NO. BD-2006-112

IN RE: JOHN TRAFICONTE

S.J.C. Order of Term Suspension entered by Justice Spina on December 22, 2006, with an effective date of January 22, 2007.[1]

HEARING REPORT

On November 24, 2003, Bar Counsel filed a petition for discipline against the Respondent, John Traficonte. The petition, in four counts, charges that the Respondent committed numerous ethical violations in 1997, when he settled a proposed products liability class action and accepted the defendant's payment of attorneys' fees without his clients' knowledge or consent.

Represented by counsel, the Respondent filed his amended answer on September 23, 2004.[2] The answer generally denied dishonesty or improper motive, asserted good-faith mistake, and specifically denied violations of Canon One, DR 1-102(A)(4) and (6).

On December 7, 2004, Bar Counsel moved that most of the allegations of the petition be deemed admitted.[3] On January 3, 2005, the Hearing Committee, by its Chair, issued an order deeming admitted all of the factual allegations of the petition except paragraphs 15 and 16, and all of the conclusions of law except those charging violations of Canon One, DR 1-102(A)(4) or (6).

Hearings were held on February 1, 2 and 3, 2005. Thirty-three exhibits were admitted, and eight witnesses testified. The parties filed their post-hearing submissions on May 2, 2005.

I. Findings of Fact

1. The Respondent, John Traficonte, was admitted to the bar of the Commonwealth on December 21, 1983. Petition 2.

2. Since 1995 and at all relevant times, the Respondent split his law practice between part-time employment as litigation counsel for Cabot Corporation and part-time solo practice conducted from his home. Transcript 1:32-35.[4] In 1997, the Respondent received an annualized salary from Cabot, not including other forms of compensation such as stock options, of approximately $65,000. Tr. 1:33. In his solo practice, the Respondent received business mail and met with clients at office space that he shared with another lawyer at 92 State Street in Boston. Tr. 1:34-35.

3. During 1997, Mark Hager was a member of the bar of the District of Columbia. P. 3. The Respondent and Hager were friends, and had been classmates at law school. Tr. 1:36, 142. They collaborated on certain legal matters. Tr. 1:142, 163.

4. In early 1997, Erika Raskin Littlewood and Debra Duke spoke with Hager about suing Warner-Lambert, the manufacturer and seller of NIX® head lice shampoo. P. 4. At that time, the NIX label claimed that the shampoo killed lice in one application 99% of the time.[5] Tr. 1:150; Ex. 7, Ex. 8, Ex. 12, Ex. 19, Ex. 28, Ex. 29. Duke and Littlewood claimed that NIX® was ineffective against certain strains of head lice and that its labeling was inadequate. P. 4. Among other things, they wanted Warner-Lambert to (i) change its instructions for the use of

NIX®, (ii) conduct scientific studies about the resistance of lice to the product, and (iii) provide other relief. P. 4.

5. In February 1997, Hager asked for the Respondent's help to look into suing Warner-Lambert. P. 5.

6. Hager and the Respondent decided to pursue litigation against Warner-Lambert under the Magnuson-Moss Warranty Act, 15 U.S.C. §2301 et. seq. P. 6. We credit the Respondent's testimony that he believed that the Magnuson-Moss Warranty Act permitted consumers to bring a federal class action for breach of warranty notwithstanding that their individual claims did not satisfy the federal jurisdictional amount, so long as one hundred plaintiffs were named as representing the plaintiff class. Tr. 1:148-149, 152; P. 6.

7. Littlewood and Duke helped in the effort to enlist class representatives. Tr. 1:57; P. 7. They referred consumer telephone calls from across the country to Hager. P. 7. Hager then gave the Respondent the names of consumers interested in receiving information about becoming a class representative. Tr. 1:57.

8. The Respondent communicated with interested consumers using e-mail and the Internet. Tr. 1:57-58, 154-56; Ex. 9, Ex. 11, Ex. 12.

9. About May 1997, the Respondent drafted a contingent fee agreement. Tr. 1:157.

10. Between May and the end of June 1997, the Respondent sent the contingent fee agreement to ninety people. Tr. 1:44, 57-58; P. 8. The Respondent was responsible for circulating, collecting, and keeping track of the contingent fee agreements. Tr. 1:58.

11. The cover letter accompanying the agreement described the proposed action as "a consumer class action … involving head lice shampoo failure due to the development of resistant/tolerant head lice in the United States." The letter also stated that the enclosed contingent fee agreement "indicat[es] that you are willing to have us represent you in that action as a 'class representative'." The letter advised that "[a]s soon as we reach 100 [class representatives] we will initiate the action." P. 9; Ex. 1, Ex. 16.5

12. The contingent fee agreement stated: "I hereby retain attorneys John Traficonte, 92 State Street, Boston, MA, 02109, and Mark Hager, Professor of Law, American University, 4801 Massachusetts Ave., N.W., Washington, D.C., 20016, and other lawyers they may need to associate with, to perform the legal services described below. The attorneys agree to perform these services faithfully and with due diligence." The first numbered paragraph stated that the Respondent and Hager "will investigate potential bases for a class action suit brought in federal court against the manufacturers and/or suppliers of NIX® shampoo, seeking a refund of the purchase price, and other damages, based on certain claims, including breach of warranty regarding the product (the "Class Action Claims")…," that the signer "understand[s] that the attorneys have agreed to represent me and assert claims on my behalf only in the event that such a class action suit may be brought and prosecuted"; and that "one requirement of such a suit is that 100 consumers be joined as class representative, and that the attorneys do not now represent 100 such consumers." The numbered paragraphs that followed provided additional information concerning the representation and the fee arrangements. Ex. 2.

13. Respondent admits that, of the ninety people sent the contingent fee agreement, about sixty,[6] including Littlewood and Duke, signed the contingent fee agreement and returned it to the Respondent and Hager. Tr. 1:60; P. 10. The remaining thirty people did not sign but had expressed interest in becoming class representatives and in signing the contingent fee agreement. Tr. 1:60; P. 10.

14. The sixty people, including Duke and Littlewood, who signed the contingent fee

agreement reasonably understood that the Respondent and Hager were their attorneys representing their interests in the investigation of their claims against Warner-Lambert. P. 11.

15. The Respondent now admits that sixty people, including Duke and Littlewood, became his clients when they signed the contingent fee agreement and that by the time of the negotiations with Warner-Lambert (described below) the other thirty people who received the contingent fee agreement had also become his clients. Tr. 1:77-78, 162, 191.

