DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	)	
	)	
BILLY L. PONDS,	)	Bar Docket Nos. 008-03 & 149-02
	)	
Respondent.	)	
	)	
A Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 379883)	)))	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

These two consolidated cases come to the Board on Professional Responsibility (the "Board") from Hearing Committee Six (the "Committee"), which concluded that Billy L. Ponds (the "Respondent") did not violate Rule 1.16 of the District of Columbia Rules of Professional Conduct in Bar Docket No. 008-03, but disclosed confidential client information in violation of Rule 1.6 of the Maryland Rules of Professional Conduct in Bar Docket No. 149-02.[1] The Committee recommended the issuance of a public censure. Bar Counsel did not take exception to the Committee's report. Respondent filed an exception to the finding of a violation of Md. Rule 1.6, but withdrew the exception at the outset of oral argument before the Board. For the reasons set forth below, we adopt the Committee's findings of fact in their entirety, concur with its conclusions of law and agree that the proper sanction is public censure.

[1] The District of Columbia Rules of Professional Conduct will be cited herein simply as "Rule __." Because the alleged misconduct at issue in Bar Docket No. 149-02 involved the representation of a client in the United States District Court for the District of Maryland, the Board considers the applicable ethical standard under Maryland law pursuant to Rule 8.5. The Maryland Rules of Professional Conduct will be cited herein simply as "Md. Rule __." Sections of Rule XI of the District of Columbia Court of Appeals Rules Governing the District of Columbia Bar will be cited herein as "D.C. Bar R. XI, § __."

I. PROCEDURAL HISTORY

On January 2, 2004, Bar Counsel filed a Specification of Charges and a Petition Instituting Formal Disciplinary Proceedings in Bar Docket Nos. 008-03 and 149-02 alleging that Respondent violated Rule 1.16 by failing to promptly turn over client files belonging to Steven Crockett, and violated Md. Rule 1.6 by disclosing confidential information regarding Ammad Perry in a motion to withdraw as his defense counsel. BX B.[2] In his answer, Respondent argued that he promptly produced his client papers for Mr. Crockett's new counsel and did not disclose improperly any client confidences or secrets in the motion to withdraw as counsel for Mr. Perry, but only certain "threats that were the basis of future crimes." BX C at 5.

This matter was heard by the Committee on June 9 and September 20, 2004. Bar Counsel's Exhibits A through D and 1 through 9 were received in evidence without objection. Tr. II at 70, 160.[3] Bar Counsel called Mr. Crockett's new counsel, Mr. Perry, and an expert in Maryland Rules of Professional Conduct, Fred Bennett. Respondent's Exhibits A through H, 1 through 16, and 22 through 24 were received into evidence. Tr. II at 150, 156-57. Respondent testified but did not call any witnesses. Throughout the proceedings, Respondent represented himself.

At the conclusion of the hearing, the Committee announced its preliminary, non-binding determination that Bar Counsel had presented evidence sufficient to permit a finding of a violation of at least one of the alleged charges. Tr. II at 158. Bar Counsel offered evidence of prior discipline in aggravation of the charges. Tr. II at 159-61. Respondent did not offer any evidence in mitigation. Tr. II at 161. Following the hearing, Bar Counsel filed Proposed

[2] Bar Counsel's exhibits will be referred to as "BX." Respondent's exhibits will be referred to as "RX."

[3] The transcripts of the hearings on June 9 and September 20, 2004 will be referred to, respectively, as "Tr. I" and "Tr. II."

Findings of Fact, Conclusions of Law, and Recommendation as to Sanction and Respondent timely filed a post-hearing brief.

The Committee's Report and Recommendation, issued on December 10, 2004, found that Respondent did not violate Rule 1.16, but did violate Md. Rule 1.6 and recommended that Respondent be publicly censured. Respondent filed a brief excepting to the finding of a violation and Bar Counsel filed a brief in support of the Committee's report. At the commencement of oral argument, Respondent withdrew his exceptions to the Committee's findings and recommendation and this case was thus submitted to the Board on the undisputed records and without exception by either party.

II. FINDINGS OF FACT

The Board adopts the Findings of Fact made by the Committee which are set forth here with minor changes:[4]

1. Respondent, Billy L. Ponds, Esq., is a member of the District of Columbia Bar, having been admitted on June 25, 1984 and assigned bar number 379883. BX A.

