

William C. Sandelands, Presenter  
Solomon and Weinberg, LLP  
Two University Plaza  
Hackensack, NJ 07601  
(201) 487 6900

DISTRICT X ETHICS COMMITTEE	:	Supreme Court of New Jersey
	:	District X Ethics Committee
Complainant,	:	
	:	Docket No. X-00-019E
vs.	:	
	:	DISCIPLINARY ACTION
KENNETH H. GINSBERG, ESQ.	:	
	:	COMPLAINT FOR
Respondent,	:	MISCONDUCT
	:	R.1:20-4

District X Ethics Committee by way of complaint against  
respondent says:

GENERAL ALLEGATIONS

1. Kenneth H. Ginsberg ("Respondent") was admitted to the Bar of this State in 1974. Respondent maintains an office at 1201 Sussex Turnpike, Mt Freedom, Morris County, New Jersey 07970.

2. In or around late 1987 respondent was retained by Joseph Callaremi, Sr. ("Joseph Sr.") and Rae Callaremi ("Rae") to prepare an estate plan for them. The respondent prepared such a plan with the assistance on Kathy Fiamingo, Esq., an estate attorney.

3. The estate plan documents, which consisted of similar wills, two inter vivos trusts known as GRITs and a cross purchase stock agreement ("CPSA"), were signed by Joseph Sr. and Rae in December 1988. The CPSA was also signed on that same day by Joseph Callaremi, Jr. Anthony Callaremi and Michael Callaremi, who were also shareholders in the car dealerships owned by the Callaremi family.

4. Although the estate plan documents were executed in December 1988 they are all dated in mid June 1988. The respondent has admitted that he intentionally backdated the documents. The backdating was done because of an anticipated change in law, which would have made the GRITs ineffective if dated after mid June 1988.

5. An Attorney Ethics Grievance Form was filed by Joseph Callaremi, Jr., (the "grievant") the grievant on or about February 14, 2000 and an investigation ensued. The grievant alleged, among other things, that the respondent backdated the estate planning documents.

FIRST COUNT

6. Respondent backdated the estate planning documents so that they would be effective assuming a proposed new law became effective. This act of knowingly and intentionally backdating the estate planning documents constitutes violations of RPC 4.1(a)(1) and 8.4(a) and (c).

DISTRICT X ETHICS COMMITTEE

Dated: December 18, 2000

/s/ William C. Sandelands

Hoagland, Longo, Moran, Dunst & Doukas, LLP  
40 Paterson Street, P.O. Box 480  
New Brunswick, NJ 08903  
732-545-4717  
Attorneys for Respondent, Kenneth H. Ginsberg, Esq.

DISTRICT X ETHICS COMMITTEE	:	Supreme Court of New Jersey
	:	District X Ethics Committee
Complainant,	:	
	:	Docket No. X-00-019E
vs.	:	
	:	DISCIPLINARY ACTION
KENNETH H. GINSBERG, ESQ.	:	
	:	ANSWER TO COMPLAINT FOR
Respondent,	:	MISCONDUCT BY KENNETH H.
	:	GINSBERG, ESQ. and REQUEST FOR
	:	HEARING

The respondent Kenneth H. Ginsberg, Esq. by way of Answer to the Complaint for Misconduct says:

1. This respondent admits the allegations contained in Paragraph 1 of the Complaint.

2. This respondent admits the allegations contained in Paragraph 2 of the Complaint.

3. This respondent admits the allegations contained in Paragraph 3 of the Complaint.

4. This respondent admits the allegations contained in Paragraph 4 of the Complaint.

5. This respondent admits the allegations contained in Paragraph 5 of the Complaint.

6. This respondent admits the allegations contained in Paragraph 6 of the Complaint.

**FIRST MATTER IN MITIGATION**

Both prior to and subsequent to the post dating incident of December of 1988 respondent has had an unblemished disciplinary record.

