BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

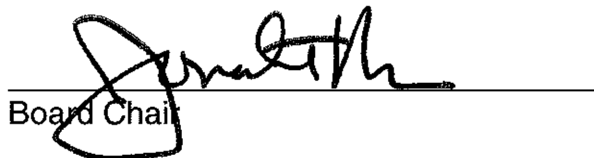
OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 125 DB 2006
v.	:	Attorney Registration No. [ ]
[ANONYMOUS] Respondent	:	([ ] County)

ORDER

AND NOW, this 28th day of March, 2008, upon consideration of the Report and Recommendation of the Hearing Committee filed October 26, 2007 and the briefs filed by the parties; it is hereby

ORDERED that the charges against [ ], docketed at No. 125 DB 2006 are DISMISSED for the reasons set forth in the attached Opinion.

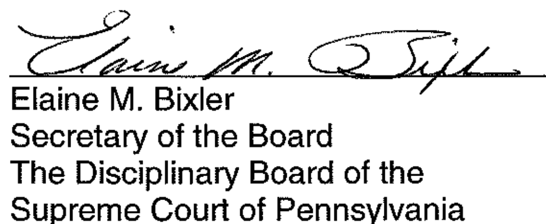
BY THE BOARD:



Board Chair

Board Members Raspanti, Brown and Pietragallo recused.

TRUE COPY FROM RECORD
Attest:



Elaine M. Bixler
Secretary of the Board
The Disciplinary Board of the
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 125 DB 2006
v.	:	Attorney Registration No. [ ]
[ANONYMOUS], Respondent	:	([ ] County)

OPINION

I. HISTORY OF PROCEEDINGS

On October 16, 2006, Office of Disciplinary Counsel filed a Petition for Discipline against [ ], Respondent. The Petition charged Respondent with violations of former RPC 1.6(a), former RPC 1.6(d), and RPC 8.4(c). Respondent filed an Answer to Petition for Discipline on November 30, 2006.

A disciplinary hearing was held on March 9, 2007, before a District [ ] Hearing Committee comprised of Chair [ ], Esquire, and Members [ ], Esquire, and [ ], Esquire. Respondent was represented by [ ], Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on October 26, 2007 and recommended the dismissal of the charges.

Petitioner filed a Brief on Exceptions on November 15, 2007.

Respondent filed a Brief on Exceptions on November 16, 2007 and a Brief Opposing Exceptions on December 5, 2007.

This matter was adjudicated by the Disciplinary Board at the meeting on January 30, 2008.

II. FINDINGS OF FACT

The Board adopts the findings of fact as set forth in the Hearing Committee Report, which Report is attached to this Opinion. (Appendix A)

III. CONCLUSIONS OF LAW

Respondent's acts as set forth in the attached findings of fact do not constitute violations of former RPC 1.6(a), former RPC 1.6(d), or RPC 8.4(c).

1. Former Rule 1.6(a) stated:

> A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

Under RPC 1.6(c)(2), (3), a lawyer is permitted to reveal information to the extent he reasonably believes is necessary "to prevent or to rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being used or had been used'; or "to establish a defense to a criminal charge or civil claim or disciplinary proceeding against the lawyer based upon conduct in which the client was involved."

There is no violation by Respondent as the release of information was permitted pursuant to 1.6(c)(3).

2. Former Rule 1.6(d) stated:

> The duty not to reveal information relating to representation of a client continues after the client-lawyer relationship has terminated.

There is no violation by Respondent as this provision is subject to the exception in 1.6(c)(3).

3. Rule 8.4(c) states:

> It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

There is no violation by Respondent as the conduct he engaged in was justified under the exception in RPC 1.6(c)(3).

IV. DISCUSSION

Respondent was charged in a Petition for Discipline with violating former RPC 1.6(a), former RPC 1.6(d), and RPC 8.4(c) as a result of recorded conversations of Respondent and his client made under supervision of the federal government. Respondent denied that he violated the Rules and defended himself by demonstrating that he was at real risk of being implicated in his client's wrongdoing and feared his unjustified involvement in the criminal prosecution of his client. Respondent's actions were taken after seeking advice of counsel and establishing all reasonable protections for his client. Respondent

acted only when it became clear to him and his counsel that his cooperation was critical to convince the United States attorneys that he was not part of his client's fraud scheme.

