

IN THE SUPREME COURT OF THE STATE OF DELAWARE

In the matter of a Member of the
Bar of the Supreme Court of the
State of Delaware:

ANDREW J. WITHERELL,

Respondent.

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No. 154, 2010

Board Case No. 2009-0007-B

Submitted: April 6, 2010

Decided: June 30, 2010

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 30th day of June 2010, it appears to the Court that the Board on Professional Responsibility has filed its Report and Recommendation of Sanctions in this matter pursuant to Rule 9(d) of the Delaware Lawyers' Rules of Disciplinary Procedure. Neither the respondent 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) and concludes that the Board's Report should be approved.

NOW, THEREFORE, IT IS ORDERED THAT:

1) The Report of the Board of Professional Responsibility filed on March 22, 2010 (copy attached) is hereby APPROVED.

2) Respondent is publicly reprimanded for his violations of Rules 1.15(d), 8.4(c) (two counts) and Rule 8.4(d) (three counts).

3) Respondent shall serve a public two-year period of probation from the date of this Order, subject to the following terms:

(a) Respondent shall have an audit by a licensed certified public accountant for his Certificates of Compliance, reporting the status of his compliance or lack thereof with the requirements of Rule 1.15 and Rule 1.5(a) and shall file each annual Certificate of Compliance by no later than the due date;

(b) Respondent shall also provide the ODC with a timely written confirmation that he has filed each Annual Certificate of Compliance with the required pre-certification;

(c) Respondent shall cooperate fully and promptly with the ODC in its efforts to monitor compliance with his probation, including any audit performed at the request of the ODC or otherwise;

(d) Respondent shall also cooperate with the ODC's investigation of any allegations of any unprofessional conduct that may come to the attention of the ODC;

(e) Upon request of the ODC, the Respondent shall provide authorization for the release of information and documentation to verify compliance with these conditions;

(f) Respondent shall pay the cost of this disciplinary proceeding pursuant to procedural Rule 27 promptly upon being presented with a statement of these costs by the ODC. The costs to be paid by Respondent will include, without limitation, the costs of the follow-up audits; and

(g) Respondent shall meet with the Professional Guidance Committee for assistance and guidance in managing his solo practice of law and he shall complete a minimum of six hours of continuing legal education addressing law office management and maintenance of books and records, no later than the due date for filing of his 2011 Certificate of Compliance.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

ATTACHMENT

**BOARD ON PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF THE STATE OF DELAWARE**

In the Matter of a)	
Member of the Bar of)	<u>CONFIDENTIAL</u>
the Supreme Court of)	
Delaware:)	Board Case No.: 2009-0007-B
)	
ANDREW J. WITHERELL,)	
Respondent.)	

**THE BOARD ON PROFESSIONAL RESPONSIBILITY'S
REPORT AND RECOMMENDATION OF SANCTIONS**

This is the Report and Recommendation of Sanctions of the Board on Professional Responsibility of the Supreme Court of the State of Delaware (the "Board") in the above-captioned matter. A Hearing on this matter was held on January 13, 2010, in the Supreme Court Hearing Room, 11th Floor, Carvel State Building, 820 North French Street, Wilmington, Delaware. The Panel of the Board consisted of Emilie R. Ninan, Esquire, Adele Ashley-Axon, M.D. and Mark L. Reardon, Esquire (Chair) (collectively the "Panel"). The Office of Disciplinary Counsel ("ODC") was represented by Patricia B. Schwartz, Esquire and Frederick W. Iobst, Esquire. Respondent, Andrew J. Withereil ("Respondent") was represented by Charles Slanina, Esquire and Ben T. Castle, Esquire.