A. Count I (Crockett Matter, B.D.N. 008-03)

2. Respondent represented Steve Crockett at his trial in the Superior Court for the District of Columbia where he was charged with first-degree murder. Tr. I at 20. Mr. Crockett was found guilty by the jury after a trial and was sentenced to life imprisonment. Tr. I at 58. Respondent also handled Mr. Crockett's appeal. The D.C. Court of Appeals affirmed the conviction on June 13, 2002. BX 1.

[4] We cite to the record before the Hearing Committee for findings made by the Board. Findings made by the Hearing Committee will be cited to the Hearing Committee Report ("HC Rpt".).

3. Mr. Crockett was also charged in a second murder case handled by Respondent. Tr. I at 49; Tr. II at 72. This case resulted in a plea of guilty to a charge of manslaughter. Tr. II at 72. His sentence on this conviction was 30 years to be served consecutively with the sentence he received for the first-degree murder conviction. Tr. II at 88. As of mid-2002, Mr. Crockett was incarcerated at the United States penitentiary in Atlanta, Georgia. Tr. I at 20.

4. In September 2002, Mr. Crockett's mother came to the office of D.C. attorney Marc L. Resnick, and retained him to see if anything could be done for her son in connection with the first-degree murder case. Tr. I at 20. According to Mr. Resnick, by this time Mr. Crockett's appeal rights had been extinguished and the case could only be revived through the filing of collateral post-conviction motions. Tr. I at 57. There was no deadline facing Mr. Resnick. Id.

5. Mr. Resnick wanted to review Respondent's trial files, including transcripts, and the appellate file to determine if there was anything he could do for Mr. Crockett. Tr. I at 23.

6. Mr. Resnick prepared and mailed a letter dated September 30, 2002 to Respondent, explaining that he now represented Mr. Crockett in connection with his affirmed conviction. BX 3; Tr. I at 26. The letter requested that Respondent send to Mr. Resnick the trial transcripts and other file materials that Respondent had on the Crockett case that had gone to trial. BX 3. The letter indicated that Mr. Crockett was copied on this correspondence. Id.

7. Respondent denied under oath that he ever received the letter dated September 30, 2002 (Tr. II at 80-82) and Bar Counsel provided no evidence that the letter was ever received by Respondent or his office.

8. Mr. Resnick testified that he never telephoned or faxed Respondent inquiring about the lack of response to his September 30, 2002 letter. Tr. I at 44-45, 61.

9. By letter dated November 15, 2002, Mr. Resnick wrote again to Respondent, noting that he had not received a response to his September 30 letter and reiterating his request for the trial transcripts and all related file materials of Mr. Crockett's case. BX 3; Tr. I at 27. The November 15 letter did not include a copy of the September 30 letter. Mr. Resnick sent a copy of the November 15 letter to the D.C. Court of Appeals and to the Superior Court for the District of Columbia. BX 3; Tr. I at 28.

10. Within five days of the November 15 letter, Respondent responded to the November 15 letter from Mr. Resnick. BX 4; Tr. II at 73. In his November 20th letter, Respondent stated that he had never received the September 30 letter. Id. He requested documentation that Mr. Resnick represented Mr. Crockett and promised that upon receipt of such documentation he would promptly copy Mr. Crockett's file and notify Mr. Resnick of the availability of the copies. Respondent's letter was sent by fax as well as by first-class mail. Id.

11. Mr. Resnick did not object to Respondent's request and again made no phone call to Respondent expressing any sense of urgency or requesting that Respondent copy the file prior to receipt of the documentation from Mr. Crockett. Tr. I at 43, 44. Mr. Resnick also did not provide to Respondent a copy of the written retainer that he allegedly had with Mr. Crockett.

12. By handwritten letter dated December 1, 2002, and apparently mailed from the penitentiary in Atlanta, Mr. Crockett wrote Respondent advising that "Marc L. Resnick is my new attorney," and requesting Respondent to send Mr. Resnick the transcripts and files from the first-degree murder case. RX 3. The letter did not reference any prior correspondence that Mr. Crockett allegedly sent to Respondent. Id. The text of the letter suggests that this letter is the first time that Mr. Crockett had ever advised Respondent of his retention of Mr. Resnick or of any request by Mr. Crockett to Respondent to send Mr. Resnick his files. Respondent claims

that this letter was received by his office in mid-December 2002. Tr. II at 77. Bar Counsel provided no evidence to the contrary. Generally, Respondent and his staff take some vacation time for the holidays in December. Tr. II at 73.

