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D.C. Court of Appeals

ATTORNEYS
DISCIPLINE

60 day suspension from practice of law is imposed for failure to seek client's lawful objective and neglect of legal matter.

IN RE: JOHN J. STANTON, RESPONDENT, D.C.App. No. M-124-82, November 30, 1983. *Opinion per curiam* (Frank Q. Nebeker, John M. Ferren and James A. Belson, JJ. concur).

PER CURIAM: This matter is before us for our consideration of the Report and Recommendation of the Board on Professional Responsibility (Board).

The Board has found one instance of respondent's "neglect of a legal matter entrusted to him" in violation of DR 6-101(A)(3) and two acts of respondent's "intentional failure to seek a client's lawful objectives" in violation of DR 7-101(A)(1). The Board recommends suspension of respondent for sixty (60) days. We accept the Board's findings of fact as being supported by substantial evidence of record, and adopt the Board's recommended suspension of respondent for sixty (60) days.

Accordingly, it is ordered by the court that respondent, John J. Stanton, be and he hereby is suspended for sixty (60) days from the practice of law for the reasons set forth in the appended Report and Recommendation of the Board. Respondent's sixty (60) day suspension is to be served concurrently with his suspension of a year and a day for similar disciplinary rule violations entered this day in *In re John J. Stanton*, No. 83-142 (D.C. November 30, 1983).

This order of suspension shall be effective thirty (30) days from the date of this opinion. D.C. Bar Rule XI §19(3).

So ordered.

BOARD ON
PROFESSIONAL RESPONSIBILITY
DISTRICT OF COLUMBIA
COURT OF APPEALS

Bar Docket Nos. 180-79, 468-79, and 258-80

IN THE MATTER OF
JOHN J. STANTON
Bar No. 168997

REPORT AND RECOMMENDATION

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We agree with the Hearing Committee's conclusion that respondent violated DR 7-101(A)(1) when he refused to file a bond review motion on behalf of his client in the face of her direct instruction to do so. A lawyer who refuses to file a motion as fundamentally important as a bond review motion after being instructed to do so by his client is in violation of the disciplinary rules except in certain unusual circumstances.

The factors involved in a judge's decision to reduce the severity of a criminal defendant's conditions of release are so subjective that no lawyer can be sure that such a motion would be frivolous except in certain clearcut cases. To be sure, if the client is subject to a five-day hold, is also arrested on an escape warrant from another sentence, has been revoked on his probation or parole, or otherwise has no possible chance of being released, then an attorney might be justified in refusing to file a bond review motion despite his client's request. Such a motion might be frivolous, and the lawyer would have an obligation not to burden the court with a pointless motion.

On the other hand, where the client can theoretically be released, then a bond review motion should always be filed when requested by the client. It is simply impossible to predict with absolute certainty how a court will react to such a motion. Sometimes even the mere passage of time will convince a judge to reduce the severity of the conditions of release. Thus, the motion should always be filed when the client insists upon exercising his absolute statutory right to such a motion unless the lawyer determines that the motion would be wholly frivolous. D.C. Code §23-1321(d).

This is not to say that a lawyer could not advise his client that such a motion was so unlikely to succeed as not to be worthwhile. A lawyer would certainly be justified in urging his opinion on the client and in telling his client that the lawyer's time and efforts would be better spent on other aspects of the case. However, if the client, having heard his lawyer's opinion and having understood it, rejects it and insists upon a bond review motion being filed, the lawyer is obligated to pursue his client's lawful objectives through reasonably available means permitted by law.

There is no question that a bond review motion is a reasonably available means permitted by law. The respondent in this case flatly refused to file such a motion despite repeated requests by his client. It was his judgment that such a motion would be worthless and that the client would be better off in jail. Our point is that an attorney is not entitled to substitute his own judgment for that of the client in a matter as fundamental as whether or not to ask that the client be released pending trial. The case belongs to the client, not to the lawyer. The lawyer is bound to exercise his professional judgment in advising the client. But if the lawyer's advice on such a fundamental matter is rejected, the lawyer has only two choices: either pursue the lawful objective of the client or withdraw.

What the lawyer may not do is simply substitute his own judgment for that of the client and leave an incarcerated indigent client isolated in the District of Columbia Jail with no one to turn to, his lawyer having simply overruled him.

When a lawyer represents an indigent criminal client, particularly one who is incarcerated, his duty is particularly compelling. For an indigent locked up in the District of Columbia Jail, the world is a hostile place indeed. Communications with one's family and friends and neighbors may be difficult or virtually impossible. The incarcerated indigent typically has few or no resources with which to deal with the many problems that confront him. The one person in the complex criminal justice system who is supposed

(Cont'd. on p. 106 - Discipline)

D.C. Court of Appeals

ATTORNEYS
DISCIPLINE

1 year suspension of attorney from practicing la is imposed where attorney failed to seek client objectives based on his intractable view that in h judgment he could overrule client's instruction

IN RE: JOHN J. STANTON, RESPONDEN D.C.App. No. 83-142, November 30, 1983. *Opi ion per curiam* (Theodore R. Newman, Jr., C. Frank Q. Nebeker and Julia Cooper Mack, J concur; Mack, J. would adopt sanction recor mended by hearing committee).