I. Procedural History

The ODC filed a Petition for Discipline (the "Petition") with the Board on December 2, 2009. The Petition was subsequently approved by a panel of the Preliminary Review Committee. As set forth in more detail below, ODC asserted in the Petition that Respondent violated the Delaware Rules of Professional Conduct ("the Rules"). Specifically, ODC alleged

Respondent violated Rule 1.15(d), 5.4(c) (two counts), and Rule 8.4(d) (three counts). The Respondent filed a response to the ODC's Petition on December 23, 2009. On January 13, 2010, Respondent filed an Amended Answer admitting all counts of the Petition, and the Amended Answer was formally entered on the docket on March 18, 2010.

The record in this case consists of: (1) the Petition; (2) the Answer and Amended Answer; and, (3) the transcript of the January 13, 2010, Hearing (and exhibits admitted therein). During the hearing, Respondent testified on his own behalf.¹

II. Factual Findings

1. The Respondent is a member of the Bar of the Supreme Court of Delaware. He was admitted to the Bar in 1994. At all times relevant to the Petition for Discipline, Respondent was engaged in the private practice of law as a solo practitioner in Wilmington, Delaware. (Amended Answer at 1). Respondent's practice is concentrated primarily in criminal defense. (Tr. at 13).

2. Delaware lawyers are obligated to file an annual Registration Statement with the Supreme Court of Delaware (the "Court"). The Registration Statement includes a Certificate of Compliance, by which the lawyer certifies to the Court the lawyer is properly maintaining the law practice's books and records in compliance with the specific requirements of the Rules. The Court expects lawyers completing the Certificate of Compliance will undertake the appropriate review and inquiry into matters involving their law practice books and records so as to enable lawyers accurately to answer all of the items identified on the Certificate. (Amended Answer at 1).

¹ The transcript of the January 13, 2010 Hearing will be cited herein as "Tr. at ___."

3. On Monday, September 8, 2008, the Lawyers Fund for Client Protection (“LFCP”), provided the ODC with a report (“Audit Report I”) concerning a compliance audit conducted at the Respondent’s law office in July 2008 by the LFCP auditor. The audit covered the six (6) month period ending April 30, 2008. (November 2007-April 2008). (Amended Answer at 2).

4. The audit report outlined several deficiencies in the Respondent’s law practice books and records under Rule 1.15(d). The deficiencies have been enumerated as follows:

(a) The Respondent’s 2006 and 2007 federal, state and local tax returns had not been filed and the taxes due had not been paid.

Operating Account #2837-3910

(b) The account was incorrectly titled.

(c) The Respondent could not provide bank statements, bank reconciliations, cash receipt journals, or cash disbursement journals for the month of January 2008.

(d) There were twenty-six overdraft balances in the account during November 2007-April 2008.

(e) The Respondent’s cash receipts journal and cash disbursements journal failed to include monthly totals for the time period reviewed, November 2007-April 2008.

(f) The cash receipts entries could not be proved to deposit totals on the bank statements for the time period reviewed, November 2007-April 2008.

(g) The Respondent failed to prepare bank reconciliations for the time period reviewed, November 2007-April 2008.

Trust Account #2837-3929

(h) The Respondent's cash receipts journal and cash disbursements journal for the month of November 2007 did not have monthly totals.

(i) The Respondent did not prepare bank reconciliations or a list of outstanding checks for the time period reviewed, November 2007-April 2008.

(j) The Respondent did not prepare a client subsidiary ledger during the time period reviewed, November 2007-April 2008.

(k) It could not be determined if any attorney funds were in the account since the account had not been reconciled.

(l) The reconciled end-of-month cash balance could not be agreed to the total of all client funds held because neither report was prepared for the time period reviewed. The difference between the bank statement balance and the register balance from the accounting system ranged from \$9,972.25 to \$14,872.25 for the time period reviewed, November 2007-April 2008.

(m) The Respondent failed to prepare a monthly listing of client balances during the time period reviewed, November 2007-April 2008.

(n) The Respondent failed to provide retainer agreements for two out of five clients selected for testing. The Respondent could not provide the statement provided to clients showing the amount withdrawn from a retainer and the remaining balance of the retainer for the five payments selected for testing.

