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DEFERENCE TO A HEARING PANEL?:  
EMERGING TRENDS IN THE DISCIPLINARY DECISIONS  
OF THE SUPREME COURT OF NORTH DAKOTA—  
2004-2007

KATHARINE TRAYLOR SCHAFFZIN\*

I. INTRODUCTION

Over the past year, the North Dakota legal community has come under attack from the popular press. Headlines have announced “Lawyers Violating Behavior Policies,”<sup>1</sup> “Attorney Discipline Most in Decades,”<sup>2</sup> “Attorney Loses Law License,”<sup>3</sup> “N.D. Supreme Court Reprimands Attorney,”<sup>4</sup> and “[West Fargo] Attorney Facing Another Sex Charge.”<sup>5</sup> News articles detail the sordid tales of one attorney soliciting sex from female clients in lieu of payment<sup>6</sup> and another charging a client \$275 an hour for work performed by his legal assistant.<sup>7</sup>

The reality, however, is that much of the attention drawn from the press can be attributed to the conduct of very few. Since 2004, the Supreme Court of North Dakota has ruled on only twenty-one recommendations from hearing panels for the dismissal, reprimand, suspension, or disbarment of an attorney licensed to practice in the State.<sup>8</sup> Each of those twenty-one cases can be categorized as involving either incompetence or lack of diligence, fraud, misappropriation, conflicts of interest, unreasonable fees, unauthorized practice of law, harassment or intimidation, or sexual misconduct. Despite the racy headlines, only one of those cases involved any alleged sexual misconduct by a member of the bar.<sup>9</sup>

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1. Steven P. Wagner, *Lawyers Violating Behavior Policies*, FARGO FORUM, Dec. 10, 2006, at A1.

2. *Attorney Discipline Most in Decades*, BISMARCK TRIB., Dec. 16, 2006, available at <http://bismarcktribune.com/articles/2006/12/16/news/state/125288.txt>.

3. *Attorney Loses Law License*, FARGO FORUM, Nov. 14, 2006, at A6.

4. *N.D. Supreme Court Reprimands Attorney*, FARGO FORUM, Dec. 6, 2006, at A12.

5. *W.F. Attorney Facing Another Sex Charge*, FARGO FORUM, Nov. 18, 2006, at A9.

6. *Id.*

7. Janell Cole, *Court to Decide if Fee Was Fair*, FARGO FORUM, Jan. 10, 2006, at A7.

8. See *infra* Part III for a detailed discussion of each of the twenty-one cases considered by the North Dakota Supreme Court. Not included in the total or addressed in this article are cases involving only orders of interim suspension or discipline against judicial officers.

9. *In re Chinquist*, 2006 ND 107, ¶ 4, 714 N.W.2d 469, 471.

This article reviews the disposition of each report and recommendation by a hearing panel of the disciplinary board considered by the Supreme Court of North Dakota for final disposition since 2004. The article identifies three factors as distinguishable from others which may have some bearing on the disposition of those cases. Specifically, in every case where an attorney has consented to discipline, the Supreme Court of North Dakota has adopted the report and recommendation of the hearing panel. In one third of all cases in which an attorney has instead objected to the report and recommendation of the hearing panel, the court has rejected the recommendation of the hearing panel and instead issued a harsher sanction than the one to which the attorney in question initially objected. In another third of those cases where the attorney has objected, the court has nonetheless issued the recommended sanction. And, in the final third of such cases, the court has issued a sanction less severe than that which the hearing panel recommended; those three cases proved to be the only instances since 2004 where the court imposed a sanction less than that recommended by a hearing panel. Additionally, the decision of disciplinary counsel to object to the hearing panel's report and recommendation has also proven significant. More often than not, when the court has considered an objection of disciplinary counsel, the court has also rejected the recommendation of the hearing panel and instead issued a harsher sanction against the attorney.

At least in the recent past, an attorney facing disciplinary charges has been generally better off consenting to discipline, rather than facing the distinct possibility that the court could issue a sanction more severe than that proposed by the hearing panel.<sup>10</sup> In Part II, this article briefly outlines the process of disciplining attorneys in North Dakota. Part III provides a brief summary of the facts, procedure, and legal analysis of each of the twenty-one cases the court has addressed since 2004. Part IV demonstrates the emerging pattern of the court in considering disciplinary cases. Finally, in Part V, this article concludes that attorneys facing disciplinary charges before the current court may receive a harsher sanction from the court by failing to consent to the sanction suggested by a hearing panel.

## II. THE NORTH DAKOTA ATTORNEY DISCIPLINARY PROCESS

All disciplinary actions commenced against an attorney in North Dakota are subject to the same disciplinary process. A surface comprehension of this process is necessary to an understanding of the recent disciplinary cases considered by the Supreme Court of North Dakota. Because this

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10. See *infra* Part IV for a detailed explanation of emerging trends in recent supreme court disciplinary cases.

article concludes that, in the recent past, an attorney who challenged the discipline suggested by a hearing panel was likely to receive a harsher sanction than an attorney who consented to the sanction proposed by that panel, the reader must have some familiarity with the role of a hearing panel and the supreme court in the disciplinary process.

The disciplinary process commences in one of two ways. Most commonly, a member of the public may file a complaint with the disciplinary board of the Supreme Court of North Dakota.<sup>11</sup> Additionally, the disciplinary board or an inquiry committee may initiate disciplinary proceedings against an attorney on the motion of the board or inquiry committee.<sup>12</sup>

In response to a complaint or motion, the disciplinary board commences disciplinary proceedings. The case is then assigned to the inquiry committee<sup>13</sup> with jurisdiction in the locale where the attorney in question is located. The chair of that committee reviews the complaint to determine whether it states grounds for discipline.<sup>14</sup> If the complaint survives summary dismissal by the chair of the appropriate inquiry committee, the chair will assign the case to either a member of the inquiry committee or to disciplinary counsel to conduct an investigation.<sup>15</sup> The lawyer accused of wrongdoing is required to file a written response to the complaint and the complainant is offered the opportunity to file a written response thereto.<sup>16</sup>

At the conclusion of the investigation, the investigating member will prepare a report of his or her findings and distribute it to the members of the inquiry committee.<sup>17</sup> The inquiry committee will consider the report at its next meeting, where both the complainant and the responding attorney will be invited to appear.<sup>18</sup> There, the committee can dismiss the complaint, order diversion from discipline to a lawyer assistance program, issue an admonition, order a consent probation, or instruct disciplinary counsel to file a formal petition with the disciplinary board.<sup>19</sup> Absent an appeal or the

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11. Paul W. Jacobson, *The Discipline Process 2* (Feb. 26, 2007) (unpublished handout presented at *The Disciplinary Process, Trust Accounts, & Recent North Dakota Disciplinary Cases* continuing legal education seminar, on file with the North Dakota Law Review).

12. *Id.* at 1.

13. An inquiry committee is composed of six members of the North Dakota Bar and three members of the public; each member of an inquiry committee is appointed by the president of the State Bar Association of North Dakota for a period of three years. *Id.* at 2. Three inquiry committees currently serve three different geographic regions of the State. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at 3.

18. *Id.*

19. *Id.*

filing of a petition by disciplinary counsel, the proceeding ends without involvement of the supreme court.

Once instructed to do so by an inquiry committee, disciplinary counsel will file a petition with the disciplinary board<sup>20</sup> against the attorney in question.<sup>21</sup> The attorney is again required to answer the petition or the board will deem the allegations contained therein admitted.<sup>22</sup> The chair of the disciplinary board will then appoint a hearing panel from among current or former members of the board,<sup>23</sup> which panel will conduct a hearing into the allegations of the petition. The hearing panel then disposes of the matter by dismissing the petition, issuing a reprimand, ordering a consent probation, or filing a report of its findings and recommendations to the supreme court that the court reprimand, suspend, or disbar the attorney.<sup>24</sup>

If neither the attorney nor disciplinary counsel appeal the order of dismissal, reprimand, or consent probation, the disciplinary proceeding is concluded. If either party to the petition appeals such an order, however, the supreme court will consider the matter.<sup>25</sup> Additionally, the court will consider the matter if the hearing panel files a report of its findings and recommendations.<sup>26</sup> The court may then consider the briefs and oral arguments of the parties before rendering its decision to dismiss the petition or to issue sanctions.

### III. RECENT NORTH DAKOTA DISCIPLINARY CASES

Since 2004, only twenty-one cases involving attorney discipline have reached the Supreme Court of North Dakota for final decision.<sup>27</sup> Because those cases are organized on the basis of the attorney in question, rather

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20. The disciplinary board is comprised of seven lawyers (one from each judicial district) and three members of the public at large. *Id.* at 5. The supreme court appoints the attorney members of the board after selecting each from a list of three nominees prepared by the State Bar Association of North Dakota's Board of Governors. *Id.* A committee consisting of the president of the State Bar Association, the Attorney General of the State of North Dakota, and the chair of the Judicial Conference nominates the members of the public at large. *Id.* All members serve terms of three years and are limited to serving two consecutive terms. *Id.*

21. *Id.* Additionally, disciplinary counsel may at any time file with the Supreme Court of North Dakota evidence that the attorney has committed misconduct and presents a substantial threat to the public accompanied by a proposed form of order for interim suspension. *Id.* at 9. The court may, thus, order the immediate suspension of an attorney while the formal proceedings continue. *Id.*

22. *Id.* at 5.

23. *Id.*

24. *Id.*

25. *Id.* at 6.

