PCB 28

[13-Mar-1992]

NOTICE OF DECISION

PCB # 28

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

IN RE: DEBORAH T. BUCKNAM
PCB FILE 89.53

ORDER

This matter came on for hearing on February 14, 1992 before the full Professional Conduct Board pursuant to Rule 8(D) of Administrative Order No. 9. Respondent was present with her attorney, Edwin Amidon, Esq. Bar Counsel, Wendy Collins, Esq., was also present. Due consideration was given to the briefs filed by Bar Counsel and Respondent and to their oral arguments and to the reports from the Hearing Panel (consisting of Findings of Fact and Conclusions of Law and a Notice of Decision Regarding Imposition of Sanctions). The Board, having at its February 14, 1992 meeting adopted the aforesaid Findings of Fact and Conclusions of Law as amended by the aforesaid Notice of Decision Regarding Imposition of Sanctions, hereby affirms the majority opinion of the Panel as stated in its Notice of Decision Regarding Imposition of Sanctions with the clarifications as noted herein and the Board hereby issues this Order pursuant to Rule 8(D).

In deciding to affirm the majority opinion of the Hearing Panel, the Board notes the existence of the following mitigating factors:

a. the absence of any prior ethical violations by the Respondent;
b. the institution by Respondent since the initiation of these disciplinary proceedings of new office procedures for explaining retainer agreements to clients and for monthly itemized billing; and
c. Respondent's substantial pro bono work, particularly in the field of domestic law.

We must also consider aggravating circumstances under Rule 8-(D) to determine an appropriate sanction to impose upon Respondent. The following aggravating circumstances exist here. We find them to be significant and substantial both individually and collectively. (See ABA Standards for Imposing Lawyer Sanctions, Section 9.2).

a. The existence of a dishonest and selfish motive on Respondent's behalf.
b. A pattern of misconduct. While only one pair of clients were involved in this matter, there was a series of

ethical violations by Respondent directed at her clients for a considerable period of time. (Approximately July 1988 to August 1989).

c. There were multiple offenses. We did not have an isolated instance of misconduct here. Nor did we have unintentional misconduct (with the exception of the failure to provide the expense accounting in a timely fashion). Instead, we have repeated instances of purposeful ethical violations, including outright lying to clients (for a selfish motive) which in and of itself mandates suspension.

d. Respondent refused to acknowledge the wrongful nature of her conduct. Indeed, at the Rule 8(D) hearing, Respondent continued to challenge the Panel's findings and continued to attempt to justify or minimize the wrongfulness of her actions (for example, by asserting that she lied to her clients over the phone only because she wanted to tell them the truth in person). The Board is not persuaded that Respondent appreciates the seriousness of her misconduct, but rather appreciates only the seriousness of the sanction(s) that she now faces. Indeed, the Board is fearful that because of Respondent's lack of appreciation of her misconduct, similar harm to future clients of the Respondent may result. Therefore, to protect the public and to assure, as best the Board can, that similar or identical violations will not recur the imposition of probation following suspension is necessary.

e. The vulnerability of the victims. The Complainants here were unsophisticated and unfamiliar with the legal system. The Respondent's demand for payment of expenses, her attempt to change the fee arrangement, her withdrawal from their case, and her refusal to release their file (without payment of expenses and/or fees to which she was not entitled) placed her clients in an untenable situation and resulted in their inability to obtain substitute counsel and eventual dismissal of their claims.

f. Respondent has substantial experience in the practice of law. Her offenses were not the technical non-intentional errors occasionally made by recent admitees to the Bar. To the contrary, they were significant intentional ones made by a practitioner with considerable experience.

For the foregoing reasons, the Board adopts the majority opinion of the Panel regarding sanctions (with certain clarifications in order to comply with Rule 7 of Administrative Order No. 9) and hereby imposes the following sanctions upon Respondent pursuant to Rule 7:

1. Respondent shall be suspended from the practice of law for a period of thirty days.

2. At the conclusion of Respondent's suspension, she shall be placed on probation for a period of one year with the following conditions:

a. Respondent shall successfully complete the multi-state professional responsibility exam;

b. Respondent shall reimburse the Complainants for any money Respondent has collected on the Judgment she obtained against them for expenses allegedly due her. The Board understands that to date Respondent has not received any money from the Complainants for this purpose. Therefore, the

effect of this condition is that Respondent shall not be entitled to collect on her judgment against the Complainants and said Judgment shall be null and void even after the conclusion of Respondent's probationary term.

c. Respondent shall not be found to have committed a same or similar ethical violation as was found to exist in these proceedings that arises from events that take place after the effective date of this Order.

Dated at Montpelier, Vermont, this 13th day of March, 1992.

/s/
J. Eric Anderson, Esq., Chair

/s/
Christopher L. Davis, Esq.

/s/
Richard L. Brock, Esq.

/s/
Leslie G. Black, Esq.

/s/
Donald Marsh

/s/
Nancy Foster

/s/
Nancy Corsones, Esq.

/s/
Deborah S. Banse

/s/
Rosalyn L. Hunneman

/s/
Joseph Cahill, Esq.

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

IN RE: DEBORAH T. BUCKMAN,

HEARING PANEL'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter was heard on September 17, 18 and October 11, 1991. Hamilton Davis and Leslie G. Black, Esq. served on the hearing panel along with Christopher L. Davis, Esq., who served as chair. The panel accepted a number of exhibits and took testimony from, Guy Favreau, Vicki Favreau, Scott Cameron, Esq., Judith Smiley, Charles Calley, Esq. and Chad Hickey,

Esq., Hon. Dean Pineles, Hon. Alan Cheever, Peter Hall, Esq. and Frederick Page.

Based upon the relevant credible evidence before it, the panel finds the following by clear and convincing evidence.

FACTS

1. Respondent is an attorney licensed to practice law in the State of Vermont. She was admitted to the Vermont Bar in 1980 and is a solo practitioner in St. Johnsbury, Vermont.

2. In January of 1987, Guy Favreau contacted Respondent regarding a claim against Goss Tire. He had been injured in 1985 while working at Goss Tire but had been told by his supervisor that he was not entitled to worker's compensation benefits. After speaking with Mr. Favreau, Respondent agreed to represent him. She gave him a copy of her standard contingency fee agreement which he signed on January 24, 1987.

3. The fee agreement was unclear whether or not the Favreaus had a responsibility to reimburse Respondent for expenses as incurred or at the conclusion of the matter. Mr. Favreau did not understand the terms of the agreement with regard to his duty to reimburse Respondent for expenses. He knew he had a responsibility to pay them but was unsure whether he had to do so at the conclusion of the case or when they were incurred. A reasonable reading of the agreement would be that there was no obligation to pay expenses until the conclusion of the case.

4. Respondent filed a worker's compensation claim on behalf of Mr. Favreau against Goss Tire. She also prepared a tort suit against Goss Tire for wrongful denial of worker's compensation benefits.

5. Mr. Favreau, after injuring his back at Goss Tire, reinjured his back while working for Asplundh Tree Company. Asplundh had denied outright Mr. Favreau's claim for worker's compensation benefits.

6. Respondent felt that she needed to add Asplundh as a defendant in the Goss Tire tort suit and that she needed to pursue a worker's compensation claim against Asplundh as well.

7. Mr. and Mrs. Favreau were reluctant to sue Asplundh (either on a tort claim or for worker's compensation benefits).

8. Mr. Favreau had obtained the job at Asplundh through his father who worked for Asplundh. Consequently, Mr. Favreau was concerned that Asplundh might take retaliatory measures against his father. However, at Respondent's strong urging at a meeting with the Favreaus and Mr. Favreau's father, the Favreaus consented to suing Asplundh. Respondent did not discuss fees with the Favreaus at this meeting. The Favreaus assumed that their contingency fee agreement in the Goss Tire case would apply to the Asplundh case as well in part because Respondent had represented to the Favreaus that one case could not be brought without the other. In the absence of any other fee agreement, the Panel finds that the original fee agreement covered both the cases against Goss Tire and Asplundh.

