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State Bar Court of California
Hearing Department
San Francisco

PUBLIC MATTER

Counsel For The State Bar	Case Number (s)	(for Court's use)
Robert Henderson **State Bar of California** **180 Howard St.** **San Francisco, CA 94105** **(415) 538-2385** Bar # **173205**	**07-J-10237**	FILED MAR 2 9 2007 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent **Merrick S. Rayle** **212 Wood St.** **Pacific Grove, CA 93950** **(415) 533-5316** Bar # **139478**	Submitted to: **Settlement Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **ACTUAL SUSPENSION** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter Of: **Merrick S. Rayle** Bar # **139478** A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted **March 29, 1989.**

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.

(3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **9** pages, not including the order.

(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- ☒ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- ☐ costs to be paid in equal amounts prior to February 1 for the following membership years: (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- ☐ costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

(1) ☐ **Prior record of discipline** [see standard 1.2(f)]

(a) ☐ State Bar Court case # of prior case

(b) ☐ Date prior discipline effective

(c) ☐ Rules of Professional Conduct/ State Bar Act violations:

(d) ☐ Degree of prior discipline

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.

(2) ☒ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct. **Respondent fraudulently transferred the assets from the McDonald accounts to avoid paying creditors and made intentional misrepresentations to the circuit court about the transfers.**

(3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **Respondent's conduct harmed the administration of justice by requiring additional proceedings for the creditor to collect the money owed.**

(5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

(7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

(8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

(1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.

(2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.

(3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.

(4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.

(5) ☐ **Restitution:** Respondent paid $ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.

(6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.

(7) ☐ **Good Faith:** Respondent acted in good faith.

(8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.

(9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

(10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

(11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.

(12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

(13) ☒ **No mitigating circumstances** are involved.

Additional mitigating circumstances

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **two-years**.

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of **three-years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **one-year**.

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

(1) ☒ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

(2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the

probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

(5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

(6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

(7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

(8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

☐ No Ethics School recommended. Reason:

(9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

(10) ☐ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions ☐ Law Office Management Conditions

☐ Medical Conditions ☐ Financial Conditions

F. Other Conditions Negotiated by the Parties:

(1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

☐ No MPRE recommended. Reason:

(2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule **9.20**, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

(3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule **9.20**, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

(4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:

(5) ☐ **Other Conditions:**

Attachment language begins here (if any):

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Merrick S. Rayle

CASE NUMBER(S): 07-J-10237

FACTS.

Respondent was suspended from the practice of law in Illinois, by order of the Illinois Supreme Court, effective December 8, 2006. Respondent was disciplined in Illinois for violating Rules 1.2(d), 3.3(a)(2), 7.5(d), 8.4(a)(4) and 8.4(a)(5) of the Illinois Rules of Professional Conduct. The Illinois Supreme Court Order and the decisions of the Review Board and Hearing Board of the Illinois Attorney Registration and Disciplinary Commission are hereby attached as exhibit 1 and incorporated by reference. The Illinois Rules of Professional Conduct are hereby attached as exhibit 2 and incorporated by reference. The disciplinary proceeding held in Illinois was fair and satisfied all constitutional requirements. The analogous California rule or statutory provisions for the respondent's culpable conduct are as follows:

Illinois Rules of Professional Conduct	California Rule of Professional Conduct or Business and Professions Code section
1.2(d)	3-210; 6068(c);6068(d) and 6106
3.3(a)(2)	6068(d) and 6106
7.5(d)	1-400(D)
8.4(a)(4)	6068(D) and 6106
8.4(a)(5)	2-400 and 6068(h)

CONCLUSIONS OF LAW.

Respondent by his conduct in Illinois violated rules 1-400(D), 2-400 and 3-210, California Rules of Professional Conduct. Respondent by his conduct in Illinois also violated Business and Professions Code section 6068(c), 6068(d), 6068(h) and 6106.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was February 5, 2007.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 5, 2007, the estimated prosecution costs in this matter are approximately $1,636. Respondent acknowledges that this figure is an estimate only. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

AGREEMENTS AND WAIVERS PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6049.1.

1. Respondent's culpability determined in the disciplinary proceeding in Illinois would warrant the imposition of discipline in the State of California under the laws or rules in effect in this State at the time the misconduct was committed; and

2. The proceeding in the above jurisdiction provided respondent with fundamental constitutional protection.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.3 "Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law."

Rodgers v. State Bar (Mar. 1989) 48 Cal.3d 300 – Rodgers persuaded a client, who was conservator of an estate, to loan money to an ex-client who owed the attorney legal fees. Rodgers did not make any required disclosures when encouraging the client to make the loan. Thereafter Rodgers actively deceived both opposing counsel and the probate court. Some of Rodgers acts were: intentionally delaying the filing of the required inventory of the conservatee's assets; intentionally failing to have the assignments recorded; and fraudulently leading interested parties into believing that the loan was properly secured. Rodgers had no prior record of discipline. Rodgers received two-years actual suspension.

STATE BAR ETHICS SCHOOL.

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

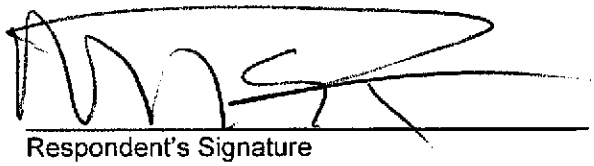
Respondent admits that the above facts are true and that he is culpable of violations of the specified statutes and Rules of Professional Conduct.

(Do not write above this line.)

In the Matter of **Merrick S. Rayle**	Case number(s): **07-J-10237**

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

February 24, 2007 Date	 Respondent's Signature	Merrick S. Rayle Print Name
February, Date	Respondent's Counsel Signature	N/A Print Name
February 26, 2007 Date	Deputy Trial Counsel's Signature	Robert A. Henderson Print Name

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In the Matter of	Case number(s):
Merrick S. Rayle	07-J-10237

ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

☐ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.

☑ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.

☐ All Hearing dates are vacated.

1. On page 3, Section C(13), the "x" in front of the box must be deleted as there are mitigating circumstances.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)**

March 27, 2007
Date

Pat McElroy
PAT MCELROY
Judge of the State Bar Court

1 of 3 DOCUMENTS

ILLINOIS

Illinois Attorney Registration and Disciplinary Commission Decisions

In re: Merrick Scott Rayle

M.R. 21117

Supreme Court of Illinois

2006 Ill. Atty. Reg. Disc. LEXIS 258

November 17, 2006

OPINION: [*1] Disciplinary Commission.

The petition by respondent Merrick Scott Rayle for leave to file exceptions to the report and recommendation of the Review Board is denied.Respondent is suspended from the practice of law for one (1) year, as recommended by the Review Board.

Suspension effective December 8, 2006.

Respondent Merrick Scott Rayle shall reimburse the Client Protection Trust Fund for any Client Protection payments arising from his conduct prior to the termination of the period of suspension.

Order entered by the Court.

EXHIBIT 1

7 of 11 DOCUMENTS

ILLINOIS

Illinois Attorney Registration and Disciplinary Commission Decisions

In re Merrick Scott Rayle
Respondent-Appellant
Commission No. 04 CH 21

04 CH 21

The Review Board of the Illinois Attorney Registration and Disciplinary Commission

2006 Ill. Atty. Reg. Disc. LEXIS 145

July 12, 2006

OPINION: [*1]

Synopsis Of Review Board Report And Recommendation

(July 2006)

The Administrator filed a two-count complaint against Merrick Scott Rayle, charging him with fraudulently transferring his assets to avoid paying judgment creditors and making misrepresentations regarding his assets in a citation to discover assets proceeding. The Administrator alleged that Respondent engaged in conduct that he knew was criminal or fraudulent; falsely stated or implied that he practices law in a partnership; failed to disclose to a tribunal a material fact known to him when disclosure is necessary to avoid assisting a criminal or fraudulent act; engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; engaged in conduct prejudicial to the administration of justice; and engaged in conduct that tends to bring the courts or the legal profession into disrepute in violation of Rules 1.2(d), 3.3(a)(2), 7.5(d), 8.4(a)(4) and 8.4(a)(5) of the Illinois Rules of Professional Conduct and Supreme Court Rule 771. Rayle admitted some of the factual allegations in the complaint, denied others, and denied all allegations of misconduct.

The Hearing Board found that the Administrator proved **[*2]** all of the charged misconduct and recommended that Rayle receive a one-year suspension.

Rayle contended on review that the Hearing Board's findings are contrary to the manifest weight of the evidence, he could not have violated Rules 1.2(d) or 3.3(a)(2) because he was not representing a client or appearing before a tribunal when the misconduct occurred, the matter should be remanded for expert testimony, and the Hearing Board's recommended sanction is excessive.

The Review Board affirmed the Hearing Board's factual findings and findings of misconduct. It recommended that Rayle's license be suspended for one year.

8 of 11 DOCUMENTS

ILLINOIS

Illinois Attorney Registration and Disciplinary Commission Decisions

In the Matter of:
MERRICK SCOTT RAYLE,
Respondent-Appellant,
No. 2293587
Commission No. 04 CH 21

04 CH 21

The Review Board of the Illinois Attorney Registration and Disciplinary Commission

2006 Ill. Atty. Reg. Disc. LEXIS 146

July 12, 2006

MEMBERS: **[*1]** Leonard F. Amari; John W. Rapp., Jr.; Thomas A. Zimmerman, Jr.

OPINION: REPORT AND RECOMMENDATION OF THE REVIEW BOARD

This matter comes before us on the exceptions of Respondent-Appellant, Merrick Scott Rayle, to the Hearing Board's Report and Recommendation. The Administrator-Appellee filed a two-count complaint against Respondent, charging him with fraudulently transferring assets in order to avoid paying judgment creditors, and making misrepresentations regarding his assets in a citation proceeding.

The Administrator alleged that Respondent engaged in conduct that he knew was criminal or fraudulent; falsely stated or implied that he practices law in a partnership; failed to disclose to a tribunal a material fact known to him when disclosure is necessary to avoid assisting a criminal or fraudulent act; engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; engaged in conduct prejudicial to the administration of justice; and engaged in conduct that tends to bring the courts or the legal profession into disrepute in violation of Rules 1.2(d), 3.3(a)(2), 7.5(d), 8.4(a)(4) and 8.4(a)(5) of the Illinois Rules of Professional Conduct and Supreme Court Rule 771. Respondent **[*2]** admitted some of Administrator's factual allegations, denied others, and denied all allegations of misconduct.

Following a two-day hearing, the Hearing Board determined that Respondent committed all of the charged misconduct and recommended that he receive a one-year

PAGE 2:

suspension. Respondent filed exceptions, making the following contentions of error: (1) the finding that Respondent transferred assets to avoid his creditors is against the manifest weight of the evidence; (2) Respondent lacked the requisite intent to commit fraud under the Uniform Fraudulent Transfer Act or under the Rules of Professional Conduct; (3) Respondent did not violate Rule 1.2(d) because that rule does not apply to the facts of this case; (4) the manifest weight of the evidence does not support the finding that Respondent made misrepresentations to the court; (5) the Hearing Board did not give proper consideration to the circuit court's denial of the petition for a rule to show cause against Respondent; (6) the matter should be remanded for expert testimony regarding the Uniform Fraudulent Transfer Act and the Bankruptcy Code; and (7) the Hearing Board's recommended sanction is excessive.

