PCB 24

[12-Oct-1990]

DECISION No. 24

ENTRY ORDER
SUPREME COURT DOCKET NO. 90-542
SEPTEMBER TERM, 1991

In re Frank Berk	}	APPEALED FROM:
	}	
	}	Original Jurisdiction
	}	
	}	Docket No. 89.40

In the above entitled cause the Clerk will enter:

Judgment that Frank Berk is suspended from the office of attorney and counselor at law for a period of six months, beginning January 6, 1992 and ending July 6, 1992, and thereafter, until he demonstrates compliance with reinstatement conditions contained in this opinion.

BY THE COURT:
/s/
_____
Frederic W. Allen, Chief Justice
/s/
_____
Ernest W. Gibson III, Associate Justice
/s/
_____
John A. Dooley, Associate Justice
/s/
_____
James L. Morse, Associate Justice
/s/
_____
Denise R. Johnson, Associate Justice

[ ] Publish

[ ] Do Not Publish

NOTICE: This opinion is subject to motions for reargument under V.R.A.P. 40 as well as formal revision before publication in the Vermont Reports. Readers are requested to notify the Reporter of Decisions, Vermont Supreme Court, 111 State Street, Montpelier, Vermont 05602 of any errors in order that corrections may be made before this opinion goes to press.

No. 90-542

In re Frank Berk

Supreme Court
Original Jurisdiction
September Term, 1991

Wendy S. Collins, Bar Counsel, Montpelier, for plaintiff-appellee

P. Scott McGee of Hershenson, Carter, Scott & McGee, Norwich, for defendant-appellant

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

PER CURIAM. Attorney Frank Berk appeals from a Professional Conduct Board ("PCB") conclusion that he violated two provisions of the Code of Professional Responsibility, DR 1-102(A)(3) (engaging in conduct involving moral turpitude) and DR 1-102(A)(7) (engaging in conduct that adversely reflects on fitness to practice law) and from the board's recommendation that he be suspended from the practice of law for six months. We affirm the board's conclusions and accept its recommendation on sanctions.

At the time of the relevant events, appellant had been an attorney in this state for thirteen years and was a senior partner in a law firm. In May 1988, he was arrested in New Jersey in the process of purchasing between six and seven grams of cocaine, which he intended to share with an associate in his law firm. He was charged with attempted possession of cocaine but, after he successfully completed a pretrial diversion program, the charges were dismissed.

This incident triggered the filing of the PCB complaint. The subsequent investigation revealed that appellant had completed at least three similar drug purchases in the prior seven months. Each purchase was made from the same friend who lived in New Jersey. The locations of the drug purchases varied: sometimes the friend travelled to Vermont, sometimes appellant travelled to New Jersey. On each occasion, appellant collected money from other friends to buy the drugs and after the purchase shared the drugs with them. In the course of the May 1988 drug transaction, appellant met with his cocaine supplier, who had been arrested on drug charges and who sought his legal advice. Appellant told the dealer that he could not represent him because he was not licensed to practice law in New Jersey, but he discussed his case in general terms.

Appellant does not contest the board's findings. Rather, he argues that the facts do not support the board's conclusions that he engaged in conduct involving moral turpitude and adversely affecting his fitness to practice law.

The parties raise two preliminary issues: (1) what standard of review applies to PCB conclusions and dispositions, and (2) whether the PCB's conclusions concerning professional misconduct are limited in scope by the formal charge against him.

I. Standard of Review

PCB decisions are appealable to this Court under Rule 8(E) of the Permanent Rules Governing Establishment of Professional Conduct Board and Its Operation ("Permanent Rules"), A.O. 9. The same rule provides that the board's findings of fact "shall not be set aside unless clearly erroneous."

Id. The rules do not, however, provide standards of review for the board's conclusions (mixed findings of fact and law) or its recommendations on sanctions.

Prior to the adoption of the rewritten Administrative Order (effective July 1, 1991), the PCB's findings, whether purely factual or mixed legal and factual, were upheld if they were "`clearly and reasonably supported by the evidence.'" In re Rosenfeld, No. 89-513 (Vt. Nov. 1, 1991), slip op. at 6 (quoting In re Wright, 131 Vt. 473, 490, 310 A.2d 10, (1973)). Nothing in the current version of this order suggests that this standard no longer applies.

The PCB acts on behalf of this Court and pursuant to rules adopted by this Court. See Preamble to Permanent Rules, A.O. 9 (PCB created by this Court pursuant to its "exclusive responsibility . . . for the structure and administration of the lawyer discipline and disability system"). This Court retains "inherent power . . . to dispose of individual cases of lawyer discipline." Id.; see also Vt. Const. ch. II, § 30 (Supreme Court has "disciplinary authority concerning all . . . attorneys at law in the State"). Consequently, this Court does not "review" PCB recommendations on sanctions; rather, it makes its own ultimate decisions on discipline. Nonetheless, PCB recommendations on sanctions will be accorded deference. See In re Harrington, 134 Vt. 549, 552, 367 A.2d 161, 163 (1976) (because PCB acts "both as an arm of the Court and as a body representative of the profession," its recommendations "carry great weight"). Courts in other jurisdictions are similarly deferential. See, e.g., Matter of Kushner, 101 N.J. 397, 403, 502 A.2d 32, 35 (1986); Matter of Discipline of Gubbins, 380 N.W.2d 810, 812 (Minn. 1986); Hawkins v. State Bar, 23 Cal. 3d 622, 627, 591 P.2d 524, 526, 153 Cal. Rptr. 234, 236 (1979).

II. Complaint

Appellant argues that conclusions of misconduct cannot be based on uncharged behavior. He asserts, therefore, that only those findings relating to the events of May 1988, culminating in his arrest for attempting to purchase cocaine in New Jersey, can be used to support misconduct.

A PCB proceeding is neither civil or criminal; rather, it is sui generis. A.O. 9, Permanent Rules, Rule 13(A). Nevertheless, regardless of the form of the proceedings, an attorney charged with misconduct is entitled to basic procedural due process rights, including the right to fair notice of charges. In re Ruffalo, 390 U.S. 544, 550 (1968). Thus, findings concerning uncharged behavior cannot be used to support a conclusion of misconduct. See Matter of Roberts, 442 N.E.2d 986, 988 (Ind. 1983) (attorney charged with misconduct "is entitled to know in advance the extent of the charges against him"). When determining sanctions, however, the Court may consider not only the misconduct, but also "the entire course of [the attorney's] conduct . . . including any uncharged misconduct which is supported by the evidence in the record and relates to the finding of misconduct" Id.

