PCB 41

[06-Nov-1992]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

NOTICE OF DECISION NO. 41

In Re: Gary Karpin, Esq.
PCB File Nos. 89.57, 90.08, 90.64, 91.53

REPORT OF THE PROFESSIONAL CONDUCT BOARD

Following the Rule 8D Hearing in the captioned matters, the Professional Conduct Board adopts the findings of fact of the Hearing Panel. The Panel's recommendations are modified as follows:

1. The charged violations of DR 1-102(A)(7) in the complaint of Gage is dismissed;

2. The reference to ABA Standard 5.2 Failure to Maintain the Public Trust is deleted and ABA Standard 5.1 Failure to Maintain Personal Integrity is substituted, therefore,

The recommended sanction of disbarment is approved.

Dated in Montpelier, VT this 6th day of November, 1992.

PROFESSIONAL CONDUCT BOARD

By: /s/
J. Eric Anderson, Chair

/s/
Deborah S. Banse, Esq.

/s/
Nancy Foster

/s/
Anne K. Batten

/s/
Joseph F. Cahill, Jr., Esq.

/s/
Rosalyn L. Hunneman

/s/

Nancy Corsones, Esq.	Robert P. Keiner, Esq.
	/s/
Christopher L. Davis, Esq.	Donald Marsh
	/s/
Hamilton Davis	Karen Miller, Esq.
/s/	
Paul S. Ferber, Esq.	Edward Zuccaro, Esq.

Dissent as to sanction:

/s/
_____
Christopher L. Davis, Esq.

PROFESSIONAL CONDUCT BOARD

In re: Gary Karpin
PCB Files 89.57,90.08, 90.64, 91.53

HEARING PANEL'S FINDINGS OF FACT,
RECOMMENDED CONCLUSIONS OF LAW, AND RECOMMENDED SANCTION

PROCEDURAL HISTORY

Respondent was charged in a four count petition with violating numerous provisions of the Code of Professional Responsibility. The matter was heard before a hearing panel on July 15 - 17, July 22 - 24, and September 10, 1992. The hearing panel consisted of Leslie G. Black, Esq., who served as chair, Ms. Nancy Foster, and Deborah S. Banse, Esq. Present at the hearings were Wendy Collins, Bar Counsel, David Sleigh and or David Williams Respondent's Attorneys. Respondent was present at every hearing with the exception of September 10, 1992 at which time his counsel expressly represented to the Panel that respondent had waived his right to be present.

The following witnesses testified before the panel: Gary Karpin, Fred Gage, Janet Gage, Duncan Kilmartin, James Coffrin, Cleon McNally, Valerie White, Robert W. Davis, Philip H. White, Donald Coderre, Richard T. Franco, Richard Geoffrey, Gary Guillette, Gregory P. Howe, Nancy Ouellette, Marc Hull, Magistrate Trine C. Bech, Mark Hull, Elaine Hall Cuttings Collins, Wayne Dyer, Vera LaBlonde, Howard Knight, Jr., Mini Florence Knight, Fr. George A. Paulin, and Andrew Grievy.

Based upon all of the relevant, credible evidence before it, the panel makes the following findings of fact, recommended conclusions of law, and

recommended sanction to the Professional Conduct Board. In reaching its decision the Panel has considered each count separately for purposes of determining whether the respondent violated the Code of Professional Responsibility. For purposes of the recommendation of sanction all four counts are considered together.

A. INTRODUCTION

1. Gary Karpin graduated from Vermont Law School in 1985 and was admitted to the Vermont Bar in October of 1987. He clerked for a Vermont attorney in 1985. After his admission he spent three months practicing with a lawyer in Maine. Gary Karpin moved to Orleans County in November of 1987 where he became a deputy state's attorney. He remained in that job until the end of September 1988. Since then he has been a solo practitioner in Newport.

B. COUNT I - THE GAGE COMPLAINT

2. Janet and Fred Gage moved to Jay, Vermont from Indiana in 1988. Fred Gage was the manager of a radio station, Janet Gage was in the antique business. Gary Karpin first met Fred Gage in October or November of 1988 when he was hired by Gage to do some collection work for the radio station. Gage had no complaints about respondent's work for the station.

3. In January of 1989 the Gages contracted to buy a new house and hired Gary Karpin to represent them.

4. A few days after the closing in the early months of 1989, the furnace in their new home malfunctioned due to what they believed to be the faulty installation of the furnace and hot water heater. The malfunction caused considerable soot damage to their home and the antiques. The Gages first telephoned representatives of Northern Petroleum, the company responsible for the installation. Northern Petroleum initially agreed to correct the problem but shortly thereafter denied liability. At that point, the Gages contacted Gary Karpin to help them.

5. Gary Karpin began pursuing Northern Petroleum for damages while his clients, with his knowledge and consent, contacted their home insurance carrier, Co-op Insurance. (Testimony of Fred and Janet Gage.) On at least one occasion Gary Karpin specifically told Mrs. Gage to seek payment of cleaning bills from the Co-op. (Janet Gage) The Gages told the Co-op that they were working with Gary Karpin in this matter and asked that the Co-op be in touch with their attorney. (Janet Gage, Ex. 18) The panel finds that Gary Karpin knew that the Gages were pursuing a claim with their home insurance carrier. (Janet and Fred Gage)

6. The Co-op agreed to pay approximately $12,000 in damages. Fred Gage telephoned Gary Karpin to discuss this settlement with him. Gary Karpin said not to tell him what they were receiving from their own insurance carrier because it would hurt his dealings with Northern Petroleum. Fred Gage thought this advice odd, but assumed that Gary Karpin knew what he was doing. (Fred Gage)

7. At Co-op's request, the Gages signed a form entitled "Proof of Loss", a standard pre-printed form used in the insurance industry which includes a subrogation clause.

8. The panel finds that the Gages did not comprehend the consequences of the subrogation clause. They believed that since Gary Karpin was representing them in the matter that he would have advised them not to sign if it had been important and Gary Karpin had said he did not want to know about the settlement. Another factor in their signing was that since the Co-op agent indicated that the form was standard procedure, the Gages assumed there was no problem with their signing it and if a problem existed Karpin would have advised them. (Fred and Janet Gage). Gary Karpin admitted on direct examination that he could have done better in explaining the issues involved.

9. At about the same time, Gary Karpin settled the claim against Northern Petroleum for $8000, $2000 of which Gary Karpin received as legal fees. The Gages went to Gary Karpin's office to sign a release at which point Mrs. Gage asked if this would have any effect on their settlement with the Co-op. (Janet and Fred Gage) Gary Karpin told her it would have no effect on the Co-op claim because the Northern Petroleum claim covered a different loss. (Janet and Fred Gage) Based on this advice, they signed the release and, shortly thereafter, signed another proof of loss for the Co-op.

10. Gary Karpin's advice was obviously erroneous. By signing the release, the Gages unwittingly defeated the rights of the Co-op to assert its subrogation rights against Northern Petroleum in order to recoup its payment to the Gages.

11. When the Co-op learned of the release of Northern Petroleum, it demanded its money back from the Gages.

12. The Gages were stunned by this turn of events and confronted Gary Karpin about it. (Testimony of Janet Gage) Gary Karpin told the Gages that he had not known they had filed a claim with the Co-op. (Testimony of Fred and Janet Gage) At about the same time, Gary Karpin told counsel for the Co-op that there was no dual compensation because the claims had covered different losses. (Kilmartin, Ex. 13) Neither of these statements was true.

13. The panel does not find credible the respondent's testimony that he never knew about the Gages' claim filed with the Co-op, especially in view of his testimony that he knew from the Gage's that the Co-op had been notified and was involved and in view of Janet Gage's testimony that Gary advised her to call her own carrier (the Co-op) when Northern Petroleum refused to pay.

