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IN THE SUPREME COURT OF THE STATE OF DELAWARE

In the Matter of a Member of the Bar of the Supreme Court of Delaware	§	
	§	No. 575, 2007
EDWARD C. PANKOWSKI, JR., Respondent,	§	

Submitted: November 9, 2007
Decided: December 5, 2007

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

AMENDED ORDER

This 5th day of December 2007, it appears to the Court that the Board on Professional Responsibility has filed a Report on this matter pursuant to Rule 9(d) of the Rules of the Delaware Lawyers' Rules of Disciplinary Procedure. Neither the Respondent, having waived his right to file objections by not responding, nor the Office of Disciplinary Counsel has filed objections to the Board's Report. The Court has reviewed the matter pursuant to Rule 9(e) of the Rules of the Delaware Lawyers' Rules of Disciplinary Procedure and concludes the Board's Report should be approved.

NOW, THEREFORE, IT IS ORDERED that the Report filed by the Board on Professional Responsibility on October 29, 2007 (copy attached) is hereby **APPROVED**.

The Court hereby imposes a public reprimand and the following sanctions. The Respondent shall be suspended from the practice of law for a period of three months, beginning on January 1, 2008; permanently barred from acting as a notarial officer pursuant to 29 *Del. C.* § 4323(a)(3); and pay the costs of the disciplinary proceedings.

Additionally, for a period of at least five years from the date of this Order, the Respondent's practice shall be limited to (a) residential real estate closings for a flat fee and (b) criminal defense in connection with a court supervised conflicts program. The Respondent may thereafter file a petition with the Delaware Supreme Court requesting that he be permitted to expand his practice areas beyond residential real estate closings for a flat fee and criminal defense in connection with court supervised conflicts program. Prior to filing such a petition with the Administrative Assistant to the Board on Professional Responsibility, with service upon the ODC, the Respondent shall send a written notification to the ODC of his intent to file such petition, and shall thereupon comply with any procedures deemed appropriate by the ODC for the purpose of gathering information to respond to the petition. The Respondent shall have the burden of demonstrating, by clear and convincing evidence, his fitness to expand his practice areas beyond residential real estate closings for a flat fee and a criminal conflicts program.

Further, the Respondent shall be required to instruct any non-lawyer notarial officer who performs notarial services in connection with his practice regarding the notarial duties and the notarial officer's obligation to have signatures placed on documents in their presence only and that Respondent be required to provide a copy of Title 29 *Delaware Code* Chapter 43 "Notaries Public" to any such non-lawyer notarial officer.

The Office of Disciplinary Counsel is directed to file within ten days of the date of this Order the costs of the disciplinary proceedings. Thereafter, the Respondent is directed to have all costs paid within thirty days.

The matter is hereby **CLOSED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

BOARD ON PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF DELAWARE

IN THE MATTER OF A MEMBER OF THE BAR OF THE SUPREME COURT OF DELAWARE, EDWARD C. PANKOWSKI, JR., RESPONDENT	)))))	**CONFIDENTIAL** **BOARD CASE NOS. 9 and 17, 2007**

BOARD REPORT AND RECOMMENDATION OF SANCTION

I. Procedural Background

Pending before a panel of the Board on Professional Responsibility (the "Board") is a Petition for Discipline filed on July 17, 2007 in Case Nos. 9 and 17, 2007 (the "Petition") involving Edward C. Pankowski, Jr., Esquire ("Respondent"), a member of the bar of the Supreme Court of the State of Delaware.

Respondent, through his counsel, Charles Slanina, Esquire, filed a Response to the Petition on August 7, 2007 (the "Response") in which Respondent denied the allegations.