5. For each of the areas of non-compliance identified in paragraph 4 above, the Respondent certified on his 2006, 2007, and 2008 Certificates of Compliance that he was in compliance. (Amended Answer at 5) These responses were false. Id.

6. The Respondent advised the LFCP Auditor the deficiencies would be resolved and by letter dated January 21, 2009, the Respondent, through counsel, advised the ODC the accounts were reconciled and a follow-up audit could be scheduled. (Amended Answer at 5).

7. The LFCP Auditor conducted a follow-up audit on May 12, 2009. A copy of the audit was provided to the ODC ("Audit Report II"). The audit covered the six-month period ending March 31, 2009 ("October 2008-March 2009").

8. With respect to Audit Report II, the following deficiencies were noted:

(a) The Respondent had filed all tax returns for 2006 and 2007, but still owed money on his state and federal returns.

Operating Account #2837-3910

(b) The account continued to be incorrectly titled.

(c) There were twenty-three overdraft balances in the account during the time period reviewed, October 2008-March 2009.

(d) The Respondent's cash receipts journal and cash disbursements journal were combined on the reconciliation.

(e) The reconciled end-of-month bank balance did not agree to the register balance. The difference between the reconciled bank balance and the register balance ranged from \$855.12 to \$19,991.70 during the time period reviewed, October 2008 - March 2009.

Trust Account #2837-3929

(f) The Respondent's cash receipts journal and cash disbursements journal were combined on the reconciliation.

(g) According to the client funds list, the account had a negative balance ranging from -\$48,945.50 to -\$60,945.50. In addition, an "unknown" amount carried a negative balance of -\$119,808.43 for each month during the period reviewed, October 2008 - March 2009. (Amended Answer at 6).

(h) The reconciled end-of-month cash balance did not agree to the total of all client funds held. The difference between the reconciled bank statement balance and the register balance from the accounting system was \$1,666.10 for every month in the time period reviewed, October 2008 - March 2009.

(i) The attorney's client funds lists had negative balances and old balances, which appear to include fees earned by the attorney.

(j) The Respondent could not provide retainer agreements for four of the five payments selected for testing. The Respondent could not provide the statement provided to clients showing the amount withdrawn from a retainer and the remaining balance of the retainer for the five payments selected for testing. (Amended Answer at 7).

9. Because of the continuing deficiencies, the LFCP Auditor conducted a second follow-up audit on September 16, 2009. A copy of the audit was provided to the ODC ("Audit Report III"). The audit covered the six-month period ending August 31, 2009 ("March 2009 - August 2009"). (Amended Answer at 7).

10. With respect to Audit Report III, the following deficiencies were noted:

(a) The Respondent reported that all tax filings were up to date, but he still owed money on his federal returns.

Operating Account #2837-3910

(b) There were twenty-six overdraft balances in the account during the time period reviewed, March 2009 - August 2009.

(c) The Respondent's cash receipts journal and cash disbursements journal were combined on the reconciliation.

(d) The reconciled end-of-month bank balance did not agree to the register balance. The difference between the reconciled bank balance and the register balance ranged from -\$171.32 to \$304.69 during the time period reviewed, March 2009 - August 2009.

Trust Account #2837-3929

(e) The reconciled end-of-month cash balance did not agree to the total of all client funds held. The difference between the reconciled bank statement balance and the register balance from the accounting system was \$70.64 for every month in the time period reviewed, March 2009 - August 2009.

(f) The attorney's client funds lists had negative balances and old balances, which appeared to include fees earned by the attorney.

(g) The Respondent could not provide retainer agreements for four of the five payments selected for testing. The Respondent could not provide the statement provided to clients showing the amount withdrawn from a retainer and the remaining balance of the retainer for the five payments selected for testing. (Amended Answer at 7-8). With respect to Respondent's admitted violations, the Panel acknowledges there is no evidence that any client

was directly harmed and, no evidence that any client complained about Respondent's fee collection or bookkeeping practices. (Tr. at 20).