14. The Co-op filed an action in fraud against the Gages. The Gages retained new counsel who filed an action against Gary Karpin. After depositions and discovery were complete, the law suit was eventually settled in September of 1990 when Gary Karpin's malpractice carrier paid the bulk of the damages. (James Coffrin, Duncan Kilmartin, Gary Karpin)

15. Respondent's denial to his clients that he had any knowledge of the claims with the Co-op, when he had been informed that they had filed claims, was conduct involving dishonesty and misrepresentation in violation of DR 1-102(A)(4). Gary Karpin's dishonesty caused his clients serious expense in terms of additional attorney's fees and aggravation involved in the subsequent litigation on the subrogation and malpractice.

16. In connection with the imposition of sanctions, which are considered later, the panel notes the following factors relating to this complaint which bear on sanctions. In aggravation the panel takes note of the fact that Gary Karpin submitted false statements to bar counsel in connection with her investigation of this complaint and refused to acknowledge the wrongful nature of his conduct by attempting to shift the blame to his clients. He submitted two written statements to bar counsel (Ex 14 & 15) in which he falsely claimed: he did not know that the Gage's had filed a claim with the Co-op until Duncan Kilmartin told him; claimed that the Gage's had kept him ignorant of the Co-op claim; and suggested that the entire problem was a result of the Gages trying to defraud the carriers without his knowledge or involvement. Based upon the testimony of respondent and the other witnesses the Panel finds that the respondent knew these statements to be false at the time they were made and that they were made for the purpose of avoiding the disciplinary process.

B. COUNT II - THE WHITE COMPLAINT

17. Gary Karpin was an Orleans County Deputy State's Attorney from November, 1987 until October, 1988 and at all times pertinent to the instant complaint, Mr. Karpin served under the direction of Philip White, then Orleans County State's Attorney;

18. Mr. White had developed a "protocol" which established a unified, interagency procedure coordinating the investigation and prosecution of child sex abuse cases. The protocol defined clear office policies governing the handling of child sex abuse cases.

19. In late July of 1988, the SRS office in Orleans County obtained evidence that one KB, a 13 month old baby, had been sexually abused. Although both parents had access to the baby, there was no evidence as to the identity of the perpetrator. The baby was placed in foster care on an emergency basis.

20. Philip White, the state's attorney, learned of this case as he was preparing to leave on vacation. Cases involving alleged sexual abuse of children - particularly very young children - were treated as important matters in his office. Before leaving for vacation, White advised Gary Karpin that the case was coming into the office and that he was to handle it.

21. On August 1, 1988, Gary Karpin filed a CHINS petition requesting that K.B. be declared a child in need of care and supervision. (Ex. 19.) He represented the State at a temporary detention hearing held that date. (Ex. 20.)

22. On September 22, 1988, a hearing on the merits was scheduled. Gary Karpin appeared on behalf of the State. He was present with at least one expert witness and was prepared to go forward with a contested hearing on the merits. Although originally reluctant to enter into a settlement of the case which Valerie White, counsel for the child, was attempting to negotiate, Gary Karpin participated actively in the resolution of this case, was present during interviews of the doctor, his witness, and eventually signed a stipulation that allowed placement of the child with SRS. (Ex. 23.)

23. Although Gary Karpin claimed that his involvement in the case was

not significant, the panel, based on the credible testimony before it, finds otherwise. Specifically Gary Karpin signed the original CHINS petition after reviewing the supporting affidavits. Respondent testified that he signed the petition as he would have signed a traffic ticket. This testimony belies the fact that the office procedure of which he was aware was to treat these cases very seriously. Gary Karpin testified that his appearance for the State at the merits hearing was neither significant not substantial. Gary Karpin's testimony that the disposition hearing (which he did not handle) not the signing of the original petition or the merits hearing was the only critical or substantial stage of the proceedings was not credible especially in view of the State's Attorney's acknowledgment that without a favorable ruling at the merits hearing, the State could not proceed to disposition.

24. The panel finds that Karpin's involvement in the CHINS petition with respect to KB was substantial and that he was involved in the matter at all but one of the critical stages of the litigation.

25. Sometime the following summer, after Gary Karpin had left the State's Attorneys Office, the parents of KB asked Gary Karpin to represent them in this same matter. They told him they wanted to hire someone who was already familiar with the case. (Karpin testimony).

26. Karpin testified that he informed the parents of KB of the nature of his participation in the juvenile case and that he was aware of the ethical rules regarding participation in a matter in which he had substantial participation while a public official. The panel does not find credible his testimony that he researched the issue and reached a reasoned conclusion that his representation was within the bounds of ethical conduct.

27. Karpin agreed to represent the parents and thereafter appeared at an SRS plan review meeting on July 7, 1989 as their counsel.

28. Gary Karpin's conduct here is a clear violation of DR 9-1O1(B) (a lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee).

29. His actions as a public prosecutor in filing and prosecuting through the merits hearing a CHINS petition alleging that the parents were not providing proper parental care precluded his representation of those same parents in further proceedings in the same matter.

30. In connection with the imposition of sanctions the panel notes the following with respect to this matter. In aggravation the panel notes Gary Karpin's claim that his signing the petition was like signing a traffic ticket and his statements that his involvement in the matter was "insignificant."

31. It is clear that Gary Karpin has refused to acknowledge the wrongful nature of his conduct which will be considered in recommending a sanction.

C. COUNT III - THE CODERRE COMPLAINT

32. Donald Coderre resides in Newport with his wife and four children. For a number of years he has been employed driving a van for the

patients of a local mental health program. He is not well educated and is unable to read beyond a very primary level.

33. In December of 1988, Donald Coderre bought a used car from DeLaBruere Auto Sales by trading in his old car obtaining a secured loan of $6140 from the First Vermont Bank, and an unsecured loan for $500 from DelaBruere Auto Sales. (Ex. 40 NN.) DeLaBruere Auto Sales helped arrange the bank financing.

34. The automobile was covered by a 45 day limited warranty that required the dealer to pay 100% of labor and parts for covered systems listed in the buyer's guide. Petitioner's EE.

35. Coderre soon experienced a number of problems and took the car back to DelaBruere three times within the first six weeks. The dealer worked on the car but was unable to find or remedy the problem.

36. Coderre then took the car to an independent garage. The mechanic there thought it was either a defect in the head gasket or engine block and advised him to take it back to DeLaBruere. Coderre did so but again the dealer could not detect a problem. Coderre took the car to yet another independent mechanic who also believed there was a defect in the engine block or head gasket.

37. Both mechanics estimated that it would have cost about $300-400 to fix a head gasket, $700-1000 to replace an engine head, and about $1500 to replace a defective engine block. Both mechanics testified that without tearing down the engine, the mechanics could not pinpoint the problem. Coderre was reluctant to authorize tearing down the engine because of the cost and DeLaBruere refused to do it.

38. At no time did anyone involved determine the exact nature of the problems with the car, the cost to fix the problem or whether or not the problem was covered by the warranty.

39. Coderre grew concerned that the dealer was unable or unwilling to fix the car and decided he needed a lawyer. Coderre looked through the yellow pages and decided to call Gary Karpin based on Karpin's display ad. They met and Coderre explained his problem. Karpin told Coderre that he had a good case. Karpin said he would sue DeLaBruere to get Coderre's money back for him. He said his legal fees were $60 an hour. Coderre paid Karpin a retainer of $276 and agreed to make monthly payments on the balance.

40. Karpin told Coderre that he thought he had a good case and that he could either get DeLaBruere to fix the car or to take back the car and get his money back.

