violation of N.J.S.A. 39:4-130. Specifically, respondent informed the prospective client that such a conviction could impact her "freedom" and result in a "criminal record" or "time in jail in some cases." Respondent's representations regarding the criminal consequences of such a conviction, however, were grossly misleading.

In New Jersey, it is well settled that "only [a]n offense defined [in Title 2C] or by any other statute of this State, for which a sentence of imprisonment in excess of 6 months is authorized, constitutes a crime within the meaning of the Constitution of this State." State v. Taimangelo, 403 N.J. Super. 112, 123 (App. Div. 2008) (quoting N.J.S.A. 2C:1-4(a)) (alterations in original), certif. denied, 197 N.J. 477 (2009). By contrast, the Court has characterized Title 39 "traffic offenses as quasi-criminal." State v. Widmaier, 157 N.J. 475, 494 (1999). "Quasi-criminal offenses are 'a class of offenses against the public which have not been declared crimes, but wrongful against the general or local public which it is proper should be repressed or punished by forfeitures and penalties." Ibid. (quoting State v. Laird, 25 N.J. 298, 302-03 (1957)) (emphasis added).

An individual convicted of failing to report an accident "shall be fined not less than $30 or more than $100." N.J.S.A. 39:4-130. Respondent's references to jail time, thus, constituted a material misrepresentation of law, given that only a fine, and not a term of imprisonment, can result from a conviction for failing to report an accident. The recipient of the solicitation letter, however, may well have been under the misimpression that her criminal record and liberty interests were in serious jeopardy for allegedly committing a traffic offense.

Additionally, respondent violated RPC 5.3 by failing to ensure that Ortega, B&A's nonlawyer employee, conformed her conduct with the professional obligations of a lawyer. Specifically, respondent allowed Ortega to sign the deceptive solicitation letter, under her name, despite the fact that RPC 7.3(a) and (b) allows a lawyer to solicit a prospective client only within the strictures of that Rule. By allowing Ortega to transmit the improper solicitation letter, respondent failed to ensure that Ortega conformed her conduct with the professional obligations of a lawyer.

However, we dismiss the second RPC 7.1(a)(1) charge. The OAE again alleged that respondent misled the recipient of the letter into believing that B&A consisted of government lawyers based on the following statement: "[a]s Asbury Park City lawyers, we ask you [sic] let us handle the court personnel that will be prosecuting the case for Asbury Park City, and the State of New Jersey."

However, as discussed above, it appears that respondent was attempting to communicate only that B&A attorneys regularly practiced law in the City of Asbury Park.

Finally, we dismiss the RPC 7.1(a)(3) charge.

RPC 7.1(a)(3) prohibits a lawyer from making a "false or misleading communication[] about the lawyer, the lawyer's services or any matter in which the lawyer has or seeks a professional involvement" by "compar[ing] the lawyer's services with other lawyers' services, unless the (i) name of the comparing organization is stated, (ii) the basis for the comparison can be substantiated, and (iii) the communication includes the following disclaimer in a readily discernable manner: 'No aspect of this advertisement has been approved by the Supreme Court of New Jersey.'"

The bottom of the June 13, 2017 solicitation letter stated: "we aim to refer you to a top Attorney focusing on your area of Law." As alleged in the complaint, the OAE claimed that the statement improperly "compare[d]" B&A's legal services with those of other lawyers. However, rather than comparing B&A's services with those of other lawyers, it appears that respondent was engaging in mere sales puffery by claiming that B&A's attorneys were "top" lawyers. Consequently, because respondent did not appear to improperly

compare B&A's legal services with those of other lawyers, we determine to dismiss the RPC 7.1(a)(3) charge.

The November 14, 18, and 20, 2017 Solicitation Letters (Count Four)

In connection with the November 14, 18, and 20, 2017 solicitation letters, respondent violated RPC 7.1(a)(1) by including, in the letterheads, the "OCEAN" or "MIDDLESEX" "COUNTY DIVISION" headings, in large font, above the name of B&A, which appeared in smaller font.[23] Additionally, a nearly identical "COUNTY DIVISION" letterhead appeared on the envelope enclosing the November 14 solicitation letter. The "COUNTY DIVISION" headings appeared prominently in the letters and on at least one of the envelopes sent to the individuals charged, in either Ocean or Middlesex County municipalities, with careless driving, operating a motor vehicle while in possession of narcotics, or disorderly persons possession of drug paraphernalia.

