

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF THE STATE OF NORTH DAKOTA

IN THE MATTER OF THE APPLICATION
FOR DISCIPLINARY ACTION AGAINST
JAMES R. BULLIS, A MEMBER OF
THE BAR OF THE STATE OF NORTH DAKOTA

Supreme Court No. 20060132

BRIEF OF JAMES R. BULLIS

Ronald H. McLean (ID# 03260)
SERKLAND LAW FIRM
10 Roberts Street
P.O. Box 6017
Fargo, ND 58108-6017
Telephone: (701) 232-8957

Joseph A. Wetch (ID# 05788)
SERKLAND LAW FIRM
10 Roberts Street
P.O. Box 6017
Fargo, ND 58108-6017
Telephone: (701) 232-8957

ATTORNEYS FOR RESPONDENT JAMES R. BULLIS

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STATEMENT OF THE ISSUES

- 1) Is review of the Hearing Panel's recommended sanction proper under Rule 3.1(F)(2) of the North Dakota Rules for Lawyer Discipline?
- 2) Is there clear and convincing evidence that James Bullis violated Rules 1.6, 1.7(a), 1.7(b), 1.7(c), 1.8(a), 1.8(b), and 1.9 of the North Dakota Rules of Professional Conduct?
- 3) Is the Hearing Panel's recommended sanction adequate for its finding of Rules 1.7(a), 1.7(b), 1.7(c), 1.8(a) and 1.8(b) violations?

STATEMENT OF THE CASE

a. Nature of the Case

This is a disciplinary proceeding brought against James R. Bullis for alleged violations of the North Dakota Rules of Professional Conduct. The alleged violations arise out of transactions involving (a now defunct) company known as Intellisol, Michael Volk, James Ellefson (the complainant), Kevin Christianson, Bruce Hager, an Arizona company known as WORKFORCE ROI, and a North Dakota limited liability company known as AV IV, LLC.

b. Course of Proceedings

This matter was commenced by disciplinary counsel on September 23, 2005 by service of a Petition for Discipline. The Petition alleged violations of 1.6, 1.7(a), 1.7(b), 1.7(c), 1.8(a), 1.8(b) and 1.9. The allegations in the Petition for Discipline stem from Bullis' contact with Michael Volk, Bruce Hager, Kevin Christianson, James Ellefson, Intellisol, WORKFORCE ROI and AV IV, LLC.

Specifically, the Petition alleged that Bullis represented Volk and Intellisol in 2000 and 2001 and that later Bullis represented Ellefson and Christianson in a creditor workout agreement with Intellisol when it was controlled by a different group. The Petition also alleged that Bullis wrongfully purchased Ellefson's rights in Intellisol's successor, WORKFORCE ROI, through AV IV, LLC, a company in which Bullis had an interest.

The petition also alleged that Bullis represented First International Bank & Trust in a lawsuit against Intellisol, Volk, and other defendants.

Bullis timely filled his response to the Petition for Discipline. Bullis asserted that in 2000 he did represent Volk in a sale of stock to James D. Ellefson as the trustee of the James D. Ellefson Revocable Trust. Bullis' role in that transaction was as an attorney for Mr. Volk. Bullis also admitted that he represented Intellisol in connection with Ellefson purchasing certain stock warrants from Intellisol, which required Ellefson to execute a Promissory Note on behalf of Wells Fargo Bank of Moorhead, Minnesota in the amount of \$500,000.00. Bullis did later represent Ellefson and a local businessman, Kevin Christianson, in the spring of 2001, as the note was coming due and Intellisol was controlled by a different group. In connection with WORKFORCE ROI's interest in purchasing Mr. Ellefson's right to invest in Intellisol, Ellefson was informed by Bullis that he would have a conflict of interest in advising Ellefson regarding the transaction and told him to see another attorney. Nevertheless, Ellefson went forward with the transaction and Ellefson received approximately \$100,000 plus certain future rights in the event Workforce ROI, LLC was successful. Finally, Bullis asserted that at the time he started a lawsuit for First International Bank & Trust, he did not have an attorney/client relationship with Intellisol, Volk, or any other defendant and that there would have been no confidential information learned from any prior representation of those clients relevant to his representation of First International Bank & Trust.

c. **Disposition by Hearing Panel**

A hearing was held before a Hearing Panel of the Disciplinary Board of the Supreme Court on January 25, 2006. After hearing the testimony of James Bullis, James Ellefson, and others and after

receiving post-hearing briefs from both disciplinary counsel and Bullis, the Hearing Panel concluded that Bullis had violated Rules 1.7(a), (b) and (c) “in that Bullis’ loyalties were impaired by conflicting responsibilities as a lawyer for Michael Volk, Intellisol, Ellefson, Christianson and AV IV, LLC; as a business associate of Volk, Hager and Christianson, and trustee of the James D. Ellefson Irrevocable Trust; as a part owner of Intellisol stock; and as a part owner of AV IV, LLC.”

The Hearing Panel also concluded that Bullis violated Rule 1.8(a) and (b) “in that Bullis used Ellefson’s investment strategies to his advantage and failed to advise Ellefson to seek independent counsel.”

The Hearing Panel concluded that there was no violation of Rules 1.6 or 1.9. The hearing panel also found no violations regarding the First International Bank.

The Hearing Panel concluded that Bullis exercised poor judgment and was “negligent” in determining that there was a conflict and caused injury or potential injury to the client and thus concluded a reprimand is appropriate under Standard 4.33, North Dakota Standards for Imposing Lawyer Sanctions, and recommended the sanction be imposed. It is noteworthy that the Hearing Panel did not order the sanction but made a recommendation.

Neither Bullis nor the Disciplinary Counsel petitioned for review of the recommended sanction by the Hearing Panel. Bullis did dispute the Petition for Discipline at the hearing and in Post-Hearing Briefs. Nevertheless, Bullis chose not to appeal. As this matter is now going to be reviewed under de novo basis, Bullis urges the Court that there was no violation of the Rules of Professional Conduct.

Finally, Bullis urges that if the Court disagrees he respectfully urges that the sanction of reprimand is adequate.

By way of a letter dated May 10, 2006, the Clerk of the North Dakota Supreme Court notified Bullis and Disciplinary Counsel that "the Court has directed that this matter be set for argument in September 2006. Additionally, counsel are requested to file briefs focusing on whether the recommended sanction is adequate."

