DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	:	
	:	
MICHAEL L. AVERY, SR.,	:	
	:	
Respondent.	:	Bar Docket No. 378-04
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
(Bar Registration No. 447083)	:	

REPORT AND RECOMMENDATION OF
THE BOARD ON PROFESSIONAL RESPONSIBILITY

Respondent, Michael L. Avery, Sr., is charged with violations of nine disciplinary Rules arising out of his representation of Complainant on injuries resulting from an alleged fall from a gurney in a nearby hospital. At the commencement of the evidentiary hearing, Respondent signed a four-page stipulation which rendered it unnecessary for Bar Counsel to call witnesses in its case-in-chief. Hearing Committee Number Three (the "Hearing Committee") found violations of eight Rules[1] and recommended public censure, which Respondent did not oppose. No exceptions have been filed to the Hearing Committee Report.

The Board on Professional Responsibility (the "Board") concludes that: (1) the Hearing Committee correctly found that Respondent committed the violations charged, and (2) the sanction of public censure recommended by the Hearing Committee, and not challenged by either party, is appropriate in this case.

[1] Post hearing, Bar Counsel concluded there was insufficient evidence of a Rule 1.5(b) violation. The Hearing Committee agreed. H.C. Rpt. at 16.

I. PROCEDURAL HISTORY

On May 4, 2006, Respondent was served with a Specification of Charges asserting violations of the following District of Columbia Rules of Professional Conduct:

- 1.1(a) by failing to provide competent representation to his client;
- 1.3(a) and (c) by failing to act zealously and with reasonable promptness on his client's behalf;
- 1.4(a) and (b) by failing to communicate adequately with his client;
- 1.5(b), (c) and (e) by failing to appropriately handle fee arrangements with his client; and
- 1.16(d) by failing to appropriately terminate the representation of his client.

Respondent filed his Answer on June 5, 2006, and the evidentiary hearing took place on the morning of August 2, 2006. At the commencement of the hearing, Bar Counsel placed in evidence Stipulations of Fact and advised the Hearing Committee that as a result of the Stipulations, he would rest.[2] With the concurrence of Respondent and his counsel, and following the admission of Respondent's exhibits, the Hearing Committee took a brief recess and thereafter announced a preliminary non-binding determination that Respondent had violated at least one disciplinary rule. Thereafter, Bar Counsel stated he had no evidence in aggravation. Respondent's counsel called Respondent to testify in mitigation of sanctions, as well as one additional brief character witness. Respondent, who underwent examination by his counsel, Bar Counsel, and the Hearing Committee, testified almost exclusively on the events surrounding the misconduct.

[2] Bar Counsel also, without objection, moved into evidence other documentary exhibits. Tr. at 5.

Following the conclusion of the hearing, both Bar Counsel and Respondent's counsel filed proposed findings of fact and conclusions of law. Bar Counsel contended he had submitted proof of eight violations of the disciplinary rules and recommended censure as an appropriate sanction. Respondent acknowledged his failings in representing his client, pointed to his unblemished record as an attorney, his distinguished career as an officer in the United States Marine Corps, and conceded that public censure would be a reasonable sanction. The Hearing Committee filed its excellent Report on November 29, 2006, finding eight violations of the Rules and recommending public censure as the appropriate sanction.

II. FINDINGS OF FACT

The Board adopts the Hearing Committee's findings of fact with minor word changes that have no impact on the substance.

1. Respondent was admitted to the District of Columbia Bar on June 5, 1995. BX[3] A. He is also a member of the Virginia Bar. He has practiced principally in the area of personal injury with an emphasis on automobile accident cases. Tr. at 20.

2. Respondent had represented Complainant, Robert K. Ellis, in two automobile accident cases in 1999. Tr. at 20-21. Both cases settled without trial. Tr. at 21, 82-83; RX[4] 2, 3.

3. On April 6, 2000, Mr. Ellis was allegedly injured in a fall at Civista Medical Center, a Maryland Hospital, where he had undergone an endoscopic examination. BX 8; RX 5, 10, 12; JX[5] at ¶4. Thereafter, on December 13, 2000, Mr. Ellis consulted with a physician, Dr. John P. Byrne, M.D., at Greater Metropolitan Orthopaedics regarding pain

[3] Bar Counsel's Exhibits (hereinafter "BX").
[4] Respondent's Exhibits (hereinafter "RX").
[5] Joint Exhibit (hereinafter "JX").

in his left shoulder that he had been experiencing since "March or April of this year" when he "fell after having [an] endoscopic evaluation." RX 12; BX 6. In January 2001, Mr. Ellis had a surgical procedure performed by Dr. Byrne at Southern Maryland Hospital Center to repair a "large split rotator cuff tear in" his left shoulder. RX 12. According to the Consultation Report for the surgery, the injury was "sustained last April 2000. Apparently the patient fell and injured his left shoulder." BX 5.

