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[4-Oct-1996]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

DECISION NO. 110

IN RE: WILLIAM A. HUNTER, ESQ.
Respondent

PCB Docket Nos. 94.02, 94.14, 94.27, 94.46, 95.41, 95.42, 95.77, 96.09, 96.30

FINAL REPORT TO THE VERMONT SUPREME COURT

I. PROCEDURAL HISTORY

This matter is before us following the filing of a hearing panel report and a Rule 8D hearing which was held on July 12, 1996. We have considered the report, the arguments of counsel, the statement of Respondent, and the briefs filed. We have had an opportunity to review the record below including the transcript of the May 2, 1996 hearing and the exhibits.

At the Rule 8D hearing, upon motion of Respondent, the Board ruled that we would make our findings of fact and conclusions of law based upon the facts and conclusions stipulated to by the parties. Specifically, we determined that the hearing panel had incorrectly gone beyond the scope of those stipulated facts and conclusions in making its determination that Respondent had violated additional Code provisions beyond what he had stipulated to. So that the record is very clear as to the findings and conclusions stipulated to by Respondent and Bar counsel, adopted by the Hearing Panel and now adopted by this Board, those findings and conclusions are set forth in full below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent, William A. Hunter, is an attorney who has been licensed to practice law in the State of Vermont since December 1985.

2. The Respondent started his practice in Ludlow, Vermont, and opened a second office in Windsor in 1989, which offices remained open until 1993.

3. In the early 1990's, the Respondent became seriously overloaded with work, and his caseload grew to the point where it was unmanageable.

4. The Respondent was often late for appointments and often was slow in returning or failed to return phone calls to clients. Some of those clients filed complaints with the Board against the Respondent.

PCB File No. 94.02: Complaint of Frances Hamann

5. Frances Hamann was a divorce client of the Respondent's from 1988 until July 1993.

6. During the period of representation, the Respondent failed to return many telephone calls and to respond to written correspondence from Ms. Hamann on a number of occasions.

7. When the Respondent began representing Ms. Hamann, Ms. Hamann was living in Springfield, and the Respondent met frequently with her at scheduled office appointments. In 1991, Ms. Hamann came into the Respondent's Windsor office on Tuesday evenings to answer the telephone and assist with office work while the Respondent held evening office hours with clients. During that period of time, which was immediately before the contested divorce hearing, the Respondent and Ms. Hamann were in close communication. After the divorce was decided in 1991, Ms. Hamann relocated to New York.

8. Ms. Hamann was very upset with the fact that the trial judge in her divorce awarded her ex-husband a share of the marital home and instructed the Respondent to appeal the decision to the Vermont Supreme Court, which the Respondent did.

9. While the appeal was pending, the Respondent attempted to negotiate with Mr. Hamann's attorney to see if Mr. Hamann would be willing to have part of his share of the house put in trust for the parties' daughter, who was then in college.

10. The Respondent was unable to obtain an offer of settlement that was acceptable to Ms. Hamann.

11. When Ms. Hamann instructed the Respondent to dismiss the appeal of her case, the Respondent did not do so in a timely manner. In May 1993, the Supreme Court dismissed the appeal for lack of prosecution.

12. The Respondent did not provide Ms. Hamann with a copy of her final divorce order; nor did he inform her that the divorce was final.

13. In July 1993, Ms. Hamann discharged the Respondent and asked that her file be forwarded to another attorney. The Respondent was slow in responding to the request, and the file was not delivered to the new attorney until September 1993.

14. In failing to (i) return his client's phone calls and respond to her written correspondence; (ii) follow his client's instruction to dismiss her appeal; (iii) inform his client that her divorce was final and provide her with a copy of her Final Decree; and (iv) timely forward his client's file to her new attorney, the Respondent neglected legal matters entrusted to him in violation of DR 6-101(A)(3).

PCB File No. 94.14: Complaint of Darlene Cowdrey

15. Darlene Cowdrey was a client of the Respondent's from January 1990 until January 1994. She had a variety of problems with which the Respondent assisted her.

16. In January 1994, Ms. Cowdrey discharged the Respondent and hired

a new attorney, Maria Sozio, to handle her SSI and SSDI claims.

17. Attorney Sozio wrote the Respondent on January 18, 1994, requesting that Ms. Cowdrey's SSI and SSDI files be forwarded to her office.

18. The Respondent spoke with Ms. Sozio's partner soon thereafter and made arrangements to have Attorney Tapper pick up Ms. Cowdrey's SSI and SSDI file at a business office in Ludlow on February 1, 1994. That was convenient for Attorney Tapper, since he was going through Ludlow on that day.

19. The Respondent did not get the file to the office in Ludlow in time to be picked up as arranged, so he called Attorney Tapper's office and agreed to deliver it to the office on February 3, 1994.

20. The Respondent went to Attorney Tapper's office on February 3, 1994. Attorney Sozio was in the office, but, without knocking, the Respondent concluded that the office was already closed. The Respondent left the file in a sealed envelope in a public hallway outside the locked office door.

21. In failing to forward his client's file in a secure manner to her new attorney, the Respondent neglected a legal matter entrusted to him in violation of DR6-101(a)(3).

PCB File NO. 94.27: Complaint of Bar Counsel Shelley Hill

22. On December 3, 1993, the Respondent was scheduled to appear at the District Court in White River Junction for a hearing on his motion for a new trial and for acquittal in the case of State v. Thomas Olsen, Docket 548-5-91 WrCr.

23. The only notice for the hearing was at the bottom of the page on which the motion to continue had been granted. The Respondent had not noticed the notice, and his office staff had failed to enter the date on his computerized appointment calendar.

24. The Respondent did not appear for the hearing, although his client (who was in custody in connection with another matter in which he was represented by separate counsel) had been transported to the Court for the hearing.

25. Judge Theodore Mandeville ordered that the Respondent show cause why he should not be held in contempt for his failure to appear at the December 3, hearing. At a show cause hearing on December 20, 1993, the Respondent acknowledged that the failure to appear was his responsibility, and the Court ordered that a sanction of a $200 fine payable to the State was appropriate. The Respondent paid the fine.

26. In failing to appear for the December 3, 1993 hearing, Respondent neglected a legal matter entrusted to him in violation of DR 6-101(A)(3).

PCB File No. 94.46: Complaint of Pamela (Ferguson) Rich

27. The Respondent represented Pamela Ferguson (now Rich) in a divorce case from January 1993 until January 1994. Ms. Ferguson's husband

had left her in December 1993, and she was in a very precarious situation financially.

28. During the period of representation, the Respondent met with Ms. Ferguson on a number of occasions and spoke with her on the telephone. There were times when Ms. Ferguson did not have a phone and would have to call the Respondent from work. If the Respondent was not able to return the call while Ms. Ferguson was at work, it was very frustrating for Ms. Ferguson.

29. The Respondent and Ms. Ferguson discussed the problems she was facing in earning enough money to support herself and her child from a previous marriage. She did not have sufficient education to get a job earning much more than minimum wage, and she was not receiving any child support from her first husband. She had been married to her present husband less than two years.

30. The Respondent contacted the Office of Child Support on behalf of Ms. Ferguson to try to get OCS to try to collect child support from Ms. Ferguson's first husband.

31. The Respondent spent a considerable amount of time working with Ms. Ferguson on trying to get her enrolled in college courses so that she could improve her earning ability. As a result of the efforts the Respondent made with Ms. Ferguson, Ms. Ferguson enrolled in Community College of Vermont in the fall of 1993 and was very proud of her accomplishments in the courses she took.

32. The Respondent spent a considerable amount of time negotiating with Attorney Maureen Martin, who represented Mr. Ferguson. After one long negotiating session in June 1993, the parties arrived at a settlement that the Respondent and Attorney Martin both considered very favorable to Ms. Ferguson.

33. A short time later, however, Ms. Ferguson changed her mind and rejected the settlement offer.

34. The Respondent then filed a Motion for Stepparent Support in the Family Court. At the hearing on the Motion, the judge directed that the Respondent file supplemental materials in support of his request by August 9, 1993.