26. *Id.*

27. Not included in this total are cases involving orders of interim suspension or discipline against judicial officers. For an explanation of an order of interim suspension, see *supra* note 21.

than by each specific instance of alleged misconduct, disciplinary cases reaching the supreme court often involve multiple and distinct instances of misconduct.<sup>28</sup> Thus, these cases often defy classification into only one type of violation of the North Dakota Rules of Professional Conduct. Nonetheless, this article classifies each case by the most apparent type of alleged violation: incompetence or lack of diligence, fraud, misappropriation, conflicts of interest, unreasonable fees, unauthorized practice, harassment or intimidation, or sexual misconduct. A discussion of each of the twenty-one cases addressed by the court follows.

#### A. INCOMPETENCE OR LACK OF DILIGENCE

In the past four years, the Supreme Court of North Dakota has heard more disciplinary actions alleging attorney incompetence or lack of diligence than any other violation. The sanctions imposed for such violations have ranged from dismissal to disbarment. The violations involved Rules 1.1, 1.3, 1.4, and 3.3 of the North Dakota Rules of Professional Conduct, regarding competence, diligence, communication, and candor to the tribunal respectively.

In the first of these cases considered since 2004, *In re Secrest*,<sup>29</sup> the Supreme Court of North Dakota accepted the recommendation of a hearing panel that the court reprimand Attorney T.L. Secrest for failing to communicate to his client or the trustees of her irrevocable trust that the purpose of creating the trust was to minimize estate taxes, thus failing to give effect to the purpose of the trust.<sup>30</sup> Attorney Secrest stipulated that his actions violated Rule 1.1 of the North Dakota Rules of Professional Responsibility,<sup>31</sup> requiring competence, and Rule 1.4,<sup>32</sup> requiring adequate communication with a client.<sup>33</sup> Accordingly, he consented to the discipline recommended by the hearing panel—reprimand.<sup>34</sup> In light of the agreement between disciplinary counsel and Attorney Secrest, the court issued a reprimand.<sup>35</sup>

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28. *E.g.*, *In re Chinquist*, 2006 ND 107, ¶ 5, 714 N.W.2d 469, 471 (considering misappropriation and sexual misconduct).

29. 2004 ND 180, 687 N.W.2d 251.

30. *In re Secrest*, ¶ 2, 687 N.W.2d at 252.

31. Rule 1.1 provides in pertinent part that “[a] lawyer shall provide competent representation to a client.” N.D. R. PROF’L CONDUCT 1.1.

32. Rule 1.4(b) provides that “[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” N.D. R. PROF’L CONDUCT 1.4(b).

33. *In re Secrest*, ¶ 2, 687 N.W.2d at 252.

34. *Id.*

35. *Id.*

One month later, in *In re Peterson*,<sup>36</sup> the Supreme Court of North Dakota rejected the recommendation of a hearing panel that Donald L. Peterson be suspended for one year and, instead, ordered his disbarment.<sup>37</sup> In that case, Attorney Peterson agreed to represent Robert Taylor in his appeal of a divorce action, although he allegedly never pursued such an appeal, as well as in bringing a contempt proceeding against Taylor's ex-wife.<sup>38</sup> On May 15, 2003, Taylor called the Ward County Clerk's office and determined that Peterson had not yet filed the contempt proceeding, in direct contravention of Peterson's alleged statement to Taylor only one day earlier.<sup>39</sup> Peterson did not file the contempt proceeding until May 16, 2003, when he included an affidavit allegedly notarized by Peterson and purportedly signed by Taylor under oath.<sup>40</sup> Taylor did not sign the affidavit.<sup>41</sup>

In another matter, Peterson's client allegedly retained a new attorney to inquire into the status of his case after Peterson allegedly failed to communicate with him.<sup>42</sup> Peterson allegedly told the new attorney that the case had been dismissed and allegedly prepared an order dismissing the complaint purportedly signed by Judge Gary A. Holum; Judge Holum did not sign such an order.<sup>43</sup>

The hearing panel found violations of Rule 1.4 of the North Dakota Rules of Professional Conduct,<sup>44</sup> requiring communication, and Rule 3.3,<sup>45</sup> requiring candor to the tribunal, among others.<sup>46</sup> Accordingly, the hearing panel recommended that the court suspend Peterson for one year.<sup>47</sup> Although neither Peterson nor disciplinary counsel filed objections to the report of the hearing panel, the court requested that both parties file briefs on the issue.<sup>48</sup> Because Peterson's conduct involved false swearing and dishonesty, fraud, or deceit reflecting adversely on his fitness to practice

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36. 2004 ND 205, 689 N.W.2d 364.

37. *In re Peterson*, ¶ 13, 689 N.W.2d at 366.

38. *Id.* ¶ 2, 689 N.W.2d at 364.

39. *Id.* ¶ 3.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* ¶ 7, 689 N.W.2d at 365.

44. Rule 1.4(b) provides in pertinent part that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." N.D. R. PROF'L CONDUCT 1.4(b).

45. Rule 3.3(1) & (2) provides in pertinent part that "a lawyer shall not knowingly make a false statement of fact or law to a tribunal . . . or offer evidence that the lawyer knows to be false." N.D. R. PROF'L CONDUCT 3.3(1) & (2).

46. *In re Peterson*, ¶ 12, 689 N.W.2d at 365.

47. *Id.* at 366.

48. *Id.*

law, the court rejected the recommended sanction of the hearing panel and instead ordered disbarment.<sup>49</sup>

More than six months later, in *In re Edin*,<sup>50</sup> a hearing panel recommended a six-month suspension for attorney Charles T. Edin for his lack of diligence and communication in multiple cases.<sup>51</sup> Edin admitted that his conduct violated Rule 1.3 of the North Dakota Rules of Professional Conduct,<sup>52</sup> requiring diligence, and Rule 1.4,<sup>53</sup> requiring communication, among others.<sup>54</sup> Nonetheless, disciplinary counsel filed objections to the hearing panel's recommendation, arguing that Edin's neglect in pursuing his clients' cases amounted to abandonment of his practice; disciplinary counsel asked the Supreme Court of North Dakota to issue a two-year suspension.<sup>55</sup> The court rejected the recommendation of the hearing panel and instead issued the two-year suspension disciplinary counsel had requested.<sup>56</sup>

Later that same month, the supreme court suspended William P. Vela for one-year, accepting a hearing panel's finding that Vela neglected his client's application for asylum.<sup>57</sup> In *Vela*, an immigration judge instructed Attorney Vela on May 14, 2001, to collect and present evidence prior to the next hearing on July 2, 2003, that his client's Nepalese passport was fake.<sup>58</sup> Despite having two years to collect and present such evidence, Vela allegedly failed to do so and allegedly failed to even notify his client that he needed to collect such information.<sup>59</sup> The hearing panel found that Vela's conduct violated Rule 1.3 of the North Dakota Rules of Professional Conduct,<sup>60</sup> requiring diligence, and Rule 1.4,<sup>61</sup> requiring communication,

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49. *Id.*

50. 2005 ND 109, 697 N.W.2d 727.

51. *In re Edin*, ¶ 1, 697 N.W.2d at 728-29.

52. Rule 1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." N.D. R. PROF'L CONDUCT 1.3.

53. Rule 1.4 provides in pertinent part that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." N.D. R. PROF'L CONDUCT 1.4.

54. *In re Edin*, §§ 2-8, 697 N.W.2d at 729-30.

55. *Id.* §§ 8-10, 697 N.W.2d at 730-31.

56. *Id.* ¶ 14, 697 N.W.2d at 731.

57. *In re Vela*, 2005 ND 119, ¶ 14, 699 N.W.2d 839, 841.

58. *Id.* ¶ 4, 699 N.W.2d at 840.

59. *Id.*

60. Rule 1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." N.D. R. PROF'L CONDUCT 1.3.

61. Rule 1.4 provides in pertinent part that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." N.D. R. PROF'L CONDUCT 1.4.



among others, and recommended a one-year suspension.<sup>62</sup> The court found that Vela's untimely letter objections to the recommendation of the hearing panel were insufficient to avoid a determination that the accusations against Vela should be deemed admitted.<sup>63</sup> Thus, the court adopted the recommendation of the hearing panel and issued a one-year suspension.<sup>64</sup>

The following month, the Supreme Court of North Dakota, in *In re Sundby*,<sup>65</sup> accepted a hearing panel's recommendation that the court suspend Elizabeth Jane Sundby for six months for her lack of diligence in seven matters and her failure to communicate with six clients.<sup>66</sup> Sundby stipulated that her misconduct violated Rule 1.3 of the North Dakota Rules of Professional Conduct,<sup>67</sup> requiring diligence, and Rule 1.4,<sup>68</sup> requiring communication, among others.<sup>69</sup> The court ordered a six-month suspension, to which Sundby consented.<sup>70</sup>

Several weeks later, the Supreme Court of North Dakota declined to sanction attorney Michael R. Hoffman after he incorrectly calculated the filing deadline for his client's petition for post-conviction relief.<sup>71</sup> In *Hoffman*, Attorney Hoffman objected to the hearing panel's recommendation that the court issue a reprimand.<sup>72</sup> The court agreed with Hoffman after determining that Hoffman's actions constituted a singular act of negligence, unlikely to recur, for which no sanction was warranted.<sup>73</sup> Accordingly, the court dismissed the complaint.<sup>74</sup>

The following year, in *In re McKechnie*,<sup>75</sup> the Supreme Court of North Dakota ordered a two-year suspension for William E. McKechnie after he failed to timely appeal the denial of post-conviction relief on behalf of his client and after he failed to refund the unearned portion of another client's retainer after he received an interim suspension.<sup>76</sup> A hearing panel

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62. *In re Vela*, ¶ 13, 699 N.W.2d at 841.