The Board convened a hearing (the "Hearing") by the panel on September 12, 2007.[1] Action by the panel constitutes action by the Board. (Rule 2(c), Disc. Proc. Rules)

At the hearing, the Office of the Disciplinary Counsel (the "ODC") and Respondent submitted a Stipulation of Admitted Facts and Violations and Joint Recommendation of Sanction (the "Stipulation") (hereinafter cited as "Stip. At ¶ ___"). The Stipulation was signed by Andrea L. Rocanelli, Esquire, Chief Counsel of the ODC and by Mr. Slanina and included a Certification by Respondent unconditionally admitting the facts and

[1] The transcript of the September 12, 2007 hearing is cited herein as "Tr. At __."

violations set forth in the Stipulation and consenting to the terms of the sanctions set forth in the Stipulation. Respondent also certified that he currently limits his practice of law to (a) residential real estate closings for a flat fee and (b) criminal defense in connection with a court-supervised conflicts program. Respondent also certified that he has ceased acting as a notarial officer.

At the hearing the panel received into evidence as joint exhibits the Stipulation and a memorandum from the Board dated August 28, 1992 addressed to all members of the Delaware Bar to which was attached a memorandum prepared by David C. Johnson-Glebe, then Deputy Disciplinary Counsel of the Supreme Court of Delaware entitled "Professional Integrity and the Delaware Lawyer" addressing false notarizations (the "1992 Memorandum"). The panel also received into evidence without objection a letter dated September 6, 2007 to Mr. Slanina from Jerome Capone, Esquire. The panel also heard testimony from Respondent and testimony on Respondent's behalf from Gregory M. Johnson, Esquire and Michael C. Heyden, Esquire, members of the Delaware Bar. The Board also received a proffer of testimony on Respondent's behalf from Lee C. Goldstein, Esquire, a member of the Delaware Bar.

II. Factual Findings

1. Mr. Pankowski is a member of the Bar of the Supreme Court of Delaware, having been admitted to the Bar in 1972. At all times relevant to this Petition, Mr. Pankowski was engaged in the private practice of law in the State of Delaware as a solo practitioner with an office in Wilmington, Delaware. (Stip. At ¶¶ 1 and 2)

Board Case No. 17, 2007 (Susanna Khoe)

2. On January 15, 2007, Ms. Susanna Khoe ("Khoe") retained Respondent to represent her in a divorce action in the Family Court of the State of Delaware, in and for New Castle County ("Family Court") (Stip. At ¶ 3).

3. Beginning March 8, 2007, Khoe left telephone messages and sent e-mails inquiring about the status of her divorce case, but Respondent had not responded to these inquiries. On March 22, 2007, Khoe spoke with Respondent on the telephone concerning the Rule 16(c) financial report that she was trying to complete for the Family Court case (Stip. At ¶ 4).

4. On March 23, 2007, Respondent signed Khoe's name to Petitioner's Answer to Respondent's Counterclaim. Respondent did not include any notation with the signature reflecting that he was signing on behalf of Khoe. Respondent also notarized the document he had executed with Khoe's name and filed it that day with the Family Court. The notarization falsely represented to the Family Court that Khoe had "personally appeared" before Respondent and that the verification was "SWORN AND SUBSCRIBED before [him] on the aforesaid date" of March 23, 2007 (Stip. At ¶ 5).

5. On March 27, 2007, having received from Respondent a copy of the Petitioner's Answer reflecting her unauthorized signature, Khoe asked Respondent to "cease action" on her case, thereby intending to terminate Respondent's termination. Respondent did not file a motion to withdraw with the Family Court. Nor did Respondent contact Khoe to discuss the filing of such a motion or alternatives, such as a substitution of counsel (Stip. At ¶ 6).

6. On April 3, 2007, Khoe filed a complaint with the ODC concerning the unauthorized signature (Stip. At ¶ 7).

7. On April 9, 2007, Khoe reviewed her case file at the Family Court, and discovered that the final divorce decree had been signed on April 3 and sent to Respondent. Khoe had not received a copy of the decree from Respondent, nor had he informed her that it had been entered. The case file also included an April 3 order concerning ancillary matters and a March 20 notice of trial-readiness, neither of which Respondent had provided to Khoe. Respondent forwarded the divorce decree and scheduling order to Khoe on April 15, 2007. Khoe picked up her entire file from Respondent on April 18, 2007. Respondent, who was still counsel of record in Family Court because he had not filed a motion to withdraw, continued to forward information and documents to Khoe after she picked up her file. Christine K. Demsey, Esquire entered her appearance in Family Court as counsel of record for Khoe on April 24, 2007 (Stip. At ¶ 8).