4. Around April 2001, Respondent told Mr. Ellis that he would investigate a possible claim Mr. Ellis might make for injuries allegedly suffered a year earlier when he was a patient at Civista. Mr. Ellis said he had been dropped from a gurney at Civista. Respondent stated he had reservations about this case, but nevertheless wrote to the Risk Management Office at Civista that "[his] office represent[ed] the interests of [Mr. Ellis] relative to an incident occurring at Civista Health on or about April 6, 2000." BX 8; JX at ¶4-5. Respondent stated he explained to Mr. Ellis at some point that "he would only owe . . . a fee if there was a recovery," and, having no "specific recollection of stating to Mr. Ellis that this would be a one third contingency," believed "there were no questions in this regard from Mr. Ellis." BX 11. Respondent never provided Mr. Ellis with a written retainer agreement. BX 8; JX at ¶4; Tr. at 22.

5. On May 8, 2001, a representative from OHIC Insurance Company[6] on behalf of Civista replied to Respondent's letter that this was the "first notice of this claim" and requested certain information regarding Mr. Ellis's potential claims. RX 6; JX at ¶6.

6. Over seven months later, in December 2001, Respondent proceeded to gather records from Civista. On December 26, 2001, he requested Mr. Ellis to provide him with a "signed . . . release of medical information" authorization. BX 6. Mr. Ellis then

[6] Hereinafter ("OHIC").

provided Respondent a signed release form, dated December 30, 2001, authorizing Respondent access to Mr. Ellis's medical records. BX 8; RX 9; JX at ¶7.

7. By letter dated January 22, 2002, Respondent requested from Civista copies of all "prior and present medical records" for "an accident" occurring on April 6, 2000. RX 11. Also on January 22, 2002, Respondent requested all prior and present copies of Mr. Ellis's medical records from Southern Maryland Hospital for "an accident [that] occurred at Civista Health on or about April 6, 2000." RX 10. Respondent also sought similar medical records from another medical care provider. RX 10; JX at ¶7.

8. Civista requested prepayment to process this request, and Respondent sent Civista a check as payment for the medical records. BX 6; RX 11. On February 8, 2002, Civista notified Respondent that it was "unable to complete the request" and returned Respondent's check with a notice indicating its understanding that he "no longer needs copies of medical records." RX 11. Respondent stated that he was not aware that his office had not received any Civista records, was not informed about this by his office staff, and does not know why the request was cancelled. RX 10, 14; JX at ¶9. Respondent never renewed his request for Mr. Ellis's records at Civista. Tr. at 44.

9. On February 22, 2002, Southern Maryland Hospital replied that "[t]he date your [sic] looking for, the patient wasn't here" and provided no information about any incident involving Mr. Ellis at Civista. RX 10; BX 6; JX at ¶8. After a second request was made, Respondent obtained medical records, including an "Operative Report" by Dr. Byrne, who stated in the report that Mr. Ellis had shoulder surgery at Southern Maryland Hospital in January 2001 for injuries "sustained last April 2000." JX at ¶8;

BX 6; RX 10, 12. Respondent never contacted Dr. Byrne to find out whether Mr. Ellis's shoulder could have been injured in a fall at Civista. Tr. at 47-48.

10. Respondent concluded that there was no well-grounded claim for an April 2000 injury based on the medical records he had obtained (Tr. at 24-27; JX at ¶11), but did not tell this to Mr. Ellis. Tr. at 27-30, 33. However, in addition to the surgery report from Southern Maryland Hospital mentioning injuries sustained in April 2000, medical records at Civista never obtained by Respondent indicated that Mr. Ellis complained to hospital staff in April 2000 that his "back hurts" and that he "fell back when he went to sit on bed (pre-op)." BX 13; JX at ¶10. According to those same medical records, Mr. Ellis also said to hospital staff, "I'm okay. I just wanted to tell someone." *Id.*

11. Respondent later advised Mr. Ellis in early 2003 that no medical records supported his claims of being injured at Civista in April 2000. Tr. at 45. Respondent stated that Mr. Ellis then told him that the incident happened on November 27, 2000. Tr. at 24-25, 48; BX 8; JX at ¶13. Respondent never attempted to obtain medical records indicating that Mr. Ellis was injured at any hospital on that date. Tr. at 51. Moreover, Respondent never informed OHIC that he was no longer pursuing a claim for Mr. Ellis based on an April 2000 injury or planned to pursue a claim based on a different injury date. JX at ¶11-12.