63. *Id.* ¶ 7, 699 N.W.2d at 840.

64. *Id.* ¶ 14, 699 N.W.2d at 841.

65. 2005 ND 135, 701 N.W.2d 863.

66. *In re Sunby*, ¶ 17, 701 N.W.2d at 865.

67. Rule 1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." N.D. R. PROF'L CONDUCT 1.3.

68. Rule 1.4 provides in pertinent part that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." N.D. R. PROF'L CONDUCT 1.4.

69. *In re Sundby*, ¶ 10, 701 N.W.2d at 864.

70. *Id.* ¶ 12, 701 N.W.2d at 865.

71. *In re Hoffman*, 2005 ND 153, ¶ 18, 703 N.W.2d 345, 352.

72. *Id.* ¶ 1, 703 N.W.2d at 346.

73. *Id.* ¶ 17, 703 N.W.2d at 352.

74. *Id.* ¶ 19.

75. 2006 ND 2, 708 N.W.2d 310.

76. *In re McKechnie*, ¶¶ 11-15, 708 N.W.2d at 312.

concluded that McKechnie violated Rule 1.1 of the North Dakota Rules of Professional Conduct, requiring competence,<sup>77</sup> Rule 1.3, requiring diligence,<sup>78</sup> and Rule 1.5,<sup>79</sup> requiring that fees be reasonable, among others.<sup>80</sup> Attorney McKechnie stipulated to the alleged misconduct and consented to the two-year suspension recommended by the hearing panel.<sup>81</sup> Accordingly, the court issued a two-year suspension.<sup>82</sup>

Later that same year, in *In re Balerud*,<sup>83</sup> the Supreme Court of North Dakota suspended Lee J. Balerud for six months for missing scheduled client meetings and a mediation, for arriving late to multiple court appearances, and for disorganization throughout the representation of his client, allegedly resulting in an unfavorable jury verdict against his client.<sup>84</sup> In reaching its decision, the court considered the findings of the hearing panel that Balerud's conduct violated Rule 1.1 of the North Dakota Rules of Professional Conduct,<sup>85</sup> requiring competence, and Rule 1.3,<sup>86</sup> requiring diligence, among others.<sup>87</sup> Hearing no objection to the report and recommendation of the hearing panel, the court accepted its recommendation and ordered Balerud suspended for six months.<sup>88</sup>

## B. FRAUD

The Supreme Court of North Dakota has heard five disciplinary cases involving fraud or deceit since 2004. The sanctions ordered have varied from a public reprimand to disbarment.

In 2005, the supreme court followed the recommendations of separate hearing panels that the court disbar attorneys Richard C. Wilkes<sup>89</sup> and Thomas K. Schoppert.<sup>90</sup> In both cases, the attorneys at issue had been

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77. Rule 1.1 provides in pertinent part that “[a] lawyer shall provide competent representation to a client.” N.D. R. PROF'L CONDUCT 1.1.

78. Rule 1.3 provides that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.” N.D. R. PROF'L CONDUCT 1.3.

79. Rule 1.5(a) provides in pertinent part that “[a] lawyer's fee shall be reasonable.” N.D. R. PROF'L CONDUCT 1.5(a).

80. *In re McKechnie*, ¶ 8, 708 N.W.2d at 311.

81. *Id.* ¶ 8,11, 708 N.W.2d at 311-12.

82. *Id.* ¶ 11, 708 N.W.2d at 312.

83. 2006 ND 164, 719 N.W.2d 329.

84. *In re Balerud*, ¶ 14, 719 N.W.2d at 331.

85. Rule 1.1 provides in pertinent part that “[a] lawyer shall provide competent representation to a client.” N.D. R. PROF'L CONDUCT 1.1.

86. Rule 1.3 provides that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.” N.D. R. PROF'L CONDUCT 1.3.

87. *In re Balerud*, ¶ 8, 719 N.W.2d at 330.

88. *Id.* ¶ 14, 719 N.W.2d at 331.

89. *In re Wilkes*, 2005 ND 168, ¶ 7, 704 N.W.2d 809, 809.

90. *In re Schoppert*, 2005 ND 45, ¶ 6, 693 N.W.2d 19, 20.

convicted on tax evasion charges.<sup>91</sup> The respective hearing panels recommended disbarment, to which both attorneys consented.<sup>92</sup> Accordingly, the court in each instance ordered disbarment.<sup>93</sup>

The following year, the court suspended John T. Korsmo for six months after his sentence of probation for making false and fictitious statements in a federal investigation.<sup>94</sup> In *In re Korsmo*, Korsmo affirmatively denied knowledge of how the Clayburgh campaign obtained the contact information of Home Loan Bank executives invited to a fundraising event.<sup>95</sup> Korsmo later claimed that his spouse forwarded the names to the campaign, although he had denied having knowledge of that fact when initially questioned in the investigation.<sup>96</sup>

A hearing panel found that Korsmo violated Rule 1.2(A)(2) of the North Dakota Rules of Lawyer Discipline<sup>97</sup> because his conduct reflected adversely on his honesty, trustworthiness, or fitness to practice law.<sup>98</sup> Because providing the information to the Clayburgh campaign was not illegal, the hearing panel found that Korsmo's act in lying to cover up such action was mitigated and recommended a two-year suspension.<sup>99</sup> Attorney Korsmo filed objections to the hearing panel's recommended sanction.<sup>100</sup>

The court agreed with the hearing panel that disbarment was inappropriate in light of the mitigating circumstances, but rejected its recommendation of a two-year suspension.<sup>101</sup> Because Korsmo's statement was not made under oath and conferred no personal benefit to him, the court found that a lesser sanction of a six-month suspension beginning at the end of his criminal probation was a sufficient sanction.<sup>102</sup>

Later that same year, the Supreme Court of North Dakota ordered only a reprimand of Attorney William P. Harrie where an insurance carrier retained him to represent an insured driver who had died since her involvement in a car accident.<sup>103</sup> In *In re Edison*, Harrie had served an answer to

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91. *In re Wilkes*, ¶ 2, 704 N.W.2d at 809; *In re Schoppert*, ¶ 1, 693 N.W.2d at 20.

92. *In re Wilkes*, ¶¶ 2, 5, 704 N.W.2d at 809; *In re Schoppert*, ¶¶ 3-4, 693 N.W.2d at 20.

93. *In re Wilkes*, ¶ 7, 704 N.W.2d at 809; *In re Schoppert*, ¶ 6, 693 N.W.2d at 20.

94. *In re Korsmo*, 2006 ND 148, ¶ 10, 718 N.W.2d 6, 9.

95. *Id.* ¶ 3, 718 N.W.2d at 7.

96. *Id.*

97. Rule 1.2(A)(2) provides in pertinent part that a lawyer violates the Rules of Lawyer Discipline if his or her conduct "reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer." N.D. R. LAWYER DISCIPLINE 1.2(A)(2).

98. *In re Korsmo*, ¶ 5, 718 N.W.2d at 7.

99. *Id.* ¶ 4.

100. *Id.* ¶ 5.

101. *Id.* ¶ 8, 718 N.W.2d at 8.

102. *Id.* ¶ 9, 718 N.W.2d at 8-9.

103. *In re Edison*, 2006 ND 250, ¶ 18, 724 N.W.2d 579, 585.

plaintiff's complaint on March 27, 2002, nine days after receiving the file and fourteen days before learning that the driver was deceased.<sup>104</sup> On the same day that Harrie learned of his client's death, he allegedly filed an amended answer alleging insufficient service.<sup>105</sup> After receiving proof of service from plaintiff's counsel, Harrie informed opposing counsel that his client was dead at the time of service rendering service on her husband improper.<sup>106</sup> Harrie won summary judgment against the plaintiff because the statute of limitations had run, but the court reversed and remanded to determine whether the defendant was equitably estopped from arguing that the statute of limitations had run.<sup>107</sup>

A hearing panel ordered the dismissal of the disciplinary complaint after finding that Harrie did not knowingly deceive opposing counsel in filing the answer to the complaint without notifying plaintiff's counsel that the driver was deceased.<sup>108</sup> In response, disciplinary counsel petitioned the court for review of the hearing panel's disposition of the matter.<sup>109</sup> Although Attorney Harrie opposed the petition of disciplinary counsel,<sup>110</sup> the court reviewed the hearing panel's decision and found that Harrie violated Rule 4.1 of the North Dakota Rules of Professional Responsibility,<sup>111</sup> among others, when he filed the amended complaint with actual knowledge that his client was dead.<sup>112</sup> Accordingly, the court issued a public reprimand.<sup>113</sup>

That same week, in *In re Stensland*,<sup>114</sup> the court issued the harsher sanction of a sixty-day suspension against Monty J. Stensland when he allegedly falsely signed his client's name on a bankruptcy petition.<sup>115</sup> William Stuckey retained Stensland to file a bankruptcy petition on his behalf before new bankruptcy laws took effect on October 15, 2005.<sup>116</sup> When Stuckey was unable to contact Stensland as the deadline for filing approached, he retained another attorney, who filed the petition on October

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104. *Id.* ¶ 3, 724 N.W.2d at 580-81.

105. *Id.*

106. *Id.*

107. *Id.* ¶ 4.

108. *Id.* ¶ 6, 724 N.W.2d at 582.

109. *Id.*

110. *Id.* ¶ 8.