13. By letter dated January 9, 2003, and apparently hand-delivered to Mr. Resnick, Respondent provided copies of what he represented were all the materials located in the files for Mr. Crockett. RX 4; Tr. I at 36. Thus, this response was within 30 days of the time that Respondent claims to have received Mr. Crockett's written authorization and within 40 days of the date of Mr. Crockett's letter.

14. By letter dated January 15, 2003, and apparently faxed on that date, Mr. Resnick wrote Respondent, thanking him for the files, but noting that the trial transcript was not included. RX 5; Tr. I at 37, 39.

15. By January 25, 2003, Respondent's office had hand-delivered to Mr. Resnick copies of the trial transcript, which Respondent said had been inadvertently omitted from the January 9 production. Tr. I at 42-43; Tr. II at 74, 89.

16. Mr. Resnick completed his review of the file in June 2003. Tr. I at 60-61. After reviewing the files for four or five months, Mr. Resnick concluded that there was no basis for any post-conviction motions and never filed any such motions. Tr. I at 58-59. Not only did he not file any motion attacking Respondent's competency in the representation of Mr. Crockett, but he stated the opinion at the hearing that Respondent had done a good job for Mr. Crockett. Tr. I at 48, 63.

17. Mr. Resnick never complained to Bar Counsel about the delay in his receiving Mr. Crockett's files from Respondent. He testified that this "never rose to the level of something that I would have contacted Bar Counsel about." Tr. I at 63.

18. Mr. Crockett appears to have complained to Bar Counsel about both Respondent and Mr. Resnick. Tr. I at 53. After the termination of Mr. Resnick's representation in June 2003, Mr. Crockett claimed that he had not received all of the transcripts from Mr. Resnick. Mr. Resnick replied to Mr. Crockett that he had sent to Mr. Crockett all of the files he received from Respondent. Mr. Resnick advised that if any transcripts were missing, as Mr. Crockett alleged, then either Mr. Crockett was mistaken or Respondent had not sent those transcripts to Mr. Resnick. Tr. I at 56.

19. Bar Counsel has never suggested that Respondent ever had any files or transcripts concerning Mr. Crockett's case that were not transmitted to Mr. Resnick or through Mr. Resnick to Mr. Crockett.

B. Count II (Perry Matter, B.D.N. 149-02)

20. Ammad Perry, who also uses the alias Benjamin Franklin Moffit (RX 8, 9), was convicted in Maryland state court in 1989 for robbery, grand theft, assault and battery and assault with intent to disable. RX 7. He was sentenced to five years' imprisonment and served two years for these offenses. Id. In 1994, he was convicted of carrying a deadly weapon and sentenced to 10 months. Id. He also has a history of substance abuse and other arrests involving dangerous weapons. Id.

21. On June 6, 2001, Mr. Perry was charged in federal court in the District of Maryland with being a felon who knowingly and unlawfully possessed a .380 caliber semi-automatic handgun with the serial numbers obliterated. RX 9. According to the statement of charges filed by the arresting police officers, at the time of his arrest in June 2001, Mr. Perry

possessed not only the .380 caliber semi-automatic handgun, but also a fixed blade knife, a set of brass knuckles, and a sand club, identified as a "dangerous and deadly weapon." RX 8.

22. On or about June 13, 2001, Mr. Perry retained the services of Respondent to represent him in connection with the federal criminal charges in Maryland. Tr. I at 67. Mr. Perry signed a written retainer letter and paid Respondent for his services. Id. The retainer provided that for a payment of $7,500, Respondent would handle all aspects of Mr. Perry's criminal case through trial. Tr. II at 90. By September 2001, Mr. Perry had paid Respondent $6,000, in accordance with the retainer agreement. Tr. II at 44, 90.

23. On June 15, 2001, at Respondent's advice, Mr. Perry surrendered on the federal charges to the U.S. Marshal. Tr. II at 26, 90; RX 10. At the resulting hearing, U.S. Magistrate Judge Jillyn K. Schulze released Mr. Perry to the custody of his mother, placing him on home confinement with work release privileges to be monitored by the pre-trial services electronic monitoring system. RX 10.

24. By mid-September 2001, Mr. Perry had stopped cooperating with his pre-trial services officer. RX 22. During the week of September 11, 2001, the pre-trial services officer, Ms. Andrea Austin-Spann, reported to both the Government and to Respondent that Mr. Perry was no longer wearing his electronic monitor and that when she went to visit Mr. Perry at his mother's house, she could not find him. Id. She advised that the Government intended to request the Court to issue a bench warrant for his arrest. Id.