The Hearing Committee made factual findings that support Respondent's version of events. The Committee found that Respondent's actions were calculated not to hurt his client, nor were they to help the federal government but instead finely sharpened to provide him an opportunity to exonerate himself from the danger of prosecution; a situation into which Respondent had been improperly placed by the fraudulent conduct of his client. The Committee stated its finding that Respondent was justified in his actions and found his conduct fit within the exception under RPC 1.6(c)(3). However, the Committee still concluded that Respondent had violated the Rules of Professional Conduct but recommended that the charges against Respondent be dismissed.

Respondent takes exception to the Committee's conclusions of law, even while agreeing with the ultimate recommendation of dismissal. Respondent contends that he did not violate the Rules. After review of the record, particularly the findings of the Hearing Committee, the Board is persuaded by Respondent's arguments. Respondent's actions fall within the exception provided for by Rule 1.6(c)(3). The facts amply support a finding that Respondent was justified in abrogating his duty to guard client confidential information as required in RPC 1.6(a) and (d). Further, he did not act in a dishonest way or make misrepresentations to his client as his conduct was justified by the self defense exception to the confidentiality rules. These findings lead the Board to conclude that Respondent did not engage in violations of the Rules of Professional Conduct.

The Board will dismiss all charges against Respondent.

V. DETERMINATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously determines that the charges filed against Respondent, [ ], be Dismissed.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By:______________________________
Carl D. Buchholz, III, Board Member

Date: ___March 28, 2008___

Board Members Raspanti, Brown and Pietragallo recused in this matter.

Board Member Jefferies did not participate in the adjudication.

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 125 DB 2006
v.	:	Attorney Reg. No. [ ]
[ANONYMOUS], Respondent	:	([ ] County)

REPORT AND RECOMMENDATIONS OF HEARING COMMITTEE TO THE CHAIR AND MEMBERS OF DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

I. STATEMENT OF THE CASE

This matter is before the Hearing Committee on a Petition for Discipline filed on October 16, 2006, charging Respondent with violations of former RPC 1.6(a), former RPC 1.6 (d) and RPC 8.4(c).

Respondent, through his counsel [ ], Esquire, filed an Answer to the Petition for Discipline on November 30, 2006.

By reference for disciplinary hearing dated December 6, 2006, the Secretary of the Disciplinary Board appointed Hearing Committee Members [ ], Esquire, Chair, [ ], Esquire, and [ ], Esquire. [ ] was subsequently replaced by [ ], Esquire. A prehearing conference was conducted on December 28, 2006, and January 18, 2007, before Designated Member [ ]. A disciplinary hearing was originally scheduled for February 16, 2007, but was continued upon motion of Respondent. On March 9, 2007, a

FILED
OCT 2 6 2007
Office of the Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

APPENDIX "A"

disciplinary hearing was conducted and a second day of hearing was held on March 29, 2007. Respondent was represented by [ ] and Petitioner was represented by [ ], Esquire.

Following the hearings, the Hearing Committee set a briefing schedule. Both the Respondent and the Office of Disciplinary Counsel filed Briefs.

II. ABSTRACT OF THE EVIDENCE

At the disciplinary hearing, the parties initially introduced into evidence a Joint Stipulation with a "Joint Exhibit 1." Petitioner entered into evidence, with no objection, Exhibits P-1 through P-39. Respondent offered, with no objection, Exhibits A through H.

Petitioner presented the testimony of [ ], [ ], Esquire, and [ ], Esquire. Respondent presented the testimony of [ ], Esquire, [ ], Esquire, [ ], Esquire, [ ], and testified on his own behalf. After Respondent testified, Petitioner presented the testimony of [ ], Esquire, [ ], Esquire, and [ ], Esquire. Respondent presented the testimony of character witnesses [ ], Esquire and [ ], Esquire. After the parties had rested, the Committee convened and then represented that they had found a prima facie violation of at least one of the charged Rules of Professional Conduct. Petitioner then submitted, without objection, Exhibit P-41, demonstrating that Respondent had previously received an informal admonition. Respondent was briefly recalled to the stand to address his prior record of discipline. At the conclusion of the hearing the Committee agreed to a waiver of the page limit for Briefs.

This report is submitted in support of the position that Respondent has in fact violated former RPC 1.6(a) and former RPC 1.6(d) and RPC 8.4(c); however his conduct does not warrant punishment as it was justified under the circumstances.

III. PROPOSED FINDINGS OF FACT

The Hearing Committee incorporates by reference as if set forth fully herein the Joint Stipulation of Fact that was entered into evidence at the disciplinary hearing on March 9, 2007.

