2002 Traveling Seminar

Current Developments in Legal Ethics

3:30-4:30 p.m.

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September 30-October 7, 2002

I. New Rules for Attorney Advertising, Effective February 15, 2002

The Iowa Supreme Court made significant amendments to Canon 2 of the Iowa Code of Professional Responsibility for Lawyers which became effective February 15, 2002. The most significant changes involve the following:

A. Elimination of Certain Disclaimers.

The following disclaimers previously required have been removed:

(1) The DR 2-101(A) disclaimer previously required for any indication beyond a "business card" has been eliminated. That disclaimer provided:

"The determination of the need for legal services and the choice of a lawyer are extremely important decisions and should not be based solely upon advertisements or self-proclaimed expertise. This disclosure is required by rule of the Supreme Court of Iowa."

(2) The DR 2-101(C) disclaimer with respect to section memberships or authorships has been eliminated. That disclaimer provided:

"Memberships and offices in legal fraternities and legal societies, technical and professional licenses, and memberships in scientific technical and professional associations and societies of law or fields of practice do not mean that a lawyer is a specialist or expert in a field of law, no do they mean that such lawyer is necessarily any more expert or competent than any other lawyer.

All potential clients are urged to make their own independent Investigation and evaluation of any lawyer being considered. This notice is required by rule of the Supreme Court of Iowa."

(3) The DR 2-105(A)(3)(c) disclaimer previously required when indicating a field or area of practice has been eliminated. That disclaimer provided:

"A description or indication of limitation of practice does not mean that any agency or board has certified such lawyer as a specialist or expert in an indicated field of law practice, nor does it mean that such lawyer is necessarily any more expert or competent than any other lawyer.

All potential clients are urged to make their own independent Investigation and evaluation of any lawyer being considered. This notice is required by rule of the Supreme Court of Iowa.

(4) The disclaimers previously required by Ethics Opinions 90-39, 91-43, and 00-12, with respect to lawyers who had been certified by the National Board of Trial Advocacy, the American Bankruptcy Institute, An the National College for DUI Defense, Inc., and who wished to state such certification on their business cards or letterheads have also been eliminated by Ethics Opinion ________of September 18, 2002, rescinding those prior Ethics Opinions.

B. Not all required disclaimers have been eliminated by the New Advertising Rules:

(1) DR 2-101(D) still provides:

> *"(3) Contingent fee rates, subject to DR 2-106(c), provided that the statement discloses whether percentages are computed before of after deduction of costs and advises the public that in the event of an adverse verdict or decision, the contingent fee litigant could be liable for court costs, expenses of investigation, expenses of medical examinations, and costs of obtaining and presenting evidence, and*
>
> *(4) Fixed fees or ranges of fees for specific legal services or hourly fee rates provided that, in print size at least equivalent to the largest print used in setting forth the fee information, the statement discloses:*
>
> > *(a) that the stated fixed fees or ranges of fees will be available only to clients whose matters are encompassed within the described services; and*
> > *(b) If the client's matters are not encompassed within the described services, or if an hourly rate is stated, the client is entitled, without obligation, to a specific written estimate of the fees likely to be charged."*

(2) DR 2-101(F) still provides:

> *"Content (Institution of Litigation). In the event that the communication seeks to advise the institution of litigation, the communication must also disclose that the filing of a claim or suit solely to coerce a settlement or to harass another could be illegal and could render the person so filing liable for malicious prosecution or abuse of process."*

(C) Indication of Areas of Practice.

Under the old Rules, the **only way** an attorney could indicate an area of practice was to preface the indication with either **"practicing primarily in"** or **"practice limited to."** The lawyer could indicate no more than 3 areas of practice, as listed in DR 2-105, would need to include both the DR 2-101 and DR 2-105 disclaimers, and prior to any such advertisement have filed with the Commission on Continuing Education his or her certification that in the prior year he or she had secured 10 hours of CLE in each area of practice indicated and in the prior two years had devoted at least 20% of his or her practice, or 200 hours, whichever was greater in each indicated field of practice.

Under the new Rules, effective February 15, 2002, there are now 3 ways an attorney may indicate fields of practice.

(1) If the attorney states "**general practice including but not limited to**:...", he or she need not meet any specific requirements with respect to CLE or time devoted to each area of practice.

In it's Order of August, 2002, inviting comments to its proposed new attorney advertising rule the Court stated its intention to allow attorneys who use the preface "general practice including but not limited to" to list specific fields of practice in their advertisements without imposing any related CLE or hours of practice requirements.

"DR 2-101(C) Content. (General Information). The following Information may be communicated to the public in the manner Permitted by DR 2-101(B), provided it is provided in a dignified Manner:

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(2) The following descriptions of practice:
(a) 'General practice';
(b) 'General practice including but not limited to' followed by one or more fields of practice descriptions set forth in DR 2-105(A)(2):,

(2) **Designation** of an area of practice.

This would involve any indication of an area of practice other than one prefaced by "general practice including but not limited to" or "practicing primarily in" or "practice limited to." Examples would be: an attorneys listing in telephone yellow pages in the listing of attorneys by area of practice, or the indication of an area of practice in a box advertisement in the yellow pages not prefaced by "general practice including but not limited to," or "practicing primarily in" or "practice limited to."

Note!: There are prior CLE and hours of practice requirements to be able to "designate" an area of practice.

"DR 2-105(B)(1) For all fields of practice designated, a lawyer must have devoted the greater of 100 hours or 10 percent of the lawyer's time spent in the actual practice of law to each indicated field of practice for the preceding calendar year. In addition, the lawyer must have completed at least 10 hours of accredited continuing legal education courses of study in each indicated field of practice during the preceding calendar year."

The completing of those requirements must be certified to the Commission on Continuing Legal Education.

(3) For the lawyer who still wishes to indicate that he or she **"practices primarily in"** or **"limits his practice to"** particular areas of practice, the burden of CLE and hours of practice, has been increased to 15 hours of CLE in the prior year and 40% of time in practice or 400 hours, which ever is greater in the immediate preceding year, and of course the certification of the completion of those requirements to the Commission on Continuing Legal Education.

"DR 2-105(B)(2). A lawyer who wishes to use the terms 'practice limited to...' or 'practicing primarily in...' must have devoted the greater of 400 hours or 40 percent of the lawyer's time spent in the actual practice of law to each separate indicated field of practice for the preceding calendar year. In addition, the lawyer must have completed at least 15 hours of accredited legal education courses of study in each separate indicated field of practice during the preceding year."

The completion of these requirements must be certified to the Commission on Continuing Legal Education.

D. Expansion of permitted indication of areas of practice

ADDITIONS TO AND CHANGES IN PERMITTED LISTING OF AREAS OF PRACTICE EFFECTIVE FEBRUARY 15, 2002

Permitted listings prior to Feb.15, 2002	Permitted listings after Feb.15, 2002
Administrative Law	Administrative Law (same)
Admiralty Law	**Admiralty and Maritime Law (new)**
Adoption Law	Adoption Law (same)
	Agricultural Law (new)
Alternate Dispute Resolution	Alternate Dispute Resolution (same)

Antitrust and Trade Regulation	Antitrust and Trade Regulation (same)
Appeals	**Appellate Practice (new)**
	Aviation and Aerospace (new)
Banking	**Banking Law (new)**
	Bankruptcy (new)
	Business Law (new)
	Civil Rights and Discrimination (new)
Commercial and Retail Collections	**Collections Law (new)**
	Commercial Law (new)
	Communications Law (new)
Constitutional Law	Constitutional Law (same)
Construction Law	Construction Law (same)
	Contracts (new)
Corporation and Business Law	**Corporate Law (new)**
Criminal Law	Criminal Law (same)
Debt and Bankruptcy Law	**Debtor and Creditor (new)**
Discrimination and Civil Rights Law	
Domestic Relations and Family Law	
	Education Law (new)
	Elder Law (new)
	Election, Campaign and Political (new)
	Eminent Domain (new)
	Employee Benefits (new)
Employment Law	Employment Law (same)
	Energy (new)
	Entertainment and Sports (new)
Environmental Law	Environmental Law (same)
	Estate Planning (new)
	Family Law (new)
	Finance (new)
	Franchise Law (new)
	Government (new)
	Government Contracts (new)
Health Law	**Health Care (new)**
Immigration Law	**Immigration (new)**
	Indians and Native Population (new)
Insurance Law	**Insurance (new)**
Intellectual Property	Intellectual Property (same)
Permitted listings prior to Feb.15, 2002	**Permitted listings after Feb.15, 2002**
International and Foreign Law	**International Law (new)**
International Trade and Investment	**International Trade (new)**
	Investments (new)
Labor Law	Labor law (same)

Malpractice or Professional Negligence	**Legal Malpractice (new)**
	Litigation (new)
	Media Law (new)
	Medical Malpractice (new)
	Mergers and Acquisitions (new)
Military law	Military Law (same)
Municipal Law	Municipal Law (same)
	Natural Resources (new)
	Occupational Safety and Health (new)
Pension and Profit Sharing Law	Pension and Profit Sharing Law (same)
Personal Injury Law	**Personal Injury (new)**
Product Liability Law	Product Liability (same)
	Professional Liability (new)
Public Utility Law	Public Utility Law (same)
Real Estate Law	**Real Estate (new)**
Securities Law	**Securities (new)**
Social Security Disability	Social Security Disability (same)
Taxation Law	**Taxation (new)**
	Tax Returns (new)
	Technology and Science (new)
	Toxic Torts (new)
Trademarks and Copyright Law	Trademarks and Copyright Law (same)
	Transportation (new)
Trial Law	Trial Law (new)
Wills, Estate and Probate Law	**Trusts and Estate (new)**
	Wills and Probate (new)
	Workers' Compensation (new0
	Zoning, Planning and Land Use (new)

II Procedure for attorney Discipline in Iowa

CHAPTER 35. ATTORNEY DISCIPLINE, DISABILITY, AND REINSTATEMENT

Iowa Atty. Discipline R. 35.1 (2002)

Rule 35.1 Grievance commission.

There is hereby created a grievance commission consisting of five lawyers from each judicial election district, to be appointed by the supreme court. The court shall designate one of them, annually, as chair of the commission. The president-elect of the Iowa State Bar Association shall nominate lawyers, including nonmembers of the association, for appointment to the grievance commission. The grievance commission shall also consist of not less than five nor more than 26 laypersons appointed by the court. Members shall serve no more than three three-year terms or nine years, whichever is less. The grievance commission shall have an administrative committee consisting of the

chair, the clerk, and a nonlawyer commission member appointed by the court. The administrative committee shall at least 60 days prior to the start of each calendar year submit to the court a budget for consideration and approval covering the commission's operations for the upcoming calendar year. The grievance commission, or a duly appointed division thereof, shall hold hearings and receive evidence concerning alleged violations, wherever such violations occur, of the Iowa Code of Professional Responsibility for Lawyers or laws of the United States, and the laws of the state of Iowa or any other state or territory within their respective jurisdictions by lawyers who are members of the bar of the supreme court. The grievance commission, or a duly appointed division thereof, also shall hold hearings and receive evidence concerning alleged violations, wherever such violations occur, of the Iowa Code of Professional Responsibility for Lawyers by lawyers practicing law in Iowa who are not members of the bar of the supreme court. The grievance commission shall have such other powers and duties as are provided in these rules.

Rule 35.2 Board of professional ethics and conduct.

35.2(1) There is hereby created the Iowa Supreme Court Board of Professional Ethics and Conduct. The board shall consist of seven lawyers and two laypersons appointed by the supreme court. The supreme court shall designate one of the lawyers, annually, as chair. The president-elect of the Iowa State Bar Association shall nominate lawyers for appointment to the board. The board shall have an executive committee consisting of the chair, the administrator and one nonlawyer member of the board appointed by the court. The executive committee shall at least 60 days prior to the start of each calendar year submit to the court for its consideration and approval a budget covering the operations of the board for the upcoming calendar year. This budget shall include proposed payments to the Iowa State Bar Association for staff, support staff, office space, equipment and supplies necessary to administer the responsibilities of the board as set out in these rules. Approval of the budget by the court shall authorize payment as provided in the budget. The board members are appointed commissioners of the supreme court to initiate or receive, and process complaints against any attorney licensed to practice law in this state for alleged violations of the Iowa Code of Professional Responsibility for Lawyers and laws of the United States or the state of Iowa. Similarly, the members may initiate or receive, and process complaints against any attorney who is not licensed to practice law in this state, but who engages in the practice of law in Iowa, for alleged violations of the Iowa Code of Professional Responsibility. Upon completion of any such investigation the board of professional ethics and conduct shall either dismiss the complaint made, or admonish or reprimand the attorney, or file and prosecute the complaint before the grievance commission or any division thereof. Complaints involving attorneys who are not authorized to practice law in Iowa may additionally be referred to the commission on the unauthorized practice of law.

35.2(2) No member appointed to either the board of professional ethics and conduct or the grievance commission shall undertake to represent, in any stage of the investigative or disciplinary proceedings, any lawyer against whom an ethical complaint has been filed. To avoid even the appearance of impropriety, no member of the board of professional ethics and conduct should undertake to represent any lawyer in any malpractice, criminal, or other matter where it

appears that the filing of an ethical complaint against that lawyer is reasonably likely. A member of the grievance commission may represent a lawyer in a malpractice, criminal, or other matter; however, a member must decline representation of the lawyer in any stage of the investigative or disciplinary proceedings, and not participate in any hearing or other proceeding before the commission.

Rule 35.3 Reprimand.

In the event an attorney is reprimanded by the board of professional ethics and conduct, a copy of the reprimand shall be filed with the clerk of the grievance commission who shall forthwith cause a copy of the reprimand to be served on the attorney by personal service in the manner of an original notice in civil suits or by restricted certified mail, with a notice attached stating that the attorney has 30 days from the date of completed service to file exceptions to the reprimand with the clerk of the grievance commission. Service shall be deemed complete on the date of personal service or the date shown by the postal receipt of delivery of the notice to the attorney. If the attorney fails to file an exception such failure shall constitute a waiver of any further proceedings and a consent that the reprimand be final and public. In that event, the clerk of the grievance commission shall cause a copy of the reprimand to be forwarded to the clerk of the supreme court, together with proof of the aforesaid service thereof and a statement that no exceptions had been filed within the time prescribed. The supreme court shall thereupon cause the reprimand to be spread upon the records of the court as a public document. In the event, however, the attorney concerned files a timely exception to the reprimand, no report of the reprimand shall be made to the clerk of the supreme court and the reprimand shall be stricken from the records. The board of professional ethics and conduct may, however, proceed further with any complaint against such attorney before the grievance commission. When a reprimand has been filed but exception is duly taken thereto, such reprimand shall not be admissible in evidence in any hearing before the grievance commission.

GUIDELINES FOR ATTORNEY DISCIPLINARY PROCEEDINGS

Prior to February 15, 2002, the Court Rule establishing the complaint procedure was Rule 118. Those provisions now appear as Chapter 35 of the Iowa Rules of Court. The new Chapter 35 setting out the complaint procedure did not, however, include the Guidelines that had formerly followed Rule 118. Those guidelines are still helpful, however, in describing the disciplinary process and are repeated here:

GUIDELINES CONCERNING DISCIPLINARY PROCEEDINGS UNDER SUPREME COURT RULE 118 (now chapter 35 of the Iowa Court rules)

There are two methods for disciplinary procedure in Iowa. One is under Iowa supreme court rule 118 *(now chapter 35)*, and the other is under Iowa Code sections 602.10123 to 602.10136.

The procedure under chapter 602 provides for the filing of a complaint in the district court, and pleadings and trial as with ordinary public litigation, before a three–judge court appointed by the chief justice of the Iowa supreme court. This statement of

chapter 602 proceedings is abbreviated because it is not used very much, since rule 118 has become so effective. These guidelines concern themselves with the rule 118 procedure.

Complaints may be filed either with the county or district bar association or directly with the state. There is enclosed herewith a copy of the complaint form used by the state.

Nowhere, either by statute or supreme court rule, is there a provision defining the authority of a local committee. Traditionally local committees have:

1. Investigated complaints.
2. By personal admonition or in writing warned members of their bar concerning activities considered improper.
3. Forwarded the material to the Iowa Supreme Court Board of Professional Ethics and Conduct for attention. Local committees can and, for many years past, have played a very important role in discipline by meeting with the complainants, hearing "their side" and explaining the whole problem. Often this is all the complainants want and all that is needed. There also is great value in these committees meeting with the lawyer, hearing the lawyer's side and, where indicated, influencing the lawyer to adjust the lawyer's fee, correct a minor error, or caution the lawyer against certain practices.

If discipline more serious than an admonition is indicated, it is suggested that under existing rules the matter be forwarded to the Iowa Supreme Court Board of Professional Ethics and Conduct. It is entirely possible that that board will request additional investigation or action from the local committee thereafter.

The lawyer members and the lay members of the board of professional ethics and conduct are appointed by the supreme court and all are then confirmed as commissioners of the supreme court. The president–elect of the Iowa State Bar Association shall nominate lawyers for appointment to the board. Upon receipt of complaints by that board, they are investigated to the extent deemed necessary and then acted upon by the board.

The board has the authority to:

1. Dismiss the complaint.
2. Admonish (a private communication spelling out the violation that has occurred and cautioning against its repetition).
3. Reprimand. (This is a written reprimand which becomes filed with the clerk of the supreme court and thus becomes a public record unless excepted to by respondent.) See rule 118.3. *(now 35.3)*
4. File a formal complaint with the grievance commission.

The lawyer members and lay members of the grievance commission are appointed by the supreme court and all are then confirmed as commissioners of the supreme court. The president–elect of the Iowa State Bar Association shall nominate lawyers for appointment to the grievance commission. The grievance commission receives formal complaints filed by the board of professional ethics and conduct and may:

1. Dismiss the complaint.
2. Admonish the respondent.
3. Recommend reprimand.
4. Recommend suspension for a certain period of time.
5. Recommend disbarment.

The findings and recommendations of the grievance commission are filed with the clerk of the supreme court. Under rule 118 procedure, *(now chapter 35)* this is the first time they become a public record.