35. Before the supplemental materials were due, the Respondent and Attorney Martin discussed a settlement of the issue under which Mr. Ferguson would pay $250 per month until the case was over. Under the child support guidelines, Mr. Ferguson's stepparent support would have been approximately $400 per month.

36. The Respondent encouraged Ms. Ferguson to accept the $250 per month proposal, but Ms. Ferguson rejected it and told the Respondent she wanted the judge to decide. The Respondent filed his Memorandum on August 26, 1993.

37. On September 7, 1993, the judge denied the request for stepparent support "for failure to adequately support the request as directed by the court."

38. The Respondent then filed a request for temporary maintenance on behalf of his client. The hearing on the request was set for October 14, 1993, at 3:30 p.m.

39. On October 14, the Respondent was scheduled to be in Rutland Superior Court for a hearing starting at 1:00 p.m. When he did not appear at the White River Junction Courthouse, the Court ordered that the Respondent pay Attorney Martin the $250 she said she would be charging her client for attending the hearing.

40. In failing to timely file the memorandum in support of his motion for stepparent child support as directed by the court, and in failing to appear at the scheduled hearing on October 14, 1993, concerning his motion for temporary maintenance, Respondent neglected legal matters entrusted to him in violation of DR 6-101(A)(3).

PCB File No. 95.41: Complaint of Frank Punderson

41. In March of 1989, the Respondent and his business partner, Brita Bergland, purchased a building in Windsor, Vermont, from Michael and Nancy Wood.

42. The Respondent offered to prepare all the documents for the transaction, including the deed, the mortgage to the bank, a second mortgage to the Woods, and a promissory note to the Woods.

43. Michael Wood and Brita Bergland understood that the Respondent was representing all parties to the action. The Respondent denies such an understanding. Michael Wood did file documentation with the State indicating that he (Wood) had paid another attorney.

44. The Respondent did not record the Mortgage Deed for approximately three years.

45. In failing to clarify that he did not represent all parties to a real estate transaction involving Michael and Nancy Wood, and in failing to timely record a mortgage deed in said transaction, the Respondent engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(5).

PCB File No. 95.42: Complaint of Joseph Wevurski

46. Joseph Wevurski consulted the Respondent about representing him in a worker's compensation case in August 1993.

47. During the time this matter was pending, Mr. Wevurski and his family were experiencing great financial stress, and Mr. Wevurski called the Respondent's office many times to ask about progress on the case.

48. The Respondent often did not return Mr. Wevurski's calls, nor did he provide adequate meeting times or conditions. The Respondent was always very late to each appointment.

49. In March 1994, Mr. Wevurski discharged the Respondent and requested return of his file.

50. The Respondent made arrangements to have the file picked up by

Mr. Wevurski's wife in Ludlow, which was more convenient to the clients. However, he left it at a public, unrelated business office.

51. While the file was promptly returned, there was a delay in the return of the x-ray envelope containing films of the complainant's foot.

52. In failing to return his client's phone calls, provide adequate meeting times and conditions for meetings with his client, and in failing to timely forward a portion of this client's file, the Respondent neglected the legal matters entrusted to him in violation of DR 6-101(A)(3).

PCB File No. 95.77: In re Smith v. Smith, Docket No. 552-11-94 WrDmd
(William M. Dorsch, Esq. - Complainant)

53. The Respondent represented the plaintiff, Elsa Smith.

54. The Respondent failed to appear on March 15, 1995, at Windsor County Family Court for a hearing concerning a Motion for Contempt filed against the Respondent's client.

55. Judge Walter M. Morris, Jr., held a hearing on March 23, 1995, to show cause why the Respondent should not be held in contempt for his failure to appear on March 15, 1995.

56. The Court made no finding of contempt, but admonished the Respondent by Entry Order dated March 24, 1995 that it would find contempt and order sanctions in the event of a future failure to appear.

57. In failing to appear at the March 15 hearing, without good cause, the Respondent neglected legal matters entrusted to him in violation of DR 6-101 (A)(3); engaged in conduct which was prejudicial to the administration of justice in violation of DR 1-102(A)(5); and engaged in conduct which adversely reflected his fitness to practice law, in violation of DR 1-102(A)(7).

PCB File No. 95.77: In re Streeter v. Roberts, Docket No. F48-2-93 WrDmd
(William M. Dorsch, Esq. - Complainant)

58. The Respondent represented the defendant, Frank W. Roberts.

59. The Respondent failed to appear on March 9, 1995, at Windsor County Family Court for a hearing concerning modification of child support.

60. Magistrate Patricia Whalen assessed the Respondent fees in the amount of $343.25.

61. In failing to appear at this hearing, without good cause, the Respondent neglected legal matters entrusted to him in violation of DR 6-101 (A)(3); engaged in conduct which was prejudicial to the administration of justice in violation of DR 1-102(A)(5); and engaged in conduct which adversely reflected his fitness to practice law, in violation of DR 1-102(A)(7).

PCB FILE NO. 95.77: In re Turco v. Turco, Docket No. F498-12-92
(William M. Dorsch, Esq. - Complainant)

62. The Respondent represented the defendant, Vaughn D. Turco.

63. The Respondent failed to appear on March 8, 1995, at Windsor County Family Court for a status conference concerning a child support modification.

64. Magistrate Patricia Whalen granted Attorney Joanne Baltz permission to file for costs by Entry Order dated March 8, 1995.

65. In failing to appear at this status conference, without good cause, the Respondent neglected legal matters entrusted to him in violation of DR 6-101 (A)(3); engaged in conduct which was prejudicial to the administration of justice in violation of DR 1-102(A)(5); and engaged in conduct which adversely reflected his fitness to practice law, in violation of DR 1-102(A)(7).

PCB 96.09
(William M. Dorsch, Esq. - Complainant)

66. In each of the following 15 cases, Respondent failed to timely file required documents and to appear at scheduled court matters before the United States Bankruptcy Court for the District of Vermont (Rutland), without good cause.

IN RE: Robert B. Pardy and Dorothy Pardy, Bankruptcy Petition No. 92-10091

67. The Respondent represented the petitioners, Robert B. Pardy and Dorothy Pardy.

68. The Respondent failed to timely file required documents including an original mailing matrix for scanning purposes in advance of the deadline of February 18, 1992.

69. The court telephoned the Respondent on two occasions in February 1992 to inform him of the importance of filing the matrix.

70. The Respondent filed the required documents on or about March 27, 1992.

71. By this misconduct, Respondent neglected the Pardy matter, in violation of DR 6-101(A)(3); engaged in conduct which was prejudicial to the administration of justice, in violation of DR 1-102(A)(5); and engaged in conduct which adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(7).

IN RE: Barbara L. Gunn, Bankruptcy Petition No. 92-10051

72. The Respondent represented the petitioner, Barbara L. Gunn.

73. The Respondent failed to timely file required schedules and statements in advance of the February 6, 1992, deadline.

74. The court scheduled a Show Cause Hearing on November 2, 1992, to show cause why the case should not be dismissed for this failure.

75. The Respondent failed to appear at the above-mentioned hearing.

76. The court dismissed the Gunn Petition on or about November 5,

1992. However, the court reinstated the action on November 25, 1992, following a Motion to Reconsider and the Respondent's compliance with the document filing requests.

77. By this misconduct, Respondent neglected the Gunn bankruptcy matter, in violation of DR 6-101(A)(3); engaged in conduct which was prejudicial to the administration of justice, in violation of DR 1-102(A)(5); and engaged in conduct which adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(7).

IN RE: Jay Cedric Miles, Bankruptcy Petition No. 92-10092

78. The Respondent represented the petitioner, Jay Cedric Miles.

79. The Respondent failed to timely file required documents including an original mailing matrix for scanning purposes in advance of February 18, 1992, deadline.