16. The Respondent testified that, at the time of his negotiations with Warner-Lambert, he did not think of these ninety people as his clients. Tr. 1:67-68, 81, 95, 97, 161-162. We find, to the contrary, that the Respondent in fact considered them to be his clients, if not for individual state court actions, then at least with respect to exploring the possibility of a federal class action based on a claim of breach of warranty.

17. We base this finding on our assessment of the Respondent's credibility, as well as on the following documents.

(a) At least three of the Respondent's e-mails during April of 1997, before the Respondent drafted the contingent fee agreement, referred to people who had agreed to act as class representatives as his "clients". Tr. 1:56; Ex. 12, Ex. 28 and Ex. 29.

(b) The Respondent sent to ninety people a document entitled "Contingent Fee Agreement," with the request that they sign it. The first sentence of the contingent fee agreement stated, "I hereby retain attorneys John Traficonte…and Mark Hager…to perform the legal services described below." Ex. 2. Although the first numbered paragraph of the contingent fee agreement states that "the attorneys have agreed to represent me and assert claims on my behalf only in the event that such a class action suit may be brought and prosecuted," it also identifies legal services to be provided before any suit was brought, i.e., "[t]he attorneys will investigate potential bases for a class action suit brought in federal court…." Id. The cover letter accompanying the contingent fee agreement invited the recipients to be "represent[ed]" by him and Hager. Ex. 1.

(c) In letters to Littlewood and to Duke during late July of 1997,[7] the Respondent stated, in substance, that he represented them. Ex. 3, Ex. 4.

18. We do not credit the testimony of the Respondent's neighbor, Michelle Simons, on the issue of whether or not the Respondent thought of the potential class representatives as his clients. We do not question Ms. Simon's candor. Nevertheless, her testimony was contrary to the weight of the documentary evidence, and she candidly admitted limits on her ability to recall. Tr. 3:21, lines 3-7. Further, the Respondent did not provide a time frame for the discussion that gave rise to Ms. Simon's understanding.

19. We credit the Respondent's testimony that before Karel Zaruba, a lawyer for Warner-Lambert,[8] contacted the Respondent, Zaruba had seen a copy of the contingent fee agreement and the accompanying cover letter. Tr. 1:61, 173-74.

20. We credit the Respondent's testimony that Zaruba contacted him in early July 1997 (Tr. 1:61; P. 13) and that he told Zaruba that he had the names of ninety people interested in being class representatives in a class action against Warner-Lambert under the Magnuson-Moss Warranty Act for breach of the 99% effectiveness warranty. Tr. 1:61–62, 174-77; P. 13.

21. We also credit the Respondent's testimony that in the follow-up conversation, Zaruba told the Respondent that Warner-Lambert had removed the 99% effectiveness claim from the NIX label (Tr. 1:63, 177), that Zaruba said he would send the Respondent the new NIX package, and that Zaruba then raised the subject of settlement. Tr. 1:63, 178.

22. In a letter to the Respondent dated July 17, 1997, Zaruba enclosed a carton bearing the

revised NIX label, which the Respondent received. Tr. 1:63-64, 178; Ex. 21.

23. We credit the Respondent's testimony that about July 20, 1997, after he had received the revised NIX label, he spoke again with Zaruba, Tr. 1:64, who asked him if he was interested in resolving the claims regarding NIX® without litigation. Tr. 1:64-65. Initially Zaruba, on behalf of Warner-Lambert, offered only to refund money to the specific ninety proposed class representatives about whom the Respondent had told him. Tr. 1:65. The Respondent rejected that offer. Tr. 1:65.

24. We credit the Respondent's testimony that he spoke with Zaruba at least five times during the settlement negotiations. [9] Tr. 1:66. There is no evidence that Hager conducted any negotiations with Warner-Lambert. Based on all of the testimony, we find that the Respondent conducted all of the negotiations with Warner-Lambert.

25. We credit the Respondent's testimony that he understood that Zaruba intended the settlement to avoid the threat of litigation, including a class action by the people whom the Respondent represented, Tr. 1:66, 91, 94-95, that he refused Zaruba's request for signed releases from his ninety clients (Tr. 1:92-94, 122-123), and that because he refused to provide releases, and because Zaruba wanted to avoid future litigation, Zaruba conditioned settlement on the entire settlement being kept confidential. Tr. 1:94–95, 105-106, 190.

26. We credit the Respondent's testimony that towards the end of his negotiations with Warner-Lambert, he discussed with Hager whether and to what extent they could refrain from disclosing the terms of the settlement agreement to their clients[10] (Tr. 1:67–73), and that he and Hager together decided that they would withhold from their clients the existence of the settlement and the fact that Warner-Lambert had offered to pay them attorneys' fees. Tr. 1:67–73. The Respondent admits that he did not consult with anyone besides Hager, and did not consult the disciplinary rules, in reaching his decision. Tr. 1:67–73.

27. We credit the Respondent's testimony that after these discussions with Hager, the Respondent obtained Zaruba's agreement to allow disclosure of certain other terms of the settlement to, among others, his ninety clients. Tr. 1:96; Ex. 8, sec. 3.

28. We credit the Respondent's testimony that the last issue negotiated was his fees (Tr. 1:75-76), and that Warner-Lambert raised the subject. Tr. 1:187-188

29. We credit the Respondent's testimony that in response to Warner-Lambert's raising the issue of fees, he first asked that Warner-Lambert pay him and Hager 10% of all NIX® refunds made pursuant to its new money-back guarantee (Tr. 1:188), and that Warner-Lambert refused. Tr. 1:189. We further credit the Respondent's testimony that he discussed the matter with Hager, and they proposed that Warner-Lambert make a one-time payment of $225,000, an amount they believed to be less than 10% of the foreseeable refunds from Warner-Lambert under the new guarantee. Tr. 1:189-90. Warner-Lambert agreed to that payment. Tr. 1:190, Ex. 8.

30. Based on the Respondent's admissions that, at various points during the negotiation, he and Hager failed to disclose the status of the settlement discussions or to seek their clients' authority, we find that throughout the negotiations with Warner-Lambert, neither the Respondent nor Hager informed their clients that the Respondent was negotiating or had negotiated a fee of $225,000 for himself and Hager, or that the Respondent was negotiating the terms of a confidentiality agreement. Tr. 1:39, 69–70, 73, 77, 84-85; P. 17, 21, 22, 24, 25, 27, 44.