III. Moral Turpitude

Appellant asserts that, under Vermont law, his behavior does not rise to the level of moral turpitude. Not every criminal act involves moral

turpitude; only those which are by nature "base or depraved" qualify. State v. Fournier, 123 Vt. 439, 440, 193 A.2d 924, 925 (1963). The term is "amorphous at best," and no clear guidelines exist for determining when it applies. State v. LaPlante, 141 Vt. 405, 409, 449 A.2d 955, 957 (1982). Nevertheless, one relevant factor is society's view of the activity, that is, whether "sufficient opprobrium [has] attach[ed] to the crime." Fournier, 123 Vt. at 440, 193 A.2d at 925.

Contrary to appellant's assertions, we did not decide in LaPlante that, as a matter of law, possession of a controlled substance is never a crime of moral turpitude. We decided only that possession of an unspecified quantity of an unspecified "harmful" drug was not a crime of moral turpitude for the purpose of impeaching a witness's credibility. The Court reasoned that, because the drug in another context would have "redeeming social value," possessing it is not "inherently evil." LaPlante, 141 Vt. at 410, 449 A.2d at 957. We doubt that cocaine has redeeming social value. See In re Chase, 29 Or. 391, 404-05, 702 P.2d 1082, 1090-91 (1985) (Peterson, C.J., dissenting) (describing the debilitating physical effects of cocaine and the magnitude of the social problems its use has caused). Rather, we conclude that sufficient opprobrium has attached to its possession to support a finding of moral turpitude.

Moreover, more than simple possession is at issue here. Appellant initiated an illegal drug transaction, conspiring with his friend and a dealer in New Jersey to purchase the drug. He involved his associate in the deal, collecting money from him for the drug and intending to share it with him. Appellant went to New Jersey, met with the drug source to discuss his legal problems, and was prevented from completing the transaction only by the intervention of the police. These factors -- soliciting and conspiring to purchase, possess, and distribute cocaine -- make the transaction more than simple possession of a drug for personal use and are sufficient to characterize appellant's activity as involving moral turpitude.

Cases from other jurisdictions overwhelmingly support the view that virtually any drug-related activities involve moral turpitude. See Annotation, Narcotics Conviction as Crime of Moral Turpitude Justifying Disbarment or Other Disciplinary Action Against Attorney, 99 A.L.R. 3d 288 (1980). In many of these cases, drug quantities are very small and profit is not a motive. See, e.g., Committee on Professional Ethics v. Green, 285 N.W.2d 17, 18 (Iowa 1979) (delivery of cocaine); State v. Matt, 213 Neb. 123, 126, 327 N.W.2d 622, 623-24 (1982) (helping a friend buy cocaine constitutes "aiding and abetting in criminal dealings"); Matter of Gorman, 269 Ind. 236, 237, 379 N.E.2d 970, 971-72 (1978) (possession with intent to distribute, distribution and conspiring to distribute one gram of cocaine); Florida Bar v. Weintraub, 528 So. 2d 367, 368 (1988) (possessing cocaine and delivering it to a friend); Office of Disciplinary Counsel v. Simon, 510 Pa. 312, 314, 507 A.2d 1215, 1216 (1986) (facilitating a sale of four ounces of cocaine).

Two cases cited by appellant -- Matter of Smoot, 243 Kan. 589, 757 P.2d 327 (1988), and In re Chase, 299 Or. 391, 702 P.2d 1082 (1985) -- are factually distinguishable. Both are simple possession cases. In neither case was there any evidence that an attorney had conspired with others to

purchase drugs or had distributed drugs to others. In Smoot, an attorney was found to have possessed a gram of cocaine solely for personal use. 243 Kan. at 590, 757 P.2d at 328. The attorney was sanctioned, but not for moral turpitude. Id. Chase involved attempted possession of a small amount of cocaine, a misdemeanor. 299 Or. at 393, 702 P.2d at 1083. Overruling a disciplinary board vote, four to three in favor of finding that such conduct involved moral turpitude, a divided court distinguished between possession for personal use and trafficking or sale. Id. at 403, 702 P.2d at 1090.

That appellant was prevented from completing the transaction is irrelevant. With respect to moral turpitude, there is no distinction "between the commission of a substantive crime and an attempt to commit it." Id. at 402, 702 P.2d at 1089.

IV. Fitness

Appellant argues that his actions in attempting to purchase and distribute cocaine did not directly implicate his professional conduct or adversely affect his capacity to practice law. We disagree.

An attorney is subject to misconduct even for actions committed outside the professional capacity. Committee on Professional Ethics v. Shuminsky, 359 N.W.2d 442, 445 (Iowa 1984) ("lawyers do not shed their professional responsibility in their personal lives"); see also Disciplinary Board of Hawaii v. Bergan, 60 Haw. 546, 554, 592 P.2d 814, 818 (1979).

The Alaska Supreme Court rejected a similar argument in Matter of Preston, 616 P.2d 1, 5 (1980):

> An attorney acts in a position of public trust and is an officer of the court. He has a duty to the profession and the administration of justice, especially to uphold the laws of the state in which he practices.

See also Matter of McLaughlin, 105 N.J. 457, 462, 522 A.2d 999, 1002 (1987) (possession of drugs for personal use reflected adversely on attorney's fitness to practice law); Simon, 510 Pa. at 321, 507 A.2d at 1220 (attorney's involvement in drug transaction reflected on his ability to practice law because he "knowingly and intentionally shirked his responsibility as an officer of the court and exemplified disrespect for the laws which govern our society"); Gorman, 269 Ind. at 239, 379 N.E.2d at 972 (attorney's drug conviction implicated his fitness to practice law because he "has attempted to place himself above the law and superior to societal judgments").

Appellant knew his behavior was illegal. He had been an attorney for thirteen years and even discussed criminal charges with the New Jersey drug dealer. His actions reflect negatively on his professional judgment and detract from public confidence in the legal profession.