#### **SECOND MATTER IN MITIGATION**

Respondent's conduct in backdating the document in December of 1988 was aberrational in nature. He had never before nor since engaged in any such conduct.

#### **THIRD MATTER IN MITIGATION**

Respondent has been contrite about the backdating incident. He has already testified about it in court and has acknowledged his responsibility. The testimony in Court came in conjunction with a law suit filed by grievant, JR Callaremi, and his brother, Anthony, against their mother Rae Callaremi and other brother, Michael Callaremi. Mr. Ginsberg and others were also parties defendant to this action. The claims against Mr. Ginsberg have been settled. The testimony occurred before Judge McKenzie in the Morris County Chancery Division. During the testimony Mr. Ginsberg made a frank admission about the backdating incident.

#### **FOURTH MATTER IN MITIGATION**

During the pendency of the aforesaid lawsuit against Mr. Ginsberg, he was the subject of an inquiry as to whether he could give favorable testimony to the grievant and his brother, Anthony, in exchange for a dismissal of the law suit against him. Mr. Ginsberg declined this proposal because the testimony requested of him was not true and accurate in Mr. Ginsberg's mind. Therefore, the matter

against him continued, he made the aforesaid admissions in Court and ultimately this Ethics Complaint was filed. Parenthetically, it should be noted that Mr. Ginsberg is not claiming that he was requested to perjure himself at trial because the subject matter of the inquiry concerned matters which were not asked of him during his pretrial deposition. This incident reflects respondent's honesty and reinforces the fact that his conduct was aberrational in nature at the time of the backdating incident.

**FIFTH MATTER IN MITIGATION**

No harm or fraud was worked on any taxing authority or any other entity or individual as a result of the backdating of the documents.

**SIXTH MATTER IN MITIGATION**

Respondent received no profit or benefit from the backdating incident.

**SEVENTH MATTER IN MITIGATION**

Respondent has relocated to Florida and is now teaching college full time.

**EIGHTH MATTER IN MITIGATION**

The backdating incident occurred over 12 years ago. Given the passage of time the rehabilitative goal of discipline would not be advanced by a suspension from the practice of law. Under these circumstances a suspension would be more vindictive than just.

**NINTH MATTER IN MITIGATION**

Respondent engaged in but one transgression which occurred in December of 1988. The absence of other transgressions speaks in favor of either a reprimand or a period of probation instead of a suspension

because in similar cases lawyers who engaged in numerous document falsifications over a period of time received probation rather than suspension. See Matter of Alum, 162 N.J. 313 (N.J.2000). Here respondent's misconduct was less egregious than the respondent's in Alum.

#### **TENTH MATTER IN MITIGATION**

Under the circumstances of this case as indicated in the prior and subsequent Matters in Mitigation the discipline imposed ought to be a reprimand but if any suspension is imposed that suspension itself should be suspended and Mr. Ginsberg put on a period of probation.

#### **ELEVENTH MATTER IN MITIGATION**

Respondent enjoys a good reputation amongst the legal community in Morris County. His prior professional conduct has been trustworthy and he has a good character.

#### **TWELFTH MATTER IN MITIGATION**

Respondent has endured anguish and concern over the backdating incident for the past nine years since grievant and his brother filed litigation against him and threatened him with an ethics complaint.

#### **THIRTEENTH MATTER IN MITIGATION**

The goals of attorney discipline viz. (a) to protect the public; (b) to discourage future misconduct; and (c) to encourage rehabilitation of the errant lawyer will not be served by a period of suspension. Rather the goal of discipline can be accomplished in this case, under these circumstances, by either a reprimand or a period of probation.