111. Rule 4.1 provides that "a lawyer shall not make a statement to a third person of fact or law that the lawyer knows to be false." N.D. R. PROF'L CONDUCT 4.1.

112. *Id.* ¶ 16, 724 N.W.2d at 584.

113. *Id.* ¶ 18, 724 N.W.2d at 585.

114. 2006 ND 251, 725 N.W.2d 191.

115. *In re Stensland*, ¶ 12, 725 N.W.2d at 193.

116. *Id.* ¶ 2, 725 N.W.2d at 191.

14, 2005.<sup>117</sup> One hour and a quarter after Stuckey's new attorney filed his petition, Stensland filed a petition on Stuckey's behalf, bearing a signature for Stuckey not in Stuckey's own handwriting.<sup>118</sup>

A hearing panel found that Stensland violated Rule 3.3 of the North Dakota Rules of Professional Responsibility,<sup>119</sup> among others, when he allegedly signed Stuckey's name under penalty of perjury although he had no authorization to sign on Stuckey's behalf.<sup>120</sup> In the absence of any objection by Attorney Stensland, the court followed the recommendation of the hearing panel and suspended Stensland for sixty days.<sup>121</sup>

### C. MISAPPROPRIATION

The Supreme Court of North Dakota has sanctioned only three attorneys since 2004 for conduct involving the mishandling of client funds. Not surprisingly, the sanctions varied from public reprimand to disbarment depending on the harm the client in each case suffered.

In 2005, the court followed the recommendation of a hearing panel that the court reprimand Michael Ward for his alleged negligence in failing to keep duplicate billing records.<sup>122</sup> In *In re Ward*, a hearing panel determined that Ward violated Rule 1.15(f) of the North Dakota Rules of Professional Conduct<sup>123</sup> by allegedly failing to keep duplicate billing records of fees paid in advance and failing to fully account for a portion of those fees paid.<sup>124</sup> Although both disciplinary counsel and Attorney Ward filed objections to the report and recommendation of the hearing panel,<sup>125</sup> the court determined that Ward's negligence warranted the reprimand that the hearing panel recommended.<sup>126</sup>

The next year, the Supreme Court of North Dakota rejected a hearing panel's recommendation of a thirty-day suspension for C. Charles Chinquist

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117. *Id.*

118. *Id.* ¶ 3.

119. Rule 3.3 provides in pertinent part that "a lawyer shall not knowingly make a false statement of fact or law to a tribunal or offer evidence that the lawyer knows to be false." N.D. R. PROF'L CONDUCT 3.3.

120. *In re Stensland*, ¶ 8, 725 N.W.2d at 192-93.

121. *Id.* ¶ 9, 725 N.W.2d at 193.

122. *In re Ward*, 2005 ND 144, ¶ 17, 701 N.W.2d 873, 878.

123. Rule 1.15(f) provides in pertinent part that "[a] lawyer shall maintain or cause to be maintained on a current basis records sufficient to demonstrate compliance with the provisions of this rule. Such records shall be preserved for at least six years after termination of the representation." N.D. R. PROF'L CONDUCT 1.15(f).

124. *In re Ward*, ¶ 4, 701 N.W.2d at 875.

125. *Id.* ¶ 15, 701 N.W.2d at 878. Disciplinary counsel argued that the court should suspend Attorney Ward. *Id.* Attorney Ward argued that an admonishment would be more appropriate. *Id.*

126. *Id.* ¶ 16.

in *In re Chinquist*<sup>127</sup> and, instead, ordered a suspension of six months.<sup>128</sup> That case involved allegations that Chinquist failed to safekeep his client's property or to properly keep records regarding his bills or fees paid.<sup>129</sup> Chinquist began representing a female client in her attempt to regain custody of her child after a period of incarceration, although the two never entered into a written fee agreement.<sup>130</sup> The client allegedly paid Chinquist "between \$13,500 and \$15,000 in the form of money orders and cash delivered to Chinquist's home and office in a manila envelope, a Cracker Jack box, and an Altoids tin."<sup>131</sup> He allegedly failed to provide the client with any billing statements or any accounting of fees paid during the representation and he allegedly failed to deposit any fees received from the client into a trust account.<sup>132</sup> Additionally, Chinquist allegedly stopped keeping time records related to the representation early on and, upon his interim suspension, allegedly shredded whatever documentation he had kept.<sup>133</sup>

In addition to the misconduct alleged regarding Chinquist's fees and billing practices, Chinquist allegedly engaged in a sexual relationship with his client after determining that she was legally emotionally disabled.<sup>134</sup> At some point before custody of her son was restored, Chinquist told her that he could no longer represent her in the custody matter.<sup>135</sup>

A hearing panel considered the petition against Chinquist and determined that Chinquist's fee and billing practices violated Rules 1.5(a) and (b) and 1.15(a) and (f) of the North Dakota Rules of Professional Conduct, among others.<sup>136</sup> The hearing panel, however, determined that Chinquist

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127. 2006 ND 107, 714 N.W.2d 469.

128. *In re Chinquist*, ¶ 24, 714 N.W.2d at 476.

129. *Id.* ¶ 3, 714 N.W.2d at 470-71.

130. *Id.* ¶ 2, 714 N.W.2d at 470.

131. *Id.* ¶ 3. The client in this case also paid Chinquist \$5000 to be applied to the fees due from another client in an unrelated matter. *Id.*

132. *Id.*

133. *Id.* at 471.

134. *Id.* ¶ 4.

135. *Id.*

136. *Id.* ¶ 6. Rule 1.5(a) provides in pertinent part that "[a] lawyer's fee shall be reasonable." N.D. R. PROF'L CONDUCT 1.5(a). Rule 1.5(b) provides in pertinent part that, "[w]hen the lawyer has not regularly represented the client, the basis, rate, or amount of the fee shall be communicated to the client before or within a reasonable time after commencing the representation." N.D. R. PROF'L CONDUCT 1.5(b). Rule 1.15(a) provides in pertinent part that "[a] lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property." N.D. R. PROF'L CONDUCT 1.15(a). Rule 1.15(f) provides in pertinent part that "[a] lawyer shall maintain or cause to be maintained on a current basis records sufficient to demonstrate compliance with the provisions of this rule. Such records shall be preserved for at least six years after termination of the representation." N.D. R. PROF'L CONDUCT 1.15(f).

did not violate Rule 1.7(a)<sup>137</sup> when he allegedly engaged in a sexual relationship with an emotionally disabled client during representation related to a custody matter.<sup>138</sup> The hearing panel recommended a thirty-day suspension.<sup>139</sup>

Disciplinary counsel and Attorney Chinquist each objected to the report and recommendation of the hearing panel.<sup>140</sup> Disciplinary counsel urged the court to issue a two-year suspension against Chinquist,<sup>141</sup> while Chinquist himself argued that a reprimand was a more appropriate sanction.<sup>142</sup> The court accepted that part of the hearing panel's report which found that Chinquist's fee and billing practices violated Rules 1.5(a) and (b) and 1.15(a) and (f) of the North Dakota Rules of Professional Conduct.<sup>143</sup> The court, however, rejected that part of the hearing panel's report finding that Chinquist did not violate Rule 1.7(a) when he engaged in a sexual relationship with his emotionally disabled client.<sup>144</sup> Upon finding this additional violation and in light of other aggravating factors, the court issued a six-month suspension.<sup>145</sup>

In *In re Buresh*,<sup>146</sup> decided the following year, the court disbarred Eugene F. Buresh for allegedly misappropriating client funds.<sup>147</sup> In that case, Buresh allegedly deposited the proceeds of the sale of a client's farm into his office trust fund account and then used \$28,500 from that fund to pay office expenses.<sup>148</sup> A hearing panel found that Buresh violated Rules 1.15(a) and (b) of the North Dakota Rules of Professional Conduct<sup>149</sup> by

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137. Rule 1.7(a) provides in pertinent part that “[a] lawyer shall not represent a client if the lawyer’s ability to consider, recommend, or carry out a course of action on behalf of the client will be adversely affected by the lawyer’s responsibilities to another client or to a third person, or by the lawyer’s own interests.” N.D. R. PROF’L CONDUCT 1.7(a).

138. *In re Chinquist*, ¶ 6, 714 N.W.2d at 471.

139. *Id.*

140. *Id.* ¶ 1, 714 N.W.2d at 470.

141. *Id.* ¶ 8, 714 N.W.2d at 475.

142. *Id.*

143. *Id.* ¶ 9, 714 N.W.2d at 472-73.

144. *Id.* ¶ 18, 714 N.W.2d at 475.

145. *Id.* at 476.

146. 2007 ND 8, 726 N.W.2d 210.

147. *In re Buresh*, ¶ 15, 726 N.W.2d 210, 214-15.

148. *Id.* ¶ 4, 726 N.W.2d at 212.