Respondent argued that his use of "COUNTY DIVISION[s]" in the letterheads merely designated B&A's applicable location or division within New

[23] The OAE alleged, in the formal ethics complaint, that respondent violated RPC 7.5(e) by engaging in "misleading" advertising by including the "COUNTY DIVISION" letterheads in his solicitation letters. However, as the CAA correctly found, respondent had fair notice that engaging in misleading advertising regarding B&A's professional services was more appropriately encapsulated by RPC 7.1(a). See R. 1:20-4(b) (entitled "Contents of Complaint" and requiring, among other notice pleading requirements, that a complaint "shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct").

Jersey. However, respondent's argument fails to appreciate that the use of "COUNTY DIVISION" letterheads could easily have misled the solicited individuals, who may have been anxiously awaiting their court appearances, that they had received an official notice from a court. Indeed, respondent's use of the phrase "URGENT COURT MATTER!," on at least one of the envelopes, may have bolstered the perception of the recipients that they had received a time-sensitive notice from a court.

Moreover, respondent violated RPC 7.3(b)(iv) by failing to contain the notice required by that Rule, at the bottom of each of his letters, stating that the recipients may report any inaccurate or misleading letters to the CAA.

Finally, respondent violated RPC 5.3(a) by, again, failing to ensure that Ortega conformed her conduct with the professional obligations of a lawyer. Specifically, respondent allowed Ortega to sign her name on the deceptive November 14 and 20 solicitation letters, despite the fact that only attorneys can solicit prospective clients.

We dismiss both RPC 7.1(a)(1) charges, which alleged that the November 14 and 20, 2017 letters improperly implied that B&A was comprised of government lawyers by including the statements: "[a]s Plumsted Township" or "Perth Amboy City" "lawyers, we ask you [sic] let us handle the court personnel that will be prosecuting the case for [the applicable municipality], and the State

of New Jersey." Again, in our view, it appears that respondent was attempting to communicate merely that B&A attorneys regularly practiced law in the applicable municipalities.

The Ten Solicitation Letters Issued Between December 17, 2016 and February 4, 2019 (Count Five)

Respondent violated RPC 7.1(a)(1) by prominently displaying the "COUNTY DIVISION" letterhead in connection with eight of the solicitation letters, issued between December 17, 2016 and February 4, 2019, and sent to individuals charged, throughout New Jersey, with various motor vehicle or disorderly persons offenses. Respondent violated another instance of RPC 7.1(a)(1) by displaying substantially the same "COUNTY DIVISION" letterhead on at least four of the eight envelopes containing the solicitation letters.[24] As noted above, such letterheads were materially misleading, given that they made respondent's solicitation letters appear as if the recipients had received an official notice from a court regarding an "URGENT COURT MATTER![,]" language which also appeared on each of the envelopes bearing the solicitation letters.

[24] The OAE alleged, in the formal ethics complaint, that respondent twice violated RPC 7.5(e) by including the misleading "COUNTY DIVISION" letterheads in his solicitation letters and envelopes. However, as the CAA correctly found, respondent had fair notice that engaging in misleading advertising regarding B&A's professional services was more appropriately encapsulated by RPC 7.1(a).

Additionally, respondent violated RPC 7.1(a)(3) by claiming, in the December 17, 2016, December 8, 2018, and January 5, 2019 solicitation letters, that B&A attorneys had "been honored by our peers as a [sic] criminal defense SuperLawyers for the past four years" and requesting that the recipient "[l]et our SuperLawyers maximize your chance of a downgrade or dismissal in this criminal case." A truthful communication that a "lawyer has received an award or accolade is not misleading or impermissibly comparative" provided that:

> (1) the conferrer has made inquiry into the attorney's fitness; (2) the conferrer does not issue such an honor or accolade for a price; and (3) a truthful, plain language description of the standard or methodology upon which the honor or accolade is based is available for inspection either as part of the communication itself or by reference to a convenient, publicly available source.
>
> [Pressler & Verniero, Current N.J. Court Rules, cmt. on RPC 7.1 at xxvii (2023).]