12. Mr. Ellis's cause of action was subject to a three-year statute of limitations under Maryland law and would have expired in April 2003 if his injury had occurred in April 2000, and in November 2003 if his injury had occurred in November 2000. BX 14; Tr. at 30, 50. Respondent never filed any action on Mr. Ellis's behalf.

13. On October 27, 2003, Respondent informed Mr. Ellis in writing that "a colleague, Paul J. Duffy, Esquire [will] assist in the filing of a lawsuit on your behalf," based upon Mr. Ellis's claim of being injured in November 2000. BX 1. Respondent further counseled Mr. Ellis to "rest assured that we intend to see your case through to the end, which we sincerely hope will satisfy your losses from this accident." *Id.* Respondent never advised Mr. Ellis what hospital would be sued, how Respondent would continue to be involved in the matter, or that any claim would have to be filed by, at the latest, November 27, 2003. JX at ¶13.

14. Paul J. Duffy, Esquire, practices principally in the area of personal injury, handling injury claims occurring in Maryland. JX at ¶14. Respondent stipulated that, after he gave Mr. Ellis's file to Mr. Duffy, Respondent "did not maintain contact with Mr. Duffy to determine that a lawsuit on Mr. Ellis' behalf would in fact be filed as he had advised Mr. Ellis, and he did not discuss with Mr. Duffy, if the latter did not go forward with the lawsuit, which of them had the responsibility to notify Mr. Ellis that he needed to consult another attorney who would represent him in the matter within a reasonable time before the statute of limitations ran on Mr. Ellis' claim for injuries that may have occurred in November 2000." JX at ¶14; Tr. at 54. In fact, Mr. Duffy never agreed to represent Mr. Ellis in a lawsuit. Tr. at 60.

15. In late 2003, Mr. Ellis attempted to call Mr. Duffy to inquire about the status of his matter, but was informed that Mr. Duffy's office was not representing him. BX 1; Tr. at 56. Mr. Ellis subsequently contacted Respondent for an update on the status of his case. BX 6. Respondent then asked Mr. Duffy about this matter, who replied that he had reviewed Mr. Ellis's file, "rejected the case" because of the "sol [statute of limitations]

issue," and "wrote an e-mail to [Respondent] at this account letting you know the same." BX 6; JX at ¶15.

16. On January 27, 2004, Respondent asked Mr. Duffy whether he was "going to file this case," to provide reasons if he was not, and whether "the statute [has] run." BX 6. That same day, Mr. Duffy replied that "the sol appeared to ran [sic], even before [Mr. Ellis] contacted you [sic], at least that is my recollection . . . [T]he records did not suggest that he had a case, that he had severe [other health] problems, and that the sol had run." *Id.* On January 28, 2004, Respondent asked Mr. Duffy to "communicate [his] findings to the client so that he doesn't come after us for blowing the statute." *Id.*

17. On February 3 and 20, 2004, Respondent wrote Mr. Duffy urging him to contact Mr. Ellis regarding his claim. BX 6. On February 20, 2004, Mr. Duffy advised Respondent that he would write a memo to Mr. Ellis explaining that Mr. Duffy's office found "no documentation to support [Mr. Ellis's] assertion" and that it looked "as if the sol had run before [Mr. Ellis] signed up with [Respondent]." *Id.*

18. On February 23, 2004, Mr. Duffy wrote Respondent a letter explaining how Mr. Duffy had handled Mr. Ellis's matter. BX 6; JX at ¶16. In that letter, Mr. Duffy noted that the medical records he reviewed "clearly establish that the incident wherein Mr. Ellis was injured occurred in April 2000." BX 6. Mr. Duffy, apparently thinking that Mr. Ellis had approached Respondent after April 2003, reiterated his incorrect belief that the statute of limitations had already run by the time Mr. Ellis approached Respondent about filing a lawsuit based on the injury at Civista. *Id.* Mr. Duffy also stated that his firm ultimately determined Mr. Ellis had not sought legal counsel in a

timely fashion and that they would be unable to pursue any case for him. *Id.* Neither Mr. Duffy nor Respondent shared this letter with Mr. Ellis. JX at ¶16; Tr. at 59.