PER CURIAM: This matter is before us f our consideration of the Report and Recomme dation of the Board on Professional Responsibi ty.

The Board finds two separate acts of "negle of a legal matter . . .", 6 DR §101(A)(3), and tw separate instances of "intentional failure to see a client's lawful objectives." 7 DR §101(A)(The Board recommends suspension for a ye and a day. We adopt the Board's recommend tion.

Accordingly, it is ORDERED by the court th respondent John J. Stanton, be, and hereby suspended for a year and a day from the practi of law for the reasons set forth in the append Report and Recommendation of the Board Professional Responsibility.

This order of suspension shall be effective th ty (30) days from the date of this opinic D.C.App.R. 11 §19(3).

So order

BOARD ON
PROFESSIONAL RESPONSIBILITY
DISTRICT OF COLUMBIA
COURT OF APPEALS

Bar Docket Nos. 31-81, 38-81

IN THE MATTER OF
JOHN J. STANTON, RESPONDENT.

REPORT AND RECOMMENDATION

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Our review of the extensive record in this ca leaves us with no doubt that responde neglected the legal matters of Johnson a Faison that were entrusted to him and that, several instances, he willfully failed to purs the lawful objectives of his two clients. T record in this case is highly detailed, and r spondent contests almost none of the fa recited above. The Hearing Committe

(Cont'd. on p. 104 - Attorneys)

TABLE OF CASES

D.C. Court of Appeals

Fourth Annual National Inventors Conference to Focus on Entrepreneurship

The Fourth Annual National Inventors Conference will offer a practical program of lectures and workshops for inventors, business executives, scientists, and entrepreneurs. The conference will be presented on Friday, February 10, 1984, at the Marriott Crystal Gateway Hotel in Arlington, Virginia. Cosponsored by The U.S. Patent and Trademark Office, The National Council of Patent Law Associations, and The Bureau of National Affairs, Inc. The program will focus on entrepreneurship for inventors, the patent process, marketing, obtaining capital, inventor organizations, and federal programs aiding in program development.

Gerald J. Mossinghoff, U.S. Commissioner of Patents and Trademarks, will be the luncheon speaker. Four different workshops for participants will be led by panels of inventor-entrepreneurs, venture capitalists, representatives of inventor groups, and Government representatives. The workshop topics are: Inventing in Today's World, Funding a New Idea, Inventor Organizations as a Source of Help, and What the Government Can Do to Help.

The conference registration fee, which includes all sessions, a luncheon, and conference materials, will be $75.00. Checks should be made payable to BNA Conferences.

To register or for further information, contact National Inventors Conference Registrar, BNA Conferences, 1231 25th Street, N.W., Washington, D.C. 20037; or telephone 800—424-9890 or (202) 452-4420 in the Washington, D.C. metropolitan area.

ATTORNEYS

(Cont'd. from p. 101)

meticulous report sets forth its findings of fact and carefully ties them to the record.

Those facts show that in the *Faison* case respondent failed to file a bond review motion when requested to do so by his client; failed to communicate in any significant fashion with his client; failed to investigate the facts of his client's case. Like the Hearing Committee, we do not reach the question whether any one of these failures by itself would amount to a violation of the disciplinary rules. Our unequivocal conclusion is that the sum total of all of these failures violates both DR 6-101(A)(3) (neglect) and DR 7-101(A)(1) (intentional failure to seek lawful objectives).

Turning first to the bond review motion, as we pointed out in *In re Rosen*, Bar Docket Nos. 347-80, *et al.*, decided April 28, 1982, now pending in the District of Columbia Court of Appeals, there may be certain extreme situations in which a bond review motion is utterly futile. In our view, those situations are limited to ones in which there is no possibility of release.

Faison found himself in a far different situation. There is no question that securing Faison's release, given the fact that he was subject to three separate bonds, would have been a difficult undertaking indeed. However, so far as we are aware a lawyer is not excused from performing legitimate tasks on behalf of his client simply because of their difficulty. The truth is that much could have been, and was subsequently done by other counsel, to reduce Faison's bond. That being the case, the precious right of respondent's client to secure his freedom before trial should not have been so lightly put aside by respondent.

There is no doubt in this record that the client requested that a bond review motion be filed. Therefore, respondent's refusal to carry out his client's lawful objective smacks of the kind of intentional conduct that is prohibited by DR 7-101(A)(1).

We think that the Hearing Committee also correctly analyzed the question whether respondent should have made a visit to the jail to discuss the case with his client. Although as individual lawyers, members of the Board might reach a different conclusion considering respondent's blanket refusal to interview his clients in the jail, that decision seems to us within the range of possible judgments that a lawyer could reasonably make concerning how to communicate with his clients.

However, the total absence of any meaningful discussion of this case with the client in any context or in any setting casts the entire matter in a different light. Thus, we find that even if we accept respondent's judgment in the matter of visiting the jail, we are bound to condemn his failure to find some alternative means of talking with his client about the case somewhere else.