80. The court telephoned the Respondent on three occasions during February 1992 regarding the importance of the matrix, and on February 18, 1992, informed the Respondent that the court would dismiss the Miles petition if the matrix was not filed.

81. The Respondent filed the required documents on or about March 31, 1992, and the court did not dismiss the action.

82. By failing to comply with the court deadline, Respondent neglected the Miles bankruptcy matter, in violation of DR 6-101(A)(3); engaged in conduct which was prejudicial to the administration of justice, in violation of DR 1-102(A)(5); and engaged in conduct which adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(7).

In Re: T. Patrick Harrington No. 93-10304

83. The Respondent represented the petitioner, T. Patrick Harrington.

84. The Respondent failed to timely file required documents.

85. The Court ordered the Respondent to appear at a Show Cause Hearing on June 21, 1993, to show cause why the Harrington case should not be dismissed for failure to file required documents.

86. The Respondent failed to appear at the Show Cause hearing. The court ordered the Respondent to pay sanctions $150.00 and dismissed the Harrington case.

87. By this misconduct, Respondent neglected the Harrington bankruptcy matter entrusted to him, in violation of DR 6-101(A)(3); engaged in conduct which was prejudicial to the administration of justice, in violation of DR 1-102(A)(5); and engaged in conduct which adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(7).

IN RE: Randall R. Ashworth and Diana J. Ashworth,
Bankruptcy Petition No. 93-10339

88. The Respondent represented the petitioners, Randall R. Ashworth and Diana J. Ashworth.

89. The Respondent failed to timely file required schedules in advance of the June 1, 1993 deadline.

90. On June 8, 1993, the Court issued an order to Respondent to appear at a Show Cause Hearing scheduled for June 21, 1993, to show cause why the court should not dismiss the Ashworth petition for this failure.

91. The Respondent failed to appear.

92. On or about June 23, 1993, the court dismissed the Petition, directed the Respondent to pay attorney's costs of $150.00, and ordered that the Respondent would be in contempt if he did not timely pay the assessed sanction.

93. By this misconduct, Respondent neglected the Ashworth matter, in violation of DR 6-101(A)(3); engaged in conduct which was prejudicial to the administration of justice, in violation of DR 1-102(A)(5); and engaged in conduct which adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(7).

IN RE: Donald E. Hofer and Joyce A. Hofer, Bankruptcy Petition No. 93-10369

94. The Respondent represented the petitioners, Donald E. Hofer and Joyce A. Hofer.

95. The Respondent failed to timely file required schedules by the deadline of June 14, 1993.

96. The Respondent filed schedules on or about August 8, 1993; however, these were not in compliance with the Court's rules.

97. By Order issued on August 10, 1993, the Court ordered the Respondent to file the schedules and amended schedules on or before August 25, 1993.

98. On or about September 1, 1993, the Trustee filed a Motion to Dismiss Case. The deadline for filing a memorandum in opposition to this Motion was September 28, 1993.

99. On September 29, 1993, Respondent filed his responsive memorandum.

100. The court held a Show Cause Hearing on October 12, 1993, regarding Respondent's failure to file the requested schedules.

101. By Order issued October 20, 1993, the Court granted a Motion to Dismiss contingent on the filing of the required documents on or before October 21, 1993, and the appearance of the debtor at a 341 meeting.

102. On November 8, 1993, the court terminated the deadline regarding its Conditional Order of Dismissal, following the filing of the required documents and the appearance of the debtor.

103. By this misconduct, Respondent neglected legal the Hofer bankruptcy matter, in violation of DR 6-101(A)(3); engaged in conduct which was prejudicial to the administration of justice, in violation of DR

1-102(A)(5); and engaged in conduct which adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(7).

IN RE: Randall R. Ashworth and Diana J. Ashworth,
Bankruptcy Petition No. 93-10423

104. The Respondent represented the petitioners, Randall R. Ashworth and Diana J. Ashworth.

105. The Respondent failed to timely file a required schedule in advance of the deadline of July 6, 1993.

106. By Order issued July 9, 1993, the Court ordered the Respondent to appear on August 4, 1993, to show cause why the case should not be dismissed due to his failure to file the required schedule.

107. The court canceled the show cause hearing, following the Respondent's compliance on or before July 15, 1993.

108. By this misconduct, Respondent neglected the Ashworth matter, in violation of DR 6-101(A)(3); engaged in conduct which was prejudicial to the administration of justice, in violation of DR 1-102(A)(5); and engaged in conduct which adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(7).

IN RE: Susan Nissenbaum, Bankruptcy Petition No. 93-10470

109. The Respondent represented the petitioner, Susan Nissenbaum.

110. The Respondent failed to timely file required schedules and statements in advance of a July 31, 1993, deadline.

111. By Order issued August 3, 1993, the Court ordered the Respondent to appear on August 10, 1993, to show cause for his failure.

112. The court canceled the show cause hearing, following the Respondent's compliance on August 9, 1993.

113. By this misconduct, Respondent neglected the Nissenbaum matter entrusted to him, in violation of DR 6-101(A)(3); engaged in conduct which was prejudicial to the administration of justice, in violation of DR 1-102(A)(5); and engaged in conduct which adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(7).

IN RE: Calvin C. Frost, Jr., Bankruptcy Petition No. 93-10675

114. The Respondent represented the petitioner, Calvin C. Frost, Jr.

115. The Respondent failed to timely file required bankruptcy schedules.

116. By Order issued October 15, 1993, the Court ordered the Respondent to file the above-mentioned schedules on or before November 1, 1993.

117. On or about November 16, 1993, the Court dismissed the Frost petition due to the Respondent's failure to file the required documents.

118. By this misconduct, Respondent neglected the Frost matter, in violation of DR 6-101(A)(3); engaged in conduct which was prejudicial to the administration of justice, in violation of DR 1-102(A)(5); and engaged in conduct which adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(7).

IN RE: Alan D. Peterson, Bankruptcy Petition No. 93-10617

119. The Respondent represented the petitioner, Alan D. Peterson.

120. On or about November 15, 1993, Trustee Oliver L. Twombly filed a Motion to Dismiss Case for Failure to Appear at the Section 341(a) Meeting of Creditors.

121. On or about December 13, 1993, the Respondent filed a letter regarding the above-mentioned Motion.

122. On or about December 14, 1993, the Court informed the Respondent that it will take no action on the Respondent's letter, finding that the letter was not a proper pleading.

123. On or about February 16, 1994, the Court denied the Motion to Dismiss, upon the debtors appearance at a later scheduled 341 meeting.

124. By failing to appear and by failing to submit proper pleadings, Respondent neglected the Peterson matter, in violation of DR 6-101(A)(3); engaged in conduct which was prejudicial to the administration of justice, in violation of DR 1-102(A)(5); and engaged in conduct which adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(7).

Stevens v. Harrington and Nissenbaum, Adversary Proceeding No. 94-1017

125. The Respondent represented the defendants, Thomas P. Harrington and Susan Nissenbaum.

126. The Respondent failed to timely file an Answer in advance of an April 22, 1994, deadline.

127. On or about May 12, 1994, the Respondent failed to appear at a pre-trial hearing.

128. On or about May 26, 1994, the plaintiff filed a Motion for Summary Judgment.

129. The Respondent filed a responsive memorandum on June 6, 1994, three days after the Court's deadline.

130. The Respondent failed to attend a hearing on June 13, 1994, concerning the above-mentioned Motion.

131. The court granted the Motion on June 13, 1994.

132. By this misconduct, Respondent neglected his clients' legal matter, in violation of DR 6-101(A)(3); engaged in conduct which was prejudicial to the administration of justice, in violation of DR 1-102(A)(5); and engaged in conduct which adversely reflects on his fitness

to practice law, in violation of DR 1-102(A)(7).

Miscellaneous Proceeding Re: William A. Hunter No. 94-101

133. The Respondent appeared pro se.

134. On or about May 24, 1994, the Court ordered the Respondent to appear on June 15, 1994, at a Show Cause Hearing to show cause why he should not be barred from practicing in the U.S. Bankruptcy Court, Rutland.