41. Karpin wrote a demand letter to DeLaBruere Auto Sales and then filed a law suit in Superior Court. He alleged breach of warranty in the sale of defective goods. The complaint demanded return of the purchase price ($7,124), incidental damages ($1,000), and attorney's fees.

42. In order to perfect Coderre's rights under the Uniform Commercial Code, Karpin told Coderre to take the car back to the dealer, remove the plates and give back the keys. Karpin also advised Coderre not to make any further payments to the bank until they recovered the purchase price from

the dealer. Karpin said he would work with the bank and keep it apprised of the situation. Coderre relied on Gary Karpin and folLowed his advice.

43. In order to prove the case against the car dealer, Gary Karpin knew he would have to prove there was a defect in the engine. His client had no money to pay an independent expert to take apart the engine to determine exactly what was wrong with the car.

44. Attorney Greg Howe undertook representation of DeLaBruere and concluded the case had little merit. In April of 1989, he conveyed to Gary Karpin an offer to fix the car within the terms of the warranty. (Ex. 42M.) If the problem was due to a covered defect, there would be no charge to Coderre. Costs not covered by the warranty would have to be borne by Coderre.

45. Karpin advised his client not to accept the offer. Coderre followed his lawyer's advice and refused to allow the seller to repair the car.

46. Karpin then took the depositions of the defendants which yielded no helpful evidence. (Karpin testimony.) He also attended the depositions which Howe took of Mr. and Mrs. Coderre, the two mechanics, and a friend of Coderre who had witnessed the car break down. These depositions were all completed by July of 1989. Gary Karpin did no further trial preparation.

47. In August of 1989, the car was repossessed. Coderre was somewhat surprised by this as he thought Gary Karpin was working with the bank to prevent this. Whatever evidence there was within the car's engine to prove the breach of warranty was thereby lost to Coderre. Gary Karpin reassured his client that this would not matter to his case, that he did not need the car to prove the defect. Gary Karpin planned on proving the case by relying upon the expert testimony of the two mechanics who thought there was something wrong with either the head gasket or the engine block. However, neither mechanic had actually torn down the engine to find out exactly what was wrong so their testimony was of limited value.

48. Donald Coderre and Gary Karpin discussed the case on many occasions. Each time Coderre told Karpin that he wanted the dealer to pay off the bank loan and to forgive the repair bills. Throughout 1990, Gary Karpin conveyed to Donald Coderre a belief that Coderre had a good case and that he would prevail.

49. Gary Karpin did nothing further in this case between early September of 1990 and March of 1991. Donald Coderre fell behind in his monthly payments to Karpin and began to accumulate a balance due to Karpin of a couple of hundred dollars.

50. In March, Karpin met with Howe on another matter and they discussed possible settlement of the Coderre case. Howe offered $500. Karpin conveyed this offer to his client. Coderre thought the offer a joke in light of what Karpin had told him about the strength of his case. He rejected the offer and again told Karpin that he would not settle the case unless the car dealer paid off the bank and dropped the repair charges.

51. Attorney Howe wrote a lengthy letter to Gary Karpin on April 9 in which he tried to persuade Karpin that his case had no merit. (Ex. 42SS.) He pointed out that by not allowing the car dealer to make repairs pursuant

to the warranty, Coderre's case was fatally flawed. Howe said he would discuss with his client the possibility of settling the case for $1000 and paying the financing agency $3500. He closed with the observation,

> "On a more personal note, as I am sure you are already aware, if we pay the finance company, there will be no funds from which legal fees can be deducted. It would seem to me that part of the pie is better than no pie at all."

52. On April 18, 1990, the Superior Court informed Gary Karpin that the Coderre case was scheduled as a back up trial for May 1, 1990. (Stipulation as to Connie Daigle's testimony.) On April 24, Gary Karpin wrote a letter to his client advising him of this fact, however, Donald Coderre never received the letter.

53. On Wednesday, April 25, Gary Karpin learned that the case was no longer a back-up and that trial would commence at 9:30 am on Tuesday, May 1. Gary Karpin did not notify his client of this change at that time.

54. On the Friday before trial, Gary Karpin's secretary asked him if she wanted him to notify the witnesses to be in court on Tuesday. Gary Karpin told her not to because the case was going to settle. His client had not, however, given him authority to settle the case.

55. On the Sunday before trial, Gary Karpin telephoned Greg Howe who said the most his client would pay in settlement was $1500. At approximately 10 pm that evening Gary Karpin spoke to Donald Coderre by telephone. He told Coderre for the first time that the case was going to trial on Tuesday. Coderre was alarmed by this short notice. He was concerned that the case was not ready for trial and that his two expert mechanics might not be available on such short notice. Karpin falsely stated to his client that the subpoenas were ready to be served the next day.

56. Karpin then discussed settlement of the case and that the car dealer had offered to pay $1500. Coderre said that $1500 was acceptable to him only if the car dealer was also going to pay off the car loan and forgive the repair bills. Karpin stated that he should not worry about the debt to the bank because he could avoid that by filing personal bankruptcy. Coderre had no interest in so defeating the rights of the bank and told Karpin so.

57. The next day, Gary Karpin told Greg Howe that Donald Coderre would settle the case for $1500. Howe immediately sent a stipulation and a general release to be signed by Donald Coderre.

58. Gary Karpin called his client on the morning of the trial and told him that the case had been settled and that he did not need to go to court that day. Coderre went to work but telephoned Gary Karpin during a break to find out what the terms of the settlement were. At that time, Gary Karpin stated that the settlement was for $1500 "in your pocket." Coderre asked what about the bills. Gary Karpin indicated that that was the extent of the settlement.

59. Donald Coderre was extremely upset. As soon as he finished work he went to Gary Karpin's office and made clear in no uncertain terms that he had not authorized such a settlement. Gary Karpin told him he would try

to "undo" the settlement. However, Gary Karpin did not contact Greg Howe and let him know that he had exceeded his authority. In fact, he did nothing to address the problem.

60. Within approximately one week, Gary Karpin told him there was nothing he could do and that Coderre would have to take it or leave it. Donald Coderre fired Gary Karpin and began to try to locate new counsel. On May 16, 1990, Donald Coderre met with Attorney Richard Franco and retained him to oppose the settlement. They also discussed recouping legal fees paid to Gary Karpin and a possible malpractice claim.

61. That same day, Attorney Howe became concerned that the deal was going sour. (Howe.) He had been holding the settlement check since May 9 awaiting return of the general release. (Ex. 40 S) Attorney Howe sent the check on to Karpin with a request that he hold it in trust until Donald Coderre signed the release. He also sent the release signed by DeLaBruere and a proposed stipulation for dismissal to be signed by Gary Karpin.

62. Gary Karpin deposited the check in his trust account. Knowing that his client had rejected the settlement and knowing that his client had fired him as his counsel, Gary Karpin nevertheless negotiated the check, signed the stipulation authorizing dismissal of the case and filed it with the court on May 22. (Ex.42 WW and 42 XX.)

63. About two weeks later, Gary Karpin finally wrote to Greg Howe that Donald Coderre wished to back out of the settlement. Howe let Karpin know that it was too late to rescind.

64. Karpin learned that Coderre had told Franco that Karpin had exceeded his authority to settle the case. Karpin was angry and wanted to get back at Coderre. (Karpin.) On July 12, he filed a small claims case against Donald Coderre seeking payment of $456 which he claimed to be his outstanding legal fees. (Ex. 34a.)

65. These fees included a charge of $180 for three hours of trial preparation allegedly rendered on April 30. The panel does not believe Karpin's claim that these services were, in fact, rendered as claimed.