31. We credit the Respondent's testimony that during the negotiations Warner-Lambert also offered to refrain from asserting that Nix® was effective on first use 99% of the time, to attempt to convene a scientific study panel, to make refunds to the ninety potential class representatives, and to place a money-back guarantee on the NIX® package. P. 14; Ex. 6, Ex.

7, Ex. 22.

32. In late July 1997, while the Respondent and Warner-Lambert were negotiating, Hager revealed to Littlewood and Duke that the Respondent was negotiating a settlement with Warner-Lambert regarding the potential class action lawsuit. P. 18. In Hager's first conversation with them, he told them that the settlement was for refunds. P. 18. Littlewood and Duke expressed dissatisfaction, and Hager eventually informed them that the proposed settlement provided for: a refund of the purchase price of NIX® paid by each consumer; the removal of the 99% effectiveness claim from the NIX® label; the creation of a scientific panel to research the existence of insecticide resistant lice; and a money-back guarantee to be posted on the NIX® label. P. 18. Littlewood and Duke told Hager that they opposed a settlement that did not include damages other than refunds. P. 18.

33. Hager told the Respondent that Littlewood and Duke were dissatisfied with the proposed terms of the settlement. P. 18.

34. We credit the Respondent's testimony that he then spoke separately with Littlewood and Duke, his first communications ever with them (Tr. 1:39, 126–127); that they both told him that they wanted Warner-Lambert to provide relief in addition to the refund, with Littlewood mentioning payment of consequential damages, such as the costs of dry cleaning and rug shampoo (Tr. 1: 85, 93-94, 126–127); and that the Respondent told them that to keep the unity of the class the damages needed to be limited to refunds. Tr. 1: 85, 93-94, 126–127.

35. During Littlewood's late-July 1997 conversation with the Respondent, she informed him that she was withdrawing from the class action and terminating his representation. Tr. I, pp. 197-98; P. 31.

36. On July 25, 1997, the Respondent wrote a confirming letter to Littlewood that stated: "[A]lthough Mark and I would be happy to continue to represent you regarding your claims for refund, you have decided not to be represented by us any longer regarding these issues." Ex. 3. The letter also stated that the class action would be limited to refunds to increase the chances of "successfully bringing forward the class action." P. 31, Ex. 3.

37. The Respondent admits that when he wrote the July 25 letter he knew that the successful conclusion of his negotiations with Warner-Lambert would require Hager and him to agree not to represent individuals asserting claims against Warner-Lambert concerning Nix®. Tr. 1:85, 89-90; Ex. 3. We find, based on all of the credible evidence, that this letter was misleading, and that the Respondent intentionally withheld information from Littlewood.

38. About July 26, 1997, the Respondent spoke with Duke by telephone. P. 36. He discussed with her certain purported reasons for limiting to refunds the relief sought in the class action, and did not disclose the other terms of the proposed settlement with Warner-Lambert. P. 36.

39. The Respondent then wrote a letter to Duke that repeated the assertions he had made in his telephone conversation with her, i.e., that the proposed limitation of damages to refunds would increase the chances of "successfully bringing forward the class action," Ex. 4. The letter also stated, "Mark Hager and I continue to represent you in the would-be class action against the seller of head lice shampoo." Ex. 4.

40. The Respondent's letter to Duke, like his telephone conversation with her, did not disclose that he and Hager had agreed not to serve as counsel for individuals asserting claims against Warner-Lambert concerning Nix®, that they had agreed to keep their work product confidential, and that they would be receiving a payment of attorneys' fees from Warner-Lambert. P. 36, 37; Ex. 4. We find, based on all of the credible evidence, that the Respondent's telephone conversation with and letter to Duke, described above, were misleading and that the Respondent intentionally withheld information because he was concerned about his clients' reaction to learning the terms of the settlement.

41. When the Respondent spoke with Duke and when he wrote his letter to her, he knew, as he did when communicating with Littlewood, that the successful conclusion of negotiations with Warner-Lambert would require Hager and him to agree not to serve as counsel for individuals asserting claims against Warner-Lambert concerning Nix®. Tr. 1:85, 89–90.

42. The Respondent admits that he did not take any steps in late July 1997 to determine whether any other clients besides Littlewood and Duke might be dissatisfied with a recovery of only refunds. Tr. 1:125-126.

43. In late July or early August 1997, Littlewood requested that the Respondent give her the names of the ninety people who had been sent the contingent fee agreement. The Respondent refused to give them to her. P. 32.

44. On August 4, 1997, the Respondent faxed a draft settlement agreement to Warner-Lambert. P. 19; Ex. 6, Ex. 7. That draft provided, among other things, that Warner-Lambert was to pay the Respondent and Hager $225,000.00 as attorneys' fees; that they covenanted not to serve as counsel for any individuals asserting claims against Warner-Lambert concerning Nix®; that they would not disclose their work product "to any person or entity"; and that any person other than the Respondent and Hager retained any claims they might have against Warner-Lambert regarding NIX®. P. 19; Ex. 7.

45. On or about August 8, 1997 the Respondent and Hager signed the settlement agreement with Warner-Lambert without the knowledge or consent of any of their clients. P. 7, 21; Ex. 8. The executed document was substantially similar to the August 4, 1997 draft with respect to the fee to be paid to the Respondent and Hager, its confidentiality terms, the Respondent's and Hager's obligation not to disclose their work product, and their clients' reservation of rights. Ex. 7, Ex. 8.

46. Paragraph 3 of the settlement set out the confidentiality terms. Ex. 8. It required the Respondent and Hager to keep the existence and terms of the settlement in confidence, except that they could disclose to the ninety clients (1) that they had a right to receive a refund for their past purchases of NIX; (2) that Warner-Lambert had agreed to make various changes in labeling, including offering a money-back guarantee for future purchases of the product; and (3) that Warner-Lambert, notwithstanding its denial of any knowledge of the existence of resistant lice, was formulating a scientific panel to study the issue. Ex. 8. In addition, Paragraph 3 authorized the Respondent and Hager to make certain limited disclosures to others for limited purposes not here relevant. Tr. 1:98, 99, 102; Ex. 8. Essentially, all other provisions of the settlement were to be confidential. Ex. 8.