III. Admitted Violations

COUNT ONE: RESPONDENT FAILED TO MAINTAIN BOOKS AND RECORDS IN VIOLATION OF RULE 1.15(d)

11. Rule 1.15(d) sets forth detailed and specific requirements for the maintenance of attorney's books and records and handling of practice-related funds.

12. Respondent admitted that he failed to properly maintain his books and records in violation of Rule 1.15(d) including as follows: (1) no client subsidiary ledger was maintained; (2) monthly totals in client receipt and disbursement journals were not calculated; (3) the reconciled end-of-month cash balance in the fiduciary funds account did not agree to the total of all client funds; (4) there were multiple overdraft balances in his non-fiduciary funds account for every period reviewed; (5) there was not monthly listing of client balances for the fiduciary funds accounts; and, (6) Respondent could not provide bank statements, bank reconciliations, cash receipt journals and cash disbursement journals for the month of January 2008.

COUNT TWO : RESPONDENT ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION IN VIOLATION OF RULE 8.4(c)

13. Rule 8.4(c) provides it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

14. Respondent admitted that he violated Rule 8.4(c) by filing with the Supreme Court Certificates of Compliance in years 2006, 2007, and 2008, each of which contained misrepresentations to the Court relating to the Respondent's maintenance of his law office books and records.

COUNT THREE: RESPONDENT ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 8.4(d)

15. Rule 8.4(d) provides it is professional misconduct for a lawyer to “engage in conduct that is prejudicial to the administration of justice.” The Delaware Supreme Court relies upon the representations made by attorneys in the Certificates of Compliance filed with their Annual Registration Statements each year in the administration of justice governing the practice of law in Delaware.

16. Respondent admits that he violated 8.4(d) by filing with the Supreme Court Certificates of Compliance for 2006, 2007, and 2008, each of which contained misrepresentations to the Court relating to the Respondent's maintenance of his law office books and records.

COUNT FOUR: RESPONDENT ENGAGED IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION IN VIOLATION OF RULE 8.4(c)

17. Rule 8.4(c) provides it is professional misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.”

18. Respondent admitted that he violated Rule 8.4(c) by filing with the Supreme Court Certificates of Compliance in years 2006, 2007, and 2008, each of which contained misrepresentations to the Court relating to the Respondent's obligation to file and pay federal, state and local taxes.

COUNT FIVE: RESPONDENT ENGAGED IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE 8.4(d)

19. Rule 8.4(d) provides it is professional misconduct for lawyers to “engage in conduct that is prejudicial to the administration of justice.” The Delaware Supreme Court relies

upon representations made by attorneys in the Certificates of Compliance filed with their Annual Registration Statements each year in the administration of justice governing the practice of law in Delaware.

20. Respondent admitted he violated Rule 8.4(d) by failing to timely file and pay federal, state and local income taxes for the years 2006 and 2007.

**COUNT SIX: RESPONDENT ENGAGED IN CONDUCT PREJUDICIAL TO THE
ADMINISTRATION OF JUSTICE IN VIOLATION OF RULE
8.4(d)**

21. Rule 8.4(d) provides it is professional misconduct for a lawyer to “engage in conduct that is prejudicial to the administration of justice.” The Delaware Supreme Court relies upon the representations made by attorneys in the Certificates of Compliance filed with their Annual Registration Statements each year in the administration of justice governing the practice of law in Delaware.

22. Respondent admitted he violated Rule 8.4(d) by filing with the Supreme Court Certificates of Compliance for 2006, 2007, and 2008, each of which contained misrepresentations to the Court relating to the Respondent’s obligations to file and pay federal, state and local taxes.