THE EVIDENCE

[*3] Respondent was licensed to practice law in Illinois in 1975 and in California in 1989. Before moving to Chicago in May 1996, Respondent practiced law in several California firms. In Chicago, Respondent set up a law firm entitled "Rayle & Partners," although he did not have any partners.

Respondent's fiancee, Bonnie Lockwood, moved to Chicago in June 1997. On June 10, 1997, Respondent named Lockwood as a joint tenant with the right of survivorship on Respondent's checking account at the Fowler State Bank in Benton County, Indiana (Fowler account). Lockwood did not give Respondent any consideration for her interest in the account. On February 5, 1999, Respondent transferred his interest in the Fowler account to Lockwood. Respondent remained a signatory on the account.

Respondent testified that he transferred the Fowler account to Lockwood because he was not good at managing money. After the transfer, Respondent continued to use funds from

PAGE 3:

the Fowler account to pay his personal and business expenses. Through Lockwood, Respondent deposited fees he earned in the account, including $ 218,000 that he received from the Town of Cicero on July 27, 1999.

During the 1990s, Respondent [*4] and/or one of his former firms were defendants in malpractice lawsuits filed in California. Both of Respondent's former clients, Nostalgia Network, Inc., and Elaine Cassavitis, obtained judgments against Respondent. Nostalgia's judgment was entered on July 6, 1999, in the amount of $ 3,060,377.96. Cassavitis's judgment was entered on March 26, 1999, in the amount of $ 593,000. On December 8, 1997, another former client, Technidisc, obtained an $ 81,459 judgment against Respondent for fees it paid to Respondent which Respondent failed to turn over to his law firm.

On August 9, 1999, Nostalgia, through its attorney John Cyrluk, filed a petition to register its judgment against Respondent in Cook County. Nostalgia served Respondent with a citation to discover assets on September 10, 1999. The citation stated that Respondent was not allowed to transfer or dispose of any property that was not exempt from execution or garnishment or to which he was entitled until further order of the court. It also ordered Respondent to produce documents pertaining to all assets in which Respondent had an interest from January 1, 1990, through the present.

On September 22, 1999, Respondent liquidated [*5] three investment accounts, which the parties have referred to as the "McDonald accounts." Two of the McDonald accounts were individual retirement accounts (IRAs), and the other account was the "Merrick Scott Rayle Special Account # 3." Respondent received three checks totaling $ 28,347 as a result of cashing in the McDonald accounts. He deposited all of the checks in the Fowler account on September 29, 1999.

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When Respondent gave his deposition in the citation proceeding on October 5, 1999, he was asked whether he had any IRAs or brokerage accounts. Respondent answered that he had had some IRAs with "immaterial amounts of money" that he had cashed out when he lived in California. He did not disclose that he had liquidated the McDonald accounts, nor did he produce any documents regarding the accounts.

During Respondent's deposition on November 2, 1999, he was asked what he owned as of February 5, 1999, and as of July 29, 1999. Respondent answered that he had no tangible assets.

Nostalgia learned of the Fowler account when Respondent disclosed it at the October 5th deposition. Nostalgia then had the account assets frozen. An Indiana court determined that the funds in the Fowler [*6] account belonged to

Respondent and ordered the Fowler State Bank to turn over the account funds to Nostalgia.

Nostalgia petitioned the Circuit Court of Cook County for a rule to show cause why Respondent should not be held in contempt of court for transferring the funds from the McDonald accounts to the Fowler account. The circuit court denied the motion. Nostalgia also filed suit in federal court against Respondent, his firm, and Lockwood, alleging that Respondent fraudulently transferred his assets to Lockwood to avoid paying his creditors. The United States District Court for the Northern District of Illinois found that Respondent made a fraudulent transfer in law, and the United States Court of Appeals for the Seventh Circuit affirmed. *Nostalgia Network v. Lockwood, 315 F.3d 717 (2002).* Nostalgia obtained approximately $ 370,000 of Respondent's funds toward the approximately $ 3 million judgment.

After hearing the evidence, the Hearing Board found that the Administrator met her burden of proving that Respondent fraudulently transferred his assets to Lockwood to avoid

PAGE 5:

paying his creditors, made misrepresentations about his assets in the **[*7]** citation proceeding, and committed all of the charged misconduct. The Hearing Board recommended that Respondent receive a one-year suspension.

ANALYSIS

Respondent's first contention is that the Hearing Board's finding that he fraudulently transferred his assets is against the manifest weight of the evidence. The Administrator has the burden of proving the alleged misconduct by clear and convincing evidence. *In re Ingersoll, 186 Ill.2d 163, 168, 710, N.E.2d 390, 237 Ill. Dec. 760 (1999).* This Board will not disturb the Hearing Board's factual findings unless they are against the manifest weight of the evidence. *In re Smith, 168 Ill.2d 269, 283, 659 N.E.2d 896, 213 Ill. Dec. 550 (1996).* A finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident. *In re Winthrop, 219 Ill.2d 526, 542, 848 N.E.2d 961, 302 Ill.Dec. 397 (2006).* The Review Board may not substitute its judgment for that of the Hearing Board just because the opposite conclusion is reasonable or because **[*8]** the Review Board may have ruled differently. *Winthrop, 219 Ill.2d at 542-43, 848 N.E.2d, 302* Ill.Dec. 397.

Respondent asserts that the evidence showed that he did not transfer his assets to avoid paying his creditors. He relies on his own testimony that he thought he was allowed to use the Fowler account funds to pay his personal and business expenses, and that he thought Lockwood would do a better job than he at managing his money.

We defer to the Hearing Board's factual findings, including findings regarding intent (*In re Spak, 188 Ill.2d 53, 66, 719 N.E.2d 747, 241 Ill.Dec. 618 (1999))* because the Hearing Board has the opportunity to observe the witnesses and, consequently, is in a better

PAGE 6:

position to judge their credibility and resolve conflicting testimony. See *In re Timpone, 208 Ill.2d 371, 380, 804 N.E.2d 560, 281 Ill.Dec. 595 (2004).*

Based on Respondent's continued control over and use of the transferred funds, the Hearing Board found that Respondent intended to defraud his creditors. **[*9]** Respondent does not dispute his use of the funds, but maintains that he believed, and continues to believe, that his actions were proper. The Hearing Board, however, found his testimony as to why he transferred the funds unpersuasive and unreasonable. Respondent bears a heavy burden in seeking to overturn the trier of fact's findings, and merely pointing to evidence that could support a different conclusion is not enough. He has not shown that the opposite conclusion is clearly evident, and we will not substitute our judgment for that of the Hearing Board.

Next, Respondent argues that the Hearing Board's findings with respect to Count I are based on uncharged conduct,

namely, Respondent's transfer of ownership of the Fowler account to Lockwood. According to Respondent, Count I was based only on the transfer of the funds Respondent received from the Town of Cicero. We disagree. While Count I alleges that the transfer of the Cicero funds was fraudulent, it also alleges that Respondent transferred ownership of the Fowler account yet remained an authorized signatory on the account, retained control of the only automatic teller machine card for the account, deposited in the account over **[*10]** $ 1.6 million dollars in funds payable to Respondent or Rayle & Partners, and used funds from the account to pay his personal and business expenses. The Administrator based the allegations of ethical violations on all of the conduct outlined in Count I. Accordingly, the conduct upon which the Hearing Board relied was charged in the Complaint.

Respondent further argues that the Hearing Board misapplied the law when it found that the transfers of funds were fraudulent in fact. Respondent contends that a transfer

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may not be fraudulent in fact if there was no consideration given for it. The Uniform Fraudulent Transfer Act (the Act) provides creditors with a means to invalidate a debtor's fraudulent transfers. *In re Marriage of Del Giudice, 287 Ill.App.3d 215, 678 N.E.2d 47, 222 Ill.Dec. 640 (1997).* When a debtor transfers assets after a claim arises against him, does not receive adequate consideration for the transfer, and is or becomes insolvent as a result of the transfer, the transaction is fraudulent in law. See 740 ILCS 160/5 and 160/6. The Act also allows creditors to challenge transfers that were made for consideration. **[*11]** In such cases, if the creditor shows that the debtor made a transfer with the intent to hinder, delay or defraud creditors, the transaction may be deemed fraudulent in fact. 740 ILCS 160/5.

We need not decide whether the finding of fraud in fact was proper, because the finding that Respondent committed fraud in law was sufficient to establish a violation of Rule 8.4(a)(4). Respondent asserts that, because fraud in law does not require a showing of specific intent, it cannot provide the basis for an 8.4 (a)(4) violation. He further contends that he did not commit fraud under the Rules of Professional Conduct, because he lacked the requisite intent. We disagree with both of Respondent's contentions.

Rule 8.4(a)(4) prohibits attorneys from engaging in conduct involving fraud, deceit, dishonesty, or misrepresentation. The Review Board does not necessarily interpret the different terms in Rule 8.4(a)(4) to mean the same thing. *In re Meyer*, No. 01 SH 81 (Review Board, April 15, 2004), *petition for leave to file exceptions denied*, No. M.R. 19491 (September 4, 2004). The Terminology section of the Rules of Professional Conduct defines "fraud" as "conduct having a purpose to deceive **[*12]** and not merely negligent misrepresentation or failure to apprise another of relevant information." Dishonesty is broadly defined as "a disposition to lie, cheat, or defraud; untrustworthiness; a lack of integrity." *Meyer*, No. 01 SH 81, Review Board

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Report and Recommendation at 6. Consequently, conduct that is dishonest but does not rise to the level of fraud constitutes a violation of Rule 8.4(a)(4). *Meyer*, No. 01 SH 81, Review Board Report and Recommendation at 6.See also *In re Wheaton, 02 Ch 59,* (Review Board, November 3, 2005), *petition for leave to file exceptions denied*, No. M.R. 20663 (March 20, 2006).

There is no question that the finding of fraud in law is sufficient to support a finding of dishonest conduct, at the very least. By divesting himself of all of his funds when claims were pending against him and rendering himself insolvent, Respondent attempted to deprive his creditors of any chance to collect from him. These actions clearly evince a lack of integrity and trustworthiness. Accordingly, we affirm the Hearing Board's decision that Respondent's violation of the Act by committing fraud in law constitutes a violation **[*13]** of Rule 8.4(a)(4).

Moreover, we affirm the Hearing Board's finding that, regardless of whether Respondent violated the Act, the Administrator sufficiently proved that Respondent engaged in conduct involving fraud, deceit, dishonesty, or misrepresentation. The Hearing Board found that Respondent fraudulently concealed his assets from Nostalgia and

Cassavitis. As we have indicated, we defer to the fact finder's determination of whether an attorney possesses fraudulent intent. The Hearing Board based its finding that Respondent intended to conceal assets from his creditors on the fact that he moved large sums of money to an account that did not bear his name at a time when he had two malpractice lawsuits pending against him, both of which resulted in huge judgments against him. Despite Respondent's testimony that he transferred the Fowler account to Lockwood because he could not manage his own money, he retained and exercised control over the funds in the account and used them to pay his personal and business expenses.

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Based on the foregoing evidence, we cannot say that the Hearing Board's finding that Respondent intended to deceive his creditors was against the manifest weight **[*14]** of the evidence.