66. With the assistance of Richard Franco, Coderre answered the small claims complaint by alleging that Karpin's representation had been incompetent and that the case was settled without his authority. In the meantime, Richard Franco began to negotiate with Gary Karpin regarding return of the $1500 settlement check to the defendant. (Ex. 42 CCC and Ex. 42 GGG.)

67. The small claims case was scheduled to be heard on September 12, 1990 before Judge Martin. Coderre discussed the matter with Richard Franco before going to court. The two agreed that, if possible, Donald Coderre would forego recoupment of legal fees already paid if Gary Karpin dropped his claim for additional fees. They did not discuss waiving any malpractice claim.

68. At the hearing, the presiding judge suggested to Coderre and Karpin that they try to work out their dispute. The two met in a conference room and discussed the matter. Donald Coderre said he would drop his attempt to recoup legal fees already paid if Karpin would drop his attempt to collect more legal fees. Gary Karpin agreed and said he would

write up their agreement. They did not discuss ethics, malpractice or the Professional Conduct Board.

69. Gary Karpin wrote in long hand a document entitled "Stipulation" which stated as follows:

> Now come the parties and hereby agree to dismiss all claims against the other respective party, including attorneys fee [sic], complaints, civil and ethical, and any and all other claims arising out of the civil action known as Codderre [sic] vs. Delaburre [sic].
>
> The plaintiff agrees to turn over all paperwork including depositions to the attorney for the defendant without charge.

70. This language did not reflect the oral agreement which they had just reached. The panel finds that Gary Karpin acted purposefully and in bad faith in so misrepresenting their agreement. His purpose and intent was to prevent Donald Coderre from bringing a malpractice case and to prevent any inquiry into this matter by the Professional Conduct Board.

71. Gary Karpin also had every reason to believe that he could succeed in deceiving Donald Coderre. Gary Karpin knew that Donald Coderre could not read and was unsophisticated in the law. He knew that Donald Coderre would not understand the full meaning of the stipulation as he drafted it.

72. After writing up the stipulation, Gary Karpin read it to Donald Coderre who did-not understand the scope of the release. Donald Coderre assumed it meant what they had agreed to orally, i.e., Coderre would not get a refund of any of the money he had paid Karpin for legal services, but Coderre would not have to pay Karpin for any other legal services rendered but unpaid. Donald Coderre signed it. The case was dismissed.

73. Gary Karpin had several reasons to wish to avoid further inquiry into his professional conduct. Bar counsel was at that time actively investigating the PCB complaint which the Gages had filed. Moreover, Karpin's malpractice insurance carrier had just settled Co-op v. Gage and Karpin by paying $12,400 to the Co-op, nearly $2,000 of which was from Gary Karpin's own pocket. (Testimony of Karpin, Coffrin.)

74. Donald Coderre took a copy of the document back to Richard Franco. Attorney Franco told Coderre that under the terms of the stipulation, Coderre had agreed not to bring a malpractice case or to file a complaint with the Professional Conduct Board. Coderre was angry and felt betrayed again.

75. Gary Karpin went back to his office and transmitted the Coderre file to Franco along with the check for $1500 which he had been holding since May. (Ex. 42 III.)

76. Richard Franco drafted a complaint to the Professional Conduct Board for Coderre's signature.

77. Donald Coderre testified at length about the facts involved in this matter as did the respondent. There were numerous occasions in which their testimony conflicted. There were also instances where respondent

attempted to show a conflict but the Panel found that the testimony of the two could be reconciled. The Panel found Donald Coderre to be a credible witness.

78. The panel concludes that Gary Karpin tried to settle the Coderre v. DeLaBruere case because he was ill prepared to try it, a fact which he tried to hide from his client. Gary Karpin made a number of serious mistakes in his handling of the case and thought settlement provided a way-out. His conduct violated DR 6-1O1(A)(2) handling a legal matter without adequate preparation).

79. The panel also concludes that Gary Karpin violated DR 7-102(A)(1) in failing to seek the lawful objectives of his client when he settled the case without authority to do so.

80. The panel also concludes that Gary Karpin violated DR 6-102(A) when he attempted to obtain a release from Donald Coderre for his mishandling of the Delabruere case. See In re Preston, 111 Ariz. 102, 523 P.2d 1303 (1974) and Matter of Darby, 426 NE2d 683 (Ind. 1981).

81. The Panel also concludes that Gary Karpin violated DR 1-102(A)(4) by misrepresenting to his client that he was ready to go to trial and misrepresenting to the court in May that he was authorized to dismiss the DelaBruere case. More egregiously, he purposefully attempted to deceive Donald Coderre in the way in which he secured his signature on the September 12 stipulation.

82. Finally, the panel concludes that Gary Karpin's attempt to forestall an ethics inquiry by obtaining a waiver from the potential complainant is conduct destructive of the system of lawyer self- regulation and is conduct prejudicial to the administration of justice in violation of DR 1-102(A)(5).

83. In consideration of sanctions in this matter the Panel believes that Gary Karpin's conduct in this matter demonstrates an appalling lack of concern for this client and the client's matter. When the matter began to go badly his only concern was for self-preservation. The Panel was particularly struck by respondent's testimony before the panel that the reference in his September 12 stipulation to ethics complaints was inserted "inadvertently." The Panel believes this to have been intentional, dishonest and self serving. In addition, as in the Gage case, he attempted to deflect the blame for his incompetence on to his client through false accusations. (Ex. 45.)

D. COUNT IV - THE BECK AND OUELLETTE COMPLAINT

84. Nancy Ouellette is a math teacher in the Danville school system. In 1991, she and her ex-husband became involved in family court litigation regarding the support and custody of their 17 year old son. Against her wishes, the son had left his mother's home to live with his father. The father filed a petition for modification of their existing support and custody order seeking custody of the child and support payments from Nancy Ouellette. Nancy Ouellette wanted to oppose the motion and was not happy with the advice her first lawyer had given her.

85. The child support hearing before the magistrate was scheduled for June 19, 1991. On advice of a co-worker, Nancy Ouellette retained Gary

Karpin in June of 1991 to help her. 86. At their initial meeting, Gary Karpin told Nancy Ouellette that he would seek a continuance of the June 19 hearing. Nancy Ouellette told Gary Karpin that she would be in Virginia most of the summer but could return for the hearing if he let her know when it would be held. Gary Karpin told Nancy Ouellette that she would not have to return to Vermont for the hearing and that he would take care of the matter himself. In fact, as Gary Karpin knew, Nancy Ouellette's appearance at the hearing was mandatory.

87. They discussed the merits of the case at length. Gary Karpin advised his client that it would be to her advantage to delay the proceedings as much as possible since the child was not far from 18.

88. Nancy Ouellette was given a blank Affidavit of Income and Assets to fill out and return to Karpin's office. She filled out most of the form but had some questions as to whether certain income from rental property should be included. She left the rental income out of the affidavit and returned it to Gary Karpin's office unsigned with a note on the form itself requesting advice as to how it should be completed. (Ex. BB.) Gary Karpin did not respond to her inquiry.

89. Gary Karpin successfully moved for a continuance of the June 19 hearing on the motion for modification. It was rescheduled for July 17, 1991. He told his client about the new date, but did not tell his client that she was required to attend.

90. On July 17, moments before he had to leave Newport to travel to St. Johnsbury for the Ouellette hearing, Gary Karpin returned to his office to pick up the Ouellette file. His secretary, Elaine Hall, gave him the file which he quickly reviewed. He noted that his client had not executed the affidavit.

91. Gary Karpin told Elaine Hall to sign Nancy Ouellette's name and notarize the signature. Elaine Hall asked if she would get in trouble for doing that. He told her no. Elaine Hall quickly looked through the file for samples of Nancy Ouellette's signature. She then signed Nancy Ouellette's name to the affidavit, notarized the signature, and gave the affidavit to Gary Karpin. (Ex. 48.)