IV. Standard of Proof and Finding of the Panel

Allegations of professional misconduct set forth in the ODC’s Petition for Discipline must be proven by clear and convincing evidence. Rule 15, Disciplinary Procedure Rules. In view of the Respondent’s admission to all of the counts in the Petition, the ODC has met its burden of proof. Therefore, the Panel is left to recommend proper sanctions for Respondent’s

admitted violations of the Delaware Rules of Professional Conduct. Rule 9(d)(4), Disciplinary Procedure Rules.

V. Recommendation for Sanctions

In recommending proper sanctions for Respondent's admitted conduct, the Panel is guided by a well-established framework for analysis:

The objectives of the lawyer disciplinary system 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. To further these objectives and to promote consistency and predictability in the imposition of disciplinary sanctions, the Court looks to the ABA Standards for Imposing Lawyer Sanctions as a model for determining the appropriate discipline warranted under the circumstances in each case. The ABA framework consists of four key factors to be considered by the Court: (a) the ethical duty violated; (b) the lawyer's mental state; (c) the extent of the actual or potential injury caused by the lawyer's misconduct; and (d) aggravating and mitigating factors. *In re Bailey*, 821 A.2d 851, 866; see also *In re Fountain*, 878 A.2d 1167, 1173 (Del. 2005).

Following the Panel's review of the evidence, the testimony of Respondent, and argument of counsel, the Panel considered each of the four prongs. After review of the first three factors, the Panel considered the aggravating and mitigating circumstances to determine if an increase or decrease in the sanction is warranted. *In re Steiner* 817 A.2d 793, 796 (Del. 2003) The Panel's four-prong assessment is summarized as follows:

1. Ethical Duties Violated

As previously elaborated, ODC alleged and Respondent admitted that the Respondent committed misconduct in violation of Professional Rules of Conduct 1.15(d) (failure to properly maintain financial books and records), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) (two counts), 8.4(d) (engaging in conduct that is

prejudicial to the administration of justice governing the practice of law in Delaware) (three counts).

Under the ABA standards, this misconduct constitutes violations of duties owed by Respondent to clients under Rules 1.15 and 8.4(c) and violations owed by Respondent to the legal system (Rule 8.4(d)). See ABA Standard 6.0. As a result of these admitted violations, numerous ABA Standards for imposing lawyer sanctions (the “ABA Standards”) were evaluated to determine the appropriate sanction.

2. The Lawyer’s Mental State

Under the ABA Standards, “mental state” is defined by levels of culpability. The most culpable mental state is “intent,” which is when a lawyer acts with the conscious objective or purpose to accomplish a particular objective. The next most culpable mental state is “knowledge,” which is when a lawyer acts with conscious awareness of the nature of attendant circumstances of his conduct without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is “negligence,” which is when a lawyer fails to become aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. See ABA Standards at 6. Respondent asserts he acted negligently (Tr. at 22). Respondent specifically states he neither deliberately intended to misrepresent (Tr. at 18) nor intended to make a fraudulent statement to the Court (Tr. at 19). The ODC contends that Respondent’s failure to maintain his financial books and records appropriately was more than mere negligence, and that Respondent instead acted with knowledge in that there was a sustained and systematic disregard to his obligations to maintain books and records. (Tr. at 29).