Here, by claiming that B&A attorneys had been "honored" as "SuperLawyers for the past four years," respondent compared B&A's services to those of other lawyers. Although respondent testified that he and other B&A attorneys had been "featured as rising stars and/or Super Lawyers" in "Super Lawyers Magazine," respondent failed to state the name of the comparing organization in his letters, as RPC 7.1(a)(3)(i) requires. Rather, respondent claimed only that he and the members of his firm had been "honored" as

"SuperLawyers." Respondent also failed to include either a plain language description or a reference to a convenient, publicly available source, detailing the standard or methodology upon which the "SuperLawyers" accolade was based, as the official comment to RPC 7.1 requires. Finally, following his references to the "SuperLawyers" accolade, respondent failed to include the required disclaimer that no aspect of the advertisement had been approved by the Court.

However, we dismiss the second RPC 7.1(a)(3) charge, which alleged that respondent failed to plainly state that he and other B&A attorneys allegedly had received an honor in the "Super Lawyers list." Because such misconduct is adequately addressed by the other RPC 7.1(a)(3) charge, we dismiss the second RPC 7.1(a)(3) charge as duplicative.

Moreover, respondent violated RPC 7.1(b) and the principles of A.C.P.E Joint Opinion 666/C.A.A. Joint Opinion 14, by advising prospective personal injury clients, in the October 23 and November 30, 2018 solicitation letters, that B&A would handle the representation without any "FEES UNLESS WE WIN YOUR CASE."

A.C.P.E Joint Opinion 666/C.A.A. Joint Opinion 14 prohibits direct solicitation letters that suggest that the lawyer will handle a matter on a contingent fee basis, without additional language concerning alternative fee

options. In that joint opinion, the Advisory Committee on Professional Ethics (the ACPE) and the CAA observed that such a provision violates R. 1:21-7(b) (prohibiting attorneys from entering "into a contingent fee arrangement without first having advised the client of the right and afford[ing] the client an opportunity to retain the attorney under an arrangement for compensation on the basis of the reasonable value of the services").

Here, respondent's October 23 and November 30, 2018 solicitation letters indicated that B&A would handle the representation without any fees "UNLESS WE WIN YOUR CASE," without referencing any alternative fee arrangements, as Joint Opinion 666 and Joint Opinion 14 require.

Further, respondent violated RPC 7.1(b)[25] and the principles of C.A.A. Opinion 22, by notifying prospective clients, in the December 17, 2016, December 8, 2018, and January 5, 2019 solicitation letters sent to individuals charged with various disorderly persons offenses, that B&A employed "former judges to assist you."

In C.A.A. Opinion 22, the CAA considered whether an individual, who had served as a municipal court judge in "numerous" townships between 1979

[25] The formal ethics complaint alleged that respondent violated RPC 7.1(a) by violating the principles of C.A.A Opinion 22. However, respondent had fair notice that using an advertisement known to have been disapproved by the CAA was more appropriately encapsulated by RPC 7.1(b).

and 1983, could advertise his former service as a judge in a regional newspaper and phonebook. The CAA observed that the "mere statement that one was once a municipal judge, without more[,] may be potentially misleading." Specifically, the CAA found that a "consumer" could "make a hasty or uninformed decision concerning the choice of counsel" by not knowing the years or locations of service in which the attorney had served as a municipal judge. The CAA, thus, held "that an attorney may advertise" his or her former service as "a municipal court judge only if the attorney includes the years and location(s) of service in the advertisement."

During the ethics hearing, respondent claimed that B&A had employed a former municipal court judge. Consequently, respondent's statement in his solicitation letters that B&A had "former judges to assist you" was misleading, not only because B&A had, in fact, employed only one former judge, but also because the solicitation letters failed to specify the locations and years of service wherein the attorney had served as a former judge, as C.A.A. Opinion 22 requires.

Additionally, respondent violated RPC 7.3(b)(5)(ii) by altogether failing to advise the recipients of the October 23 and November 30, 2018 solicitation letters to disregard the correspondence if they already had retained counsel.

Respondent also violated RPC 7.3(b)(5)(i) by including the improper phrase "URGENT COURT MATTER!" on five of the solicitation letter envelopes issued between August 14, 2018 and February 4, 2019. Although respondent included the word "Advertisement" beneath the "URGENT COURT MATTER!" notice, the word "Advertisement" appeared in much smaller font and was not prominently displayed, as required by RPC 7.3(b)(5)(i) and Attorney Advertising Guideline 2(c) (the word "ADVERTISEMENT" on the face of the envelope must be at least one font size larger than the largest font size used on the envelope).