25. Respondent advised Mr. Perry that the pre-trial services officer had been unsuccessful in her effort to visit him and was concerned that he was not in compliance with the electronic monitoring system. RX 22. He also advised Mr. Perry that the Government was

going to seek a warrant for his arrest. Id. Respondent advised Mr. Perry to visit Ms. Austin-Spann to work out the issue. Id.

26. In an *ex parte* memo filed under seal with the Court, Ms. Austin-Spann reported to the Court that Mr. Perry was not in compliance with the electronic monitoring system and could not be found when she attempted to visit him. RX 22. As a result, Magistrate Judge Schulze issued a bench warrant for Mr. Perry's arrest on or about September 13. Id.; Tr. II at 92.

27. On September 19, 2001, a hearing was held before Judge Messitte in the federal district court in Greenbelt. RX 22. The Court, having been advised of these circumstances, revoked Mr. Perry's bond and directed that if he were re-arrested, he was to remain in custody pending trial or other disposition. Id. The Court ruled that there would be no further Magistrate releases. Id. At that point, no trial date had been set. Tr. II at 111.[5]

28. By mid-September 2001, in addition to attending the initial appearance, the arraignment and securing Mr. Perry's release, Respondent had also filed and secured a favorable modification of the conditions of release for Mr. Perry. RX 10; Tr. II at 26, 91. In early July, Respondent also filed a motion to suppress tangible evidence and a confession by Mr. Perry and a Brady motion which were scheduled to be heard on September 19. RX 12, 13. Respondent also filed with the Court a set of his *voir dire* questions. RX 11. The hearing on the motions was not held on September 19 because Mr. Perry failed to appear in court that day. Tr. II at 92. In short, by this time, Respondent had expended significant efforts on Mr. Perry's behalf in connection with this matter. He had appeared in court on at least four occasions and had met with Mr. Perry on several additional occasions to prepare for the hearings and trial. Tr. II at 90.

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[5] A trial date had previously been set, but was changed at the hearing on September 19, 2001, which Mr. Perry did not attend. According to Respondent, a new trial date was not set because Mr. Perry was on fugitive status. Tr. II at 111.

29. Around 5:30 p.m. on the evening of September 28, 2001, Mr. Perry appeared, unannounced and without a scheduled appointment, at Respondent's law offices. Tr. II at 23, 92-93. Another man, Desmond Grant, known to Mr. Perry as "Bones" (Tr. II at 40, 42), accompanied Mr. Perry to Respondent's office. Tr. II at 93. While certain matters relating to the ensuing conversation between Respondent and Mr. Perry are disputed, there is no dispute of at least the following four facts concerning this unannounced meeting. There is no dispute that: (a) Mr. Perry requested a refund of $5,000 of the $6,000 he had paid Respondent (Tr. II at 25, 35, 95); (b) at first, Respondent refused to accede to this request (Tr. II at 95); and (c) as a result of the private conversation between Respondent and Mr. Perry, in Respondent's office at which only the two of them were present, Respondent arranged for his secretary to write a post-dated check for $5,000 payable to Mr. Perry (Tr. II at 35); (d) Mr. Perry took the post-dated $5,000 check with him upon departing Respondent's office. Tr. II at 24-25, 97.

30. Asserting his Fifth Amendment privilege, Mr. Perry refused to testify about portions of his conversation with Respondent, including his knowledge of the arrest warrant and the advice Respondent gave him concerning his obligation to comply with the conditions of his release. Tr. II at 16-19, 21, 23-24, 29-32. Mr. Perry admits that he went to the office for the purpose of securing the return of $5,000 which he claimed he needed for living expenses. Tr. II at 24. Mr. Perry never testified that when he went to see Respondent he was seeking to terminate the attorney-client relationship. He testified that when he left the meeting he still considered Respondent to be his attorney. Tr. II at 36. He testified that if he ever returned to stand trial, he would ask Respondent to represent him. Tr. II at 50.