The Panel finds the Respondent acted with “knowledge” in that Respondent was consciously aware of his obligations to properly manage a law office and accurately report to the Court in the Annual Certificate of Compliance. In support of this finding, the Panel considered that for the three years prior to the July 2008 LFCP audit, Respondent in 2006, 2007, and 2008 attempted to maintain and manage the books and record keeping of his law practice without the benefit of a bookkeeper, office manager or accountant. (Tr. at 17). In December 2005 or January 2006, Respondent terminated a certified public accountant upon whom he previously relied to maintain his books and records in compliance with the Rules established by the Delaware Supreme Court. (Tr. at 16). The basis for Respondent’s termination of his certified public accountant was Respondent’s displeasure with the accuracy of the work by his CPA and the consequential billing expense. (Tr. at 17). Respondent’s decision to terminate his CPA coupled with his decision to proceed in maintaining his books and records without the assistance of staff or a replacement CPA conclusively establishes Respondent acted “with knowledge.” His admission to “procrastination” in managing his financial affairs also establishes that he knew of his financial reporting obligations but delayed in meeting them. (Tr. at 22). Respondent’s explanation that his procrastination in taking care of his firm’s books and records was caused by his dedication to his busy law practice (Tr. at 14-15) and family obligations (Tr. at 21) is admirable, but unpersuasive in this context.

Respondent also demonstrated by his testimony a relative indifference to his obligations to comply with Rule 1.15 for maintaining proper books and records and Rule 8.4(d) when making representations to the Court about his Certificate of Compliance. For instance, his answers to specific questions in the 2007 Certificate of Compliance are incomplete,

contradictory or simply inaccurate. (Tr. at 23-25). Respondent's approach to his reporting obligations demonstrated a level of indifference that falls well short of the required conduct in Delaware.

After reviewing the evidence, the Panel finds that Respondent possessed the requisite knowledge in that he was aware of his responsibilities to maintain books and records and reporting obligations, and he was aware his action and inaction would form the basis for the violations set forth above. The Panel concludes that the Respondent acted with a sustained and systematic disregard with respect to his reporting obligations regarding his law office books and records and his tax filing obligations. As in *Stull*, the Panel here finds Respondent's conduct with respect to reporting obligations to be a "head-in-the-sand" approach.

3. The Actual or Potential Injury Caused by Respondent's Misconduct

The Panel readily acknowledges no client was harmed by his misconduct. Nonetheless, Respondent's misconduct violated his duties to the legal system and to the profession. Although no actual injury resulted, Respondent's misconduct is significant. As the Supreme Court has stated, "[a] lawyer's duty to maintain proper books and records exists for the purpose of protecting not only the lawyer but the lawyer's clients, and the failure to fulfill that duty presents serious risks to the lawyers clients, even if no actual harm results." *In re Benson*, 774 A.2d 258, 262-63 (Del. 2001).

Under ABA Standard 7.3, a reprimand is generally appropriate when a lawyer engages in conduct that is a violation of a duty owed as a professional and causes little or no injury or potential injury to a client, the public, or the legal system, and the purpose of the lawyer

discipline will be best served by imposing a public sanction that helps educate the lawyer and deter future violations.

As in *In re Stull*, 2009 WL 4573243 (Del. Supr.), the Panel here finds the Court's analysis in *In re Benson* 774 A.2d 258, 262-264 (Del. 2001) instructive. In *Benson*, the Supreme Court found that Benson violated duties owed to her clients by failing to properly maintain her books and records. She also violated duties owed to the legal system and to the profession by certifying to the Supreme Court for three consecutive years that her books and records were in compliance when, in fact, her books were not in compliance. While the Court accepted the Board's finding that Benson's misconduct was not intentional, the Court noted that it was "concerned that her apparent inattentiveness to her obligations to the Court...continued for so many years." Moreover, the Court found that even though Benson's violations did not result in any injury to her clients, her careless record keeping had the potential to cause injury because of the difficulty in ascertaining that all client funds in fact were being properly maintained.

The Court in *Benson* specifically stated:

In our view, a public sanction will deter other lawyers from similar misconduct. Moreover, this Court's means of monitoring a lawyer's compliance with record keeping obligations is dependent upon the lawyer's accurate, written representations as part of the Annual Registration process. Even though Benson did not make intentional misrepresentations to the Court in this case, she clearly failed to exercise the required care and attention in making her annual certifications.

Benson, 774 A.2d at 262-63.