Respondent himself admitted that the government's case against Faison was speculative in nature. Nevertheless, respondent made no effort to locate any witnesses helpful to Faison who could have bolstered his case. Respondent compounded the seriousness of his inactivity by refusing to withdraw as Faison's lawyer when notified by Bar Counsel of Faison's complaint against him. To compound matters, respondent refused to take any further action on behalf of Faison after the complaint was filed by Faison. Respondent sought no informal discovery from the prosecutor, initiated no plea negotiations, undertook no investigation, and did not speak to his client except for a brief courthouse cellblock visit when Faison was in court in connection with another case.

On the whole record in the *Faison* case, we concur in the Hearing Committee's finding that respondent violated the rules as charged.

The *Johnson* case presents a different, but equally disturbing, set of facts. Johnson had a hopeless case on the drug charge. Johnson had repeatedly told respondent that he was guilty of the charge. Johnson had signed a confession that was not subject to suppression. There were no search and seizure questions concerning the manner in which the police found the drugs in Johnson's possession. There was no affirmative defense. Respondent himself acknowledged that a guilty verdict was a virtual certainty.

In the face of all this, respondent counselled Johnson against entering a plea, instead urging Johnson to exercise his constitutional right to put the government to its burden. We wish to state that, whether or not individual members of this Board might or might not have adopted the same strategic approach to Johnson's case, respondent's advice to Johnson in this matter is not the subject of our concern.

Respondent claims that he had a theory of Johnson's case. Johnson had been on probation at the time of his arrest on the drug charge and had not been reporting regularly to his probation officer. Respondent says he believed that Johnson's release on bond could be obtained and that Johnson could, while on bond, compile a record of reporting to the probation officer that would assist Johnson at his virtually inevitable sentencing on the drug charge. We express no opinion as to the soundness of respondent's approach in this regard since it is not our function to assess the relative merits or demerits of reasoned tactical choices made by diligent counsel.

However, even accepting respondent's view of the case, once the trial date of June 4, 1981, came around, there was no further advantage for his client in pursuing the strategy of delay. At that point, Johnson clearly wanted to plead guilty. He had repeatedly expressed to respondent his desire to do so. Nothing further could be gained for Johnson by refusing to do so. Nevertheless, in direct contravention of his client's often-repeated desire to plead guilty, respondent refused in open court to take any affirmative action to further his client's desires in the matter.

The transcript of the colloquy between Judge Hess, Johnson, and respondent at the opening of the trial makes clear beyond doubt that respondent stubbornly refused to give his client even minimal assistance in entering his plea. Johnson sought the court's attention and said that he wanted to plead guilty. The judge began a standard Rule 11 voir dire to determine the voluntariness of the plea. Johnson indicated confusion about one point. He was confused as to why his drug charge and his petty larceny case had not been consolidated since the drugs had been seized from his person at the time that he was arrested on a warrant on the petty larceny case.

Johnson's confusion could have been cleared up in a moment or two had respondent offered his client any advice or guidance. Far from offering advice and guidance to the client in order to assist him in achieving his lawful objective, respondent said nothing to his client beyond several times urging him to tell the judge what was on his mind. This conduct falls so far below the standard expected of attorneys in assisting their clients that we have not the slightest hesitation in condemning it as neglect and as a wilful failure to pursue the client's lawful objectives.

Respondent's conduct embodies a view of the lawyer's role that we simply cannot accept. Respondent's view seems to be that in a case of disagreement between respondent and his client over the proper course of action to follow, the client is on his own in attempting to follow any course not concurred in by respondent. We think it is clear that, at least as to the fundamental decisions concerning the client's case, it is the respondent's desires, so long as they are lawful, that must control.

Respondent owes his clients an obligation to pursue their objectives as they see them. Naturally, we would defend to the fullest respondent's right, and indeed his duty, to communicate to his client his own views. However, once respondent is satisfied that his client is competent to make decisions concerning fundamental matters such as whether to plead guilty, once respondent is satisfied that the client understands the advice that he is giving, and once respondent is satisfied that the client's choice in the matter is a lawful choice, then respondent, in our view, owes his client a legal

duty to use his best efforts to pursue the client's stated objective. He may not substitute his own judgment for that of the client, and he may not, as he did in the case of Johnson's plea of guilty, stand passively by while his client flounders in an attempt to achieve a perfectly reasonable goal.

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SANCTION

The Hearing Committee conducted a separate proceeding on the issue of sanction and had before it briefs from Bar Counsel recommending suspension of a year and a day and respondent's brief, which did not address the issue of sanction but in effect asked the Committee to reconsider its decision on the violation. In a separate report and recommendation on the issue of discipline the Committee, after careful consideration, rejected Bar Counsel's proposed discipline and recommended instead that respondent be suspended from the practice for 120 days. In addition, the Committee recommended that, if subsequent procedural developments made it possible, respondent's suspension in the present case as well as in his prior case (*In re Stanton*, Bar Docket Nos. 180-79, *et al.*) total no more than 120 days.

After much consideration, we cannot agree with the Hearing Committee's recommendation in this regard. Although we are always reluctant to overrule our hearing committees and particularly so where the hearing committee has done an extensive and thoughtful job of analyzing the case, as here, we are moved by different considerations in recommending a sanction to the court in this case.

The focus of our analysis is on the respondent himself. Although the Board has an undoubted duty to maintain consistency in its recommended sanctions, a matter to which we turn in a moment, we feel that the unusual circumstances of respondent's position mandate that we begin our inquiry by focusing on his particular situation.