Also relevant is Ethical Consideration 1-5 of the Code of Professional Responsibility:

> A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. . . . because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude.

In this regard, appellant's behavior is even more reprehensible because he encouraged and facilitated his associate's participation in a criminal act.

V. Administration of Justice

Bar counsel asserts that the PCB erred in dismissing a third charge against appellant, violation of Code of Professional Conduct, DR 1-102(A)(5) (engaging in conduct prejudicial to the administration of justice). Upon failure to file an appeal, "dismissal [of a charge] shall become effective." A. O. 9, Permanent Rules, Rule 8(E). Bar counsel did not appeal the dismissal and consequently cannot raise the issue now.

VI. Sanctions

Appellant argues that the sanction recommended by the PCB is too severe in light of the facts of the case, mitigating circumstances, and lack of any injury to clients. We disagree.

The purpose of sanctions is not punishment. Rather, they are intended to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar. In re Calhoun, 127 Vt. 220, 222, 245 A.2d 560, 561 (1968). Sanctions also serve the goal of deterring others from similar conduct. Shuminsky, 359 N.W.2d at 444-45; Florida Bar v. Lord, 433 So. 2d 983, 986 (Fla. 1983); Matter of Carroll, 124 Ariz. 80, 86, 602 P.2d 461, 467 (1979).

The PCB evaluated sanctions under the American Bar Association Standards for Imposing Lawyer Sanctions. We have found these standards helpful and have used them in arriving at attorney sanctions. In re Rosenfeld, No. 89-513, slip op. at 10-11 (Vt. Nov. 1, 1991). Under Standard 3.0, factors relevant to deciding sanctions include: (a) the duty involved; (b) the lawyer's mental state; (c) the actual or potential injury; and (d) any aggravating or mitigating factors.

Using this scheme, the PCB analyzed appellant's actions under Standard 5.0 as a violation of a duty owed to the public. See Introduction to Standard 5.0 ("The public expects the lawyer to be honest and to abide by the law; public confidence in the integrity of officers of the court is undermined when lawyers engage in illegal conduct."). The board then looked at sanctions recommended for this violation. Under Standard 5.11, disbarment is an appropriate sanction when a lawyer engages in "serious criminal conduct, a necessary element of which includes . . . the sale, distribution or importation of controlled substances." The PCB rejected disbarment because it found no "evidence to indicate that [appellant] was engaged in commercial drug trafficking." Instead, it recommended suspension, the appropriate sanction "when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice." Standard 5.12. Possession of narcotics is one of the crimes most commonly warranting suspension under this standard. Commentary to Standard 5.12.

Having determined that suspension was the appropriate sanction, the PCB

looked at mitigating factors, including character evidence in the form of numerous supporting letters, see Standards 9.3, 9.32(g), and recommended a six-month suspension, the shortest time provided by the standards. See Standard 2.3 and Commentary (suspension should be no less than six months, no more than three years; at least six months necessary to protect public and adequately show rehabilitation).

In light of all the circumstances -- including the seriousness of the attempted crime, appellant's involvement of his associate in criminal activities, the pattern of behavior, the need to deter others from similar behavior and restore public confidence in the legal profession, and the extensive support from appellant's peers and acquaintances attesting to his good character and professional competence -- we find that the board's recommendation of six months suspension is appropriate.

The provisions of Administrative Order 9, as amended effective July 1, 1989, apply in this case. At the end of six months, appellant will not be automatically reinstated; rather he must comply with Rule 20(B) and (D). Specifically, he must show as a condition of reinstatement that he has "the moral qualifications . . . for admission to practice law in the state, and that resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or to the administration of justice nor subversive of the public interest and that [he] has been rehabilitated."

Judgment that Frank Berk is suspended from the office of attorney and counselor at law for a period of six months, beginning January 6, 1992 and ending JULY 6. 1992, and thereafter until he demonstrates compliance with reinstatement conditions contained in this opinion.

BY THE COURT:

/s/
_____
Frederic W. Allen, Chief Justice

/s/
_____
Ernest W. Gibson III, Associate Justice

/s/
_____
John A. Dooley, Associate Justice

/s/
_____
James L. Morse, Associate Justice

In re Frank Berk

Supreme Court
Original Jurisdiction

September Term, 1991

Wendy S. Collins, Bar Counsel, Montpelier, for plaintiff-appellee

P. Scott McGee of Hershenson, Carter, Scott & McGee, Norwich, for defendant-appellant

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

Morse, J., concurring. Because I believe that "moral turpitude" is so vague that it invites arbitrary interpretation and application and inadequately warns what crimes are sanctionable as professional misconduct, I do not join section III of the Court's opinion. I concur with the remainder of the opinion.

The term is rooted in common law and was developed at a time when concepts of religion and law were more closely interwoven and sin and crime were virtually synonymous. Jordan v. DeGeorge, 341 U.S. 223, 237 (1951) (Jackson, J., dissenting). Consequently, the term "assumes the presence of [a] common conscience . . . of the community," Bradway, Moral Turpitude as the Criterion of Offenses that Justify Disbarment, 24 Cal. L. Rev. 9, 21 (1936), based on fixed legal and moral concepts. But, as society has increasingly become both more secular and pluralistic, there is less consensus about what is immoral, especially in areas of "vice" -- sexual relations, gambling, and drug and alcohol use. Without social consensus on what is "moral," the term conveys little guidance to fathom what we mean by it.

Today, moral turpitude is a compass with the directional needle removed. We are left only the temptation to label behavior we find personally repugnant "immoral," or, as in this case, simply to follow without analysis the popularly held opinion vilifying drug use. See id. (judge "may unconsciously mistake his own bias for an intuitive perception of the common conscience"). The resulting decisions on moral turpitude are unprincipled and contradictory, and exacerbate rather than cure the vagueness of the term. See Jordan, 341 U.S. at 239 (examining fifty lower court opinions applying "moral turpitude" and finding the "chief impression from the cases is the caprice of the judgments"; "[i]rrationality is inherent in the task of translating the religious and ethical connotations of the phrase into legal decisions"). Crime involving moral turpitude might as well be all serious crimes committed by a lawyer.