As stated above, and consistent with *Stull* and *Benson*, a public sanction affords the Court the opportunity to underscore how serious the Court considers a lawyer's obligation to maintain

orderly books and records. The Panel finds that a public sanction in this instance will also serve as an important preventative measure in situations such as this where the violations could be readily repeated without prompt detection. A public sanction also puts clients on notice of past problems and allows them to take any necessary steps to protect their own interests.

4. Aggravating and Mitigating Factors

ABA Standards Section 9.1 provides that aggravating (Section 9.22) and mitigating (Section 9.32) circumstances should also be considered, to increase or decrease the degree of discipline to be imposed. *In re Bailey*, 821 A.2d 851, 866 (2003).

The aggravating factors to be considered are:

A. Prior Disciplinary Offenses

There is no evidence in the record that this aggravating factor exists.

B. Dishonest or Selfish Motive

There is no evidence in the record that this aggravating factor exists.

C. Pattern of Misconduct

This aggravating factor is found to exist with respect to the admitted violations identified above.

D. Multiple Offenses

This factor is found with respect to the Respondent admitting to have violated six counts of professional misconduct.

E. Bad Faith Obstruction of the Disciplinary Process

There is no evidence in the record that this aggravating factor exists.

F. Submission of False Evidence or False Statements During the Disciplinary Process

There is no evidence in the record that this aggravating factor exists.

G. Refusal to Acknowledge Wrongful Nature of Conduct

There is evidence in the record to demonstrate that Respondent has recognized the wrongful nature of his conduct by engaging a Certified Public Accountant in order that in the future his books and records will be properly maintained and his taxes properly filed. (Tr. at 22). At the same time, the Panel acknowledges that Respondent's testimony during the January 13, 2010, Hearing did not demonstrate that he fully appreciated the seriousness of his admitted violations. As a result of this observation by the Panel, some additional sanction, namely a period of probation, is warranted in order to avoid Respondent lapsing to the lackadaisical attitude that precipitated his now admitted violations.

H. Vulnerability of Victim

There is no evidence in the record that this aggravating factor exists.

I. Substantial Experience in the Practice of Law

There is evidence of Respondent's substantial experience in the practice of law. He was admitted as a member of the Bar in 1994, and has been engaged in the private practice of law for fifteen years.

J. Indifference to Making Restitution

There is no evidence in the record that this aggravating factor exists.

K. Illegal Conduct, Including that Involving the use of a Controlled Substance

There is no evidence in the record that this aggravating factor exists.

With respect to mitigating factors, the Panel considered the following:

A. Absence of Prior Disciplinary Record

There is evidence in the record that this mitigating factor exists. This is Respondent's first violation of the Delaware Lawyer's Rules of Professional Conduct.

B. Absence of a Dishonest or Selfish Motive

There is no evidence of dishonest or selfish motive therefore this mitigating factor exists.

C. Personal or Emotional Problems

There is no evidence in the record that this mitigating factor exists.

D. Timely Good Faith Effort to Make Restitution or to Rectify Consequences of Misconduct

There is evidence in the record that the Respondent has made affirmative steps to rectify deficiencies, including the timely payment of all outstanding tax obligations. (Tr. at 17-18).

E. Full and Free Disclosure to Disciplinary Board and Cooperative Attitude Towards Proceedings

There is evidence in the record that Respondent provided full and free disclosure to the Panel and ODC.

F. Inexperience in the Practice of Law

Respondent has been in private practice since 1994.

G. Character or Reputation

No evidence was presented that would have character or reputation considered as a factor in the imposition of sanctions. However, it was noted in the record of the

January 13, 2010, Hearing that two witnesses were slated to appear to validate Respondent's good professional reputation and personal character. Since the Hearing adjourned before the witnesses' scheduled appearance, their anticipated testimony was acknowledged by consensus of the parties. (Tr. at 63).

H. Physical Disability

There is no evidence in the record that this mitigating factor exists.