Next, we address Respondent's assertion that the Hearing Board's finding that he gave deceptive testimony regarding his retirement accounts was against the manifest weight of the evidence. Respondent was asked what assets he owned as of February 5, 1999, and July 29, 1999. He was specifically asked about retirement accounts, IRAs, and brokerage accounts. Respondent possessed all of the McDonald accounts on those dates, but he did not disclose them. Respondent's attempt to distinguish between monies that were exempt from collection and those that were not exempt is unpersuasive. He was not asked whether he had any accounts that were subject to collection; he was asked to disclose all of his assets. The Hearing Board concluded that Respondent gave false answers to clear, direct questions about his assets. This is sufficient to support the findings that Respondent engaged in dishonest and fraudulent conduct, made a false statement to the court, and engaged in conduct that was prejudicial to the administration of justice and brought the legal profession into disrepute.

Respondent further argues that the Hearing Board did not give sufficient consideration to the circuit **[*15]** court's decision on the contempt issue. We disagree. The circuit court's decision is not binding on the Hearing Board. Whether Respondent's conduct was contemptuous is a separate issue from whether he violated the Rules of Professional Conduct, and the Hearing Board was required to make an independent judgment after hearing all of the evidence. The Hearing Board did not ignore the circuit court's order. Rather, it determined that the circuit court's decision not to hold Respondent in contempt "has little bearing on whether he engaged in misconduct under the ethical rules." It is within the Hearing Board's province as the fact finder to decide how much weight to give to the evidence. Ultimately, the Hearing Board

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disagreed with the circuit court's interpretation of Respondent's testimony and his actions. It is also significant that the circuit court's order addresses only Respondent's liquidation of the McDonald accounts, and does not address his testimony in the citation proceeding. The Hearing Board, on the other hand, relied on Respondent's failure to disclose the existence of the McDonald accounts as the basis of its finding that he committed misconduct.

Next, we address **[*16]** Respondent's contention that Rules 1.2(d) and 3.3(a)(2) do not apply in this case because he did not counsel a client to engage in criminal or fraudulent conduct. Rule 1.2(d) provides in pertinent part that "a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent." Rule 3.3(a)(2) prohibits a lawyer appearing in a professional capacity before a tribunal from failing to disclose a material fact known to the lawyer when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client.

Following *In re Segall, 117 Ill.2d 1, 509 N.E.2d 988 (1987),* which holds that an attorney who is a party to litigation represents himself, this Board has consistently held that an attorney who is representing himself in litigation may be disciplined for conduct that he is forbidden to engage in on behalf of a separate client. Moreover, attorneys have been found to have violated Rule 3.3 for misconduct that occurred during depositions. In *In re Zurek, No. 99 CH 45* (Review Board, March 28, 2002), *petition for leave to file exceptions denied* **[*17]** , No. M.R. 18164 (Sept. 19, 2002), the Hearing Board found and the Review Board affirmed the finding that an attorney's conduct during a deposition at which

he represented himself violated Rule 3.3(a)(9). In another case, the Hearing Board determined that an attorney's misrepresentations during his deposition regarding his employment status and finances violated Rule 3.3(a)(2). *In re Clifton*, No. 94 SH 469 (Hearing Board, January 8, 1996), *approved and confirmed*, No. M.R.

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12533 and 12586 (May 28, 1996). In the case at bar, Respondent was a party to the citation proceeding and made misrepresentations while under oath during his deposition. Consequently, he may be disciplined under Rules 1.2(d) and 3.3(a)(2) for misconduct committed during that proceeding.

Respondent further asserts that this matter should be remanded for expert testimony on the Bankruptcy Code and the Uniform Fraudulent Transfer Act. We disagree. Respondent has failed to specify any issue that requires expert testimony. As we have indicated, the status of Respondent's IRA funds is not determinative of the charges against him. Moreover, Respondent had the opportunity to present expert testimony below, **[*18]** but chose not to do so. There is no legitimate reason to allow him to do so now.

Respondent's final contention is that the Hearing Board's recommended sanction is excessive. Relying on *In re Ruggiero, No. 00 CH 29, approved and confirmed*, No. M.R. 16933 (September 19, 2002), the Hearing Board recommended that Respondent receive a one-year suspension.

The Hearing Board's sanction recommendation is advisory. *In re Hopper 85 Ill.2d 318, 323, 423 N.E.2d 900, 53 Ill. Dec. 231 (1981).* When deciding which sanction to recommend, we consider the facts and circumstances of the particular case, the sanctions imposed in cases involving similar misconduct, the purposes of the disciplinary system, and the sanction's potential deterrent value. *In re Rice, No. 95 CH 210* (Review Board, Dec. 16, 1996) at 11-12, *approved and confirmed*, No. M.R. 13391 (March 21, 1997).

Respondent's misconduct in this case was serious. He attempted to avoid his creditors by transferring his assets to his fiancee, and made misrepresentations to the court. This type of misconduct tarnishes **[*19]** the reputation of the legal profession and prejudices the

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administration of justice. Additionally, while Respondent's misconduct did not harm any of his current clients, he did cause his former client, Nostalgia, to incur significant expense in its effort to track down Respondent's assets and to collect a portion of its judgment.

In mitigation, this is Respondent's first disciplinary proceeding in his 30 years of practice. In aggravation, he has not acknowledged his misconduct or expressed any remorse.

Like the Hearing Board, we consider *Ruggiero* to be sufficiently similar to the instant case to support a one-year suspension. Ruggiero had a long legal career without any previous discipline. He had a large judgment against him and, in a citation to discover assets proceeding, gave misleading testimony about his ownership of certain real estate. He was uncooperative in the citation to discover assets proceeding, and was held in civil contempt. He was also convicted of misdemeanor criminal contempt. Ruggiero paid the judgment and the fines against him.

Respondent argues that Ruggiero's conduct was more egregious than his. We disagree. While Ruggiero was convicted of **[*20]** misdemeanor criminal contempt and was held in civil contempt, what is important is the attorney's conduct and not whether a court chose to punish the attorney for that conduct. Both Respondent and Ruggiero had large judgments against them, and both gave misleading testimony about their assets. Ruggiero was not charged with misconduct related to fraudulent transfer of assets, so Respondent has additional misconduct that Ruggiero did not.

Respondent contends that his case is more like *In re Levin, No. 00 CH 72* (Review Board, April 16, 2004), *petition for*

leave to file exceptions denied, No. M.R. 19490 (Sept. 24, 2004), in which an attorney received a thirty-day suspension for helping his client transfer ownership of five properties after he had been served with a citation to discover assets

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and saying nothing when his client testified falsely at his deposition. We find *Levin* distinguishable from the instant case. Levin's assistance to his client was an isolated event, whereas Respondent engaged in an ongoing campaign to conceal his assets. Also, the day after his client's deposition, Levin informed opposing counsel and the court of **[*21]** the false testimony. Respondent has yet to acknowledge his misconduct. The Review Board in *Levin* noted that Levin received no personal gain from his misconduct. Respondent, on the other hand, was attempting to benefit himself financially.

The other case Respondent cites involving a fraudulent conveyance, *In re Doss, No. 94 CH 220* (Hearing Board, January 19, 1995), is similarly inapposite. It involved an isolated instance in which a licensed attorney who had spent his career as an FBI agent, helped his mother transfer property, which had the effect of avoiding a judgment against his father. Doss stipulated to the misconduct and received a reprimand. In our view, there are more differences than similarities between *Doss* and this case. Most significantly, there was no evidence of a dishonest motive in *Doss*, which is not the case here. The conduct at issue in *Doss* did not go beyond a single transaction, unlike Respondent's more extensive misconduct. Further, Doss had never practiced law and admitted to his misconduct, whereas Respondent, who has worked as an attorney for 30 years, has failed to recognize that he did anything wrong.

We have **[*22]** reviewed the other cases cited by Respondent and conclude that they do not involve similar misconduct, or that they address only part of the misconduct at issue here. Consequently, they are not helpful in recommending an appropriate sanction.

Considering all of the relevant circumstances, the aggravating and mitigating factors, and the applicable precedent, we recommend that Respondent's license to practice law be suspended for one year.

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CONCLUSION

We affirm the Hearing Board's factual findings and findings of misconduct. We recommend that Respondent receive a one-year suspension.

Respectfully submitted:

Leonard F. Amari

John W. Rapp. Jr.

Thomas A. Zimmerman, Jr.

Date Entered: July 12, 2006

9 of 11 DOCUMENTS

ILLINOIS

Illinois Attorney Registration and Disciplinary Commission Decisions

In the Matter of:
MERRICK SCOTT RAYLE,
Attorney-Respondent,
No. 2293587.
Commission No. 04 CH 21

04 CH 21

The Hearing Board Of The Illinois Attorney Registration And Disciplinary Commission

2005 Ill. Atty. Reg. Disc. LEXIS 262

September 1, 2005

MEMBERS: **[*1]** James A. Shapiro, Chair; Leonard J. Schrager; Cheryl M. Kneubuehl

OPINION: REPORT AND RECOMMENDATION OF THE HEARING BOARD

INTRODUCTION

The hearing in this matter was held on April 18 and 19, 2005, at the Chicago, Illinois offices of the Attorney Registration and Disciplinary Commission ("ARDC") before the Panel of James A. Shapiro, Chair, Leonard J. Schrager and Cheryl M. Kneubuehl. Donald P. Jonker represented the Administrator of the ARDC. Respondent appeared in person and proceeded *pro se*.

THE PLEADINGS

On April 8, 2004, the Administrator filed a two-count complaint against Respondent pursuant to Supreme Court Rule 753(b). The complaint alleged that Respondent fraudulently transferred assets to avoid paying judgments and made misrepresentations to the court regarding his assets. Based on the factual allegations in the amended complaint, the Administrator charged Respondent with engaging in conduct that the lawyer knows is criminal or fraudulent; falsely stating or implying that he practices law in a partnership; failing to disclose to a tribunal a material fact known to the lawyer when disclosure is necessary to avoid assisting a criminal or fraudulent act; engaging in **[*2]** conduct involving dishonesty, fraud, deceit or misrepresentation; engaging in conduct prejudicial to the administration of justice; and engaging in conduct that tends to bring the courts or the legal profession into disrepute in violation of Rules 1.2(d), 3.3 (a)(2), 7.5(d), 8.4(a)(4), and 8.4(a)(5) of the Illinois Rules of Professional Conduct and Supreme Court Rule 771.

Respondent filed an answer to the complaint admitting the some of the factual allegations, denying some of the factual allegations, and denying all allegations of misconduct.

THE EVIDENCE

The Administrator presented the testimony of one witness, called Respondent as an adverse witness, and tendered exhibits 1-29 and 31-41, which were admitted. Respondent testified on his own behalf, and tendered one exhibit, which was also admitted.

Respondent's Testimony

Respondent has been licensed to practice law in Illinois since 1975, and licensed to practice law in California since 1989. In the 1990's, while practicing law in California, Respondent's firm represented Nostalgia Network, Technidisc, and Elaine Cassavitis, the former wife of Tony Orlando, in various legal matters. Subsequently, each of these clients **[*3]** filed a lawsuit against Respondent's firm and/or Respondent, and obtained judgments against him. Respondent left his California practice, moved to Chicago in May 1996, and rented an apartment and an office. (Tr. 22-29).