92. When he arrived at Caledonia Family Court, he gave the affidavit to plaintiff's counsel, Jan Paul, and told Ms. Paul that Ms. Ouellette could not attend the hearing that day because she was in Virginia taking mandatory training courses in order to keep her certification as a teacher. Nancy Ouellette never made any such representations to Gary Karpin and this information was not true.

93. The hearing commenced whereupon Ms. Paul advised the court that she had some disagreements with the affidavit and that, since Nancy Ouellette was not present, the hearing would have to be continued. Ms. Paul stated that she would seek attorney's fees for having to attend the rescheduled hearing.

94. Gary Karpin then repeated his story to the court that his client had been prevented from attending because she needed to be in Virginia at a mandatory training course in order to keep her job. (Ex. 47, attached depo. ex. 37, p. 3.) He also stated that he was new to the case and that an award of attorney's fees was not warranted.

95. The magistrate entered a temporary order based upon the forged affidavit, Exhibit 48, and the matter was continued until September 11, 1991.

96. Jan Paul filed a motion requesting payment of attorney's fees for having to attend another hearing due to the defendant's failure to attend the July 17 hearing. Gary Karpin responded by filing a memorandum in opposition. (Ex. 47, attached depo. ex. 42.) In his memo, Gary Karpin repeated the claim that his client was unable to attend "due to mandatory educational training which she needed to participate in to keep her job." This was not true.

97. Gary Karpin sent a copy of this memo to Nancy Ouellette. She read it and was surprised by the false assertions regarding mandatory educational courses. She contacted Gary Karpin immediately to let him know that this information was not true. Nancy Ouellette had been available to attend the July 17 hearing and would have attended but for Gary Karpin telling her she did not have to appear.

98. On or before the September 11 hearing, Nancy Ouellette completed another Affidavit of Income and Assets. (Ex. 47, attached depo Ex. 43.) This one included the additional rent income that had not been included in the July affidavit. Nancy Ouellette gave this signed affidavit to Gary Karpin.

99. The panel finds that the signature on the July affidavit, Ex. 48, was not that of Nancy Ouellette and that she had not signed it before Elaine Hall as suggested by respondent. The panel further finds that Nancy Ouellette had been in Virginia on July 17; that she was there on vacation and not to attend any mandatory training course, and that she did not attend the July 17 hearing because Gary Karpin told her not to.

100. The magistrate asked Gary Karpin who signed the July 17 affidavit. He falsely stated that he did not know. He then produced the newly signed affidavit which Nancy Ouellette had signed the day before. He submitted this affidavit to the court.

101. Gary Karpin also told the court that he had been mistaken about the educational courses.

102. The court granted Ms. Paul's motion for attorney's fees. Gary Karpin later apologized to his client for his representations regarding the educational courses and said he would pay the attorney's fees.

103. At the hearing on this matter, the panel was impressed with the credibility of Nancy Ouellette. Gary Karpin, on the other hand, who attempted to shift the blame to both Ouellette and Hall and who continued to deny any role in preparing the forged July affidavit, was not believable.

104. His sworn testimony was that Nancy Ouellette had told him that she was in Virginia taking educational courses. (Ex. 46.) This was not true.

105. His sworn testimony was that the first he learned about the forged affidavit of July 17 was during his client's testimony at the

September 11 hearing. (Ex. 47.) This was not true.

106. His sworn testimony was that when he learned of the forgery, he returned to his office and confronted Elaine Hall about it. Karpin claimed that Elaine Hall then admitted to him that she had signed the affidavit by mistake. Gary Karpin testified that he reprimanded her for this conduct. None of this sworn testimony is true.

107. Nancy Ouellette fired Gary Karpin and reported this matter to the PCB. Magistrate Bech, who had presided at both the July and September hearings also filed a complaint regarding Gary Karpin's submission of false evidence. The Professional Conduct Board opened a file and commenced investigation shortly thereafter.

108. In order to defend himself against these PCB complaints, Gary Karpin asked Elaine Hall to sign an affidavit accepting responsibility for the forged affidavit of July 17. Elaine Hall had by this time left Gary Karpin's employment due to medical problems. At the time she left Gary Karpin's employment, there was no discussion or offer of any severance pay. Gary Karpin sent Elaine Hall an affidavit which he had drafted for her and which falsely claimed that she signed the Ouellette affidavit on July 17, 1991 "inadvertently" and without Gary Karpin's knowledge or participation. Along with the affidavit was a check for $100 marked "severance pay." Elaine Hall signed the affidavit because she wanted to help out her former employer and because she wanted the money. Karpin then submitted this false affidavit to the Professional Conduct Board in response to the complaint. (Ex. 46.)

109. The Professional Conduct Board investigation continued and the board's investigator spoke with Elaine Hall again. After this conversation, she called Gary Karpin and told him it had gone well. Shortly after this call she received a second one hundred dollar ($100.00) check from Gary Karpin marked "severance pay".

110. She submitted another affidavit in January of 1992 in which she set forth her medical problems and claimed to be cooperating fully with the investigation.

111. In March of 1992, Gary Karpin sent two (2) more one hundred dollar ($100.00) checks to Ms. Hall, the third after he requested information about her conversation with Nancy Ouellette and the fourth after he received an angry call from Elaine Hall's husband.

112. In June of 1992, Elaine Hall was subpoenaed to a deposition. She testified that she knew that she had not been telling the truth up to that point and was getting in deeper and deeper. She spoke to an attorney who advised her to tell the truth. The Vermont Attorney General granted Elaine Hall "use and fruits" immunity in return for her testimony in the Professional Conduct Board matter.

113. The Hearing Panel finds no violation based upon the respondent's efforts to obtain what the panel believed to be false affidavits from Elaine Hall since this was not charged by Bar Counsel. The evidence with respect to these affidavits was admitted without objection and the panel has found it helpful in evaluating the credibility of Elaine Hall. Even though she had lied in the past, a fact she freely admitted, the panel found her very credible. Her demeanor was forthright and her answers to

questions were direct and without equivocation.

114. The panel also considered this evidence in recommending sanctions.

115. Gary Karpin's fraudulent, deceptive, and dishonest conduct in submitting the forged affidavit of July 17, and the false information that his client could not attend the hearing due to mandatory educational requirements violated DR 1-102(A)(4)(conduct involving fraud, deceit, misrepresentation, false statement), DR 7-102(A)(4)(use of false evidence); and DR 7-102(A)(6)(creation of false evidence).

116. Gary Karpin was not adequately prepared to handle the July 17 hearing because he had not bothered to secure the presence of his client, had not reviewed or answered her questions about what should be included in the affidavit, and had not even bothered to note that it was unsigned. This conduct violated DR 6-101(A)(2) (handling a legal matter without adequate preparation). His resulting false statements and fraud began because of his attempt to cover up for his lack of preparation.

117. His instructions to his client not to attend a hearing when he knew her attendance was required and the submission of a false affidavit constituted conduct prejudicial to the administration of justice in violation of DR 1-102(A)(5). The delays incurred as a result of his actions needlessly wasted court time and needlessly prolonged adjudication of the matter.

In reference to sanctions, we note that during the disciplinary process Gary Karpin engaged in an unprecedented pattern of submitting false statements, submitting false evidence, and using other deceptive practices. The panel was particularly appalled by his repeated attempts to shift blame to Elaine Hall and his efforts to obtain false affidavits from her.

In considering the credibility of the respondent in addition to other evidence the Panel considered the extremely negative testimony as to his reputation for truthfulness and veracity.