9. In November 1987 Respondent filed a worker's compensation claim against Asplundh on behalf of Mr. Favreau. In January 1988, Respondent

filed suit on the Favreaus' behalf against Goss Tire and Asplundh. Shortly thereafter Respondent settled the Goss Tire worker's compensation case for $1008. She retained 20% for her legal services and remitted the balance to Mr. Favreau. She did not retain any money to cover her expenses.

10. In July of 1988 Respondent first billed Mr. Favreau for expenses. The bill totaled $580.39. Mr. Favreau did not pay the bill, and did not discuss the bill with Respondent nor did she discuss it with him.

11. In December 1988 Goss Tire filed a motion for summary judgment in the civil suit asserting that worker's compensation was Mr. Favreau's exclusive remedy. In January 1989 Asplundh filed a like motion. Respondent filed a memorandum in opposition.

12. In February 1989 Mr. Favreau asked to see Respondent because he and his wife were frustrated by what they perceived to be a lack of access to Respondent. Mr. Favreau thought that Respondent was not returning his calls and was not letting him know what was going on with his case. When he called Respondent, he was often directed to Charles Calley, Respondent's law clerk. Mr. Calley spoke with Mr. Favreau but could not always answer his questions satisfactorily.

13. A friend of Mr. Favreau recommended that Mr. Favreau see Scott Cameron an attorney practicing in Montpelier. Mr. Favreau contacted Mr. Cameron and explained that Respondent was not keeping Mr. Favreau satisfactorily informed about his case. Mr. Cameron urged him to talk to Respondent to explain how he felt and to try to resolve their communication problems.

14. The Favreaus took Mr. Cameron's advise and met with Respondent in early February of 1989. Mr. Favreau told Respondent that he had talked to another lawyer, but that he wanted the Respondent to continue to represent him. He tried to explain to her his frustration that nothing seemed to be happening with his case.

15. Respondent indicated that she felt that she was on top of Mr. Favreaus' case and had put a lot of work into their case. She felt that the Favreaus were ungrateful. She was angry with Mr. Favreau that he had spoken to another lawyer. She told him that if he was unhappy he should perhaps retain another lawyer. The conversation ended with Mr. Favreau insisting that he did not want to change lawyers because he would lose too much time and effort that had already been invested in the cases.

16. A few days after this meeting, on February 6, 1989, the superior court dismissed the lawsuit against Asplundh. Respondent wrote a letter to Mr. Favreau on March 6, 1989 advising him of the dismissal. In this letter she claimed that their contingency agreement, executed two years earlier, did not extend to the Asplundh worker's compensation case. She noted that the agreement only referenced Goss Tire. She told Mr. Favreau that she would continue to represent him only on an $80.00 per hour basis, and that she required a $750.00 retainer within nine days.

17. Mr. Favreau was shocked when he received this letter. He telephoned Respondent immediately and told her he thought everything was covered by the original contingency fee agreement. She replied that she did not agree with him and required a retainer.

18. Respondent, prior to this letter, had never mentioned any change in the fee arrangement nor had she ever billed the Favreaus on an hourly basis. Respondent admitted that she never treated the cases separately nor kept separate track of her time on the two cases (i.e., the Goss Tire and the Asplundh cases).

19. By her March 6, 1989 letter, Respondent attempted to change unilaterally her fee structure from a contingency one to an hourly basis one.

20. Mr. Favreau could not afford the $750.00 retainer. After the phone conversation with Respondent, Mr. Favreau understood that Respondent was "firing " him as a client. Mr. Favreau contacted Mr. Cameron and explained this situation to him. Attorney Cameron said he could not take over the case against Asplundh without talking to Respondent first. Attorney Cameron notified Respondent of this meeting in a letter to her dated March 17, 1989. He stated that he wanted to talk to her about the matter before making any decisions about accepting the case.

21. Respondent and Mr. Cameron subsequently spoke by telephone. Respondent told Mr. Cameron that she wanted to get out of all the pending cases involving the Favreaus. She told him that she would give him the files once her expenses were paid.

22. Respondent was aware at the time she spoke to Mr. Cameron that she had not sent Mr. Favreau a bill for expenses since July of 1988. She reviewed her file and determined that Mr. Favreau owed her $498.00 in expenses.

23. On March 22, 1989, Respondent wrote a letter to Mr. Favreau. The letter, along with a copy to Scott Cameron, was not mailed until April 3, 1989. The letter stated in pertinent part as follows:

> This is to confirm our agreement that I am withdrawing from the case of Favreau v. Goss. et al. I will give you your file when I receive my out-of-pocket expenses, which amount to $498.00.
>
> By this agreement, you are not responsible for any other attorney's fees. As I indicated to you over the telephone, this is more than fair to you since we spent many hours on your case.
>
> Therefore, if I do not receive money for the expenses within 15 days, you will be responsible for the entire amount of my attorney's fees. Thank you.
>
> Very truly yours,
>
> /s/ Deborah T. Buckman, Esq.

In fact there was no such agreement between the Favreaus and the Respondent as represented by the Respondent in her letter. Mailed at or about the same time was a bill dated March 31 which itemized $498.00 in expenses.

24. The Favreaus were quite upset with Respondent's March 31, 1989

letter for two reasons. First, they had no agreement with Respondent to pay all of her expenses within 15 days or else become responsible for all of her attorney's fees. Second, the expenses claimed did not appear to be ones they owed. For instance, they were billed for the expense of obtaining medical records which Mrs. Favreau had herself obtained and delivered to Respondent. There were other expenses which they knew nothing about and which they did not believe were theirs.

25. Mrs. Favreau telephoned Respondent's office several times following receipt of the March 31, 1989 letter and requested that she and her husband be provided with copies of the underlying bills to justify the statement of expenses. Respondent recalled receiving only one message and did not return the telephone call nor did she provide the requested information to her clients.

26. In the meantime, the Favreaus contacted Mr. Cameron and explained the difficulties they were having getting access to Respondent's file. Mr. Cameron agreed to write to Respondent to try to straighten out the situation.

27. Mr. Cameron wrote to Respondent on April 12, 1989 hoping to obtain an orderly transition of the Respondent's file to whomever would be taking over their cases.

28. In his letter, Mr. Cameron recited his understanding of the situation to date, including the history of the dealings between Respondent and the Favreaus. Mr. Cameron attempted to correct the record by noting that, contrary to Respondent's March 22, 1989 letter, neither he nor the Favreaus had formed an agreement with her that the Favreaus would pay her expenses in 15 days or else be responsible for her fees. He explained that he needed to review her file before making a determination as to whether he could take over the matter.

29. Respondent was incensed by Mr. Cameron's letter. She believed that his purpose in writing the letter was to offend her and to exacerbate the situation. She telephoned his office the next day and left a message for him that she did not appreciate his letter and that his remarks were sexist. Mr. Cameron called her back but did not reach her.

30. On April 17, 1989 Respondent appeared at a hearing in Caledonia Superior Court on the Goss Tire suit. At the hearing, the court granted a summary judgment motion in favor of Goss Tire. Respondent did not tell her clients about the decision.

31. A few days after the hearing, Respondent telephoned Mr. Cameron and angrily denounced him for the April 12, 1989 letter he had sent to her.

32. At Mr. Cameron's suggestion, Mrs. Favreau telephoned approximately a week after the summary judgment hearing in the Goss Tire case and asked what had happened. Respondent told Mrs. Favreau that no decision had been reached. This statement by Respondent was untruthful and Respondent so admitted.