Respondent has had bank accounts at the Fowler State Bank since he was a child. Fowler State Bank is located in Indiana. One of Respondent's accounts, number 080-250-6 (the Fowler account), was originally held in only Respondent's name. On June 10, 1997, Bonnie Lockwood moved to Chicago and Respondent added her name to the account as a joint tenant. Lockwood gave Respondent no consideration for being added to the account. Until that date, Respondent paid all of his business and personal expenses from that account. (Tr. 27-28, 31, 40; Adm. Ex. 3).

Between December 1996 and December 1998, Respondent entered into a contract to perform legal work for the town of Cicero. Respondent's law firm was named "Rayle & Partners" but he had no partners and he used several independent contractors, including attorneys, paralegals and secretaries to perform the legal work. Lockwood worked for Respondent as his office manager, and he paid her a salary. He billed Cicero on a monthly **[*4]** basis, and deposited all of the proceeds into the Fowler account. Between June 10, 1997, and February 5, 1999, Cicero paid Respondent $ 1,608,231.01, which he deposited into the Fowler account. In December 1998, Respondent filed a lawsuit against Cicero for unpaid fees and expenses. On July 27, 1999, Cicero settled the matter for $ 218,000, and on July 30, 1999, Respondent deposited the settlement check into the Fowler account. (Tr. 31-36, 40-41, 70-71; Adm. Exs. 1, 4, 16).

On February 5, 1999, Respondent transferred his interest in the Fowler account to Lockwood, remained an authorized signatory, and was identified as the "pay on death beneficiary." Respondent intended to give Lockwood the funds. He trusted her and wanted her to have the funds because of the sacrifices and commitments she made for him. Also on February 5, 1999, Respondent withdrew $ 81,459.49 from the account to pay the judgment in the *Technidisc* matter. After February 5, 1999, Respondent wrote fewer than ten checks on that account and continued to use the automatic teller machine (ATM) card. Some of the checks Respondent wrote were payable to Lockwood, and she deposited them into a different account. The bank **[*5]** records also show that Respondent made approximately $ 2,000 in ATM withdrawals each month. On June 10, 1997, the balance in the account was $ 29,854.09. (Tr. 36-39, 47-48, 86-87; Adm. Exs. 5, 7).

Respondent had three investment accounts, two with McDonald Investments, and one with Federated (collectively referred to as the McDonald accounts). Two of the accounts were retirement accounts with a combined balance of $ 15,860, and the other account with a balance of $ 12,486. On September 29, 1999, Respondent closed those accounts, received checks totaling $ 28,347.30, and deposited the funds into the Fowler account. The balance in the Fowler account was $ 81,590.83, after the checks were deposited. On October 21, 1999, the balance in the Fowler account was $ 47,291.60. (Tr. 42-44, 74-75, 89-90; Adm. Exs. 2, 7, 20).

Between March 1999 and October 1999, Lockwood wrote several checks on the Fowler account. Many of the checks were for rent for Respondent's law office and apartment, and other business expenses, including payments to his independent contractors. In August 1999, Lockwood paid the rent for Respondent's law office for September, October, and November. In October 1999, Lockwood **[*6]** paid the rent for Respondent's apartment for November, December, and January. Before October 1999, Respondent paid the rent for his apartment on a monthly basis. On October 5, 1999, Lockwood wrote a check to herself in the amount of $ 7,000, which she used to prepay a vacation for Respondent and herself. (Tr. 48-59; Adm. Exs. 7, 8).

As of February 5, 1999, Respondent was aware that Nostalgia had filed for the renewal of application for entry of judgment. Respondent believed that the Nostalgia judgment would not be enforceable against him. A default order was entered against Respondent in California after he failed to attend a status conference. Respondent maintained that he

never received notice of the status conference and the court declined to enter a judgment based on the default order. In the meantime, Respondent's former law firm settled the matter for approximately $ 2 million.

Nostalgia agreed not to execute any judgment against the law firm, but reserved the right to execute against Respondent. (Tr. 60-61).

On January 20, 1999, Nostalgia filed a memorandum in support of its renewal of application for entry of judgment against Respondent. On July 6, 1999, a default judgment **[*7]** was entered against Respondent in the *Nostalgia* matter in the amount of $ 3,060,377.96. On August 9, 1999, Nostalgia filed a petition to register a foreign judgment in the Circuit Court of Cook County. On September 10, 1999, Respondent was served with a citation to discover assets. The citation required Respondent to appear in court on October 5, 1999, and to produce "any and all documents referring or related to any and all brokerage accounts which you have or have had any interest in any nature whatsoever, direct or indirect, at any time from January 1, 1990 to the present." At some point, Respondent produced documents relating to the McDonald investment accounts, but he could not recall when he did so. (Tr. 65-74; Adm. Exs. 12, 15, 18, 19).

On January 27, 1999, Cassavitis filed a request for entry of default judgment. Respondent received this document, and on February 2, 1999, filed a response to it. On March 26, 1999, the court entered a default judgment against Respondent in the *Cassavitis* matter in the amount of $ 593,000. On June 23, 1999, Respondent filed a motion to set aside the default judgment. On July 27, 1999, the court denied Respondent's motion. (Tr. 63-72; **[*8]** Adm. Exs. 10, 11, 13, 14, 17).

Respondent appeared for depositions in the citation to discover assets proceedings in the *Nostalgia* matter on October 5, 1999, and November 2, 1999. He failed to disclose the existence of the McDonald accounts, or that he had transferred the proceeds from those accounts to Lockwood. Specifically, at the October 5, 1999, deposition, Respondent was asked the following questions and gave the following answers:

Q: Besides the Fowler State Bank [account], did you have any other accounts?

A: I did not. Of course, in my life I have.

Q: Right. Let's say from 1995 to the present.

A: Bank of America in Los Angeles.

Q: Do you know the account number there?

A: I do not.

Q: What type of account was that?

A: A checking account.

Q: And the account in Fowler State Bank, what kind of account was that?

A: That was a checking account. All of my savings accounts I closed out.

Q: Your savings accounts, you've had savings accounts?

A: I've had savings accounts. Those were all closed out at or about the time I sold my house.

Q: And when was that?

A: I believe the closing was April 26th, 1997.

Q: Okay. And where were those savings accounts?

A: They too **[*9]** were at the Bank of America.

[Adm. Ex. 22 at 18-19].

* * *

Q: At the time you left Chicago to move to California, what was your approximate net worth?

A: I don't know. I truly don't know.

Q: Was it over five hundred thousand?

A: You know, I can't answer. I don't know. I had a five-hundred-and-five-acre farm, I had a 401(k) plan.

Q: How much was in your 401(k) plan?

A: You know, I don't know, sir, but it was not insubstantial, not insubstantial.

* * *

Q: Aside from this Fowler State Bank account that you held, have you ever held any other bank accounts of any type, checking, savings, money market?

A: Bank of America in California.

Q: Okay.

A: I had a savings account and a checking account and a joint checking account with Ms. Spees [Respondent's former wife].

* * *

Q: And I assume that when you got your divorce from Ms. Spees, that's when you terminated the joint checking account?

A: I think that's right.

Q: Any securities brokerage accounts?

A: No.

Q: Any 401(k) accounts other than the one you mentioned, any other type of retirement accounts?

A: No. I had some IRA's, immaterial amounts of money, and when I say I cashed out, I cashed out my 401(k)s and **[*10]** IRA's.

Q: When did you cash those out?

A: Well, it all happened at the time Dressler, Rein and Rayle was founded and I can't give you the exact date. . .

[Adm. Ex. 22 at 85-86]

At the November 2, 1999, deposition, Respondent was asked the following questions and gave the following answers:

Q: As of February 5, 1999, what did you own?

A: I own no cash, no automobile. I own no investments of any kind, no real estate. What I owned was an expectation of being able to earn money.

[Adm. Ex. 23 at 269].

* * *

Q: Did you have any tangible assets as of February 5, 1999?

A: No. I believe not.

* * *

Q: What were your assets as of July 29, 1999?

A: My future.

[Adm. Ex. 23 at 280].

* * *

Q: Any other tangible assets other than your clothing, jewelry, and --

A: No. I think not.

[*Id.*].

Respondent did not think that any of the questions related to the McDonald accounts. He believed that the accounts were exempt from collections, and that he answered all of the questions honestly. Respondent believed that the questions were related to his assets in 1994, and not more recent retirement accounts. In any event, the proceeds from those accounts were deposited into **[*11]** the Fowler account before the first deposition. Respondent would answer the question the same way today as he did then. (Tr. 81, 93-98, 100-107, 111-13).

Respondent also noted that his answers were the subject of a contempt petition, and that the petition was denied. Nostalgia filed a petition for rule to show cause against Respondent in the circuit court based on Respondent's failure to identify the McDonald accounts. The circuit court denied the petition. The court stated that the "ultimate goal of punishment directed at a citation violation should be that the debtor not profit and the creditor not be prejudiced by the violation." Respondent, by transferring the funds into the Fowler account, had "made additional money available for the satisfaction of plaintiff's judgment." The court found that Respondent did not profit and Nostalgia had not been prejudiced by the transfer. Additionally, the court stated that Respondent's actions "pale in comparison to the acts of many judgment debtors that come before this court." (Resp. Ex. 1).

John Cyrluk

John Cyrluk is an attorney, and in 1999 Nostalgia hired his law firm to collect the judgment that was entered against Respondent. On **[*12]** August 9, 1999, Cyrluk registered the California judgment in the circuit court of Cook County, and on September 10, 1999, initiated a citation to discover assets proceeding. According to the citation, Respondent was prohibited from disposing of or transferring his assets without a court order. The citation prevented Respondent from paying any other creditors. (Tr. 118, 122-24, 141-42, 157; Adm. Exs. 18, 19).

The rider attached to the citation requested that Respondent identify any and all assets for which he had an interest, and produce all documents relating to any bank and brokerage accounts for which Respondent had an interest. During the citation proceedings, Cyrluk learned of the Fowler bank account and discovered that there was one ATM card issued on that account. Between February and September 1999, Respondent used the ATM card to make monthly withdrawals from the account. Cyrluk also found that Lockwood prepaid Respondent's apartment and office rent. (Tr. 129-35).

Cyrluk believed that the rider would require Respondent to disclose the McDonald accounts. However, after receiving the citation, Respondent liquidated the McDonald accounts, one of which was not an exempt retirement **[*13]** account. Cyrluk subsequently took Respondent's deposition, and at no time did Respondent mention those accounts. Cyrluk learned of the McDonald accounts after reviewing the deposits made into the Fowler account. (Tr. 140-50; Adm. Exs. 22, 23).

Because the Fowler account was in Indiana, on October 26, 1999, Cyrluk initiated proceedings in Indiana to freeze the account. On February 15, 2000, the Indiana court found that the money in the Fowler account belonged to Respondent, and directed that the money in that account be paid to satisfy Nostalgia's judgment. (Tr. 124, 162-65; Adm. Ex. 29).