Recognizing problems in defining moral turpitude, we have already eliminated its primary use as the gauge for determining which crimes may be used to attack a witness's credibility. See Reporter's Notes to the 1989 Amendment to V.R.E. 609(a) (labeling "moral turpitude" as "troublesome" and "vague" and replacing it with "more precise and relevant standards for determining the admissibility of prior convictions for impeachment"); see also Reporter's Notes to now superseded V.R.E. 609(a) (questioning the utility of categorizing crimes as mala in se and mala prohibita and describing the apparently inconsistent case law on Rule 609 moral

turpitude). In our pre-1989 cases, we attempted to mitigate the vagueness problem by tying moral turpitude to "testimonial reliability -- whether the convicted person would regard lightly the obligation to tell the truth." Id.

DR 1-102(A)(3) provides no such functional saving grace. Appellant should not be sanctioned for departing from such an arcane and ill-defined standard, although his conduct is sanctionable as conduct adversely reflecting on his fitness to practice law and should be treated as such. See ABA Model Rule of Professional Conduct 8.4(b) (eliminating moral turpitude standard and defining misconduct as "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects") and ABA Annotated Model Rules of Professional Conduct 353-54 (1984)(moral turpitude standard was rejected because it had proved "manifestly ambiguous [as] evidenced by the wide ranging interpretations given it by the courts" and had been criticized by commentators "as inviting subjective judgments of diverse lifestyles instead of focusing on the lawyer's ability and fitness to practice law").

Criminal conduct "adversely reflecting on fitness to practice law" is also vague, but the phrase invites less value-laden interpretation. I appreciate the gravity of a lawyer's conduct when he travels out-of-state, where he is less likely to be recognized, to purchase cocaine to satisfy his and a colleague's appetite. A lawyer -- sworn to uphold the law and expected to be a good example to society -- who does such a thing demeans the practice of law and causes others to disrespect the law. On the other hand, I have difficulty contemplating that the act of purchasing drugs for a lawyer's use is so depraved that it rises to the level of moral turpitude.

/s/ James L. Morse

_____

Associate Justice

No. 90-542

In re Frank Berk

Supreme Court
Original Jurisdiction
September Term, 1991

Wendy S. Collins, Bar Counsel, Montpelier, for plaintiff-appellee

P. Scott McGee of Hershenson, Carter, Scott & McGee, Norwich, for defendant-appellant

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

Johnson, J., concurring. I do not agree that appellant's actions involved moral turpitude and therefore do not joint section III of the Court's opinion.

Our case law defines a crime of moral turpitude as "one based on conduct not only socially undesirable, but, by its very nature, base or depraved." State v. LaPlante, 141 Vt. 405, 408, 449 A.2d 955, 956 (1982); State v. Fournier, 123 Vt. 439, 440, 193 A.2d 924, 925 (1963). This definition originated in the traditional distinction between crimes mala in se and those mala prohibita. See 1 W. LaFave & A. Scott, Substantive Criminal Law § 1.6(b), at 45 (1986) (crimes mala in se are "wrong in themselves; inherently evil"; those mala prohibita are "not inherently evil; wrong only because prohibited by legislation"). Crimes of moral turpitude are mala ln se, that is, acts that, even without the added stigma of being criminalized, are, in themselves, morally repugnant. See Black's Law Dictionary 865 (5th ed. 1979) (crime malum in se is "immoral in its nature and injurious in its consequences, without any regard to the fact of its being noticed or punished by the law of the state").

Although courts have had difficulty classifying which crimes involve moral turpitude or are "bad in themselves," crimes so classified are generally characterized by an attempt to achieve personal gain or satisfaction by exploiting or injuring others. See LaFave & Scott, supra, at 45-48. Thus, murder, Black's at 865, and crimes "dangerous to life or limb," LaFave & Scott, supra, at 45-46, are included, as are theft crimes, crimes of dishonesty, fraud and deceit, commercialized vice crimes, bigamy, and rape. See generally, Note, Crimes Involving Moral Turpitude, 43 Harv. L. Rev. 117 (1930). I have difficulty putting possession of cocaine in the same category as these other crimes or labeling it "immoral in its nature."

Society's attitudes toward drugs and drug use are, at best, equivocal. Our lives are filled with a plethora of wonder drugs. Many, such as tranquilizers and stimulants, are mind-altering, and yet they are used by millions of Americans every day. Alcohol and tobacco, though highly addictive and physically debilitating, are tolerated despite their huge social costs. They support multi-billion-dollar industries, and acceptance of their use is deeply ingrained in our collective life style. Street drugs -- marijuana and cocaine -- may be black sheep, but they are members of the same family.

Recognizing cocaine's potential to harm both the user, and indirectly, others, society may take all reasonable steps to eliminate its use, including making it illegal. But, identifying drug abuse as a social problem does not render possession of cocaine immoral, any more than alcoholism renders any and all drinking immoral.

I do not agree with the majority that more than possession is at issue here. Appellant attempted to purchase approximately six grams of cocaine. He collected half the money for the buy from his colleague and intended to share the drug with him. This transaction did not involve trafficking: appellant had no profit motive. Moreover, appellant should not indirectly be held responsible for the actions of his associate nor should the

associate be seen as a victim. There is no evidence that the associate was anything other than a willing participant in the drug transaction. He is also a lawyer, capable of knowing the consequences of his actions and deciding for himself whether to become involved. The key indicia of moral turpitude -- dishonesty, injurious consequences, personal gain -- are absent. See In re Chase, 299 Or. 391, 403, 702 P.2d 1082, 1089-90 (1985) (distinguishing between sale and trafficking offenses, which involve moral turpitude, and possessory offenses, which do not).

/s/

Denise R. Johnson, Associate Justice

PROFESSIONAL CONDUCT BOARD

To: Professional Conduct Board Members

From: Wendy S. Collins, Bar Counsel

Date: May 6, 1992

Re: PCB Decisions - Vol. I

Enclosed for insertion at the end of Decision #24 are copies of J. Eric Anderson's letter to the Supreme Court and the Hearing Panel's Findings and Recommendations.

Decision #24 begins at Page 146 and currently ends at Page 174.

