

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-266
District Docket No. XIV-2010-0485E

In the Matter of
John J. Robertelli
An Attorney at Law

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Dissent

Decided: April 30, 2020

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

We dissent from the majority and vote to impose a censure.

The events giving rising to this disciplinary matter took place in 2008. The majority found that respondent violated RPC 4.2 (communicating with a person represented by counsel), RPC 5.3 (a), (b), and (c) (failure to supervise a nonlawyer assistant), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and determined to impose an admonition. Three dissenting colleagues voted to dismiss.

For the reasons which follow, we disagree with the majority's recommended sanction and, rather, vote for and thereby recommend the imposition of a censure. We further write to express our personal disagreement with respondent's defense, and the arguments of our esteemed colleagues, that respondent's actions should be excused, because, at the time the events in question arose, he was uninformed, not knowledgeable of, and indeed largely ignorant concerning information available on and obtainable from the internet.

Long before the advent of the internet, and certainly long before 2008, it was known, without question, that a lawyer was prohibited from communicating with a person the lawyer knew or should have known to be represented by adverse counsel. Likewise, it was known that a lawyer had the obligation to supervise a non-lawyer assistant and could be held responsible for the assistant's conduct, should that conduct run afoul of the mandates of the RPCs.

For the sake of this discussion only, we put aside the conflict in the testimony before the Special Master between the respondent and his paralegal, Valentina Cordoba, as it dealt with the communications that took place between the two with regard to the internet search of Hernandez's Facebook account. The Special Master found that respondent was more credible than his paralegal, at least in part, because she was sick during her testimony. We are willing to accept the Special Master's trustworthiness assessment, but only for the sake of this

discussion, despite the fact that we have yet to come to an understanding as to how Cordoba's laryngitis and severe cold on the day she testified affected her credibility.

Credibility aside, it is undisputed that respondent asked Cordoba to conduct an internet search to obtain information about Hernandez's criminal, academic, and work history. It is likewise undisputed that, after respondent received Hernandez's Notice of Tort Claim, he knew that Hernandez was posting on the internet and, shortly after a complaint was filed, respondent was informed by his paralegal that Hernandez had a Facebook account. It is likewise undisputed that, thereafter, respondent instructed Cordoba to continue to monitor Hernandez's account, and that she informed him that she had to "click a button" to access more information not generally available from his Facebook account. It is likewise undisputed that, at first, respondent instructed his paralegal to refrain from pressing that "button;" he then had a discussion with a claims person and, subsequently, came back to Cordoba and instructed her to proceed with accessing more information about Hernandez from his Facebook account by "clicking the button."

Every one of the above facts is taken from respondent's testimony before the Special Master. They are the facts, for the purpose of this discussion, uncontroverted, accepted as true, not subject to attack as to the credibility of

Cordoba. In our view, these facts prove, by clear and convincing evidence, that respondent, through his paralegal, was making a prohibited contact with a represented adverse party and, at the very least, even if one were to accept his defense of ignorance of the internet generally and Facebook in particular, he failed to supervise his assistant when he knew, without question, that she was, at his instruction, trying to make contact with an adverse represented person. Respondent made no inquiry as to what “clicking the button” involved or permitted access to and, if he was uninformed, as he claims, about how the internet worked, at the very least he had the obligation to inform himself so that he could properly advise Cordoba whether to proceed with her investigation of Hernandez on the internet/Facebook. “Clicking the button” was the way to gain access to Hernandez’s private Facebook pages. Whether it was, as Cordoba testified she told respondent it was, “telling Hernandez that he looked like a hockey player she knew so as to “‘friend’ him,” or simply, as respondent would have it, that she simply advised she needed to press a “button,” that dispute in the testimony is of no moment, as neither scenario provides a defense or safe harbor for respondent in respect of the charged RPC violations.

Accordingly, for the reasons expressed above, we respectfully dissent from both the majority’s opinion recommending an admonition, and from our

dissenting colleagues' recommendation that all counts of the complaint be dismissed.

Disciplinary Review Board
Maurice J. Gallipoli, Vice-Chair
Robert C. Zmirich

By: 

For: Ellen A. Brodsky
Chief Counsel