1. Petitioner, Office of Disciplinary Counsel (hereinafter referred to as "ODC") whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent, [ ], is an attorney admitted to practice law in the Commonwealth of Pennsylvania, having been admitted to practice on December 6, 1991, and maintains his office at [ ].

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

4. Respondent represented [A] in numerous legal and litigation matters from at least 1993 to at least a date in early 2001. Respondent had a continuing attorney-client relationship with [A] during that period. Respondent represented [A] and entities operated or owned by [A] in a variety of litigation and business matters such as eviction proceedings, traffic violations, foreclosures, contract disputes, real estate disputes and employment litigation.

5. [B] was a charitable nonprofit organization created to assist first-time home buyers with their down payments.

6. Respondent submitted to the Pennsylvania Department of State the necessary application and paperwork to create [B] and permit its operation.

7. [A] was never an officer, director, or employee of [B] and never purported to act in any capacity on behalf of [B]. [A] did not have any authority to act or speak on behalf of [B]. Id.

8. After [B] began to operate as a nonprofit organization assisting home buyers, Respondent served as an escrow agent for transactions involving [B].

9. As [B's] escrow agent, Respondent wrote checks to settlement companies on behalf of home buyers who were receiving assistance from [B] and Respondent received $100.00 fee for each transaction.

10. [A's] construction company is [C].

11. Starting in late 2000 to early in 2001, the federal government commenced a criminal investigation of [A] and others, including Respondent, relating to the financing of home sales by [C] with significant focus on the [B] transactions.

12. The allegations were that [A], or his employees, were falsely representing that "gifts" were being given to home buyers when, in reality, they were undisclosed loans for which [A] would later seek repayment or foreclosure, thereby being a fraud pursuant to Federal HUD regulations.

13. [A] was issued a subpoena in August 2000 for documents, including all documents in his possession concerning [B] Box.

14. On May 11, 2001, after the date on which he was subject to the government subpoena, [A] delivered a box of [B] documents to the offices of Respondent and asked that they be placed with his other files.

15. The [B] Box contained [B] documents, including numerous letters with the forged signatures and forged letterhead of Respondent.

16. By Letter dated May 9, 2001, [E], Esquire of the [ ] Law Firm informed Respondent that [E]:

a) Represented [A] in a matter currently under investigation by the federal authorities;

b) Had called Respondent and left several messages but had not heard back from Respondent;

c) Wanted an opportunity to speak with Respondent as soon as possible;

d) Wanted to discuss with Respondent [A’s] desire not to waive any attorney-client privilege he may have had as a result of Respondent's past representations of him or his company; and,

e) Expected that Respondent would protect [A's] assertion of the attorney-client privilege.

17. In the May 9, 2001, letter, [E] never purported to represent [B] or its interests.

18. Respondent received [E's] May 9, 2001 letter.

19. On or about May 15, 2001, [E] and [E's] investigator met with Respondent at Respondent's office.

20. Respondent sought legal advice of outside counsel on how to handle the [B] Box. Upon that advice of counsel from [F], Esquire, Respondent stored the [B] Box and refused to surrender it absent a directive to do so by a [B] officer or director. Id.

21. From sometime in May 2002 through the summer of 2003, [A's] attorneys, primarily from the office of [G], Esquire, attempted to gain access to the [B] Box; however, Respondent never produced the box as he had not been given a directive to do so by a [B] officer or director.

22. Specifically, On May 13, 2002, [G], Esquire and [H], Esquire of the law firm of [ ] visited Respondent's law office unannounced.

23. At the first meeting with Respondent, [A's] attorney, [G], told Respondent there was an criminal investigation and Respondent's "name is in the middle of it".

24. [H] testified that at the May 13, 2002 meeting with Respondent, Respondent acknowledged that [I] was the President of [B] and that Respondent would accept a letter from her or her attorney and release the [B] documents to the [ ] firm. Respondent also agreed to assert [A's] privilege if he was contacted by the Government.

25. Although there was much discussion and conflicting testimony regarding a letter from [I], ostensibly acting as President of [B] and directing a release of the [B] Box, it was clear that pursuant to a telephone conversation she had with Respondent, [I], for whatever reason, told Respondent that she could not confirm she had signed such a release letter and that was not authorizing release of the [B] Box.

Additionally, [I] testified that it is possible that she did write a letter to Respondent in 2002 or 2003 requesting him to provide the [B] records to [A's] attorneys but she just doesn't remember doing so. She cannot testify that she is positive she did not write such a letter.