149. Rule 1.15(a) provides in pertinent part that “[a] lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property.” N.D. R. PROF’L CONDUCT 1.15(a). Rule 1.15(b) provides in pertinent part that “[u]pon receiving, in connection with a representation, funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. . . . [A] lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.” N.D. R. PROF’L CONDUCT 1.15(b).

misappropriating client funds and recommended an eighteen-month suspension.<sup>150</sup>

Although neither party filed objections to the hearing panel's report and recommendation, the court requested each party to brief the issue.<sup>151</sup> Disciplinary counsel argued to the court that Buresh should be disbarred, while Buresh argued that a six-month suspension would be more appropriate.<sup>152</sup> The court considered the positions of the hearing panel, disciplinary counsel, and Buresh himself before identifying the following as aggravating factors favoring harsher disciplinary action: Buresh had allegedly failed to repay the client; he allegedly repeatedly lied to the third person entitled to receive the funds; and, the amount involved was a large sum of money.<sup>153</sup> The court ordered the discipline sought by disciplinary counsel and disbarred Attorney Buresh.<sup>154</sup>

#### D. CONFLICTS OF INTEREST

In the period from 2004 through 2007, the Supreme Court of North Dakota has acted on two hearing panel recommendations concerning conflicts of interest. In *In re Christensen*,<sup>155</sup> the court accepted the recommendation of a hearing panel that Douglas A. Christensen be reprimanded for his misconduct.<sup>156</sup> In *In re Bullis*,<sup>157</sup> however, the court suspended James R. Bullis for ninety days after rejecting the recommendation of a hearing panel that he be merely reprimanded for his misconduct.<sup>158</sup>

In 2005, the Supreme Court of North Dakota issued a public reprimand against Attorney Christensen.<sup>159</sup> In that case, University Hotel Development ("UHD") retained Christensen's partners, Jensen and Gaustad, in November 2001 to represent it in its efforts to develop the Hilton Garden Inn in Grand Forks, North Dakota.<sup>160</sup> UHD instructed Gaustad and Jensen not to inform Christensen of the representation because, as a member of the Grand Forks City Council, Christensen would be called upon to vote on matters related to the UHD project.<sup>161</sup> After learning of the representation

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150. *In re Buresh*, ¶ 5, 726 N.W.2d at 212.

151. *Id.*

152. *Id.* ¶ 8, 726 N.W.2d at 213.

153. *Id.* ¶ 13, 726 N.W.2d at 214.

154. *Id.* ¶ 15.

155. 2005 ND 87, 696 N.W.2d 495.

156. *In re Christensen*, ¶ 15, 696 N.W.2d at 498.

157. 2006 ND 228, 723 N.W.2d 667.

158. *In re Bullis*, ¶ 15, 723 N.W.2d 667, 675-76.

159. *In re Christensen*, ¶ 17, 696 N.W.2d at 498.

160. *Id.* ¶ 3, 696 N.W.2d at 495.

161. *Id.*



in mid-January 2002,<sup>162</sup> Christensen allegedly failed to adopt adequate precautions to assess potential conflicts of interest arising from his position as partner to Gaustad and Jensen, and also as a City Council Member.<sup>163</sup>

In an unrelated matter, Christensen represented Stephen Boone, co-trustee to Ralph Boone's trust, in a petition seeking guardianship of Ralph when Ralph married, despite the fact that Ralph was also Christensen's client.<sup>164</sup> In yet another matter, Christensen filed mechanic's liens on behalf of Lumber Mart against homeowners who had purchased homes from Cameo Homes, a client of Jensen.<sup>165</sup> Christensen recognized the conflict when Cameo Homes was first brought into the action through a third-party complaint, but he continued to represent Lumber Mart through settlement, even after he was unable to obtain a waiver of the conflict from Cameo Homes.<sup>166</sup>

Disciplinary counsel and Attorney Christensen entered into a Stipulation and Consent to Discipline, in which both parties agreed that Christensen be reprimanded.<sup>167</sup> Consistent with the Stipulation and Consent, a hearing panel determined that Christensen violated the North Dakota Rules of Professional Conduct cautioning against conflicts of interest in three separate instances.<sup>168</sup> The hearing panel recommended that the court issue a reprimand in accordance with the Stipulation and Consent.<sup>169</sup> Without addressing why the hearing panel's recommended sanction was appropriate, the court issued a reprimand.<sup>170</sup>

The court did not consider its next conflict of interest matter for over a year, when it decided *Bullis*. Attorney Bullis allegedly set up several holding companies to enable Michael Volk to transfer options in Intellisol stock to investors. Bullis allegedly received a five percent commission on the sale of such stock options to a group of investors named the Fargo Capital Group. Bullis, after representing Volk in a sale of stock options to James Ellefson, then represented Ellefson in certain estate planning matters. Bullis later allegedly represented Intellisol in a sale of stock warrants

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162. *Id.*

163. *Id.* ¶ 4, 696 N.W.2d at 495-96.

164. *Id.* ¶¶ 5-7, 696 N.W.2d at 496.

165. *Id.* ¶ 9, 696 N.W.2d at 497.

166. *Id.* ¶ 10.

167. *Id.* ¶¶ 11, 12.

168. *Id.* ¶¶ 11-15. Rule 1.7(a) provides that “[a] lawyer shall not represent a client if the lawyer’s ability to consider, recommend, or carry out a course of action on behalf of the client will be adversely affected by the lawyer’s responsibilities to another client or to a third person, or by the lawyer’s own interests.” N.D. R. PROF’L CONDUCT 1.7(a).

169. *In re Christensen*, ¶ 15, 696 N.W.2d at 498.

170. *Id.* ¶¶ 16, 17.

directly to Ellefson. Ellefson believed that Bullis was representing him in this transaction.<sup>171</sup>

Intellisol later defaulted its creditors, including Ellefson and the Fargo Capital Group, and Bullis represented both Ellefson and Intellisol's landlord, Kevin Christianson, in a workout agreement. Ellefson was unaware that Bullis also represented Christianson. Bullis then allegedly represented Ellefson in renewing his note on Intellisol stock warrants. Bullis allegedly billed both Ellefson and Intellisol for this work on the workout agreement and the renewal of the note.<sup>172</sup>

When Intellisol finally ceased operations, it was taken over by Workforce ROI. Bullis allegedly told Ellefson that he and other investors were interested in purchasing his interests in Workforce ROI; he added that he could not represent Ellefson in such a sale because it would create a conflict of interest. Bullis allegedly recommended that Ellefson contact a new attorney, which advice Ellefson declined. Bullis drafted an agreement by which he and other investors purchased Ellefson's interest.<sup>173</sup>

A hearing panel concluded that Bullis violated Rule 1.7(a)-(c) of the North Dakota Rules of Professional Responsibility<sup>174</sup> because his ability to represent Ellefson was adversely affected by his responsibilities to other clients, third parties, and his own interests.<sup>175</sup> The hearing panel further found that, because Bullis used his knowledge of clients' investments to his advantage and failed to explain to Ellefson the implications of the conflict of interest when he advised Ellefson to obtain independent counsel, he had also violated Rule 1.8(a) and (b).<sup>176</sup> Accordingly, the hearing panel recommended that the court issue a reprimand.<sup>177</sup>

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171. *In re Bullis*, 2006 ND 228, ¶ 7, 723 N.W.2d 667, 669.

172. *Id.* ¶ 8, 723 N.W.2d at 670.

173. *Id.* ¶ 9.

174. Rule 1.7(a) provides that "[a] lawyer shall not represent a client if the lawyer's ability to consider, recommend, or carry out a course of action on behalf of the client will be adversely affected by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests." N.D. R. PROF'L CONDUCT 1.7(a). Rule 1.7(b) provides that "[a] lawyer shall not represent a client when the lawyer's own interests are likely to adversely affect the representation." N.D. R. PROF'L CONDUCT 1.7(b). Rule 1.7(c) provides that "[a] lawyer shall not represent a client if the representation of that client might be adversely affected by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless: (1) [t]he lawyer reasonably believes the representation will not be adversely affected; and (2) [t]he client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved." N.D. R. PROF'L CONDUCT 1.7(c).

175. *In re Bullis*, ¶ 11, 723 N.W.2d at 670.

176. *Id.* Rule 1.8(a) provides that "a lawyer shall not enter into a business, financial or property transaction with a client unless: (1) [t]he transaction is fair and reasonable to the client; and (2) [a]fter consultation, including advice to seek independent counsel, the client consents to the transaction." N.D. R. PROF'L CONDUCT 1.8(a). Rule 1.8(b) provides that "a lawyer shall not

Attorney Bullis objected to the report and recommendation of the hearing panel<sup>178</sup> and disciplinary counsel opposed his argument.<sup>179</sup> The court, nonetheless, accepted the hearing panel's findings that Bullis violated Rule 1.7(a)-(c) of the North Dakota Rules of Professional Responsibility,<sup>180</sup> as well as Rule 1.8(a) and (b).<sup>181</sup> The court, however, held that a reprimand is not a sufficiently harsh sanction where an attorney's simple negligence results in substantial injury to the client.<sup>182</sup> The court, thus, rejected the hearing panel's recommendation that a reprimand was a sufficient sanction.<sup>183</sup> Instead, the court determined that Bullis acted with knowledge resulting in "potential injury, if not actual injury," and suspended Bullis for ninety days.<sup>184</sup>

#### E. UNREASONABLE FEES

Twice since 2004, the Supreme Court of North Dakota has considered recommendations from hearing panels concerning the unreasonable practices of attorneys in charging fees. In *In re Madlom*,<sup>185</sup> the court reprimanded Bruce L. Madlom for allegedly demanding that his client, who had paid Madlom upfront to file a bankruptcy petition on her behalf, also pay her daughter's outstanding legal bill to Madlom before he would file the bankruptcy petition.<sup>186</sup> In *In re Hellerud*,<sup>187</sup> the court accepted the recommendation of a hearing panel that it reprimand Mark R. Hellerud for charging unreasonable fees.<sup>188</sup>

In 2004, the court reprimanded Attorney Madlom and ordered that he refund amounts allegedly overcharged to clients.<sup>189</sup> In that case, Bonnie Bell retained Madlom's services to file a bankruptcy petition for \$750.<sup>190</sup> Bell also agreed to assume responsibility for her adult daughter's

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use information relating to representation of a client to the disadvantage of the client for purposes of furthering either the lawyer's or another person's interest unless after consultation, including advice to seek independent counsel, the client consents." N.D. R. PROF'L CONDUCT 1.8(b).