III. CONCLUSIONS OF LAW

A. Competent Representation – Rule 1.1(a)

Perhaps the clearest example of Respondent's failure to provide competent representation, as pointed out in the Hearing Committee Report, is the fact that, by his silence on the three-year statue of limitations period, he caused his client unwittingly to abandon his claim under Maryland law. As stated by the Hearing Committee, a competent attorney would have (1) conducted a thorough investigation of Mr. Ellis's claim, which would have included at least obtaining his medical records from Civista; (2) investigated the notations in Dr. Byrne's reports that an injury had occurred in April 2000, which would have included at least attempting to interview Dr. Byrne or gather further information from his office; (3) taken whatever reasonable steps were necessary to prevent the statute of limitations from running, which would have included at least informing Mr. Ellis about the applicable statute of limitations, allowing him time to seek other counsel if Respondent did not intend to file a lawsuit, and seeking timely review of the records from a licensed Maryland attorney before the statute had run. The Hearing Committee correctly found a violation of Rule 1.1(a).

B. Diligence and Promptness – Rule 1.3(a) and 1.3(c)

Respondent engaged in a pattern of neglect that violated Rule 1.3(a). As noted by the Hearing Committee, after agreeing to represent Mr. Ellis, Respondent failed to obtain Mr. Ellis's medical records from Civista. Respondent also failed to conduct an adequate review of Dr. Byrne's notes of December 2000 and January 2001, which indicated that

the injury to Mr. Ellis's shoulder was reported to have resulted from a fall in April 2000 after an endoscopic procedure.

Respondent's actions are similar to those in *In re Bernstein*, 707 A.2d 371 (D.C. 1998) where the Court held that the attorney violated Rule 1.3(a) when he showed scant effort in pursuing the client's claims, neglected to keep the client apprised of the lawsuit's status, and ultimately allowed dismissal of the lawsuit for want of prosecution. The Court has further held that failure to take action for a significant time to further a client's cause, whether or not prejudice to the client results, violates Rule 1.3(c). *In re Dietz*, 633 A.2d 850 (D.C. 1993). There is no question that Respondent failed to act diligently and with reasonable promptness in representing Mr. Ellis. The Hearing Committee correctly found that Respondent violated both Rule 1.3(a) and Rule 1.3(c).

C. Failure to Communicate – Rules 1.4(a) and 1.4(b)

In this case, Respondent conceded that "[h]e did not communicate effectively to Mr. Ellis the problems found with the case" (JX at ¶3), and that by October 2003, "[h]e did not advise Mr. Ellis that the lawsuit had to be filed within one month or what part he would continue to play in the matter," when he notified Mr. Ellis that Mr. Duffy [a Maryland attorney] would file a lawsuit on his behalf. JX at ¶13. The Hearing Committee correctly found violations of these two rules.

D. Fee Arrangements – Rules 1.5(b) and 1.5(c)

Bar Counsel initially charged Respondent with violating Rules 1.5(b) and 1.5(c), but concluded in its brief that Respondent only violated 1.5(c). As noted by the Hearing Committee, Respondent sought written retainer agreements with Mr. Ellis in two prior cases at the outset of the representation before investigating each of those matters. BX 8.

A new writing may not be required, however, where there has been regular representation. *See* Rule 1.5(b), comment [1]. The Board agrees with the Hearing Committee in finding no clear and convincing evidence in the record that Respondent violated Rule 1.5(b).

Rule 1.5(c), however, required any contingent fee agreement to be in writing and to explain how the attorney's fee is to be computed. *In re Bettis*, 855 A.2d 282 (D.C. 2004) (all contingent fee arrangements must be recorded in writing); *In re Williams*, 693 A.2d 327 (D.C. 1997). Respondent's oral advice to his client that he would only owe a fee if there were a recovery, does not satisfy the requirements of Rule 1.5(c). BX 11. As noted by the Hearing Committee, when Respondent later informed Mr. Ellis in October 2003 that Mr. Duffy would "assist in the filing of a lawsuit on [his] behalf," Respondent also failed to provide Mr. Ellis a contingency agreement in writing. The Board agrees that Respondent's failure to provide Mr. Ellis a writing setting forth the contingent fee agreement violated Rule 1.5(c).