STATEMENT OF FACTS

a. Introduction to James Bullis

Jim Bullis (Bullis) was born on September 30, 1966. (Respondent's Appendix ("R. App.") R-248-49)¹ He graduated from Fargo South High School in 1985 (R. App. R-248-49) and the University of North Dakota in 1989. (R. App. R-249-50) He graduated from the University of North Dakota law school in 1992. (R. App. R-222-23) He is licensed to practice in North Dakota and Minnesota. (R. App. R-249-50) He is presently a partner in the law firm of Montgomery, Goff & Bullis. (R. App. R-224-25) His practice primarily involves transaction law with special emphasis in real estate and corporate planning. (R. App. R-224-25) He is married to Kristen Stormoe. (R. App. R-249-50) She is an elementary school teacher. (R. App. R-249-50) They are the parents of three young children. (R. App.

¹ We have cited to the official transcript page in our Appendix, which is found on the right-hand column. The right-hand column page description is displayed where the bottom of the official transcript page would exist. The pages that we have printed off from the transcript were formatted to us in a slightly different manner from the official transcript. Therefore, the Appendix page designation that is accurate is on the right-hand column not the page number found at the bottom. We apologize for any inconvenience this has caused the Court.

R-249-50).

He has never before been the subject of a disciplinary complaint. (Resp. p. R-249-50)

The hearing panel found that he had good character and a good reputation.

He is not an investment advisor. He has never said he was an investment advisor to anyone, including the Complainant. (Resp. App. R-298-99, 307-08,310-12, 215, 216-19)

b. Introduction to Complainant

The Complainant, James Ellefson (Ellefson), is the mayor of Ada, Minnesota. (R. App. R-305-06) Ellefson is a sophisticated investor. He has operated a business all of his adult life. He has significant investment assets managing four (4) million dollars. (R. App. R-305, 206, 207-13) Ellefson used Bruce Hager as his financial advisor. In his initial opening of his accounts with Hager, Ellefson announced his objectives including investing in "creative investment ideas," including IPO's or "other type[s] of investment possibil[ities] not readily available through most investment professionals." (R. App. R-216-19) Ellefson has experience in "analyzing a business opportunity to determine its viability" and is completely at ease in performing this function. Id.

Ellefson's sophistication does not end there. He was involved in the heavily regulated (R. App. R-301-02) telephone industry since 1972 (R. App. R-216-19, 300-01) He also knew how to obtain services from attorneys, having used the services of the Minneapolis firm of Moss & Barnett (R. App. R-302-03) for both regulatory and business activities. (R. App. R-302-04) He also personally knows the

city attorney for Ada, Minnesota, Tom Opheim. (R. App. R-304). Ellefson has filed lawsuits in his name against various entities including a malpractice claim against Bullis. (R. App. R-264-66, 309-10)

Ellefson has also been using a certified public accounting firm, Olsen, Thielen & Company from St. Paul for most of his adult life, which shows his familiarity with accounting professionals. (R. App. R-299A-301)

Ellefson also understood that an “accredited investor” had to have a net worth of at least one (1) million dollars. (Petitioner’s Appendix (“P. App.”) 20-30. He also understood complex estate planning vehicles which caused him to have a revocable living trust created. (R. App. R-299A-301) He was attuned to and gravitated towards “high risk” and “speculation” investments (R. App. R-306-08, 214, 215):

c. Introduction to Other Relevant Individuals and Entities

i. Bruce Hager

Bruce Hager is a Fargo financial advisor and stockbroker. (R. App. R-252-53) He holds a securities license. (P. App. 87) Ellefson approached Hager for financial advice in early 2000. (R. App. R-294-95) Hager then became Ellefson’s financial advisor controlling millions of dollars of funds. (R. App. R-214 (ProEquities IRET Stock Purchase)); (R. App. R-215 (ProEquities Brokerage Trading Account)) Hager has also become the subject of a lawsuit by Ellefson regarding Ellefson’s investment in Intellisol. (R. App. R-309-10) Hager was at all times Ellefson’s sole financial advisor.

ii. Intellisol

Intellisol is an Australian company that had offices in the Fargo area. (R. App. R-226) It was a computer software business. It primarily had two market strategies, a project involving accounting software that worked with Great Plains Software of Fargo and it was developing human resource employment scheduling software. (R. App. R-226) The top Australian managers of the company were Phillip D. Dodds (P. App. 100) (R. App. R-267) and Tony Castagna. (P. App. 117) Scott Wilson, a native of the United States, was another manager of Intellisol. (P. App. 117).

iii. Michael Volk

Michael Volk was employed by Intellisol in 1999 and 2000. (R. App. R-251) Prior to working for Intellisol Volk was the Chief Financial Officer of Prairie Psychiatric Associates. Id. While working for Prairie Psychiatric Associates he and Bullis became aware of each other when Bullis was retained by Volk to represent Prairie Psychiatric Associates in a potential land transaction. Id. Through this land transaction, Bullis came to know Kevin Christianson, the owner of the real property Volk was attempting to buy for Prairie Psychiatric Associates. Id.

Volk was Intellisol's Chief Financial Officer. (R. App. R-227-28) He was later fired in October, 2000 for advising the Intellisol board that there was going to be a shortage of money in the company (R. App. R-258-59) and that the tech market was going to drop. (R. App. R-266) His advice turned out correct. He has since declared bankruptcy. (P. App. 83)

Coincidentally it is at the same period of time (2000) when Bullis opens up his new law firm

and it moves to the Amber Valley Parkway area of Fargo where Intellisol did business.

d. Volk Stock Option

Volk was able to secure a valuable stock option through his employment with Intellisol. The stock option provided that he had the ability to buy 110,000 shares at \$10.00 per share. (R. App. R-2229-30) (P. App. 86, 119). The price of these shares was rising rapidly in 2000. Volk was under some time deadlines to exercise his option, (P. App. 86) and he approached Bullis about what he could do. (P. App. 86) Bullis' position was that he should contact a financial advisor to help raise money to exercise the options. (P. App. 87, 119) It was determined that Hager might be a likely source for Volk to make contact with. (P. App. 87) Volk at this time did not have the funds available to exercise the option without assistance. (P. App. 86)

In April 2000 Hager was able to find \$1.2 million dollars of capital to purchase stock. (P. App. 120) His primary investors were wealthy former Fargoans living in the Phoenix, Arizona area. (P. App. 119-21) They called themselves the Fargo Capital Group, an Arizona LLC. Volk ultimately sold \$1.2 million dollars of stock to them, roughly them granting 30,000 shares. Id. The lead investor of this group is Don Meyers. Id. Mr. Meyers is a lawyer and a native of Towner, North Dakota. Id. He is a highly respected Phoenix lawyer who has occasionally been involved in North Dakota investments and North Dakota litigation. Id. Art Bunker and John Dean were other wealthy investors that were involved with Fargo Capital Group. (R. App. R-244-45) After the sale, Volk still had approximately 80,000 shares. He also had income tax that he was going to have to pay. (P. App. 119, 121).