However, we determine to dismiss the RPC 7.3(b)(5)(iv) charge, which was premised on respondent's failure to comply with RPC 7.3(b)(5)(i) in connection with the statements made on the solicitation letter envelopes. Because RPC 7.3(b)(5)(i) correctly encapsulates respondent's failure to comply with that same Rule, we dismiss the RPC 7.3(b)(5)(iv) charge as duplicative and as a matter of law.

Respondent also violated RPC 5.3(a) by failing to ensure that Randall, B&A's nonlawyer employee, conformed his conduct with the professional obligations of a lawyer. Specifically, respondent allowed Randall to sign his name on the improper December 17, 2016 solicitation letter. As noted above, only attorneys can solicit prospective clients.

Finally, we dismiss the charge that respondent violated RPC 7.1(a)(3), as alleged in the complaint, by claiming, in all ten solicitation letters issued between December 17, 2016 and February 4, 2019, that B&A "aim[ed] to refer" the prospective client "to a top Attorney focusing on your area of the law." However, as noted above, such language appears to constitute mere sales puffery—namely, that B&A consisted of "top" lawyers— rather than an attempt to improperly compare B&A's legal services with those of other lawyers.

The September 2, 2019 Solicitation Letter (Count Six)

RPC 7.4(a) provides, in relevant part, that "[a] lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law." However, the Rule generally prohibits any attorney from stating or implying "that the lawyer has been recognized or certified as a specialist in a particular field of law." Nevertheless, a lawyer "may communicate that the lawyer has been certified as a specialist or certified in a field of practice only when the communication is not false or misleading, states the name of the certifying organization, and states that the certification has been granted by the . . . Court or by an organization that has been approved by the [ABA]." RPC 7.4(d). "Only lawyers who are certified by the . . . Court or an organization approved by the [ABA] may call themselves experts." C.A.A. Opinion 45.

Here, respondent violated RPC 7.4(a) and the principles of C.A.A. Opinion 45 by claiming, in the September 2, 2019 solicitation letter, that B&A consisted of "personal injury expert trial attorneys." However, neither respondent nor the members of B&A were recognized as "personal injury expert trial attorneys" by either the Court or by an ABA approved organization.

Additionally, respondent violated RPC 7.1(b) by advising the prospective personal injury client that B&A would handle the representation without any "FEES UNLESS WE WIN YOUR CASE[,]" without referencing any alternative fee arrangements, as the principles of C.A.A. Joint Opinion 14 require.

Moreover, respondent violated RPC 7.3(b)(5)(iv) in two respects. First, respondent failed to include the address of the attorney responsible for the advertisement in the notice required by that Rule at the bottom of the letter. Second, respondent failed to include the CAA's correct address in the notice required by that Rule.

Additionally, respondent violated Attorney Advertising Guideline 2(b) by making the font size of the RPC 7.3(b)(5)(iv) notice smaller than the font size used in other portions of the September 2, 2019 solicitation letter. Nevertheless, a violation of the Attorney Advertising Guidelines does not, by itself, constitute a violation of the Rules of Professional Conduct. See In the Stanley Marcus, DRB 11-014 (June 28, 2011) at 4 ("not every violation of a Court Rule is a

violation of the Rules of Professional Conduct"), so ordered, 208 N.J. 178 (2011). Consequently, we find that respondent did not commit any unethical conduct in connection with the font size of the RPC 7.3(b)(5)(iv) notice.

Finally, we dismiss the RPC 7.3(b)(5)(i) charge. As alleged in the formal ethics complaint, the envelope enclosing the September 2, 2019 solicitation letter contained the improper phrase "URGENT COURT MATTER!" However, that envelope is not included in the record before us, and respondent did not stipulate to its content. Consequently, there is no clear and convincing evidence that the envelope contained such improper language.

In sum, we find that respondent violated RPC 5.3(a) (three instances – counts three through five); RPC 7.1(a) (seven instances – counts one through five); RPC 7.1(b) (three instances – counts five and six); RPC 7.3(b) (eight instances – counts two, four, five, and six); RPC 7.4(a) (count six); and RPC 7.5(e) (two instances – counts one and two).