135. The Respondent appeared on June 15, 1994, and the Court stated its concerns.

136. On or about July 1, 1994, the Court ordered the Respondent to appear on July 25, 1994, to respond to the Court's earlier stated concerns and set a deadline of July 22, 1994, for filing a written response.

137. The Respondent failed to file a written response and failed to timely appear on July 25, 1994.

138. At the July 25, 1994, hearing, the Court suspended the Respondent from the U.S. Bankruptcy Court, Rutland.

139. Upon the Respondent's late appearance on July 25, 1994, the Court vacated its earlier Order to suspend and dismissed the Motion to show cause.

140. By this misconduct, Respondent engaged in conduct which was prejudicial to the administration of justice, in violation of DR 1-102(A)(5); and which adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(7).

IN RE: James Ryll, Bankruptcy Petition No. 94-10299

141. The Respondent represented the petitioner, James Ryll.

142. By Order issued August 25, 1994, the Court discharged the debts of James Ryll.

143. On or about September 19, 1994, interested party Norm Webster filed a Motion to Reopen Case.

144. On or about November 9, 1994, the Respondent failed to appear at a hearing concerning the above-mentioned Motion and failed to file a memorandum in opposition to the Motion. The Court denied the Motion on or about November 17, 1994.

145. By this misconduct, Respondent engaged in conduct which was prejudicial to the administration of justice, in violation of DR 1-102(A)(5) and which adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(7).

IN RE: Calvin C. Frost, Jr., Bankruptcy Petition No. 95-10116

146. The Respondent represented the petitioner, Calvin C. Frost, Jr.

147. On or about February 22, 1995, the Respondent filed a voluntary

Chapter 7 bankruptcy petition on behalf of his client, Calvin C. Frost, Jr.

148. The Respondent failed to notify the Court that his client had previously filed a Chapter 7 petition with the same Court, as required by the Court and where the Respondent was the petitioner's attorney in the prior action.

149. The Respondent failed to timely file a required schedule.

150. By Order issued February 22, 1995, the Court ordered him to file the required schedule on or before March 9, 1995.

151. The Respondent filed the missing document on or before March 24, 1995, and the Court did not dismiss the voluntary petition.

152. By this misconduct, Respondent neglected the Frost matter, in violation of DR 6-101(A)(3); engaged in conduct which was prejudicial to the administration of justice, in violation of DR 1-102(A)(5); and engaged in conduct which adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(7).

IN RE: Watersedge Group, Inc., Bankruptcy Petition No. 95-10225

153. The Respondent represented the petitioner, Watersedge Group, Inc.

154. The Respondent failed to timely file required statements and schedules.

155. By Order issued March 30, 1995, the Court ordered the Respondent to file the above-mentioned documents on or before April 14, 1995.

156. On or about May 5, 1995, the Court dismissed the voluntary bankruptcy petition due to the Respondent's failure to file the required documents.

157. By this misconduct, Respondent neglected his client's legal matter, in violation of DR 6-101(A)(3); engaged in conduct which was prejudicial to the administration of justice, in violation of DR 1-102(A)(5); and engaged in conduct which adversely reflects on his fitness to practice law, in violation of DR 1-102(A)(7).

IN RE: PCB File No. 96.30

158. The Respondent represented Lorle Adlerbert and her husband, Bo Adlerbert, now deceased, for many years in a variety of matters, including the setting up of a family trust, the Adlerbert Family Trust.

159. The Respondent continued to represent Lorle Adlerbert, following Mr. Adlerbert's death.

160. In November 1992, the Respondent came to Ms. Adlerbert to ask if she would be willing to loan $20,000 from the family trust to an individual known to the Respondent, a mechanic who was trying to raise money to purchase a commercial property. The Respondent indicated that the borrower would be willing to pay 10% interest, far higher than the rate the trust was then receiving.

161. Although Ms. Adlerbert did not ask for the name of the individual, the Respondent told Ms. Adlerbert that he knew the prospective borrower well. Ms. Adlerbert agreed to make the loan, provided the Respondent would handle all the details and provided Ms. Adlerbert would not have to deal directly with the borrower.

162. Ms. Adlerbert does not remember the Respondent telling her that the proposed debtor was the Respondent's client. The Respondent contends that he did so inform Ms. Adlerbert.

163. The Respondent did not make adequate disclosure to Ms. Adlerbert at that time that this individual was a client of the Respondent, because she does not remember any such disclosure, and the Respondent did not document the disclosure in writing to Ms. Adlerbert.

164. The loan was made in November 1992. Ms. Adlerbert did not indicate how she wanted the loan repaid. The Respondent arranged to have the borrower make monthly payments, initially of interest only, but then increasing in August 1993 so that the loan would be fully amortized at the end of five years.

165. The Respondent did not adequately secure the loan.

166. Roger Russell paid the loan in full with accrued interest by a single payment on August 6, 1993.

167. Ms. Adlerbert did not receive regular monthly payments on the loan as she had understood would be the case. The Respondent did give Ms. Adlerbert several partial payments, all but one of which was after the Russell loan had been paid in full.

168. The payment made prior to the Russell loan being paid was paid by the Respondent from his personal funds.

169. The Respondent issued a Mortgage Discharge for "the Mortgage of 11/9/92" in his own hand and signed by him on or about March 30, 1994. That discharge was signed by the Respondent without authority from Ms. Adlerbert, although purportedly signed on her behalf. The discharge also is ineffective because it:

a. does not reference the recorded book and page of the mortgage being discharged;
b. does not indicate the mortgagor;
c. does not indicate the property location; and
d. is not witnessed or acknowledged.

170. In August 1993, the Respondent reloaned the $20,000 repaid by Mr. Russell to Hammondsville Environmental Forestry Associates, Inc., a Vermont corporation.

171. The Respondent is a director of the Hammondsville Environmental Forestry Association, Inc.

172. The Respondent made this second loan without the authority of Ms. Adlerbert. He also did not disclose to Ms. Adlerbert that the new borrower was his client or that he was a director of the borrower corporation.

173. The Respondent did not adequately secure this second loan. The Mortgage Deed was recorded at the Reading Town Clerk's Office on August 3, 1994, nearly one year after the loan was made. The Promissory Note also appears to have been executed after the date the loan was made.

174. A Notice of Lien on this property in the amount of $1,165.31 was recorded on June 10, 1994, prior to the recording of the Mortgage Deed to the Adlerbert Family Trust.

175. Ms. Adlerbert frequently voiced her concern to the Respondent about the timing of the payments. She also asked the Respondent when final payment of the loan would be made.

176. In June 1995, Federal agents searched Respondent's home and office and requested documents about several of Respondent's clients, including Hammondsville Environmental Forestry Associates, Inc.

177. Shortly after the search, Respondent went to visit Ms. Adlerbert to tell her that she might be questioned about the loan of the money and to suggest that she might need to retain an attorney other than Respondent to advise her.

178. After Ms. Adlerbert informed the Respondent that she intended to hire an attorney in this matter, the Respondent corresponded with Ms. Adlerbert by letter dated July 26, 1995.

179. In that correspondence, the Respondent was referring to the second loan, but Ms. Adlerbert understood him to be referring to the first loan.

180. In late 1995, through Attorney Douglas Richards, Ms. Adlerbert indicated that the second loan was not made with her authority, and she requested that the loan be paid back in full as soon as possible.

181. In early 1996, the Respondent personally paid the outstanding balance owed on the loan, and Ms. Adlerbert assigned the mortgage and note to Respondent.

182. In arranging the loaning of a client's funds without obtaining adequate security for that loan, the Respondent neglected a legal matter entrusted to him, in violation of DR 6-101(A)(3).

183. In arranging the loan of his client's funds to another client without adequately disclosing the attorney-client relationship, the Respondent involved himself in the representation of multiple clients with conflicting interests, in violation of DR 5-105(C).