47. The settlement agreement prohibited the Respondent from disclosing to his ninety clients that they retained the right to pursue claims against Warner-Lambert concerning Nix®. We do not credit the Respondent's testimony that the agreement did not prohibit this disclosure and that he simply did not think about disclosing to his clients that they had retained rights. Tr. 1:121. We find instead, based on all of the credible evidence, including the conduct of the negotiations, the Respondent's knowledge and experience as an attorney, and the plain meaning of the settlement agreement, that he understood that the settlement agreement prohibited disclosure, that he believed that disclosure of the retained rights would jeopardize the settlement and his entitlement to his share of the $225,000 in attorneys' fees, and that for these reasons he did not disclose to his clients that they had retained their rights against Warner-Lambert.

48. At about the same time that he signed the settlement agreement, on August 8, 1997, the Respondent faxed to Zaruba instructions for wiring the attorneys' fees to the Respondent, P. 22, and, pursuant to the requirements of the settlement, sent Zaruba the names and addresses of his ninety clients, without their knowledge and consent. Tr. 1:82–83; P. 22; Ex. 8.

49. Between August 8 and August 26, 1997, the Respondent received $225,000.00 in attorneys' fees from Warner-Lambert for Hager and himself. Tr. 1:201; P. 23.

50. On August 26, 1997, the Respondent sent a letter to his ninety clients advising them that Warner-Lambert had agreed to make certain labeling changes, to establish a scientific panel, and to provide refunds. P. 44; Ex. 5. The Respondent enclosed a refund form, which the letter advised the clients they "should" sign and return to Warner-Lambert. Ex. 5.

51. The letter also stated that the Respondent and Hager were abandoning the class action, as follows:

Mark and I, notwithstanding our best efforts, have not assembled 100 consumers willing to agree in writing to function as class representatives in a class action regarding the Product. Moreover, the inherent scientific and legal difficulties in successfully prosecuting such a class action, together with the willingness of Warner-Lambert to make what we consider to be reasonable changes in its marketing of the Product, have led Mark and I to the decision to abandon any further efforts in this regard. P. 45; Ex. 5.

52. The Respondent did not inform his clients that Warner-Lambert had paid Hager and him $225,000, that they had agreed to keep this payment secret, that the clients had retained their claims and rights against Warner-Lambert despite the settlement, or that he and Hager had covenanted not to sue Warner-Lambert and had agreed to keep their information and work product secret from everyone, including their own clients. Tr. 1:121–123; P. 44; Ex. 5, Ex. 8.

53. About November 20, 1997, Duke wrote to the Respondent. Ex. 32. She asked, among other things, whether Warner-Lambert had paid the Respondent and Hager. P. 38; Ex. 32.

54. The Respondent wrote to Duke on December 2, 1997. Ex. 31. In that letter, the Respondent refused to respond to Duke's inquiry concerning whether or not he had been paid by Warner-Lambert. Instead, he told Duke that he and Hager had not represented her interests in the negotiations with Warner-Lambert. P. 38; Ex. 31. The letter further stated that the Respondent had a contractual obligation to Warner-Lambert not to disclose the payment of legal fees, and disclaimed any duty to make "full disclosure" to Duke concerning Warner-Lambert's agreement to pay attorneys' fees. P. 39; Ex. 31. Although only the Respondent signed that letter, we credit his testimony that Hager co-authored it. Tr. 1:118-19.

55. In general, based on our assessment of the Respondent's credibility and the other credible evidence, we make the following findings about the Respondent's state of mind and motivations. During the negotiations with Warner-Lambert, the Respondent was motivated by the best of intentions on behalf of his clients, and sincerely and reasonably believed that he was obtaining the best result possible for his clients. He believed that his chances for successfully prosecuting a Magnusson-Moss Warranty Act class action were dim. (The law cited in the post-hearing briefs indicates that this belief was a reasonable one.) We find, however, that the Respondent engaged in rationalization about his relationship with his clients and about his reasons for not disclosing the settlement terms to his clients (especially the fee he was being paid and his clients' retention of their rights). We further find that, once his clients began questioning the terms and conditions on which, and manner in which, the dispute with Warner-Lambert was settled, the Respondent intentionally made deceptive statements. At the hearing, the Respondent testified that he now understands that he committed multiple errors of judgment in connection with his representation of his clients. Tr. 1:158-162, 193-95. We credit this testimony, and find that the Respondent now understands that the individuals were his clients, and that he had a duty to keep them fully informed about the settlement of their claims.

II. Conclusions Of Law

Count One

56. Without more, the Respondent did not violate Canon One, DR 1-102(A)(6) (conduct reflecting adversely on a lawyer's fitness to practice), or Canon Two, DR 2-110(B)(2) (mandatory withdrawal when continued representation would violate a Disciplinary Rule) by entering into settlement discussions without his clients' knowledge or consent. When the Respondent continued to negotiate with Warner-Lambert without disclosure to his clients after it became reasonably clear that Warner Lambert was making a firm offer that included (i) payment of the Respondent's attorneys' fees, (ii) his agreement not to pursue claims against Warner-Lambert, and (iii) his agreement not to share work-product, however, the Respondent's interests conflicted with his clients' interests, and his professional judgment on their behalf was impaired by the conflict. It was obvious that his continued employment would, at the least, violate Canon Five, DR 5-101(A) (refusing employment when the interests of the lawyer may impair his professional judgment), DR 5-107(A) (accepting compensation for legal services from someone other than client without disclosure) and DR 5-107(B) (allowing someone who pays for legal services for another to direct or regulate professional judgment), and that he was required to make full disclosure or withdraw. By failing to do either, he violated Canon Two, DR 2-110(B)(2).[11]

57. The failure to disclose his negotiations or to withdraw immediately from representation was a substantive violation of the Disciplinary Rules, and not merely a technical one. Entering into the settlement would foreseeably involve a number of other violations of the Disciplinary Rules, as discussed below. The Respondent breached his duties of loyalty and of effective and unimpeded representation, and his violations reflected adversely on his fitness to practice law, in violation of Canon One, DR 1-102(A)(6). See Matter of McPhee, 17 Mass. Att'y Disc. R. 417, 419 (2001) (failure to withdraw, close files, etc. upon suspension violated Mass. R. Prof. C. 1.16(a)(1) and 8.4(c), the analogues to DR 2-110(B)(2) and DR 1-102(A)(6)).