#### **FOURTEENTH MATTER IN MITIGATION**

Respondent has been involved in community service over the years. For example he has served as the following:

1. Unpaid counsel to RSVP of Morris County (a not for profit volunteer organization providing assistance to seniors);
2. Counsel and trustee to Dover Visions, Inc. (a not for profit organization generating funds for local improvements);
3. President of Dover Housing Corp. (a not for profit company which generated funds to acquire housing for qualified families);
4. Pro bono counsel to the Boy Scouts of America;
5. Member of District X Ethics Committee from 1982-1984;
6. A Member and officer of the Dover Rotary and Kiwanis;
7. Pro bono counsel on many assigned cases;
8. Pro bono counsel for Morris County Legal Services in civil matters; and
9. Unpaid counsel on many cases where the client could not afford to pay.

**REQUEST FOR HEARING**

Respondent hereby requests a hearing on Matters in Mitigation.

HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, LLP  
Attorneys for the Respondent  
Kenneth H. Ginsberg, Esq.

/s/ THADDEUS J. HUBERT III

DATED: February 1, 2001



DISTRICT X ETHICS COMMITTEE	:	SUPREME COURT OF NEW JERSEY
	:	DISCIPLINARY REVIEW BOARD
Complainant,	:	DOCKET NO: X-01-030E
	:	
vs.	:	HEARING PANEL REPORT:
	:	REPRIMAND
KENNETH H. GINSBERG, ESQ.	:	
	:	
Respondent,	:	

TO: THE HONORABLE CHAIR AND THE MEMBERS OF THE DISCIPLINARY REVIEW BOARD

The District X Ethics Committee Hearing Panel respectfully shows:

**I. PROCEDURAL HISTORY**

1. Kenneth H. Ginsberg, is an attorney-at-law in the State of New Jersey and was admitted to the Bar in 1974. He presently resides in the State of Florida. He does not practice law.

2. On December 18, 2000, the District X Ethics Committee filed a Complaint for Misconduct under Docket Number X-00-019E.

3. On February 1, 2001, Respondent filed and Answer by and through his attorneys, Hoagland, Longo, Moran, Dunst & Doukas, LLP (Thaddeus J. Hubert, Ill, Esq., appearing).

4. The Hearing Panel initially established a hearing dates for March 1, which it carried to March 26, 2001 to permit adequate time for briefing.

5. On February 20, 2001, Respondent's attorney requested a stay of the subject proceedings. He based his request on a third-party

action filed against his client. The issues in that action arise from the underlying facts of this Grievance.

6. As a result of Respondent's request, the Hearing Panel postponed the March 26 hearing.

7. By correspondence dated March 9, 2001, the District X Ethics Committee dismissed the Grievance.

8. On May 1, 2001, the Office of Attorney Ethics ("OAE") advised of a recent Rule change: "Once a formal complaint has been filed, the matter shall not be stayed nor held in abeyance pending completion of the related litigation unless so authorized by the director." The OAE directed reinstatement and the issuance of a new Docket Number, X-01-030E.

9. The Hearing Panel Chair advised all parties and Panel members of OAE's decision and established a new briefing schedule and Hearing date.

10. On July 9, 2001, the Vice Chair of the District X Ethics Committee contacted the Hearing Panel Chair regarding a telephone communication from the Grievant, J.R. Callaremi. Apparently the Grievant disagreed with Presenter's strategy and sought to participate at the time of the hearing with his own counsel present.

11. The Hearing Panel Chair then advised the Presenter of the Grievant's request. The Grievant had not conveyed his request to the Presenter.

12. The Grievant then telephoned The Hearing Panel Chair to discuss the parameters of his participation. He was told that he had the right to attend the Hearing and, in view of his request, that the Panel would permit him or an attorney on his behalf to present testimony and cross examine witnesses, provided he limit the cross examination to the relevant issues in the Complaint. If the Grievant wished to rely upon facts outside the scope of testimony, the Panel would require that he be placed under oath.

13. The scheduled Hearing took place on July 20, 2001 at the offices of Lum, Danzis, Drasco, Positan and Kleinberg, LLC. 103 Eisenhower Parkway, Roseland, New Jersey.

14. The Grievant failed to appear at the hearing, nor did an attorney appear on his behalf. Before taking testimony, the Hearing Panel Chair placed the foregoing communications on the record and the Hearing proceeded without the Grievant. Since the Respondent admitted all allegations of the Complaint, the Grievant's testimony was not required.