On April 20, 2000, Cyrluk filed an action in the federal district court for the Northern District of Illinois against Lockwood claiming a violation of the Uniform Fraudulent Transfer Act (the Act). He alleged that between February 5, 1999, and September 29, 1999, Respondent fraudulently transferred $ 342,650.16 to Lockwood. Cyrluk argued that Respondent committed fraud in fact and fraud in law. Fraud in fact requires the showing of intent to defraud, while fraud in law does not. The district court found that Respondent committed fraud in law, and found it unnecessary to determine if Respondent committed **[*14]** fraud in fact. The district court stated that under the Act, a transfer is fraudulent in law when a debtor: 1) transfers assets after a claim arises against him, 2) does not receive adequate consideration for the transfer, and 3) is insolvent or becomes insolvent as a result of the transfer. The Act defines "claim" as "a right to payment, whether or not the right is reduced to judgment." Also, the filing of a lawsuit establishes the existence of a claim, although a claim can exist sooner than that. The court found that Nostalgia's claim against Respondent arose no later than October 1994, when Nostalgia filed a lawsuit against him. (Tr. 125, 167-70; Adm. Exs. 31, 35).

The district court further found that Respondent did not receive reasonably equivalent value for the transfers he made to Lockwood. In fact, she gave him no consideration for the transfers. The court further found that Respondent was insolvent when he made the transfers to Lockwood. "A debtor is insolvent when the sum of his debts exceeds his assets." In Respondent's case, as of February 5, 1999, Respondent's assets were approximately $ 400,000.

During the time Respondent was transferring his assets to Lockwood, a **[*15]** judgment for more than $ 3 million was entered against him, making him insolvent. Accordingly, the court found that all of Respondent's transfers to Lockwood were fraudulent in law and voidable, and that Nostalgia was entitled to recover from Lockwood. (Adm. Ex. 35).

On January 23, 2001, the district court entered a judgment against Lockwood and in favor of Nostaglia in the amount of $ 306,538. The judgment was against Lockwood because she was the recipient of the fraudulent transfer. (Tr. 186-88).

The United States Court of Appeals for the Seventh Circuit affirmed the district court's decision. *Nostalgia Network v. Lockwood, 315 F.3d 717 (2002).* The court stated that because the district court did not rule on whether Respondent committed fraud in fact, it did not have to rule on that issue either, but noted "parenthetically that the evidence of actual fraud is overwhelming." (Adm. Ex. 38). Cyrluk also believed that Respondent's transfers of property to Lockwood were fraudulent in fact because Respondent made the transfers after he paid the judgment to Technidisc, made the transfers to an insider, continued to use the assets to pay his personal expenses, **[*16]** and did not receive anything of value for the transfers. (Tr. 172-77, 184-85).

After obtaining a judgment in the district court in Illinois, Cyrluk registered the judgment in the district court for the Southern District of Indiana. On May 30, 2003, the Indiana district court issued a final order allowing Nostalgia to seize

$ 340,000 from Lockwood's personal account in Indianapolis. Ultimately, Nostalgia received approximately $ 370,000 from Respondent. Cyrluk worked on the case for more than two years and his attorney's fees were approximately $ 100,000. (Tr. 125-26, 189, 194; Adm. Ex. 39).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In attorney disciplinary proceedings, the Administrator must prove the alleged misconduct by clear and convincing evidence. Supreme Court Rule 753(c)(6); *In re Ingersoll, 186 Ill. 2d 163, 168, 710 N.E.2d 390 (1999).* It is well-settled that "clear and convincing evidence is a standard of proof which, while less than the criminal standard of proof beyond a reasonable doubt, is greater than the civil standard of preponderance of the evidence." Cleary and Graham, *Handbook of Illinois Evidence*, § 301.6 (6th **[*17]** ed. 1994). This standard of proof is one in which the risk of error is not equally allocated; rather, this standard requires a high level of proof, both qualitatively and quantitatively, from the Administrator. *Santosky v. Kramer, 455 U.S. 745, 764-66, 102 S. Ct. 1388 (1982); In re Tepper, 96 CH 543,* M.R. 14596 (1998) (Review Bd. Dec. at 12). Suspicious circumstances are insufficient to warrant discipline. *In re Lane, 127 Ill. 2d 90, 111, 535 N.E.2d 866 (1989).*

In this case, based on the evidence and testimony presented at the hearing, we find that the Administrator proved, by clear and convincing evidence, that Respondent engaged in the misconduct alleged in Counts I and II of the complaint. Specifically, we find that Respondent: 1) engaged in conduct that the lawyer knows is criminal or fraudulent; 2) falsely stated or implied the practice of law in a partnership; 3) failed to disclose to a tribunal a material fact known to the lawyer when disclosure is necessary to avoid assisting a criminal or fraudulent act; 4) engaged in conduct involving dishonesty, fraud, **[*18]** deceit or misrepresentation; 5) engaged in conduct prejudicial to the administration of justice; and 6) engaged in conduct that tends to bring the courts or the legal profession into disrepute in violation of Rules 1.2(d), 3.3 (a)(2), 7.5(d), 8.4(a)(4), and 8.4(a)(5) of the Illinois Rules of Professional Conduct and Supreme Court Rule 771.

COUNT I

We find that the Administrator proved that Respondent fraudulently transferred assets to Lockwood to avoid paying creditors as alleged in Count I of the complaint. First, we find that Respondent violated the Uniform Fraudulent Transfer Act (the Act). Although we are not bound by the decisions of the United States Court of Appeals for the Seventh Circuit and the district court, which found that Respondent engaged in fraud under the Act, after independently reviewing the facts, we agree with those decisions.

As the Seventh Circuit and district court stated, under the Act there are transfers that are fraudulent in law and fraudulent in fact. A transaction is fraudulent in law when the debtor: 1) transfers assets after a claim arises against him; 2) does not receive adequate consideration for the transfer; and 3) is insolvent or becomes **[*19]** insolvent as a result of the transfer. There need not be evidence of intent to defraud a creditor to find fraud in law, and it can be proven by the timing of the transfers. A transaction that is fraudulent in fact requires proof that the debtor had actual intent to hinder, delay or defraud a creditor. Timing of the transfers is insufficient to prove fraud in fact. 740 ILCS secs. 160/5-6.

In the *Nostalgia* matter, it is beyond question that Respondent transferred assets to Lockwood after Nostalgia asserted a claim against him. Nostalgia filed a lawsuit against Respondent in October 1994. Respondent transferred assets to Lockwood in February and September 1999. Thus, Nostalgia's claim against Respondent arose nearly five years before the transfers. It is also undisputed that Respondent did not receive any consideration from Lockwood for the transfer of assets. Respondent testified that he received no consideration for the assets he transferred to Lockwood. (Tr. 86-87).

Additionally, Respondent was insolvent at the time of the transfers to Lockwood. Under the Act, a debtor is insolvent when the sum of his debts exceeds his assets. 740 ILCS sec. 160/3(d). In February 1999, before **[*20]** transferring his funds to Lockwood, Respondent had approximately $ 400,000 in assets. As discussed above, Nostalgia's claim against Respondent existed in October 1994. Although the exact amount of the claim was not adjudicated, it would have been

apparent to Respondent that he could be liable for a substantial amount of money, as evidenced by the ultimate judgment of more than $ 3 million. Accordingly, at the time he transferred his assets to Lockwood, he was insolvent. Based on these facts, we find that Respondent's transfers to Lockwood were fraudulent in law in violation of the Act

We also find that Respondent's transfers were fraudulent in fact. His intent to defraud Nostalgia is proven by the fact that Respondent continued to use the money after he transferred it to Lockwood, and that Lockwood used the money to pay Respondent's expenses. As the Seventh Circuit stated "It didn't make any sense, in the absence of a desire to throw creditors off the scent, for Rayle to give money to Lockwood to give back to him for living expenses rather than defraying the expenses directly out of a bank account of his own." After Respondent transferred the funds in the Fowler account to Lockwood, **[*21]** however, he continued to use the money for his own purposes. He used an ATM card to withdraw approximately $ 2,000 per month from the account for his personal expenses. Additionally, Lockwood wrote checks from that account to pay the rent on Respondent's apartment and law office and payment to attorneys who worked for Respondent. These facts, along with other facts already discussed, establish that Respondent engaged in fraud in fact.

Even if, for the sake of argument, Respondent did not violate the Act, he still engaged in misconduct under the disciplinary rules regarding the *Nostalgia* and *Cassavitis* matters.

Generally, an individual can give another individual any amount of money he chooses, so there is nothing inherently wrong with the fact that Respondent made the transfers. There is, however, something wrong with an individual transferring money to another if that individual is attempting to conceal that money from creditors. This is exactly what Respondent did, and in doing so, he engaged in misconduct.

The timing of the transfers and the judgments against Respondent, along with Respondent's continued use of the funds in the account, establish clearly and convincingly **[*22]** that Respondent transferred the funds to avoid paying his creditors. There were two relevant cases pending against Respondent. The first one was filed against Respondent by Nostalgia on October 7, 1994, in California. On October 10, 1996, a default order was entered against Respondent in that case. The second case was filed against Respondent by Cassavitis on May 14, 1998, also in California. On January 27, 1999, a default order was entered against Respondent in the Cassavitis case. Despite these lawsuits, on February 5, 1999, Respondent transferred ownership in the Fowler account to Lockwood, and received no consideration from her. The balance in the account was $ 60,664.89.

On March 26, 1999, the California court in the *Cassavitis* case entered a judgment in the amount of $ 593,000 against Respondent. On July 6, 1999, the California court in the *Nostalgia* case entered a judgment in the amount of $ 3,060,377 against Respondent. Importantly, On July 29, 1999, Respondent deposited the $ 218,000 settlement proceeds from his lawsuit against Cicero into the Fowler account. On August 9, 1999, Nostalgia registered the California judgment in Illinois.

These facts clearly and convincingly **[*23]** establish that Respondent was fraudulently concealing his assets from Nostalgia and Cassavitis. The timing of the transfers coincide with actions taken in the pending cases and is extremely telling of Respondent's intent. Additionally, Respondent continued to have access to the money even after he transferred title to Lockwood. He wrote numerous checks on the account and used the ATM card to make withdrawals from the account averaging $ 2,000 per month. Moreover, Lockwood used the funds to pay for Respondent's personal and business expenses including the rent for Respondent's apartment and law office, and payments to attorneys who worked for him. These facts unquestionably prove that Respondent transferred the money to Lockwood to conceal it from his judgment creditors.

Further, there is no other plausible explanation for the transfers. Respondent claims that he transferred the assets to Lockwood because she had made sacrifices and commitments to him, but we do not find this testimony at all persuasive. If this were true, why would the money be used to pay Respondent's expenses and why would Respondent withdraw money from the account on a monthly basis? As the Seventh Circuit stated, **[*24]** "It is one thing to make a

gift; it is another to transfer money to someone whom you expect to retransfer it to you; the inescapable implication is that you are parking your money in a place where you hope your creditors won't know to look." It appears that although Respondent transferred title to Lockwood, Respondent retained substantial control over the money, and regularly exercised that control.

Respondent also claims he did not know he was prohibited from transferring the funds. Respondent's argument presupposes that the only relevant inquiry is his subjective knowledge. We do not agree with this assumption. Instead, we must apply an objective standard, and determining what a reasonable person in Respondent's position should have known. Based on that objective standard, we believe that Respondent knew or should have known he was acting fraudulently when he transferred the funds to Lockwood. Respondent is an experienced and accomplished attorney. He handled complex litigation matters throughout his career. It is simply not believable that Respondent would honestly think that he could transfer his assets to Lockwood when he had these cases pending against him.