33. Respondent met with Mr. and Mrs. Favreau on Saturday, April 29, 1989 at Respondent's office. At the meeting Respondent yelled at the Favreaus. She was angry and threatening. The Favreaus told Respondent that Mr. Favreau was not taking home much money each week and that, with

three children, they could barely get food on the table. Her response was "That's not my problem. That's your problem. I have bills, too." It was at this meeting that the Respondent first informed the Favreaus of the dismissal of the Goss Tire civil suit.

34. Toward the end of the meeting, Mr. Favreau explained that he did not want another lawyer and that he wanted her to continue to handle the Goss Tire case and for her to appeal it. Respondent said she would handle the case only if the Favreaus paid her $100 per month for her expenses. The Favreaus felt pressured by Respondent. They did not want to change lawyers at this late date. They also did not have the income to pay her $100 per month. Nevertheless, the Favreaus said they would try to pay the money. Respondent felt they had a firm verbal agreement to that effect.

35. Subsequently, Respondent filed the appeal. The Favreaus, however, failed to pay the $100 per month. Mr. Favreau did not have any funds available to pay these expenses in the summer of 1989. He was supporting his wife and three children on $18,000 a year and lived in a trailer with a monthly mortgage in excess of $460. Their expenses exceeded their income. Respondent sought to demonstrate through an expert that the Favreaus could have obtained a loan in the summer of 1989 to pay her fees. The expert's opinion was based on the Favreaus tax statements for 1988 and 1990. He conceded he did not know whether Mr. Favreau would have ability to borrow money to pay Respondent's fees.

36. On June 21, 1989 Respondent wrote to Mr. Favreau advising that if he did not pay $100.00 in five days, she would withdraw from the case. When Mr. Favreau did not respond, Respondent filed a motion in the Supreme Court seeking permission to withdraw for her clients' "failure to abide by the retainer agreement."

37. Again, Mr. Favreau sought Scott Cameron's assistance. Since Mr. Cameron did not have a copy of the retainer agreement, he advised Mr. Favreau to get a copy of it from Respondent.

38. Mr. Favreau telephoned Respondent's office and made arrangements to pick up a copy of the retainer agreement. When he appeared at the office as scheduled, Respondent told her office manager not to give Mr. Favreau a copy of the retainer agreement.

39. Without a copy of the retainer agreement, the Favreaus were unable to respond to Respondent's Motion to Withdraw. Attorney Cameron drafted a letter, dated July 26, 1989, for their signature which they sent to the Supreme Court. They stated that they were not in violation of their retainer agreement, although they realized that they were ultimately responsible for expenses Respondent had incurred on their behalf. They also noted that on at least three occasions, they had asked Respondent for an accounting to justify the expenses she claimed but had not received such an accounting. They asked for a hearing on Respondent's motion to withdraw.

40. Respondent received a copy of the July 26, 1989 letter and was upset by it because she felt, among other things, that the Favreaus had not requested an accounting at least three times as they had stated but only once as she had recalled and because she thought that an accounting had in fact been sent to them. However, she did not check her file to make sure of this. In fact, Respondent had not sent the requested accounting and had

not taken reasonable steps to ensure that an accounting had been sent to the Favreaus. Moreover, when she was notified by the July 26, 1989 letter that this was still an outstanding issue, Respondent did not take reasonable steps to ensure that the Favreaus' request for an accounting had been satisfied.

41. On or after June 29, 1989, Respondent's staff had compiled a list of expenses incurred on behalf of the Favreaus. The expenses totaled $808.69. Attached to this list were copies of checks and invoices substantiating the charges. This accounting was never sent to the Favreaus. Respondent was repeatedly advised by her clients, by Mr. Cameron, and eventually by bar counsel that the Favreaus wanted but had never received an accounting of their expenses. Even as of the close of the evidence in this proceeding, Respondent had yet to furnish the requested information to the Favreaus.

42. On or about August 1, 1989, Mr. Cameron sent a letter to Respondent, inquiring under what conditions the Respondent would release the Favreau file in the event her motion to withdraw was granted. Mr. Cameron noted that there was a current dispute over expenses in an amount between $500 and $600. Mr. Cameron indicated that before he could decide whether to take over the matter he would need to know what Respondent was claiming for compensation if the Favreaus recovered anything.

43. At Respondent's direction, Judith Smiley, the office manager for Respondent, sent a letter to Attorney Cameron dated August 8, 1989. The letter provided as follows:

> "In response to your letter dated August 1, 1989, the conditions under which this office will turn over the Favreaus' complete file are as follows:
>
> 1. All costs which have been expended on the Favreaus' behalf will be paid. Our costs are considerably higher than the statement sent to the Favreaus as there were several charges which were not included therein.
>
> 2. Since so much time as been expended by this office on the Favreaus' behalf, and in accordance with the fee agreement the Favreaus' executed, we will expect to receive 1/3 of whatever fees you receive in the event this matter is successfully appealed and litigated.
>
> If you have any questions, you may feel free to contact me."

44. Mr. Cameron wrote back on August 10, 1989 and asked Respondent's office manager for a copy of her retainer agreement with the Favreaus so that he could "assess the reasonableness" of Respondent's position.

45. That afternoon, a hearing on Respondent's motion to withdraw was held before Justice Gibson. Respondent told the Court that her retainer agreement required payment of expenses when billed, that Mr. Favreau had not paid the expenses, and that she was entitled to withdraw. Respondent did not provide a copy of the retainer agreement to the Court. Mr. Favreau

addressed the Court and stated, among other things, that Respondent had yelled at him and his wife during a meeting, that he had repeatedly asked Respondent for the bills to support her demand for expenses, and that he could not afford to pay the expenses at that time.

46. Justice Gibson granted Respondent's motion to withdraw but instructed Respondent to give Mr. Favreau a copy of the retainer agreement.

47. Respondent then forwarded a copy of the retainer agreement by letter to Mr. Cameron dated August 14, 1989. When she wrote this letter, Respondent was angry at the remarks which Mr. Favreau had made to Justice Gibson. Therefore, she wrote to Mr. Cameron a letter dated August 14, 1989 which stated as follows:

> "Enclosed please find a copy of the Retainer Agreement Mr. Favreau signed. Since I was required to travel to Montpelier last week on the Motion to Withdraw, and since Mr. Favreau chose to make false allegations about my representation of him to the Vermont Supreme Court, my prior offer is no longer in effect.
>
> "In order for Mr. Favreau to receive his file, I will require the full amount of expenses and my full fee, should there by an recovery. In the alternative, Mr. Favreau may pay for the hours billed on this case. My secretary has estimated that amount to be $2200.00. The expenses are over $800.00.
>
> "If Mr. Favreau agrees to that method of payment, I will be happy to send him an itemized bill. I will, however, not have my secretary spend time on the bill unless Mr. Favreau agrees to pay by that method first. The $2200.00 does not begin to cover the amount of time that we spent on this case as we were not diligent in keeping track of our time, so I will not waste my time with an itemized bill unless an agreement is reached beforehand. Thank you.

48. The Panel finds that Respondent increased her demand for payment in part because she was angry at Mr. Favreau. Her actions in this regard were clearly vindictive.

49. Following the Supreme Court hearing on Respondent's motion to withdraw, Mr. Favreau made a number of attempts to obtain substitute counsel. Mr. Cameron would not undertake representation without access to Respondent's file. Mr. Cameron believed it was necessary to review the medical evidence contained therein, evidence which the Favreaus believed they had gathered for Respondent. Other attorneys whom Mr. Favreau contacted would not take the case. When no substitute counsel pursued the appeal, the case was dismissed.