15. Steven Ritardi, Esq., participated as Chair. Alan Strelzik, Esq., and Mr. Frank Allocca, participated as Panel members. William Sandelands, Esq. presented the matter. All Exhibits are herewith submitted.

## **II. SYNOPSIS OF ALLEGATIONS**

16. Respondent's Answer admitted all factual and substantive allegations set forth in the Complaint, which read as follows:

a. In or around late 1987, Respondent was retained by Joseph Callaremi, Sr. ("Joseph Sr.") and Rae Callaremi ("Rae") to prepare an estate plan for them. The Respondent prepared such a plan with the assistance of Kathy Fiamingo, Esq., an estate attorney.

b. The estate plan documents, which consisted of similar wills, two inter vivos trusts known as GRITs and a cross purchase stock agreement ("CPSA"), were signed by Joseph Sr. and Rae in December 1988. The CPSA was also signed on that same day by Joseph Callaremi, Jr., Anthony Callaremi and Michael Callaremi, who were also shareholders in the car dealerships owned by the Callaremi family.

c. Although the Estate Plan documents were executed in December 1988, they are all dated in mid June 1988. The Respondent has admitted the he intentionally backdated the documents. The backdating was done because of an anticipated change in law, which would have made the GRITs ineffective if dated after mid June 1988.

d. An Attorney Ethics Grievance Form was filed by Joseph Callaremi, Jr. (the "grievant") on or about February 14, 2000 and an investigation ensued. The grievant alleged, among other things, that the respondent backdated the estate planning documents.

e. [First Count] Respondent backdated the estate planning documents so that they would be effective assuming a proposed new law became effective. This act of knowing and intentionally backdating the

estate planning documents constitutes violations of RPC 4.1(a)(1) and 8.4(a) and(c).

17. Respondent's Answer set forth fourteen separate affirmative defenses in mitigation and requested a hearing on matters in mitigation.

18. Pursuant to Rule 1:20-6(c)(1), a respondent is entitled to a hearing if (1) the pleadings raise a genuine issue of material fact; (2) respondent's answer requests an opportunity to be heard in mitigation; or (3) the presenter requests to be heard in aggravation. There were no disputed material issues of fact. The Presenter did not apply to be heard in aggravation. Thus, the Hearing proceeded on Respondent's case in mitigation.

### **III. FINDINGS OF AND CONCLUSIONS**

19. After reviewing the testimony and exhibits, the Hearing Panel makes the following factual findings and conclusions.

20. Our Courts identify a number of factors that mitigate the discipline imposed. Some of those factors are as follows:

Good reputation and character: Matter of Gillespie, 124 N.J. 81, 87 (1991) (80 letters of good character and reputation received); Matter of Chester, 117 N.J. 360 (1989); Matter of Kaufman, 104 N.J. 509 (1986) ("prior trustworthy professional conduct"); In re Stout, 75 N.J. 321 (1978) (attorney had served in State Legislature for 22 years); In re Sears, 71 N.J. 175, 200 (1976); In re Wilentz, 69 N.J. 121 (1976) (record of achievement at the bar and public service).

No prior disciplinary history: Matter of Gillespie, 124 N.J. 81, 87 (1991); Matter of Kinneer, 105 N.J. 391 (1987); Matter of Orlando,

104 N.J. 344, 351 (1986); Matter of Tusso, 104 N.J. 59 (1986; Matter of Liebowitz, 104 N.J. 175 (1985).

Ready admission of wrongdoing: Matter of Chester, 117 N.J. 360 (1989); Matter of Ritger, 115 N.J. 50 (1989); Matter of Smith, 101 N.J. 568 (1986).

Contrition and remorse: Matter of Vaughn, 13 N.J. 576 (1991); Matter of James, 112 N.J. 580, 588 (1988).