31. Mr. Perry admitted that when he went to Respondent's office on September 28, 2001, he was quite stressed and in dire financial straits. Tr. II at 36-38. He testified that by this

time the terrorist bombings of September 11th had occurred and that this had caused him considerable stress. Id. He stated that because he was allowed to leave home for only four hours each day he was unable to keep his job and, as a result, could not pay his bills and was evicted from his apartment. Tr. II at 32. Mr. Perry stated that he had no place to live, and needed "to get some money so that I can get my life back in order, so that I can stay out of jail until I go to trial." Tr. II at 33, 35. In response to repeated questions as to whether he was terminating Respondent as his counsel, Mr. Perry testified: "I told him that, right now, I had to get my living situation together, and that's what I wanted to focus on, that, you know, let me get myself together and I'll come back to you . . . . I'll bring you some money back." Tr. II at 35. He testified that he would not have asked Respondent for his money back if he had not been in such dire financial condition. Tr. II at 45. He testified that when he departed the office with the $5,000 check, he still believed that Respondent represented him and that he "could count on Mr. Ponds." Tr. II at 34, 36, 42, 48. He said: "I mean pretty much, I probably was going to continue on with Mr. Ponds." Tr. II at 50.

32. Having observed Mr. Perry's demeanor at the hearing on two separate occasions, and having heard his explanation for the reasons he was seeking the return of the $5,000 that he had paid Respondent, the Committee did not credit Mr. Perry's version of the events in Respondent's office that day. More specifically, the Committee did not credit his denial that he made threats to Respondent to obtain the $5,000. See Tr. at 24, 41. The Committee credited Respondent's sworn testimony of what occurred at that meeting.

33. Respondent testified, and the Committee found, that Mr. Perry and Mr. Grant arrived at Respondent's offices unannounced late on Friday evening, September 28, 2001. Tr. II

at 92-93. Respondent invited Mr. Perry to his private office and shut the door, with Mr. Grant remaining in the firm's lobby with Respondent's two female employees. Tr. II at 29, 93.

34. In the closed-door meeting, Mr. Perry told Respondent that he did not intend to remain for his trial and that he intended to leave the country. Tr. II at 94, 114. He stated that he was a Muslim and that in light of the events of September 11, 2001, he had determined that he was not going to go to court (Tr. II at 94), apparently believing that he would not receive a fair trial. Respondent advised Mr. Perry of the bench warrant and urged him to turn himself in and to stand trial. Tr. II at 94; see also Tr. II at 23. Mr. Perry repeatedly rejected Respondent's advice. Id.

35. Mr. Perry demanded a refund of the $5,000 that he had paid Respondent. Tr. II at 24, 38, 95. Respondent told him that he could not give him a refund. Tr. II at 95. Mr. Perry threatened that if he did not get a refund, someone was going to get hurt. Tr. II at 95. During this conversation, Mr. Perry kept his hands in his pockets. Tr. II at 95. Respondent asked him to take his hands out of his pockets, fearing that Mr. Perry had a concealed weapon. Tr. II at 95. Mr. Perry refused to remove his hands from his pockets. Id.

36. Respondent had a reasonable fear for the safety and welfare of his two female employees who were in the office at the time, as well as for his own personal safety. Tr. II at 95. He knew Mr. Perry's prior record and his history of possessing deadly weapons. RX 7. He perceived Mr. Perry's apparent distress and agitation. Tr. II at 94-95. Respondent also believed that Mr. Perry had a colleague sitting in his lobby who, he believed, posed a potential danger to the two female employees who were working there. Tr. II at 95.

37. Based on this reasonable fear, Respondent summoned one of his employees to his office and directed her to write a post-dated check for Mr. Perry in the amount of $5,000. Tr. II

at 96. The check on Respondent's account was for the amount of $5,000 and dated for October 1, 2001. Tr. II at 97. With the check in hand, Mr. Perry departed from Respondent's office. Id.

38. Immediately upon Mr. Perry's departure from Respondent's office, Respondent called Assistant United States Attorney Stuart Berman, who was handling Mr. Perry's case. Tr. II at 97, 103-104. Respondent left a voice message with Mr. Berman describing what had occurred in Respondent's office moments earlier. Tr. II at 120, 129.

39. The Committee found that, but for the explicit threat, Mr. Perry's menacing tone and Respondent's knowledge of Mr. Perry's violent past, Respondent would not have authorized the issuance of the $5,000 check to Mr. Perry.

40. On the next business day, Monday, October 1, 2001, Respondent directed his employees to issue a stop-payment order on the check that had been issued to Mr. Perry. Tr. II at 101, 142. A stop-payment order was issued by the bank that day. RX 6.

41. Respondent did not go into his office on October 1 and 2, fearing possible reprisal from Mr. Perry once he learned that payment on the check had been stopped. Tr. II at 128. Respondent also advised his two employees to lock the office suite on those days. Id. Respondent spoke to AUSA Berman on October 1 and Mr. Berman stated that he was going to get an FBI agent to follow-up. Tr. II at 129.