We dismiss the charges that respondent violated RPC 7.1(a) (seven instances – counts two through five) and RPC 7.3(b) (two instances – counts five and six).

The sole issue left for our determination is the appropriate quantum of discipline for the totality of respondent's misconduct.

Admonitions and reprimands have been imposed on attorneys who engage in improper, unsolicited, direct contact with prospective clients or who, in their quest to solicit clients, make false or misleading communications in their general advertising campaigns. See, e.g., In re Verrastro, 242 N.J. 144 (2020) (admonition for attorney who sent solicitation letters to the former clients of a suspended attorney for the purpose of assuming their legal representation; the attorney's solicitation letters falsely claimed that he had "extensive experience as a litigator and trial lawyer in both criminal and civil matters[;]" in fact, the attorney had not yet been involved in a single criminal trial at the time he had disseminated the letters; the attorney refused to admit his wrongdoing or demonstrate any remorse; no prior discipline); In the Matter of Robert Richard Hynes, DRB 19-063 (April 24, 2019) (admonition for attorney who failed to supervise a nonlawyer employee, who directly communicated with a prospective personal injury client, via an unsolicited telephone call; the attorney was aware, based on a prior ethics investigation prompted by similar facts, that his employee's conduct regarding prospective clients needed to be closely supervised; no prior discipline); In re Fritz, 253 N.J. 373 (2023) (reprimand for attorney who served as an independent contractor attorney at B&A and stipulated that he violated the RPCs governing attorney advertising in connection with two of the solicitation letters at issue in the instant matter—

specifically, the attorney signed the May 10, 2016 solicitation letter that falsely identified B&A's address as that of a UPS store and which contained grossly misleading statements regarding the penal and criminal consequences the solicited client could face for a mere traffic offense; additionally, the attorney signed the September 2, 2019 solicitation letter that improperly proclaimed B&A's attorneys as "personal injury expert trial attorneys" and stated "NO FEES UNLESS WE WIN YOUR CASE," without disclosing any alternative fee arrangements; in mitigation, the attorney had no prior discipline and, unlike the censured lawyer in Rakofsky, the attorney did not fabricate his credentials and his misconduct was confined to the RPCs governing attorney advertising).

The Court has imposed a censure when an attorney committed multiple egregious advertising violations. In re Rakofsky, 223 N.J. 349. In Rakofsky, the attorney had essentially no experience when he opened a law firm, but 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) at 13. He misrepresented that he had worked on cases involving murder; embezzlement; tax evasion; civil RICO; and securities, insurance, and bank fraud, among other serious criminal matters, as well as drug offenses, including drug trafficking. Id. at 5.

We found that Rakofsky's misrepresentations were so egregious as to constitute outright lies. Id. at 25. Rakofsky did not merely inflate his credentials, he fabricated them, and conveyed the impression that he was a "super lawyer." Ibid. His firm's letterhead failed to indicate that two of the firm's attorneys were not licensed to practice law in New Jersey. Id. at 13. He also failed to set forth, in writing, the basis or rate of his fee, failed to maintain a file for the matter, and lacked diligence. Notwithstanding the attorney's lack of prior discipline; his youth and inexperience; the immediate withdrawal of the offending advertising; the correction of his misleading letterhead; and the lack of harm to his clients, we determined that a censure was the appropriate quantum of discipline for the attorney's misconduct. Id. at 25. The Court agreed.

As the CAA correctly observed, this matter is not a typical advertising case. Specifically, unlike the reprimanded attorney in Fritz – who stipulated that he had transmitted two improper solicitation letters while serving as an independent contractor attorney at B&A – respondent oversaw B&A's entire advertising campaign, spanning nearly three-and-a-half years, during which his firm transmitted at least sixteen improper solicitation letters and nine improper solicitation envelopes. However, based on respondent's testimony that B&A had transmitted between five and ten thousand solicitation letters each week during its three-and-a-half year advertising campaign, the CAA found that respondent's

noncompliant solicitation letters could have "number[ed] as many as a million."