177. *In re Bullis*, ¶ 11, 723 N.W.2d at 670-71.

178. *Id.* ¶ 1, 723 N.W.2d at 668.

179. *Id.* ¶ 22, 723 N.W.2d at 674.

180. *Id.* ¶ 17, 723 N.W.2d at 673.

181. *Id.* ¶ 21, 723 N.W.2d at 674.

182. *Id.* ¶ 28, 723 N.W.2d at 675-76.

183. *Id.* ¶ 25, 723 N.W.2d at 675.

184. *Id.* ¶ 28, 723 N.W.2d at 675-76.

185. 2004 ND 206, 688 N.W.2d 923.

186. *In re Madlom*, ¶ 3, 688 N.W.2d at 924.

187. 2006 ND 105, 714 N.W.2d 38.

188. *In re Hellerud*, ¶ 1, 714 N.W.2d at 39.

189. *In re Madlom*, ¶¶ 7-11, 688 N.W.2d at 924-25.

190. *Id.* ¶ 2, 688 N.W.2d at 923.

outstanding legal bill in the amount of \$1,157.90 and made arrangements for a payment plan on that amount.<sup>191</sup> Later, Madlom allegedly refused to file Bell's bankruptcy petition until she paid off her daughter's debt to him.<sup>192</sup> Bell terminated Madlom and demanded a refund of the fees paid for the bankruptcy petition which was never filed.<sup>193</sup>

Disciplinary counsel and Attorney Madlom entered into a Stipulation and Consent to Discipline in which Madlom admitted the violations alleged in the petition and accepted discipline in the form of a reprimand.<sup>194</sup> A hearing panel determined that Madlom violated Rule 1.5(a) of the North Dakota Rules of Professional Conduct,<sup>195</sup> among others, when he failed to refund to Bell unearned legal fees for the bankruptcy services that he failed to provide.<sup>196</sup> The hearing panel accepted the parties' Stipulation and Consent and recommended that the court issue a reprimand against Attorney Madlom.<sup>197</sup> The court accepted the report and recommendation of the hearing panel, issued a reprimand, and ordered Madlom to refund to Bell the unearned fees.<sup>198</sup>

The court revisited the issue of unreasonable fees two years later in *Hellerud*.<sup>199</sup> In that case, Mark Hellerud charged Edward Kraft \$275 an hour to administer his brother's estate, valued at approximately \$65,000.<sup>200</sup> Hellerud generally charged \$200 an hour for probate matters, but explained to Kraft that he needed to charge more because he was unfamiliar with North Dakota probate matters.<sup>201</sup> In addition, Hellerud billed Kraft for the time of his legal assistant at the rate of \$275, arguing that his outdated billing system prevented him from distinguishing between the two.<sup>202</sup>

A hearing panel concluded that Hellerud violated Rule 1.5(a) which requires that an attorney's rate be reasonable<sup>203</sup> and recommended that the court reprimand him.<sup>204</sup> Attorney Hellerud filed objections to the hearing

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191. *Id.* ¶¶ 2, 3, 688 N.W.2d at 923-24.

192. *Id.* ¶ 4, 688 N.W.2d at 924.

193. *Id.*

194. *Id.* ¶ 6, 688 N.W.2d at 924.

195. Rule 1.5(a) provides in pertinent part that "[a] lawyer's fee shall be reasonable." N.D. R. PROF'L CONDUCT 1.5(a).

196. *In re Madlom*, ¶ 3, 688 N.W.2d at 924.

197. *Id.* ¶ 7.

198. *Id.* ¶¶ 9, 11, 12, 688 N.W.2d at 924-25.

199. *In re Hellerud*, 2006 ND 105, ¶ 20, 714 N.W.2d 38, 44.

200. *Id.* ¶ 2, 714 N.W.2d at 39-40.

201. *Id.* at 40.

202. *Id.*

203. *Id.* ¶ 5, 714 N.W.2d at 40. Rule 1.5(a) provides in pertinent part that "[a] lawyer's fee shall be reasonable." N.D. R. PROF'L CONDUCT 1.5(a).

204. *Id.* ¶ 5, 714 N.W.2d at 40.

panel's report and recommendation.<sup>205</sup> The court, nonetheless, followed the recommendation of the hearing panel and issued a reprimand and an order that he refund to the estate the amount in which he overbilled it.<sup>206</sup>

#### F. UNAUTHORIZED PRACTICE

Since 2004, the Supreme Court of North Dakota has considered the issue of unauthorized practice only one time.<sup>207</sup> In the case of *In re Giese*,<sup>208</sup> a hearing panel recommended that the court suspend Bryan L. Giese for sixty days for practicing law while suspended and for committing various additional violations in connection with such practice.<sup>209</sup> In that case, Giese had been suspended from the practice of law on June 3, 2003, for ninety days commencing on August 1, 2003.<sup>210</sup> After the suspension was issued, but before it became effective, Giese provided legal services to Ronald and Nancy Getsman.<sup>211</sup> On August 5, 2003, the Getsman's scheduled an appointment to meet with Giese on August 12, 2003.<sup>212</sup> When the Getsman's learned of Giese's suspension, they cancelled their appointment to meet with him.<sup>213</sup> Giese explained to the hearing panel that he was acting in his capacity as legal assistant to Attorney Benjamin Pulkrabek when he anticipated meeting with the Getsmans.<sup>214</sup>

The hearing panel determined that, among other things, Giese violated Rule 5.5 of the North Dakota Rules of Professional Conduct.<sup>215</sup> Thus, the hearing panel recommended that the court suspend him from the practice of law for a period of sixty days.<sup>216</sup> Giese filed objections to the report and recommendation of the hearing panel.<sup>217</sup>

Because the Getsmans believed Giese to be a licensed attorney and because Giese allegedly failed to inform them that he was suspended from the practice of law, the court agreed with the findings of the hearing panel and found that Giese held himself out as licensed to practice law while he

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205. *Id.* ¶ 6.

206. *Id.* ¶ 25, 714 N.W.2d at 44.

207. *In re Giese*, 2006 ND 13, 709 N.W.2d 717.

208. *Id.* ¶ 2, 709 N.W.2d at 718.

209. *Id.* ¶ 1.

210. *Id.* ¶ 2.

211. *Id.* ¶ 3.

212. *Id.*

213. *Id.*

214. *Id.* ¶ 4, 709 N.W.2d at 718-19.

215. *Id.* ¶ 6, 709 N.W.2d at 719. Rule 5.5(d) provides: "A lawyer who is not admitted to practice in this jurisdiction shall not represent or hold out to the public that the lawyer is admitted to practice law in this jurisdiction." N.D. R. PROF'L CONDUCT 5.5(d).

216. *In re Giese*, ¶ 6, 709 N.W.2d at 720.

217. *Id.* ¶ 1, 709 N.W.2d at 718.

was suspended.<sup>218</sup> Because Giese also attempted to mislead the court in an affidavit in which he allegedly certified that he complied with the terms of his suspension, the court found his misconduct to be intentional and issued the recommended sanction of a suspension for sixty days.<sup>219</sup>

#### G. HARASSMENT OR INTIMIDATION

The Supreme Court of North Dakota has considered only one case since 2004 focused primarily on misconduct by an attorney in the form of harassment or intimidation against a member of the public. In *In re Mertz*,<sup>220</sup> the court rejected the recommendation of a hearing panel that it suspend Monty G. Mertz for one month for allegedly attempting to intimidate an individual to dissuade him from proceeding against Mertz's daughter for a vicious dog complaint by threatening the individual with a defamation suit.<sup>221</sup> Instead, the court issued a public reprimand of Mertz.<sup>222</sup>

The matter leading to the reprimand in *Mertz* arose from an incident in a West Fargo park in which Meagan Mertz, Monty Mertz's daughter, allegedly was walking her dogs unleashed.<sup>223</sup> Gary Allen Hanson approached Ms. Mertz when one of her dogs bit Hanson.<sup>224</sup> Hanson signed complaints against Meagan Mertz for violating city ordinances against vicious dogs and against unlicensed animals.<sup>225</sup>

Mertz sent Hanson a letter identifying himself as counsel to Meagan Mertz. In the letter, Mertz allegedly accused Hanson of defaming Meagan Mertz when he signed the complaints against her and Mertz included a draft complaint in defamation. In the letter, Mertz referred to Hanson as an animal hater and abuser. The letter continued, "If you wish to minimize the consequences to you for your dishonesty, then you will agree to the dismissal of the charge you signed." Mertz offered to settle the defamation claim in exchange for Hanson's dismissal of the complaints against Meagan Mertz.<sup>226</sup>

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218. *Id.* ¶ 14, 709 N.W.2d at 721.

219. *Id.* ¶¶ 19-20, 709 N.W.2d at 722.

220. 2006 ND 85, 712 N.W.2d 849.

221. *In re Mertz*, ¶¶ 8, 13, 712 N.W.2d at 852-53.

222. *Id.* ¶ 25, 712 N.W.2d at 855.

223. *Id.* ¶ 2, 721 N.W.2d at 851.

224. *Id.*

225. *Id.* ¶ 3.

226. *Id.* ¶ 5.