26. Respondent never received clear authorization to release the [B] Box and therefore maintained possession.

27. On November 3, 2003, FBI Agents [J] and [K] made an unannounced visit to Respondent's office at which time they interviewed Respondent concerning [A] and [B] and served him with a Grand Jury Subpoena at the conclusion of the interview.

28. Respondent told the FBI Agents that he had done work for [A] and [A] companies in the past but could not discuss them due to privilege.

29. Respondent did discuss his knowledge of [B] and his actions as an escrow agent for the entity as he believed this was necessary to defend his actions in the investigation of [B].

30. The following day, on November 4, 2003, fearful of the criminal investigation and his perceived role (caused by the forged letters), Respondent hired attorneys [L], Esquire and [M], Esquire to represent him in the investigation in to [B] and [A].

31. Pursuant to the subpoena issued by the Grand Jury, the [B] Box, along with the "[I] Letter" were turned over to his counsel on November 4, 2003 and, ultimately, the Grand Jury.

32. Pursuant to an agreement with the U.S. Attorney's Office, Respondent had agreed not to have any contact with [A].

33. Beginning on November 4, 2003, [A] was aggressively attempting to contact Respondent at his office, on his cell phone, and stopping by his home.

34. On or about November 4, 2003, the Federal Authorities were advised of [A's] attempts to contact Respondent.

35. Due to some belief that [A] was improperly attempting to influence witnesses, the U.S. Attorney's Office requested permission to tape the telephone conversations.

36. Prior to agreeing to record telephone conversations, Respondent advised the Federal Government agents that Respondent believed, based on Respondent's past experience with [A], that [A's] usual course of conduct would cause him to believe that any conversations between Respondent and [A] were covered by attorney-client privilege.

37. A "Chinese Wall" or "Taint Team" was created to guard against an improper release of attorney/client privileged information to the Prosecutors in the [A] case.

38. After consulting with his attorneys, Respondent agreed, upon advice of counsel, to record telephone conversations between himself and [A] and agreed to provide the Federal Government "Taint Team" with any tape recordings of his conversations.

39. Between on or about November 4, 2003, and November 6, 2003, FBI agent [N] provided Respondent with recording equipment and instructions on how to use the equipment.

40. The Prosecution team wanted Respondent to claim that no privilege existed, ostensibly so that anything said in the conversations could be utilized in the prosecution case.

41. Respondent's counsel, [L], Esquire, advised him that he should act conservatively and maintain the privilege when in doubt.

42. Respondent's counsel, [L], Esquire, believed, and communicated to the Respondent, that if Respondent gave the privilege, [A] would likely clear him and the prosecutors could not use the information against [A], thereby creating a "win-win" situation for the government.

43. On November 6, 2003, Respondent telephoned [A] and recorded his telephone conversation with [A].

44. On November 11, 2003, Respondent received a return telephone call from [A] to Respondent's November 10, 2003 telephone message. Respondent recorded his November 10, 2003 telephone message to [A] and also recorded his November 11, 2003 telephone conversations with him.

45. During Respondent's November 6, 2003 telephone conversation, [A] asked: "Are we attorney/client privileged? I mean is there a way that, there's a phone or state that on the phone" and Respondent responded by saying "Yeah."

46. Exhibit P-39, most especially paragraph 14, states that the potential exists for Respondent to be charged in the criminal indictment. Thus, Respondent's articulated fears in needing to defend himself in the investigation were warranted.

47. Respondent had a reasonable belief that [A's] privileged persisted, despite the recordings, based on the existence of the "Taint Team", and the advice of

attorneys [L] and [M], and that the information that was privileged would be protected and kept from the Prosecution Team, which it ultimately was.

48. The statement by Respondent does not guarantee secrecy to [A], only a willingness by Respondent to consider the conversation as subject to attorney/client privilege should the government attempt to utilize the tapes in its prosecution, which it did not.

49. At all relevant times subsequent to the phone calls, Respondent did, in fact, act in a manner consistent with the statement that the conversations were subject to attorney/client privilege and there is no evidence that he ever took a position inconsistent with this statement.

50. By letter dated November 10, 2003, Respondent's attorneys, [M] and [L], on behalf of Respondent, agreed to enter into an "off the record" proffer in which Respondent agreed to talk to the Government about [B] and Respondent's involvement with [B], under certain protections that included the agreement of the Government not to use Respondent's statements or testimony in any criminal proceedings against Respondent.