Relative youth and inexperience: Matter of Dienes, 118 N.J. 403 (1990); Matter of Stier, 108 N.J. 455 (1987); Matter of Di Biasi, 102 N.J. 152 (1986); Matter of Kotok, 108 N.J. 314 (1987).

Service to the community: Matter of Stier, 108 N.J. 455 (1987); Matter of Tusso, 104 N.J. 59 (1986).

Exemplary conduct since transgression: Matter of Willis, 114 N.J. 42 (1989); Matter of Farr, 115 N.J. 231(1989).

Circumstances showing little likelihood of repeat offenses: Matter of Farr, 115 N.J. 231 (1989); Matter of Barbour, 109 N.J. 143 (1988); Matter of Templeton, 99 N.J. 365, 376-377 (1985); In re Sears, 71 N.J. 175, 200 (1976).

Cooperation with ethics authorities: Matter of Yacavino, 100 N.J. 50, 54 (1985); In re Mirabelli, 79 N.J. 597 (1979).

Cooperation with law enforcement: Matter of Gillespie, 124 N.J. 81, 87(1991); Matter of Yacavino, 100 N.J. 50,54(1985).

Misconduct an isolated incident: Matter of Yacavino, 100 N.J. 50, 54 (1985).

Misconduct clearly not for personal gain: Matter of Litwin, 104 N.J. 362 (1986); Matter of Yacavino, 100 N.J. 50, 54 (1985); Matter of Esposito, 96 N.J. 122, 132 (1984).

Lack of injury to any client: Matter of Santasiere, 123 N.J. 578 (1991); Matter of James, 112 N.J. 580 (1988); Matter of Fucetola, 101 N.J.5,9 (1985).

Subsequent remedial measures: Matter of Librizzi, 117 N.J. 481 (1990); Matter of Fucetola, 101 N.J. 5, 9 (1985).

Respondent no longer practicing law: Matter of Santasiere, 123 N.J. 578 (1991); Matter of Stein, 97 N.J. 550, 566 (1984).

22. Our Courts also identify a variety of aggravating factors, which include hostility to ethical standards; failure to cooperate with ethics authorities; lack of candor with disciplinary authorities; lack of remorse; prior disciplinary action taken against the attorney; failure to remediate despite opportunities to do so; failure to report out-of-state suspension; misconduct as part of a pattern; status as a law enforcement officer; and status as a judicial clerk; and active participation and continuing criminal conduct. [Citations Omitted.] In this matter, the Panel heard no aggravating factors.

23. Grievant's counsel offered testimony from the following witnesses: Kenneth H. Ginsberg, Esq., the Respondent; Ronald Heymann, a Morris County practitioner; and Michael Callaremi, the brother of Grievant.

24. In late 1987 or early 1988, Joseph Callaremi, Sr., and his wife, Rae Callaremi, retained Kenneth Ginsberg to provide legal services that encompassed, among other things, the preparation of their estate plan. The estate plan was to include wills, as well as

two inter vivos trusts known as Grantor Retained Investment Trusts or "GRITS" and a Cross Purchase of Stock Agreement. The GRITS would transfer to Joseph Callaremi, Sr.'s sons the ownership of certain assets in order to reduce the size of the parents' respective estates upon their death. The Cross Purchase Stock Agreement would prevent alienation of the corporate stock to anyone other than the specified family members.

25. Because the Respondent was not an expert in estate planning, he sought assistance from Ms. Fiamingo, who specialized in estate planning. Ms. Fiamingo, however, cautioned that proposed legislation, if passed, would negate the efficacy of the Cross Purchase Stock Agreement and GRITS if executed after June 1988.

26. Joseph Callaremi, Sr., his wife and their respective sons, (one of them being the Grievant) executed the documents in or about December 1988. The documents, however, were backdated to June 1, 1988. Respondent prepared those documents.