DISCUSSION

Respondent has argued that charging her with violations of D.R. 1-102(A) (5) violates of her due process rights because the rule is too vague. That rule provides that a lawyer shall not engage in conduct that is prejudicial to the administration of justice. We agree with Bar Counsel's argument on this issue. A rule is void for vagueness if it fails to give a

person of ordinary intelligence a reasonable opportunity to know what is prohibited or fails to provide sufficient standards for enforcement. Grayned v. City of Rockford, 408 U.S. 104, 108-109 (1972). Moreover, rules setting guidelines for members of the bar need not meet the precise standards of clarity that might be required of rules of conduct for lay persons. See Parker v. Levy, 417 U.S. 733, 756 (1974). The constitutionality of this rule has been upheld by the United States Court of Appeals for the Circuit in Howe v. State Bar of Texas, 843 F.2d. 205 (5th. Cir. 1988). For like reasons, we also find that Disciplinary Rule 1-102(A)(7) (which provides that a lawyer shall not engage in any other conduct that adversely reflects upon the lawyer's fitness to practice) is not constitutionally overbroad.

Respondent has asserted in her defense that she had a right to withhold her file from the Favreaus on the grounds that she had a common law attorney's retaining lien. We do not accept the implication of the Respondent that such lien can be imposed without limitation. For example, the lien cannot be ethically asserted when it would impair or prejudice the client's interest in the subject matter. Opinion 82-9 Vermont Bar Association (1982). Likewise, if a lawyer withdraws improperly and thereby violates the client/lawyer contract or engages in substantial professional misconduct toward the client, the lawyer cannot assert a lien on the client's files. Wolfram Modern Legal Ethics at 560 (1986). Here, Respondent wrongfully sought to terminate her relationship with the Favreaus by insisting on reimbursement of expenses to which she was not yet entitled.

Respondent relies upon Lucky - Goldstar International v. International Mfg. Sales Co., 636 F. Supp. 1059 (N.B. Ill. 1986) to buttress her position. Again, we accept Bar Counsel's argument in this regard. The fee agreement letter was unclear as to when expenses were due. Respondent so acknowledged. When reasonably requested to provide an accounting regarding the expenses, Respondent failed to do so. The Favreaus were of limited financial means and were not sophisticated clients. We do not decide whether or not the Respondent had a right to such a lien if she had justifiable grounds for withdrawing. Rather, we are holding that, because, among other things, she misrepresented to the Supreme Court the status of the dispute with her clients and because she wrongfully demanded reimbursement for expenses prior to the conclusion of the case she can not use the claim of an attorney's lien as a defense to the disciplinary rule violations alleged. At the same time we do not find that there was a disciplinary rule violation by the withholding of the file in and of itself as that isolated issue was not presented.

Respondent also claims that she can assert an attorney's lien for her fees because the Favreaus had the ability to pay her. As the Panel finds that the Favreaus did not in fact have the ability to pay the Respondent, we do not reach this issue as well.

CONCLUSIONS OF LAW

Respondent was charged with violating a number of different disciplinary rules by her actions as set forth above. We assess each alleged misconduct separately.

15A.

The Respondent lied to the Favreaus about the status of the Goss Tire litigation. Respondent knew that the motion for summary judgment dismissing the claim had been granted by the Court but purposely did not tell the Favreaus. Respondent admitted these facts. Respondent's actions involved dishonesty, deceit and misrepresentation, a violation of D.R.1-102(A) (4) .

B.

Respondent attempted to alter unilaterally her contract of employment with the Favreaus. She claimed that her fee agreement with the Favreaus covered only the Goss Tire case and not the Asplundh tree case. However, by her own admission she handled and treated these cases as one and the same. For example, she did not maintain separate records for them nor separate time journals nor separate expense accounting. Her attempt to change her fee arrangement with the Favreaus regarding these matters constituted conduct involving dishonesty, deceit, and misrepresentation and was also prejudicial to the administration of law and therefore a violation of D.R. 1-102(A)(4) and (5) and D.R. 7-lOl(A)(3).

C.

The Respondent's demand of the Favreaus for reimbursement of expenses incurred on their behalf was improper. Her written fee agreement with the Favreaus did not allow her to demand reimbursement of expenses prior to the conclusion of the case. Her insistence for reimbursement of expenses and then her request to withdraw as the Favreaus' attorney because they had allegedly violated their fee agreement with her was conduct involving dishonesty, deceit and misrepresentation. Further, Respondent's refusal to provide Favreaus with a copy of the fee agreement letter prior to the Supreme Court hearing on Respondent's motion to withdraw amounted to conduct prejudicial to the administration of justice. By these actions she violated D.R. l-lOl(A) (4) and (5). Respondent also violated D.R. 7-lOl(A)(3) because by her actions she intentionally prejudiced or damaged her clients during the course of their professional relationship: to wit, Respondent was able to withdraw wrongfully from continuing to represent the Favreaus.

D.

The Favreaus repeatedly requested an accounting of the expenses Respondent allegedly incurred on behalf of the Favreaus. Scott Cameron asked for such an accounting more than once. Bar Counsel asked for this accounting on several occasions. Respondent as of the time of the hearing had still not provided the accounting. Respondent's demand for payment of expenses as a condition to continued representation of the Favreaus, while not complying with their reasonable requests for an accounting of the expenses, constituted conduct that adversely reflects upon Respondent's fitness to practice law, a violation of D.R. 1102(A) (7) and is conduct prejudicial to the administration of the law, a violation of D.R. 1-102(A)(5).

E.

Respondent represented to Attorney Scott Cameron the existence of an

oral agreement with the Favreaus whereby the Favreaus purportedly agreed to pay all of the Respondent's expenses in fifteen days or else become responsible for the entire amount of Respondent's attorney's fees. This false assertion was conduct involving dishonesty, deceit and misrepresentation, a violation of D.R. 1-102(A)(4) and adversely reflects on Respondent's fitness to practice law, a violation of D.R. 1-102(A)(7).

F.

Respondent refused to release her file to the Favreaus or to Attorney Scott Cameron unless she received one-third of the total recovery obtained by the Favreaus as her attorney's fees and reimbursement of her expenses. She did not have a right to demand such payment under the terms of her fee agreement with the Favreaus where she did not represent them to the completion of their cases. Furthermore, by conditioning release of the file on such unfair terms, she prevented the Favreaus from obtaining substitute counsel. Respondent's actions in this regard were dishonest and deceitful and adversely reflect on her fitness to practice law, violations of D.R. 1-102(A)(4) and (7). By insisting on fees she was not entitled to, Respondent also intentionally prejudiced or damaged the Favreaus during the course of Respondent's professional relationship with them, a violation of D.R. 7-l0l(A)(3). Furthermore, Respondent did not take reasonable steps to avoid foreseeable prejudice to the rights of her clients. E.C. 2-32. She created a situation where the Favreaus could not obtain substitute counsel in a timely manner. As such she violated D.R. 2-l10(A)(2) which states, in part, that:

> . . . a Lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and steps.

Respondent has also been charged with abusive behavior and language toward the Favreaus and Attorney Scott Cameron. While Respondent may have been discourteous to the Favreaus and Attorney Cameron, the Panel does not find that such conduct clearly and convincingly rises to the level of a disciplinary rule violation.

CONCLUSION

The Hearing Panel finds by clear and convincing evidence the violations by the Respondent of the above enumerated Disciplinary Rules. The Hearing Panel recommends that the Professional Conduct adopt these Findings of Fact and Conclusions of Law. Prior to recommending what sanctions should be imposed pursuant to the request of Bar Counsel and agreed upon by Respondent, the Hearing Panel shall hear argument on that issue from Bar Counsel and from Respondent and shall issue a separate report to the Board.

Dated at Montpelier this 6th day of December, 1991.

The Board adopts these Findings and Conclusions as amended as of February 14, 1992.