E. RECOMMENDED SANCTION

Respondent here repeatedly violated the duties he owed his clients, to the public, and to the legal system. See, for example, the following provisions of the ABA Standards for Imposing Lawyer Sanctions: 4.4 Lack of Diligence, 4.5 Lack of Competence, 4.6 Lack of Candor, 5.2 Failure to Maintain the Public Trust, and 6.1 False Statements, Fraud, and Misrepresentation, and 9.22(f) Submission of False Statements in Connection with the Disciplinary Process.

The only factors present in mitigation are his absence of a prior disciplinary record and his inexperience in the practice of law. Since, however, the violations span nearly the entire time he has been a member of the Vermont bar, the absence of prior violations is of little relevance. On the other hand, almost every aggravating factor articulated in the ABA Standards is present here: dishonest and selfish motive, a pattern of misconduct, multiple offenses, submission of false evidence, refusal to acknowledge the wrongful nature of his conduct, and, in the Coderre matter particularly, the vulnerability of his victim.

The Panel is convinced that the depth and breadth of respondent's unethical conduct is so significant and wide-ranging that he is a threat to the public, the profession, the courts, and his clients. The panel recommends that he be disbarred from the practice of law.

Dated October 21, 1992

Respectfully submitted,

/s/

_____
Leslie G. Black, Esq.

/s/

_____
Deborah Banse, Esq.

/s/

_____
Nancy Foster

ENTRY ORDER

SUPREME COURT DOCKET NO. 92-570

MARCH TERM, 1993

In re Gary Karpin	}	APPEALED FROM:
	}	
	}	
	}	Original Jurisdiction
	}	
	}	
	}	DOCKET NO. 89.57; 90.08; 90.64
	}	& 91.53

In the above entitled cause the Clerk will enter:

Judgment that Gary Karpin is removed from the office of attorney and counsellor at law and his name is stricken from the rolls.

BY THE COURT:
/s/

Frederic W. Allen, Chief Justice
/s/

Ernest W. Gibson III, Associate Justice
/s/

John A. Dooley, Associate Justice
/s/

James L. Morse, Associate Justice
/s/

Denise R. Johnson, Associate Justice

No. 92-570

In re Gary Karpin

Supreme Court

Original Jurisdiction

March Term, 1993

Shelley A. Hill, Bar Counsel, Montpelier, for plaintiff-appellee

David J. Williams of Sleigh & Williams, St. Johnsbury, for defendant-appellant

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

PER CURIAM. Respondent-attorney appeals the recommendation of the Professional Conduct Board that he be disbarred from the practice of law. Respondent claims that (1) his due process rights were violated by allowing Bar Counsel to prosecute the case and participate in the Board's deliberations, in violation of the doctrine of "internal separation of powers," (2) the evidence is insufficient to support many of the Board's key findings, and (3) the recommended sanction is inappropriate. We adopt the recommended sanction.

I.

Respondent's first argument is that his due process rights were violated when the Board failed to disqualify Bar Counsel from prosecuting this case. Respondent claims that the dual role of Bar Counsel, as prosecutor and counsellor to the Board, violated the internal-separation-of powers rule. The combination of investigatory and adjudicatory functions does not, by itself, violate due process. In re O'Dea, 4 Vt. L.W. 19, 22 (Feb. 11, 1993). Because the Board is not the final decision-making authority and has the power only to recommend the sanction, respondent has not demonstrated any deprivation of due process rights in the disciplinary process. See id. (no violation of due process where Judicial Conduct Board prosecutor actively participated in the deliberative process).

II .

Respondent's second claim is that the evidence does not support the findings. First, respondent argues that, because Bar Counsel carries the burden of proving respondent's misconduct by clear and convincing evidence, A.O.9 Rule 13(C), on appeal all reasonable doubts and inferences must be resolved in his favor, citing Emslie v. State Bar of California, 520 P.2d 991 (Cal. 1974). Emslie, however, is distinguishable. Under the California disciplinary system, findings of fact made by the disciplinary board are not binding on the reviewing court. Id. at 995. Under present Vermont law, however, this Court must accept the Board's findings of fact unless they are "clearly erroneous." A.O. 9 Rule 8(E). As long as the Board applies the correct standard of proof, the Board's findings will be upheld if they are "'clearly and reasonably supported by the evidence'" because the Board is the trier of fact. In re Rosenfeld, __ Vt. __, __, 601 A.2d 972, 975 (1991) (quoting In re Wright, 131 Vt. 473, 490, 310 A.2d 1, 10, (1973)); cf. In re G.S., 153 Vt. 651, 652, 572 A.2d 1350, 1351 (1990 mem.) (findings of fact stand unless clearly erroneous because court correctly applied clear and convincing standard of proof in proceeding for termination of parental rights). Because the Board correctly applied the clear and convincing standard of proof, we will accept the Board's findings unless they are clearly erroneous.

The allegations of misconduct arise out of the respondent's representation of different clients in four unrelated matters. Each is addressed separately.

A.

In the first case, respondent was contacted by Fred and Janet Gage to represent them in connection with soot damage they had sustained in their home due to what they believed was a faulty installation of a furnace and hot water heater. The company that installed the furnace and hot water heater initially agreed to correct the problem, but then denied liability. Respondent was employed to pursue the claim against the installer. He also knew that his clients were making a claim against their own insurer, Cooperative Fire Insurance Association, which ultimately paid approximately $12,000 in damages. When Mr. Gage telephoned respondent to discuss this settlement, respondent advised Mr. Gage not to tell him what he was receiving from the insurer "because it would hurt his dealing with the installer." The Gages executed a proof of loss which subrogated to their insurer their rights to collect damages from the installer.

Respondent settled the Gages' claim against the installer for $8,000 and informed the Gages that this settlement would have no effect on their claim against their own insurer because the claim against the installer "covered a different loss." When the insurer later learned of the settlement with the Gages, it demanded the return of the monies paid under the policy. When the Gages confronted respondent about the problem, he told them that he had not known they had filed a claim against the insurer. He later told counsel for the insurer that there was no dual compensation "because the claims had covered different losses."

The hearing panel, in findings adopted by the Board, found that respondent's denial to his clients that he had any knowledge of the claim against the insurer was conduct involving dishonesty and misrepresentation in violation of DR 1-102(A)(4). The panel further found as aggravating factors that respondent submitted false statements to Bar Counsel in connection with the investigation of the matter and that he attempted to shift blame for the problem by suggesting that the Gages were attempting to defraud the insurer and the installer without his knowledge or involvement.

On appeal, respondent argues that the Gage complaint must be dismissed because the only evidence to support the Board's findings is the testimony of Janet Gage and that her testimony was not worthy of belief. It is the role of the trier of fact to "'determine the weight of the evidence and the persuasive effect of the testimony.'" In re Rosenfeld, ___ Vt. at ___, 601 A.2d at 975 (quoting In re Wright, 131 Vt. 473, 490, 310 A.2d 1, 10 (1973)). We find no error in the Board finding Janet Gage credible.

In addition, respondent alleges that two findings are clearly erroneous: the finding stating that the Gages contacted the insurer with respondent's knowledge and consent and the finding stating that the Gages did not understand the subrogation form. There was credible testimony directly supporting each of these two findings, and thus, we uphold the factual determination made by the finder of fact. See id.

Respondent also claims that the panel failed to find several facts: that the Gages did not inform respondent of their contacts with and attempts to collect from the insurer; that Mrs. Gage met with McNally from the insurance company and told him that she was not getting any money from the installer on the same day that she signed the general release of the installer; and finally, that there was no evidence that respondent ever lied to or misled the Gages. Because there was credible evidence directly refuting respondent's alleged facts, the Board did not err by failing to so find. Cf. Cano v. Cano, 129 Vt. 598, 605, 285 A.2d 721, 726 (1971)(failure to make certain findings will not be reviewed where requested findings are of insufficient merit to affect the result).