Board Case No. 9, 2007 (Thomas E. Zeglin)

8. In April 2005, Mr. Thomas E. Zeglin ("Zeglin") retained Respondent to pursue a motion for reduction of sentence. At the time, Zeglin was incarcerated in Delaware following his criminal conviction and sentencing in March 2005 for fourth-offense driving under the influence, and was serving a one-year mandatory prison sentence (Stip. At ¶ 17).

9. Zeglin's family provided Respondent with a check in the amount of $1,500.00 to investigate, prepare and file the motion for reduction of sentence (Stip. At ¶ 18).

10. Despite specific written document requests made to him by the ODC, Respondent produced no evidence that (1) he had provided a written statement to Zeglin or his family member(s) concerning the fee arrangement, including the basis on which the $1,500.00 paid in advance would be considered earned and informing Zeglin that the fee was refundable if

not earned, or that (2) the $1,500.00 advance fee received for Zeglin's case had been deposited and safeguarded in a client trust account (Stip. At ¶ 19).

11. On June 2, 2005, Respondent filed a motion for reduction of sentence in the Superior Court of the State of Delaware, in and for New Castle County ("Superior Court"). As grounds for the motion, Respondent stated as follows:

> "Mr. Zeglin is in poor health and is 58 years of age. He suffers from diabetes and lower spine and hip problems and he was previously treated by physicians before his incarceration." (Stip. At ¶ 20)

12. Respondent did not attach to the motion for reduction of sentence any copies of medical records, affidavits or other corroborating information upon which the Superior Court might rely to reduce Zeglin's sentence. He did not meet with Zeglin before filing the motion. He did not investigate Zeglin's medical condition, the care he needed, and whether he was receiving that care in prison. The motion did not provide any showing regarding the risks faced by Zeglin if he did not receive adequate care (Stip. At ¶ 21).

13. On August 29, 2005, the Superior Court entered an order denying the motion for reduction of sentence (Stip. At ¶ 22).

III. Standard of Proof

Allegations of professional misconduct set forth in the ODC's Petition must be established by clear and convincing evidence (Rule 15, Disc. Proc. Rules).

IV. Violations of the Rules

As admitted in the Stipulation, the Board finds that Respondent has violated the following Rules:

1. **Rule 1.2(a)** provides that a lawyer "shall abide by a client's decisions concerning the objectives of the representation, and, as required by Rule 1.4, shall consult with the client as

to the means by which they are to be pursued." By failing to consult with Khoe about the contents of the Petitioner's Answer to the Respondent's Counterclaim, signing her name on the document, and filing it with the Family Court without her approval, the Respondent violated **Rule 1.2(a).**

2. **Rule 1.4(a)** requires, in pertinent part, that a "lawyer shall: (1) promptly inform the client of any decision or circumstance as to which the client's informed consent ... is required by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; [and] (4) promptly comply with reasonable requests for information...". By (1) failing to consult with Khoe about the contents of the Petitioner's Answer to the Respondent's Counterclaim; (2) failing to respond to Khoe's attempts to contact him about the status of the Family Court case over a period of two weeks in March 2007; and (3) failing promptly to inform Khoe that a final divorce decree and other orders had been entered by the Family Court, the Respondent violated **Rule 1.4(a)**.

3. **Rule 3.3(a)(1)** provides that "[a] lawyer shall not knowingly ... make a false statement of material fact or law to a tribunal." By filing with the Family Court the Petitioner's Answer to the Respondent's Counterclaim, on which the Respondent had signed Khoe's name and had falsely notarized the signature, the Respondent violated **Rule 3.3(a)(1)**.