184. In arranging the loaning of a client's funds to a corporation for which he served as a member of the board of directors without providing adequate disclosure to the client, the Respondent involved himself in a matter where he had a conflicting personal interest, in violation of DR 5-101(A).

185. In failing to repay his client all funds received for repayment of a loan made with the client's funds, the Respondent failed to properly handle his client's funds, in violation of DR 9-102.

Thus, to summarize, given the foregoing facts and conclusions that Respondent has stipulated to, the Board concludes that Respondent violated the following provisions of the Code of Professional Responsibility: (references are to paragraph numbers in the stipulations)

1. Paragraph 14 - DR6-101(A)(3), neglect of legal matters;
2. Paragraph 21 - DR6-101(A)(3), neglect of legal matters;
3. Paragraph 26 - DR6-101(A)(3), neglect of legal matters;
4. Paragraph 40 - DR6-101(A)(3), neglect of legal matters;
5. Paragraph 45 - DR1-102(A)(5), conduct prejudicial to the administration of justice;
6. Paragraph 52 - DR6-101(A)(3), neglect of legal matters;
7. Paragraph 57 - DR6-101(A)(3), neglect of legal matters; DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
8. Paragraph 61 - DR6-101(A)(3), neglect of legal matters; DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
9. Paragraph 65 - DR6-101(A)(3), neglect of legal matters; DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
10. Paragraph 71 - DR6-101(A)(3), neglect of legal matters; DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
11. Paragraph 72 - DR6-101(A)(3), neglect of legal matters; DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
12. Paragraph 82 - DR6-101(A)(3), neglect of legal matters; DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
13. Paragraph 87 - DR6-101(A)(3), neglect of legal matters; DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
14. Paragraph 93 - DR6-101(A)(3), neglect of legal matters; DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
15. Paragraph 103 - DR6-101(A)(3), neglect of legal matters; DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
16. Paragraph 108 - DR6-101(A)(3), neglect of legal matters;

DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.

17. Paragraph 113 - DR6-101(A)(3), neglect of legal matters; DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
18. Paragraph 118 - DR6-101(A)(3), neglect of legal matters; DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
19. Paragraph 124 - DR6-101(A)(3), neglect of legal matters; DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
20. Paragraph 132 - DR6-101(A)(3), neglect of legal matters; DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
21. Paragraph 140 - DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
22. Paragraph 145 - DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
23. Paragraph 152 - DR6-101(A)(3), neglect of legal matters; DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
24. Paragraph 157 - DR6-101(A)(3), neglect of legal matters; DR1-102(A)(5), conduct prejudicial to the administration of justice; DR1-102(A)(7), conduct adversely reflecting upon his fitness to practice law.
25. Paragraph 182 - DR6-101(A)(3),neglect of legal matters.
26. Paragraph 183 - DR5-105(C), representation of multiple clients with conflicting interests.
27. Paragraph 184 - DR5-101(A), involvement in a legal matter with a conflicting personal interest.
28. Paragraph 185 - DR9-102, failure to handle client funds properly.

III. RECOMMENDED SANCTIONS

A. Introduction

The violations committed by Respondent are lengthy and complex. Here, as in each case that comes before the Board, the issue is determination of the appropriate sanction to recommend to the Vermont Supreme Court. The Board must consider, not only the nature of the violations, which are several, but also, of course, any aggravating and mitigating factors that may exist. We also note that Respondent himself acknowledged at the 8D hearing that a lengthy suspension was in order.

In reviewing the nature of the violations committed by the Respondent, we turn first to the American Bar Association Standards For Imposing Lawyer Sanctions.

B. A.B.A. Standards

1. Neglect Cases.

Issues of neglect involve violations of a lawyer's duty to his client. Here, there is a strong pattern of neglect, over a number of years, with an unprecedented number of clients. A.B.A. Standard 4.42 holds that the sanction of suspension is generally appropriate when:

"a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client."

The only relevant annotation to this standard refers to a one year suspension for a lawyer who neglected three separate client matters. (In Re Earl J. Taylor, 363 N.E.2d 845 (1977)). Applying Standard 4.42 to the case at bar strongly supports Respondent's long term suspension from the practice of law, as there are twenty-two separate instances of neglect.

2. Conduct Prejudicial to the Administration of Justice.

Issues involving conduct prejudicial to the administration of justice concern violations of a lawyer's duty owed to the legal system. A.B.A. Standard 6.2 frames the type of misconduct committed by Respondent above as an abuse of the legal process, by knowingly and/or negligently violating a court order or rule, causing injury or potential injury to a client or party, or causing interference or potential interference with a legal proceeding. Generally speaking, suspension is the appropriate sanction when the violation is knowing; reprimand is recommended where the violation is negligent. As with all other recommended sanctions, however, any aggravating or mitigating factors must be considered. These will be discussed in detail, infra.

Given the nineteen separate violations involved, and that the majority of them involved Respondent's failure to appear at duly noticed hearings, the Board concludes that as to these violations, generally, suspension is appropriate.

3. Conduct Adversely Reflecting on Respondent's Fitness to Practice Law

Issues involving questions of a lawyer's conduct adversely reflecting on his fitness to practice law are more complex, as they cover a wide variety of circumstances. For example, the A.B.A. Standards envision three separate duties that may be violated when a lawyer's fitness to practice is questioned. They involve duties owed to clients, duties owed to the public and duties owed to the legal system.

In order to carefully assess the standards, and how they relate to these violations, the Board notes that the stipulated violations all involve failures to appear at hearings without good cause.

Clearly, these failures violated Respondent's duties to his clients, and to the legal system. Under each analysis, as envisioned by the A.B.A. Standards, reprimand seems to be the appropriate sanction. However, the Board notes that the standards themselves simply do not contemplate circumstances that we confront - dozens of violations of the same code provision in the same proceeding. The sheer volume of violations evidences

an unprecedented pattern of neglect. Again, although aggravating factors will be discussed infra, the Board feels that suspension is a more appropriate sanction than reprimand for these violations.

4. Representation of Multiple Clients With Multiple Interests

Issues of conflict of interest involve violations of duties owed to clients. The stipulated violation in this case (hereinafter referred to as the Adlerbert matter) is very different from the long pattern of neglect evident in the previous cases.

The A.B.A. Standards are very clear with respect to recommended sanctions for violations involving conflicts of interest.

For example, disbarment is generally appropriate where a lawyer, without the informed consent of the client, simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to the client.

The stipulated facts of the Adlerbert matter make it clear that Respondent did not make adequate disclosure to his client that the individual to whom her money would be loaned was another client. (Paragraph 163.) Moreover, Respondent did not disclose to Ms. Adlerbert that the second borrower was also his client, or that Respondent was a director of the borrower corporation. (Paragraph 172.)

The stipulated facts make it clear as well that there was potentially serious injury to Ms. Adlerbert as the loan was undertaken without adequate security. (Paragraph 173.)

Under this analysis, either suspension or disbarment would appear to be an appropriate sanction.

5. Failure to Handle Client Funds

Failing to handle client funds properly involves a violation of a duty owed to a client. A.B.A. Standards make a specific distinction in this regard between "knowing conversion" of client property, see A.B.A. Standard 4.1, which warrants disbarment, and reckless or negligent handling of a client's funds, Standard 4.2, which warrants suspension. The Commentary to the Standards states, "Most courts . . . reserve disbarment for cases in which the lawyer uses the client's funds for the lawyers' own benefit." Standard at page 26.

The record before us shows that Respondent misappropriated Mrs. Adlerbert's money by loaning it to another client without Mrs. Adlerbert's authority. Clearly, Respondent should have known that he was dealing improperly with Ms. Adlerbert's money, in loaning it to the Hammondsville Corporation. Does his neglect shock the conscience of the Board? Completely. Does the public need to be protected from this type of misconduct? Without question. However, there is no clear and convincing evidence, based on the stipulated facts before us, that Respondent

knowingly and intentionally converted Ms. Adlerbert's money to his own benefit. For this reason, we are not recommending his disbarment for this violation.