I. Mental Disability or Chemical Dependency

There is no evidence in the record that this mitigating factor exists.

J. Delay in Disciplinary Proceedings

There is no evidence in the record that this mitigating factor exists.

K. Imposition of Other Penalties or Sanctions

ODC submits that Respondent should be issued a public reprimand and a two-year period of public probation. The Respondent contends that the appropriate sanction is a private admonition with the same probationary conditions recommended by ODC.

L. Remorse

Respondent has made no statement or expressions of remorse.

M. Remoteness of Prior Offenses

There is no evidence in the record that this mitigating factor exists.

VI. The Panel's Recommended Sanction

The Panel has determined that a public reprimand and a public probation period of two years is consistent with the Supreme Court's prior decisions in other cases involving similar disciplinary charges. Since the aggravating factors neutralize the mitigating factors, the Panel

finds that a public sanction would serve the purpose of providing notice to the legal community and the public that violations with respect to the maintenance of proper financial books and records will be dealt with severely by the Board and by the Delaware Supreme Court. Finally, the Panel specifically finds that the imposition of the sanction of public reprimand and probation in this matter is consistent with Delaware Supreme Court precedent in similar matters. See *In re Stull*, 2009 WL 4573243 (Del. Supr.); *In re Benson*, 774 A.2d 258 (Del. Supr. 2001); *In re Bailey*, 821 A.2d 851 (Del. Supr. 2003); *In re O'Brien*, 888 A.2d 232 (Del. Supr. 2005); *In re Froelich*, 838 A.2d 117 (Del. Supr. 2003); *In re Doughty*, 832 A.2d 724 (Del. Supr. 2003); *In re Macpherson-Johnson, Board Case No. 40, 2000* (Del. Supr. 2000). Each of these cases involved violations relating to financial record keeping and reporting.

In terms of a specific recommended sanction, the Panel finds that the Respondent should be publicly reprimanded for his violations of Rules 1.15(d), 8.4(c) (two counts) and Rule 8.4(d) (three counts) as well as serve a public two-year period of probation, subject to the following conditions:

A. Respondent shall have an audit by a licensed certified public accountant for his Certificates of Compliance, reporting the status of his compliance or lack thereof with the requirements of Rule 1.15 and Rule 1.5(a), and shall file each annual Certificate of Compliance by no later than the due date;

B. Respondent shall also provide the ODC with a timely written confirmation that he has filed each Annual Certificate of Compliance with the required pre-certification;

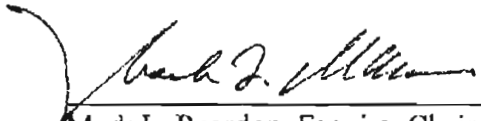
C. The Respondent shall cooperate fully and promptly with the ODC in its efforts to monitor compliance with his probation, including any audit performed at the request of the ODC or otherwise;

D. Respondent shall also cooperate with the ODC's investigation of any allegations of any unprofessional conduct that may come to the attention of the ODC;

E. Upon request of the ODC, the Respondent shall provide authorization for the release of information and documentation to verify compliance with these conditions;

F. The Respondent shall pay the cost of this disciplinary proceeding pursuant to Procedural Rule 27 promptly upon being presented with a statement of these costs by the ODC. The costs to be paid by the Respondent will include without limitation the costs of the follow-up audits; and,

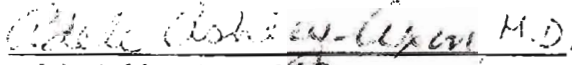
G. Respondent shall meet with the Professional Guidance Committee for assistance and guidance in managing his solo practice of law and he shall complete a minimum of six hours of continuing **legal education** addressing law office management and maintenance of books and records, no later than the due date for filing of his 2011 Certificate of Compliance.



Mark L. Reardon, Esquire, Chair



Emilie R. Ninan, Esquire



Adele Ashley-Axon, M.D.

Dated: 3.22.10