4. **Rule 8.4(c)** provides that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." By filing with the Family Court the Petitioner's Answer to the Respondent's Counterclaim, on which the Respondent had signed Petitioner's name and had falsely notarized the signature, the Respondent violated **Rule 8.4(c)**.

5. **Rule 1.1** requires that a "lawyer shall provide competent representation to a client." By failing to conduct an adequate investigation and prepare and file a motion for reduction of sentence containing medical records, affidavits or other corroborating information upon which the Superior Court might rely to reduce Zeglin's sentence, the Respondent violated **Rule 1.1**.

6. **Rule 1.3** requires that a "lawyer shall act with reasonable diligence and promptness in representing a client." By failing to conduct an adequate investigation and prepare and file a motion for reduction of sentence containing medical records, affidavits or other corroborating information upon which the Superior Court might rely to reduce Zeglin's sentence, the Respondent violated **Rule 1.3**.

7. **Rule 1.5(a)** requires that "a lawyer shall not make an agreement for, charge, or collect an unreasonable fee." By charging a fee of $1,500.00 for the minimal legal services he performed in connection with the motion for reduction of sentence, the Respondent violated **Rule 1.5(a)**.

8. **Rule 1.5(f)** states that a lawyer "may require the client to pay some or all of the fee in advance of the lawyer undertaking the representation, provided that: (1) [t]he lawyer shall provide the client with a written statement that the fee is refundable if it is not earned, (2) [t]he written statement shall state the basis under which the fees shall be considered to have been earned, whether in whole or in part, and (3) [a]ll unearned fees shall be retained in the lawyer's trust account, with statement of the fees earned provided to the client at the time such funds are withdrawn from the trust account." By failing to provide Zeglin with a written statement that the $1,500.00 advance fee was refundable if not earned and stating the basis under which the fees would be considered to have been earned, whether in whole or in part, and (2) failing to deposit

and retain the $1,500.00 in his client trust account and account for it as fees were earned, the Respondent violated **Rule 1.5(f)**.

9. **Rule 1.15(a)** requires, in part, that 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," and that property of clients or third persons must be appropriately safeguarded. By failing to deposit and safeguard the advance fee of $1,500.00 paid in Zeglin's case in a client trust account until earned, the Respondent violated **Rule 1.15(a)**.

V. Recommended Sanctions

The ODC and Respondent agreed that the following are the appropriate sanctions and jointly proposed that the Board, through the panel, recommend said sanctions to the Delaware Supreme Court:

The Respondent shall:

(1) be suspended from the practice of law for a period of three (3) months, beginning on the later of January 1, 2008 or the date of the Delaware Supreme Court's Order in these matters;

(2) be permanently barred from acting as a notarial officer pursuant to 29 Del. C. § 4323(a)(3); and

(3) pay the costs of these disciplinary proceedings.

In addition:

(4) for a period of at least five (5) years from the date of the Supreme Court's Order, the Respondent's practice shall be limited to (a) residential real estate closings for a flat fee and (b) criminal defense in connection with a court supervised conflicts program. The Respondent may thereafter file a petition with the Delaware Supreme Court requesting that he be permitted to expand his practice areas beyond residential real estate closings for a flat fee and criminal defense in connection with court supervised conflicts program. Prior to filing such a petition with the Administrative Assistant to the Board on Professional Responsibility, with service upon the ODC, the Respondent shall send a written notification to the ODC of his intent to file such petition, and shall thereupon

> comply with any procedures deemed appropriate by the ODC for the purpose of gathering information to respond to the petition. The Respondent shall have the burden of demonstrating, by clear and convincing evidence, his fitness to expand his practice areas beyond residential real estate closings for a flat fee and a criminal conflicts program.