58. The Respondent concedes, and we conclude, that there was a "settlement" within the meaning of the Disciplinary Rules. Although the Respondent's and Hager's agreement with Warner-Lambert did not itself release or otherwise directly dispose of the clients' rights, it was the functional equivalent of a settlement. See In the Matter of Hager, 812 A.2d 904, 917-19 (D.C. Cir. 2002). By entering into the settlement without the knowledge and consent of his clients, the Respondent violated Canon Five, DR 5-106(A) (settling the claims of more than one client without full disclosure and consent). See Matter of Zisk, 1 Mass. Att'y Disc. R. 315 (1979) (DR 5-106(A) violated by settling claims of four clients involved in an automobile accident without their knowledge and consent); Hayes v. Eagle-Picher Industries, 513 F.2d 892 (10th Cir.) (1975) (settlement deemed improper where at least two of the lawyer's eighteen clients did not consent to it).

59. We have rejected the Respondent's rationalization that he did not fully "represent" his clients, and have found that he did think of them as his clients. By entering into a settlement without their knowledge and consent, the Respondent violated Canon One, DR 1-102(A)(6).

60. The Respondent agreed not to inform the clients that they had retained rights against Warner-Lambert and he agreed not to provide them or anyone else with his work product. We find, therefore, that he intentionally failed to seek the lawful objectives of his clients, in violation of DR 7-101(A)(1), and intentionally failed to carry out his contract of employment, in violation of DR 7-101(A)(2).

61. The Respondent intentionally prejudiced or damaged his clients during the course of his representation of them, in violation of Canon Seven, DR 7-101(A)(3). Violation of this rule does not require a specific intent to cause harm. He possessed the requisite "intent" even though he thought that he was getting the best result possible for the clients. See Matter of Dolan, 10 Mass. Att'y Disc. R. 59, 63 (1994). The Respondent's reliance on Kantner v. Warner-Lambert Co., 99 Cal. App. 4th 780, 788, 797 ff (Ct. App. 1st Dist. 2002), which postdates the settlement, is misplaced. We are not compelled to find that his clients were not harmed

because their claims were barred by federal preemption. The Respondent does not suggest that when he was negotiating with Warner-Lambert it was already a foregone conclusion that an action in state court asserting state-law causes of action, including breach of warranty, would be preempted. An attorney's failure to litigate issues that are at least colorably meritorious may constitute the injury that, combined with other aggravating factors, may justify suspension for a pattern of neglect. See Matter of MacDonald, 18 Mass. Att'y Disc. R. 382, 392-93 (2002) (failure to ensure that summary judgment motions were opposed would have warranted suspension under Matter of Kane, 13 Mass. Att'y Disc. R. 321 (1997)). Here, the Respondent harmed his clients by failing to take steps to ensure that their rights against Warner-Lambert, whatever their ultimate validity, were protected.

62. By agreeing, in return for a fee from Warner-Lambert and while representing clients he recognized to be clients, not to pursue claims against Warner-Lambert, not to advise his clients that they had retained rights, not to share his work product and not to reveal the fee he was to receive, the Respondent violated Canon Two, DR 2-110(A)(2) (lawyer may not withdraw without taking reasonable steps to avoid prejudice to client), and Canon One, DR 1-102(A)(6) (conduct adversely reflecting on his fitness to practice). See Matter of Cohen, 19 Mass. Att'y Disc. R. 83, 85 (2004) (failing to keep the clients apprised of the status of their case violated, among other rules, DR 1-102(A)(6)).

63. By that conduct, the Respondent also violated Canon Two, DR 2-108(B) (entering into an agreement in connection with a settlement that restricts the lawyer's right to practice law). See Adams v. Bellsouth Telecommunications, 2001 WL 34032759, at *7 (S. D. Fla. 2001) ("A central purpose of … [the Model Rule analogue to DR 2-108(B)] is to prohibit corporate "buyouts" of plaintiff's attorneys.").

64. Even if the Respondent's self-interest had not in fact impaired his judgment on behalf of his clients (and we find that it did, see 55, supra), his judgment might have been affected. Warner-Lambert offered him substantial fees in exchange for unethical conduct while he was facing a risk of receiving nothing at all for his work. In the circumstances, the possibility that his judgment might be affected triggered a duty to disclose or to withdraw. The Respondent did neither, violating Canon Five, DR 5-101(A) (refusing employment when the interest of the lawyer may impair his independent professional judgment). Cf. Matter of Roberts, 9 Mass. Att'y Disc. R. 271 (1993) (attorney engaged in impermissible conflict, notwithstanding that he represented both clients diligently, caused no harm, and eventually made disclosure that was "full but not as timely as it should have been"); Matter of Manelis, 18 Mass. Att'y Disc. R. 375 (2002) (attorney engaged in impermissible conflict by drafting a will at a beneficiary's suggestion where there might have been harm to the client testator).

65. In contrast, we find no violation of DR 2-110(A)(4) (attorney withdrawing from contingent fee case must turn over work product upon the client's request for the file) because Bar Counsel offered no evidence that a client's request for the file was refused. We address separately, below, the charge based on the Respondent's refusal of Littlewood's demand that he provide her with the names of the other potential class representatives.

66. Likewise, we find no violation of Canon Five, DR 5-105(B) and (C) (refusing to accept or continue employment if the interests of another client may impair the professional judgment of the lawyer) because we do not find that the Respondent undertook to represent Warner-Lambert.[12]

67. By accepting $225,000.00 as attorney's fees from Warner-Lambert without his clients' knowledge or consent the Respondent violated Canon Five, DR 5-107(A)(1) (accepting compensation for legal services from someone other than client without disclosure to client and consent). Matter of Herman, 7 Mass. Att'y Disc. R. 110, 111-12, 114 (1991) (DR 5-107(A)(1) violated by attorney who received payment from buyer of estate real estate while simultaneously representing the administrator as seller).

68. By agreeing at Warner-Lambert's insistence to certain terms of the settlement, especially non-disclosure of the settlement terms, non-prosecution of claims against Warner-Lambert, non-publication of his research, and non-disclosure of the client's retained rights, the Respondent violated Canon Five, DR 5-107(B) (allowing someone who pays for legal services for another to direct or regulate professional judgment). Cf. Matter of Weitz, 15 Mass. Att'y Disc. R. 630, 630-31 (1999) (DR 5-107(B) violated by attorney who simultaneously represented lender and borrower, altered the transaction to the lender's detriment in favor of the borrowers, and received payment for the lender's services from the borrowers).

69. We do not find that the Respondent violated Canon Four, DR 4-101(B)(1) and (3) (disclosure or use of confidences or secrets of clients without client consent), by revealing to Warner-Lambert the names and addresses of his ninety clients without their knowledge and consent. Those names and addresses were not confidences or secrets because the clients had authorized their disclosure to the world in the class action complaint. Matter of Hager, 812 A.2d 904, 920-21 (2002).