PROFESSIONAL CONDUCT BOARD

By: /s/
Christopher L. Davis, Esq., Chair

/s/ J. Eric Anderson, Esq.	/s/ Leslie Black, Esq.
/s/ Joseph F. Cahill, Jr. Esq.	/s/ Hamilton Davis
/s/ Deborah S. Banse	/s/ Rosalyn Hunneman
/s/ Nancy Corsones	/s/ Richard Brock, Esq.
/s/ Nancy Foster	/s/ Donald Marsh

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

IN RE: DEBORAH T. BUCKNAM
PCB FILE 89.53

HEARING PANEL'S NOTICE OF DECISION
REGARDING IMPOSITION OF SANCTIONS

This matter came on for hearing on January 3, 1992 to consider appropriate sanctions for the Respondent following the Findings of Fact and Conclusions of Law previously issued by this Panel. Hamilton Davis and Leslie G. Black, Esq. served on the Hearing Panel along with Christopher L. Davis, Esq., who served as Chair. Present at the Sanctions Hearing were the Respondent, Deborah Bucknam, Esq. and her counsel, Edwin H. Amidon, Jr., Esq. as well as Bar Counsel, Wendy Collins, Esq. Based upon the evidence presented at the Sanctions Hearing and at the hearing on the merits as well as the written arguments of Bar Counsel and Respondent, the Panel reaches the following conclusions and makes the following recommendations regarding sanctions to be imposed.

A primary purpose of lawyer disciplinary proceedings is the protection of the public. In determining appropriate sanctions for those who have violated disciplinary rules, the Professional Conduct Board has in the recent past sought guidance from the ABA's Standards for Imposing Lawyer Sanctions (1986). These Standards state that the factors to be considered in imposing sanctions include:

a) the duty violated;
b) the lawyer's mental state;
c) the potential or actual injury caused by the lawyer's misconduct; and
d) the existence of aggravating or mitigating

factors.

Here Respondent has been found to have committed acts involving dishonesty, deceit and misrepresentation with her clients. Her conduct was prejudicial to the administration of justice and she intentionally prejudiced or damaged her clients during the course of representing them by insisting on fees to which she was not entitled and by improperly withholding her clients' file. Respondent, by her own admission, misrepresented to her clients the status of their case. She also attempted to change unilaterally her fee arrangement with her clients. Finally, she misrepresented that she and her clients had entered into a new fee arrangement whereby all her expenses were to be paid within 15 days or else her legal fees were to be paid in full. Each of these ethical violations was committed knowingly. The Respondent also negligently failed to provide to her clients an accounting of the disputed expenses despite repeated requests for her to do so.

As a result of Respondent's misconduct, her clients were unable to retain new counsel, their case was dismissed and they lost an opportunity to pursue a valid cause of action. The damage to the clients was, therefore, substantial.

A number of aggravating factors exist. Respondent's misconduct consisted of multiple offenses extending over a considerable period of time and involved a dishonest or selfish motive. Worse yet, Respondent was not contrite about her misconduct. Indeed, at the Sanctions Hearing she testified that, while she might owe her clients an apology, they owed her one as well. Thus, to put it bluntly, Respondent "does not get it." She has no understanding of the wrongfulness of her actions nor of the special duties that she owes to her clients.

On the other hand, in mitigation, Respondent has been practicing for over 10 years and has no prior disciplinary record. She is also respected within the profession, particularly for her substantial pro bono work, especially in the area of domestic law.

We now address the separate acts of misconduct and what sanctions might be appropriate for each individual one. Each one is discussed with the assumption that no other act of misconduct had occurred.

A. Misrepresentation as to the status of the Goss Tire Tort Claim

Respondent intentionally did not tell her clients that the Goss Tire tort claim had been dismissed. She lied, pure and simple. This was not an act of negligence. However, her clients suffered no injury as a result of this misconduct.

Paragraph 4.64 of the Standards provides that an admonition is generally appropriate where a lawyer negligently fails to provide a client with accurate information and there is no injury to the client. If there is injury, a reprimand is recommended (Paragraph 4.63). Where an attorney knowingly deceives a client, and a client is injured, the Standards recommend a suspension (Paragraph 4.62). No suggested sanction is provided where the attorney, as here, intentionally deceives a client but no injury results.

In Kentucky Bar Association v. Reed, 623 S.W.2d 228 (Ky 1981), the

Court suspended a lawyer for one year for misrepresenting the status of three different cases where each of the three different clients suffered injury. (Two clients suffered summary judgment against them and the third client was denied a settlement payment for an extensive period of time).

In the Panel's mind the fact that the deception was intentional and for the purpose of assuring that Respondent would get her fee makes the violation serious even though no actual injury occurred.

B. Attempt to unilaterally alter the Asplundh Fee Agreement

Respondent's fee agreement with her clients covered both the Goss Tire and the Asplundh matters. Nevertheless, she attempted to change the fee arrangement unilaterally, that is, without the consent of her clients. No injury was suffered by her clients however. Therefore, there being no element of injury or potential injury, the appropriate sanction for the individual act of misconduct seems to be admonition if we rely upon Paragraph 4.6 of the ABA's Standards.

C. Wrongful Demand of Expenses Prior to Conclusion of the Case.

The Panel concluded that Respondent's clients were, in fact, injured by Respondent's wrongful demand of expenses prior to the conclusion of the case as a precondition to continued representation. The injury, as stated earlier, was substantial: the clients were unable to retain substitute counsel and could not pursue a valid claim. This injury was found by clear and convincing evidence. This case bears some resemblance to People v. Radinsky, 51 P.2d 267 (Colo. 1973). In Radinsky, the lawyer represented clients in a personal injury claim on a contingency fee bases. The lawyer/client relationship broke down and Respondent demanded immediate payment of his costs. The clients then sought substitute counsel and tendered payment of the requested costs. The Respondent, however, refused the costs and demanded payment of a fee which he claimed was then due and owing. He asserted an attorney's lien and refused to release any of the documents he held. The attorney's notice of lien misrepresented the amount which his clients had agreed to pay and the conditions under which the fee would be paid. Therefore, the attorney was not justified in retaining the files and in jeopardizing his former clients' right to pursue their claim. The Supreme Court of Colorado disbarred the attorney noting that "an attorney's lien which misstates facts and is utilized to overreach and to force payment of more than is owed cannot be tolerated." Id. at 628.

The ABA Standards, paragraph 7.2, provide that "suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client ...." Respondent here has been found to have violated intentionally such a duty (D.R. 7-101) and caused injury to her clients so relying upon the Standards, a suspension seems appropriate. However, the commentary to paragraph 7.2, by way of an example, seems to a situation where a layer engages in a pattern of charging excessive or improper fees, which is not the case here.

D. Negligent Refusal to Supply Expense Accounting.

With regard to this matter the Board must first correct its findings. Bar Counsel at the Sanctions Hearing pointed out that the Board's conclusion in Section D of its Findings and Conclusions (Page 17)

should be revised to indicate that the requested accounting had, at the time of the hearing, not been provided to the clients but had been provided to Bar Counsel. The Panel now so finds.

The delay in providing the accounting was considerable. It followed repeated requests. It was, however, a result of negligence. There was no finding by the Panel based upon clear and convincing evidence that it was withheld deliberately or knowingly.

Paragraph 4.63 of the Standards suggests that a reprimand is generally appropriate when a lawyer negligently fails to provide a client with appropriate information and such failure causes injury or potential injury to the client.

Paragraph 4.64 provides that admonition is appropriate in cases of isolated instances of neglect where there is little or no actual or potential injury. Here there was evidence of a pattern of like misconduct.