Respondent's most egregious misconduct was his repeated use of the false and misleading "COUNTY DIVISION" letterheads. Specifically, depending on the municipality wherein the individual was charged with either a disorderly persons or motor vehicle offense, respondent would modify B&A's law firm name, on both the envelope and in the solicitation letter, to the applicable county. The top line of each of respondent's letterheads, thus, broadcasted to the recipients that they had received a notice from a "COUNTY DIVISION." Moreover, many of the envelopes further communicated that the correspondence was regarding an "URGENT COURT MATTER!" Although B&A's law firm name appeared on the solicitation letters and envelopes, which, at times, contained the word "Advertisement," that required information appeared much less prominently. Respondent's "COUNTY DIVISION" letterheads, thus, could easily have misled numerous individuals throughout New Jersey that they had received an official notice from a court regarding an "URGENT COURT MATTER!"

Respondent's serious advertising misconduct, however, did not end there. Specifically, many of the solicitation letters contained grossly misleading statements regarding the penal and criminal consequences the prospective clients could face for mere traffic offenses. Although some of the traffic offenses

listed in respondent's solicitation letters, including careless driving and failing to obey traffic signals, could result in a short jail term, respondent likely knew, as the managing partner of a firm that handled a high volume of municipal court matters, that such convictions would almost certainly not result in a term of incarceration, in light of the Court's recognition, in State v. Widmaier, 157 N.J. 475 (1999), that such offenses should ordinarily be "punished by forfeitures and penalties." Id. at 494. Nevertheless, the recipients of such solicitation letters may well have been under the misimpression that their criminal records and liberty interests were in serious jeopardy for allegedly committing a traffic offense.

Additionally, respondent's May 10, 2016 "BERGEN COUNTY LEGAL CENTER" solicitation letter and accompanying envelope falsely identified B&A's address as that of a UPS store located in Bergen County. Regardless of whether the UPS store may have accepted mail on behalf of B&A, the fact remains that the solicitation letter created the false impression that B&A was known only as the "BERGEN COUNTY LEGAL CENTER" and that it maintained an office suite located in Bergen County. Respondent's argument that he did not engage in any misleading advertising based on his view that he had, at some point, attempted to purchase a law firm in Bergen County did not render the solicitation letter any less deceptive.

Moreover, respondent's reliance on Hyderally is entirely misplaced. In that matter, Hyderally was unaware that a website designer had placed the New Jersey Board of Attorney Certification emblem on his firm's website. Upon being told of its presence, Hyderally had it removed immediately. Hyderally also did not otherwise hold himself out as a certified civil trial attorney. The Court, thus, found no clear and convincing evidence demonstrating that Hyderally had engaged in any knowing acts of deception and dismissed the sole RPC 8.4(c) charge. In re Hyderally, 208 N.J. at 461.

Unlike Hyderally, respondent cannot reasonably claim to have been ignorant of the content of his firm's advertising materials. Specifically, as B&A's managing partner, respondent oversaw his firm's advertising campaign and reviewed the templates of the draft solicitation letters before his staff transmitted them to prospective clients.

Further, unlike Fritz, who stipulated to his misconduct in connection with the May 10, 2016 and September 2, 2019 solicitation letters, respondent has, throughout the disciplinary proceedings, displayed a disturbing lack of remorse for his misconduct. Specifically, respondent characterized the solicitation letters presented by the OAE as "defects," "rogue print job[s]," or "draft[s]" that somehow made their "way out" of his office. Similarly, respondent claimed that the "defects" represented "less than 1%" of the total volume of his advertising

campaign and were the result of "human error," "technology glitches," and the principles of the axiom "Murphy's Law." In respondent's view, the OAE created "a narrative . . . focusing on the few defects and not the . . . 990,000 letters that were fully compliant."

The improprieties in respondent's deceptive solicitation letters, however, were not the result of technological "glitches" or "rogue print jobs." Rather, respondent appeared to carefully craft his template solicitation letters, many of which contained substantially the same content, in order to alarm prospective clients into believing they had received an "URGENT" notice from a "COUNTY DIVISION" in connection with a matter that could result in jail time.

Additionally, throughout the disciplinary proceedings, respondent has not produced a single compliant solicitation letter, despite his claim that 990,000 of such letters fully complied with the RPCs governing attorney advertising. However, even if we were to accept respondent's claim that "less than 1%" of the total volume of his solicitation letters failed to comply with the RPCs governing attorney advertising, that would mean that B&A had transmitted approximately 10,000 solicitation letters containing improprieties throughout its three-and-a-half-year campaign to solicit clients.