With the publication of the report and recommendation of the Board in this case, respondent will be before the court on two separate cases involving a total of four clients. Upon consideration of all four matters together, we think that a pattern emerges in respondent's conduct that is most disturbing.

First, respondent arrogates to himself the role of decision-maker in his representation of his clients. Although, as we have said so many times in our two opinions in these cases, there are areas in which counsel's judgment should prevail, respondent's peculiar view of his duty to his clients means to him that his judgment should prevail over that of the client in the substantive areas traditionally reserved solely to the client. There is no question that the decision whether to plead guilty, as in the *Johnson* case, is committed to the client and not to the lawyer. Nevertheless, respondent feels that he is entitled actively to attempt to thwart his client's desires as in the *Wilson* case discussed in our previous report and recommendation or to stand by and allow his client to flounder without his assistance as in the *Johnson* case discussed herein.

Second, respondent's habit of keeping his clients largely in the dark about the progress of their case is deplorable. The ABA's Minimum Standards for the Defense Function make it clear that full and complete communication with the client is an essential part of the attorney's role. Whether or not respondent cares to visit the D.C. jail to communicate with his clients is immaterial. If he chooses not to visit his clients at the jail, then he has the responsibility to devise some other means of keeping them posted as to developments in their cases.

Third, although not the basis for any disciplinary violation in this case, we think that respondent's arrogant and abusive manner towards his clients is relevant to the issue of sanction. The record in this and in the prior case is now replete with instances in which respondent admits that he verbally abused his client or a member of the client's family. We find his foulmouthed conduct in this regard to be starkly unprofessional and symptomatic of contempt, even almost a feeling of anger, that respondent seems to hold routinely towards his clients.

We are not unmindful of the difficulties of serving as appointed counsel for indigent criminal defendants. This Board tries to remember that charges are easy to make and difficult to defend. Nevertheless, out of the fabric of respondent's practice, there emerges a pattern of contempt for his clients that we find deeply disturbing.

Fourth, we are impressed by the fact that respondent does not seem to have the slightest doubt about the correctness of his behavior in routinely overruling his clients' judgments. In his arguments in the various hearing committees before which he has appeared and in this Board and in the papers he has filed, respondent has taken an extreme position: namely, that he is entitled to exercise his professional judgment in almost every situation regardless of the views of his client.

The result of this extreme view is particularly harsh where respondent does not communicate fully or well with his clients. In these situations, the client has little or no opportunity to make his views known, and when he does, his judgment is overruled by his attorney.

The cumulative effect of respondent's approach to his practice falls especially heavily upon respondent's clients because they do not choose to be his clients. Respondent's practice consists largely of appointed criminal cases. His clients have little or no choice as to who will represent them. In that situation, it seems to us that respondent has a particular obligation not to run roughshod over his client's views because they do not have available to them the protective mechanism that the client of the retained lawyer does: that is, simply to change lawyers.

We turn now to a consideration of other like cases and similar sanctions. As always, the job of drawing bright lines through the previous decisions of this Board and of the court in cases concerning neglect and wilful failure to pursue lawful objectives is a task fraught with difficulty. Nevertheless, we believe that certain broad patterns can fairly be discerned. At the lower end of the scale, the sanctions of reprimand by this Board and censure by the court have been reserved, for the most part, for single cases of neglect. *In re Williams*, Bar Docket No. 147-77; *In re Roundtree*, Disciplinary No. 31-76; *In re Rosenthal*, Bar Docket No. 118-77; *In re Mailloux*, Bar Docket No. 66-79; and *In re Hyman*, Bar Docket No. 69-79, are all cases involving simple neglect without more, all of which resulted in public reprimands. *But see In re Menard*, Bar Docket No. 278-78 (also involving violations of DR 1-102(A)(5) and 7-101(A)(1) resulting in reprimand); *In re Mundle*, Bar Docket No. 442-77 (involved violations of same additional rules also resulting in public reprimand). *In re Brown*, Bar Docket Nos. 305-77, *et al.*; *In re Guhring*, Bar Docket No. 398-78; *In re Mizel*, Bar Docket No. 77-74, also involve simple neglect in violation of DR 6-101(A)(3) and resulted in public censures. *But see In re Hughes*, Bar Docket No. 455-78 (also involving violations of DR 5-105(A) and 7-101(A)(1) and (2) resulting in public censure).

At the other end of the scale, the sanctions of disbarment or suspensions of two years or more have been, by and large, limited to those cases involving an extremely broad pattern of neglect and/or wilful failure, usually joined with other disciplinary violations and/or a record of previous disciplinary violations, indicating a general unfitness to practice law. *In re Haut*, 444 A.2d 317 (D.C.C.A. 1982) (twelve counts of neglect together with violations of numerous other disciplinary rules and prior record); *In re Spencer*, Bar Docket Nos. 222-79, *et al.* (eight counts); *In re Walsh*, Bar Docket Nos. 198-77, *et al.* (six counts); *In re Kops*, Bar Docket No. 211-77 (allowed legal clinic to collapse leaving at least four clients without representation resulting in two-year suspension).

Disbarment and lengthy suspensions have also resulted where gross negligence and wilful failure are combined with an extensive prior disciplinary record. *In re Bush*, Bar Docket No. 101-78 (gross negligence plus prior censure, two prior admonitions, and one prior reprimand resulted in disbarment); *In re Carter*, Bar Docket Nos. 170-77, *et al.* (gross negligence in two cases plus two prior suspensions resulted in disbarment); *In re Thorup* (neglect in criminal case joined with prior discipline and failure to cooperate with Bar Counsel resulted in recommendation of two-year suspension now pending in D.C.C.A.). Also, serious neglect and/or wilful failure combined with an act of dishonesty and/or prior discipline has also resulted in disbarment or a lengthy suspension. *In re Deusterdieck*, D.C.C.A. No. D-9-75 (1975) (neglect leading to expiration of statute of limitations joined with false statements concerning status of claim resulted in disbarment); *In re Sawyer*, Bar Docket Nos. 117-76, *et al.* (neglected to file two cases and subsequent misrepresentations concerning status and outcomes of cases resulted in disbarment by consent); *In re Williams*, Bar Docket Nos. 206-78, *et al.* (pattern of neglect plus commingling resulted in Board recommendation of disbarment now pending in D.C.C.A.); *In re Haupt*, 422 A.2d 76 (D.C.C.A. 1980) (four counts of neglect joined with conversion of client funds resulted in three-year suspension).

However, when we turn to suspensions in the range of sixty days to a year and a day, the waters become considerably murkier. The cases involving suspensions for a year and a day include *In re Bush*, Bar Docket Nos. 63-77, *et al.* (two cases of neglect joined with presentation of false evidence to hearing committee and record of prior censure); *In re Fogel*, 422 A.2d 96 (D.C.C.A. 1980) (neglect joined with false excuses to the court and previous reprimand for neglect); *In re Smith*, Bar Docket Nos. 370-77, *et al.* (numerous cases joined with failure to honor agreement with Bar Counsel). *Bush*, *Fogel*, and *Smith*, like the present case, all involved conduct that was wilful as well as neglectful. *In re Tucker*, Bar Docket No. 155-76, involved a single act of neglect joined with conduct involving dishonesty in the conversion of funds from an estate. The sanction of one year and one day suspension was apparently tailored to fit the Board's and the Court's concern that respondent's failing mental and physical condition made

unlikely that she would be able to resume the practice of law in the future. Therefore, a suspension of a year and a day was thought appropriate in order to shift the onus to respondent of justifying any possible future readmission to the Bar.

Cases involving suspensions of six months include *In re Lieber*, Bar Docket Nos. 384-78, *et al.* (neglect joined with failure to honor promises to Bar Counsel); *In re Ramos*, Bar Docket Nos. 548-78, *et al.* (neglect and wilful failure resulting in expiration of statute of limitations and failure to respond to court's request for additional evidence); *In re Russell*, 424 A.2d 1087 (D.C.C.A. 1980) (wilful failure to pursue personal injury case joined with failure to turn over file to new counsel and failure to cooperate with Bar Counsel); *In re Whitlock*, 441 A.2d 989 (D.C.C.A. 1982) (neglect and wilful failure in two criminal appeals made out pattern of conduct but mitigating factors present); and *In re Roundtree*, Bar Docket No. 432-77, *et al.* (four cases of neglect and wilful failure including prior disciplinary record for neglect resulted in Board recommendation of six-month suspension now pending in D.C.C.A.).

Before turning to the cases involving suspension of three months, we note that *In re Cope*, D.C.C.A. No. M-58-80, decided January 24, 1983, the court held that respondent's conduct in neglecting two criminal appeals was "less aggravated than had been the conduct of the attorney in *Whitlock*, *supra*, who was suspended for six months."

The cases involving suspensions of three months include *In re Alexander*, Bar Docket Nos. 179-80, *et al.* (respondent, who neglected to appear for scheduled trial in one case and sent unprepared associate to hearing in another, had three prior informal admonitions; case resulted in Board recommendation of suspension of three months now pending in D.C.C.A.); *In re Dwyer*, Bar Docket Nos. 356-78, *et al.* (respondent neglected to appear three times in one case and wilfully violated client's instructions in another); *In re Harmon*, Bar Docket No. 350-79 (neglect and wilful failure in not filing suit and failure to honor promise to Bar Counsel); *In re Jamison*, Bar Docket No. 5-78 (neglect and wilful failure to file answer on time and appeared in court late after three prior informal admonitions); *In re Knox*, Bar Docket No. 414-78 (neglect and wilful failure leading to expiration of statute of limitations after three prior informal admonitions); *In re Rosen*, Bar Docket Nos. 347-80, *et al.* (neglect and wilfil failure to move for pretrial release, failure to communicate with client, and failure to conduct investigation in two cases after record of prior discipline).

Finally, in respondent Stanton's previous case before this Board involving similar conduct in two other appointed criminal cases, the Board recommended a suspension of sixty days. That recommendation is now pending in the District of Columbia Court of Appeals.

As we survey this panoply of cases, we conclude that within the range of suspension from sixty days to a year and a day, the cases do not admit of easy classification. The sanctions that this Board has recommended, and that the court has adopted, in various neglect and wilful failure cases within the range we are now discussing seemed particularly sensitive to the facts and circumstances of each individual case.