C. Conclusion as to Recommended Sanction

Given the record, it is clear that only removing Respondent from the practice of law will adequately protect the public from further misconduct. Less draconian methods have simply not worked. Even Respondent has recognized that in his decision to stop practicing law, and in this proceeding acknowledged that he suffers from an addiction to work and an obsessive inability to place boundaries on his practice which is comparable to alcoholism. He acknowledges that while laudable for its compassionate spirit, this addictive behavior is a mental problem which has substantially affected his well being and jeopardized his career in the field of law. Respondent's Brief, at 16 (July 10, 1996).

The only remaining issue is what length of suspension is appropriate. Disbarment allows for readmission to the bar after five years. Suspension allows the Respondent to apply for reinstatement sooner. In either case, Respondent will have to prove by clear and convincing evidence that he has the moral qualifications, competency and learning required for the admission to the practice of law in this state, and his resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration of justice, nor subversive of the public interest, and that he has been rehabilitated.

Applying the ABA Standards for Imposition of Lawyer Discipline it appears that either sanction can be justified under Standards 4.11, 4.41(c), 8.1 (all of which suggest disbarment is in order) or 4.12, 4.32, and 4.42, 8.2 (all of which suggest suspension is in order). Applicable aggravating and mitigating circumstances set forth in Standards 9.2 and 9.3 do not make the decision any clearer. On the one hand, in aggravation, there are numerous prior disciplinary offenses detailed here as an Addendum to this report. Further there is a pattern of misconduct, multiple offenses, vulnerability of victims, and substantial experience in the practice of law. On the other hand, there is an absence of a dishonest or selfish motive. Further, Respondent has expressed great remorse about the events which have led him to this point.

Respondent introduced a broad spectrum of witnesses who testified regarding their personal opinions of Respondent's good character.

There is no question that Respondent is well liked by many members of the bar and respected for his efforts to represent members of the public who cannot afford counsel. At the panel hearing on sanctions, Respondent presented considerable evidence to this effect. We note, however, that few of the witnesses had any knowledge of Respondent's disciplinary history or the scope of the misconduct underlying these proceedings. Much of the testimony was eloquent; little of it was well informed. Many witnesses had no idea, for instance, that Respondent had admitted to engaging in conduct involving mishandling of client funds and backdating legal documents. The hearing panel appropriately exercised its discretion in giving it little weight.

However, the issue here is not resolved by whether some members of the bar, the bench or the public have had positive experiences with Respondent.

The record shows by stipulated facts and testimony that sometimes Respondent has been very helpful and dedicated to his clients and that his personal philosophy is respected by many lawyers.

The issue from the point of view of regulating lawyer licensing is whether Respondent has the ability to conform his conduct to the ethical precepts of this profession as set forth in the Code of Professional Responsibility. He has demonstrated that, despite good intentions in many instances, he cannot. Further, the misconduct has gone beyond neglect due to overcommitment or disorganization or poor planning. Finally, it has devolved to very serious issues of mishandling of client funds. See, Paragraphs 158 through 185.

Mrs. Adlerbert entrusted her money to Respondent for a specific purpose - a loan to Mr. Russell. Respondent had no authority to use those funds for any other purpose. Yet he misused his position of trust by lending them to yet another client without her authority. Par. 172. By any definition, this is serious misconduct. It is not a defense that the funds were used for the benefit of another client. See, e.g., People v. Bealmear, 655 P.2d 402 (Colo 1982) (funds of one client may not be used to cover obligations of another). It is not a defense that the lawyer intended to repay the money or that the unauthorized use was only temporary. See, e.g., In the Matter of Dawkins, 412 Mass. 90, 587 NE 2d 761 (1992). It is not a defense that the unauthorized use yielded a higher interest rate for the client or that the attorney's unauthorized use of the client's funds was with good motives. See, e.g., In the Matter of Miller, 568 SW2d 246 (Mo. 1978) (attorney who invested incapacitated client's funds without authority violated "elementary rules of fiduciary obligation"). It is not a defense that the mishandling was the result of a disorganized state of Respondent's law practice. See, e.g., Innis v. State Bar, 143 Cal. Rptr. 408, 573 P.2d 852 (1978). Respondent's conduct threatened serious potential injury to his client. By lending his client's funds to a third party unknown to his client without authority and failing to adequately secure the loan, Respondent put those funds at risk of loss which the client had not agreed to accept. This misconduct could easily support a recommendation of disbarment.

Despite these factors, the Board does not recommend that the Supreme Court disbar Respondent. A lengthy period of suspension - three years - coupled with the readmission procedures is deemed to be sufficient to protect the public in this case. It should prove enough time for Respondent to rehabilitate himself, engage in the course of counselling he described during his hearing before the Board, and apply for the opportunity to return to the practice of law with the skills essential to make his idealism work for his clients. We come to this decision after much study of this case. A more severe sanction might be perceived as punitive. A less severe sanction would be insufficient to protect the public. For the reasons stated above, the Board recommends a suspension of three years.

Dated at Montpelier, Vermont this 4 day October, 1996.

PROFESSIONAL CONDUCT BOARD

/s/

_____

Robert P. Keiner, Esq. Chair

/s/

Joseph F. Cahill, Jr., Esq.

Nancy Corsones, Esq.

Charles Cummings, Esq.

Paul S. Ferber, Esq.

/s/

Michael Filipiak

Nancy Foster

/s/

Donald Marsh

/s/

Karen Miller, Esq.

/s/

Robert F. O'Neill, Esq.

Alan S. Rome, Esq.

/s/

Mark L. Sperry, Esq.

Ruth Stokes

Jane Woodruff, Esq.

DISSENTING:

I would adopt the hearing panel's report and recommend disbarment for the reasons contained therein.

/s/

Rosalyn Hunneman

ADDENDUM TO REPORT

RESPONDENT'S PRIOR DISCIPLINARY RECORD

In November of 1990, Respondent appeared before a hearing panel in connection with conduct occurring in 1989 in two separate cases. In the first, the panel concluded that Respondent violated DR 1-102(A)(4)(conduct involving dishonesty, fraud, deceit, or misrepresentation), DR 1-102(A)(5)(conduct prejudicial to the administration of justice), and DR 5-103(B)(personally guaranteeing financial assistance to a client). In the second, the panel concluded that Respondent violated DR 7-108 (improper communication with potential jurors). The hearing panel recommended suspension.

In January of 1991, Respondent appeared before the Board and admitted responsibility for his misconduct. A number of mitigating factors were advanced, including Respondent's inexperience and lack of prior disciplinary record. The Board was persuaded by Respondent that removal from practice was not necessary to protect the public from further misconduct. It recommended a public reprimand which the Court imposed in August of 1991. In re William A. Hunter, 157 Vt 649 (1991).

Respondent then became the subject of the second set of disciplinary proceedings. They involved misconduct similar to the instant cases.

In January of 1994, Respondent appeared before a hearing panel in connection with three complaints. The panel (and eventually this Board and the Vermont Supreme Court) found that he neglected client matters and engaged in conduct prejudicial to the administration of justice. At that time he and bar counsel urged imposition of a public reprimand on a series of neglect cases. Respondent represented that he had difficulty saying "no" to clients, that his caseload had been unmanageable. He also represented that he was taking steps to get this behavior under control.

The hearing panel credited Respondent's good intentions and lack of intent to harm clients, but was concerned about the disturbing patterns of neglect and unresponsiveness to clients' needs. In re William A. Hunter, 163 Vt. , 656 A.2d 203, 209 (1994). With some reservations about the need to remove Respondent from practice, the panel recommended public reprimand with a corresponding period of probation intended to protect the public from further misconduct. In May of 1994, the Board issued its decision, recommending a public reprimand with a nine month period of probation. In December of 1994, the Supreme Court approved the Board's report, imposed a public reprimand and a nine month period of probation. During this probationary period, Respondent was to review his caseload on a monthly basis with a member of the Vermont bar. Respondent was to file quarterly reports verifying each monthly review. Id. These conditions were not accomplished.