42. On the morning of October 3, 2001, Mr. Perry appeared at Respondent's bank and attempted to cash the check. RX 14; Tr. II at 101, 143. Bank employees called Respondent's office and Respondent advised the bank manager to call the police. Tr. II at 129, 143. Respondent also contacted Mr. Berman, who said he would send an FBI agent to the bank. Tr. II at 129, 143. Respondent believed that if Mr. Perry was not arrested after the bank refused to honor the check, Mr. Perry would have attempted to retaliate against Respondent and his

employees and carry out his threat of violence. Mr. Perry was arrested at the bank on October 3. Tr. II at 35.

43. On October 4, 2001, Respondent filed a motion to withdraw as Mr. Perry's counsel in the federal District Court in Maryland. BX 6; Tr. II at 100. The written motion included the following representations by Respondent:

> "Even though counsel informed Mr. Perry of his obligation to appear in court… (on September 19), he failed to appear. [In a footnote, he wrote: "Counsel learned from Mr. Perry . . . that prior to September 19, 2000, Mr. Perry had removed his electronic monitoring bracelet without consent from the Court."]
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> "On September 28, 2001, Mr. Perry, unannounced, appeared at counsel's office. Counsel informed Mr. Perry that the Court had issued a warrant for his arrest because he did not appear in court on September 19, 2001. Counsel then informed Mr. Perry of his obligation to surrender to the United States Marshals. During counsel's conversation with Mr. Perry, he made implicit and explicit threats to counsel to secure a refund of the fee paid to counsel for legal representation. Shortly after Mr. Perry left counsel's office, counsel contacted Assistant United States Attorney Stuart Berman and left a message concerning Mr. Perry.
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> "Counsel issued a refund to Mr. Perry because he feared for the safety of his employees. The check was solely remitted to Mr. Perry based on the threats he made to counsel.
>
> "On or about October 1, 2001, counsel placed a stop-payment on the check remitted to Mr. Perry. Counsel informed his bank to contact his office should Mr. Perry negotiate the check. On October 3, 2001, [an employee] of the Bank of America… contacted counsel's office. Counsel informed [the employee] that a stop-payment had been placed on the check. Counsel also informed [the employee] that she should contact law enforcement officials because of Mr. Perry's fugitive status. The bank contacted law enforcement officials, they arrived at the bank, detained Mr. Perry and confirmed that he was wanted on a federal fugitive warrant." BX6.

44. Respondent did not consult with Mr. Perry about the motion to withdraw prior to its filing (Tr. I at 69) and did not serve a copy of the motion on Mr. Perry, who was then in federal custody. Tr. II at 133. The motion was not filed under seal. Tr. II at 130.

45. At a detention hearing on October 5, 2001, Judge Messitte granted the motion to withdraw and appointed the Federal Defender's office to represent Mr. Perry. Tr. II at 131.

Mr. Perry's new counsel did not move to strike the motion to withdraw or to place it under seal. Id.

46. Respondent set forth in the motion to withdraw the details of the events in his office on September 28 because he wanted the Court and the U.S. Attorney's Office to know that he had acted out of coercion and that he was not intentionally aiding and abetting Mr. Perry in his decision to flee the jurisdiction in an effort to avoid trial. Tr. II at 106, 107, 112, 121. Respondent was concerned that the prosecutor and the Court might reach the wrong conclusion when they saw that Respondent's office had issued a $5,000 check to an individual who no longer planned to appear at court. Id.

47. Mr. Perry's initial trial on the federal charges resulted in a hung jury. RX 15. After the mistrial, the Government handed up a superceding indictment, adding a count accusing Mr. Perry of engaging in misleading conduct to hinder and delay the investigation. BX 5. The new count was based on Mr. Perry's giving the arresting officer a false name and other false information at the time of his arrest. Mr. Perry was ultimately acquitted of the weapons charges, but convicted of misleading statements that obstructed justice and sentenced to 21 months' imprisonment, with credit for detention from October 3, 2001. BX 5; RX 16; Tr. II at 57.

III. ANALYSIS

A. Bar Docket No. 008-03 (Crockett Matter)

In Bar Docket No. 008-03, Bar Counsel charged Respondent with failing to timely turn over client files to a successor attorney representing Mr. Crockett in violation of Rule 1.16. Bar Counsel argued that Respondent delayed more than three months. The documentary evidence and the hearing testimony ultimately established that Respondent turned over the files within 30 days of receiving a request and, therefore, did not violate Rule

1.16. This Committee finding is supported by substantial evidence in the record. RX 3 & 4; Tr. I at 36. Bar Counsel does not except to this finding and we find no reason to disagree with it. Consequently, we adopt the Committee's reasoning and its conclusion that Respondent did not violate Rule 1.16 in Bar Docket No. 008-03.