WSC:pab
Enclosures

PROFESSIONAL CONDUCT BOARD

P.O. Box 801
Brattleboro, Vermont 05302-0801
802-254-2345

26 November 1990

The Honorable Frederic W. Allen, Chief Justice Vermont Supreme Court
Pavilion Office Building Montpelier, Vermont 05602

Re: Professional Conduct Board
File No.: 89.40
Frank Berk

Dear Chief Justice Allen:

Pursuant to Rule 8E of Administrative Order 9, the Professional Conduct Board hereby reports to the Supreme Court its recommended disposition in the captioned matter. At the Board's meeting of 2 November 1990, the Board voted that Respondent be suspended from the practice of law for six (6) months. A copy of the Report of the Hearing Panel's Findings and Recommendation is enclosed.

If the Court needs any further information with respect to this matter, I trust that you will contact me.

JEA:gws
Enclosure

Sincerely yours,
PROFESSIONAL CONDUCT BOARD

J. Eric Anderson, Chairman

cc: Wendy S. Collins, Esquire (w/o enclosure)
P. Scott McGee, Esquire (w/o enclosure)

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

IN RE: Frank Berk, PCB File No. 89.40

PANEL RECOMMENDATION

The above-captioned matter was assigned to a Hearing Panel of the Professional Conduct Board pursuant to Rule 8C of Administrative Order 9 of the Supreme Court. The Hearing Panel consisted of Edward R.

Zuccaro, Esq., Hamilton Davis and Deborah S. McCoy, Esq.

This case is a formal disciplinary proceeding filed by Bar Counsel, alleging misconduct on the part of Frank S. Berk, Esq. The Petition alleges that Frank Berk's conduct violated the following provisions of the Code of Professional Conduct:

I. DR 1-102(A)(3) (Engaging in illegal conduct involving moral turpitude); and

II. DR 1-102(A)(5) (Engaging in conduct that is prejudicial to the administration of justice); and

III. DR 1-102(A)(7) (Engaging in conduct that adversely reflects on his fitness to practice law).

The Panel conducted two days of hearings on April 26, 1990 and April 27, 1990 at which time all members were present throughout the proceedings. The parties filed Requests for Findings of Fact and proposed conclusions of law and in addition filed Reply Memorandum.

At the commencement of the hearing the Respondent was represented by his attorney P. Scott McGee, Esq. but did not appear personally. Bar Counsel appeared in the person of Wendy S. Collins, Esq. The Panel notes that Bar Counsel issued a subpoena to Respondent commanding him to appear before the Panel at the hearing on April 26, 1990. Bar Counsel did not however tender the fees and mileage provided for in V.R.C.P. 45(c). On advice of counsel Respondent did not appear at the commencement of the hearing. Respondent did voluntarily appear and testify on the afternoon of April 27, 1990. Respondent's initial decision not to appear at the hearing has not been held against him by the Hearing Panel in deciding the merits of this case.

In consideration of the testimony and evidence introduced at the hearing held on April 26 and 27, 1990, the records and files in this case, the pleadings filed by the parties, the Requests for Findings of Fact, proposed Conclusions of Law and Reply Memorandum, the Panel makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Frank Berk (Berk) is an attorney duly admitted and licensed to practice law in the State of Vermont and at all times material hereto was so admitted and licensed. He was a partner in the law firm of Berk, Mayer & Obuchowski during all material times hereto.

2. Ilerdon Mayer (Mayer) was admitted to the Vermont Bar in 1986. He has been an associate in the law firm of Berk, Mayer & Obuchowski for the past three years.

3. In approximately the summer to fall of 1987, Berk met an old acquaintance of his named Michael Cohen (Cohen) at a reunion for the camp both had attended in their youth.

4. Cohen is a resident of Greenwood Lake, New Jersey.

5. Cohen and Berk discovered that each had used cocaine and Cohen

indicated that he would be in a position to provide Berk with the drug from time to time.

6. Over the course of the five to seven months prior to May of 1988, Cohen and Berk visited each other approximately five or six times, and on at least two of these occasions, Cohen brought some cocaine to Berk in Vermont. On one of the occasions, Berk traveled to New York to purchase the cocaine from Cohen.

7. On each occasion when a purchase occurred, Berk paid approximately $500 to $600 to Cohen for six to seven grams of cocaine.

8. After each purchase Berk and Cohen would use some of the cocaine during their visit, then Berk would deliver approximately one-half of the amount purchased to acquaintances of Berk, including Mayer, who had given Berk part of the money Berk sent to Cohen.

9. The remaining cocaine would be used by Berk over the course of six weeks to two months.

10. In early May of 1988, Berk received a telephone call from Cohen, who stated that a friend had been arrested on criminal drug charges. Cohen asked Berk if he would be willing to talk with this friend. Berk told Cohen to have his friend call him.

11. Approximately three weeks later, Berk asked Cohen if he could get him some cocaine. Cohen said he would find out and get back to him.

12. Cohen went to his source, one Floyd Perry (Perry), who was the friend who had been arrested on criminal drug charges. Perry told Cohen he would provide the cocaine for Berk only if Berk would speak with him about the pending charges against him.

13. On or about May 25, 1988, Cohen called Berk and told him that he could get the drugs, and asked again if Berk would agree to speak to his friend about his pending criminal charges. Berk agreed to do so.

14. The next day Berk and Mayer traveled by car to Greenwood Lake, New Jersey to meet Cohen. Berk and Mayer had previously agreed to each contribute $250 for the purchase an to split the cocaine

15. After meeting Cohen, Berk and Mayer were directed to follow his vehicle to an apartment building in Boonton, New Jersey. There they were introduced to Perry, who entered Berk's vehicle. Berk was directed to follow Cohen's vehicle to a diner in Fort Lee, New Jersey.

16. During the course of the trip from Boonton to Fort Lee, Berk and Perry discussed in general terms the pending criminal charges against Perry. Berk told Perry that he could not represent him in court because he was not licensed in New Jersey, but he could discuss the issues and the normal process with him generally.

17. Upon arrival at the Fort Lee diner, Berk parked his car and he, Mayer and Perry got out and walked to Cohen's parked van. Perry got in the van and Berk gave $500 to Cohen for cocaine, $250 of which Berk had previously collected from Mayer. Cohen told Berk and Mayer to wait in the diner.

18. Cohen and Perry thereupon drove into New York City where Perry purchased cocaine. The trip took approximately 25 minutes.