For the reasons which follow, the panel accepts the recommendation of ODC and Respondent, but in addition, recommends that Respondent be required to instruct any non-lawyer notarial officer who performs notarial services in connection with his practice regarding the notarial duties and the notarial officer's obligation to have signatures placed on documents in their presence only and that Respondent be required to provide a copy of Title 29 Delaware Code Chapter 43 "Notaries Public" to any such non-lawyer notarial officer.

VI. Rationale for Recommended Sanctions

In making its recommendation, the Panel has utilized the four-part framework set forth in the ABA Standards for Imposing Lawyer Sanctions (1991 & Supp. 1992) ("ABA Standards") as required in *In re Steiner*, 817 A.2d 793, 796 (Del. 2003). A preliminary determination of the appropriate sanction is made by assessing the first three prongs of the test: (1) the ethical duty violated; (2) the lawyer's state of mind; and (3) the actual or potential injury caused by the lawyer's misconduct. *Id.* (4) Once the preliminary determination is made, the fourth prong addresses whether an increase or decrease in the preliminarily determined sanction is justified because of the presence of mitigating or aggravating factors. *Id.*

The panel has also been mindful that the objectives of the lawyer disciplinary system in Delaware are to protect the public, to protect the administration of justice, to preserve confidence in the legal profession, and to deter other lawyers from similar misconduct.[2] The

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[2] *In re: Francine R. Solomon*, No. 361 (Del. 2005), quoting *In re Bailey*, 821 A.2d 851 at 866 (Del. 2003).

focus of the lawyer disciplinary system in Delaware is not on the lawyer but, rather, on the danger to the public that is ascertainable from the lawyer's record of professional misconduct.[3]

We turn to a discussion of the elements of this framework.

1. The Ethical Duties Violated. As previously recited, ODC and Respondent stipulated and the panel determined that the Respondent committed misconduct in violation of Professional Rules of Conduct 1.1 (lack of competence), 1.2(a), 1.3 (lack of diligence), 1.4(a) (failure of communications), 1.5(a) (agreement for unreasonable fee), 1.5(f), 1.15(a) (failure to maintain client funds in separate account), 3.3(a)(1) (lack of candor to the tribunal) and 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Under the ABA Standards, this misconduct constituted violations of duties owed by Respondent to clients (Rules 1.1, 1.2(a), 1.3, 1.4, 1.5(e), 1.15 and 8.4(c)), violation of duties owed by Respondent to the public (Rule 8.4(c)), violation of duties owed by Respondent to the legal system (Rules 1.2(a) and 3.3) and violation of other duties owed by Respondent as a professional (Rule 1.5(a). See ABA Standards Appendix 1.

2. State of Mind. The panel determines that Respondent's conduct with respect to the Susanna Khoe matter (Board Case No. 17) was knowing insofar as he signed Ms. Khoe's name to a pleading and then notarized it. (Tr. At 113). See *In re Bailey*, supra at 863-64. However, the panel does not believe Respondent acted with intent to deceive the Family Court or to harm his client with respect to the false notarization. Rather, Respondent intended to protect, not injure, Ms. Khoe by his actions. Respondent signed and filed a pleading without Ms. Khoe's consent to protect her position (Tr. At 35, 51, 52) and falsely notarized that pleading because Ms. Khoe was not present to sign the pleading which Respondent mistakenly believed was required to be acknowledged. (Tr. At 36, 51, 52). Respondent acknowledged that his behavior in this

[3] *In re Hull*, 767 A.2d 197, 201 (Del. 2001).

regard was a "very bad mistake in judgment." (Tr. At 37). Respondent's failures to communicate with Ms. Khoe appeared to be the product of negligence and misunderstanding of his responsibilities, rather than any intention to harm Ms. Khoe or knowledge that he was doing so.