A hearing panel concluded that Mertz violated Rule 3.4(a) of the North Dakota Rules of Professional Conduct,<sup>227</sup> which prohibits an attorney from unlawfully obstructing another party's access to evidence.<sup>228</sup> The hearing panel determined that Mertz also violated Rule 4.4 of the North Dakota Rules of Professional Conduct<sup>229</sup> by using language in his letter to Hanson designed to embarrass and intimidate Hanson from giving evidence in the vicious dog complaint.<sup>230</sup> The hearing panel recommended that the court suspend Attorney Mertz from the practice of law for a period of one month.<sup>231</sup>

Both disciplinary counsel and Attorney Mertz filed objections to the report and recommendation of the hearing panel.<sup>232</sup> The court determined that Mertz's letter to Hanson was permissible in most respects, finding facial validity in Meagan Mertz's defamation complaint. Thus, the court found no violation of Rule 3.4(a) of the North Dakota Rules of Professional Conduct.<sup>233</sup> Nonetheless, the court agreed with the finding of the hearing panel that Mertz violated Rule 4.4 of the North Dakota Rules of Professional Conduct when he used language in his letter to Hanson designed to embarrass and intimidate Hanson from giving evidence in the vicious dog complaint.<sup>234</sup> Specifically, the court found Mertz's accusations that Hanson was an animal abuser and hater inappropriate.<sup>235</sup>

Ultimately, because the underlying circumstances concerned Mertz's daughter, the court determined that the situation was exceptional and unlikely to occur in the future. Thus, the court rejected the recommendation of the hearing panel for a suspension and opted instead to publicly reprimand Mertz.<sup>236</sup>

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227. Rule 3.4(a) provides in pertinent part that a lawyer shall not "unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value." N.D. R. PROF'L CONDUCT 3.4(a).

228. *In re Mertz*, ¶ 6, 712 N.W.2d at 851-52.

229. Rule 4.4 provides, in pertinent part, that "a lawyer shall not use means that have no substantial purpose other than to embarrass or burden a third person, or use methods of obtaining evidence that violate the legal rights of such person." N.D. R. PROF'L CONDUCT 4.4.

230. *In re Mertz*, ¶ 6, 712 N.W.2d at 851-52.

231. *Id.*

232. *Id.* ¶¶ 8, 14, 712 N.W.2d at 852-53. Disciplinary counsel argued that Attorney Mertz's conduct warranted a suspension of six months. *Id.* ¶ 23, 712 N.W.2d at 854.

233. *Id.* ¶ 13, 712 N.W.2d at 853.

234. *Id.* ¶ 18.

235. *Id.*

236. *Id.* ¶ 25, 712 N.W.2d at 855.

## H. SEXUAL MISCONDUCT

A great deal of recent media attention has focused on the sensationalized tales of sexual misconduct by attorneys in North Dakota. When a hearing panel soon makes a recommendation in *In re Overboe*,<sup>237</sup> the court

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237. *In re Overboe*, 2006 ND 249, ¶ 2, 724 N.W.2d 576, 576. On December 4, 2006, the court granted the request of disciplinary counsel for an interim suspension against David A. Overboe. *Id.* ¶ 14, 724 N.W.2d at 579.

That case involved an incident in October 2006 wherein Overboe allegedly engaged in sexual conduct with a female client and attempted to exact sexual favors in lieu of payment for legal fees. *Id.* ¶ 2, 724 N.W.2d at 576. In his Application for Interim Suspension of David A. Overboe, Disciplinary counsel asserted that Overboe was charged with one count of sexual assault and two counts of hiring an individual to engage in sexual activity. *Id.* After filing the initial Application, disciplinary counsel filed multiple supplements, most in the form of Affidavits. *Id.* ¶ 7, 724 N.W.2d at 577. In addition to the allegations alleged in the initial Application, disciplinary counsel added that Overboe had been charged with an additional count of sexual assault and disorderly conduct concerning an incident in which Overboe allegedly attempted to kiss another female client. *Id.* Disciplinary counsel also related an incident in which a female client of Overboe's refused to exchange sexual favors for payment of legal fees. *Id.* ¶ 8, 724 N.W.2d at 577-78. Overboe billed this client four years later for the underlying bill and late fees, doubling the costs of the original fee. *Id.* Disciplinary counsel then submitted an Affidavit detailing a situation in which Overboe allegedly attempted to meet with another female client after hours, offered her alcohol, and called her at home to ask her out for drinks and to inquire whether her divorce was final. *Id.* ¶ 9, 724 N.W.2d at 578. Finally, disciplinary counsel submitted an Affidavit describing encounters between Overboe and several female clients. *Id.* ¶ 10. Specifically, the Affidavit described:

- a) In events occurring in 1998 or 1999, Overboe offered to exchange legal fees for sexual favors with a female client. This client filed a Complaint with the Disciplinary Board, which resulted in an admonition to Overboe.
- b) In events occurring approximately 14 years ago, Overboe made overtures to a female client by sending flowers and a purse full of silver coins with writing on them. On the day her case was completed, Overboe took this client to the Holiday Inn where sex was exchanged for his legal fee.
- c) In events occurring in 1994, Overboe offered a female client alcohol, requested meeting after normal business hours, discussed different ways she could make payments on her bill, and offered her a trip to Las Vegas. Approximately four years after she stopped contact with Overboe, she received a judgment on her legal fees, including late charges. The late charges were removed from her bill after she mentioned these incidents.
- d) In events occurring in 1999, Overboe met with a female client after normal business hours; when she arrived, Overboe was drinking and offered her alcohol. After this meeting, the client would not meet with Overboe alone. When she brought a friend, Overboe offered both of them alcohol. Overboe made several references about the cost of his legal services had he not agreed to do her case without a fee.
- e) In events occurring from 1995 through 1996, a client's female secretary brought papers to Overboe. During one meeting, Overboe proceeded to unzip his pants and expose himself to her, and tried to have sex with her. After this meeting, Overboe called her many times, but never discussed the case. The client was billed for the personal phone calls Overboe made to the client's secretary.
- f) In events occurring in January 2006 that correspond with the charges in the Information in *Cass Co. No. 06-K-4307*, Overboe met with a female client after normal business hours. Overboe offered her alcohol, and he appeared to be intoxicated. When the client was leaving, Overboe assisted her with her jacket, then



will consider this issue. Aside from the *Overboe* case which has not yet been considered for final determination, the supreme court has only disciplined one attorney since 2004 for sexual misconduct.<sup>238</sup> As discussed above, a great deal of the attorney misconduct in the case of *In re Chinquist*, in fact, surrounded misappropriation, rather than sexual misconduct.<sup>239</sup> The media attention paid to attorney sexual misconduct may be largely overblown.

#### IV. EMERGING TRENDS IN THE SUPREME COURT OF NORTH DAKOTA'S CONSIDERATION OF DISCIPLINARY CASES

Since 2004, a number of interesting trends have emerged from the consideration by the Supreme Court of North Dakota of the recommendations of hearing panels assigned to report to the court on disciplinary matters. Although no real pattern has emerged regarding the timing of the court's consideration, for example, moving from harsher discipline in 2004 to lighter discipline in 2007, trends have developed associating certain violations with a specific range of discipline, as well as concerning the probability that an objection may result in a harsher or lighter sanction than that recommended by a hearing panel.

Initially, this article notes that the Supreme Court of North Dakota has issued sanctions ranging from dismissal of the petition<sup>240</sup> to disbarment<sup>241</sup> since 2004. The court has imposed a variety of sanctions against attorneys found to have violated the Rules of Professional Conduct requiring competence and diligence, including both dismissal and disbarment.<sup>242</sup> That full range of sanctions, however, has not been issued for every type of violation. Those attorneys found to have violated the Rules through fraud or misappropriation have received sanctions varying from reprimand to

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grabbed her, pulled her toward him and tried to kiss her. He offered to work something out with her regarding his legal fee and offered her a trip to Cancun.

*Id.* Based on the information provided by disciplinary counsel, the court ordered Overboe suspended pending final disposition of the disciplinary proceeding against him. *Id.* ¶ 14, 724 N.W.2d at 579. The court additionally considered the allegations in the Application that Overboe engaged in a pattern of meeting with female clients after hours, offering those clients alcohol, making inappropriate comments to them, and engaging in sexual conduct with them, sometimes in exchange for the payment of Overboe's legal bills. *Id.* ¶ 2, 724 N.W.2d at 576.

238. *In re Chinquist*, 2006 ND 107, ¶¶ 22, 24, 714 N.W.2d 469, 475-76.

239. See *supra* Part III.C for a detailed discussion of the court's analysis in *In re Chinquist*.

240. *In re Hoffman*, 2005 ND 153, ¶ 11, 703 N.W.2d 345, 346 (incompetence).

241. *In re Buresh*, 2007 ND 8, ¶ 15, 726 N.W.2d 210, 214-15 (misappropriation); *In re Wilkes*, 2005 ND 168, ¶ 7, 704 N.W.2d 809, 809 (fraud); *In re Schoppert*, 2005 ND 45, ¶ 6, 693 N.W.2d 19, 20 (fraud); *In re Peterson*, 2004 ND 205, ¶ 13, 689 N.W.2d 364, 366 (incompetence).

242. Compare *In re Hoffman*, ¶ 1, 703 N.W.2d at 346 (dismissing petition charging attorney with incompetence) with *In re Peterson*, ¶ 13, 689 N.W.2d at 366 (ordering disbarment of attorney for incompetence).

disbarment.<sup>243</sup> The court has imposed sanctions from reprimand to a ninety-day suspension upon those found to have maintained conflicts of interest.<sup>244</sup> The court has punished the unauthorized practice of law with a sixty-day suspension<sup>245</sup> and issued only a reprimand in each case involving harassment<sup>246</sup> or unreasonable fees.<sup>247</sup> While there exists no hard and fast rule limiting the court in its discretion to sanction attorneys for disciplinary misconduct, a pattern does exist by which one can compare the sanction imposed to the violation charged.