51. The "Proffer Letter" is another indication that Respondent’s belief that he was the subject of a criminal investigation due to the acts of his former client was reasonable.

52. On November 19, 2003, Respondent and his attorneys met with Assistant U.S. Attorneys pursuant to their "off the record" proffer agreement with the Government.

53. Assistant U.S. Attorneys [ ] and [ ], who were not on the prosecution team but were the taint team, listened to the two tape recorded conversations.

54. [A] testified before the Board that he was calling Respondent in November 2003 to "discuss the [O] case"

55. In neither tape recorded conversation with Respondent did [A] ever mention the "[O] case".

56. The tapes were never heard by the Prosecution team.

57. The tapes were never released to the Prosecution team.

58. [L], Respondent's counsel in the investigation, testified that he did not know what was on the "tapes" but he concluded that the information cleared Respondent from suspicion once the "Taint Team" had listened to them. It was after the Taint Team listened to the tapes that the decision to not prosecute Respondent was made.

59. [A] was indicted on fifty-nine (59) counts of fraud and making false statements to HUD.

60. None of the indictments relied on information provided by Respondent.

61. There is no evidence in the record of any damage to [A] or his defense caused by the taping of the conversations.

62. On March 29, 2005, pursuant to a plea agreement to resolve the indictments, [A] pleaded guilty and was sentenced to imprisonment of 18 months followed by supervised release for a term of 3 years.

63. As part of the plea agreement, [A] paid fines, assessments, and penalties of over one Million, one hundred fifty thousand, dollars ($1,150,000.00).

64. This Committee finds that Respondent was justified in his actions pursuant to Rule 1.6(c) as he reasonably believed the actions of a former client had put him in substantial criminal risk and reasonably believed, with the advice of counsel, that the steps he took were necessary to defend himself in the ongoing investigation, while providing protection for his former client.

65. This Committee finds that in light of the forgeries of Respondent's name and letterhead which, while they may or may not have been done by [A] directly were clearly done by someone acting in his interest and to his financial gain. Respondent was ethically justified in taking the steps he felt necessary to protect himself from his former client's illegal acts.

PROPOSED CONCLUSIONS OF LAW

DISCUSSION

A. The Evidence Presented Establishes that Respondent did Violate RPC 1.6(a) and former RPC 1.6(d) and RPC 8.4(c); however, Respondent's actions were justified under the circumstances and Respondent's client was not harmed by the violations.

Former RPC 1.6(a)

Former Rule of Professional Conduct 1.6(a) states that "[a] lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c)." Under RPC 1.6(c)(2), (3), a lawyer is permitted to reveal information to the extent he reasonably believes is necessary "to prevent or to rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used"; or "to

establish a defense to a criminal charge or civil claim or disciplinary proceeding against the lawyer based upon conduct in which the client was involved." Here, Respondent's conduct fits within the exception to for RPC 1.6(a) as an exception under RPC 1.6(c)(3). The comment to RPC 1.6 provides:

> Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (c)(3) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion…. [D]isclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner which limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable."

Based upon the facts before this Committee, it is clear that Respondent held a reasonable belief that he might need to establish a defense to [A's] illegal conduct. Respondent was led to believe that the forged letters in the [B] Box were insufficient to provide such a defense. Naturally, in agreeing to tape record privileged conversations with [A], Respondent had some self interest in this defense; however, he acted only to the extent reasonably necessary to establish his defense while still taking actions to protect [A] from being harmed by the tape recordings. The tapes were screened by the U.S. Attorney's "taint team" and never provided to the prosecution team; thus, the tapes were never used in a way that harmed [A] or led to his incarceration. In fact, by telling [A] that the conversations were privileged he effectively denied the US Attorney the use of any

information provided by [A] in response. Thus, the justification for Respondent's violation of RPC 1.6(a) is built into the law at RPC 1.6(c)(3).

Former RPC 1.6(d)

Former Rule of Professional Conduct 1.6(d) reads, "The duty not to reveal information relating to representation of a client continues after the client-lawyer relationship has terminated." It is clear from these facts that Respondent and [A], at least at one time, had a client-lawyer relationship; thus, information relayed to Respondent by [A] was protected by the attorney-client privilege. However, for the same reasons stated above regarding the exceptions to former RPC 1.6(a), Respondent was justified in violating this rule under the circumstances.

RPC 8.4(c)

Rule of Professional Conduct 8.4(c) reads, "It is professional misconduct to engage in conduct involving dishonestly, fraud, deceit or misrepresentation."