E. False Assertion of Agreement by Client to Pay Expenses within 15 days or become responsible for Attorney's fees.

At the Sanctions Hearing Respondent testified that she did not intend by the wording of her March 22, 1989 letter to create the impression that her clients had agreed to a revised fee arrangement. Despite this assertion, the Panel stands by its decision that the evidence indicates clearly and convincingly that the Respondent did so intend. However, the Respondent's clients suffered no injury as a result of this misconduct and under the Standards no more than an admonition would be an appropriate sanction.

Summary

There was no motive here by Respondent to cheat or steal money from her clients. Indeed, the money in dispute was relatively insignificant. However, given the modest means of the clients, it was still a considerable sum to them. For whatever reason, Respondent believed that she was being cheated by her clients and she overreacted. To her credit, since the institution of these disciplinary proceedings, she has instituted new procedures in her office for monthly itemized billing and for explaining retainer agreements to clients. On the other hand, while the acts of misconduct involve only one set of clients, there is a clear pattern of misconduct with regard to these individuals that lasted over a protracted period of time. Furthermore, as stated earlier, Respondent lacks an appreciation of the wrongfulness of her actions.

In view of the foregoing, the majority of the Panel recommends Respondent be suspended for a period of thirty days followed by a period of probation to last until she satisfactorily completes the professional responsibility portion of the Multi State Examination and that she not be found in violation of a like disciplinary rule while on probation.

Respondent obtained a judgment against the Complainants for expenses that she incurred on their behalf. She also received a fee for some of her work. To the extent that the Findings omit these facts they are now so found. The panel believes that it is unfair that the Respondent receive money from the Complainants over and above the expenses she incurred for them. Therefore, to the extent that the fees received by Complaint exceed

the amount of money she has received on her judgment against the Complainant, she shall make restitution to the Complainants and she shall remain on probation until satisfactory proof of payment has been forwarded to this Board.

Dated at Montpelier, Vermont, this 14th day of February, 1992.

/s/
Leslie G. Black, Esq.

/s/
Hamilton Davis

MINORITY OPINION

I concur with the opinions expressed by the majority of the panel, however, I would give greater deference to the mitigating factors enumerated in the majority's opinion and consequently feel that a suspension might be too harsh. I recommend that respondent be publicly reprimanded and that she be placed on probation for a period of a year with the condition that she satisfactorily complete the professional responsibility portion of the Multi State Examination and that she not be found in violation of a like disciplinary rule. I also agree with the majority regarding the condition of probation concerning restitution to the Complainants.

Dated at Montpelier, Vermont this 14th day of February, 1992.

/s/
Christopher L. Davis, Esq.,
Chair

APPENDIX TO NOTICE OF DECISION NO. 28

ENTRY ORDER

SUPREME COURT DOCKET NO. 92-134

MARCH TERM, 1993

In re Deborah Bucknam	}	APPEALED FROM:
	}	
	}	
	}	Professional Conduct Board
	}	
	}	
	}	
	}	DOCKET NO. 89.53

In the above entitled cause the Clerk will enter:

Respondent is publicly reprimanded for the violations found in this opinion. She shall forego collecting expenses allegedly due her from complainants. From the date of issuance of this opinion, she shall be on probation for a period of one year, during which time she shall successfully complete the multi-state professional responsibility examination and shall not
be found to have committed similar ethical violations.

BY THE COURT:
/s/
_____
Frederic W. Allen, Chief Justice
/s/
_____
Ernest W. Gibson III, Associate Justice
/s/
_____
John A. Dooley, Associate Justice
/s/
_____
James L. Morse, Associate Justice
/s/
_____
Denise R. Johnson, Associate Justice

No. 92-134

In re Deborah Bucknam

Supreme Court

Original Jurisdiction

March Term, 1993

Wendy S. Collins, Special Bar Counsel, Montpelier, for plaintiff-appellee

Edwin A. Amidon, Jr. of Roesler, Whittlesey, Meekins and Amidon, Burlington, for defendant-appellant

PRESENT: Allen, C.J., Gibson, Dooley, Morse and Johnson, JJ.

JOHNSON, J. The Professional Conduct Board concluded that respondent-attorney Deborah Bucknam violated several provisions of the Code of Professional Responsibility in dealing with a client and his wife over a six-month period in 1989. The Board recommended that respondent be suspended from the practice of law for a period of thirty days and that she be placed on probation for a period of one year under the following conditions: that she successfully complete the multi-state professional responsibility exam, that she forego the collection of any expenses from complainants, and that she not be found to have committed similar ethical violations. On appeal, respondent challenges three of the six violations found by the hearing panel and adopted by the Board. She argues that the remaining three violations warrant only an admonition with no probationary period. We conclude that a public reprimand is a more appropriate sanction than a one-month suspension, given the facts of this case. In all other respects, we adopt the Board's recommended sanctions.

I.

In January 1987, respondent agreed to represent complainants on a contingency basis regarding a worker's compensation claim and a tort suit against the husband's former employer, the Goss Tire Company. The husband signed a retainer agreement. After filing a worker's compensation claim against Goss Tire, respondent persuaded complainants that it was also necessary to file a worker's compensation claim against Asplundh Tree Company, a subsequent employer that had also denied a claim for benefits by the husband, and to add Asplundh as a defendant in the tort suit to be filed against Goss Tire. In November 1987, respondent filed a worker's compensation claim against Asplundh and, two months later, a civil suit against both Asplundh and Goss Tire.

In early 1988, respondent settled the Goss Tire worker's compensation case for $1008. She retained 20% for her legal services and remitted the balance to complainants without retaining any money to cover her expenses. In July 1988, respondent sent complainants a bill for expenses, totaling $580. Complainants did not pay the bill, and neither respondent nor complainants discussed the bill again.

In December 1988, Goss Tire filed a motion for summary judgment in the civil suit on the ground that worker's compensation was the husband's exclusive remedy. Within a month, Asplundh filed a motion to dismiss on the same ground.

About that time, the husband contacted another lawyer because he was frustrated by what he perceived to be respondent's failure to keep him informed of progress with the lawsuits. The lawyer suggested he resolve the problem with respondent. In early February, complainants met with respondent and, among other things, mentioned that they had contacted another lawyer because of their frustration over the lack of progress in their cases. Angered by complainants' lack of gratitude for her work on the cases, respondent suggested that they retain another lawyer if they were not happy with her services. Complainants stated that they did not want to retain another lawyer because it would mean a great deal of lost time and effort.

A few days after this meeting, on February 6, the superior court

dismissed the civil suit against Asplundh without prejudice to refile after resolution of the Asplundh worker's compensation claim. On March 6, respondent wrote a letter to complainants informing them of the dismissal. In that letter, she stated that a fee agreement had never been reached regarding the Asplundh claim, that she would continue to represent them only on an hourly basis, that she charged $80 per hour and required a $750 retainer, and that she would presume they did not want her to represent them if she did not receive the retainer and a signed agreement by March 15. Complainants immediately called respondent and told her they had understood that the actions against both Goss Tire and Asplundh would be handled on a contingency basis. Respondent disagreed. Because respondent was unwilling to represent complainants in the Asplundh claim on a contingency basis, complainants agreed to allow respondent to withdraw from the pending cases.

Complainants then contacted the lawyer to whom they had previously spoken. In turn, the lawyer contacted respondent, who said she wanted to withdraw from all of the remaining matters involving complainants, but would not release the case files until complainants reimbursed her for out-of-pocket expenses, which amounted to $498. On April 3, respondent mailed a letter to complainants, with a copy to the lawyer, confirming her agreement with complainants to withdraw, stating that she would not release the files unless complainants paid her expenses, and warning complainants that they would be responsible for the entire amount of her attorney's fees unless the expenses were paid within fifteen days. Respondent also sent complainants a statement itemizing the expenses. The wife called respondent to challenge the accuracy of the statement and to obtain copies of the underlying bills, but respondent neither returned the calls nor supplied the requested information.

