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In the Supreme Court of Iowa

Supreme Court No. 17-1599
Grievance Commission No. 819

Iowa Supreme Court
Attorney Disciplinary Board,

Appellee,

vs.

Mark T. Hamer,

Appellant

Appeal from the Report of the Iowa Supreme Court Grievance Commission

Appellee's Final Brief

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Table of Contents

Table of Authorities 4

Statement of the Issues Presented for Review 7

Routing Statement 10

Statement of the Case 10

Statement of the Facts 12

Argument 53

Assessment of Credibility 53

Paul's Motivation 56

Hamer Has Not Met His Burden to Make a Full Disclosure to Paul 56

Refusing Employment When the Interests of the Lawyer May Impair the Lawyer's Independent Professional Judgment: Violation of DR 5-101(A) 58

Refusing to Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer: Violations of DR 5-105(C) & (D) 58

Conflict of Interest: Current Clients: Violation of Rule 32:1.7(a)(2) & (b) 60

Limiting Business Relations with a Client: Violation of DR 5-104(A) 63

Conflict of Interest: Current Clients: Specific Rules: Violations of Rule 32:1.8(a) 69

Communication: Violations of Rule 32:1.4 (a)(1), (a)(2), & (b) 70

Fees for Legal Services: Violation of DR 2-106(A) 72

Misconduct: Violation of DR 1-102(A)(4) 72

Aggravating Factors 73

Conclusion 74

Request for Nonoral Submission 76

Certificate of Compliance with Type-Volume Limitation,
Typeface Requirements, and Type-Style Requirements 77

Table of Authorities

Cases

Attorney Disciplinary Bd. v. Arzberger,
887 N.W.2d 353 (Iowa 2016) 54

Attorney Disciplinary Bd. v. Barnhill,
847 N.W.2d 466 (Iowa 2014) 57, 60, 73

Attorney Disciplinary Bd. v. Clauss,
711 N.W.2d 1 (Iowa 2006) 58, 59

Attorney Disciplinary Bd. v. Johnston,
732 N.W.2d 448 (Iowa 2007) 59

Attorney Disciplinary Bd. v. Kress,
747 N.W.2d 530 (Iowa 2008) 72

Attorney Disciplinary Bd. v. Marks,
814 N.W.2d 532 (Iowa 2012) 61

Attorney Disciplinary Bd. v. McGrath,
713 N.W.2d 682 (Iowa 2006) 54, 55

Attorney Disciplinary Bd. v. Qualley,
828 N.W.2d 282 (Iowa 2013) 69, 70, 71

Attorney Disciplinary Bd. v. Santiago,
869 N.W.2d 172 (Iowa 2015) 56

Attorney Disciplinary Bd. v. Sobel,
779 N.W.2d 782 Iowa 2010) 54

Attorney Disciplinary Bd. v. Stoller,
879 N.W.2d 199 (Iowa 2016) 62

Attorney Disciplinary Bd. v. Willey,
889 N.W.2d 647 (Iowa 2017) 62, 63

Attorney Disciplinary Bd. v. Wintroub,
745 N.W.2d 469 (Iowa 2008) 68, 69, 74

Attorney Disciplinary Bd. v. Wright,
840 N.W.2d 295 (Iowa 2013) 70

Bd. of Prof'l Ethics & Conduct v. Fay,
619 N.W.2d 321 (Iowa 2000) 67, 68

Bd. of Prof'l Ethics & Conduct v. Sikma,
533 N.W.2d 532 (Iowa 1995) 66

Bd. of Prof'l Ethics & Conduct v. Wagner,
599 N.W.2d 721 (Iowa 1999) 59, 66, 67

Bd. of Prof'l Ethics & Conduct v. Walters,
603 N.W.2d 772 (Iowa 1999) 67

Comm. on Prof'l Ethics & Conduct v. Baker,
269 N.W.2d 463 (Iowa 1978) 64

Comm. on Prof'l Ethics & Conduct v. Carty,
515 N.W.2d 32 (Iowa 1994) 65

Comm. on Prof'l Ethics & Conduct v. Hall,
463 N.W.2d 30 (Iowa 1990) 65

Comm. on Prof'l Ethics & Conduct v. Mershon,
316 N.W.2d 895 (Iowa 1982) 56, 64, 65

Comm. on Prof'l Ethics & Conduct v. Oehler,
350 N.W.2d 19 (Iowa 1984) 65

Comm. on Prof'l Ethics & Conduct v. Postma,
430 N.W.2d 387 (Iowa 1988) 65

Heninger & Heninger, P.C. v. Davenport Bank & Trust Co.,
341 N.W.2d 43 (Iowa 1983) 56

Other Authorities

Comment 2 to Rule 32:1.8 69

Iowa Code of Prof'l Responsibility
DR 1-102 .... 11, 55, 72

Iowa Code of Prof'l Responsibility
DR 2-106 .... 11, 72

Iowa Code of Prof'l Responsibility
DR 5-101 .... 11, 58

Iowa Code of Prof'l Responsibility
DR 5-104 .... 11, 63, 64, 65, 66, 67, 69

Iowa Code of Prof'l Responsibility
DR 5-105 .... 11, 58

Iowa Code of Prof'l Responsibility
DR 7-102 55

Iowa R. of Prof'l Conduct
32:1.4 .... 11, 70

Iowa R. of Prof'l Conduct
32:1.7 .... 11, 60, 62, 63, 69

Iowa R. of Prof'l Conduct
32:1.8 .... 11, 69, 70

Iowa R. of Prof'l Conduct
32:1.9 61

Statement of the Issues Presented for Review

Mark Hamer violated the Iowa Code of Professional Responsibility for Lawyers and the Iowa Rules of Professional Conduct