More interesting and apparent, however, is the correlation demonstrated over the past several years between the position disciplinary counsel and the attorney in question take to the report and recommendation of the hearing panel and the sanction imposed by the Supreme Court of North Dakota. Three separate factors distinguish themselves in this pattern. First, there exists a statistical correlation between the decision of the attorney in question and disciplinary counsel to enter into a Stipulation and Consent to Discipline and the decision by the court to accept the recommendation of the hearing panel.<sup>248</sup> Second, there exists an interesting correlation between an attorney's decision to object to the report and recommendation of the hearing panel and the court's decision to either accept the hearing panel's recommendations or to issue a sanction more or less harsh than that recommended.<sup>249</sup> Finally, there is a surprising correlation between the action of disciplinary counsel to object to the recommendation of the hearing panel and the court's decision to reject the hearing panel's recommendation and instead issue a harsher sanction.<sup>250</sup> Although a statistical analysis of past decisions cannot guarantee the treatment by the court in a specific case, the results are startling enough to consider in

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243. *In re Buresh*, ¶ 15, 726 N.W.2d at 214-15 (disbarring attorney for misappropriation); *In re Stensland*, 2006 ND 251, ¶ 12, 725 N.W.2d 191, 193 (issuing sixty-day suspension for fraud); *In re Edison*, ¶ 17, 724 N.W.2d at 585 (ordering reprimand for fraud); *In re Korsmo*, 2006 ND 148, ¶ 13, 718 N.W.2d 6, 9 (issuing six-month suspension for fraud); *In re Chiquist*, 2006 ND 107, ¶ 17, 714 N.W.2d 469, 476 (ordering attorney suspended for six months for misappropriation); *In re Wilkes*, ¶ 17, 704 N.W.2d at 809 (disbarring attorney for fraud); *In re Ward*, 2005 ND 144, ¶ 24, 701 N.W.2d 873, 878 (reprimanding attorney for misappropriation); *In re Schoppert*, ¶ 6, 693 N.W.2d at 20 (disbarring attorney for fraud).

244. *Compare In re Christensen*, 2005 ND 87, ¶ 15, 696 N.W.2d 495, 498 (reprimanding attorney for maintaining conflict of interest) with *In re Bullis*, 2006 ND 228, ¶ 28, 723 N.W.2d 667, 675-76 (issuing ninety-day suspension for conflict of interest).

245. *In re Giese*, 2006 ND 13, ¶ 1, 709 N.W.2d 717, 718.

246. *In re Mertz*, 2006 ND 85, ¶ 1, 712 N.W.2d 849, 851.

247. *In re Hellerud*, 2006 ND 105, ¶ 1, 714 N.W.2d 38, 39; *In re Madlom*, 2004 ND 206, ¶ 10, 688 N.W.2d 923, 924.

248. *See infra* notes 255-257 and accompanying text.

249. *See infra* notes 258-260 and accompanying text.

250. *See infra* note 261 and accompanying text.

determining how to proceed in light of a hearing panel's report and recommendation.

It is useful to note that, since 2004, the Supreme Court of North Dakota has accepted the recommendation of a hearing panel in every case in which the attorney in question and disciplinary counsel have entered a Stipulation and Consent to Discipline.<sup>251</sup> In each stipulation, the attorney admitted to the violations charged and consented to a specific sanction to which disciplinary counsel agreed.<sup>252</sup> In each case where such an agreement has been reached between the parties since 2004, the court has issued the sanction the hearing panel recommended.<sup>253</sup> This appears to be strong statistical evidence that the supreme court will order the recommended sanction where an attorney consents to such discipline.

Only nine attorneys have filed objections to the report and recommendation of a hearing panel in the twenty-one cases the court has considered since 2004.<sup>254</sup> In one third of those cases, the court accepted the original recommendation of the hearing panel, regardless of the attorney's objections.<sup>255</sup> Interestingly, the only three cases since 2004 in which the court issued a sanction less severe than that recommended by the hearing panel involved situations where the attorney objected to the recommendation.<sup>256</sup> For those three attorneys, objecting led to a successful outcome. Unfortunately for three different attorneys, representing the final third of those who objected, the court issued a harsher sanction than that recommended by the hearing panel in three of the nine cases in which an attorney objected.<sup>257</sup> Objecting has proven the only method for receiving a sanction less than that

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251. *E.g.*, *In re McKechnie*, 2006 ND 7, ¶ 10, 708 N.W.2d 310, 312; *In re Wilkes*, 2005 ND 168, ¶ 17, 704 N.W.2d 809, 809; *In re Sundby*, 2005 ND 135, ¶ 16, 701 N.W.2d 863, 865; *In re Christensen*, 2005 ND 87, ¶ 16, 696 N.W.2d 495, 498; *In re Schoppert*, 2005 ND 45, ¶ 6, 693 N.W.2d 19, 20; *In re Madlom*, ¶ 9, 688 N.W.2d at 924; *In re Secrest*, 2004 ND 180, ¶ 7, 687 N.W.2d 251, 252.

252. *See* cases cited *supra* in note 251 (noting cases in which the Supreme Court of North Dakota has accepted the recommendation of a hearing panel in cases in which the disciplinary counsel and the attorney in question had entered a Stipulation and Consent to Discipline).

253. *See* cases cited *supra* in note 251 (noting cases in which the Supreme Court of North Dakota followed the hearing panel's recommended sanction).

254. *E.g.*, *In re Edison*, 2006 ND 148, ¶ 18, 724 N.W.2d 579, 585; *In re Korsmo*, 2006 ND 6, ¶ 10, 718 N.W.2d 6, 9; *In re Chiquist*, 2006 ND 107, ¶ 23, 714 N.W.2d 469, 476; *In re Hellerud*, 2006 ND 105, ¶ 7, 714 N.W.2d 38, 39; *In re Mertz*, 2006 ND 85, ¶ 7, 712 N.W.2d at 852; *In re Giese*, 2006 ND 13, ¶ 1, 709 N.W.2d 717, 718; *In re Hoffman*, ¶ 1, 703 N.W.2d at 346; *In re Ward*, 2005 ND 144, ¶ 9, 701 N.W.2d 873, 878; *In re Edin*, 2005 ND 109, ¶ 7, 697 N.W.2d 727, 728-29.

255. *E.g.*, *In re Hellerud*, ¶ 1, 714 N.W.2d at 39; *In re Giese*, ¶ 1, 709 N.W.2d at 718; *In re Ward*, ¶ 1, 701 N.W.2d at 874.

256. *E.g.*, *In re Korsmo*, ¶ 10, 718 N.W.2d at 9; *In re Mertz*, ¶ 7, 712 N.W.2d at 852; *In re Hoffman*, ¶ 1, 703 N.W.2d at 346.

257. *E.g.*, *In re Edison*, ¶ 18, 724 N.W.2d at 585; *In re Chiquist*, ¶ 1, 714 N.W.2d at 470; *In re Edin*, ¶ 1, 697 N.W.2d at 728-29.

recommended by a hearing panel since 2004, but it has also led to a one in three chance or receiving a harsher sanction.

The final factor which distinguishes itself as playing a significant role in the Supreme Court's disciplinary decisions is the filing of an objection by disciplinary counsel. In three out of the five cases in which disciplinary counsel has objected to the recommendation of a hearing panel since 2004, the court rejected the hearing panel's recommendation and opted instead to issue a sanction more severe than that which the hearing panel recommended.<sup>258</sup> Stated otherwise, the Supreme Court of North Dakota is more likely to accept an argument made by disciplinary counsel than a recommendation offered by a hearing panel, where disciplinary counsel opts to file an objection.<sup>259</sup>

## V. CONCLUSION

Despite headlines in the media to the contrary, North Dakota is not besieged by attorney violations of the North Dakota Rules of Professional Conduct. The behavior of only twenty-one attorneys has reached the Supreme Court of North Dakota for final disposition since 2004. And, unlike the headlines, the court has disciplined only one attorney for sexual misconduct during that same period.

Studying those cases, nonetheless provides the opportunity to examine patterns in the disposition of disciplinary cases. Specifically, it is apparent that, from 2004 to 2007, the court accepted the discipline recommended by a hearing panel with respect to every attorney who has consented to discipline. Those attorneys who have objected to the recommendation of the hearing panel, however, have submitted to a one in three chance that the court would issue the recommended discipline, issue a lesser sanction than recommended, or issue a sanction more severe than that which the hearing panel recommended. Finally, in greater than half of those cases in which disciplinary counsel objected to the sanction recommended by a hearing panel, the court has rejected the hearing panel's recommendation and instead issued a sanction more severe. While this study provides no guarantees as to how the court will handle individual cases in the future, it nonetheless may provide some insight into their recent actions.

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258. *E.g.*, *In re Edison*, ¶ 18, 724 N.W.2d at 585; *In re Chinquist*, ¶ 1, 714 N.W.2d at 470; *In re Mertz*, ¶ 6, 712 N.W.2d at 852; *In re Ward*, ¶ 15, 701 N.W.2d at 878; *In re Edin*, ¶ 1, 697 N.W.2d at 728-29.

259. This result raises questions concerning the efficacy of the current system of handling disciplinary matters too significant to address in this article.