19. Upon the return to the diner, Perry went inside and told Berk and Mayer that they were "all set." Cohen parked the van and joined them, whereupon it was decided to go to Perry's apartment to split up the cocaine. Berk, Mayer and Perry again went to Berk's car, and Cohen drove his van.

20. Before the vehicles could exit the parking lot, they were stopped by police, who had the area under surveillance. A search of the van produced approximately 26 grams of 47% pure cocaine. A search of Berk produced a vial containing trace amounts of cocaine which he intended to use to transport cocaine back to Vermont.

21. At the time of his arrest on May 26, 1988, Berk was attempting to purchase at least 6-7 grams of cocaine, with intent to deliver one-half thereof to Mayer, who had provided one-half of the purchase-money.

22. At the time of his arrest, Berk had successfully completed similar purchase transactions on a least 3 occasions during the preceding 7 months, and had shared the benefits of said purchases with Mayer and others.

CONCLUSIONS OF LAW

The Petition filed in this case charges the Respondent with engaging in illegal conduct involving moral turpitude, engaging in conduct that is prejudicial to the administration of justice and engaging in conduct that adversely reflects on his fitness to practice law, in violation of Disciplinary Rules 1-102(A)(3)(5)(7).

We have found that Respondent over a period of five to seven months prior to May, 1988, purchased cocaine from Michael Cohen which Respondent did not consume entirely by himself, but in fact distributed some to Ilerdon Mayer an associate in his law firm who has been admitted to practice approximately four years and has been associated with Berk for the past three years. We are presented with a case where a senior lawyer in a law firm is not only using an illegal drug but has provided the drug to a young associate and on at least one occasion collected money from this associate pooled it with his own, and proceeded to purchase cocaine.

There can be no question that Berk has engaged in illegal conduct. The Panel must resolve whether the conduct involved moral turpitude which is prohibited under DR 1-102(A)(3). Vermont case law defines a crime involving moral turpitude as one based on conduct not only socially undesirable but by its very nature base or depraved. State v. Laplante 141 Vt 405, 449, A 2d 955 (1982); State v. Fournier, 123 Vt 439, 193 A 2d 924 (1963).

Counsel for Respondent argues that the conduct of attorney Frank Berk does not constitute a crime involving "moral turpitude" because he characterizes Mr. Berk's conduct as involving "the attempt to possess a personal use quantity of cocaine (3 or 4 grams)" rather than

conduct "involving a drug distribution scheme or a conspiracy to distribute drugs". In fact, we have found that Mr. Berk's conduct went far beyond mere possession or attempted possession of a regulated drug for personal consumption. The uncontradicted testimony was that over a period of months Mr. Berk purchased quantities of cocaine which he consumed himself and which he shared with Ilerdon Mayer and which was provided on social occasions to guests at his home. hat is most troubling, is that Mr. Berk enabled a young associate in his office to acquire cocaine from sources in New Jersey and New York which but for Mr. Berk's actions, would not have been available to the associate.

Whether participating in the illegal distribution of drugs constitutes a crime of moral turpitude is a question of first impression in this State but has been dealt with by disciplinary panels and courts in numerous other jurisdictions. An attorney was held to have engaged in illegal conduct involving moral turpitude by delivering cocaine from one friend to another. Committee on Professional Ethics v. Green, 285 NW 2d 17 (Iowa 1979). An attorney as held to have engaged in illegal conduct involving moral turpitude by acting as a middleman in connection with the sale and purchase of 4 ounces of cocaine between friends. Office of Disciplinary Council v. Simon, 507 A 2d 1215 (PA 1986).

There is no evidence in this case to indicate that the Respondent was involved in the commercial sale of illegal drugs. Nevertheless, the Respondent himself actively engaged in the introduction of cocaine into the possession of Mr. Mayer and others. He intentionally set into motion, without any apparent regard for the consequences, factors which could have a serious impact on other societal members. By our society, through the enactment of laws, the use, possession and sale of cocaine have been deemed unwanted and illegal acts. By his conduct, the Respondent has attempted to place himself above the law and superior to societal judgments. These acts being committed by an attorney, are evidence of a baseless, vileness and depravity in the social and private duties which an attorney owes to his fellow man. In the matter of James Gorman, 379 NE 2d 970 (Indiana) (1978).

We hold that Berk's conduct constituted a crime involving moral turpitude and violated Disciplinary Rule 1-102(A)(3).

We now turn to the question of whether Respondent Berk engaged in conduct that is prejudicial to the administration of justice. Bar Counsel argues that Respondent was fully aware that Floyd Perry had been charged with illegal drug offenses, and that he was desirous of obtaining legal advice. She further argues that Respondent was aware that Perry was Michael Cohen's supplier of cocaine and that he agreed to provide legal services to Floyd Perry in order to obtain cocaine. While there is no question that Respondent Berk met with Floyd Perry, there is no evidence that Mr. Berk was establishing or attempting to establish an attorney-client relationship with Mr. Perry at the time he was engaging in unlawful activity. There ~as a conflict between the testimony of Michael Cohen and that of Frank Berk and Ilerdon Mayer as to whether Mr. Berk knew that Mr. Perry was in fact the source of the cocaine which Mr. Cohen was obtaining. Berk engaged in a conversation with Mr. Perry and told him that he was not familiar with New Jersey law and could not advise or represent Mr. Perry. He did explain to Mr. Perry in general terms what would have occurred had Mr. Perry been

charged with a violation of law in Vermont. We are unable to find sufficient evidence to support a holding that Frank Berk engaged in conduct that is prejudicial to the administration of justice in violation of DR 1-102(A)(5) and that charge is accordingly dismissed.

The final charge is that Respondent Berk engaged in other conduct that adversely reflects on his fitness to practice law in violation of DR 1-102(A)(7). Respondent argues that there is an absence of evidence showing any nexus between Mr. Berk's conduct and his fitness to practice law.

Bar Counsel calls our attention to matter of McLaughlin, 522 A 2d 999 (NJ 1987). In the McLaughlin case, the New Jersey Supreme Court dealt with the question of young attorneys found to have purchased small quantities of illegal drugs for their own personal use. The court noted the public shame which the respondents' conduct brought "not just upon themselves but upon the profession to which they had just earned the privilege of entering". The court found that the Respondent's had engaged in conduct which adversely reflected upon their fitness to practice law.