B. Bar Docket No. 149-02 (Perry Matter)

As for Bar Docket No. 149-02, Respondent is charged with violating Md. Rule 1.6 when he filed a motion to withdraw as counsel for Mr. Perry on October 4, 2001.[6] Respondent has withdrawn his exception to the Committee's finding of a violation of Md. Rule 1.6, so we will not address the arguments raised in his brief. The undisputed facts contained in the Committee's report support the violation charged.

The scope of Maryland Rule 1.6 is very broad and includes "all information relating to the representation, whatever its source." Md. Rule 1.6 cmt. 5. However, a violation of Md. Rule 1.6 can only be found when the information revealed has the potential for harming the interests of the client. Harris v. The Baltimore Sun, 625 A.2d 941, 947 (Md. 1993). Respondent made statements in the motion to withdraw that revealed "information relating to representation of" Mr. Perry. In the Board's view, Respondent's disclosure of Mr. Perry's whereabouts and knowledge of the outstanding warrant for his arrest had the potential for harming Mr. Perry because this information could have been used against him in future bail hearings or any prosecution of a Bail Act violation. Indeed, at his disciplinary hearing Respondent tacitly acknowledged the proscriptions contained in Md. Rule 1.6 when he testified that, had it not been for the threats made by Mr. Perry, he would not have made the disclosures to the Court. Tr. II at

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[6] The facts of this matter are dramatic and the evidence reflects Respondent's disclosure of confidential client information prior to his filing of a motion to withdraw as Mr. Perry's counsel in the U.S. District Court for Maryland. But the only charges of misconduct for improper disclosure relate to the motion to withdraw. Accordingly, we focus on that motion and the disclosures contained in it.

114-15 ("if Mr. Perry came into my office and told me that he was not going back to court, that he was leaving the country, and he stopped by just to let me know that, I would have never said anything to the court.").

The record thus requires finding that Respondent violated Md. Rule 1.6 unless one of the four exceptions to that Rule applies. The exceptions define those circumstances in which a lawyer is allowed to reveal confidential client information. The Md. Rule 1.6(b) exceptions are:

> (1) to prevent the client from committing a criminal or fraudulent act that the lawyer believes is likely to result in death or substantial bodily harm or in substantial injury to the financial interests or property of another;
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> (2) to rectify the consequences of a client's criminal or fraudulent act in the furtherance of which the lawyer's services were used;
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> (3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, or to establish a defense to a criminal charge, civil claim, or disciplinary complaint against the lawyer based upon conduct which the client was involved or to respond to allegations concerning the lawyer's representation of the client;
>
> (4) to comply with these Rules, a court order or other law.

Exception (b)(1) does not apply because Respondent's motion to withdraw was not made to prevent his client from committing an act that was likely to result in substantial injury. Exception (b)(2) does not apply because there was no use of the "lawyer's services" in furtherance of the client's criminal acts. And exception (b)(4) does not apply because the disclosures made by Respondent in the motion were not necessary to comply with the Maryland Rules of Professional Conduct or the Local Rules of the District of Maryland. See Local Rules of the United States District Court for the District of Maryland, Rule 201(3) ("Counsel for a defendant may withdraw their appearance only with leave of Court."). We address exception (b)(3) below because at first blush it appears pertinent.

Until he withdrew his exception to the Hearing Committee Report, Respondent argued that the statements he made in the motion to withdraw fell within exception (b)(3) because they were necessary to establish Respondent's defense to an assertion that Respondent aided his client in avoiding arrest. If Mr. Perry had actually obtained money from Respondent – which he did not – and, if the police or prosecutors were investigating it, or had the Court learned of it, it might have become necessary for Respondent to reveal this information in defense of an assertion that he aided his client in avoiding arrest. Such disclosure would, in all likelihood, be permitted under Md. Rule 1.6(b)(3). But we are not faced with this situation in Respondent's case. In fact, at the time Respondent filed his motion to withdraw the client did not have any funds from Respondent, there was no criminal investigation or charge, no civil claim and no disciplinary complaint pending against Respondent that might have justified the disclosures contained in the motion. In the absence of such circumstances, a "lawyer shall not reveal information . . . unless the client consents after consultation . . . ." Md. Rule 1.6(a). Respondent's client did not consent to these disclosures. Accordingly, exception (b)(3) does not apply and we find that the disclosures of client confidences contained in Respondent's motion to withdraw violated Md. Rule 1.6.