E. Division of Fees – Rule 1.5(e)

The failure of an attorney to provide necessary information in writing on the division of fees with other attorneys is a violation of Rule 1.5(e). *See In re Confidential (J.E.S.)*, 670 A.2d 1343 (D.C. 1996) (attorney violated Rule 1.5(e) when he failed to provide his client a writing explaining the responsibilities of a second lawyer outside his firm and how that new lawyer's fee would effect the client's recovery). Also, "[t]he lawyer who refers the client to another lawyer, or affiliates another lawyer in the representation, remains fully responsible to the client. . . ." Rule 1.5(e), comment [11].

As described in the Hearing Committee Report, Respondent informed Mr. Ellis that a lawsuit would be filed by Mr. Duffy, but conceded that he failed to inform Mr. Ellis "what part he [Respondent] would continue to play in the matter." JX at ¶13. Respondent also did not provide a writing advising Mr. Ellis how he would divide responsibility with Mr. Duffy, who works for a different firm, and how both of their attorney's fees would be paid from any settlement or court judgment obtained in Mr. Ellis's case. BX 1. As a result, Respondent's conduct violated Rule 1.5(e).

F. Terminating Representation – Rule 1.16(d)

Respondent notified Civista in April 2001 that he was representing Mr. Ellis in this matter. In October 2003, Respondent gave Mr. Ellis's file to Mr. Duffy, a Maryland attorney. Thereafter, Respondent stipulated that "he did not maintain contact with Mr. Duffy to determine that a lawsuit on Mr. Ellis' behalf would in fact be filed as he had advised Ellis." JX at ¶14. Respondent effectively terminated his representation of Mr. Ellis, yet failed to provide him with timely notice of the termination, and an explanation as to the statute of limitations, in order to protect Mr. Ellis's interests. The Hearing Committee correctly found a violation of Rule 1.16(d).

IV. RECOMMENDED SANCTION

From the outset, as noted by the Hearing Committee, Respondent has acknowledged and stipulated that he did not adequately represent the interests of Mr. Ellis in the matter at issue, nor does he argue that he did not violate the disciplinary rules. Bar Counsel and Respondent both agree that public censure is an appropriate sanction in this case. The Hearing Committee agreed. For the reasons set forth below,

the Board agrees with the Hearing Committee and recommends that Respondent be publicly censured.

The appropriate sanction is what is necessary to protect the public and the courts, to maintain the integrity of the profession, and "to deter other attorneys from engaging in similar misconduct." *In re Uchendu*, 812 A.2d 933, 941 (D.C. 2002) (internal citations omitted). Recognizing that each case must be evaluated on its facts, the sanction imposed must be consistent with cases involving comparable misconduct. D.C. Bar R. XI § 9(g)(1); *In re Dunietz*, 687 A.2d 206, 211 (D.C. 1996). However, "[t]he imposition of sanctions in bar discipline . . . is not an exact science but may depend on the facts and circumstances of each particular proceeding." *In re Fair*, 780 A.2d 1106, 1115 n.24 (D.C. 2001) (citation omitted).

As noted by the Hearing Committee, the District of Columbia Court of Appeals (the "Court") has imposed a range of sanctions for neglect violations that occur during the course of a single representation. These sanctions range from reprimand or censure to suspensions of varying lengths. *See, e.g.*, *In re Nwadike*, 905 A.2d 221 (D.C. 2006) (attorney received informal admonition for missing the deadline to file an expert witness statement); *In re Shepherd*, 870 A.2d 67 (D.C. 2005) (per curiam) (attorney censured for neglecting client's interests, failing to keep client reasonably informed, failing to withdraw properly, and engaging in conduct seriously interfering with the administration of justice); *In re Bland*, 714 A.2d 787 (D.C. 1998) (per curiam) (censure for generally neglectful handling of a four-year case by a solo practitioner, with no record of misconduct, who agreed to take the case thinking it would settle); *In re Gordon*, 747 A.2d 1188 (D.C. 2000) (attorney censured for failure to seek post-conviction relief as