B.

In the second case, respondent was retained by Donald Coderre after a car dealer refused to fix Coderre's recently purchased, allegedly defective used automobile. Although two independent mechanics suspected that the car had either a faulty head gasket or engine block, the dealer refused to fix the car, thereby allegedly dishonoring the forty-five-day warranty. When Coderre contacted respondent, respondent indicated that Coderre had a good case and that Coderre should return the car to the dealer as defective goods under the Uniform Commercial Code and stop making payments on his bank loan, which was secured by the car. The bank subsequently repossessed

the car.

Respondent performed minimal trial preparation by deposing the dealer and attending opposing counsel's depositions of Coderre and Coderre's witnesses. During pretrial negotiations, Coderre told respondent that he wanted the dealer to pay off the car loan and forgive the repair bills. For six months there was no action in the case.

In March of 1990, opposing counsel made respondent an offer, which Coderre rejected. On April 24, 1990, respondent wrote a letter informing Coderre that the case was scheduled as backup for May 1, 1990; however, Coderre never received this letter. The case was moved from backup to the schedule for May 1, but respondent did not immediately inform Coderre of this change. Respondent did not notify the witnesses of the trial date because, as he told his secretary, the case was going to settle. Thereafter, he telephoned Coderre at 10:00 p.m. at his home on April 28 to tell Coderre that the case was going to trial on May 1. When Coderre expressed his concern over the short notice and the possible unavailability of his witnesses, respondent falsely stated that the subpoenas were ready to be served the next day. Respondent discussed settlement with Coderre, who insisted that a $1500 settlement would be acceptable only if the dealer would pay off the car loan and forgive the repair bills.

Respondent agreed with the attorney for the car dealer to settle the case for $1500 in direct opposition to his client's wishes. When Coderre learned of this, he told respondent he had not authorized such a settlement and respondent must undo the settlement. Despite Coderre's wishes, respondent negotiated the check, signed the stipulation agreement and filed it with the court.

Coderre hired another attorney in order to try to rescind the settlement. Respondent learned that Coderre had informed his new attorney that respondent had settled without Coderre's authority. Respondent then commenced a retaliatory small claims suit for the collection of unpaid services he had rendered on Coderre's case. The Board found that some of the fees sought were for services that had not been rendered. Coderre answered respondent's claim with allegations that respondent was incompetent and that respondent had settled the case without Coderre's authority. Although assisted by his new attorney, Coderre represented himself at small claims court. Coderre and respondent reached an oral agreement in which Coderre said he would drop his attempt to recover fees already paid to respondent if respondent would drop his attempt to collect more legal fees. They did not discuss malpractice or ethical complaints. Respondent drew up the stipulation, which included a waiver by Coderre of any malpractice or ethical complaints against respondent. Because Coderre was unsophisticated and did not read well, he signed the stipulation assuming it contained the terms to which the two had orally agreed. The Board found that respondent had violated DR 6-101(A)(2) by inadequately preparing for Coderre's trial and DR 1-102(A)(5) by attempting to squelch any ethical investigation into his conduct.

Respondent argues that several findings of fact are clearly erroneous because the panel chose to believe Coderre and ignore contradictory business-record evidence. As respondent states, the central question is whether Donald Coderre was a credible and trustworthy witness. The panel specifically found Donald Coderre to be a credible witness. We will uphold this factual determination. See Lockwood v, Bougher, 145 Vt. 329, 331, 488

A.2d 754, 755 (1985)(determining credibility of witnesses is exclusively matter for trier of fact). The findings that respondent challenges state the following: that respondent advised him not to continue to make payments on his bank loan; that Coderre was surprised that the car had been repossessed; the alleged implication that respondent was responsible for the loss of the evidence (the car) necessary for the law suit; that Coderre received no notice of the trial until two days before the trial; and finally, that respondent tricked Coderre into waiving his civil claims against respondent. Because there is credible evidence to support all of these findings, we defer to the Board's fact-finding and reject all of respondent's arguments concerning the Coderre complaint.

In addition to the factual disputes raised by respondent in the Coderre case, the Board noted three other factual situations in which respondent was found to have lied, and these situations are relevant to the determination of the appropriate sanction. Respondent lied to the Board in stating that he had been ready to go to trial in the Coderre case, that the witnesses were ready to testify at the trial, and that he was authorized to settle the case.

C.

In the third case, respondent was charged with accepting private employment in a matter in which he had had substantial responsibility while he was an Orleans County Deputy State's Attorney. Respondent had served as Deputy State's Attorney to Philip White, who had developed a unified, interagency procedure to coordinate the investigation and prosecution of child sex abuse cases. The panel found that this procedure demonstrated that the office took child sex abuse cases very seriously.

In July of 1988, as he was preparing to leave on vacation, Philip White advised respondent that a sex abuse case involving a thirteen-month-old baby, K.B., was coming into the office and that respondent was to handle the case. Respondent filed a CHINS petition and represented the State at a temporary detention hearing. Respondent was prepared to represent the State at a contested merits hearing but instead actively participated in the negotiated resolution of the case, which resulted in a stipulation signed by respondent. The panel found that respondent's participation in the case was substantial.

Later in the summer, after respondent had left the State's Attorney's office, the parents of K.B. asked respondent to represent them in the same matter. They told respondent that they wanted to hire someone already familiar with the case. Respondent testified that he was aware of the ethical issues raised by the representation of K.B. and that he had researched these issues and reached a reasoned conclusion that his representation was within the bounds of ethical conduct. The panel, however, found this testimony was not credible. The panel concluded that respondent clearly violated DR 9-101(B) (a lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee).

Respondent argues that three of the panel's findings are clearly erroneous. First, respondent contests findings that he characterizes as implying that any attorney involvement in sex abuse cases would be per se "substantial." Respondent mischaracterizes these findings. They do not state or imply any per se rule. Rather, these findings describe the office

procedure for sex abuse cases and stress the seriousness with which the office addressed such cases.

Second, respondent challenges the finding that respondent's conduct was a "clear violation of DR 9-101(B) (a lawyer shall not accept private employment in a matter in which he had had substantial responsibility while he was a public employee)." Although the panel did not cite any case law interpretations of the term "substantial," the factual findings clearly support the finding that respondent had substantial responsibility in the K.B. case.

Finally, respondent contests the finding that the panel did not find credible respondent's testimony that he researched the ethical implications of private representation of K.B. and had reached a reasoned conclusion that his representation would not violate any ethical rules. Respondent testified, however, that he could remember only "looking into the issue" but not whether he consulted case law. Moreover, the panel was free to believe or not believe respondent's testimony. See In re Rosenfeld, ___ Vt. at ___, 601 A.2d at 975 (panel must determine weight and persuasiveness of testimony).

D.

In the final case, respondent was retained in June of 1991 by Nancy Ouellette to represent her in a modification-of-custody-and-support action. Ouellette told respondent that she would be in Virginia for most of the summer but could return for a hearing. Respondent advised Ouellette that she would not need to be present at the hearing. Ouellette was given a blank affidavit of income and assets to fill out and return to respondent's office. She completed most of the form but had questions as to whether to include certain income from rental property. She returned the unfinished and unsigned affidavit with a note asking for advice as to how it should be completed. Respondent did not respond to Ouellette's inquiry.

Respondent informed Ouellette of the hearing date but did not tell her she was required to attend. On the day of the hearing, respondent noticed that the affidavit was not signed. He instructed his office worker, Elaine Hall, to sign Ouellette's signature and notarize the signature. Hall quickly looked at some samples of Ouellette's signature and signed the affidavit.