27. Respondent testified that Joseph Callaremi, Sr., requested that he backdate the documents to avoid the effects of the proposed legislation, which never did pass. Mr. Callaremi did not want the estate plan efforts to go to waste. Respondent testified that Mr. Callaremi was a persuasive individual, who appeared ill during the estate-planning phase. Respondent testified that he sensed some urgency and Mr. Callaremi's appearance did factor into Respondent's decision to backdate the documents.

28. In October 1989, Joseph Callaremi, Sr., died. Subsequent to his death, the three sons quarreled over the business and how to run it. The family then divided into two factions: Anthony and J.R. on one side, and their mother and brother Michael Callaremi on the other.

29. Beginning in April 1992, the first of several "bitter" lawsuits ensued, which included professional malpractice claims against Respondent, and most recently the Third-Party Complaint referenced hereinabove.

30. During one of the "mini trials" pending before the Hon. Kenneth Mackenzie, Presiding Judge of the Chancery Division, Morris County, the Respondent testified that J.R. and Anthony Callaremi "suggested" that ethics charges might be brought if he failed to provide favorable testimony at the time of trial. The Respondent viewed that approach as a threat, which he revealed to the Court at trial.

31. Not unlike his testimony before Judge MacKenzie, the Respondent admitted that backdating the documents was a serious mistake. That mistake snowballed into a series of "dark" and difficult issues that ultimately influenced his decision to leave the practice of law, move to Florida and change professions.

32. The Respondent candidly testified that for some time he attempted to justify his transgression through legal anomalies that he now calls "silly". He said that his mistake was a professional disaster, which impacted him and his family.

33. The Respondent testified about the humiliation of having to tell his wife and children about his mistake. That mistake ensnared him in the Callaremi family litigation that now has been pending in one form or another for nearly a decade. Clearly, the litigation and these proceeding took its toll on the Respondent.

#### **MITIGATING FACTORS**

34. Good Reputation and Character: The Grievant testified that he had no prior or subsequent grievances filed against him. He is admitted to the United States Supreme Court, Federal District Court of New Jersey, New Jersey Supreme Court and Florida Supreme Court. He has been a member in good standing of the American, New Jersey, Florida and Morris County Bar Associations, as well as a member of the American Trial Lawyers Association, and is a former member of the New Jersey Supreme Court District X Ethics Committee. Mr. Heymann, a practicing Morris County attorney, testified that he has known the Respondent professionally and personally for many years and vouched for his good character, reputation and professionalism.

35. Prior Dicipinary History: The Respondent has no prior disciplinary history.

36. Ready Admission of Wrongdoing: The Respondent was contrite. He freely admitted to the wrongdoing not only at these proceedings, but under oath in the litigation before Judge MacKenzie.

37. Contrition and Remorse: The Respondent testified that he was "sorry"; that he wished that it had never happened. Any excuse to

justify the action would, from his point of view, be "stupid" and "lame".

38. Relative Youth and Inexperience: At the time of the transgression, the Grievant was 41 years old. He now is 54 years old. The Respondent did not blame his youth or inexperience in estate planning to justify his actions.

39. Service to the Community: The Respondent cited numerous not-for-profit works, including his involvement in numerous volunteer organizations. The Respondent testified that he strongly supported pro bono assignments and freely volunteered his time without expectation of recompense. His attorney marked his C.V. at the time of the hearing (Exhibit "R-1").

40. Exemplary Conduct Since Transgression: Mr. Heymann testified that the Respondent has shown exemplary conduct since the transgression. Indeed, there exists no indication that the Respondent transgressed in any further manner. Also, Mr. Michael Callaremi testified, among other things, that had the pending litigation not been a conflict of interest for the Respondent, the Respondent still would be his attorney.

41. Circumstances Showing Little Likelihood of Repeated Offenses: The Respondent does not presently practice law and resides in the State of Florida. From a practical viewpoint, there is little likelihood of a repeated offense. But should the Respondent return to New Jersey and again practice law in this State, it is clear to this

Panel his remorse, candor and record since the transgression show little likelihood of a repeated offense.