The panel concludes that Respondent's conduct with respect to the Zeglin matter (Board Case No. 9) exhibited negligence (and not intentional or knowing violations) by Respondent with respect to the handling of the $1,500.00 paid on behalf of Mr. Zeglin by his sister-in-law, Faith Riale, and with respect to the handling of Mr. Zeglin's representation. Respondent acknowledged that he should have kept such funds in a trust account (Tr. At 46) but was confused by the relationship of Rule 1.15 to a related provision (Rule 1.5(f), Comment 10) permitting fees up to $2,500.00 to be deemed earned under certain circumstances (Tr. At 53, 54, 64). Respondent did not provide any meaningful explanation for failing to meet with Mr. Zeglin and filing a motion on his behalf without supporting documentation.

Respondent specifically expressed remorse for his handling of the Zeglin matter (Tr. At 27) and acknowledged that he should have handled the funds paid on Mr. Zeglin's behalf in a different manner (Tr. At 46). Respondent did not explicitly express remorse for his handling of the Khoe matter, but he did acknowledge the proper course of conduct he should have followed with respect to filing of pleadings on Ms. Khoe's behalf (Tr. At 32). However, despite Respondent's expression of remorse for his handling of the Zeglin matter and his acknowledgement of improper conduct with respect to the Khoe matter, the panel was disappointed by what appeared to be a lack of a completely remorseful state of mind, as at times, Respondent seemed more focused on the financial impact of any sanctions as opposed to the harm caused by his actions. In particular, the panel found it irrelevant and disappointingly not

reflective of a remorseful state of mind that in his direct testimony Respondent indicated that he can "survive a suspension", but needs to continue to practice law because he has a new wife and two stepdaughters and faces "eight years to go with tuitions from private schools". (Tr. At 39).

The panel was again disappointed to discover during the hearing that Respondent had delayed disclosure of the disciplinary charges in this proceeding to Judge Jurden in connection with his reappointment to the Superior Court Contract Attorney Program for Indigent Defendants (the "Superior Court Program"). Respondent was notified of the charges in the Zeglin matter on December 27, 2006 (Tr. At 64-65) and of the charges in the Khoe matter on April 5, 2007 (Tr. At 65). Respondent was further aware that formal charges would be brought against him by ODC by early June of 2007 (Tr. At 60) and was informed on July 11, 2007 that ODC would be recommending suspension as a result of these disciplinary complaints. (Tr. At 66) Respondent's contract with the Superior Court Program was up for renewal as of July 1, 2007 (Tr. At 60) and although there was no evidence that Respondent was required by any specific requirement of the renewal procedure to disclose the existence of these proceedings, the panel felt that Respondent should have made such disclosure to Judge Jurden in connection with the renewal. In fact, Respondent finally made such disclosure to Judge Jurden at the end of August (Tr. At 59), only weeks before the hearing.

3. Injury Caused by Respondent's Misconduct. There is no clear and convincing evidence that Respondent's clients were seriously adversely impacted by Respondent's conduct or that Respondent's conduct was actually prejudicial to the administration of justice. The panel could not conclude from the evidence presented that the improper pleadings in the Khoe matter

impacted the outcome or conduct of proceedings in that case.[4] There is no evidence that if Respondent had followed more appropriate procedures to communicate with Mr. Zeglin he would have been able to prepare a more competent motion to reduce Mr. Zeglin's sentence. The fee paid on Mr. Zeglin's behalf in 2005 was returned (Tr. At 40). It was, however, troublesome to the panel that the repayment did not occur until August of 2007, 2-1/2 years after it was paid, two years after Respondent ceased representation of Mr. Zeglin (Tr. At 44), several months following initiation of these proceedings and Respondent's retention of Mr. Slanina to represent him and virtually on the eve of the hearing.