On April 12, the lawyer with whom complainants had been consulting entered his appearance in the Asplundh worker's compensation claim. That same day, he wrote respondent, stating that complainants had not agreed to be responsible for her fees in the event they could not pay her expenses within fifteen days, and that he believed the canons of ethics required her either to continue zealous representation of complainants in the Goss Tire civil suit or to allow complainants access to the files, regardless of whether expenses were paid, so that they could secure other representation. Respondent was incensed by the letter, which she considered patronizing and sexist.

On April 17, the superior court granted summary judgment to the employer in the Goss Tire civil case at a hearing attended by respondent. Complainants' new attorney learned of the order on April 25 and suggested that complainants call respondent and ask her if anything had happened in the case. The next day, when the wife inquired about the status of the case, respondent told her that the court had not yet issued a decision. Respondent first informed complainants of the court's order at a meeting on April 29.

At that meeting, complainants stated that they wanted respondent to appeal the order. Respondent agreed to do so if complainants paid the filing fee, the cost of a transcript, and $100 per month towards expenses. Although complainants did not believe they could make the payments, they agreed to do so. Respondent filed the appeal, but complainants failed to make payments as agreed. On June 21, respondent wrote complainants that she would seek to withdraw from the case if they did not pay her $100 within five days. When complainants did not respond to her letter, respondent filed a motion to withdraw in early July on the ground that complainants had "failed to abide by the retainer agreement." When complainants sought to obtain a copy of the retainer agreement, respondent told her office manager

not to give them one.

On July 26, complainants filed a letter opposing respondent's motion to withdraw. The letter stated that complainants were not in violation of the retainer agreement and that respondent had failed to provide them with bills supporting her accounting of expenses even though they had asked for such proof three times. Complainants' letter angered respondent because she believed that her office manager had sent them copies of the bills, although she did not verify whether this had been done. In fact, in late June or early July, respondent's staff had compiled a list of expenses, totaling $809, incurred on behalf of complainants, along with copies of checks and invoices substantiating the charges; however, complainants did not receive this accounting until after it was sent to bar counsel in connection with the present disciplinary action.

On August 1, complainants' new attorney asked respondent to state (1) her conditions for releasing the file of the Goss Tire civil suit, and (2) her expectations for future payments in the event she was permitted to withdraw and complainants prevailed on appeal. Respondent stated that she would turn over the file under the following conditions: (1) "All costs which have been expended on [complainants'] behalf will be paid," and (2) "[w]e will expect to receive 1/3 of whatever fees you receive in the event this matter is successfully appealed."

On August 10, respondent's motion to withdraw was granted. At the hearing on the motion, the husband stated among other things, that respondent had yelled at him and failed to provide him with a complete accounting of the expenses, and that he was unable to pay the expenses. Acting on this Court's order, respondent sent a copy of the retainer agreement to complainants' new attorney. She also sent him a letter stating that because the husband had made false allegations to the Vermont Supreme Court, she would now release the file only under the following conditions: complainants pay either $800 in expenses plus her full fee should the appeal prove successful, or an estimated $2200 based on the number of hours billed on the case. Complainants made no payments to respondent, and complainants' new attorney would not take over the appeal without reviewing medical evidence in the file held by respondent. On November 20, 1989, the Goss Tire appeal was dismissed because complainants failed to comply with an entry order requiring the filing of a printed case and brief.

Based on this sequence of events, the hearing panel found that respondent had violated ethical rules by:

(1) lying about the status of the Goss Tire civil suit, in violation of DR 1-102(A)(4) (dishonesty, fraud, deceit, or misrepresentation);

(2) attempting to unilaterally alter the Asplundh fee agreement, in violation of DR 1-102(A)(4) and (5) (conduct prejudicial to administration of justice) and DR 7-101(A)(3) (damaging client during course of professional relationship);

(3) wrongfully demanding reimbursement of expenses before the conclusion of the case, in violation of DR 1-102(A)(4) and (5), and 7-101(A)(3);

(4) negligently failing to provide an expense accounting, in violation of DR 1-102(A)(7) (conduct adversely reflecting on lawyer's fitness to practice law);

(5) falsely asserting an oral agreement between herself and her clients, in violation of DR 1-102(A)(4) and DR 1-102(A)(7); and

(6) failing to release a file to the detriment of her clients, in violation of DR 1-102(A)(4) and (7), DR 7-101(A)(3), and DR 2-110 (A)(2) (lawyer shall not withdraw without taking reasonable steps to avoid prejudicing client, including delivering all papers to which client is entitled).

The majority of the three-member panel recommended that respondent be suspended from the practice of law for thirty days followed by a period of probation to last until she successfully completed the multi-state professional responsibility examination. The majority also recommended that respondent be required to reimburse complainants for fees retained that exceeded any judgment she collected based on expenses owed by complainants. In a minority opinion, the panel chair recommended that respondent be publicly reprimanded rather than suspended. After noting various mitigating and aggravating circumstances, the Professional Conduct Board adopted the sanctions recommended by the panel majority, with certain clarifications regarding reimbursement to complainants.

II.

Respondent concedes that she misrepresented the status of the Goss Tire civil suit to complainants, attempted to unilaterally alter the implied-in-fact agreement in the Asplundh worker's compensation matter, and negligently failed to provide complainants with cancelled checks for out-of-pocket expenses. She also concedes that she handled the fee dispute with complainants poorly. Nevertheless, she contends that, given the mitigating factors and the absence of prejudice to complainants resulting from these three violations, the appropriate sanction is admonition without a period of probation.

A.

Respondent argues that two of the violations found by the Board are unsupported by the record. First, she contends that the evidence does not support the Board's conclusion that she falsely asserted an agreement by complainants to pay expenses within fifteen days. We agree.

The disputed March 22, 1989 letter reads as follows:

> This is to confirm our agreement that I am withdrawing from the case of Favreau vs. Goss, et al. I will give you your file when I receive my out-of-pocket expenses, which amount to $498.00.
>
> By this agreement, you are not responsible for any other attorney's fees. As I indicated to you over the telephone, this is more than fair to you since we spent many hours on your case.
>
> Therefore, if I do not receive money for the expenses within 15 days, you will be responsible for the entire amount of my attorney's fees.

On its face, the letter confirms only that there was an agreement that respondent would withdraw from the case. Rather than asserting an oral agreement that complainants would be liable for attorney's fees, the third paragraph of the letter is, at worst, a threat to charge complainants for her fees unless they paid her out-of-pocket expenses within fifteen days. Respondent may not have had a right to demand attorney's fees in the event

of nonpayment of expenses, but that fact does not transform the third paragraph into a false assertion of an agreement. This Board's finding of a violation is not "'clearly and reasonably supported by the evidence.'" In re Rosenfield, 157 Vt. 537, 543, 601 A.2d 972, 975 (1991) (quoting In re Wright, 131 Vt. 473, 490, 310 A.2d 1, 10 (1973)).

Second, respondent argues that the evidence does not support the Board's conclusion that she wrongfully demanded reimbursement of expenses. In support of this argument, she points out that (1) from the outset, complainants wanted to pay for expenses on a monthly basis, and (2) the Board itself had found the fee agreement to be unclear as to whether it required reimbursement for expenses at the time they were incurred or at the conclusion of the matter. While we agree that the retainer agreement was ambiguous, and that complainants expressed a desire to pay for expenses as they came up, the Board's finding of a violation is supported by the evidence.

In relevant part, the retainer agreement read as follows:

> If we are successful, I will receive as a fee a percentage of the gross recovery. This percentage will be as follows: 25 percent of any recovery of a Workman's Compensation claim; 33 1/3 percent of any other claim up to jury verdict; 40 percent if the case is appealed.
>
> You will pay all costs and expenses of prosecution of the claim . . . . I may advance these costs and expenses, and in that case, I will deduct them from any recovery in addition to my percentage of the gross amount. . . .
>
> . . . .
>
> I shall be entitled to the percentage fee we have agreed on from any recovery, even though you may have dismissed me or substituted another attorney in my place before obtaining such recovery.
>
> I shall have an attorney's lien on any recovery pursuant to this agreement.