IV. SANCTION

We agree with the Committee's recommendation of a public censure, albeit for slightly different reasons. The appropriate sanction is what is necessary to protect the public and the courts, to maintain the integrity of the profession and "to deter other attorneys from engaging in similar misconduct." In re Uchendu, 812 A.2d 933, 941 (D.C. 2002). The sanction imposed must be consistent with cases involving comparable misconduct. D.C. Bar R. XI, § 9(g)(1); In re Dunietz, 687 A.2d 206, 211 (D.C. 1996). In determining the appropriate

sanction, the Board considers the seriousness of the misconduct, sanctions for similar misconduct, prior discipline, prejudice to the client, violation of other disciplinary rules, whether the conduct involved dishonesty, the respondent's attitude, and circumstances in aggravation and/or mitigation. In re Hutchinson, 534 A.2d 919, 924 (D.C. 1987) (en banc).

In the one similar case we have found in our jurisdiction, the disclosure of confidential client information in a motion to withdraw was found to warrant "an appropriate (if relatively modest) sanction . . . ." See In re Gonzalez, 773 A.2d 1026, 1032 (D.C. 2001) (directing Bar Counsel to issue an informal admonition).[7] The information revealed in Gonzalez was potentially detrimental to the client, although it involved the defense of a civil action instead of the criminal action involved here. Similarly, Respondent's motion to withdraw had the potential to harm Mr. Perry, although the record reveals that it did not.

The Committee recommended that the sanction for Respondent's misconduct should be mitigated because "Mr. Ponds was victimized by his client and because the client's conduct exposed Mr. Ponds to unwarranted inferences by the Court and prosecutor, and thus to the risk of serious investigations and potential sanctions. We also believe that the unusual circumstances which were forced upon him are not likely to be faced by most attorneys or even again by Mr. Ponds." HC Rpt. at 30. We disagree. The Maryland Rules of Professional Conduct clearly articulate an attorney's obligation to prevent any injury to the client when withdrawing from representation, the protection that client confidences must be afforded, and the prohibition against using client confidences to the detriment of the client. Respondent's motion to withdraw

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[7] The parties have cited no other similar disciplinary cases and we have found nothing else comparable in this jurisdiction. Other jurisdictions have imposed similar or greater sanctions for similar misconduct. See Lawyer Disciplinary Board v. Farber, 488 S.E.2d 460 (W.Va. 1997) (imposing four month suspension and two years supervised practice for disclosure of damaging client confidences in motion to withdraw); In re Billewicz, 641 A.2d 368 (Vt. 1994) (publicly reprimanding attorney who filed motion to withdraw in civil case that needlessly disclosed numerous confidences of clients).

from his representation of Mr. Perry had nothing whatsoever to do with protecting Respondent from the dangers posed by his client. As a result, we do not agree with the Committee that the factors it listed provide a basis upon which to mitigate the sanction to be imposed on Respondent.

There are, however, some mitigating circumstances here and they are: (i) the fact that Respondent gained nothing from his violation and his client was not harmed; and (ii) the fact that there is no suggestion that Respondent engaged in dishonesty.

On the other hand, Respondent does have a history of prior discipline and the sanction recommended here should reflect that fact. In re Bettis, 855 A.2d 282, 287-88 (D.C. 2004). Taking into consideration Respondent's prior informal admonition and the pending recommendation of a stayed 60-day suspension, see In re Ponds, BDN 150-98 (BPR July 31, 2003), we conclude that a public censure is warranted in this matter and is adequate to protect the public and the courts, to maintain the integrity of the profession and to deter Respondent and other attorneys from engaging in similar misconduct.

V. CONCLUSION

For the foregoing reasons, the Board finds that Respondent did not violate Rule 1.16 with respect to the representation of Mr. Crockett (BDN 008-03), but that he did violate Md. Rule 1.6 with respect to his representation of Mr. Perry (BDN 149-02). In light of Respondent's prior discipline, we recommend that the Court censure Respondent.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: ______________________________________
Martin R. Baach
Chair

Dated: April 27, 2005

All members of the Board concur in this Report and Recommendation except Dr. Payne and Ms. Coghill-Howard, who did not participate.