Therefore, we find **[*25]** that Respondent violated the Act in regard to the *Nostalgia* matter. We also find that even if, for the sake of argument, Respondent did not violate the Act, he nevertheless engaged in misconduct under our ethical rules in the *Nostalgia* and *Cassavitis* matters by engaging in conduct involving fraud, dishonesty, and misrepresentation, conduct that is prejudicial to the administration of justice, and conduct that tends to defeat the administration of justice and bring the legal profession into disrepute. The same facts that establish a violation of the Act prove he violated our ethical rules.

We further find Respondent falsely stated that he practiced law in a partnership when he was, in fact, a sole practitioner. Respondent testified that he operated a law firm under the name "Rayle & Partners" and that he had no partners. Instead, he used the services of several independent contractors to perform legal work. Rule 7.5(d) specifically states that "lawyers may state or imply that they practice in partnership or other organization only when that is the fact." Illinois Rules of Professional Conduct 7.5(d). Based on Respondent's own testimony, there can be no question that Respondent **[*26]** violated this Rule.

COUNT II

We find the Administrator proved that Respondent fraudulently transferred the assets from the McDonald accounts to avoid paying creditors and made intentional misrepresentations to the circuit court about the transfer as alleged in Count II of the complaint. On August 9, 1999, Nostalgia filed a petition in the Circuit Court of Cook County to register the California judgment of $ 3,060,377. On September 10, 1999, Respondent was served with a citation to discover assets. The citation prohibited the transfer of property that was "not exempt from garnishment or execution belonging to the debtor or to which the debtor may be entitled or which may be acquired by or become due to the debtor." The rider attached to the citation requested that Respondent identify any and all assets for which he had an interest, and produce all documents relating to any bank and brokerage accounts for which Respondent had an interest.

As of September 10, 1999, Respondent maintained three investment accounts, the McDonald accounts, with approximately $ 28,347 in total assets. Two of the accounts were retirement accounts with a combined balance of $ 15,860, and the other account **[*27]** with a balance of $ 12,486. On September 22, 1999, Respondent withdrew all the funds from the McDonald accounts and deposited them into the Fowler account. At that time, Lockwood held title to the Fowler account, and after the deposit, the balance in the account was $ 81,590.83. On October 21, 1999, the balance in the account was $ 47,291.60.

On October 5, 1999 and November 2, 1999, Respondent appeared for depositions in the citation to discover assets proceedings. Respondent admittedly failed to disclose the existence of the McDonald accounts, or that he had deposited the proceeds from those accounts into the Fowler account, which was in Lockwood's name. Respondent claims that he was not asked questions that would require him to disclose those accounts. The Administrator maintains that Respondent intentionally failed to include the McDonald accounts in his answers to the deposition questions. After reviewing the transcripts from the depositions, we agree with the Administrator.

At the depositions, Respondent answered questions about his bank accounts, 401(k) accounts, and his assets in general. At no time did he mention the McDonald accounts. Also, Respondent was specifically asked **[*28]** if he had any "securities brokerage accounts" and he said he did not. He was asked if he had any 401(k) or "other type of retirement accounts." Respondent stated that he had one 401(k) account, and "some IRA's, immaterial amounts of money" that he closed when he moved to California in May 1996. Further, Respondent was asked: "As of February 5, 1999, what did you own?" Respondent answered "I own no cash, no automobile. I own no investments of any kind, no real estate. What I owned was an expectation of being able to earn money." Respondent was asked three other questions about his assets, and he denied having any tangible assets. Respondent liquidated the McDonald accounts on September 29, 1999, six days before the first deposition and 34 days before the second deposition.

It is clear that Respondent intentionally failed to disclose the McDonald accounts during the depositions or at any other time during the citation proceedings. He was specifically asked about investment accounts, retirement accounts, and other assets, and denied having any accounts. He mentioned accounts he had several years before, that he closed, but did not mention the McDonald accounts. Respondent's claim that **[*29]** he did not think that any of the questions applied to the McDonald accounts is simply not credible. We have read the transcripts, and observed Respondent testify before us, and we simply do not believe Respondent's testimony. *See In re Smith, 168 Ill. 2d 269, 283, 659 N.E.2d 896 (1995)* (the Hearing Board is in the best position to determine the credibility of the witnesses). With the exception of specifically naming the McDonald accounts (which the questioner persumably did not know about since the purpose of the proceeding was to discover assets like that) it is difficult to imagine any other questions Respondent could have been asked that would have caused him to reveal those accounts. Further, Respondent had other opportunities to disclose the McDonald accounts and failed to do so. The language in the citation is clear, the information was material to the proceedings, and Respondent's failure to disclose these assets amounts to fraudulent conduct.

Respondent argues that Nostalgia knew about the Fowler account, and if he wanted to hide the McDonald accounts funds, he would not have deposited them into the Fowler account. Although Respondent **[*30]** could have done something else with the McDonald account funds, the fact that he deposited them into the Fowler account does not detract from his misconduct. Importantly, at the time of the deposit, title to the Fowler account was in Lockwood's name and Respondent believed she was the owner of the account. He subsequently maintained she was the owner of the account and the funds in it. Therefore, when he deposited the proceeds from the McDonald accounts into the Fowler account, he thought Nostalgia would be unable to reach them.

Respondent also argues he was not required to disclose the McDonald accounts because at least some of the funds were from IRA's and exempt from attachment by Nostalgia. Respondent is simply wrong. He was required to disclose all of his assets during the citation to discover assets proceedings. Whether some of the assets were exempt from collection is a completely different issue, and one he could have raised after he made the disclosure. His misconduct centers around his failure to disclose, and it is clear that he engaged in misconduct when he failed to do so.

Respondent further argues there should be no finding of misconduct because the circuit court declined **[*31]** to find him in contempt for failing to disclose the McDonald accounts. We do not agree with Respondent. The fact that he was not held in contempt has little bearing on whether he engaged in misconduct under the ethical rules. Initially, the standard for contempt is significantly different from the ethical rules. As articulated by the circuit court, contempt is "contumacious conduct that embarrasses or obstructs the court in its administration of justice or derogates from its authority or dignity, brings the administration of justice into disrepute or constitutes disobedience of a court order or judgment." (Resp. Ex. 1). The circuit court noted that a case cannot be considered in a vacuum, and must be compared to other cases that arise in court. In the circuit court's experience, Respondent's actions "pale in comparison to the acts of may judgment debtors that come before this court." The circuit court found that Respondent cooperated throughout the citation proceedings, that his actions did not prejudice Nostalgia, and that the transfer of the McDonald funds made more money available to satisfy the Nostalgia's judgment.

Even though Respondent's conduct was insufficient to establish **[*32]** contempt, for the reasons discussed above, it was sufficient to establish that Respondent engaged in fraudulent and dishonest conduct under the ethical rules. We must

examine Respondent's conduct in the context of the Illinois Rules of Professional Conduct and the Supreme Court Rules. We have done so, and find that not only did Respondent engage in fraudulent conduct and make a false statement to the court, but he also engaged in conduct that was prejudicial to the administration of justice and brought the legal profession into disrepute.

RECOMMENDATION

The purpose of the disciplinary system is to protect the public, maintain the integrity of the legal system and safeguard the administration of justice. *See In re Gorecki, 208 Ill. 2d 350, 802 N.E.2d 1194 (2003); In re Howard, 188 Ill. 2d 423, 721 N.E.2d 1126 (1999).* "The Rules of Professional Conduct recognize that the practice of law is a public trust and lawyers are the trustees of the judicial system." *In re Smith, 168 Ill. 2d 269, 287, 659 N.E.2d 896 (1995).* The objective of a disciplinary **[*33]** inquiry is not punishment, but to protect the public from incompetent or unscrupulous attorneys, maintain the integrity of the profession, and protect the administration of justice from reproach. *See In re Twohey, 191 Ill. 2d 75, 727 N.E.2d 1028 (2000).* In determining the appropriate sanction for an attorney's misconduct, the purpose of the disciplinary system and the facts surrounding the misconduct must be considered. *See In re Chernois, 114 Ill. 2d 527, 502 N.E.2d 722 (1986).*

The discipline imposed on an attorney who has engaged in misconduct also depends on the aggravating and mitigating factors presented during that attorney's disciplinary proceedings. *See Gorecki, 208 Ill. 2d at 360-61.* Here, there are several mitigating and aggravating factors.

Respondent's misconduct is mitigated by the fact that he has not been previously disciplined. Respondent has been practicing law for nearly 30 years without incident, and we consider this a mitigating fact. *See In re Demuth, 126 Ill. 2d 1, 14, 533 N.E.2d 867 (1988).* **[*34]** Respondent failed to present any additional mitigating evidence.

We also consider, as a mitigating factor, the fact that Respondent's misconduct did not harm any of his clients. All of the proven misconduct relates to Respondent's actions in cases involving his own legal matters. His misconduct affected the administration of justice, but he did not harm any of his clients. Although this is a mitigating factor, we do not give it substantial weight. *See In re Ruggiero, 00 CH 29,* M.R. 16933 (September 19, 2002)

Respondent aggravated his misconduct by failing to recognize the seriousness of his misconduct or exhibit any remorse. Respondent has failed to acknowledge his misconduct, even after being presented with substantial evidence of it. Because he does not believe he has done anything wrong, he has shown no remorse. Without acknowledgement of misconduct and an expression of remorse, Respondent is more likely to repeat the misconduct. *See In re Samuels, 126 Ill. 2d 509, 535 N.E.2d 808 (1989).*

Having considered the mitigating and aggravating factors, we must now recommend the appropriate sanction. The Administrator **[*35]** recommends that Respondent be suspended from the practice of law for one year, and cites several cases supporting this recommendation. *See In re Levin, 00 CH 72,* M.R. 19490 (September 24, 2004) (30-day suspension); *In re Ruggiero, 00 CH 29,* M.R. 16933 (September 19, 2002) (one-year suspension); *In re Carlson, 96 CH 880,* M.R. 17398 (June 15, 2001) (three-year suspension); *In re Green, 97 CH 57,* M.R. 14732 (May 27, 1998) (three-year suspension). Respondent believes he did not engage in any misconduct, and makes no suggestion regarding discipline.

After reviewing the cases cited by the Administrator and considering Respondent's misconduct and mitigating and aggravating factors, we recommend that Respondent be suspended for one year. We find that this case is sufficiently similar to *Ruggiero* to justify our recommendation. In that case, a $ 269,328 judgment was entered against Ruggiero. During a deposition in a citation to discover assets proceedings in federal court, he gave misleading testimony regarding ownership of his real estate holdings. The court ordered **[*36]** Ruggiero to produce all relevant documents relating to certain real estate. After Respondent failed to comply with that order, the plaintiff filed a motion for contempt. In response to that motion, Ruggiero filed an affidavit stating he had turned over all of the documents in his possession.

Subsequently, he admitted that he failed to produce all the documents. Ruggiero was held in civil contempt and fined $ 32,500. He was also convicted of misdemeanor criminal contempt, and given probation.

In mitigation, Ruggiero was 70 years old and in poor health, and had been practicing law for more than 40 years with no prior discipline. He paid the fines and judgment, and satisfied the term of probation. His misconduct did not harm any clients or client interests, and tarnished only his own good reputation. He also presented three witnesses who established his good character.