Respondent is not a young, newly admitted member of the bar. On the contrary, he has practiced law in this State for some 13 years and we concur with Bar Counsel's assertion that his conduct is more culpable than that of the respondents in McLaughlin. Id. Mr. Berk's practice of buying cocaine over an extended period and his practice of routinely sharing it with his friends and associates shows a contempt for the law and for the responsibilities that accrue to his profession that in our judgment reflect adversely on his fitness to practice the law. We hold that Respondent engaged in conduct that adversely reflects on his fitness to practice law and violated DR 1- 102(A)(7).

PROPOSED SANCTIONS

We withhold making a recommendation as to discipline which should be imposed until the parties have had an opportunity to present testimony and other evidence with regard to possible sanctions.

PROFESSIONAL CONDUCT BOARD
Hearing Panel

/s/

DATED: September 4, 1990

Edward R. Zuccaro, Esq.

/s/

Hamilton Davis

/s/

Deborah S. McCoy, Esq.

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

IN RE: Frank Berk, PCB File No 89.40

SUPPLEMENTAL PANEL RECOMMENDATION

MODIFICATION OF CONCLUSIONS OF LAW:

After the Panel issued its recommendation dated September 4, 1990, bar counsel submitted a letter addressed to the Panel questioning the Panel's power to dismiss Count II of her Complaint which alleged violation of DR1-102(A)(5) "Engaging in Conduct which is Prejudicial to the Administration of Justice".

A hearing panel is specifically limited to submitting findings and recommendations, together with the record of the hearing, to the Board. A.O. 9 Rule 2 C(3). Accordingly, the Panel hereby modifies its Conclusions of Law and recommends to the Board dismissal of the alleged violation of DRl-102(A)(5).

RECOMMENDATION AS TO SANCTIONS:

At the request of the parties, the Panel held a further hearing in the above matter with respect to proposed sanct- ions. On October 1, 1990, the Panel heard testimony from both the Respondent and witnesses called on his behalf, and heard argument from Respondent's counsel and bar counsel. In addition, the Panel considered Respondent's Memorandum in Aid of Panel's Determination of Appropriate Sanction and received and considered in excess of 70 letters from clients, friends, law school classmates and fellow attorneys who generally urged the imposition of minimum sanctions or no sanctions at all.

This has been a most difficult case involving the use, possession and non-commercial distribution of narcotics. We are also mindful that the appropriateness of sanctions in cases dealing with such conduct is one of first impression in this state.

Respondent in his detailed Memorandum to the Panel on the question of sanctions concludes by urging the Panel to recommend a public reprimand as "an adequate redress for the misconduct that occurred under all the circumstances here presented". In connection therewith he reminds us that the purpose of lawyer disciplinary proceedings is to protect the public and the administration of justice "rather than to punish the attorney". We do not disagree with this statement, nor with Respondent's assertions in this regard; however a final purpose of imposing sanctions is to educate other lawyers and the public thereby deterring unethical behavior among all members of the profession. American Bar Association Center for Responsibility, Standards for Imposing Lawyer Sanctions, February 1986 (Copyright 1986, citing Matter of Carroll, 124 Ariz 80, 602 P2d 461 (1979); Committee on Professional Ethics v. Gross 326 NW2d 272 (Iowa 1982); The Florida Bar v. Lord, 433 So2d 983 (Fla 1983). The Panel has considered the ABA standards for lawyer discipline and the criteria stated therein as relevant to the imposition of sanctions. In this case the Panel has before it a lawyer who has practiced in the State of Vermont for 13 years who the Panel has found guilty of engaging in illegal conduct involving moral turpitude in violation of DRl-102(A)(3) and engaging in conduct that adversely reflects on his fitness to practice law in violation of

DR1-102(A)(7). We note that Standard 5.11 recognizes disbarment as generally appropriate when a lawyer engages ln serious criminal conduct, a necessary element of which includes the sale, the distribution or importation of controlled substances. Standard 5.12 recommends suspension as generally appropriate when a lawyer knowingly engages in conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

In the instant case we have not found any evidence to indicate that Respondent was engaged in commercial drug trafficking which would warrant disbarment under Standard 5.11. However Respondent's conduct involving illegal drugs went far beyond mere possession or attempted possession for personal consumption. We have found that the uncontradicted testimony was that over a period of months Mr. Berk purchased quantities of cocaine which he consumed himself and which he shared on social occasions with others, including Ilerdon Mayer, an associate in his firm. Mr. Berk argues that Mr. Mayer was more than an associate, in fact he states that "he is my best friend". Nevertheless, the Panel finds that Mr. Berk's conduct seriously adversely reflects on his fitness to practice and has determined that a suspension is appropriate under Standard 5.12.

In reaching a recommendation with regard to sanctions, the Panel has considered factors of aggravation and mitigation. Standard 9.22 sets forth 10 factors which may be considered in aggravation. The Panel finds that none of the aggravating factors set forth in the Standard are applicable to Respondent in this case. It is therefore not necessary for the Panel to address each of the factors separately. It is however necessary to discuss Standard 9.22(e) "bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency." While the question of Mr. Berk's cooperation, or lack of cooperation with bar counsel was raised as an issue in the hearing on sanctions, the Panel did not consider applying this standard in imposing sanctions against Mr. Berk. Throughout the proceedings, Mr. Berk aggressively defended himself against the charges brought by bar counsel and exercised the rights granted to him in proceedings before the Panel. At no time did he evidence any bad faith nor did he fail to comply with rules or orders of the Panel or the Conduct Board

The Panel also considered Standard 9.32 and the 13 factors which may be considered in mitigation. There are numerous mitigating factors which the Panel found to be applicable in the case of Frank Berk. These included the following:

(a) Absence of Prior Disciplinary Record: This factor clearly applies to Frank Berk who has no prior disciplinary record and this has been considered by the Panel in determining the level of appropriate discipline to impose.

(b) Absence of a Dishonest or Selfish Motive: While this case involved criminal acts, and therefore by definition dishonesty, there is nothing in the record to indicate in his dealings with others Mr. Berk evidenced any selfish motive.