RPC 8.4(c) is violated when a misrepresentation is knowingly made or with reckless ignorance of the truth or falsity of the representation. *See, e.g., Office of Disciplinary Counsel v. Anonymous Atty. A*, 714 A. 2d 402, 403 (Pa. 1998); *Office of Disciplinary Counsel v. Price*, 732 A.2d 599, 604 (Pa. 1999). Recklessness may be described as 'the deliberate closing of one's eyes to facts that one had a duty to see or stating as fact, things of which one is ignorant." *Price*, 732 A. 2d at 604. The facts at present, namely a review of the taped conversations between [A] and Respondent, make it clear that Respondent either overtly misrepresented that the conversations were protected by the attorney-client privilege or simply allowed [A] to believe that they were

by not correcting [A's] assumptions of protections. On its face, this is a violation of RPC 8.4(c); however, under the circumstances, Respondent's actions were justified.

First, Respondent believed, upon the advisement of his attorneys and the FBI agents, that the fraudulent loan letters contained in the [B] Box would not be enough to clear his name; thus it was necessary to record his conversations with [A], so that [A] could specifically absolve Respondent of any involvement in the fraud scheme. Prior to being approached by the FBI but after Respondent was aware of the criminal investigation of [A], Respondent reviewed the [B] Box and suspected a fraud scheme was happening; however, he did not take it upon himself to record [A] in hopes of freeing himself of involvement. It was only until the FBI agents approached him that did this start to take form. Thus, taping the conversations was seemingly Respondent's best option, as he was able to take some steps to protect [A] from being harmed by the tape recordings.

Specifically, Respondent has stated many times throughout these proceedings that he believed that the recordings of his conversations with [A] on November 6th and 10th, 2003, should be treated as privileged no matter what [A's] actual then-existing relationship with him might have been and that he and his counsel had taken steps to establish that protection for [A] and to assert it. ("As a portion of the recorded conversation may be privileged, the case agent, SA [J] was not allowed to accept nor review the recording.").

Furthermore, a careful review of the evidence here indicates conclusively two facts. First, that the information contained in the two taped conversations of November 6th and 10th, 2003, was never provided to the prosecuting attorneys on the [A] case.

Second, [A] suffered no adverse effect from the taping or the taint team review's of the two taped conversations. Specifically, while [A] testified that he did not want the conversation revealed to the government, he was not able to articulate any damage which, in fact, he had suffered. Even prosecution witness [G], [A's] counsel, who also has brought a civil claim against Respondent upon the same facts as are at issue here upon close questioning by this Committee, testified to generalities about "strategy" and "push-back" but was not able to articulate with precision how his client's case had been damaged in fact by disclosure of any specific facts contained in the tape recordings. Instead, [G] said that the primary damage done by Respondent, in his mind, was in the interviews by the FBI of Respondent; however, importantly, [G] was unable, when asked by this Committee, to identify which statements contained in the transcript had damaged his client and what that damage was.

Under these circumstances, Respondent's actions were calculated not to hurt [A], nor were they to help the federal government but instead finely sharpened to provide him an opportunity to exonerate himself from the danger of prosecution; a situation into which he had been improperly placed by the fraudulent conduct of [A].

B. The Hearing Committee recommends that the Respondent receive no punishment; not even minor discipline or a private reprimand.

The primary purpose and function of the Disciplinary system is not punitive. Rather, the focus of the sanction rendered in a case should be designed to protect the public from unfit attorneys and to preserve public confidence in the legal profession and judicial system. Office of Disciplinary Counsel v. Stern, 515 Pa. 68, 80; 526 A.2d. 1180, 1185 (1987); Office of Disciplinary Counsel v. Lewis, 493 Pa. 519, 527; 426 A.2d.

1138, 1142 (1981). Here, although Respondent did in fact violate the Rules of Professional Conduct by tape recording two (2) conversations with [A] and turning them over to the U.S. Attorney's Office "Taint Team", under the circumstances of this case, these violations were justified. Consequently, it seems evident that Respondent is not an attorney from whom the public needs to be protected. Thus, the Hearing Committee recommends that the Respondent receive no punishment.

CONCLUSION

For the above reasons, the Hearing Committee recommends that the Respondent receive no punishment for his violations of former RPC 1.6(a), former RPC 1.6 (d) and RPC 8.4(c).

Respectfully submitted,
HEARING COMMITTEE

By: ______________________________

[ ], Chair

____

[ ], Member

____

[ ], Member

Date: October 25, 2007