Count Two

70. The Respondent's intentionally misleading letter to Littlewood, dated July 25, 1997, violated Canon One, DR 1-102(A)(4) (dishonesty, fraud, deceit, or misrepresentation) and (6) (conduct reflecting adversely, etc.). DR 1-102(A)(4) prohibits misleading omission of material facts. Matter of Moore, 442 Mass. 285, 289, 292 n.10, 20 Mass. Att'y Disc. R. 400, 404-05, 408, n. 10 (2004) (deceptive pattern of omitting facts); Matter of Pike, 408 Mass. 740, 743, 6 Mass. Att'y Disc. R. 256, 259 (1990) (inducing client to enter into a lease without disclosing commission from the landlord); Matter of Cohen, 19 Mass. Att'y Disc. R. 83, 85 (2004) (DR 1-102(A)(4), (6) violated by failing to keep the clients apprised of the status of their case).

71. We make no finding concerning whether the Respondent violated Canon Two, DR 2-110(A)(4) by failing to provide Ms. Littlewood with the list of ninety clients, as alleged in paragraph 34 of the Petition for Discipline. It is not clear that the Respondent had an obligation to turn over the names of the ninety clients, and this charge neither adds to the analysis nor affects our recommendation.

Count Three

72. By his telephone discussions with Duke and Littlewood and his follow-up letter to Duke, all of which were intentionally misleading by their omission of information concerning the settlement, the Respondent violated Canon One, DR 1-102(A)(4) (dishonesty, fraud, deceit, or misrepresentation) and DR 1-102(A)(6) (conduct adversely reflecting on his fitness to practice). See cases cited in 70, supra. Bar Counsel also charges that these communications were intentionally misleading because the Respondent gave a pretextual reason for limiting to refunds the relief sought in the proposed class action. The claim of each of his clients had to be "typical of the claims … of the class." 15 U.S.C., § 2310(e); Fed.R.Civ.P. Rule 23(a). The Respondent, therefore, reasonably believed that what he told Littlewood and Duke was the reason for limiting the claim to refunds – i.e., maintaining the integrity of the class -- was literally true. We credit his testimony to this effect. We decline to find an additional violation of Canon One, DR 1-102(A)(4), based on statements that the Respondent reasonably believed to be true, at least where they were misleading only because of the very omissions we have already found to be violative of the same rule.

73. By his communications with Duke in July 1997, the Respondent intentionally failed to seek the lawful objectives of his client (DR 7-101(A)(1)), intentionally failed to carry out his contract of employment (DR 7-101(A)(2)), and intentionally prejudiced or damaged Duke during the course of his representation of her, in violation of DR 7-101(A)(3). Based on all of the evidence concerning the settlement discussions, the timing of the discussions with Duke and Littlewood (late July, 1997) and the transmission of the draft settlement agreement (August 4, 1997), we find that the Respondent had already agreed in substance not to pursue

the class action and not to make pertinent disclosures before Littlewood terminated his representation of her. Therefore, we find that the Respondent violated these same rules in his communication with Littlewood.

74. By disclaiming in his December 1997 letter to Duke that he had had an attorney-client relationship with Ms. Duke, and by refusing in that letter to disclose all of the terms of the settlement, the Respondent violated Canon One, DR 1-102(A)(4) and (6).

75. The Respondent did not violate Canon Five, DR 5-106, by refusing to disclose the full terms of the settlement at Duke's request in late 1997. The manner and content of Respondent's communications with Duke effected performance of a settlement already entered into in August, at the latest. That, however, is different from making the settlement, which is the activity DR 5-106 addresses.

76. We decline to find that the Respondent violated Canon Seven, DR 7-101(A)(1) and (2), by refusing to disclose the full terms of the settlement at Duke's request in November and December 1997. We have serious reservations about whether the obligations of those rules survived for so long after the Respondent's letter "To All" in August of 1997, and finding this additional violation will neither alter our analysis nor affect our recommendation. The Respondent's December 1997 letter did not violate Canon Seven, DR 7-101(A)(3). By December 1997, either Duke's rights were irretrievably lost or they were not. If they were not, the Respondent's December letter cured the harm of not disclosing them. If Duke's rights had been irretrievably lost by then, the December letter caused no further harm.

Count Four

77. The Respondent's letter to his clients dated August 26, 1997, intentionally concealed from them the full terms and implications of the settlement with Warner-Lambert, including the fact that they retained rights against Warner-Lambert. That letter was deceptive and misleading in violation of Canon One, DR 1-102(A)(4) and (6). See cases cited in 70, supra.

78. By that conduct, and by advising his clients to sign and return the refund form to Warner-Lambert, the Respondent made his settlement with Warner-Lambert the functional equivalent of a settlement by his clients without their consent, in violation of Canon Five, DR 5-106.

79. By that conduct, the Respondent also intentionally failed to carry out a contract of employment and failed to seek the lawful objectives of his clients, in violation of Canon Seven, DR 7-101(A)(1)-(2), and he intentionally prejudiced his clients in violation of Canon Seven, DR 7-101(A)(3).

80. Bar Counsel charges that, if the Respondent did not withdraw when he entered into the agreement with Warner-Lambert, then by his August 26, 1997 letter the Respondent withdrew from representation without taking reasonable steps to protect his clients' interests, in violation of Canon Two, Disciplinary Rule 2-110(A)(2). Because we find that the Respondent withdrew when he entered into the agreement with Warner-Lambert, we make no finding under this charge.

III. Matters In Mitigation And Aggravation

81. Bar Counsel argues in aggravation that the Respondent engaged in multiple disciplinary rule offenses. See Matter of Saab, 406 Mass. 315, 326, 6 Mass. Att'y Disc. R. 278, 289-90 (1990); Matter of Kerlinsky, 428 Mass. 656, 666, 15 Mass. Att'y Disc. R. 304, 315 (1999). The Respondent's behavior did not consist of separate events that constitute a pattern of repeated misconduct. While we take into account that there were a number of wrongs here, we hesitate to find such a pattern where the wrongs occur in a single transaction.