In aggravation, Ruggiero failed to acknowledge his misconduct and made repeated false statements.

The similarities between this case and *Ruggiero* are compelling. In both cases, the attorneys made misrepresentations about their assets in court proceedings to deceive a judgment creditor. In mitigation, neither attorney **[*37]** had a prior discipline nor harmed their clients. In aggravation, both attorneys failed to acknowledge any wrongdoing.

The differences between the cases are obvious. In *Ruggiero*, the attorney was held in civil contempt and convicted of criminal contempt. Respondent was not found in contempt. However, as discussed, we do not focus on the court finding, but on the underlying misconduct and aside from the findings of contempt, the misconduct is similar. Additionally, Ruggiero presented more mitigating evidence than Respondent and ultimately told the court he had made a misrepresentation earlier in the proceedings. Respondent, on the other hand, presented minimal mitigating evidence and his misrepresentations were discovered only after Nostalgia's counsel's diligent efforts. On balance, we find the misconduct in this case and *Ruggiero* substantially similar and believe that the same sanction is appropriate.

Therefore, in light of Respondent's misconduct, and considering the aggravating and mitigating factors and relevant case law, we recommend that Respondent be suspended from the practice of law for one year.

James A. Shapiro, Chair, Leonard J. Schrager and Cheryl M. Kneubuehl, **[*38]** Hearing Panel Members.

Date Entered: September 1, 2005

10 of 11 DOCUMENTS

ILLINOIS

Illinois Attorney Registration and Disciplinary Commission Decisions

In re Merrick Scott Rayle
Commission No. 04 CH 21

04 CH 21

The Hearing Board of the Illinois Attorney Registration and Disciplinary Commission

2005 Ill. Atty. Reg. Disc. LEXIS 263

September 1, 2005

MEMBERS: [*1] James A. Shapiro, Chair, Leonard J. Schrager and Cheryl M. Kneubuehl

RESPONDENT'S COUNSEL: Pro se
ADMINISTRATOR'S COUNSEL: Donald P. Jonker

OPINION: Synopsis Of Hearing Board Report And Recommendation

NATURE OF THE CASE: 1) engaging in conduct that the lawyer knows is criminal or fraudulent; 2) falsely stating or implying that the lawyer practices law in a partnership; 3) failing to disclose to a tribunal a material fact known to the lawyer when disclosure is necessary to avoid assisting a criminal or fraudulent act; 4) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 5) engaging in conduct prejudicial to the administration of justice; and 6) engaging in conduct that tends to bring the courts or the legal profession into disrepute

RULES DISCUSSED: Rules 1.2(d), 3.3(a)(2), 7.5(d), 8.4(a)(4), and 8.4(a)(5) of the Illinois Rules of Professional Conduct and Supreme Court Rule 771

SANCTION: One year suspension

Rules Governing the Legal Profession and Judiciary in Illinois

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SUPREME COURT OF ILLINOIS RULES OF PROFESSIONAL CONDUCT

ARTICLE VIII.

Preamble

The practice of law is a public trust. Lawyers are the trustees of the system by which citizens resolve disputes among themselves, punish and deter crime, and determine their relative rights and responsibilities toward each other and their government. Lawyers therefore are responsible for the character, competence and integrity of the persons whom they assist in joining their profession; for assuring access to that system through the availability of competent

legal counsel; for maintaining public confidence in the system of justice by acting competently and with loyalty to the best interests of their clients; by working to improve that system to meet the challenges of a rapidly changing society; and by defending the integrity of the judicial system against those who would corrupt, abuse or defraud it.

To achieve these ends the practice of law is regulated by the following rules. Violation of these rules is grounds for discipline. No set of prohibitions, however, can adequately articulate the positive values or goals sought to be advanced by those prohibitions. This preamble therefore seeks to articulate those values in much the same way as did the former canons set forth in the Illinois Code of Professional Responsibility. Lawyers seeking to conform their conduct to the requirements of these rules should look to the values described in this preamble for guidance in interpreting the difficult issues which may arise under the rules.

The policies which underlie the various rules may, under certain circumstances, be in some tension with each other. Wherever feasible, the rules themselves seek to resolve such conflicts with clear statements of duty. For example, a lawyer must disclose, even in breach of a client confidence, a client's intent to commit a crime involving a serious risk of bodily harm. In other cases, lawyers must carefully weigh conflicting values, and make decisions, at the peril of violating one or more of the following rules. Lawyers are trained to make just such decisions, however, and should not shrink from the task. To reach correct ethical decisions, lawyers must be sensitive to the duties imposed by these rules and, whenever practical, should discuss particularly difficult issues with their peers.

Timely, affordable counsel is essential if disputes are to be avoided and, when necessary, resolved. Basic rights have little meaning without access to the judicial system which vindicates them. Effective access to that system often requires the assistance of counsel.

It is the responsibility of those licensed as officers of the court to use their training, experience and skills to provide services in the public interest for which compensation may not be available. It is the responsibility of those who manage law firms to create an environment that is hospitable to the rendering of a reasonable amount of uncompensated service by lawyers practicing in that firm.

Service in the public interest may take many forms. These include but are not limited to pro bono representation of persons unable to pay for legal services and assistance in the organized bar's efforts at law reform. An individual lawyer's efforts in these areas is evidence of the lawyer's good character and fitness to practice law, and the efforts of the bar as a whole are essential to the bar's maintenance of professionalism.

The absence from the proposed new rules of ABA Model Rule 6.1 regarding *pro bono* and public service therefore should not be interpreted as limiting the responsibility of attorneys to render uncompensated service in the public interest. Rather, the rationale for the absence of ABA Model Rule 6.1 is that this concept is not appropriate for a disciplinary code, because an appropriate disciplinary standard regarding *pro bono* and public service is difficult, if not impossible, to articulate. That ABA Model Rule 6.1 itself uses the word "should" instead of "shall" in describing this duty reflects the uncertainty of the ABA on this issue.

The quality of the legal professional can be no better than that of its members. Lawyers must exercise good judgment and candor in supporting applicants for membership in the bar.

Lawyers also must assist in the policing of lawyer misconduct. The vigilance of the bar in preventing and, where required, reporting misconduct can be a formidable deterrent to such misconduct, and a key to maintaining public confidence in the integrity of the profession as a whole in the face of the egregious misconduct of a few.

Legal services are not a commodity. Rather, they are the result of the efforts, training, judgment and experience of the members of a learned profession. These rules reflect the sensitive task of striking a balance between making available useful information regarding the availability and merits of lawyers and the need to protect the public against deceptive or overreaching practices. All communications with clients and potential clients should be consistent with these values.

The lawyer-client relationship is one of trust and confidence. Such confidence only can be maintained if the lawyer acts competently and zealously pursues the client's interests within the bounds of the law. "Zealously" does not mean mindlessly or unfairly or oppressively. Rather, it is the duty of all lawyers to seek resolution of disputes at the least cost in time, expense and trauma to all parties and to the courts.

Terminology

"Belief" or **"believes"** denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

"Confidence" denotes information protected by the lawyer-client privilege under applicable law.

"Contingent fee agreement" denotes an agreement for the provision of legal services by a lawyer under which the amount of the lawyer's compensation is contingent in whole or in part upon the successful completion of the subject matter of the agreement, regardless of whether the fee is established by formula or is a fixed amount.

"Disclose" or **"disclosure"** denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

"Firm" or **"law firm"** denotes a lawyer or lawyers engaged in the private practice of law in a partnership, professional corporation, or other entity or in the legal department of a corporation, legal services organization or other entity.

"Fraud" or **"fraudulent"** denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

"Knowingly" "known" or **"knows"** denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Partner" denotes a lawyer who is a member of a partnership, or a shareholder or officer in a law firm organized as a professional corporation.

"Person" denotes natural persons, partnerships, business corporations, not-for-profit corporations, public and quasi public corporations, municipal corporations, State and Federal governmental bodies and agencies, or any other type of lawfully existing entity.

"Reasonable" or **"reasonably"** when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

"Reasonable belief" or **"reasonably believes"** when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

"Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

"Secret" denotes information gained in the professional relationship, that the client has requested be held inviolate or the revelation of which would be embarrassing to or would likely be detrimental to the client.

"Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

RULE 1.1 Competence

(a) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation.

(b) A lawyer shall not represent a client in a legal matter in which the lawyer knows or reasonably should know that the lawyer is not competent to provide representation, without the association of another lawyer who is competent to provide such representation.

(c) After accepting employment on behalf of a client, a lawyer shall not thereafter delegate to another lawyer

not in the lawyer's firm the responsibility for performing or completing that employment, without the client's consent.

Adopted February 8, 1990, effective August 1, 1990.

RULE 1.2 Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after disclosure by the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the objectives of the representation if the client consents after disclosure.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning or application of the law.

(e) A lawyer shall not present, participate in presenting, or threaten to present criminal charges or professional disciplinary actions to obtain an advantage in a civil matter.

(f) In representation of a client, a lawyer shall not:

(1) file a suit, assert a position, conduct a defense, delay a trial or take other action on behalf of the client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another;

(2) advance a claim or defense the lawyer knows is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by a good-faith argument for an extension, modification, or reversal of existing law; or

(3) fail to disclose that which the lawyer is required by law to reveal.

(g) A lawyer who knows a client has, in the course of representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal, except when the information is protected as a privileged communication.

(h) A lawyer who knows that a person other than the client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

(i) When a lawyer knows that a client expects assistance not permitted by these Rules or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

Adopted February 8, 1990; effective August 1, 1990.

RULE 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Adopted February 8, 1990; effective August 1, 1990.

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Adopted February 8, 1990; effective August 1, 1990.

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a dissolution of marriage or upon the amount of maintenance or support, or property settlement in lieu thereof; provided, however, that the prohibition set forth in Rule 1.5(d)(1) shall not extend to representation in matters subsequent to final judgments in such cases;

(2) a contingent fee for representing a defendant in a criminal case.

(e) Notwithstanding Rule 1.5(c), a contingent fee agreement regarding the collection of commercial accounts or of insurance company subrogation claims may be made in accordance with the customs and practice in the locality for such legal services.

(f) Except as provided in Rule 1.5(j), a lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm, unless the client consents to employment of the other lawyer by signing a writing which discloses:

(1) that division of fees will be made;

(2) the basis upon which the division will be made, including the economic benefit to be received by the other lawyer as a result of the division; and

(3) the responsibility to be assumed by the other lawyer for performance of the legal services in question.

(g) A division of fees shall be made in proportion to the services performed and responsibility assumed by each lawyer, except where the primary service performed by one lawyer is the referral of the client to another lawyer and

(1) the receiving lawyer discloses that the referring lawyer has received or will receive economic benefit from the referral and the extent and basis of such economic benefit, and

(2) the referring lawyer agrees to assume the same legal responsibility for the performance of the services in question as would a partner of the receiving lawyer.

(h) The total fee of the lawyers shall be reasonable.

(i) For purposes of Rule 1.5 "economic benefit" shall include:

(1) the amount of participation in the fee received with regard to the particular matter;

(2) any other form of remuneration passing to the referring lawyer from the receiving lawyer, whether or not with regard to the particular matter; and

(3) an established practice of referrals to and from or from and to the receiving lawyer and the referring lawyer.