The agreement does not spell out when complainants must pay expenses. It does indicate, however, that costs and expenses would be deducted from any recovery if respondent decided to advance them to complainants. Despite complainants' request for monthly billing of expenses so that they would not have to pay a large sum at one time, respondent did not send complainants any bill for expenses until approximately eighteen months after she took the case. Complainants ignored that $580 bill, and respondent made no attempt to collect it or any other expenses until nearly a year later when she decided she no longer wanted to represent complainants. Given the language of the retainer agreement, which was drafted by respondent, her actions implied an agreement that she would advance the costs and expenses of the case until the matter was concluded.

In any event, respondent's demand for reimbursement was wrongful because she made the demand while refusing to provide complainants with a copy of the retainer agreement and while negligently failing to provide them with a detailed accounting of her expenses. Further, because her demand for reimbursement of expenses was wrongful, respondent cannot argue that the

expenses were properly due after complainants, under pressure from her, agreed to pay $100 per month toward expenses. The evidence supports the Board's finding of a violation.

B.

Respondent also contends that the panel abandoned its finding of a violation regarding the retaining lien, and that, even if it did not, the record does not support such a finding. We cannot agree with either contention. In its original findings and conclusions, the hearing panel found no violation for withholding the file "in and of itself," but stated that respondent could not claim an attorney's lien as a defense to the other alleged disciplinary violations. In its second decision regarding sanctions, the hearing panel stated that respondent "intentionally prejudiced or damaged her clients . . . by insisting on fees to which she was not entitled and by improperly withholding her clients' file." The panel then discussed the wrongful retention of the file within its discussion of respondent's wrongful demand for expenses. In short, the panel enfolded the retaining-lien violation into the wrongful-demand-for-expenses violation. The panel concluded that respondent's retention of the files was wrongful because her demand for expenses was wrongful. The Board adopted this conclusion.

We agree that the respondent's imposition of a retaining lien was inappropriate because her demand for reimbursement of expenses was wrongful, given her unilateral attempt to change the fee arrangement, her refusal to provide complainants with a copy of the retainer agreement, and her failure to provide complainants with support for her accounting of out-of-pocket expenses. See Lucky-Goldstar v. International Mfg. Sales Co., 636 F. Supp. 1059, 1064 (N.D. Ill. 1986) (attorney who fails to assure agreement as to amount or method of calculating fee should forego lien); Miller v. Paul, 615 P.2d 615, 620 (Alaska 1980) (if client does not initiate lawyer's withdrawal, or if discharge of lawyer is due to unethical conduct, files should not be withheld). Accordingly, apart from determining the appropriate sanction, we need not address respondent's argument that complainants were not entitled to the file because they had the ability to pay the expenses and because all of the relevant materials contained in the file were available to complainants in the file at the Vermont Supreme Court.

C.

Finally, respondent argues that the sanction recommended by the Board is too severe given the circumstances of this case and the mitigating factors present. We adopt the Board's recommendation of sanctions, except for the one-month suspension.

While they are not controlling, the American Bar Association Standards For Imposing Lawyer Sanctions [hereinafter ABA Standards] provide guidance for determining the appropriate sanction. In re Rosenfeld, 157 Vt. at 546, 601 A.2d at 977. We have already accepted the ABA's recommendation that a suspension should be for a period of at least six months. Id. at 547, 601 A.2d at 978. The reasoning is that a minimum of six months is needed to ensure effective rehabilitation and thus protect the public. Id.; ABA Standard 2.3, Commentary. Further, short-term suspensions function primarily as a fine, which is not a recommended sanction. ABA Standard 2.3, Commentary. We find nothing exceptional about this case that persuades us to disregard this policy. Therefore, we must determine whether respondent's conduct warrants a six-month suspension.

We conclude that it does not. In determining the appropriate sanction, we consider the duties violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and any aggravating or mitigating factors. In re Rosenfeld, 157 Vt. at 546, 601 A.2d at 977. As the majority of the hearing panel stated in summarizing its recommendation on sanctions, respondent never intended to cheat or gouge her clients. Indeed, there is no suggestion that she provided inadequate representation or that she overcharged for her services. Rather, believing that her clients were cheating her, she overreacted and used improper means to bully them into paying. When her clients challenged her right to the disputed expenses, she used her position as their attorney to punish them. While these violations are serious, they do not require a suspension to protect the public.

As mitigating factors, the Board cited the absence of prior ethical violations, the institution of new office procedures for explaining retainer agreements and for itemized billing, and the substantial amount of pro bono work done by respondent in the past. As aggravating factors, the Board cited the pattern of misconduct involving multiple offenses, respondent's dishonest and selfish motive, her refusal to acknowledge the wrongful nature of her conduct, the vulnerability of the clients, and her substantial experience as a lawyer. Moreover, the majority opinion of the panel, which was adopted by the Board, emphasized that the complainants' civil suit was dismissed by this Court as the result of respondent's misconduct.

While we acknowledge the mitigating factors, we are less persuaded by the aggravating factors. First, although there were multiple offenses, they were restricted to one client-couple that respondent believed was cheating her. No pattern of misconduct has been shown. Second, while respondent was somewhat defiant regarding the extent of her culpability, she acknowledged some wrongdoing. Third, although complainants were relatively unsophisticated, they did have access to the advice of another lawyer throughout the time the violations occurred. Finally, while the dismissed appeal would most likely have been heard by this Court if respondent had acted properly and remained as complainants' counsel, it is unclear why the unavailability of complainants' file prevented them from obtaining another attorney to brief the appeal. All of the documents that constituted the entire record on appeal were available in this Court's file. Other than a vague reference to medical records, there is no explanation of why the appeal could not have been briefed based on the documents in that file. Thus, the extent of actual or potential prejudice is questionable.

Based on these considerations and the fact that a one-month suspension is generally ineffective and inappropriate, we agree with the minority opinion of the hearing panel, which recommends public censure rather than a one-month suspension. We reject, however, respondent's contention that her misconduct warrants only an admonition. Admonition is appropriate "[o]nly in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should private discipline be imposed." ABA Standard 1.2. Here, in view of the number of violations and respondent's begrudging acknowledgment of wrongdoing, public censure is necessary not only to inform the public but also to put respondent, and the bar in general, on notice that this type of overbearing conduct toward clients is unacceptable. Further, the same considerations warrant a one-year probationary period, with conditions recommended by the Board.

Respondent has acknowledged that she misrepresented the status of a case to complainants, attempted to alter an implied fee agreement, and negligently failed to supply a detailed accounting of expenses. She also acted vindictively toward complainants by refusing to provide them with a retainer agreement, by revising her offer to successor counsel concerning sharing any potential recovery, and by retaining their file to pressure them into paying expenses that were legitimately in dispute. Respondent's misrepresentation alone could warrant a public reprimand. See In re Welt's Case, 620 A.2d 1017, 1019-20 (N.H. 1993) (lawyer publicly censured based on isolated course of conduct in which he misrepresented the status of litigation to clients). Combined with other incidents of misconduct against complainants, a public reprimand is appropriate and necessary.

Respondent is publicly reprimanded for the violations found in this opinion. She shall forego collecting expenses allegedly due her from complainants. From the date of issuance of this opinion, she shall be on probation for a period of one year, during which time she shall successfully complete the multi-state professional responsibility examination and shall not be found to have committed similar ethical violations.

FOR THE COURT:

/s/ Denise R. Johnson

Associate Justice