82. Bar Counsel argues in aggravation that the Respondent has demonstrated a continued lack

of insight into the wrongful nature of his misconduct, citing Matter of Eisenhauer, 426 Mass. 448, 456, 14 Mass. Att'y Disc. R. 251, 261 (1998). We do not agree. This case is not like Matter of Clooney, 403 Mass. 654, 5 Mass. Att'y Disc. R. 59 (1988), where the underlying violations were so obvious they evinced the lack of even a rudimentary understanding of a lawyer's professional responsibilities. It is also unlike Matter of Eisenhauer, and Matter of Cobb, 445 Mass. 452, 480 (2005), where the respondents demonstrated lack of candor and persisted in defending obviously wrongful conduct. While we have rejected the Respondent's testimony that he did not think his clients were his clients, we have not found that the testimony was not given in good faith. We have credited the Respondent's testimony that he now understands that he violated the disciplinary rules.

83. Bar Counsel argues in aggravation that the Respondent's misconduct was undertaken dishonestly and for selfish motives, with a primary goal of obtaining compensation. See Matter of Pike, 408 Mass. 740, 744, 6 Mass. Att'y Disc. R. 256, 260 (1990). We decline to find this factor in aggravation. While the Respondent's judgment was impaired by financial motives, we also have credited his testimony that he thought that he was obtaining the best result possible for his clients. This case does not involve the egregious conflict and self-dealing present in Pike.

84. The Respondent offers in mitigation his reputation in the community, including lack of prior discipline, and a reputation for integrity, honesty, service pro bono publico, and a concern for the public welfare. These factors are "typical," and do not constitute the "extraordinary mitigating circumstances [that may] affect a sanction otherwise warranted by an attorney's conduct." Matter of Anderson, 416 Mass. 521, 527, 9 Mass. Att'y Disc. R. 6, 11-12 (1993); see also Matter of Moore, 442 Mass. 285, 294, 20 Mass. Att'y Disc. R. 400, 411 (2004); Matter of Alter, 389 Mass. 153, 157, 3 Mass. Att'y Disc. R. 3, 7 (1983).

85. The Respondent argues in mitigation that his conduct was motivated by public interest and not avarice, and that he thought he had achieved the best result possible under the circumstances. Just as we have rejected Bar Counsel's argument that he was motivated by an improper financial motive, we reject his claim that his motives were unalloyed by avarice.

86. The Respondent argues that we should mitigate the sanction because of delay in the prosecution of his case. The Respondent must demonstrate unreasonable and prejudicial delay. Matter of Gross, 435 Mass. 445, 450, 17 Mass. Att'y Disc. R. 271, 277-79 (2001). The Respondent did not show an actual effect on his reputation or his business, and he did not show that his defense was compromised by delay. The Respondent, therefore, has not demonstrated "prejudice" in the relevant sense of either an impediment to his defense or public opprobrium while awaiting determination of the charges. Gross, 435 Mass. at 451-52.

IV. Recommendation for Discipline

The few cases cited by the parties provide no guidance to the proper sanction in this unique case. For the reasons discussed below, we conclude that a one-year suspension is appropriate.

Bar Counsel recommends a two-year suspension, arguing that the Respondent was more responsible than Hager. The Respondent argues that if he is to be suspended, the term should not be longer than Hager's one year.

We do not have enough evidence to compare the Respondent's conduct with Hager's. We do not have evidence showing solicitation of potential class representatives before the contingent fee agreement was circulated. We do not have correspondence from Hager after that agreement was signed, demonstrating an actual belief that the people who signed the contingent fee agreement were his clients, as we do from the Respondent. Neither Bar Counsel nor the Respondent elicited detailed testimony about Hager's participation in on-going decisions concerning the negotiations with Warner-Lambert. Further, the single justice who imposed a one-year suspension in Massachusetts did not base Hager's sanction on the

findings of a hearing committee and analogous precedent. Rather, the single justice imposed reciprocal discipline based on the decision of District of Columbia Court of Appeals. Matter of Hager, 19 Mass. Att'y Disc. R. 192 (2003). In reciprocal discipline the initial decision is given powerful presumptive force, for the sake of comity. Matter of Watt, 430 Mass. 232, 236, 15 Mass. Att'y Disc. R. 624, 628-29 (1999). The case before us is not one of reciprocal discipline, and we do not have enough information to conclude that the District of Columbia's sanction of Hager should be persuasive vis-à-vis the Respondent. We approach the matter de novo.

Bar Counsel also cites Matter of Pool, 4 Mass. Att'y. Disc. R. 112, 115 (1984), in which a lawyer was disbarred for providing government investigators with information leading to a safe deposit box that contained evidence of other crimes his client had committed, all in return for the opportunity to take money from the safe deposit box to pay his fee. The Respondent simply cannot be compared to Pool, whose conduct was both directly adverse to his client and motivated entirely by personal financial concerns.

The matter is not determined by presumptive sanctions announced by the Supreme Judicial Court or guidelines announced by the Board.[13] We must decide the matter in the first instance according to the familiar principle that each case must be decided on its merits and each attorney must receive the disposition most appropriate, taking into account the nature of the offense and all surrounding circumstances, for the purpose of protecting the public and deterring other attorneys from the same behavior. Matter of Moore, 442 Mass. at 291, 20 Mass. Att'y Disc. R. at 407; Matter of Foley, 439 Mass. 324, 333, 19 Mass. Att'y Disc. R. 141, 152 (2003); Matter of Concemi, 422 Mass. 326, 329, 12 Mass. Att'y Disc. R. 64, (1996); Matter of Two Attorneys, SJC-BD-2003-048 (March 1, 2005). While we consider other cases to ensure that the sanction we recommend is not "markedly disparate" from sanctions imposed in similar cases, Matter of Moore, 442 Mass. at 290, 20 Mass. Att'y Disc. R. at 406-07; Matter of Foley, 439 Mass. at 333, 19 Mass. Att'y Disc. R. at 151-52; Matter of Concemi, 422 Mass. at 329, 12 Mass. Att'y Disc. R. at 68, the primary factor is the effect on and the perception of the public and the bar. Matter of Nickerson, 422 Mass. 333, 337, 12 Mass. Att'y Disc. R. 367, 375 (1996).

The Respondent committed essentially four kinds of wrongs, one of them four times. First, he settled the claims of a (large number of) clients without their authority. Second, he terminated his relationship with those clients in a prejudicial manner. Third, he engaged in an improper conflict of interest, allowing his judgment to be affected by the opposing party's offer of significant undisclosed fees. Fourth, he misled clients about the status of their claims. Treating the telephonic misrepresentation and follow-up letter to Duke as a single misrepresentation, and likewise with the telephonic misrepresentation and follow-up letter to Littlewood, the Respondent made four misrepresentations: to Littlewood in July of 1997, to Duke in July of 1997, to all of his clients in his letter of August of 1997, and again in to Duke in his letter of December 1997.