(j) Notwithstanding Rule 1.5(f), a payment may be made to a lawyer formerly in the firm, pursuant to a separation or retirement agreement.

Adopted February 8, 1990; effective August 1, 1990.

RULE 1.6 Confidentiality of Information

(a) Except when required under Rule 1.6(b) or permitted under Rule 1.6(c), a lawyer shall not, during or after termination of the professional relationship with the client, use or reveal a confidence or secret of the client known to the lawyer unless the client consents after disclosure.

(b) A lawyer shall reveal information about a client to the extent it appears necessary to prevent the client from committing an act that would result in death or serious bodily harm.

(c) A lawyer may use or reveal:

(1) confidences or secrets when permitted under these Rules or required by law or court order,

(2) the intention of a client to commit a crime in circumstances other than those enumerated in Rule 1.6(b); or

(3) confidences or secrets necessary to establish or collect the lawyer's fee or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct.

(d) The relationship of trained intervenor and a lawyer, judge, or a law student who seeks or receives assistance through the Lawyers' Assistance Program, Inc., shall be the same as that of lawyer and client for purposes of the application of Rule 8.1, Rule 8.3 and Rule 1.6.

(e) Any information received by a lawyer in a formal proceeding before a trained intervenor, or panel of intervenors, of the Lawyers' Assistance Program, Inc., or in an intermediary program approved by a circuit court in which nondisciplinary complaints against judges or lawyers can be referred shall be deemed to have been received from a client for purposes of the application of Rules 1.6, 8.1 and 8.3.

Adopted February 8, 1990; effective August 1, 1990; amended February 2, 1994, effective immediately; amended May 24, 2006, effective immediately..

RULE 1.7 Conflict of Interest: General Rule

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after disclosure.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after disclosure.

(c) When representation of multiple clients in a single matter is undertaken, the disclosure shall include explanation of the implications of the common representation and the advantages and risks involved.

Adopted February 8, 1990; effective August 1, 1990.

RULE 1.8 Conflict of Interest: Prohibited Transactions

(a) Unless the client has consented after disclosure, a lawyer shall not enter into a business transaction with the client if:

(1) the lawyer knows or reasonably should know that the lawyer and the client have or may have conflicting interests therein; or

(2) the client expects the lawyer to exercise the lawyer's professional judgment therein for the protection of the client.

(b) Unless all aspects of the matter giving rise to the employment have been concluded, a lawyer shall not enter into any arrangement or understanding with a client or a prospective client by which the lawyer acquires an interest in publication, media, or other literary rights with respect to the subject matter of employment or proposed employment.

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(d) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the client, except that a lawyer may advance or guarantee the expenses of litigation, including, but not limited to, court costs, expenses of investigation, expenses of medical examination, and

costs of obtaining and presenting evidence if:

(1) the client remains ultimately liable for such expenses; or

(2) the repayment is contingent on the outcome of the matter; or

(3) the client is indigent.

(e) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or *nolo contendere* pleas, unless each client consents after disclosure, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(f) A lawyer shall not make an agreement with a client prospectively limiting the lawyer's liability to the client unless such an agreement is permitted by law and the client is independently represented in making the agreement.

(g) A lawyer shall not settle a claim against the lawyer made by an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(h) A lawyer shall not enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or pursue any complaint before the Attorney Registration and Disciplinary Commission.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or the subject matter of litigation which is being conducted for a client except by:

(1) acquiring a lien granted by law to secure fees or expenses; or

(2) *contracting with a client for a reasonable contingent fee in a civil case.*

Adopted February 8, 1990; effective August 1, 1990.

RULE 1.9 Conflict of Interest: Former Client

(a) A lawyer who has formerly represented a client in a matter shall not thereafter:

(1) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client consents after disclosure; or

(2) use information relating to the representation to the disadvantage of the former client, unless:

(A) such use is permitted by Rule 1.6; or

(B) the information has become generally known.

Adopted February 8, 1990; effective August 1, 1990.

RULE 1.10 Imputed Disqualification: General Rule

(a) No lawyer associated with a firm shall represent a client when the lawyer knows or reasonably should know that another lawyer associated with that firm would be prohibited from doing so by Rules 1.7, 1.8(c) or 1.9, except as permitted by Rules 1.10(b), (c) or (d), or by Rule 1.11 or Rule 1.12.

(b) When a lawyer becomes associated with a firm, the firm may not represent a person in a matter that the firm knows or reasonably should know is the same or substantially related to a matter in which the newly associated

lawyer, or a firm with which that lawyer was associated, had previously represented a client whose interests are materially adverse to that person unless:

(1) the newly associated lawyer has no information protected by Rule 1.6 or Rule 1.9 that is material to the matter; or

(2) the newly associated lawyer is screened from any participation in the matter.

(c) When a lawyer has terminated an association with a firm, the firm may thereafter represent a person with interests materially adverse to those of a client represented by the formerly associated lawyer if:

(1) the matter is not the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) no lawyer remaining in the firm has information protected by Rule 1.6 and Rule 1.10 that is material to the matter.

(d) A disqualification prescribed by Rule 1.10 may be waived by the affected client under the conditions stated in Rule 1.7.

(e) For purposes of Rule 1.10, Rule 1.11, and Rule 1.12, a lawyer in a firm will be deemed to have been screened from any participation in a matter if:

(1) the lawyer has been isolated from confidences, secrets, and material knowledge concerning the matter;

(2) the lawyer has been isolated from all contact with the client or any agent, officer, or employee of the client and any witness for or against the client;

(3) the lawyer and the firm have been precluded from discussing the matter with each other; and

(4) the firm has taken affirmative steps to accomplish the foregoing.

Adopted February 8, 1990; effective August 1, 1990.

RULE 1.11 Successive Government and Private Employment

(a) Except as otherwise expressly permitted by law, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after disclosure. No lawyer in a firm with which that lawyer is associated and who knows or reasonably should know of the lawyer's prior participation may undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no specific share of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of Rule 1.11.

(b) Except as otherwise permitted by law, a lawyer having information that the lawyer knows is confidential government information about a person, acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no specific share of the fee therefrom.

(c) Except as otherwise expressly permitted by law, a lawyer serving as a public officer or employee shall not:

(1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

(2) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally or substantially.

(d) As used in Rule 1.11, the term "matter" denotes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, offset or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

(e) As used in Rule 1.11, the term "confidential government information" denotes information which has been obtained under governmental authority and which, at the time Rule 1.11 is applied, the government is prohibited by law from revealing to the public or has a legal privilege not to reveal, and which is not otherwise available to the public.

Adopted February 8, 1990; effective August 1, 1990.

RULE 1.12 Former Judge or Arbitrator

(a) Except as provided in Rule 1.12(d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator, or law clerk to such a person, unless all parties to the proceeding consent after disclosure.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as a lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge, other adjudicative officer, or arbitrator. A lawyer serving as a law clerk to a judge, other adjudicative officer, or arbitrator may negotiate for employment with a party or a lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, other adjudicative officer, or arbitrator.

(c) If a lawyer is disqualified by Rule 1.12(a), a lawyer in the firm with which that lawyer is associated who knows or reasonably should know of that disqualification shall not undertake or continue representation in the matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no specific share of the fee therefrom; and

(2) written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of Rule 1.12.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Adopted February 8, 1990; effective August 1, 1990.

RULE 1.13 Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee, or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a

violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

(1) asking reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for representation to appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of the law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16.

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(e) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Adopted February 8, 1990; effective August 1, 1990.

RULE 1.14 Client Under a Disability

(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship.

(b) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client, only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

Adopted February 8, 1990; effective August 1, 1990.

RULE 1.15 Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account or accounts maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) All nominal or short-term funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited in one or more pooled interest-bearing trust accounts established with a bank or savings and loan association, with the Lawyers Trust Fund of Illinois designated as income beneficiary. Each pooled, interest-bearing trust account shall comply with the following provisions:

(1) Each lawyer or law firm shall establish one or more interest-bearing trust accounts with any bank(s), savings bank(s) or savings and loan association(s) authorized by federal or state law to do business in Illinois. Each interest-bearing trust account shall be insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation and such funds shall be subject to withdrawal promptly upon request. At the direction of the lawyer or law firm, such funds may be used to purchase securities pursuant to fully collateralized overnight repurchase agreements with such financial institution(s), provided such securities: (a) are guaranteed as to principal and interest by the full faith and credit of the United States or are AAA-rated United States agency obligations, and (b) are held by a third-party custodian who shall be either the Federal Reserve Bank of Chicago or St. Louis or a correspondent bank who is a member of the Federal Reserve System.

(2) The rate of interest payable on any interest-bearing trust account shall not be less than the rate paid by the depository institution to depositors other than lawyers or law firms.

(3) Each lawyer or law firm shall direct the depository institution to remit net interest or dividends, after deduction of reasonable charges and fees, as the case may be, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, directly to the Lawyers Trust Fund of Illinois. A statement shall be transmitted with each remittance showing the name of the lawyer or law firm directing that the remittance be sent, the account number, the gross interest, the service fee/handling charge, if any, the net interest remitted, the amount of such remittance, the remittance period, and the rate of interest applied.

(4) Each lawyer or law firm shall deposit into such interest-bearing trust accounts all clients' funds which are nominal in amount or are expected to be held for a short period of time.

(5) The decision as to whether funds are nominal in amount or are expected to be held for a short period of time rests exclusively in the sound judgment of the lawyer or law firm, and no charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's or law firm's judgment on what is nominal or short term.

(e) Ordinarily, in determining the type of account into which to deposit particular funds for a client, a lawyer or a law firm shall take into consideration the following factors:

(1) the amount of interest which the funds would earn during the period they are expected to be deposited;

(2) the cost of establishing and administering the account, including the cost of lawyer's services;

(3) the capability of the financial institution, through subaccounting, to calculate and pay interest earned by each client's funds, net of any transaction costs, to the individual client.

(f) Any lawyer or law firm that can establish that compliance with subparagraph (d) of this rule has resulted in any banking expense whatsoever shall be entitled to reimbursement of such expense from the Lawyers Trust Fund of Illinois by filing an appropriate claim with supporting documentation.

(g) In the closing of a real estate transaction, a lawyer's disbursement of funds deposited but not collected shall not violate his or her duty pursuant to this Rule 1.15 if, prior to the closing, the lawyer has established a segregated Real Estate Funds Account (REFA) maintained solely for the receipt and disbursement of such funds, has deposited such funds into a REFA, and:

(1) is acting as a closing agent pursuant to an insured closing letter for a title insurance company licensed

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on March 29, 2007, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

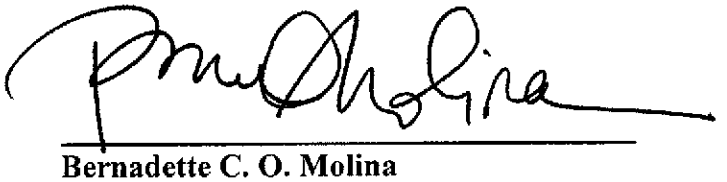
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

MERRICK S. RAYLE
212 WOOD ST
PACIFIC GROVE, CA 93950

[X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ROBERT HENDERSON, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **March 29, 2007**.



Bernadette C. O. Molina
Case Administrator
State Bar Court