requested by his client and failure to advise his client of his decision not to do so); *In re Hill*, 619 A.2d 936 (D.C. 1993) (attorney, who failed to file brief in criminal case after being appointed to represent an incarcerated client, censured for neglect and conduct prejudicial to administration of justice); *In re Banks*, 461 A.2d 1038 (D.C. 1983) (attorney, who had received prior informal admonition, censured for five separate acts of neglect); *In re Sumner*, 665 A.2d 986 (D.C. 1995) (per curiam) (attorney with no disciplinary history, who neglectfully failed to file brief but had other violations, including fraud/misrepresentation, given 30-day suspension); *In re Dory*, 528 A.2d 1247 (D.C. 1987) (per curiam) (neglect and intentional failure to pursue client's objectives based on failure to file motion for new trial or notice of appeal warranted 30-day suspension); *In re Lawrence*, 526 A.2d 931 (D.C. 1986) (attorney with two prior admonitions, who intentionally failed to file suit, as agreed, and failed to withdraw or take steps to protect client from running of the statute of limitations, given 60-day suspension).

There is no doubt that Respondent's neglect in his handling of Mr. Ellis's case was serious. Respondent allowed the statute of limitations to run, causing Mr. Ellis to lose a potential claim for his alleged injury at Civista. Regardless of whether the alleged injury occurred at Civista in April 2000 or November 2000, Respondent failed to keep Mr. Ellis reasonably informed about the matter and the existence of the three-year period in which Mr. Ellis needed to file his claim. Respondent neglected to conduct an adequate and timely investigation of the claim despite documentation supporting the existence of an injury in April 2000, and never informed Mr. Ellis that he would not file a claim on his behalf. Moreover, Respondent failed to represent Mr. Ellis competently, never provided

a written contingency agreement in the matter, involved another attorney in the matter without proper notice to and consent by Mr. Ellis, and effectively terminated the representation without timely notice to Mr. Ellis. Ultimately, Mr. Ellis was prejudiced because he lost his right to file a lawsuit against Civista. Bar Counsel has demonstrated Respondent's violations of the rules by clear and convincing evidence.

Respondent has no disciplinary history and served honorably in the United States Marine Corps. Respondent has also cooperated with Bar Counsel's investigation, including agreeing to stipulations through which he has conceded a number of failures on his part in this matter. Respondent candidly acknowledged his failings during the evidentiary hearing. In recommending its sanctions, the Hearing Committee took into account the continued uncertainty as to when, if at all, Mr. Ellis's injury occurred at Civista. That uncertainty made the degree of actual harm to Mr. Ellis by failing to file the lawsuit somewhat unclear. The Board concurs. We thus distinguish *In re Outlaw*, No. 05-BG-1470 (D.C. Mar. 1, 2007) (per curiam) (60-day suspension for multiple violations, including failure to file suit during statutory period, and dishonesty in various communications with client. Unlike the instant action, in *Outlaw* there was clear prejudice to the client, dishonest communications with the client, and a decided lack of credibility in respondent's testimony vis-à-vis the complainant).

As noted by the Hearing Committee, there was no evidence of aggravating circumstances in this matter. We thus distinguish this case from the facts in *In re Joyner*, 670 A.2d 1367 (D.C. 1996) (30-day suspension for neglecting his client's case, failing to communicate with his client, and missing his client's statutory deadline for filing suit, but with history of two prior informal admonitions for neglect of his client's affairs); *In re*

Banks, 577 A.2d 316 (D.C. 1990) (per curiam) (30-day suspension for neglect of client's matter and missing the statute of limitations, but with three prior disciplinary violations).

Given the significant number of mitigating circumstances, coupled with an uncertainty in the record as to when and whether the alleged injury actually occurred, the Hearing Committee found that a suspension was not warranted. Conversely, it noted that Respondent committed eight violations, many of which are serious. The Hearing Committee, accordingly, recommended public censure as the correct sanction. The Board agrees and so recommends. The Board further believes that Respondent could benefit from a continuing legal education course on legal ethics and recommends that he be required to certify to the Board within one year the completion of this condition.

V. CONCLUSION

The Board finds clear and convincing evidence that Respondent violated eight disciplinary rules and recommends a sanction of public censure and the completion of a course in legal ethics.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: Ray S Bolze
Ray S. Bolze

All members of the Board concur in this Report and Recommendation except Mr. Baach, who did not participate.

Dated: MAR - 7 2007