When respondent arrived at family court, he told the magistrate that Ouellette could not attend the hearing because she was in mandatory training courses, and he presented the forged affidavit to opposing counsel. Because opposing counsel had questions about the contents of the affidavit and because Ouellette was not present, the hearing had to be continued until September. Opposing counsel sought costs for the continuance. In his memorandum in opposition to awarding costs, respondent again asserted that Ouellette had been unable to attend the hearing due to mandatory training without which she would lose her job.

When Ouellette received a copy of this memo, she was surprised by the false assertions regarding job training and immediately informed respondent that she was only on vacation in Virginia. Before the September hearing, Ouellette completed another affidavit of income and assets, including her income from rental properties. During this hearing, the parties discovered that the first affidavit had been forged. Respondent informed the

magistrate that he did not know who had signed it. Respondent also told the magistrate that he had been mistaken about Ouellette taking educational courses.

The magistrate filed a complaint with the Board on October 4, 1991, and sent a copy of this complaint to respondent. In early October, Elaine Hall resigned from her employment with respondent. Although no severance pay was discussed upon her resignation, she received four or five checks, each for $100, between October of 1991 and March of 1992. Respondent was informed by the Board of the complaints filed against him on October 28, 1991. On November 14, 1991, respondent sent Hall an affidavit, which he had drafted and which falsely stated that Elaine Hall had inadvertently signed

Ouellette's affidavit. Accompanying this affidavit was a "severance pay" check for $100. Hall signed the affidavit. As part of the Board's investigation, Hall was interviewed and confirmed the information in the November affidavit. Shortly after this interview, Hall received another "severance pay" check for $100. Hall also submitted another affidavit in January confirming the November affidavit. On June 3, 1992, however, Hall was subpoenaed to a deposition and was given "use and fruits" immunity in return for her testimony. At the deposition on June 4, 1992, and at the hearing on June 23, she recanted her earlier statements and stated instead that respondent had noticed, moments before leaving for the hearing, that the Ouellette affidavit was unsigned and he had instructed Hall to sign the form and notarize it.

The hearing panel specifically found that respondent violated DR 6-101(A)(2) by failing to respond to his client's questions about completing the affidavit and failing to notice that it was unsigned. More importantly, the panel found that respondent's submission of the false affidavit violated DR 1-102(A)(5) (conduct prejudicial to the administration of justice), DR 7-102(A)(4)(knowingly using false evidence), and DR 7-102(A)(6) (the creation and use of false evidence). The panel also found that throughout the disciplinary process, respondent had submitted false statements and false evidence and had attempted to shift the blame to others, either his clients or his staff. This pattern of dishonesty, fraud and misrepresentation violated DR 1-102(A)(4).

Respondent's arguments challenge the panel's decision to find Hall's testimony credible and respondent's testimony not credible. As stated above, credibility is left to the fact-finder unless the findings are clearly erroneous. See In re Rosenfeld, ___ Vt. at ___, 601 A.2d at 975 (panel must determine weight and persuasiveness of testimony). Respondent claims that several findings are clearly erroneous. These findings state: that the signature on the July affidavit is not that of Ouellette and that Ouellette had not signed it before Elaine Hall as suggested by respondent; that respondent noticed that the signature was missing, that he asked Hall to forge the signature, and that Hall quickly looked through the files for samples of Ouellette's signature; that Hall received a check marked "severance pay" along with the affidavit that respondent had drafted for her on November 11; and that respondent misled or lied to the magistrate. There was ample credible evidence to support each of these findings, and we defer to the Board's factual findings. See id. (findings must be upheld if "clearly and reasonably supported" by evidence).

III.

Bar Counsel contends that the Board erred in dismissing a charge that respondent violated DR 1-102(A)(7), prohibiting a lawyer from engaging in "conduct that adversely reflects on the lawyer's fitness to practice law." Bar Counsel, however, neglected to file an appeal from the Board's dismissal and cannot raise the issue now. In re Berk, ___ Vt. ___, ___, 602 A.2d 946, 950 (1991).

IV.

Finally, respondent contends that the sanction is not appropriate for the alleged misconduct. In the Gage case, respondent violated DR 1-102(A)(4) (engaging in conduct involving dishonesty and misrepresentation). In the White case, respondent violated DR 9-101(B) (accepting private employment in a matter in which he had substantial responsibility as a public employee). In the Coderre case, respondent violated DR 6-1O1(A)(2) (handling a legal matter with inadequate preparation) and DR 1-102(A)(5) (attempting to foreclose an ethical investigation of his conduct, which constituted conduct prejudicial to the administration of justice). In the Ouellette case, respondent violated DR 1-102(A)(4) (engaging in conduct involving dishonesty and misrepresentation), DR 7-102(A)(4) (using false evidence), DR 7-102(A)(6) (creating false evidence), DR 6-1O1(A)(2) (handling a legal matter with inadequate preparation), and DR 1-102(A)(5) (submitting false evidence and lying to magistrate, which constituted conduct prejudicial to the administration of justice).

Although the Board's recommended sanction of disbarment is not binding upon this Court, it is accorded deference. In re Berk, ___ Vt. at ___, 602 A.2d at 948. Moreover, the Board relied upon the American Bar Association Standards for Imposing Lawyer Sanctions (1991) (ABA Standards), which we have found useful in the past. E.g., In re Berk,__Vt. at__, 602 A.2d at 950. Under these standards, the factors to be considered in imposing sanctions are the duty violated, the lawyer's mental state, the actual or potential injury caused by the lawyer's misconduct and the existence of aggravating or mitigating factors. ABA Standards, supra, at 30.

Although the Board focused on four of the ABA provisions, we are convinced that standards 4.61 and 6.11 together require disbarment in this case. Under standard 4.61, disbarment is appropriate "when a lawyer knowingly deceives a client with the intent to benefit the lawyer. . . , and causes serious injury or potentially serious injury to a client." The Board found that respondent had lied to the Gages, and the result was that the Gages were sued by their insurer and incurred additional attorney's fees. The Board also found that respondent lied to his client Ouellette about the necessity of being present at the hearing. Moreover, the Board found that respondent had engaged in a pattern of deceit in an attempt to cover up his own misconduct.

Under standard 6.11, disbarment is appropriate "when a lawyer, with the intent to deceive the court, makes a false statement, submits false document . . . , and causes serious or potentially serious injury to a party." The Board found that respondent had lied to the magistrate about the reason for Ouellette's absence from the July hearing and that he had submitted a forged affidavit to the court. In addition, respondent lied to the Board throughout the disciplinary proceedings and induced Hall to make false statements. This could have subjected Hall to prosecution, an enormous potential injury.

Disbarment is an appropriate sanction under the ABA Standards, and the fact that almost every aggravating factor is present confirms disbarment as the appropriate sanction. See ABA Standards, supra, at 9.22 (listing aggravating factors). Respondent had dishonest and selfish motives. He engaged in a pattern of misconduct. He committed multiple offenses. He engaged in bad faith-obstruction of the disciplinary proceeding by lying to the panel and attempting to have Coderre waive his right to bring a complaint. He submitted false evidence and used other deceptive practices during the disciplinary process. He refused to acknowledge the wrongful nature of his conduct. He took advantage of a vulnerable victim, especially Coderre. The only mitigating factors that were present were his inexperience in the practice of law and the absence of a prior disciplinary record. See id. at 9.32. Due to the brevity of his practice, however, the lack of past disciplinary actions is not significant. The Board properly determined the appropriate sanction for respondent's conduct, and we adopt its recommendation.

Judgment that Gary Karpin is removed from the office of attorney and counsellor at law and his name is stricken from the rolls.