(c) Personal or Emotional Problems: In 1987 and 1988 Mr. Berk was going through a difficult and emotionally draining divorce which ultimately lead to his involvement in new social settings which included the use of illegal drugs. The Panel believed Mr. Berk's testimony in this regard and

has considered his personal problems as a mitigating factor in recommending appropriate sanctions.

(d) Timely Good Faith Effort to Make Restitution or to Rectify Consequences of misconduct: After criminal proceedings were instituted in New Jersey against Mr. Berk he participated in a pre-trial intervention program which is similar to the diversion program in Vermont. He has also testified, and the Panel believes, that he has been drug free since this incident. The Panel has considered this to be a mitigating factor in making an appropriate recommendation for sanctions.

(e) Full and Free Disclosure to Disciplinary Board or Cooperative Attitude toward the Panel: Counsel for Respondent has argued that Mr. Berk attempted to work out a voluntary agreement and stipulation with regard to the facts in this case and cooperated with the bar counsel in an exchange of information. He further states that because of the potential of further criminal proceedings Mr. Berk chose to exercise certain fifth amendment rights and asks that the Board draw no adverse inferences against Mr. Berk for his failure to discuss the charges against him with the Board's investigator prior to the disciplinary hearing. The Panel has already indicated that Mr. Berk's conduct did not constitute an aggravating factor to be considered against him. The Panel however is unable to find that Mr. Berk cooperated with the Panel to such an extent that this should be a factor considered in mitigation.

(f) Inexperience in the Practice of Law: The Panel has found that Mr. Berk has practiced law in this State for 13 years and we cannot find any inexperience on his part which can be considered in mitigation.

(g) Character or Reputation: The Panel considered over 70 letters from clients, friends, law school classmates and fellow attorneys on behalf of Mr. Berk. In addition, the Panel considered the testimony of the witnesses who spoke on behalf of Mr. Berk. From the oral testimony, and the content letters received by the Panel, Mr. Berk comes across as a lawyer who is, knowledgeable, diligent and hard working. He appears to have developed an expertise in the area of housing law which is recognized statewide. For many years he has been counsel to the Vermont State Housing Authority. In addition, he is a loving and caring father and has involved himself in numerous community and civic activities. We agree with his counsel's assertion that the "many letters received on Frank Berk's behalf are a tribute to the breadth of his involvement in the affairs of his community and the Vermont public generally".

The Panel has considered these mitigating factors in determining the appropriate sanctions to be imposed.

(h) Physical or Mental Disability or Impairments: There was no physical or mental disability or impairment at the time of Mr. Berk's arrest in New Jersey for possession of cocaine nor was it present when he was sharing drugs with his friends and acquaintances. After his arrest in New Jersey, Mr. Berk has suffered physically and emotionally. He has had trouble sleeping and eating and has suffered emotionally which has manifested itself in an otherwise inexplicable weight loss. The Panel has considered these mitigating factors in determining an appropriate sanction.

(i) Delay in Disciplinary Proceedings and (j) Interim Rehabilitation:

Counsel for Respondent argues that there has been a delay in this proceeding because Mr. Berk was arrested in New Jersey in 1988 and the first hearing in this disciplinary proceeding was not held until April of 1990. He does not ascribe bad faith or purpose to the delay but notes that it has been significant. He then argues that in the interim Mr. Berk has continued to practice law and serve his clients and has been a credit to his profession. Considering the complexity of the case, the number of witnesses involved, the distances involved and the aggressive defense by Respondent, the Panel is not persuaded that there was a delay in the disciplinary proceedings. Mr. Berk's conduct in the interim was that which is expected on any member of the profession and the Panel is not persuaded that there is any evidence of factors which should be considered in mitigation under this Standard.

(k) Imposition of Other Penalties or Sanctions: The Panel has considered that Mr. Berk participated in a pre-trial intervention program in New Jersey and that the criminal charges against him in New Jersey have been dismissed.

(1) Remorse: Mr. Berk's appearance before the Panel evidenced remorse and sadness about the events. Mr. Berk stated that these events were "the biggest mistake of my life". He also stated that he suffered "shame and guilt". He regretted deeply his involvement in the recreational use of cocaine. He also testified that he was never addicted to cocaine and has since stopped using it at all.

(m) Remoteness of Prior Offenses: The Panel has consid- ered not only the incident in May of 1988 which resulted in Mr. Berk's arrest, but has also considered the fact that over a period of five to seven months prior to May of 1988, Mr. Berk purchased cocaine from Michael Cohen which Respondent did not consume entirely by himself, but in fact distributed to Ilerdon Mayer and other friends and acquaintances. The Panel has considered this as a single offense and there are no prior offenses that the Panel has been made aware of. Therefore this is not a factor considered in mitigation.

The Panel has no desire to punish Frank Berk, but it is also mindful that while the primary purpose of sanctions is to protect the public, sanctions are also necessary to protect the integrity of the legal system, to insure the administration of justice and to deter further unethical conduct. A final purpose of imposing sanctions is to educate other lawyers and the public, thereby deterring unethical behavior among all members of the profession.

Finally, Respondent in urging us to impose no more than a public reprimand points out that there is no clamor from Mr. Berk's clients, members of the public nor members of the bar for suspension or disbarment. It is the Panel's view however that considering the seriousness of Mr. Berk's conduct, and the mitigating factors which we have detailed that the interest of the public and the profession are best served by suspending Respondent from the practice of law.

In arriving at a recommended period of suspension the Panel is mindful of the provision of A.O. 9 Rule 20 which provides that a lawyer who has been suspended for six (6) months or longer shall be reinstated to the practice of law only upon the granting of a motion for reinstatement. The Panel believes that Respondent should be required to demonstrate by clear

and convincing evidence that he has the moral qualifications for admission to practice law in this State and that the resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or to the administration of justice nor subversive of the public interest and that Respondent-Attorney has been rehabilitated. For this reason, the Panel recommends that Frank Berk be suspended from the practice of law for six (6) months.

DATED: October 12, 1990

PROFESSIONAL CONDUCT BOARD
Hearing Panel

/s/

Edward R. Zuccaro, Esq.

/s/

Hamilton Davis

/s/

Deborah S. McCoy, Esq.