The respondent may take exception, and if this is done, the court considers the matter de novo, on the record. Whether or not exception is taken, final action on the recommendation of the grievance commission is by the supreme court, on its order.

There are attached hereto a copy of supreme court rule 118,*(now chapter 35)* a copy of the rules of the board of professional ethics and conduct, and a copy of the rules of the grievance commission.

Local committees are encouraged to confer with the Iowa Supreme Court Board of Professional Ethics and Conduct whenever in their opinion it seems desirable.

DISPOSITION OF COMPLAINTS OF LAWYER ETHICAL VIOLATIONS BY (A) SOURCE OF COMPLAINT AND (B) TYPE OF COMPLAINT

7/1/01 to 6/30/02

TABLE A: SOURCE OF COMPLAINT AND BOARD DETERMINATIONS

Source of Complaint	Grievance Commission	Public Reprimand	Private Admonition	Dismissal	Total
Client	31	9	16	58	114
Adverse Party	2	1	4	44	51
Prisoner or criminal defendant	5	7	5	80	97
Dissolution Client	4	3	11	34	52
Adverse Dissolution Party	1	4	3	17	25
Heir or devisee against probate attorney	6	3	2	13	24
Adverse attorney	1	3	0	4	8
Judge or other attorney	8	6	8	9	31
Referral from a County Bar Association	2	0	0	0	2
Attorney, self-reporting	0	0	0	1	1
Board complaint	3	0	2	1	6
Other	0	1	1	8	10
Totals	63	37	52	269	421

TABLE B: TYPE OF COMPLAINT AND BOARD DETERMINATIONS

Type of Complaint	Grievance Commission	Public Reprimand	Private Admonition	Dismissal	Total
Fraud, deceit, dishonesty, misrepresentation	7	5	6	41	59
Misappropriation or mishandling of money or property	10	5	3	13	31
Criminal conviction	3	0	1	0	4
Other misconduct	4	4	4	27	39
Advertising or solicitation	2	2	2	5	11
Fee matters	9	5	5	7	26
Aiding the unauthorized practice of law	3	3	0	2	8
Breaches of confidentiality	0	1	2	14	17
Conflict of interest	6	4	4	33	47
Neglect or incompetence	45	23	30	171	269
Communication with adverse party	0	3	1	2	6
Trial publicity, trial conduct	0	0	0	1	1
Frivolous or unwarranted litigation	0	0	1	5	6
Threatening criminal prosecution	0	1	0	1	2
Disrespect of court	0	0	0	0	0
trust Account irregularities	0	0	0	0	0
Totals	89	56	59	322	526

Note: The total number of complaints by type of complaint exceeds the total number of complaints subject to determination because some complainants alleged more than one type of violation.

III. RECENT IOWA DISCIPLINARY DECISIONS

1) ATTORNEY MISCONDUCT

CANON 1

A lawyer Should Assist in Maintaining the integrity and competence of the Legal Profession.

DR 1-102 Misconduct.

(A) A lawyer shall not
(1) Violate a disciplinary rule.
(2) Circumvent a disciplinary rule through actions of another.
(3) Engage in illegal conduct involving moral turpitude.
(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
(5) Engage in conduct that is prejudicial to the administration of justice.
(6) Engage in any other conduct that adversely reflects on the fitness to practice law.
(7) Engage in sexual harassment or other unlawful discrimination on the basis of sex, race, national origin, or ethnicity in the practice of law or knowingly permit staff and agents subject to the lawyer's direction and control to do so.

A. Criminal Conduct

Board v. Stephen Engelhardt, Denison 6-month suspension, 630 N.W.2d 810 (Iowa 2001).

Records of the Iowa Department of Revenue show that Engelhardt failed to file state income tax returns for 1989, 1990, and 1991, and that he filed untimely returns for 1992, 1993, 1994, 1995, and 1997. He also failed to file timely state withholding tax returns for several quarters. In 1999 some of these income and withholding tax failures were made the basis of criminal charges against Engelhardt and his wife. Pursuant to a plea agreement, Engelhardt entered an *Alford* plea to one misdemeanor count of willful failure to file withholding tax returns.

In proceedings before the grievance commission, Engelhardt sought to defend his handling of the tax matters by arguing he had relied on his wife, who was also his secretary, to make the filings. She assured him she was taking care of their tax responsibilities and concealed her failure to do so. The grievance commission concluded that Engelhardt "unreasonably and recklessly over an extended period of time wholly delegated his personal, legal responsibilities as a taxpayer and his duties as a lawyer." Engelhardt even delegated to his wife the filing of the 1997 return after learning from state revenue authorities that returns for several previous years had not been filed. In addition to the tax violations, the commission concluded Engelhardt had failed to timely respond to notices from the ethics board.

The Iowa Supreme Court expressed general agreement with the commission's findings, and suspended Engelhardt's law license indefinitely, with no possibility of reinstatement for six months.

Board v. **Stephen W. Ruth,** Davenport, 6 month suspension, 636 N.W.2d 86 (Iowa 2001)

Ruth has a history of alcoholism. While intoxicated he struck his wife in the eye with his fist, leading to a conviction in 1999 of domestic abuse assault. In July 2000 he was convicted of a third offense OWI, a felony. Following his arrest on the OWI charge he stopped drinking and successfully underwent treatment.

The Grievance Commission recommended that Ruth's law license be suspended for six months.

Based on the criminal convictions the Iowa Supreme Court agreed with the commission's recommendation and suspended Ruth's license indefinitely with no possibility of reinstatement for six months. In mitigation the court noted that he has made great progress in dealing with his alcoholism, has completed a batter's program, and has the support of his wife in his recovery efforts.

B. Conduct involving dishonesty, Fraud, Deceit or Misrepresentation.

Board v. **Wesley B. Huisenga,** Cedar Rapids, Public Reprimand and 40 hours public service requirement, 642 N.W.2d 283 (Iowa 2002)

In October 1998, Huisinga and five other attorneys with the Simmons, Perrine Firm gave notice of their intent to leave and join the Shuttleworth Firm. During his last week at Simmons Perrine, Huisinga received a check from the bankruptcy court for $3180 covering trustees fees for Chapter 7 cases closed in September. Although his agreement with Simmons Perrine called for such fees to be turned in to the firm, Huisinga deposited the check into his own personal checking account. When questioned about these fees in March 1999, Huisinga first denied receipt of any such fees for work completed in September. After being told the check had been issued, he sent a Shuttleworth Shuttleworth and he had be had been unaware that the fees had not been turned over to Simmons Perrine. Finally, after being confronted with the fact that the check had been deposited into his personal account, he asserted that his anger over the turmoil surrounding his last days at Simmons Perrine had prompted him to withhold the funds until he could calculate the extent of his damages. (Huisinga testified that Simmons Perrine withdrew his secretarial support, throwing his practice into a state of chaos.)

In November 1998, a $5,400 check for the same type of bankruptcy fees was sent to Huisinga at the Shuttleworth Firm. This check was for cases closed in October; thus, much of it would have been due to Simmons Perrine for work

performed there. Huisinga held the November check for a month, and then deposited it into a Shuttleworth account without saying anything to Simmons Perrine. When later confronted about this check, Huisinga initially denied that it existed. After being told that the check had been issued, he told Simmons Perrine that he had been obligated to spend time at Shuttleworth on bankruptcy matters for which Simmons Perrine had received the prior trustee fees, and proposed to allocate the $5,400 check "50/50 to each firm," offering to send a check for $2,700.

In March 1999, Huisinga received a check for bankruptcy fees in the amount of $5,182.71. Based on a proration of the hours spent at the two firms, Simmons Perrine's share of the check should have been $4,451.88. Huisinga endorsed and deposited the check in a Shuttleworth account, but never informed Simmons or paid any part of it to Simmons until the matter surfaced in December 2000. In January 2001, a Shuttleworth check for $4,451.88 was sent to Simmons Perrine in payment of its share of the fee.

The Grievance Commission found, with respect to the $3,180 check, that Huisinga had "converted into his personal account funds that did not belong to him," and recommended a thirty-day suspension. It found that the Board had failed to meet its burden of proof to show dishonesty with respect to the other two checks.

On appeal, the Iowa Supreme Court stated:

> In his testimony before the grievance commission, Huisinga acknowledged the impropriety of depositing a check for trustee's fees in his personal account. Yet he continued to rationalize his self-help remedy in terms of "leverage" crucial to the "day of reckoning" with his former firm. Like the grievance commission, we think it important to recognize Huisinga's supposed dilemma for what it really is. Had he directly confronted Simmons Perrine about the perceived inequity of his situation, this would be no more than a contract dispute. Instead the record reveals Huisinga's attempt to conceal wrongdoing until caught in the act. No amount of after-the-fact rationalizing can satisfactorily explain this fundamental breach of honesty and professional ethics.

The Court agreed with the Commission that there was insufficient evidence of dishonesty with respect to the other two checks. Citing Huisinga's previously unblemished record and great inconvenience which would result to the bankruptcy court if Huisinga were suspended (Huisinga is a court-appointed "panel" trustee), the Court decided not to suspend him, but to impose a public reprimand. In addition, for the first time, the Court imposed a requirement that the disciplined lawyer complete forty hours of public service to

his community. Huisinga was ordered to submit a plan for such public year, and thereafter report its completion to the Court.

Board v. **Kevin J. Visser,** Cedar Rapids, Admonition, 629 N.W.2d 376 (Iowa 2001)

Visser's client, an insurance agency, was contemplating a business venture with a Waterloo company managed by Steve Mulder. Mulder was to become a objected to the proposal and brought two suits against the agency. The first suit challenged a disbursement by the agency and was the subject of an injunction decision in which the district court noted that Heins was unlikely to succeed on the merits of his claim. The second suit pled various theories of recovery subsequent to Heins' allegedly wrongful termination by the agency. After the second suit was filed, Visser wrote a letter to the *Waterloo Courier* disparaging the suit. The letter included the following statements:

> The agency is saddened that a confused and angry young man has chosen to embarrass himself further by filing a lawsuit which is unlikely to succeed. One judge has already determined that he is unlikely to succeed on the merits of his far-fetched claims.

In the subsequent *Courier* article, Visser's letter was quoted at length. Heins then filed a complaint with the Board. He alleged a violation of DR 7-107(G), which restricts attorneys associated with civil actions in making extrajudicial statements. The Grievance Commission found that the rule was violated and that Visser's statement that "one judge has already determined that he is unlikely to succeed on the merits of his far-fetched claims" was misleading. The Commission recommended a public reprimand, and Visser appealed.

Although he had not pled the defense of First Amendment unconstitutionality before the Grievance Commission, on appeal Visser argued that DR 7-107(G) was unconstitutional on its face and as applied to him. The Court held that to pass constitutional muster, the rule should be applied only to statements which were reasonably likely to affect the fairness of the proceedings. Thus, even though Visser's comments had been held by the Grievance Commission to violate DR 7-107(G)(1), (2) and (4), the Court held that because the statements had not been reasonably likely to affect the fairness of the proceeding, there was no violation of DR 7-107(G).

The Court did, however, find a violation of DR 1-102(A)(4), which prohibits conduct involving dishonesty, fraud, deceit, or misrepresentation. Visser's statement that "one judge has already determined that [Heins] is unlikely to succeed on the merits of his far-fetched claims" was only partially true, because the judge had not dealt with the merits of the claims involved in the second suit. The Court stated: "Although we realize the statement was made under the pressure of the situation, the fact is it was only partially true and was therefore a

misrepresentation under DR 1-102(A)(4). We admonish the respondent, and the bar generally, that we do not condone such conduct."

Board v. Randy J. Hohenadel, Davenport, 4 month suspension, 634 N.W.2d 652 (Iowa 2001)

Hohenadel failed to prosecute a criminal client's appeal, resulting in its dismissal. Although he claimed in the subsequent disciplinary proceedings that he believed the client's appeal was without merit, he did not follow the appropriate procedures for withdrawal from a frivolous appeal. The client later successfully moved pro se to reinstate the appeal.

In a separate matter Hohenadel neglected a client's personal injury lawsuit. He failed to obtain service of process on the defendant and the suit was dismissed for lack of prosecution. Hohenadel then persuaded the court to reinstate the suit, in part by misrepresenting that he had now located the defendant. He later obtained a continuance by misrepresenting his efforts to find the defendant. Despite the reinstatement and the continuance, the suit once more was dismissed for failure to prosecute. Throughout the proceedings, Hohenadel concealed from his client the reason for the delay in the case.

Underlying these professional shortcomings was Hohenadel's alcoholism. Evidence at the disciplinary hearing showed instances when Hohenadel had been late or absent from scheduled court matters or had appeared in court smelling of alcohol. About a month before the Grievance Commission hearing, Hohenadel belatedly began treatment for his condition.

The Iowa Supreme Court considered both aggravating and mitigating factors in determining to suspend Hohenadel's license for at least four months. In mitigation, the Court noted that Hohenadel's record shows he is not fundamentally dishonest; rather, the neglect and deceit resulted from alcoholism, for which he is now sincerely seeking treatment. In aggravation, the Court considered the harm suffered by the personal injury client from dismissal of his lawsuit, which he has not been able to reinstate a second time. The Court further considered a prior reprimand Hohenadel received for similar neglect and misrepresentation to a client. The Court rejected the recommendation of a majority of the Grievance Commission panel that all but one month of the suspension be suspended and Hohenadel placed on probation under the supervision of the director of the Iowa Lawyers Assistance Program. The Court said that the misrepresentations and harm to the clients made a one-month suspension inadequate and that the duties of the director would conflict with his service in a probationary role.

Board **v. Timothy J. Rylaarsdam,** Sioux Center, 6 month suspension, 636 N.W.2d 90 (Iowa 2001)

In 1992 Rylaarsdam undertook to represent the administrators of the estate of Donald Lehrman. He had no experience and little knowledge in the area of probate. He failed to close the estate but told the administrators he had done so.

He also forged their signatures to a petition to sell real estate and forged the signature of one of the administrators to forms admitting claims filed in the estate.

In 1996, Donald Lehrman's sister asked Rylaarsdam to probate the estate of another brother, Robert. Rylaarsdam agreed to do so, but failed to open the estate. Without the knowledge of the clerk of court, he completed a letters of appointment form to which he signed the clerk's name and embossed the clerk's seal. He then presented this document to his client as proof that he had opened Robert's estate. Rylaarsdam also deceived his client regarding the sale of house Robert had owned. The sale was never completed and Rylaarsdam paid some of his own funds to Robert's heirs, telling them that the money came from the supposed sale

The foregoing matters were brought to the attention of the ethics board, which sent notice of complaint to Rylaarsdam and requested his response. He failed to respond.

The grievance commission and the Iowa Supreme Court concluded that Rylaarsdam's conduct violated rules against neglect, misrepresentation, conduct prejudicial to the administration of justice, and conduct reflecting adversely on fitness to practice law.

In selecting an appropriate sanction, the court considered both aggravating and mitigating factors. In mitigation, Rylaarsdam had no prior disciplinary record and did not profit financially from the misconduct. He was also suffering from increasingly severe depression during much of the relevant time period. On the other hand, Rylaarsdam's conduct went beyond lying to his clients; it included forging their signatures and falsifying a court document. The court suspended his license indefinitely with no possibility of reinstatement for six months. As a condition of reinstatement Rylaarsdam must show he is mentally and emotionally competent to practice law by submitting an affidavit from a licensed mental health professional.

Board v. **William J. Lane,** Sioux City, 60 day suspension, 642 N.W.2d 296 (Iowa 2002)

After a favorable federal court decision on liability under the Americans with Disabilities Act, Lane submitted a post-trial brief on remedies to the court. The legal portion of the brief was in great part plagiarized from a treatise on employment discrimination law. Lane also applied to the court for attorney's fees totaling $104,127, including requested compensation for 80 hours of work at the rate of $200 per hour for preparing the brief in question, and 59 hours of legal research in the two weeks prior to trial.

At the hearing on his fee application the United States Magistrate Judge stated it did not appear to him that Lane had written the legal portions of the brief. Lane acknowledged he had borrowed liberally from other sources. The Judge then ordered Lane to explain or identify the sources cited in the brief

within ten days. Lane did not comply with the court order to identify his sources. After the court reduced his fee to $20,000, Lane filed a purported disclosure of his sources in writing the brief, but the disclosure buried the citation of the one source he had used in a list of 200 other authorities. The court then undertook its own investigation and discovered that eighteen pages of the brief was lifted, word for word, from Lindemann & Grossman, *Employment Discrimination Law* (3d ed. 1996). In copying it, Lane simply cherry-picked the favorable parts and renumbered the footnotes.

The Board charged Lane with violating DR 1-102(A)(4) (conduct involving dishonesty) and 2-106(A) (charging a clearly excessive fee). He was also charged with neglecting two unrelated bankruptcy cases.

After hearing, the Grievance Commission found that the Board had proven its case regarding the brief and inflated bill, but not regarding the neglected bankruptcy matters. It recommended a three-month suspension. On review, the Iowa Supreme Court stated that "excessive billing for writing a largely plagiarized brief cannot go undisciplined." Concluding that the "record before us amply supports the conclusion Lane's conduct rises to the level of intent to deceive," the Court suspended his license to practice law for a minimum of six months.

Board v. N. LeRoy Walters, Mason City, 18 month suspension, Supreme Court Decision, June 12, 2002

In 1996 Walters undertook to represent a client in seeking a modification of her dissolution of marriage decree. Walters prepared the petition for modification, which the client signed. Walters never filed the petition with the court, however. Over the next several years he fabricated various stories and excuses to conceal from the client his failure to do so. In 1999 Walters's law license was suspended for other ethical violations. He failed to inform the modification client of his suspension, continued to represent her despite the suspension, and continued to fabricate excuses for the delay in her case.

After a complaint was filed against Walters, the board of professional ethics and conduct sent him notice and requested his response. Walters asked the board for additional time, but never did provide a response.

The board pursued charges against Walters before the grievance commission. The commission found numerous ethical violations, which the supreme court confirmed on de novo review. The neglect of the client's modification action violated DR 6-101(A)(3) and DR 7-101(A). The misrepresentations to the client violated DR 1-102(A)(4), (5), and (6). Walters's failure to notify his client of his suspension, as required by Court Rule 35.21(1)(a), violated DR 1-102(A)(5) and (6). By maintaining an attorney-client relationship despite his suspension and continuing to deceive the client, he violated DR 1-102(A)(4), (5), and (6). His failure to respond to the board's inquiries violated DR 1-102(A)(5).

Considering the seriousness of the violations and the blatant disregard of the client's interests, the court suspended Walters's license indefinitely, with no possibility of reinstatement for eighteen months.

C. Conduct Prejudicial to the Administration of Justice or Conduct Adversely Reflecting on Fitness to Practice Law. (Failure to respond to Board's Notices of Complaint)

Kay E. Dull, Spirit Lake, Public Reprimand, Supreme Court Order, August 29, 2001

In November of 1998 Dull agreed to represent a resident of Colorado who, while vacationing in Iowa in August of 1998, sustained personal injuries requiring five days of hospitalization in an Iowa hospital as a result of a fall at a lakeside park maintained by the City of Lake Park, Iowa. After undertaking his representation , Dull wrote the Iowa hospital where her client had been hospitalized and the surgeons who had attended him, enclosing medical releases and requesting itemized statements and copies of medical records.

In January of 1999 Dull sent a notice of claim to the City of Lake Park, Iowa, intending that to be a claim under the Municipal Notification Act. Though Dull made no further demand on the City, the City's insurance carrier nevertheless set up a telephone conference involving Dull and her client during which the adjuster took her client's statement. Though Dull also engaged a photographer to take pictures of the area where the accident occurred, she took no further action on his behalf, failing to file a lawsuit within the statute of limitations and failing to communicate anything further to him.

Dull was publicly reprimanded that her neglect to pursue and preserve her client's claim for personal injuries, permitting the statute of limitations to expire without taking any action on his behalf, or maintaining contact with him, was the neglect of a client's legal matter, contrary to DR 6-1-1(A)(3), and **her failure to provide the Board with a timely response despite her assurance to the contrary was conduct prejudicial to the administration of justice, contrary to DR 11-1-2(A)(5) and conduct reflecting adversely on her fitness to practice law, contrary to DR 1-102(A)(6) of the Iowa Code of Professional Responsibility for Lawyers.**

2. FEE MATTERS – CANON 2

DR 2-106 Fees for Legal Services.

(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee

is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.

(C) A lawyer shall not enter into an arrangement for, charge or collect a contingent fee for representing a defendant in a criminal case, or either party in any action involving domestic relations.

Robert B. Deck, Sioux City
Public Reprimand
Supreme Court Order, December 17, 2001

Deck demanded and sought to collect a flat fee of $3,000 for his representation of the biological mother in an adoption of her child. When the attorney for the adoptive parents challenged his entitlement to a fee in that amount Deck filed the mother's application to withdraw her consent to the adoption without the specific consent of the biological mother,then a minor, or the biological mother's mother, who was closely involved in all matters with respect to her grandchild's adoption. Though Deck subsequently withdrew that application to revoke consent he then filed a lawsuit seeking judgment for a $3000 fee, naming as defendants the adoptive parents and the adoptive parents' attorney.

Following a hearing on Deck's claim in Small Claims Court, it was determined by the Magistrate, upon his review of the record, that the only item Deck had filed in the adoption proceedings was the application to revoke the biological mother's consent to adoption. The Court awarded Deck $1500 as the "usual, necessary and commensurate fee" for the services he rendered but dismissed his action against the adoptive parents' attorney,finding she was not in any way personally liable nor had she made any guarantees for payment of the fee.

Deck was publicly reprimanded that his demand of the adoptive parents for a flat fee of $3000 for his representation of the biological mother was an attempt to collect a clearly excessive fee, contrary to DR 2-106(A). That his filing of an application to withdraw the biological mother's consent to adoption without specific authorization to do so and in pursuit of his own interest was both conduct prejudicial to the administration of justice, contrary to DR 2-101(A)(5) and, in effect, an attempt to exert a personal interest in litigation, contrary to DR 5-103(A) of the Iowa Code of Professional Responsibility for Lawyers. It was further the determination of the Board that in naming the adoptive parents' attorney as a defendant in the lawsuit to collect an excessive fee, he filed a lawsuit when it was obvious that such action would serve merely to harass or maliciously injure another, contrary to DR 7-102(A)(1) of the Iowa Code of Professional Responsibility for Lawyers.

Frank E. Robak, Sr., Council Bluffs
Public Reprimand
Supreme Court Order, May 1, 2002

Robak entered into an attorney fee contract to represent a criminal defendant June 19, 2000, which provided he was to receive a flat fee of $5,000.00 plus a 6 percent credit card fee of $300.00 for a total of $5,300.00 "to cover 1 to 40 hours," and took the position that he earned the entire $5,000.00 the same day he signed the attorney fee agreement, having spent one hour on the case that day. Although Robak deposited the entire $5,300.00 credit card payment to his trust account June 19, 2000, he deducted $5,000 as a flat fee from the retainer on the same day by writing a check drawn on his trust account to himself.

It was the determination of the Board of Professional Ethics and Conduct that Robak be publicly reprimanded that his payment of $5,000.00 unto himself the same date that amount was deposited into his trust account for one hour of work was a clearly excessive fee, contrary to DR 2-106(A) of the Iowa Code of Professional Ethics and which, as determined by the Iowa Supreme Court in *Board v. Apland,* 577 N.W.2d (Iowa 1998), is void and unethical as a violation of DR 2-106(A).

3. ENGAGING IN OR AIDING THE UNAUTHORIZED PRACTICE OF LAW - CANON 3

DR 3-101 Aiding Unauthorized Practice of Law.

(A) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.

(B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

DR 3-104 Nonlawyer Personnel.

*(A) A lawyer or law firm may employ nonlawyer personnel to perform delegated functions under the direct supervision of a licensed attorney, but shall not permit such nonlawyer personnel to (i) counsel clients about legal matters, (ii) appear in court or in proceedings which are a part of the judicial process (except as permitted by rule 31.15 or rules of this or other courts or agencies), or (iii) otherwise engage in the unauthorized practice of law. **

(B) A lawyer or law firm employing nonlawyer personnel shall not permit any representation that such nonlawyer is a member of the Iowa Bar.

(C) A lawyer or law firm employing nonlawyer personnel shall exercise care to ensure compliance by the nonlawyer personnel with all applicable provisions of the Code of Professional Responsibility. The initial and continuing relationship with the client must be the responsibility of the employing lawyer or law firm.

(D) The delegated work of nonlawyer personnel shall be such that it will assist only the employing lawyer or law firm and will be merged into the lawyer's completed work product. A lawyer shall examine, supervise and be responsible for all work delegated to nonlawyer personnel.

(E) The lawyer or law firm employing nonlawyer personnel shall not permit such nonlawyer to communicate with clients or the public, including lawyers outside the firm, without first disclosing the nonlawyer's status.

Joseph J. Bitter, Dubuque
Public Reprimand
Supreme Court Order January 17, 2002

The daughter of an elderly resident of a nursing home took her father to Bitter's office to prepare her father's last will and testament Bitter permitted his legal assistant to meet with the testator, draft his last will and testament which favored the daughter to the exclusion of her brother, and preside at the execution of the will. Bitter was not involved in any way.

Bitter was publicly reprimanded that permitting his non-lawyer employee to be totally involved in the preparation and execution of a decedent's last will and testament without any supervision or participation on his part was aiding a non-lawyer in the unauthorized practice of law, contrary to DR 3-101(A); failure applicable provisions of the Iowa Code of Professional Responsibility for Lawyers, contrary to DR 3-104(C); and the failure to examine, supervise and be responsible for all work delegated to non-lawyer personnel, contrary to DR3-104(D) of the Iowa Code of Professional Responsibility for Lawyers.

4. CONFIDENTIALITY - CANON 4

DR 4-101 Preservation of Confidences and Secrets of a Client.

(A) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(B) Except when permitted under DR 4-101(C), a lawyer shall not knowingly:

(1) Reveal a confidence or secret of a client.

(2) Use a confidence or secret of a client to the disadvantage of the client.

(3) Use a confidence or secret of a client for the advantage of the lawyer or of a third person, unless the client consents after full disclosure.

(C) A lawyer may reveal:

(1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.

(2) Confidences or secrets when permitted under disciplinary rules or required by law or court order.

(3) The intention of the client to commit a crime and the information necessary to prevent the crime.

(4) Confidences or secrets necessary to establish or collect a fee or to defend oneself, employees or associates against an accusation of wrongful conduct.

(D) A lawyer shall exercise reasonable care to prevent employees, associates, and others whose services are utilized from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101(C) through an employee.

5. CONFICTS - CANON 5

(A) Lawyer has conflicting interests:

Iowa Code Prof. Resp. DR 5-101 (2002)

DR 5-101 Refusing Employment When the Interests of the Lawyer May Impair the Lawyer's Independent Professional Judgment.

(A) Except with the consent of the client after full disclosure, a lawyer shall not accept employment if the exercise of the lawyer's professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's own

financial, business, property, or personal interests.

(B) A lawyer shall not engage in sexual relations with a client, or a representative of a client, unless the person is the spouse of the lawyer or the sexual relationship predates the initiation of the attorney-client relationship. Even in these provisionally exempt relationships, attorneys should strictly scrutinize their behavior for any conflicts of interest to determine if any harm may result to the client or to the representation. If there is any reasonable possibility that the legal representation of the client may be impaired, or the client harmed by the continuation of the sexual relationship, the attorney should immediately withdraw from the legal representation.

(C) A lawyer or the lawyer's partners or associates shall not prepare an instrument in which a client desires to name the lawyer beneficially unless the lawyer is the spouse of, or is the son-in-law or daughter-in-law of, or is otherwise related by consanguinity or affinity, within the third degree, to the client.

(D) A lawyer shall not accept employment in contemplated or pending litigation if it is known or it is obvious that a member of the lawyer's firm ought to be called as a witness, except that the employment may be undertaken and the lawyer or a member of the firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or the firm to the client.

(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or the firm as counsel in the particular case.

Danita Galdick, Dubuque
Public Reprimand
December 17, 2001

Galdick undertook the representation of a woman as plaintiff in an action to recover for personal injuries. Galdick also conferred with her as to other legal matters for which she sought Galdick's advice. Notwithstanding her representation of the woman, Galdick became romantically involved with the man with whom her client had lived for 11 years and who, because of his long term relationship with her, was a potential witness as to the pain and suffering she had sustained as a result of the accident that was the basis for her lawsuit.

As a consequence of Galdick's romantic involvement with her client's domestic partner, he abruptly left Galdick's client to take up residence with

Galdick. It was the determination of the Board of Professional Ethics and Conduct that by engaging in a romantic relationship with the man with whom her client had been living for the past 11 years, Galdick violated her fiduciary attorney-client relationship.

Galdick was publicly reprimanded that her actions were prejudicial to the administration of justice because she impeded her client's access to effective legal representation, contrary to DR 1-102(A)(5); that she engaged in conduct adversely reflecting on her fitness to practice law, contrary to DR 1-102(A)(6); and prejudiced and damaged a client during the course of her professional relationship with that client, contrary to DR 7-101(A)(3) of the Iowa Code of Professional Responsibility for Lawyers.

(B) Business Relations with a Client.

DR 5-104 Limiting Business Relations with a Client.

(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

(B) Prior to conclusion of all aspects of the matter giving rise to employment, a lawyer shall not enter into any arrangement or understanding with a client or a prospective client by which the lawyer acquires an interest in publication rights with respect to the subject matter of employment or proposed employment.

Board v. George R. Remer, Battle Creek, 3 year suspension, 646 N.W.2d 90 (Iowa 2002)

Attorney Remer was appointed to act as conservator of his aunt. One of the conservatorship assets was a family farm, as to which Remer ostensibly acted as farm manager. Remer formed a corporation, Garden Farm Inc. (GFI), in which his wife was the sole shareholder. He leased the conservatorship's farm to that corporation. Later, he sold the conservatorship's interest in the farm to GFI. Although he obtained court approval, he did not notify his aunt or anyone acting on her behalf. The terms of the sale were unfavorable to the ward.

After his aunt died, Remer's wife was appointed administrator of her estate. Remer was attorney for the estate. Later, one of the relatives petitioned for removal of Remer's wife as administrator, and both Remer and his wife resigned from their positions. The new administrator filed an action to set aside the sale of the farm to GFI, asserting that it was not in the aunt's best interest and was the result of Remer's self-dealing. After considerable litigation, the courts concluded that Remer had improperly engaged in numerous instances of self-dealing, and the sale of the aunt's farm to GFI was set aside.

At a hearing before the Grievance Commission on the matter, the Board suspension for Remer, but the Supreme Court remanded for a new hearing,

concluding that the previous trial court findings should not have been given issue preclusion effect. In the new hearing, the entire trial court record was introduced in evidence, and the Commission again found that Remer had engaged in self-dealing and violated disciplinary rules against conflicts of interest. The Commission was also concerned with Remer's failure to cooperate with the Ethics Board's inquiries, his lack of remorse, and his failure to take responsibility for his misconduct. Remer's arguments that his self-dealing did not harm his ward were found to be unsupported by the evidence. As a result of the way the farm sale was structured, for instance, the ward was entitled to less money in sale proceeds than she would have received in rental income. The Commission again recommended a three-year suspension.

On review, the Supreme Court found that Remer's conduct "reflects self-dealing, dishonesty, total willingness to compromise the interests of his client, and absolutely no remorse." Taking into account Remer's prior public reprimand for failing to timely file income tax returns for three years, the Court concluded that his license to practice law should be suspended, with no possibility of reinstatement for three years.

(C) Clients with differing interests:

Iowa Code Prof. Resp. DR 5-105 (2002)

DR 5-105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

(A) In no event shall a lawyer represent both parties in dissolution of marriage proceedings whether or not contested or involving custody of children, alimony, child support or property settlement.

(B) A lawyer shall decline proffered employment if the exercise of independent professional judgment on behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105(D).

(C) A lawyer shall not continue multiple employment if the exercise of independent professional judgment on behalf of a client will be or is likely to be adversely affected by the representation of another client, except to the extent permitted under DR 5-105(D).

(D) In the situations covered by DR 5-105(B) and DR 5-105(C), a lawyer may represent multiple clients if it is obvious that the lawyer can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of the lawyer's independent professional judgment on behalf of each.

(E) If a lawyer is required to decline employment or to withdraw from employment, no partner or associate of the lawyer or the lawyer's firm may accept or continue such employment.

David B. Russell, Urbandale
Public Reprimand
Supreme Court Order, August 29, 2001

Although a husband and wife were represented by separate counsel in their marriage dissolution, they wished to file a joint bankruptcy petition prior to the entry of their dissolution decree. The husband and wife were indebted to wife's mother and grandfather, which indebtedness was not evidenced by any written documentation. Their settlement agreement, commemorated in the dissolution decree, required that the husband pay at least some of the unsecured obligation to the wife's family members following their discharge in bankruptcy. After their joint discharge in bankruptcy, the husband refused to make any payment notwithstanding the terms of the dissolution decree.

Russell was publicly reprimanded that his failure to advise his bankruptcy clients of their potential conflict and his failure to secure their consent to his representation of both, notwithstanding that conflict, was in violation of DR 5-105(D) of the Iowa Code of Professional Responsibility for Lawyers. There was a conflicting interest – the wife wished her husband to reaffirm the unsecured obligation to her family members, which obligation he then refused to pay because of the discharge of that obligation in bankruptcy.

Lynn J. Wiese, Iowa Falls
Public Reprimand
Supreme Court Order, August 29, 2001

Wiese represented the landlord in the drafting and execution of a lease of the landlord's commercial property. In October of 2000 the landlord employed other counsel to contact the tenant with respect to the landlord's perception that the tenant had not provided documentation with respect to proof of insurance which the landlord presumed was a requirement of the lease. Upon his receipt of that letter the tenant engaged Wiese to respond. Notwithstanding that he had drafted the lease for the landlord, Wiese then communicated to the landlord, on behalf of the tenant, taking the position on behalf of the tenant that the lease did not contain the provision the landlord relied on.

When it was brought to his attention that he had drafted the lease on behalf of the landlord Wiese advised the tenant that he would not be able to represent him, "if this matter moves to a dispute." However, Wiese encouraged the tenant's continued contact of him with respect to any questions he might have.

Wiese was publicly reprimanded that in undertaking representation adverse to a former client in a matter substantially related to his representation of the former client, he engaged in an impermissible conflict of interest contrary to DR 5-105 of the Iowa Code of Professional Responsibility for Lawyers.

David E. Richter, Council Bluffs
Public Reprimand
Supreme Court Order, November 9, 2001

Richter developed a continuing attorney-client relationship with Nathan Carlile in the early 1970's which relationship continued until Carlile's death February 7, 1999. During that time Richter represented Carlile both personally, as well as the conservator for the conservatorships of sisters Viola and Verna Karstens, which were opened for both sisters in 1990. Richter also represented Carlile as the executor of the estate of Viola Karstens who died February 23, 1996.

Richter had been introduced to the Karstens sisters by Nathan Carlile in 1978 following which he represented them as to various matters with respect to the Carroll County, Iowa, farm. Richter also represented the Karstens sisters in the preparation of their wills in 1990. When Richter was requested to prepare new wills for the Karstens sisters in 1990, they initially indicated they wished to leave their Carroll county farm to Richter. Richter correctly advised them he could not write their wills to include such a devise to him and urged them to seek other counsel, which they refused to do. Richter then prepared wills for the Karstens sisters which left their farm and homestead to Carlile following the death of the survivor of the two and which wills included a specific bequest of items of personal property to Richter, his wife, his children and also included his children as residuary beneficiaries.

While Richter represented Carlile as conservator for both Karstens sisters, Carlile misappropriated substantial sums from both conservatorships. Although Richter subsequently acknowledged he was not surprised when it was later determined that Carlile had misappropriated substantial sums, and he was concerned with respect to shortcomings in Carlile's accountings submitted to him for the purpose of filing the appropriate conservatorship reports with the Court, Richter took no steps to inquire further to insure that Carlile was faithfully discharging his fiduciary obligations to the wards during the time Carlile was misappropriating significant funds from those conservatorship estates.

Richter was publicly reprimanded that in drafting wills for testators that included specific bequests to himself and his family members he violated DR 5-101(C) and that in failing to pursue his concerns with respect to Carlile's shortcomings in his conservatorship accountings, he violated DR 5-101(C) of the Iowa Code of Professional Responsibility for Lawyers by permitting his loyalty to Carlile to deter his fiduciary obligation to the Karstens sisters.

J. Bryan Schulte, Burlington
Public Reprimand
Supreme Court Order, December 17, 2001

A partner of Schulte's had represented a woman in her 1993 Iowa Dissolution of Marriage proceedings. Pursuant to those proceedings the woman was awarded the

primary care of the parties' minor son. The 1993 Iowa Dissolution Decree was modified in 1997 to reflect the change in circumstances with respect to primary care of the parties' minor son. Pursuant to the 1997 modification the woman's ex-husband was awarded primary care and the woman was obligated to pay child support. She was unrepresented in the 1997 modification proceedings.

On June 20, 2001, while the minor son was visiting her in Florida for the summer months, the woman called Schulte to advise she wished to initiate a modification proceeding to secure her son's primary care. She advised Schulte that her husband was the child's custodian but her son was with her in Florida. She related that her son had complained of unfavorable conditions in his father's home and wished to remain with her in Florida. At that time Schulte advised her she should check out her options in Florida although he believed that Iowa exercised exclusive jurisdiction.

On that same date Schulte sent her a letter enclosing an attorney fee agreement requesting that she sign and return the agreement with a retainer of $5,000. Schulte also requested that she provide him the all of the legal documents she had with respect to the dissolution. Schulte did not recognize at that time that his partner had represented her in the 1993 Iowa dissolution.

On June 26, 2001, Florida counsel filed in the Florida Courts, the woman's "Supplemental Petition to Modify Custody and Other Relief," seeking to enjoin the child's removal from the State of Florida "until further order of the court." Upon his receipt of notice of that action the child's father sought representation by Schulte's firm. When the woman called Schulte on July 10, 2001, to advise that she wished to commence the modification in Iowa and would be returning the signed fee agreement with a $5,000 retainer, Schulte realized that his firm had already agreed to represent her ex-husband. However, he was still unaware that his firm had represented her at the time of her 1993 Iowa dissolution.

Another member of Schulte's firm filed the ex-husband's "Application for Emergency Relief" in Des Moines County District Court July 17, 2001, in response to the woman's filing in Florida. The woman then dismissed her Florida action and voluntarily returned her son to Iowa. The ex-husband' application for emergency hearing filed in Des Moines County, Iowa, District Court was then dismissed.

Having been advised by Schulte that he could no longer represent her with respect to her effort to secure primary care of her son, the woman than employed other Iowa counsel to file her petition for modification in the Iowa District Court. Though another member of Schulte's firm had filed the ex-husband's application for emergency hearing in Iowa, Schulte then filed the ex-husband's answer to her modification application.

It was the determination of the Board that notwithstanding his failure to have noted his firm's representation of the woman in the 1993 Iowa dissolution Schulte was certainly knowledgeable of his prior discussions with her as to her concerns and his agreement to represent her for which she had forwarded a signed attorney fee agreement and a $5,000 retainer.

Schulte was publicly reprimanded that undertaking to represent the ex-husband after counseling and advising the woman with respect to the same subject matter, and after his firm's prior representation of her in the original dissolution proceeding, was an impermissible conflict of interest contrary to Canon 5 of the Iowa Code of Professional Responsibility for Lawyers.

6. NEGLECT AND INCOMPETENCY – CANON 6

Iowa Code Prof. Resp. DR 6-101 (2002)

DR 6-101 Failing to Act Competently.

(A) A lawyer shall not:

(1) Handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a client's legal matter.

Thomas Gillespie, Cedar Rapids
Public Reprimand
Supreme Court Order, December 17, 2001

Gillespie was court appointed to represent a prisoner for a post conviction relief application on July 28, 2000. Following his appointment Gillespie's only communication to the prisoner was a letter dated August 24, 2000, in which he advised the prisoner that he had received and reviewed the prisoner's letters and documents and had retained and reviewed the court file from the underlying criminal case. Although Gillespie advised the prisoner in that communication that he would visit him at Anamosa the following week, he failed to do so; failed to file even an appearance, and failed thereafter to communicate with the prisoner in any manner despite the prisoner's numerous requests for information. As a consequence the Court entered an order on July 23, 2001, dismissing Gillespie and appointing new counsel.

Gillespie was publicly reprimanded that his failure to have communicated in any manner with the prisoner he was court appointed to represent or to make any response to the prisoner's reasonable inquiries was the neglect of a client's legal matter, contrary to DR 6-101(A)(3) of the Iowa Code of Professional Responsibility for Lawyers.

Stephen A. Richardson, Bloomfield
Public Reprimand
Supreme Court Order, December 17, 2001

Richardson was court appointed to represent a prisoner on a post conviction relief application in July of 2000 but since his appointment and to the time of his receipt of notice of the prisoner's complaint with the Board failed to visit with the prisoner and had written only one letter to the prisoner failing to address or answer any of the questions posed by the prisoner in his numerous communications. In his one letter to the prisoner on December 4, 2000, Gillespie indicated that after he received information from the prisoner's defense attorney and the State Appellate Defender's office he would carefully

review that information and make arrangements to talk to the prisoner, personally. Richardson failed to do so, however.

In addition to failing to respond to the prisoner's inquiries, neither did he respond to the prisoner's appellate attorney who wrote Richardson May 10, 2001, on the prisoner's behalf. Richardson failed to request any information from the Appellate Defender's office although he had indicated to the prisoner he would do so. Richardson did nothing to prepare for the hearing on the prisoner's post conviction relief application until June 18, 2001, nearly a year after his appointment and failed in every way to keep the prisoner reasonable advised as the proceedings or of any effort on the prisoner's behalf.

Richardson was publicly reprimanded that his failure to respond to the prisoner's reasonable inquiries and his failure to adequately prepare for the hearing on the post conviction relief application was the neglect of a client's legal matter, contrary to DR 6-101(A)(3) of the Iowa Code of Professional Responsibility for Lawyers.

Board v. James W. Ramey Des Monies, three year suspension, 639 N.W.2d 243 (Iowa 2002)

The Iowa Supreme Court Board of Professional Ethics and conduct charged Ramey with multiple ethical violations arising from his employment by Edna Downard and her sisters to represent them with respect to their brother's estate. Ramey undertook to take steps to safeguard the assets of the estate, to seek removal of the executor, and to try to have the will set aside. Downard gave Ramey a retainer of $1,000. Some time later, Downard spoke with Ramey, who assured her he was working hard on the matter. After this conversation, she and her sisters never heard from Ramey again. He ignored their telephone calls and a letter from Downard requesting that he return the $1,000 reatainer and her documents.

Downard filed a complaint with the Board, which sent Ramey notices to which he failed to respond. The Board then filed its complaint with the Grievance Commission. Ramey failed to answer the complaint and did not appear at the hearing scheduled before the Commission. The Commission concluded that Ramey's neglect of his clients' legal matter, his failure to return or account for the retainer, and his failure to cooperate with the Board's investigation violated DR 1-102(A)(1),(5), and (6), DR 6-101(A)(3), DR 7-101(A), and DR 9-102(B)(3) and (4) of the Iowa Code of Professional Responsibility for Lawyers.

The Iowa Supreme Court agreed with the Commission's findings. The Court concluded that Ramey's conduct showed disregard for his client's interest and reflected negatively on his own personal integrity. In accepting the Commission's recommendation of a three year suspension of his license, the Court considered Ramey's disciplinary history, which included two previous suspensions.

Board v. **Robert M. Sherman,** Fort Dodge, 3 month suspension, 637 N.W.2d 183 (Iowa 2002)

Robert Sherman repeatedly was dilatory in handling a client's lawsuit. He failed to timely serve one of the two defendants (resulting in dismissal of the suit as to that

defendant) and failed to respond to interrogatories until after a motion to compel was filed. The parties agreed to settle, but Sherman delayed about nine months before obtaining a court order approving the settlement. After obtaining the order he apparently lost it, resulting in a four-month delay before it was filed. Sherman waited 10 months to send the $3,000 settlement check to his client. He never did obtain a release fro the client, although a release was one of the conditions of settlement. Sherman also failed to respond to notices from the ethics board.

At the time of the misconduct, Sherman was under stress from various professional and personal problems. Recently he was diagnosed with major depression and obsessive-compulsive disorder. Nevertheless, the court explained that one who is licensed to practice law is expected to render competent legal services and that one who is unable to provide competent assistance should consider another line of work. An aggravating circumstance was that Sherman previously was reprimanded and admonished for neglect of client's cases.

The Court suspended Sherman's license for at least three months and ordered that if he applies for reinstatement he must provide medical proof he is mentally fit to resume the practice of law.

Board v. Lance Grotewald, Oskaloosa, 60 day suspension, 642 N.W.2d 288 (Iowa 2002)

Grotewald's ethical violations arose in the handling of two separate legal matters. The first was a decedent's estate opened in December 1991. Grotewald neglected to timely perform several tasks in the administration of the estate, and did not close the estate until April 2000. In October 1999 Grotewald filed a final report with the court in which he falsely stated that the Iowa Department of Revenue acquittance was on file. When a judge questioned him at the time abut the absence of an acquittance in the court file, Grotewald admitted he had received it. He said that the Department of Revenue must not have received the tax returns. He did not file the returns until January 2000, however.

In a separate matter, Grotewald failed to file a timely answer for clients in a small claim action, resulting in a default judgment against the clients. Grotewald then filed a belated answer but did nothing further to set aside the default.

Grotewald received notices of complaint from the board of ethics regarding his conduct in the estate and small claim matters. He failed to respond to these notices.

The Grievance Commission found Grotewald's neglect of the two cases violated DR 1-102(A)(5) and (6), DR 6-101(A)(3), and DR 7-101(A). The Commission found Grotewald violated DR 102(A)(4) by making misrepresentations to the court, although it found the misconduct resulted from sloppy, casual practices rather than an intent to deceive. The Commission found that Grotewald's failure to respond to the Board violated DR 1-102(A)(5) .

The Iowa Supreme Court agreed with the Commission's findings. The court concluded that although Grotewald's misstatements to the probate judge may have resulted from his casual, lax practices, they were made in reckless disregard of the truth.

Grotewald has suffered from depression since at least 1998. The Supreme Court held that depression and other personal problems do not excuse misconduct. The Court

considered Grotewald's depression and his efforts to address this problem in determining the appropriate sanction, however. The Court found that Grotewald's actions were not solely related to the onset of major depression but that depression played a role, in varying degrees in the several violations.

Ta-Yu Yang, Des Moines
Public Reprimand
Supreme Court Order, February 22, 2002

Yang undertook to represent a citizen of Saudi Arabia whose work permit which permitted him to reside and have gainful employment in the United States was about to expire. Although Yang agreed to pursue an appeal of a determination by the Immigration and Naturalization Service that his client was not entitled to political asylum in the United States, Yang neglected to timely file the appeal.

Yang was publicly reprimanded that his failure to timely file an appeal on behalf of his immigration client was the neglect of a client's legal matter, contrary to DR 6-101(A)(3) of the Iowa Code of Professional Responsibility for Lawyers.

Mark J. Olberding, Nevada
Public Reprimand
Supreme Court, Order May 1, 2001

Olberding represented a marriage dissolution client in a Story County, Iowa, dissolution for which a decree was entered December 14, 2000. Having entered into an attorney fee agreement with that dissolution client which provided that he would not be required to provide any services after the matter was disposed of at the trial level, Olberding failed to provide the client with notice as to subsequent proceedings, including his ex-wife's Rule 179(b) motion filed December 15, 2000, nor her application for enforcement of equity decree filed March 15, 2001. Although Olberding was advised of his dissolution client's impending move to South Dakota, he made no effort to provide him with notice of either of those subsequent applications nor of the hearing set for his ex-wife's application for enforcement of equity decree set for April 30, 2001, notwithstanding his receipt of a copy of that application and a copy of the Order fixing hearing thereon for April 30, 2001.

There being no answer or appearance by or on behalf of Olberding's dissolution client the Court entered an Order April 30th setting off the amount of $24,590.50 in favor of his ex-wife against his equity in the marital residence.

Olberding's former client's first indication that such an Order had been entered was his receipt of a bill from the Story County District Court Clerk on May 3, 2001, in the amount of $15.00. Upon his receipt of that bill he called the Story County District Court Clerk who advised it was his share of the cost for a court reporter incurred during proceedings on April 30, 2001. The clerk did not, however, answer his question as to what the proceeding involved, advising him only that notification of the hearing had been sent to his attorney.

Although Olberding received notice of the application for enforcement of the equity decree filed March 15, 2001, and notice of the hearing scheduled for April 30, 2001, he made no

effort to advise his dissolution client, taking the position he had no obligation to determine where he was or ensure that he received notice of the hearing.

It was the determination of the Board of Professional Ethics and Conduct that as his dissolution client's attorney of record and having received a copy of the application and notice of hearing thereon Olberding did have an obligation to make a reasonable effort to determine his whereabouts and insure that he received such notice. It was further the determination of the Board that failing in that effort he then had the obligation to advise opposing counsel and the Court that he was unable to locate him so as to provide him with notice. The subsequent hearing resulted in an order which reduced his client's equity in the former marital residence by $24,590.50. while that might have been the appropriate result, Olberding was nevertheless precluded from defending that effort by his ex-wife solely by reason of his failure to take any steps to see that his client received notice of the application and hearing thereon.

Olblerding was publicly reprimanded that such neglect was in violation of DR 6-101(A)(3) of the Iowa Code of Professional Responsibility for Lawyers.

Michael H. Adams, Des Moines
Public Reprimand
Supreme Court Order, May 1, 2002

A prisoner at the Polk County Jail was apparently waiting for sentencing when on September 14, 1998, he was served with a Child Support Recovery Unit Notice of Support Debt. There being no answer or request for Court hearing an Administrative Order was entered December 17, 1998, while the prisoner was still in the Polk County Jail, with respect to his obligation to pay child support. On January 19, 1999, the Polk County District Court entered an Order with respect to the prisoner's child support obligation although no Guardian ad Litem had been appointed for him at that time. When a subsequent Wage Withholding Order was entered while the prisoner was in prison, he filed a complaint with the Civil Rights Commission. On January 16, 2001, the Iowa Department of Human Services Director wrote the prisoner enclosing an Administrative Order terminating the Order for income withholding. The DHS Director explained that while it was legal for CSRU to serve and obtain default orders while a non-custodial parent was in a county jail, they were prohibited by law from obtaining a default order while the non-custodial parent was in prison. Since at the time the Administrative Order was filed the prisoner was incarcerated at the Oakdale Correctional Facility, CSRU set aside the Administrative Order and terminated the income withholding Order. He was advised that payments received, totaling $54.72 would be returned to him.

The Child Support Recovery Unit then filed a Motion for Declaratory Judgment which motion acknowledged its mistake concerning the default being entered without a Guardian ad Litem having been appointed for the prisoner and sought the Court's guidance on the appropriate resolution. On March 7, 2001, the Polk County District Court entered an Order setting hearing on the DHS Motion for Declaratory Judgment for May 8, 2001, and on April 3, 2001, entered an Order appointing Adams as the prisoner's Guardian ad Litem for that hearing. The prisoner, however, was not provided with a copy of either the Motion by CSRU for Declaratory Judgment, the Court's Order fixing hearing on that motion, nor the Court's Order appointing Adams as his Guardian ad Litem.

Although Adams had conversations with the Assistant Attorney General assigned to CSRU for that case, appeared before the Polk County District Court for the May 8, 2001,

hearing, and entered into a stipulation at that time, he failed to communicate with the prisoner at any time prior to that hearing nor did he advise the prisoner of his appointment as Guardian ad Litem nor confirm that the prisoner was aware of the application by CSRU or the hearing on that application

The Polk County District Court entered its Order May 9, 2001, that the States's Motion for Declaratory Judgment be granted to the effect that the support Order of January 19, 1999, was a viable, enforceable Order, which the State might enforce. Neither Adams nor the Court advised the prisoner of the entry of that Order. The prisoner did not become aware of any of those proceedings until he was subject to a second Income Withholding Order issued May 29,2001. The prisoner then wrote a letter to t CSRU questioning that action. It was not until the prisoner contacted the Court that he was advised of the State's Motion for Declaratory Judgment and the Court Order entered granting that motion. Although the prisoner urged the Court to reconsider, the Court subsequently ruled that since it Order was filed May 19th and sent to Adams at that time, the prisoner was properly notified and his Motion for Reconsideration was not timely filed,

Adams was publicly reprimanded that his failure to have communicated with the prisoner as to the States's Motion for Declaratory Judgment , his appointment as Guardian ad Litem, the hearing thereon, and the subsequent Order, was the neglect of a client's legal matter contrary to DR 6-1-1(A)(3) of the Iowa Code of Professional Responsibility for Lawyers.

Michael L. Mollman, Cedar Rapids
Public Reprimand
Supreme Court Order, May 1, 2002

On December 10, 2001, at the direction of the United States Court of Appeals for the Eighth Circuit, that Court's Clerk entered an order reciting that on November 7, 2001, Mollman, as an Appellant's retained attorney, had been directed to show cause why he should not be disciplined for failing to prosecute an appeal. Mollman failed to respond to that Order, failed to file a brief and the United States Court of Appeals for the Eighth Circuit determined that his failure to respond to its Orders was a breach of his professional obligation to his client and to the Court, ordering that he be removed from the case.

It was the determination of the Board of Professional Ethics and Conduct that Mollman be publicly reprimanded that his neglect, as determined by the United States Court of Appeals for the Eighth Circuit, was the neglect of a client's legal matter, contrary to DR 6-101(A)(3) of the Iowa Code of Professional Responsibility for Lawyers.