e. Ellefson Buys \$100,000 of Intellisol Stock

Hager then approached Ellefson with the idea of purchasing some of Volk's remaining shares. Consistent with his investment plan to take on risky and speculative ventures, Ellefson purchased approximately 30,000 shares of stock for \$100,000. Prior to the sale, Bullis had never heard of Ellefson. (P. App. 89) Ellefson was not represented by any lawyer in connection with the sale. Instead, this investment was based upon his financial advisor's advice who had more expertise in these kinds of areas. He testified: "I think that Mr. Hager continued to represent to me that this was a good investment. And eventually I made the decision to purchase the Intellisol stock." (R. App. R-295-96)

Bullis acted as the lawyer for Volk in the transaction. (P. App. 90) Since Intellisol was selling stock a Minneapolis attorney represented it regarding securities overview of the transaction. (P. App. 121) Bullis in no way was a lawyer for Ellefson. Id. The purchaser of the stock was the James Ellefson revocable living trust, which again shows Ellefson's sophistication by use of this advance estate planning vehicle. (R. App. R-255-56) A Minneapolis law firm, possibly Faegre & Benson, had created the revocable trust. (R. App. R-255-57) Paragraph III of the Petition incorrectly alleges that Bullis assisted Ellefson in the transaction. This is not so. Instead, Bullis acted as Volk's lawyer. (P. App. 90, 121). Ellefson doesn't even remember Bullis' involvement in the transaction (R. App. R-295-97)

Bullis handled the transaction for Volk and is not aware of Volk ever having any contact in the transaction with Ellefson. As part of the transaction, Ellefson did fill out a prospective investment questionnaire prepared by Bullis for Volk's protection. (P. App. 90) (R. App. R-254-55). Mr. Ellefson

disclosed that he was an “accredited investor” with a net worth in excess of 1 million dollars. Mr. Ellefson executed the document that disclosed:

“Investor acknowledges that investor has been given full access to information regarding the investment of the company Intellisol Inc., a Minnesota Corporation (including the opportunity to meet Intellisol officers and review documents that they may have requested) has utilized such access to investor satisfaction for the purpose of making an informed investment decision and that investor has sufficient knowledge and expertise in business matters such that investors capable of evaluating the merits and risks of making this investment.”
(P. App. 20-30)

Volk had held the stock in a corporation called High Tech Ventures LLC. (P. App. 90) (R. App. R-256-57). High Tech Ventures LLC was the seller of the shares. (P. App. 90) Volk, like any other businessman, used a corporate entity to protect himself from adverse tax liability and general liability. (R. App. R-256-57) In accord with his duty to his client, Volk, Bullis created the LLC to protect the best interest of his client. (R. App. R-251, 255-57) Twenty-seven thousand seven hundred and eighty shares (27,788) were then transferred to the Jim Ellefson revocable living trust on June 19, 2000.

f. Ellefson Irrevocable Trust

Months pass and in December of 2000, Bullis is informed by Hager’s staff that they need to have an irrevocable trust created for Ellefson regarding the sale of an insurance policy. (P. App. 92) As a transaction lawyer, Bullis had in the past prepared irrevocable trusts relating to insurance policies. (R. App. R-260-62) These are called Crummey trusts. (R. App. R-259-60) The purpose of these trusts is to avoid the insurance proceeds being paid as taxable assets of the estate. Id. This is the only purpose for it. Id. Bullis did prepare an irrevocable trust for Ellefson. (R. App. R-260-62) The Trust was the

client after its creation. (P. App. 92) Bullis reluctantly served as trustee of the irrevocable trust. (R. App. R-204-05) ("I anticipate Montgomery Goff & Bullis resigning as Trustee immediately upon execution [of the trust] by Mr. Ellefson."), (R. App. R-262-64) His only duty in this regard was to send out notices to the beneficiaries. (P. App. 99) (R. App. R-263-65, 291) Bullis attempted to resign as Trustee, (R. App. R-203) but was informed that Ellefson and his civil lawyer, Steven Rufer wanted him to remain in that capacity until they found a replacement. (R. App. R-246-47, 263-65) Ellefson has brought a malpractice action against Bullis. In fact, Mr. Rufer's partner, Reed Malke sat with disciplinary counsel at the hearing. (Tr. p. 8).

g. Ellefson Makes Second Investment for \$500,000

In the Spring of 2001, Ellefson, still involved with Hager, (R. App. R-269-70) determined to make another type of investment into Intellisol for a larger amount. Id. Volk had no more involvement as he had been fired in October, 2000. In addition to Ellefson, Hager had a number of other clients, such as Art Bunker and John Dean who made substantial debenture purchases at the same time.

Ellefson determined to purchase \$500,000 worth of stock warrants, a type of debenture. (Resp. p. R-256-57) Basically he was buying a debenture where he would be able to have the choice of either converting the note to stock or having the note repaid back with interest depending upon the price of the document that he chose to agree to. (R. App. R-265-67) The \$500,000 was secured from Wells Fargo Bank in Moorhead. (R. App. R-268, 271-72) The note was set to mature on September 1, 2001. The money did go to Intellisol.

This transaction took place a couple of months after the creation of the irrevocable trust. Bullis was approached about the transaction: "I was in my office doing my everyday title opinions or whatever and I got a phone call and asked if -- from Phil Dodds who asked if Bruce Hager and Jim Ellefson could come through the back door from the break room and see me. And they came in and said, Jim's [Ellefson] going to do this." (R. App. R-231-32) The transaction whereby Ellefson decided to invest \$500,000 was completed before Bullis was approached; his only involvement was that he represented Intellisol that day in the preparation of the debenture documents. (R. App. R-231-32) Ellefson was well aware that Bullis was representing Intellisol. Additionally, Ellefson decided to invest before Bullis was even approached. (R. App. R-231-32, 271-72, 274-75) Bullis testified about his representation of Intellisol in connection with this transaction: "In fact when they were in my conference room I made it pretty clear to Bruce and Jim both I represented Intellisol. And I believe that's why it's admitted in the petition. I got to guess that's the reason." (R. App. R-271-72) Paragraph IV of the Petition does state "Bullis represented Intellisol in connection with the transaction."

The primary advisor to Ellefson was again his financial advisor Bruce Hager. Bullis made no representations to Mr. Ellefson regarding the financial wisdom of the transaction (or any other financial transactions) (P. App. 105). Bullis prepared the documents to the satisfaction of all parties involved, including Wells Fargo. There has been no evidence that there was any wrongdoing by Bullis in connection with this transaction because there could not be: he was not approached about the transaction until after Ellefson had already decided to make another more substantial investment. (R.