In the panel's view, analysis of the ethical duties violated by Respondent, Respondent's state of mind and the injury caused by Respondent's misconduct suggest a sanction of suspension or public reprimand. The ethical duties violated direct the panel to the following factors contained in the ABA Standards: 4.1 (for violation of Rule 1.15), 4.4 (for violations of Rules 1.2(a), 1.3 and 1.4), 4.6 (for violation of Rules 1.5(a) and 8.4(c)), 5.0 (for violation of Rule 5.1), 6.0 (for violations of Rules 1.2(a) and 3.3) and 7.0 (for violation of Rule 1.15(a). These provisions generally reserve the sanction of disbarment for knowing or intentional misconduct or criminal behavior which has caused serious or potentially serious injury to the client or a significant or potentially significant adverse effect on the legal proceeding. Where, as in this matter, the conduct involves knowing or negligent acts with less serious or no injury, the appropriate sanction is generally suspension or public reprimand. Of course, these general principles must be applied against the facts of each particular case, including the presence or absence of any mitigating or aggravating factors.

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[4] Counsel for ODC and Respondent acknowledged that Ms. Khoe was harmed with respect to her impression and respect for the Delaware legal community when she discovered Respondent signed her name to a pleading, notarized the signature and filed it with the Family Court (Tr. At 52). The panel did not consider this technical harm as requiring sanctions as severe as would have been the case if actual harm had resulted from Respondent's behavior.

4. Aggravating and Mitigating Factors.

A. Aggravating Factors.

ABA Standard 9.22 sets forth the following non-exhaustive list of aggravating factors:

(a) prior disciplinary offenses;
(b) dishonest or selfish motive;
(c) a pattern of misconduct;
(d) multiple offenses;
(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
(g) refusal to acknowledge wrongful nature of conduct;
(h) vulnerability of victim;
(i) substantial experience in the practice of law;
(j) indifference to making restitution; and
(k) illegal conduct, including that involving the use of controlled substances.

(ABA Standard § 9.22)

The ODC and Respondent agreed in the Stipulation that the following aggravating factors existing in this matter:

(i) 9.22(a). The Respondent has a prior disciplinary record. In 2002, the Respondent was privately admonished for violating Rule 8.4(c) by falsely notarizing two signatures on an affidavit of defense and filing that affidavit with the Court of Chancery. The panel notes that the 2002 matter involved Respondent's acknowledgment of two signatures on an affidavit of defense even though the affiants did not sign the document in his presence. Respondent's violation of the acknowledgment procedures in this matter are similar, but not the same since in this matter Respondent signed his client's name to the pleading and then notarized it. However, the panel considers the related disciplinary action from 2002 a disturbing and

aggravating factor, particularly because it involved a violation of both a duty owed to Respondent's client and the legal system.

(ii) 9.22(h). Khoe and Zeglin were vulnerable victims of the Respondent's misconduct. Khoe's native language is not English and Zeglin was incarcerated at the time of his representation by Respondent (Tr. At 84). However, it did not appear to the panel that Respondent intentionally exploited Khoe's and Zeglin's vulnerability.

(iii) 9.22(i). The Respondent has substantial experience in the practice of law, having been admitted to the Delaware Bar in 1972, although he did not begin his private practice (after many years with the Office of the Attorney General and then the Office of the Public Defender) until 2003. Both the Khoe and Zeglin matters arose from Respondent's private practice so the panel has afforded less weight to Standard 9.22(i) than the typical case of a practitioner admitted for 35 years.

The panel concluded that these aggravating factors do not justify imposition of the sanction of disbarment but certainly justify a sanction of suspension, rather than reprimand.

B. Mitigating Factors.

ABA Standard 9.32 sets forth the following non-exhaustive list of factors to be considered in mitigation:

(a) absence of a prior disciplinary record;
(b) absence of a dishonest or selfish motive;
(c) personal or emotional problems;
(d) timely good faith effort to make restitution or to rectify consequences of misconduct;
(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
(f) inexperience in the practice of law;
(g) character or reputation;
(h) physical disability;

(i) mental disability or chemical dependency including alcoholism or drug abuse when:
  (1) there is medical evidence that the Respondent is affected by a chemical dependency or mental disability;
  (2) the chemical dependency or mental disability caused the misconduct;
  (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
  (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;
(j) delay in disciplinary proceedings;
(k) imposition of other penalties or sanctions;
(l) remorse;
(m) remoteness of prior offenses.