In this case, given the deep concerns that we have about respondent's failure to grasp his ethical obligations to represent his clients in accordance with their legitimate wishes, we cannot escape the conclusion that respondent is drifting towards a disastrous disciplinary situation. Therefore, we find that a suspension of a year and a day is appropriate in this case in order to give respondent an opportunity to reflect upon his ethical obligations and to force respondent to justify his readmission to active practice.

The facts in respondent's four cases are unusual. Respondent has not been guilty of neglect in the usual sense of inadvertence or unconscious inattention. Instead, he seems to have a cohesive, although in our view completely erroneous view of his role as a lawyer. That view entitles respondent, in his judgment, freely to overrule his clients' wishes. Given the intractability of respondent's views in this regard, we think that the sanction recommended—a suspension of a year and a day—is the appropriate one.

BOARD ON
PROFESSIONAL RESPONSIBILITY

By: /s/ Mark W. Foster
MARK W. FOSTER

Date: 2/15/83

All members of the Board except Mr. Webb participated in the decision of this case.

DISCIPLINE

(Cont'd. from p. 101)

to be unreservedly devoted to the interests of such a client is the appointed lawyer. When that lawyer ignores the views of the client, the client is left completely without assistance in a world that is then unrelievedly hostile.

D. *Respondent's Attempt to Thwart His Client's Plea of Guilty.*

We part company with the Hearing Committee on the issue of respondent's handling of his client's attempt to plead guilty. In this case, complainant received contradictory advice from two different lawyers. One lawyer, Mr. Bright, urged complainant to accept a package plea of guilty in several cases, one of which was the case in which respondent was representing complainant. Respondent vigorously disagreed and urged his client not to accept the plea bargain.

We believe that the Hearing Committee misconstrued its role in resolving the question whether respondent intentionally failed to pursue his client's lawful objectives in this matter. Our misgivings are based upon our view that the merits of respondent's opinion concerning the wisdom of the plea bargain are absolutely irrelevant to our determination of this case. Whether respondent was right or wrong in his views of the plea bargain has no place in our deliberations nor in our decision.

We are therefore troubled by the discussion at pages 23 and 24 of the merits of the Hearing Committee's report concerning respondent's views of the plea offer as against those of Mr. Bright. We are particularly troubled by the following excerpt from page 25 of the Hearing Committee's thoughtful and carefully conceived report: "Even if one assumes that Respondent's judgment on that point was erroneous, it was not so far fetched as to justify a finding of 'neglect' or of 'intentionally' failing to pursue a client's objectives." Frankly, we can hardly conceive of a good faith opinion of a lawyer concerning a legal matter which would be "so far fetched as to justify a finding of 'neglect' or of 'intentionally' failing to pursue a client's objectives."

A lawyer is duty-bound to exercise his best professional judgment on behalf of his client. Only where total inattention or incompetence is made out on the part of the lawyer in reaching the decision should we ever be in the business of assessing the correctness of the lawyer's advice to his client. Otherwise, we put ourselves in the position of a sort of court of appeals from lawyers' judgments. Any attempt on our part to do so would be the worst sort of second-guessing or Monday morning quarterbacking.

Therefore, we conclude that the Hearing Committee was incorrect when it discussed the rightness or wrongness of respondent's views about the plea and purported to base its decision, at least in part, upon its view of the reasonableness of respondent's views.

What is to us much more troubling concerning respondent's conduct in this matter is the fact that, after a full opportunity to urge his views upon a competent client who disagreed with those views, respondent persisted in pressing his views in open court in an attempt to thwart his client's rationally arrived at decision to accept the plea bargain.

The facts show that respondent had had a full opportunity to argue to the complainant that she should not accept the plea bargain. In fact, respondent conceded at oral argument before the Board that he had had such an opportunity. Respondent further stated in argument before the Board that he had no doubt that the complainant was competent to make the decision that she made.

Once a lawyer's client, after full consultation, has reached a decision that the client is competent to make, then it seems to us that the lawyer is bound by that decision unless the client's decision is to seek an unlawful objective. In this case, there is absolutely no question that the client's objective—to plead guilty—was a lawful one. At that point, we believe respondent had an obligation to do his best to effectuate his client's desires. At an absolute minimum, he should have remained mute in court while the other lawyers conducted the plea procedure.

However, in this case respondent chose to take a more active role and to urge on the court his own personal views, which were in contradiction to the considered conclusion of his client.

* * *

Respondent's conduct, which is made out by the most clear and convincing evidence possible—his own words transcribed in open court—seems to us to be a serious violation of the Disciplinary Rules. No possible purpose of his client's was served by respondent's spreading his own personal views of the matter on the record after the client had decided to reject his advice. It is not a lawyer's place to seek to vindicate his own views, as opposed to those of his client, before a judge.

Respondent's conduct was particularly serious in the context of the importance of the transaction to Mr. Stanton's client. She was entering a plea of guilty in a series of cases. That plea would determine the status of her personal liberty for many months into the future. She earnestly believed, after full consultation with all of her lawyers, that the steps she was taking were in her best interest and would minimize the amount of time that she would ultimately have to spend in jail. Despite the clear fact, conceded by respondent, that his client was rational and fully informed, he interjected himself into the court procedure in an attempt to thwart the client's achieving her lawful objective of pleading guilty. This conduct violates the Disciplinary Rules.