If the Respondent's violations are viewed in isolation from each other, and especially if we accept his argument that his clients were not substantially harmed, a public reprimand might be appropriate. Matter of Dolan, 10 Mass. Atty. Disc. R. 59 (1994) (unauthorized settlement resulted in public reprimand with two years of supervised probation)[15]; Admonition No. 02-13, 18 Mass. Att'y Disc. R. 640 (2002) (public reprimand appropriate for obvious conflict of interest coupled with harm); Matter of Greenidge, 19 Mass. Att'y Disc. R. 188 (2003) (public reprimand for misrepresentations to client concerning the dismissal of the client's case, where the client's claims had little merit and the client suffered "no serious financial injury").

Looking at the entirety of the Respondent's conduct, however, we conclude that a suspension is warranted. As discussed above, the Respondent harmed his clients by his agreement with Warner-Lambert, his performance of the agreement, and the manner of his withdrawal. "Under the ABA Standards [For Imposing Lawyer Sanctions, §4.23 (1986)], '[s]uspension is appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.'" Matter of Thurston, 13 Mass. Att'y Disc. R. 776, 791-92 (1997). Suspension may also be

appropriate for conflict compounded by other factors, with resulting harm. See Matter of An Attorney, No. BD-2005-063, slip op. at 8-10 (December 13, 2005) (dictum). The Respondent compounded his conflict by accepting a secret fee, by making misleading statements to his clients, and settling his clients' claims without authority. A suspension is appropriate.

Matter of Spallina, 15 Mass. Att'y Disc. R. 568 (1999) sets the upper limit for the term of suspension here. Spallina received a two-year suspension. While post-divorce proceedings were pending, Spallina sued his own client to collect fees. He attached funds in a bank account that the probate court's judgment had allocated to the opposing ex-spouse. Spallina then represented another client in a collection action against his divorce client, and again attached the same account. He misrepresented to the probate court that the prevailing ex-spouse did not need to secure judgment with those funds because they "would be there." The probate court later disqualified Spallina after learning of his misconduct, but he continued to represent the divorce client. Spallina's self-interest was exacerbated by the direct and obvious conflict with his client, and it was not counterbalanced by a belief, like the Respondent's, that he was obtaining the best possible result for his client. Spallina's misrepresentation was made to a court, not only a client. See Matter of Foley, 439 Mass. 324, 337-38, 19 Mass. Att'y Disc. R. 141, 157 (2003) (distinguishing misrepresentations to a court from all other representations). Finally, while the Respondent's continuing representation was improper he did not violate a court order. In comparison with Spallina, suspending the Respondent for two years would be a markedly disparate sanction.

We conclude that a one-year suspension is appropriate. We reject a longer suspension because the Respondent should not have to prove his fitness to resume the practice of law. We find that he possesses the requisite learning in the law, and he now understands his ethical duties adequately. We believe it unlikely that he will repeat his conduct.

Our decision finds analogous support in Matter of Buck, No. BD-2005-105 (December 28, 2005), in which the respondent received a one-year suspension. Buck settled a personal injury case without authority and without adequate medical information concerning his client's condition. He directed his secretary to forge the clients' names to releases and then notarized those forged signatures. He received the settlement check (which he transmitted to successor counsel) after he had been discharged. His actions prejudiced his clients, who were compelled to litigate to set aside the settlement. Like the Respondent, Buck violated his duties of loyalty and honesty while settling a matter without authority. Buck's forgery of his client's signature was more egregious that the Respondent's misrepresentations, but his negligence was mitigated by his alcoholism and, unlike the Respondent, he did not receive a secret fee that affected his independent judgment.

Finally, the Respondent has offered to disgorge the improper fee to a charity, asserting that his share of the fee, net of taxes, was $65,000. Tr. 1:27, 30. Apparently, the Respondent has not yet disgorged any portion of the fee, or segregated $65,000 in anticipation of disgorgement. He has not provided this committee with the basis for his representation that his net fee was $65,000. We recommend that, as an additional condition to the Respondent's reinstatement, he provide satisfactory proof that he has contributed his net fee to the Massachusetts Bar Foundation.

FOOTNOTES

[1] The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

[2] References are to the original numbering of the Petition.

[3] The Respondent's only objection to the motion concerned Bar Counsel's allegations in the petition at 15, 16, that the Respondent had "demanded" attorney's fees as part of the settlement with Warner-Lambert.

[4] Unless otherwise noted, all citations to the transcript are to the testimony of the Respondent.

[5] The specific language of the NIX label that the Respondent used as the basis for his class action was not put into evidence. This description of the label is reconstructed from the testimony, the Respondent's correspondence, and the Settlement Agreement between the Respondent and Warner-Lambert.

[6] There is slight variation in the description of the proposed class action among the cover letters in evidence. It has no material effect on the committee's findings and analysis. Cf. Ex. 1 and Ex. 16.

[7] The Respondent testified that 58 people signed, and another three approved the contingent fee agreement by e-mail.

[8] See text quoted in 36, 39, below.

[9] The Respondent had met Zaruba in connection with the Respondent's work for Cabot. Tr. 1:173.

[10] Specifically, the Respondent testified that he spoke with Zaruba "certainly less than ten" and "I think it was more than five" times. Tr. 1:66.

[11] Where this report uses the terms "clients," "his clients," the "ninety clients" and the like to refer to the ninety people whom the Respondent now recognizes were his clients, it does not imply that the Respondent was consciously thinking of them as such at the pertinent time.

[12] Our conclusion is further supported by the Respondent's admission of this violation. On a number of Bar Counsel's charges, however, we have found no violation notwithstanding the Respondent's admissions.

[13] "DR 5 105: Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Professional Judgment of the Lawyer. … (B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will or is likely to be adversely affected by his representation of another client, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5 105(C)" (emphasis supplied).

[14] To the extent guidelines may be found for cases involving conflicts of interest, they are suggestive at best, and stated in generalities that provide little guidance in this case. See Admonition No. 02-13, 18 Mass. Att'y Disc. R. 640 (2002).

[15] See also Matter of Szlachetka, 18 Mass. Atty. Disc. R. 520 (2002) (public reprimand for unauthorized settlement); and Matter of Tiberii, 12 Mass. Atty. Disc. R. 546 (1996) (same).