ENTRY ORDER

SUPREME COURT DOCKET NO. 96-490

JUNE TERM, 1997

In re William Hunter	)	APPEALED FROM:
	)	
	)	
	)	Professional Conduct Board
	)	
	)	
	)	DOCKET NOS. 94.02, 94.14 94.27, 94.46 95.41, 95.42, 95.77, 96.09 & 96.30

In the above-entitled cause, the Clerk will enter:

Respondent William A. Hunter is hereby suspended from the practice of law for a period of three years, effective as of January 10, 1997.

BY THE COURT:

_____
Jeffrey L. Amestoy, Chief Justice

_____
John A. Dooley, Associate Justice

_____
James L. Morse, Associate Justice

_____
Denise R. Johnson, Associate Justice

_____
Frederic W. Allen, Specially Assigned

NOTICE: This opinion is subject to motions for reargument under V.R.A.P. 40 as well as formal revision before publication in the Vermont Reports. Readers are requested to notify the Reporter of Decisions, Vermont Supreme Court, 109 State Street, Montpelier, Vermont 05609-0801 of any errors in order that corrections may be made before this opinion goes to press.

No. 96-490

In re William Hunter Supreme Court

Original Jurisdiction from
Professional Conduct Board

June Term, 1997

William A. Hunter, Cavendish, pro se, appellant

William M. Dorsch of Mickenberg, Dunn, Sirotkin & Dorsch, Special Bar Counsel, Burlington, for appellee

PRESENT: Amestoy, C.J., Dooley, Morse and Johnson, JJ., and Allen, C.J. (Ret.), Specially Assigned

PER CURIAM. Respondent William A. Hunter challenges the Professional Conduct Board's recommendation that he be suspended from the practice of law for three years. His principal contention is that the recommendation is unduly harsh because the Board failed to consider several mitigating factors and refused to reopen the case to take new evidence on his mental condition. He also argues that if we accept the Board's recommendation, we should impose the sanction retroactively to the date that he voluntarily ceased practicing law. We adopt the Board's recommendation and impose the three-year sanction effective as of January 10, 1997.

The Board's recommendation is based on stipulations in which respondent acknowledged having violated multiple provisions of the Code of Professional Responsibility on numerous occasions involving many different clients and cases. Most instances concerned neglect of client matters, such as failing to appear for scheduled court hearings, failing to timely file legal documents and memoranda, failing to follow client instructions, failing to keep clients abreast of developments in their cases, failing to respond to client telephone calls and written correspondence, and failing to timely forward client files to new attorneys. See DR 1-102(A)(5), (7) (engaging in conduct that is prejudicial to administration of justice or that adversely reflects on fitness to practice law); DR 6-101(A)(3) (neglecting legal matters).

The most serious incidents involved respondent (1) arranging the loan of an elderly client's funds to another client without adequately securing the loan or disclosing to the elderly client that the borrower was also his client; (2) reloaning those same funds, again without informing the client or obtaining adequate security, to a corporate client for which he served as director; and (3) executing and signing the promissory note and mortgage deed nearly one and one-half years after the loan was made, but backdating the documents to the date of the loan. Based on these admissions, respondent acknowledged violating DR 5-101(A) (failing to disclose conflicting personal interest in legal matter), DR 5-105(C) (representing multiple clients without disclosing conflicting interests), and DR 9-102 (failing to handle client funds properly).

Following a one-day sanctions hearing in which numerous witnesses testified on respondent's behalf, a hearing panel recommended that respondent be disbarred. The parties then presented briefs and oral argument before the Board. In September 1996, two months after the Board hearing and approximately one week before the Board filed its original final report, respondent moved to reopen the matter so that he could share

with the Board what he had recently learned through therapy and treatment about his personal problems and psychological condition during the period in which his transgressions had occurred. The Board informed respondent that he could decide if he still wanted to reopen the matter after reviewing its final report. In the final report, with the exception of one dissenting member, the Board declined to adopt the hearing panel's recommendation, but instead recommended that respondent be suspended from the practice of law for three years.

Respondent then renewed his motion to reopen, this time including a doctor's affidavit stating that respondent had displayed symptoms suggesting Attention Deficit Disorder (ADD) with depression, but that he seemed to have responded well to an antidepressant prescribed to reduce those symptoms. On January 10, 1997, the Board denied respondent's motion to reopen and filed a slightly revised final report. On appeal, respondent argues that (1) the Board abused its discretion by denying his motion to reopen; (2) the Board failed to give sufficient weight to several mitigating factors; (3) the Board exaggerated the number of violations and failed to distinguish between those committed before and after this Court disciplined him in 1994; (4) the recommended sanction was unduly harsh; (5) if this Court adopts the Board's recommended sanction, it should make the three-year suspension retroactive to the date he voluntarily ceased practicing law; and (6) the Board chair erred in denying his request that she and other Board members disqualify themselves from his case.

I.

We first consider respondent's argument that the Board chair should have disqualified herself and certain other Board members from participating in his case. In May 1995, while representing Attorney Vincent Illuzzi in disciplinary proceedings before the Board, respondent filed suit in federal district court, claiming that four members of this Court and fourteen members of the Board had violated Illuzzi's constitutional rights. Soon thereafter, in his own disciplinary proceeding, respondent sought the recusal of the members of the Board whom he had sued on behalf of Illuzzi. The Board chair denied the motion.

We find no abuse of discretion. Indeed, although four members of this Court ultimately decided not to take part in the Illuzzi disciplinary action upon which the federal suit was based, we emphasized that recusal is not compelled merely because a litigant sues or threatens to sue a judge. In re Illuzzi, 164 Vt. 623, 624, 670 A.2d 1264, 1265 (1995) (mem.). Nor is there a per se lack of impartiality, requiring recusal, when a judge is the subject of a judicial conduct complaint by an attorney appearing before the judge. Ball v. Melsur Corp., 161 Vt. 35, 39, 633 A.2d 705, 709 (1993) ("Otherwise, an attorney would need only file a complaint, possibly groundless, to a avoid particular judge thereafter."); see State v. Putnam, 164 Vt. 558, 561, 675 A.2d 422, 424 (1996) (rule of per se disqualification is generally inappropriate in circumstances where Code of Judicial Conduct does not require disqualification).

Given this law, we can hardly conclude that the members of the Board were required to disqualify themselves simply because respondent had sued them on behalf of a client. Nor is a different result compelled by the fact that the Board chair, who denied respondent's motion, was one of the Board members whom respondent had sued. Further, respondent's attempts to demonstrate actual prejudice by claiming that the hearing panel did not

give adequate consideration to the testimony of his witnesses and other facets of his case fall far short of the required showing. See Ball, 161 Vt. at 40, 633 A.2d at 710 (party seeking judge's recusal must make clear and affirmative showing of bias or prejudice).

II.

Respondent argues that the Board abused its discretion by refusing to reopen his case to hear new evidence on his mental condition. We disagree. See In re Petition of Twenty-four Vermont Utilities, 159 Vt. 339, 356, 618 A.2d 1295, 1305 (1992) (administrative agency has discretion whether to reopen evidence). In support of his motion to reopen, respondent offered an affidavit from a psychiatrist stating that respondent appeared to have "symptoms suggesting an Attention Deficit Disorder with depression." The doctor indicated that he had prescribed an antidepressant to counter these symptoms, and that respondent had made significant improvements in planning, organization and consistency. This latter statement in the affidavit appears to be based on respondent's and his wife's own reports of respondent's progress. According to the affidavit, respondent's wife reported that respondent was now taking responsibility for organizing his life, and respondent reported that he was no longer setting unrealistic deadlines for his work. The doctor concluded that (1) many of the behaviors that led to problems in respondent's practice seem to have been caused by ADD and depression; (2) respondent appears to be improving as the result of taking an antidepressant; and (3) he appears to be ready to return to the practice of law.