App. R-271-72. 274-75)

h. Events of Summer, 2001 to September 11, 2001

In the Summer of 2001, Bullis' involvement with Intellisol dwindled. (R. App. R-270-71) He was aware that they were beginning to have some financial problems. (R. App. R-272-73) He is now aware that negotiations went on between Intellisol and Ellefson about the September 1, 2001 note maturity date. (R. App. R-236-37) The contacts on this matter were directly between Intellisol and Ellefson. (R. App. R-236-37) Bullis had no role regarding the September 1, 2001 note maturity date as it approached.

In September 2001, the future for Intellisol looked brighter as on September 5, 2001 it secured a substantial contract for sale of software to a hospitality chain. (R. App. R-233-35) Nevertheless, the world crashed in on Intellisol on September 11, 2001 and its stock took a drastic reduction. The rapid demise of Intellisol followed.

As Intellisol began to unravel, on October 15, 2001, Tony Castagna of Intellisol wrote a letter to Ellefson directly, evidencing that Ellefson was unrepresented in connection with his purchase of the debentures. (R. App. R-201-02) Meanwhile, the Fargo Capital Group, sophisticated Phoenix/Fargo investors moved swiftly to takeover Intellisol and protect their investment. Don Meyers was motivated to try to save the investment of the Fargo Capital Group and used a bridge loan of working capital in late Fall of 2001 to take over control of Intellisol.

As the Fargo Capital Group took control of Intellisol, Jim Ellefson's debt had to be dealt with

along with unpaid rent to Intellisol's landlord Kevin Christianson. While Meyers was maneuvering his group in the Fall of 2001, Bullis did represent Ellefson and Christianson in working with the Fargo Capital Group. (R. App. R-200, 275) There was no conflict because of past representation of Intellisol by Bullis. Bullis was now dealing with the Meyers group as the control group that had to be dealt with.

(R. App. R-300-01) Bullis testified:

No, I don't think it is. The renewal of the note was a component of it for sure, but -- what you have as 4, the Fargo Capital Group workout, at that point Don Meyers, Don Meyers' son are both directors of Intellisol. They're on the board. They now have two of the five board seats, Fargo Capital Group does. They -- at that point as far as I'm concerned Intellisol became the subject of the legal proceedings. They're not a party anymore. Fargo Capital Group is the adverse party. Don Meyers is the guy -- he's the shark out here that my client, Mr. Ellefson, and then eventually Mr. Christianson, need to be wary of.

(R. App. R-238-39)

As Bullis was now dealing with the Meyers group as the adverse party, no conflict arose. (R. App. R-276, 282-83) Volk had been fired in October, 2000 (R. App. R-258-59) so no conflict arose in that regard. No conflict arose in representing Ellefson and Kevin Christianson as their interests were not adverse. (R. App. R-276-77) Meyers communicated with Bullis on November 6, 2001 in regard to his representation on behalf of Ellefson and Kevin Christianson. (P. App. 49). On November 7, 2001, Meyers wrote Bullis with a proposal that Kevin Christianson and Ellefson assist his group. (P. App. 50-52). The letter noted that ". . . your client's Messrs. Jim Ellefson, Kevin Christianson. . . ." Id. This shows that Ellefson clearly had knowledge that Bullis was representing both individuals. Id. (R. App. R-277-79)

Bullis testified as follows: "Well, 19 is a letter from Don Meyers to me referencing my clients, Jim Ellefson and Kevin Christianson, and they both got copies. I think it would be pretty hard for Mr. Ellefson to maintain that by November 9, 2001 he was oblivious to my representation of Kevin." (R. App. R-244-45) (See also R. App. R-280-71). Not only was it obvious to Ellefson that Bullis was representing Christianson, Bullis obtained a waiver from Ellefson to represent both individuals. (P. App. 104) Finally, (P. App. 55-57) discloses the billing in connection with Bullis' representation of Ellefson. It did not commence until October 2, 2001 when Bullis had a telephone conference with Ellefson regarding the Intellisol note renewal. Id. Ultimately, Ellefson did agree to extend his \$500,000 note as requested by Don Meyers in his letter of November 9, 2001 to accommodate the workout. (P. App. 68-80, 53-54)

i. Events of 2002

In 2002 Don Meyers' group took over completely with the cooperation of Ramsey Bank, Intellisol's primary secured creditor and a new entity was created by Meyers to purchase Intellisol assets that was called WORKFORCE ROI, LLC. (R. App. R-284-88) At this time, \$500,000 was still owed by Ellefson to Wells Fargo.

Ellefson was not interested in making any additional investments with Meyers' new group WORKFORCE ROI, LLC. Id. Christianson was interested in purchasing an interest in WORKFORCE ROI, LLC. Id. Hager was interested as was Mr. Bullis and his law partners. Bullis told Ellefson that he could not represent him in the venture and that he should consult with his estate planning attorney

regarding the transaction. (R. App. R-286-88) Ellefson did not specifically recall whether Bullis told him to see another attorney. (Tr. p. 214). It is not alleged in the Petition for Discipline that Bullis failed to inform to seek independent counsel. It is noteworthy that the Petition, in Paragraph VI, recognizes that Bullis would not advise Ellefson regarding the transaction ("Bullis informed Ellefson he would have a conflict of interest in advising Ellefson concerning the transaction"). The vehicle for the purchase was a new North Dakota entity called AV IV, LLC. (R. App. R-286-89) Ellefson received \$100,000 and executed an assignment of interest. (R. App. R-288-91) In this transaction he was additionally afforded the possibility of recouping his remaining \$400,000 in the future. *Id.* In this regard, the transaction was fair and reasonable to Ellefson, since he recouped some 20% of his initial investment. There was no evidence received at the hearing that tended to show that the transaction was not fair and reasonable. As it turns out, Ellefson made a better investment decision than the members of AV IV, LLC as its members have yet to receive anything. (P. App. 58-59) is the culmination of the Agreement between Ellefson and AV IV, LLC.

j. First International Bank

Seemingly as an afterthought, Disciplinary Counsel questioned in his re-direct Bullis about a Summons and Complaint initiated by First International Bank & Trust where Bullis represented the bank in an action against Intellisol. However, no substantive questions were put to Bullis. No witnesses were examined to support any allegation of wrongdoing. No substantive documents, other than the

Summons and Complaint were received into evidence. Only on examination from his counsel was the following testimony submitted:

A. I'll explain what happened. This was the very first case I handled under the new UCC-3. Under the new rule somebody -- you don't need a signature anymore to release a UCC interest. Ramsey inadvertently released First International Bank's security interest on the equipment being used by Intellisol that WORKFORCE ROI bought.