Only the wisdom and vigilance of the presiding judge prevented respondent's intemperate behavior from frustrating his client's will. The fact that respondent did not succeed in frustrating his client's attempted plea does not weigh heavily in his favor.

On two separate occasions in the instant case respondent simply overruled his client's stated views on the grounds that he knew better than the client did. He did not have the right to do so. If his client had been wealthy, had been on release in the community, or had been better educated, she might simply have retained the services of another lawyer who would do her bidding. However, the appointed lawyer whose client is in jail has an almost entirely captive audience in his client. The client has neither the resources nor the ability quickly and easily to change lawyers, particularly in connection with a matter like bond review which must be acted upon speedily.

For all these reasons, it seems to us that an appointed lawyer with an incarcerated indige

client has a particularly high duty of fidelity to that client's considered judgments. When he breaches that duty in the highhanded manner that respondent breached his duty in this case, then his conduct rises to a considerable degree of severity.

In short, we believe that respondent violated the disciplinary rules when he intentionally failed to pursue his client's lawful objective and interjected his personal views in a forum where they had no place.

E. *The Quality of Respondent's Communications With His Client.*

We pause to note that we agree with the Hearing Committee's conclusion that, where respondent had communicated with his client, it is not our business to assess the quality of those communications. A neglect charge might be made out in a situation where no communications had occurred or where those communications were inappropriately brief or truncated in view of the complexity of the matters at hand. Neither situation appears on this record. Therefore, there could be no clear and convincing evidence of neglect based upon the quality of what a lawyer told his client unless the lawyer's competence were called into question.

II. THE WILSON CASE.

In Docket No. 258-80, respondent was charged with a violation of DR 6-101(A)(3) in that he neglected a legal matter entrusted to him. Bar Counsel charged that respondent had failed to obtain discovery, had failed to keep his client informed of the progress of the case, and had failed to investigate the case. The Hearing Committee found that there was no clear and convincing evidence that respondent failed to obtain discovery or that he failed to keep his client informed. It did find, however, that "there is clear evidence that Respondent neglected his client's legal matter. Despite the client's repeated assertions of innocence, Respondent concluded that his client was guilty, and failed to investigate the case, as charged."

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III. RECOMMENDED SANCTION.

We consider the two cases together for the purposes of determining the sanction that we recommended be imposed for respondent's actions. In the Benjamin case, the Committee recommended an informal admonition; in the Wilson case, it recommended suspension for ten days. We think neither sanction is adequate in itself and certainly not adequate when respondent's conduct is considered as a whole with respect to the two charges.

Although the facts of the two cases are distinct, respondent's conduct manifests the same underlying misconception of his obligation as an attorney. Respondent does not consider it his duty to be a representative or advocate for his client. He seems to think of himself as an arbiter who has the right to make decisions for his clients regardless of their wishes. Thus, in the Benjamin case, respondent insisted on telling the judge that he did not approve of his client's decision to plead guilty. In the Wilson case, he decided early that the client was guilty, despite the client's insistence on his innocence, and therefore felt it unnecessary to interview the client's suggested witnesses or to make any investigation.

Respondent's insistence on the validity of his own judgment, without regard to the wishes of his clients, is emphasized by the hostility that he displayed when his judgment was questioned. In the Benjamin case, the Committee noted that respondent's conduct was stubborn, petulant and abrasive, in one instance stopping just short of violence. In the Wilson case, respondent admitted becoming angry when the client chose a new attorney and therefore abusing the client with intemperate language. Several days later, on the date set for trial, respondent sought out Wilson's mother and subjected her to such abuse that she felt impelled to complain to Bar Counsel.

While in each case, the Committee expressly disclaimed basing its findings on respondent's unprofessional demeanor in these respects, we think that the arrogance respondent displayed in his dealing with his client is properly taken into account as refecting his lack of a sense of professional responsibility. This lack caused the specific acts of misconduct that we have found have been established by the evidence.

There are no precise precedents in this jurisdiction for the type of misconduct we have found exhibited in these cases (three instances of willful refusal to pursue the client's lawful objectives in two separate cases), but we think that the totality of circumstances warrants suspension for a period of sixty days.

In the Wilson case, respondent sued his client for the $600 not paid under the original $1,000 retainer. He obtained a default judgment for that amount, but a motion to open the default was pending at the time of the hearing. The Hearing Committee was of the view that respondent had earned no more than the $400 he had originally received and recommended that, if respondent recovered any more, he should make restitution to Wilson. At the time of argument before the Board, we were informed that the default had been opened; that respondent's claim had been litigated with Wilson being represented by Law Students in Court; and that the matter was awaiting decision. Since the issue of the fee is *sub judice*, we do not believe that it is appropriate for the Board to pass on the matter. We therefore make no recommendation with respect to restitution.

Accordingly, we recommend that respondent be suspended for a period of sixty days.