The ODC and Respondent agreed in the Stipulation that the following mitigating factors exist in this matter:

9.32(g). The Respondent has a record of substantial public and community service throughout the course of his legal career, including more than 25 years of service with the Office of the Public Defender, and several years of service as conflicts counsel in the Superior Court Program. The panel concurs with ODC and Respondent and further recognizes that Respondent's many years of service at the Office of the Public Defender and his current service in the Superior Court Program benefit an underrepresented constituency, namely indigent criminal defendants. *In re Landis*, 850 A.2d 291, 293 (Del. 2004). The panel also received a letter dated September 6, 2007 to Mr. Slanina attesting to Respondent's cooperation in the Superior Court Program and other public service and similar live testimony from Gregory M. Johnson, Esquire (Tr. At 69-71) and Michael C. Heyden, Esquire (Tr. At 71-73). In addition, the panel does not believe that Respondent's conduct, even with respect to the fee in the Zeglin matter, was the result of dishonest or selfish motives, but was rather the result of bad judgment or careless indifference so that Respondent merits some mitigation under Standard 9.32(b). The

panel also recognizes that Respondent, albeit particularly after he obtained counsel, exhibited cooperation with ODC as contemplated under Standard 9.32(e) (Tr. At 118-121).

Finally, the ODC and counsel for Respondent as well as the panel are mindful that the Delaware Supreme Court has expressed the view (consistent with ABA Standard 2.3) that it is generally not inclined to accept a period of suspension of less than six (6) months. *In re Figliola*, 652 A.2d 1071, 1077(1995). However, as indicated above, the panel has concluded to accept the joint recommendation of ODC and Respondent's counsel that Respondent be suspended for only three months. The panel believes that there are several reasons that support that conclusion. First, in expressing a preference for suspensions of no less than six (6) months in the *Figliola* case, the Court observed that a short-term suspension would appear to be akin to an unfavored remedy of a fine and would also be impracticable. Here, the Respondent has agreed to accept the shorter suspension and does not view it as punitive. Moreover, the Respondent has already implemented the restrictions on his civil practice to residential real estate closings for a set fee and has already turned over that practice to Lee C. Goldstein pending the outcome of this case, thus having effectively commenced at least a partial suspension as of September, 2007. (Tr. At 4-6). While making arrangements for handling of the Superior Court Program cases in preparation for Respondent's suspension was not addressed, it appears from the testimony of Respondent's colleagues that they will assist him in any transition. More importantly, the panel does not view the recommendation of suspension here like a customary suspension because Respondent's suspension is not followed by a return to an unrestricted practice, but by a return to a very restricted practice for a minimum period of five (5) years so that the three-month suspension combined with the five (5) year practice limitation may be viewed as a functionally more severe sanction than an unconditional six-month suspension. The

panel is also mindful that imposing only a three-month suspension (as opposed to a six-month suspension) will permit Respondent to resume his participation in the Superior Court Program which serves an underrepresented population.

* * *

Based on the foregoing considerations, the panel recommends as action of the Board that the sanctions set forth in Section V of this Report be imposed upon Respondent, including the imposition of costs of these disciplinary proceedings pursuant to Rule 27, Disc. Proc. Rules.

BOARD ON PROFESSIONAL RESPONSIBILITY

Richard A. Levine

Kathleen Furey McDonough

Kelly A. McKown

Dated: October 23, 2007

panel is also mindful that imposing only a three-month suspension (as opposed to a six-month suspension) will permit Respondent to resume his participation in the Superior Court Program which serves an underrepresented population.

* * *

Based on the foregoing considerations, the panel recommends as action of the Board that the sanctions set forth in Section V of this Report be imposed upon Respondent, including the imposition of costs of these disciplinary proceedings pursuant to Rule 27, Disc. Proc. Rules.

BOARD ON PROFESSIONAL RESPONSIBILITY

Richard A. Levine

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Dated: October 24, 2007