Q. Did the two banks quickly come to an agreement?

A. WORKFORCE ROI and First International quickly came to an agreement.

(R. App. R-292-93)

No complaints were filed against Bullis by Ramsey Bank or First International Bank. (P. App. 127) Without a waiver from First International Bank, Bullis is prohibited from revealing further the substance of the representation as it is confidential information that he is bound to keep secret under the attorney-client privilege and is also unable to defend himself against any accusation of wrongdoing. The panel made no finding of wrong doing.

LAW AND ARGUMENT

I. THE HEARING PANEL IMPROPERLY RECOMMENDED THE SANCTION OF REPRIMAND INSTEAD OF ORDERING A REPRIMAND

The threshold question, before other issues are considered by the Court, is whether review is proper under Rule 3.1(F)(2) of the North Dakota Rules for Lawyer Discipline.

That Rule provides:

Within 60 days of its hearing, the Hearing Panel shall submit to the Court a report containing its findings and recommendations in each matter heard other than those resulting in dismissal, consent probation, or reprimand. The Hearing Panel's report shall contain mitigating or aggravating circumstances affecting the nature of degree of discipline recommended. A copy of the report submitted to the Court must be served upon counsel, complainant and the lawyer. Within 20 days of service of the report, the lawyer and counsel may file objections to the report. Within 50 days after service of the report, the lawyer and counsel may file briefs limited to the objections timely filed under the rule. Oral arguments may be requested by the lawyer or counsel, or may be set upon the Court's own motion. Briefing and oral argument will be as provided in the North Dakota Rules of Appellate Procedure.

Id. The rule clearly contemplates that the Hearing Panel submit a report continuing recommendations on each matter heard "other than those resulting in dismissal, consent probation, or reprimand." In those cases, the rules appropriately provides for review by this Court. However, when the Hearing Panel mistakenly recommends a reprimand instead of ordering it and neither party petitions for review of the sanction, the matter should be treated under Rule 3.1(F)(1) of the North Dakota Rules for Lawyer Discipline. Thus, the Hearing Panel's "recommended" sanction be amended *nunc pro tunc* to an "order." In this fashion, the Hearing Panel's action can be properly treated under the non-discretionary direction of Rule 3.1(F), North Dakota Rules for Lawyer Discipline, which states "within 60 days of its hearing, the Hearing Panel shall file with the secretary its order of dismissal, consent probation, or reprimand."

Only after a written petition for review by counsel, the complainant or the respondent lawyer does the Court review the Hearing Panel's decision under Rule 3.1(F)(1).

As such, it would be proper for the Court to order *nunc pro tunc* that the Hearing Panel's "recommended" sanction be amended to an "order" in accordance with Rule 3.1(F) of the North Dakota Rules of Lawyer Discipline. Bullis has filed with the Court a motion in this regard dated June 8, 2006.

II. JAMES BULLIS VIOLATED NO RULES OF THE NORTH DAKOTA RULES OF PROFESSIONAL CONDUCT

The Petition for discipline alleges that Bullis violated Rules 1.6, 1.7(a), 1.7(b), 1.7(c), 1.8 (a), 1.8(b) and 1.9. Disciplinary counsel must prove each alleged violation of the disciplinary rules by clear and convincing evidence. Disciplinary Board v. Mertz, 2006 N.D. 85, ¶17, 712, N.W. 2d 849.

Because there is no clear and convincing evidence that Bullis violated any of these rules, the Petition should be dismissed. Bullis at the hearing disputed the Petition. Nevertheless, Bullis chose not to appeal the hearing panels decision recommending reprimand. As the Court now reviews the disciplinary matter on a de novo basis, Bullis urges a finding by the Court that he did not violate the Rules of Professional Conduct. If the Court finds that he did, Bullis respectfully urges the Court determine that a reprimand is an adequate sanction under the facts of his case.

a. There was No Breach of Confidentiality by Bullis

Rule 1.6, Confidentiality of Information, provides:

A lawyer shall not reveal, or use to the disadvantage of a client, information relating to the representation of the client unless required or permitted to do so by this rule. When such information is authorized by this rule to be revealed or used, the revelation or use shall be no greater than the lawyer reasonably believes necessary to the purpose. Such revelation or use is:

(a) required to the extent the lawyer believes necessary to prevent the client from committing an act that the lawyer believes is likely to result in imminent death or imminent substantial bodily harm;

(b) permitted when the client consents after consultation;

(c) permitted when impliedly authorized in order to carry out the representation;

* * *

Importantly, Rule 1.6 applies to the representation of a client by an attorney. Disciplinary Board v. Dooley, 2001 ND 198 ¶ 5, 637 N.W.2d 1 (N.D. 2001). While this proposition may seem obvious it is worth restating because for all of 2000 Bullis was not acting as an attorney for Ellefson (except for the \$350 event of the creation of the Crummey Trust, and it cannot be seriously argued that Bullis learned anything in the Crummey Trust event that he later wrongfully revealed). It is axiomatic that where there is no attorney-client relationship a violation of the duty of confidentiality cannot occur. See e.g., Sarin v. Pumphrey, 828 N.E. 2d. 957 (Mass. App. Ct. 2005) (unpublished) (non-client cannot assert a claim based on breach of duty by attorney); Continental Resources, Inc. v. Schmalenberger, 2003 ND 26 ¶ 12, 656 N.W.2d 730 (N.D. 2003) (“An integral purpose of the rule of confidentiality is to encourage clients to fully and freely disclose to their attorneys all facts pertinent to the their cause with absolute assurance that such information will not be used to their disadvantage.”)(emphasis added); Disciplinary Board v. McKechnie, 2003 ND 22 ¶ 19 (quoting ABA/BNA Lawyer’s Manual on Professional Conduct at 31:101 (2002): “The lawyer-client relationship begins when the client acknowledges the lawyer’s capacity to act in his behalf and the lawyer agrees to act for the benefit and under the control of the

client"). Indeed, even as late as the spring of 2001, Ellefson understood and agreed that Bullis was representing Intellisol and not him. (R. App. R-239-40)

Even during Bullis' later representation of Ellefson in October, 2001 concerning the workout with Intellisol (and the Meyers group when it took complete control), there is no clear and convincing evidence to suggest that Bullis revealed, or used to Ellefson's disadvantage information relating to the representation to Ellefson's disadvantage.

Bullis did assist with the creation of the Ellefson Irrevocable Trust. However, he only reluctantly served as Trustee, performed the duties of the Trustee competently, and sought to resign as trustee only to be told that it was requested he remain in the post.