BOARD ON
PROFESSIONAL RESPONSIBILITY
By: /s/ Beatrice Rosenberg
BEATRICE ROSENBERG
By: /s/ Mark W. Foster
MARK W. FOSTER

Date: June 15, 1982

All members of the Board participated in this matter and join in this recommendation, except Mrs. King, who feels that a thirty-day suspension is the appropriate sanction.

LEGAL NOTICES

ORDER NISI

FONDENES, Anna Bergitte — Deceased

Charles Patrick DeRoche, *Attorney*
927 15th St., N.W., Wash., D.C. 20005

[Filed Jan. 9, 1984. Register of Wills, Clerk of the Probate Division.] Superior Court of the District of Columbia. Probate Division. In Re: Estate of Anna Bergitte Fondenes, deceased. Administration No. 1566-83. ORDER NISI FOR SALE OF REALTY. Charles Patrick DeRoche, Personal Representative of the estate of Anna Bergitte Fondenes, deceased, having reported the sale of lot 0048 Square 1983, improved by premises 4901 Reno Road, N.W., Washington, D.C., at and for the price of $149,000.00 all cash, subject to a 6% sales commission of $8,940.00, it is by the Court this 9th day of January, 1984, ORDERED that the sale be ratified and confirmed by the Court, unless cause to the contrary be shown on or before the 6th day of February, 1984, at 9:30 o'clock A.M., at which time higher offers will be considered and objections to said sale will be heard before the Fiduciary Judge providing a copy of this order be published once in the Washington Law Reporter and once in the Washington Post Newspaper at least ten days before the last mentioned date. /s/ CARLISLE PRATT, Judge. [Seal.] A True Copy. Attest: JOAN R. SAUNDERS, *Deputy Register of Wills for the District of Columbia, Clerk of the Probate Division.* Jan. 1

FIRST INSERTION

HALL, Helen B. — Decease

Superior Court of the District of Columbia
Probate Division
Administration No. 49-84 S.E
Helen B. Hall, deceased
Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs

Albert R. Rommal, whose address is 14738 Ne Windsor Road, New Windsor, Maryland 21776, was ap pointed Personal Representative of the estate of Hele B. Hall, who died on October 31, 1983 with a Will. A unknown heirs and heirs whose whereabouts ar unknown shall enter their appearance in this pr ceeding. Objections to such appointment (or to the pr bate of decedent's Will) shall be filed with the Registe of Wills, D.C., 500 Indiana Avenue, N.W., Washingto D.C. 20001, on or before February 27, 1984. Claim against the decedent shall be presented to the unde signed with a copy to the Register of Wills or to th Register of Wills with a copy to the undersigned, on o before February 27, 1984, or be forever barred. Pe sons believed to be heirs or legatees of the decedent wh do not receive a copy of this notice by mail within 2 days of its publication shall so inform the Register o Wills, including name, address and relationship ALBERT R. ROMMAL. Name of Newspaper Washington Law Reporter. TRUE TEST COPY Henry L. Rucker, Register of Wills. [Seal.] Jan. 17

KRAUSE, Edward E., Jr. — Decease

Superior Court of the District of Columbia
Probate Division
Administration No. 45-84 S.E
Edward E. Krause, Jr., deceased
Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs

Charles E. Krause, whose address is 279 Perr Avenue, Union, New Jersey 07083, was appointed Pe sonal Representative of the estate of Edward E Krause, Jr., who died on December 30, 1983 without Will. All unknown heirs and heirs whose whereabout are unknown shall enter their appearance in this pro ceeding. Objections to such appointment shall be file with the Register of Wills, D.C., 500 Indiana Avenue N.W., Washington, D.C. 20001, on or before Februar 24, 1984. Claims against the decedent shall b presented to the undersigned with a copy to th Register of Wills or to the Register of Wills with a cop to the undersigned, on or before February 24, 1984, o be forever barred. Persons believed to be heirs o legatees of the decedent who do not receive a copy o this notice by mail within 25 days of its publication sha so inform the Register of Wills, including name, addres and relationship. CHARLES E. KRAUSE. Name o Newspaper: Washington Law Reporter. TRUE TES COPY. Henry L. Rucker, Register of Wills. [Seal.] Jan. 17

MILLER, Ruby V. — Decease

Superior Court of the District of Columbia
Probate Division
Administration No. 7-8
Ruby V. Miller, deceased
Harry Toussaint Alexander, *Attorney*
1245 13th Street, N.W., Suites 103-104
Wash., D.C. 20005
Notice of Appointment, Notice to Creditors and Notice to Unknown Heirs

Emily P. Miller, whose address is 718 Farragu Street, N.W., Washington, D.C., was appointed Pe sonal Representative of the estate of Ruby V. Mille who died on Jan. 16, 1983 with a Will. All unknown heirs and heirs whose whereabouts are unknown shal enter their appearance in this proceeding. Objections t such appointment (or to the probate of decedent's Will shall be filed with the Register of Wills, D.C., 500 In diana Avenue, N.W., Washington, D.C. 20001, on o before July 17, 1984. Claims against the decedent shal be presented to the undersigned with a copy to th Register of Wills or to the Register of Wills with a cop to the undersigned, on or before July 17, 1984, or b forever barred. Persons believed to be heirs or legatee of the decedent who do not receive a copy of this notic by mail within 25 days of its first publication shall so in form the Register of Wills, including name, address an