42. Cooperation with Ethics Authorities: Respondent fully cooperated with the ethics authorities in this matter at the investigative hearing stage. Indeed, the Panel Chair recognized the Respondent's willingness to cooperate with his travel plans from Florida to attend the Hearing.

43. Cooperation with Law Enforcement: This factor is not applicable.

44. Misconduct as an Isolated Incident: Respondent's transgression was isolated.

45. Misconduct Clearly Not for Personal Gain: Respondent backdated the documents at his client's plea. The Respondent testified that he believed Joseph Callaremi, Sr. to be ill at the time, which influenced his decision to backdate them. He did not, however, know Joseph Callaremi, Sr. was terminally ill with cancer. His decision was not for personal gain.

46. Lack of Injury to Any Client: Respondent's act did not injure his clients. The feared legislative change never took effect and Joseph Callaremi, Sr., died before the trusts served their purpose. Further, Michael Callaremi testified that Respondent advised him and his brothers, including the Grievant, that he had backdated the documents to avoid the effects of the legislation-referenced

hereinabove. Michael Callaremi stated that he and his brother's understood and agreed with the decision to backdate the documents.

47. Subsequent Remedial Measures: Because the transgression did not impact on potential tax benefits and because of Joseph Callaremi, Sr.'s passing so close in time to the execution, there was no need for remedial measures.

48. Respondent No longer Practicing Law: Respondent no longer practices law.

49. Respondent's counsel cited Matter of Stier, 108 N.J. 455 (1987) to emphasize several additional mitigating factors, one of which is the substantial passage of time. The transgression took place in 1988. Since that time, counsel argued that the Respondent has for nearly thirteen years endured constant anguish and remorse, and still lives under the cloud of seemingly endless litigation. Respondent's counsel also analogized this matter to the Matter of Di Biasi, 102 N.J. 152 (1986) in that Mr. Ginsberg, like the Respondent Di Biasi, yielded to the request of his client to perform an unethical act. There, the Court recognized a six-year time gap as important in weighing the penalty, as well the aberrational nature of the offense, Respondent's unblemished record and the absence of personal venality.

50. The Presenter, however, countered. It was his view the Respondent's actions intended to defraud the IRS and, therefore, was a serious transgression that should carry, at a minimum, a suspension, even if the circumstances warranted suspending an imposed suspension.

51. Respondent's counsel argued that a reprimand was appropriate or, in the alternative and at most, a suspended suspension.

#### **IV. DETERMINATION**

52. The Panel recommends a reprimand.

53. While the Panel recognizes the serious nature of the act, there has been a significant passage of time since the isolated transgression. Thirteen years have lapsed. Litigation relating to the transgression continues. Indeed, such litigation has been on going for almost a decade. The Supreme Court recognizes that the passage of time can and should play a part in the weighing an appropriate penalty. In this instance, the passage of time is greater than in either Matter of Stier, supra, or Matter of Di Biasi, supra.

54. For thirteen years, the Respondent has faced this issue in Court, at home and now at this Hearing. At times, he has been a pawn in the family litigation, has been sued for legal malpractice and has moved his family to another State in an effort to distance himself from the unpleasantness of the events connected to his transgression. The Panel believed the Respondent's testimony to be credible and sincere. Indeed, the Panel has little doubt that Respondent's mistake constantly weighs upon his mind. He regrets and understands the implications of his actions, which he admits were contrary to our Rules of Professional Conduct. The Respondent cannot change the past. He did, however, do the next best thing, which was to pursue a professional, ethical and exemplary career. But for this aberration,

his record remains unblemished. Based on the facts and circumstances of this matter, the Panel finds the mitigating circumstances and the absence of any aggravating circumstances warrants a reprimand, rather than a suspension.

DISTRICT X ETHICS COMMITTEE

By: /s/ STEVEN F. RITALDI, ESQ.  
Hearing Panel Chair

DATED: September 26, 2001