The following chart sheds light on the relationships between Bullis, Volk, Ellefson, Intellisol and AV IV.

June 2000	Bullis Represents Volk in Sale to Ellefson of Intellisol Stock. Ellefson unrepresented by lawyer in relation to the sale
Nov-Dec 2000	Bullis Drafts "Crummy Turst for Ellefson with purchase of life insurance policy. (Not mentioned in Petition for Discipline).

January 2001	Ellefson makes second investment in Intellisol. Ellefson is unrepresented (in fact he had decided to invest prior to seeing Bullis, who prepared the debenture documents for Intellisol)
October 2001	Bullis represents Ellefson and Christianson in workout with Meyers' group
Spring 02	AV IV, LLC buys Ellefson interest- Bullis does not represent Ellefson Ellefson told to seek outside counsel

A review of the Petition for Discipline discloses it is devoid of specific instances where Bullis is alleged to have violated Rule 1.6 at any time in any of the above relationships. The reason for this omission in the Petition for Discipline is because at no time did Bullis reveal, or use to the disadvantage of a client, or information relating to the representation of the client. The Hearing Panel did not find a violation of Rule 1.6, correctly concluding that there was no evidence such a violation existed. The finding should be upheld by this Court.

b. Bullis, When He Represented Ellefson, Did Not Represent Another Client with Adverse Interests, Nor Did He Represent Ellefson when He had Adverse Interests.

Rule 1.7 states:

- (a) A lawyer shall not represent a client if the lawyer's ability to consider, recommend, or carry out a course of action on behalf of the client will be

adversely affected by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests.

(b) A lawyer shall not represent a client when the lawyer's own interests are likely to adversely affect the representation.

(c) A lawyer shall not represent a client if the representation of that client might be adversely affected by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) The lawyer reasonably believes the representation will not be adversely affected; and

(2) The client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

As noted above, there first must be an attorney-client relationship before a breach of the lawyer's duty to a client can be alleged. See e.g., Sarin v. Pumphrey. No such relationship was established between Bullis and Ellefson until late 2001 when Bullis represented Ellefson in the workout with Meyer's group (except for the minor transaction where the Crummey Trust was created-after the creation of the trust Bullis could not be the attorney for Ellefson). Accordingly, any allegation of conflict of interest that has a factual underpinning prior to late 2001 is unsupported by the evidence.

Volk's involvement was over prior to his discharge from Intellisol in October, 2000. The 5% commission that was paid to Bullis by a written fee agreement with Volk in regard to the stock option transaction was paid prior to Ellefson ever becoming a client of Bullis. Accordingly, there can be no

violation of Rule 1.7 in that regard. No claim has ever been made that there was anything wrong with the 5% commission representation agreement.

Even when Bullis was representing Intellisol in drawing up the debenture documents, it is clear that he was not representing Ellefson. He was representing Intellisol. That is who was billed and who paid the bill.

Finally, when the work out begins with the Meyers group, it was clear that Bullis was representing both Ellefson and Kevin Christiansen who did not have adverse interest. There is no violation of Rule 1.7 in connection with these events.

The present matter is unlike a recent case involving conflict of interest under Rule 1.7. In Disciplinary Board v. Christiansen, 2005 ND 87, 696 N.W.2d 495 (N.D. 2005), the attorney involved represented a lumber yard as a mechanic's lien claimant against a party that was being represented at the same time by another lawyer in the same firm. The attorney stipulated to discipline as a result of the conflict under Rule 1.7(a). In the present case, there were no impairments to Bullis' ability to consider, recommend, or carry out courses of action on behalf of Ellefson, and certainly nothing that would adversely affect his responsibilities to another client or third party and there was no evidence presented to the contrary. His loyalties lied solely with Ellefson and Christiansen (who had similar interests) in dealing with the Meyers group. Christiansen, at ¶ 14.

Similarly, Bullis' representation did not run afoul of Rule 1.7 (b) or (c), since his own interests or the interests of other clients or third parties were in no way likely to be adversely affected by his

representation of Ellefson. All of the interests of his clients were the same. Simply put, he had no representational interest in Intellisol at that time -- his only interest was the representation of Ellefson and Christiansen.

There are many accusations, however, what actually happened was that Ellefson, on his own or with Hager, buys stock from Volk and then later buys the debentures. After September 11, 2001, it becomes apparent to Ellefson that he was in trouble and needed an attorney. He approached Bullis who agreed to represent him and Christiansen after obtaining the necessary waivers. (R. App. R-240-44). Ellefson then decided not to become part of the workout; but to accept his losses and move on. Bullis told him he could not and did not represent him in the AV IV event and to seek outside counsel. Therefore no violation of Rule 1.7(b) occurred. In short, there is no clear and convincing evidence that Bullis violated Rule 1.7(a), (b) or (c).

c. Bullis Complied with Rule 1.8 in the AV IV, LLC Transaction

Rule 1.8 (a) and (b) provide:

(a) Except for standard commercial transactions involving products or services that the client generally markets to others, a lawyer shall not enter into a business, financial or property transaction with a client unless:

(1) The transaction is fair and reasonable to the client; and
(2) After consultation, including advice to seek independent counsel, the client consents to the transaction.

(b) Except as permitted or required in Rules 1.6 and 3.3, a lawyer shall not use information relating to representation of a client to the disadvantage of the client for purposes of furthering either the lawyer's or another person's interest unless after consultation, including advice to seek independent counsel, the client consents.

The type of transactions that Rule 1.8 is meant to discourage is aptly described in Disciplinary Board v. Giese, 2003 ND 82, 662 N.W.2d 250 (N.D. 2003) and Disciplinary Board v. Crary, 2002 ND 9, 638 N.W.2d 23 (N.D. 2002). In Giese, Attorney Giese was interested in purchasing land that his clients owned. Giese was represented the clients in a dispute pertaining to the land. Giese negotiated a purchase of the land using a contract for deed. Subsequently, he requested that the land be conveyed to him via warranty deed, even though the contract for deed was not paid off. After the warranty deed was executed, the seller realized the conflict and sought to have the land returned. Importantly, Giese did not advise the sellers to seek independent counsel when he asked for the warranty deed. This was held to be a violation of Rule 1.8(a).

In Crary, attorney Crary persuaded his client to purchase annuities from a company that he was an agent for without disclosing that fact and obtained a loan from the client without repaying it. Attorney Crary did not advise the client to seek independent advice before agreeing to make the loan; this conduct was held to be a violation of Rule 1.8(a). With regard to the annuity purchases, the court held that failing to disclose his agency relationship with the annuity company to the client while encouraging her to purchase from that company was a violation of Rule 1.8(b).