In our view, respondent's conduct during the disciplinary proceedings is similar to that of the attorney in In the Matter of David M. Schlachter, DRB 22-

192 (March 28, 2023). In that matter, we unanimously determined that a three-month suspension was the appropriate quantum of discipline for an attorney who continued, for years, to misrepresent to a client that his wrongful termination lawsuit had remained pending, despite the fact that it had been dismissed, and the claim permanently extinguished, due to the attorney's neglect. During oral argument before us and in the attorney's summation brief to the District Ethics Committee, the attorney attempted to argue an alternative version of events that were contrary to his sworn admissions in his disciplinary stipulation, in an attempt to demonstrate, in his view, "what actually occurred." Id. at 15. We accorded significant aggravating weight to the attorney's deceptive behavior, including his attempts to mislead us and engage in "gamesmanship with the stipulated facts," all of which demonstrated the attorney's contempt for the attorney disciplinary system. Id. at 30. The Court agreed with our recommended discipline. In re Schlachter, __ N.J. __ (2023), 2023 N.J. LEXIS 704.

Like Schlachter, respondent's conduct during the disciplinary proceedings was deceitful and, at the very least, demonstrated a disdain for the disciplinary process designed to protect the public. Specifically, contrary to his sworn statements in his verified answer that B&A had, in fact, transmitted most of the solicitation letters presented by the OAE, during the ethics hearing, respondent refused to acknowledge that his firm had transmitted any of the letters and,

instead, argued that the solicitation letters were admitted into evidence without any "chain of custody" and could have been found in a "dumpster" or in a "recycling bin in the back of a Walmart." At other times, respondent baselessly alleged that the solicitation letters were "from a questionable origin" and may have been "manufacter[ed]" by B&A's "competitors."

Respondent further accused the OAE and the CAA of embarking upon an "utter witch hunt against him" based, in part, on his unsupported personal view that those entities were in an "unholy alliance" and held a "bias against him." See In re Cubby, 250 N.J. 428 (2022) (according significant aggravating weight to the attorney's baseless accusations that disciplinary authorities, prosecutors, and judges had conspired to falsely accuse him of misconduct; the attorney had engaged in a prolonged, scorched-earth strategy to undermine the disciplinary process).

Respondent also argued that the CAA had violated his due process rights by prohibiting the testimony of his proposed nonlawyer experts, one of whom was a realtor with a background in law enforcement while the other was an advertising consultant who worked in the healthcare industry. The CAA, however, correctly determined, pursuant to N.J.R.E. 702, to preclude those proposed experts from testifying, given that neither of them had any relevant knowledge, skill, or experience with the practice of law or the RPCs governing

attorney advertising that could have assisted the CAA, the entity with subject matter expertise in attorney advertising.

In conclusion, during a three-and-a-half-year period between April 2016 and September 2019, respondent embarked upon an extensive and improper advertising campaign throughout New Jersey, during which his firm utilized grossly misleading letterheads and scare tactics in its attempt to solicit clients. Many of respondent's letters contained grossly deceptive "COUNTY DIVISION" letterheads, improper "URGENT COURT MATTER!" notices on the envelopes, and misleading information regarding the penal and criminal consequences of committing traffic offenses. Rather than accept genuine responsibility for his firm's advertising, respondent launched baseless attacks against the integrity of the OAE and the CAA, blamed B&A's competitors for "manufacturing" the improper letters, and characterized the disciplinary proceedings against him as a "witch hunt." In light of these aggravating facts, and considering that respondent's culpability in B&A's improper advertising campaign was far more egregious than that of Fritz, who received a reprimand, we determine that a three-month suspension is the appropriate quantum of discipline necessary to protect the public and to preserve confidence in the bar.

Vice-Chair Boyer and Members Joseph and Rodriguez voted to impose a censure.

Member Hoberman was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: /s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Sean Lawrence Branigan
Docket No. DRB 23-109

Argued: June 21, 2023

Decided: October 30, 2023

Disposition: Three-month suspension

Members	Three-month suspension	Censure	Absent
Gallipoli	X		
Boyer		X	
Campelo	X		
Hoberman			X
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Rodriquez		X	
Total:	5	3	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel