November 11, 2007

Mr. Alan D. Rose
Office of the Bar Counsel
Review Department
99 High Street
Boston, MA 02110

Dear Mr. Rose:

I am in receipt of a letter from Mr. Eisenhut in which he states that my attorneys did nothing unethical. Mr. Eisenhut did not include a copy of the response by my attorneys. I most certainly want this matter brought for review by the entire board and I will note in this letter the violations of the "Rules of Professional Conduct," as well as respond to the remarks in Mr. Eisenhut's letter. This letter should be considered an amendment to my complaint.

Attorneys Polubinski and Nader were hired to resolve an issue with the IRS. I discussed the bank fraud that caused the problem, but they refused to examine the documents that I had brought to their office. Since they were not hired to litigate with the bank, I did not leave the documents with them and I did not bring up the issue again.

When funds arrived to cover the taxes, I instructed attorney Polubinski to notify the IRS that a settlement payment would be made within a few days. They were ethically bound to follow my instructions.

RULE 1.2 SCOPE OF REPRESENTATION

(a) A lawyer shall seek the lawful objectives of his or her client through reasonably available means permitted by law and these rules. A lawyer does not violate this rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his or her client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

Comment

Scope of Representation

[1] A lawyer should seek to achieve the lawful objectives of a client through permissible means. This does not prevent a lawyer from observing such rules of professional courtesy as those listed in Rule 1.2(a). The specification of decisions subject to client control is illustrative, not exclusive. In general, the client's wishes govern the conduct of a matter, subject to the lawyer's professional obligations under these Rules and other law, the general norms of professional courtesy, specific understandings between the lawyer and the client, and the rules governing withdrawal by a lawyer in the event of conflict with the client. The lawyer and client should therefore consult with one another about the general objectives of the representation and the means of achieving them. As the Rule implies, there are circumstances, in litigation or otherwise, when lawyers are required to act on their own with regard to legal tactics or

technical matters and they may and should do so, albeit within the framework of the objectives of the representation.

It was my intention to settle with the IRS for the specified amount of money at that time. He had a responsibility to notify the IRS of my desire to settle the matter immediately. Instead, they told me that the IRS was preparing to seize the business, a statement that they knew was false. This constitutes dishonesty, fraud, deceit and misrepresentation.

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) fail without good cause to cooperate with the Bar Counsel or the Board of Bar Overseers as provided in Supreme Judicial Court Rule 4:01, § 3, last sentence; or

(h) engage in any other conduct that adversely reflects on his or her fitness to practice law.

When they came to my office on March 20, they told me that I had fifteen minutes to decide whether to file for bankruptcy. There was no opportunity to discuss the implications of bankruptcy. They did not look at my business plan, the company books or my current workload. All that they knew was that I had been a victim of bank fraud, owed money to the IRS, had received a payment from one of my customers and had some debt. I made sure to tell them that virtually all of the debt was in my name, or cosigned by me. (The company debt that was my personal responsibility was actually 97% of the overall company debt.) They had an ethical responsibility to discuss the options with me. Had they discussed the situation with me, I would have told them that I was negotiating three new contracts.

The first contract was with a company whose principal was an encryption-software expert who contracted with NSA to determine the security of various radio systems. He found every system was broken easily, so he designed his own system. The company contacted the chief engineer of radio station WTOP in Washington and they recommended my company to design the hardware. His company already had tentative orders from some government agencies. This was a multi-million dollar contract.

The second contract that I was negotiating was with a software company that was designing a system to update the maps in automobiles with GPS, so that as the driver approached a city, the map would show the roads as they exist today and not when the car was manufactured. Such a system would be invaluable in Boston. They needed for me to design the hardware.

The third contract involved an established company that was setting up sales offices throughout South America. They wanted to represent my products, as well as a number of other manufacturers. There was a substantial demand for my products in South America, but I was unable to reach the perspective customers.

It was my intention to go to Washington and finalize the details, just as soon as the problem with the IRS was resolved. I expected to return with substantial retainers. Because I had to file for bankruptcy, I did not have the time to pursue the contracts and I would not have had the time properly to fulfill my commitments to my new clients.

RULE 1.1 COMPETENCE

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

RULE 1.4 COMMUNICATION

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment

[1] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. For example, a lawyer negotiating on behalf of a client should provide the client with facts relevant to the matter, inform the client of communications from another party and take other reasonable steps that permit the client to make a decision regarding a serious offer from another party. A lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case should promptly inform the client of its substance unless prior discussions with the client have left it clear that the proposal will be unacceptable. See Rule 1.2(a). Even when a client delegates authority to the lawyer, the client should be kept advised of the status of the matter.

Even worse, they did not even have an exit plan from the bankruptcy. Once in bankruptcy, they brought an agent for a potential investor. He had no knowledge of the technology that was the major asset of my company, so he could not estimate the company's intrinsic value. The next plan, to get the company out of bankruptcy, was to use my elderly parents' home as collateral for a loan. Even if I had wanted to take such a audacious action, the loan was barely enough to cover the cost of the bankruptcy with little left to restart the company. I ended up selling company assets, that were not in the

company name, to end the bankruptcy. The company was no longer viable and closed.

During the bankruptcy, both attorneys frequently visited my office for me to sign papers. The commuting time from Boston to Mason, NH is over two hours in each direction, if driving the speed limit. They could have used a private courier, Federal Express or the US Mail. In retrospect, I think I may have been one of their only clients.

RULE 1.7 CONFLICT OF INTEREST: GENERAL RULE

Lawyer's Interests

[6] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at a reasonable fee. See Rules 1.1 and 1.5. If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest. Likewise, a lawyer should not accept referrals from a referral source, including law enforcement or court personnel, if the lawyer's desire to continue to receive referrals from that source or the lawyer's relationship to that source would or would reasonably be viewed as discouraging the lawyer from representing the client zealously.

Even before the bankruptcy concluded, creditors were demanding payment, but the attorneys assured me that everything would be resolved. The creditors hired very nasty attorneys who actually threatened physical harm to my elderly parents. Attorney Nader told me that he would only act if the creditors were threatening the company.

Shortly after the conclusion of the bankruptcy, I was contacted by a small company from Spain. They were interested in reviving the commercial half of my business. The main stipulation was that the bulk of manufacturing had to be done in Spain. We communicated for a number of months, interrupted by my poor health, until we came to an agreement. They had an investor who promised seed money to get the company started and then they planned to raise working capital on the European stock market. The proposal was dropped because their attorney was afraid that one or more of the creditors of my former company would try to take the assets of the new European company. I have given up hope of restarting my company.

I have downloaded, from the DOJ website, the entire bankruptcy. I was surprised by the number of documents because I was not on the distribution list. When I examined the financial statements, I was surprise to find substantial discrepancies. The documents were made under penalty of perjury. These false numbers are detailed in my complaint.

RULE 3.1 MERITORIOUS CLAIMS AND CONTENTIONS

RULE 3.3 CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

Finally, I would like to respond to statements made in Mr. Eisenhut's letter.

> "In connection with the disciplinary matters it appears there was an objectively reasonable basis for filing a Chapter 11 on March 21, 2003 as set forth in the history described by the tax payer advocate, substantial unsecured debt and the company's inability to remain current in payroll, payroll tax withholding or payment to suppliers.
>
> "It was not a crime or unethical for Attorney Polubinski to recommend that the one time significant cash infusion that you received in March 2003 be first applied to unpaid payroll, payroll taxes and critical suppliers prior to application of unpaid IRS taxes. Even if his advice was wrong, it was not unethical.
>
> "Even if an IRS seizure was not imminent, it was inevitable by any objective analysis. Accordingly, we could not prove that the advice to file a Chapter 11 was for any improper purpose or conspiracy."

First, as both attorneys knew, I had suffered severe loss starting in September 2001 and the bank fraud exacerbated the problem. Selling my house was the solution. The company's recovery was well underway. The report from the taxpayer advocate does not acknowledge that I had forwarded false information from the bank to the IRS.

Next, he notes the debt. I lost a lot of money during late 2001 and 2002. It is reflected by the debt, but it should be put into perspective. The debt was about one-third of the gross profit of one of the contracts that was approaching completion when I filed for bankruptcy and it was about ten percent of what I believe to be the worth of the company.

He stated that I was behind with payroll. The IRS agent demanded that I pay the IRS before making payroll, which she stated was the law. I complied with her demand.

He noted that I was behind on payroll taxes, which is why I hired him. Had I made the payment, I would have been less than $500 behind on payroll taxes, as noted by the letter from the IRS agent.

He said that I was behind with my suppliers. Some of my creditors were current, while others were behind. None of them were demanding immediate payment.

In the next paragraph, he refers to the payment that I received as a "one time significant cash infusion." The payment was, in fact, only one of a number of payments from one of my many customers. There were more payments to come from this customer and other customers. Had I not filed for bankruptcy, I would have had other contracts within weeks.

Attorney Polubinski incorrectly told me that since the IRS would not accept my payment, I should apply the funds as noted. It was my request that the payment to the IRS be made first. He was not hired as a business consultant; he was hired to negotiate with the IRS. His disagreement with me should have been presented without deception.

In the last paragraph, he admits that there was no IRS seizure being planned. Had he taken the time to look at my company, he would have realized that we were recovering and that my business plan from 2001 was taking the company in the right direction. The very fact that my company did not survive Chapter 11 shows that it was the wrong

advice. If I had believed that my company was not viable, I would have contacted one of the many business brokers who offered to find a buyer for my company.

My company did not have a problem with excessive debt, although the structure of the debt did create problems. The major problem was lack of working capital. The business plan, which neither attorney examined, puts emphasis on selling design services which are profitable and are not capital intensive. The second part of the plan was to partner the manufacturing part of the business to somebody with more capital and/or contacts in China. The bankruptcy transferred the debt from the company to me and then destroyed my company. I realize in retrospect that the bankruptcy could not have solved my problem of lack of working capital and that nothing worthwhile could have been accomplished. Of all parties, the only one who benefited, or could have benefited, were my attorneys.

Had I not filed for bankruptcy, my plan would have been implimented by the end of May 2003 and I would be debt free today. Instead, I am being hounded by many of the creditors for the debt of the company that no longer exists. I expect the implications of the bankruptcy to continue for the rest of my life.

Attorneys Polubinski and Nader were too interested in finding work to care about the ramifications of their actions upon my company and me. Without checking all of the facts, they deceived me into filing for bankruptcy and ultimately destroyed not only my company, but my career.

I have documents to support most of my statements. If you need them, I can supply them.

Sincerely,

Frank Karkota
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Westford, MA 01886