The proffered evidence in the affidavit added little of significance to the factors affecting the Board's recommended sanction. This is particularly true in light of the Board's concern that respondent's misconduct had devolved from neglect to unauthorized use of clients' funds, serious enough to "easily support a recommendation of disbarment." The Board already knew that respondent had mental problems that he hoped to address and overcome. Indeed, in its final report, the Board recognized respondent's acknowledgment that "he suffers from an addiction to work and an obsessive inability to place boundaries on his practice which is comparable to alcoholism," and that "this addictive behavior is a mental problem which has substantially affected his well being and jeopardized his career in the field of law." See People v. Goldstein, 887 P.2d 634, 642 (Colo. 1994) (although hearing board did not specifically mention attorney's emotional condition as mitigating factor, board's finding on condition indicated that it took condition into account in recommending sanction).

At the disciplinary proceedings, respondent claimed that the many instances in which he had neglected client matters occurred because he was unable to control and organize his practice. The doctor's affidavit similarly suggests that respondent's mental condition prevented him from consistently planning and organizing his caseload. The proffered evidence does not suggest, however, that ADD caused respondent to engage in the misconduct that the Board considered most egregious. See id. at 641 (under ABA standards, mental condition may be considered as mitigating factor when medically documented condition caused misconduct, and respondent's recovery is demonstrated by meaningful and sustained period of rehabilitation that makes recurrence of the misconduct unlikely). The misconduct that "shock[ed] the conscience of the Board" was respondent's misappropriation of his client's money by loaning it to another client without the first

client's authority. Whatever else this may have been, it was more than inattention to client needs caused by respondent's inability to limit his caseload. See Oklahoma Bar Ass'n v. Busch, 919 P.2d 1114, 1120 (Okla. 1996) (while attorney's neglectful behavior may have been influenced by ADD, his physician testified that ADD does not create inability to tell truth). As the Board concluded, respondent cannot defend his misappropriation of client funds by claiming that he has a disorganized law practice. See Oklahoma Bar Ass'n v. Prather, 925 P.2d 28, 30 (Okla. 1996) (ADD may not shield attorney from professional responsibility, although mental condition may be considered as mitigating factor where attorney's long-term commitment to treatment has brought illness under control).

III.

We also reject respondent's arguments that (1) even on the evidence presented, the Board failed to give sufficient weight to his mental condition and other mitigating factors such as his lack of a selfish motive, cooperation and remorse, character and reputation, and pro bono work; (2) the Board exaggerated the number of violations and failed to distinguish ones committed after this Court last disciplined him in 1994; and (3) the recommended sanction was unduly harsh. The record reveals that the Board considered the positive aspects of respondent's practice and character, but concluded that they were far outweighed by the numerous aggravating factors present in this case. We concur.

The overriding aggravating factor is respondent's prior disciplinary record. In 1990, respondent appeared before the Board to answer multiple complaints of ethical violations; eventually, this Court publicly reprimanded him for improperly communicating with jurors. In re Hunter, 157 Vt. 649, 595 A.2d 296 (1991) (mem.). In 1994, this Court again publicly reprimanded respondent and placed him on probation for nine months as the result of his continuing pattern of neglect to clients and his disregard for bar counsel's efforts to investigate the complaints against him. In re Hunter, 163 Vt. 599, 656 A.2d 203 (1994) (mem.).

Notwithstanding these earlier disciplinary proceedings and sanctions, respondent not only continued to commit similar ethical violations, but his inappropriate conduct escalated into violations of a more serious nature involving the mishandling of client funds. Further, regardless of the exact number of violations or how many occurred after a certain date, respondent concedes that some of these violations occurred after this Court sanctioned him a second time in December 1994. Even more violations occurred after disciplinary proceedings leading up to the December 1994 sanction had begun, at a time when respondent should have been on notice as to the impropriety of his conduct.

As respondent acknowledges, disciplinary sanctions are not intended to punish attorneys, but rather to protect the public from harm and to maintain confidence in our legal institutions by deterring future misconduct. Given these objectives, respondent's mental condition is not the dispositive factor in determining the appropriate sanction. See In re Wysolmerski, 8 Vt. L.W. 200 (1997) (mem.) (diagnosis of clinical depression would not alter conclusion that respondent should be suspended from practice of law for three years; whether respondent's extreme errors in judgment can be explained in terms of clinical depression or profound personal distress, Court must adhere to its goals of protecting public from misconduct and maintaining confidence in our legal institutions); In re

Sullivan, 530 A.2d 1115, 1119 (Del. 1987) (since focus of disciplinary sanction is on protecting public, mental condition of attorney who posed danger to public was not mitigating factor).

Nor are we persuaded -- as respondent would have us conclude -- that the Board's "most serious mistake" in weighing mitigating factors was its evaluation of respondent's character and reputation witnesses. The Board acknowledged that a broad spectrum of witnesses testified regarding their personal opinions as to respondent's good character. But any mitigating effect that good character and reputation evidence might have on the Board's choice of sanction is necessarily diminished when, as here, the attorney has been previously disciplined. In light of respondent's continued and escalating pattern of misconduct notwithstanding prior sanctions against him, the Board's recommended three-year suspension is not excessive. See In re Berk, 157 Vt. 524, 527-28, 602 A.2d 946, 948 (1991) (although Supreme Court makes its own ultimate decision, Board's recommendations on sanctions are accorded deference); cf. Wysolmerski, Vt. L.W. at 200 (in light of respondent's multiple, serious violations of disciplinary rules, three-year suspension is appropriate); In re Illuzzi, 160 Vt. 474, 490, 632 A.2d 346, 354-55 (1993) (given respondent's numerous prior disciplinary offenses, suspension from practice is necessary).

IV.

Respondent requests that any suspension be made retroactive to January 17, 1996, the date that he voluntarily ceased practicing law. The Board made no recommendation on retroactivity, but bar counsel argues that the suspension should commence on the date of this decision. A number of factors inform our determination on this point. On the one hand, voluntary agreements to cease practicing law while a disciplinary hearing is pending can protect the public when other alternatives are not available. Cf. Administrative Order No. 9, Rule 15 (setting forth basis and procedure for interim suspension). There would be little incentive for an attorney faced with license suspension to enter into such agreements if the period of nonpractice were not considered in appropriate cases. Here, the parties stipulated that respondent had suspended his law practice by notice to this Court on January 17, 1996. See Oklahoma Bar Ass'n v. Badger, 912 P.2d 312, 316 (Okla. 1995) (suspension made retroactive to date parties filed stipulations agreeing, among other things, that respondent had voluntarily ceased practice of law). There is no suggestion that respondent has practiced law since the latter part of January 1996.

On the other hand, because neither the Board nor this Court is in any position to monitor voluntary suspensions, which are not recognized by law, it is crucial that attorneys agreeing to suspensions fully comply with the rules for discontinuing a law practice. Respondent failed to comply with Administrative Order No. 9, Rule 21 in discontinuing his practice, as he had agreed to do. He did not follow the formal notification procedures contained in that Rule. Further, he failed to discontinue his practice on the day he agreed to do so, but instead did so a few days later shortly after bar counsel informed respondent's attorney that he knew respondent was still practicing law. Respondent also failed to comply with some of the probationary conditions imposed as part of his previous December 1994 disciplinary sanction. Considering all of the circumstances of this case, we impose the sanction retroactively from January 10, 1997, the date that the Board filed its revised final report and recommendation.

Finally, we note that irrespective of the retroactivity of the suspension, respondent may not be reinstated until he has demonstrated by clear and convincing evidence that (1) he has the moral qualifications, competency, and learning required for admission to practice law in this state; (2) the resumption of his practice will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive to the public interest; and (3) he has been rehabilitated. See Administrative Order No. 9, Rule 20(D).

Respondent William A. Hunter is hereby suspended from the practice of law for a period of three years, effective as of January 10, 1997.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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James L. Morse, Associate Justice

_____
Denise R. Johnson, Associate Justice

_____
Frederic W. Allen, Specially Assigned