Clearly, the conduct of the attorneys in Giese and Crary is distinguishable from the present case. First, Bullis entered no transaction that was not fair and reasonable to Ellefson. Ellefson was offered the opportunity to have his stock warrants purchased by AV IV, LLC- he agreed. (R. App. R-286-89) The purchase of the stock warrants meant that Ellefson could recoup \$100,000 of his

investment, with the opportunity to recoup it all if the stock warrants became financially viable. (R. App. R-288-91) In any commercial context, such a transaction would be considered fair and reasonable, considering the future possibility of recouping an additional \$400,000, meaning Ellefson would have been made whole in connection with the stock warrants. In this regard, Bullis specifically told Ellefson that he would have a conflict of interest and did not counsel Ellefson in any way with regard to this transaction (as the Petition acknowledges). (R. App. R-286-88)

Moreover, Bullis specifically informed Ellefson to contact his estate planning counsel, whom Bullis believes was in Minneapolis, about securing legal advice concerning the transaction. Id. This testimony was weakly denied by Ellefson as he testified he had no specific recollection. (Tr. p. 214). Thus, unlike the attorney in Crary, Bullis instructed Ellefson to secure counsel regarding the transaction. Id. This act fulfilled his duty under N.D.R. Prof. Conduct 1.8(a)(2). The hearing panel's conclusion that Bullis "failed to advise Ellefson to seek independent counsel" has no support in the record. Ellefson never effectively contradicted Bullis. Bullis told him of the conflict and advised him to seek counsel from another attorney. There is no clear and convincing evidence to the contrary.

Secondly, Bullis did not use any information gained during the representation of Ellefson to his disadvantage as contemplated by N.D.R. Prof. Conduct 1.8(b). In fact, the purchase of the stock warrants by AV IV, LLC worked as an advantage to Ellefson insofar as he recouped \$100,000 of his initial purchase with the possibility of recouping an additional \$400,000 in the future. (R. App. R-288-91) Clearly, this opportunity would not have been available to Ellefson without AV IV, LLC's involvement.

Id. Even then, Bullis steered clear of advising Ellefson with regard to the transaction, as is required under our rules of professional conduct. (R. App. R-286-89)

d. Bullis Took No Improper Actions Regarding Any Former Clients

Rule 1.9 provides:

A lawyer who has formerly represented a client in a matter shall not thereafter:

- (a) Represent another person in the same matter in which that person's interests are materially adverse to the interests of the former client; or
- (b) Represent another person in a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or
- (c) Use information relating to the representation to the disadvantage of the former client in the same or a substantially related matter except as Rule 1.6 would require or permit with respect to a client.

It is perhaps helpful to begin with a chart of the relevant activities:

IS IT THE SAME MATTER OR SUBSTANTIALLY RELATED MATTER? NO

July 2000	Competed Sale of stock between Intellisol, Volk and Ellefson
January 2001	Ellefson purchases loan/equity opportunity from Intellisol
Fall of 2001	Work out with Meyers group

A review of the evidence does not disclose Bullis “showing up on the other side of the same matter.” Nor does it disclose “side-switching” disloyalty. ABA/BNA Lawyer’s Manual on Professional Conduct § 51:225-26 (2002). No violation of Rule 1.9(a) occurred because the representation of Ellefson in the workout was not the same “matter” that Bullis had represented Intellisol in. The workout was a separate “matter” that was unrelated to any representation Bullis had undertaken for Intellisol. This is particularly true since the Meyers group had seized control of the remnants of Intellisol. The representation involving Ellefson was a creditor workout; nothing more. Bullis does not show up on the opposite side of any client in any “same matter or substantially related matter.” Accordingly, no violation of 1.9(a) occurred.

Moreover, no violation of Rule 1.9(b) or (c) occurred because Bullis did not represent Ellefson in the Fall of 2001 where Ellefson’s interests were material adverse to Bullis’ former clients. Volk is gone by October, 2000. Intellisol is on life-support, with the Meyers group about to pull the plug. Bullis is involved by representing two investors, Ellefson and Christiansen in dealing with a bigger creditor; the Fargo Capital Group. (R. App. R-277-79) In this regard, the adverse person was Don Meyers and his group. The entity “Intellisol” was irrelevant for all practical purposes at that point. (R. App. R-238-39) Accordingly, there could not be a violation of Rule 1.9(b). Continental Resources, Inc., at ¶¶ 22 (Rule 1.9 implicated where confidential information is used to the disadvantage of client). The Hearing Panel correctly found no violation of Rule 1.9.

III. IF DISCIPLINE IS TO BE IMPOSED, THE HEARING PANEL'S DISCIPLINE IS SUPPORTED BY THE STANDARDS FOR IMPOSING LAWYER SANCTIONS

The Hearing Panel concluded that Bullis did not violate N.D.R.Prof. Conduct 1.6 or 1.9. Accordingly, arguments will be limited to those standards for imposing lawyer sanctions related to failure to avoid conflicts of interest, N.D. Stds. Imposing Lawyer Sanctions 4.3.

In general, the "standards are designed for use in imposing a sanction or sanctions following a determination by clear and convincing evidence that a member of the legal profession has violated a provision of the North Dakota Rules of Professional Conduct." N.D. Stds. Imposing Lawyer Sanctions 1.3. The Standards are designed to promote consideration of factors relevant in imposing an appropriate level of sanction in an individual case and consideration of the appropriate weight of such facts in light of the stated goals of lawyer discipline. Finally, the Standards provide for consistency in disciplinary sanctions for the same or similar offenses within and among jurisdictions.

Rule 3.0 of the N.D. Stds. Imposing Lawyer Sanctions provides that in imposing a sanction after a finding of lawyer misconduct, a Court should consider the following factors: A) The duty violated; B) The lawyer's mental state; C) The potential or actual injury caused by the lawyer's misconduct; and D) The existence of aggravating or mitigating factors.

a. The Duty Violated

The Hearing Panel concluded Bullis violated N.D.R.Prof. Conduct 1.7(a), (b), and (c) and 1.8(a) and (b). Those rules contemplate conflicts of interest. Accordingly, Rule 4.3, N.D. Stds. Imposing Lawyer Sanctions is the appropriate rule to analyze whether the recommended discipline is adequate.

Under Rule 4.33:

Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client. The issuance of an admonition should be limited to cases of negligence which cause no serious injury or little or no injury to a client. A reprimand is not a sufficiently harsh sanction in an instance where the lawyer's negligence causes substantial injury to a client.

"Negligence" is defined by the Standards as the "failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. In cases where the lawyer is alleged to have been negligent, as here, Courts generally impose a reprimand when the lawyer's conduct has resulted in no overreaching injury to the client. Unlike Giese, 2003 ND 82, ¶ 25-27, where the lawyer knew his actions in failing to advise his client to obtain independent counsel was wrong, Bullis' conduct, at most, was negligent in failing to determine that there was a conflict of interest. Disciplinary Board v. Boulger, 2001 ND 210, ¶ 14, 637 N.W.2d 710, 714 (N.D. 2001) (reprimanding lawyer for negligent conduct), Disciplinary Board v. Hellerud, 2006 ND 105, ¶ 14 (reprimanding lawyer and citing Disciplinary Board v. Gray, 544 N.W.2d 168, 172 (N.D. 1966) for proposition that "[t]here is no bright line between the mental state of 'knows or should know' and that of 'negligence'.")

Bullis' conduct also is no worse than the lawyer's in Gendron v. State Bar of California, 673 P.2d 260 (Cal. 1983) or In Re Palmieri, 385 A.2d 856 (N.J. 1978). In Gendron, a public defender was reprimanded for failing to obtain a written waiver of conflicts from three defendants who were jointly

charged with robbery. Id. at 269. The conduct equated to “gross carelessness and negligence” which warranted a reprimand. Id.

In In Re Palmieri, the attorney was reprimanded for filing a third party complaint against the buyers of a supermarket on behalf of the sellers after having represented both the seller and the buyers in the transaction. (385 A.2d at 861-62) Under circumstances of that case, a reprimand was the appropriate sanction where no other disciplinary history existed. Id. at 862.

Bullis' conduct clearly also falls short of the attorney in Giese, 2003 ND 82 ¶ 16; 662 N.W.2d at 255, who was suspended by this Court. In that case, Giese failed to advise his client to obtain independent legal advice about a business transaction entered into by the client and Giese. Id. It was held that since this failure resulted in litigation against Giese, who needlessly delayed the case, the injury requirement of N.D. Stds. Imposing Lawyer Sanctions 4.32 was not. Id. at ¶ 26; 662 N.W.2d at 258. Bullis was dealing with sophisticated business and investment people, unlike Giese, who was dealing with a widowed land owner.

Disciplinary Board v. Butz, 2002 ND 155, 652 N.W.2d 258 (N.D. 2002) is also distinguishable. In Butz, the attorney tried to settle a claim against him by a former client in violation of N.D.R.Prof.Conduct 1.8(h). This Court held that it was appropriate to suspend Butz because he knew of a conflict of interest and failed to disclose it to the client and caused injury to the client. Id. at ¶ 10; 652 N.W.2d at 359.

b. The Potential or Actual Injury Caused by the Lawyer's Misconduct

N.D. Stds. Imposing Lawyer Sanctions, Standard 3.0 also provides that a Court should, after a finding of lawyer misconduct, consider the potential or actual injury caused by the lawyer's misconduct.

In this case, there is no actual injury caused by Bullis. The common thread that runs through all of the disciplinary measures outlined in the standards for imposing sanctions that are urged by Disciplinary Counsel is injury or potential injury. No injury or potential injury was caused by Bullis. The fact of the matter is that Ellefson lost his \$600,000 without Bullis being his attorney. These investments by Ellefson, while in hindsight were unsuccessful, were in accord with his desires to have high risk speculative positions. Hager was his advisor in this regard. Others experienced investors followed Ellefson's course. But what is most important is that this money was lost in transactions where Bullis was not Ellefson's attorney.

c. The Existence of Aggravating or Mitigating Factors

N.D. Stds. Imposing Lawyer Sanctions, Rule 3.0 also provides that a Court should, after a finding of lawyer misconduct, consider the existence of aggravating or mitigating factors. N.D. Stds. Imposing Lawyer Sanctions, Rule 9.3 lists factors that are to be considered in mitigating the degree of discipline to be imposed on a lawyer. Factors which may be included in litigation are set out in N.D. Stds. Imposing Lawyer Sanctions, Rule 9.32. They include, in relevant part:

- a. Absence of prior disciplinary record;
- b. Absence of dishonest or selfish motive;

* * *

- e. Full and free disclosure to Disciplinary Board or cooperative attitude towards proceedings;

* * *

- f. Character or reputation;

The absence of disciplinary actions against Bullis is a factor that mitigates any discipline that might be imposed. He has been fully cooperative and forthright in the disciplinary process. There was no selfish motive; Bullis stood to gain nothing as the investments had been decided on by Ellefson prior to Bullis' involvement.

Furthermore, several witnesses testified to Bullis' character and reputation as being exemplary. Kenneth J. Norman, Michael S. Montgomery and John Marks all testified to Bullis' good character and ethical behavior. N.D. Stds. Imposing Lawyer Sanctions, Rule 9.32(g).

In short, there are substantial mitigating factors here should not be overlooked as the hearing panel found.

While the Court does not rubber stamp the report of the hearing panel, due weight should be given to the findings, conclusions and recommendations of the hearing panel. Disciplinary Board v. Mertz, 206 N.D. 1985 ¶7, 712 N.D. N.W. 2d 849 (N.D. 2006). Each case is to determine upon its own facts as to what discipline is warranted. Id. The purpose of the disciplinary proceeding is not to punish an attorney but to determine what is in the public interest. Id. Bullis respectfully suggests that under the

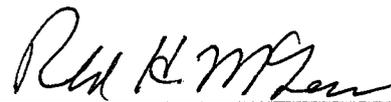
particular facts of this case that if the Court finds that there has been a violation of the Code of Professional Responsibility that reprimand is warranted and in the public's interest.

CONCLUSION

James Ellefson is a sophisticated investor that sought high risk, speculative investments. Bullis had nothing whatever to do with his decision to invest in Intellisol. In point of fact, the investment decisions were completed prior to any involvement by Bullis. At all times Bullis acted in accord with the Rules of Professional Conduct in his behavior and representation. There is no clear and convincing evidence to the contrary. All that has been proven is that there was a series of complex commercial transactions completed by sophisticated investors that lost money. That is not a cause for discipline.

If the Court determines that there was a violation of the Code of Professional Responsibility, Bullis urges that the recommended reprimand sanction by the hearing panel is adequate.

Respectfully submitted this 12th day of June, 2006.



Ronald H. McLean (#03260)
Joseph A. Wetch, Jr. (#05788)
SERKLAND LAW FIRM
10 Roberts Street
P.O. Box 6017
Fargo, North Dakota 58108-6017
701-232-8957
ATTORNEYS FOR RESPONDENT
JAMES BULLIS