Cases:

Attorney Disciplinary Bd. v. Arzberger,
887 N.W.2d 353 (Iowa 2016)

Attorney Disciplinary Bd. v. Barnhill,
847 N.W.2d 466 (Iowa 2014)

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732 N.W.2d 448 (Iowa 2007)

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747 N.W.2d 530 (Iowa 2008)

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713 N.W.2d 682 (Iowa 2006)

Attorney Disciplinary Bd. v. Qualley,
828 N.W.2d 282 (Iowa 2013)

Attorney Disciplinary Bd. v. Santiago,
869 N.W.2d 172 (Iowa 2015)

Attorney Disciplinary Bd. v. Sobel,
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Attorney Disciplinary Bd. v. Stoller,
879 N.W.2d 199 (Iowa 2016)

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430 N.W.2d 387 (Iowa 1988)

Heninger & Heninger, P.C. v. Davenport Bank & Trust Co.,
341 N.W.2d 43 (Iowa 1983)

Other Authorities:

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Iowa Code of Prof'l Responsibility
DR 2-106

Iowa Code of Prof'l Responsibility
DR 5-101

Iowa Code of Prof'l Responsibility
DR 5-104

Iowa Code of Prof'l Responsibility
DR 5-105

Iowa Code of Prof'l Responsibility
DR 7-102

Iowa R. of Prof'l Conduct
32:1.4

Iowa R. of Prof'l Conduct
32:1.7

Iowa R. of Prof'l Conduct
32:1.8

Iowa R. of Prof'l Conduct
32:1.9

Routing Statement

The Supreme Court should retain this case because “[t]he Supreme Court shall ordinarily retain the following types of cases: … e. Cases involving lawyer discipline.”

Statement of the Case

Nature of the Case

The Attorney Disciplinary Board (Board) brought this lawyer disciplinary action against Mark T. Hamer (Hamer) alleging violations of the Iowa Code of Professional Responsibility for Lawyers (Code) and the Iowa Rules of Professional Conduct (Rules).

Course of Proceedings and Disposition

On September 30, 2015, the Board filed its Complaint against Hamer. App. Vol. 1 pp. 14-60.

On April 22, 2016, Hamer filed his Answer. App. Vol. 1 pp. 61-96.

On March 14 through 16, 2017, the parties tried the case before the Grievance Commission (Commission).

On October 4, 2017, the 539th Division of the Commission filed its Findings of Fact, Conclusions of Law, and Recommendation. App. Vol. 1 pp. 97-140.

Commission's Conclusions

In Count I, regarding loans by Douglas Paul (Paul), a Hamer client, to other Hamer clients, the Commission concluded that Hamer violated Code provisions DR 5-105(C) and 5-105(D) and Rules 32:1.4 (a)(1), 32:1.4(a)(2), 32:1.4(b), 32:1.7(a)(2), and 32:1.7(b). App. Vol. 1 pp. 113-18.

In Count II, regarding loans by Paul to Hamer, the Commission concluded that Hamer violated Code provisions DR 5-101(A) and DR 5-104(A) and Rules 32:1.4 (a)(1), 32:1.4(a)(2), 32:1.4(b), and 32:1.8(a). App. Vol. 1 pp. 126-28.

In Count III, regarding joint investments by Paul and Hamer, the Commission concluded that Hamer did not violate any Code provisions or any Rules. App. Vol. 1 pp. 131-32.

In Count IV, regarding Hamer collecting a clearly excessive fee, the Commission concluded that Hamer violated Code provisions DR 2-106(A) and DR 1-102(A)(4). App. Vol. 1 pp. 135-36.

Commission's Aggravating Circumstances

As aggravating factors, the Commission cited Hamer's "many years of experience in the practice of law", his "multiple violations of ethical rules", his "pattern of conduct", and that his "misconduct has reflected poorly on the legal profession as a whole." App. Vol. 1 pp. 138-39.

Commission's Mitigating Circumstances

As mitigating factors, the Commission cited Hamer's "no record of prior disciplinary action", his "cooperation with the Board's investigation", his "community activities and volunteer efforts", and that, with the exception of the RBA loan, "all of the loans made by Paul" have been repaid. App. Vol. 1 p. 137.

Commission's Recommendation

The Commission recommended that Hamer "be suspended for a period of six (6) months". App. Vol. 1 pp. 139-40.

Hamer's Appeal

On October 12, 2017, Hamer filed his notice of appeal with the Commission. Appeal Notice.

Statement of the Facts

Hamer received his law license in 1972; he represented Paul in a variety of business and personal matters for 19 years, from 1988 to 2007, out of the more than 45 years he has been an Iowa lawyer. App. Vol. 1 p. 14 ¶¶ 2 & 4.

With regard to one aspect of his law practice, transactional work, Hamer has put lenders, including Paul, and borrowers together several hundred times. App. Vol. 4 pp. 417-18 (Tr. p. 324 l. 25 – p. 325 l. 16).

Hamer did over 20 loan transactions with Paul. App. Vol. 4 p. 426 (Tr. p. 333 ll. 19-22).

Count I
Loans by Paul to Hamer's Clients

When Hamer presented Paul with a loan proposal, he communicated to Paul that the loans were secure, but he did not communicate anything about the borrower's credit history or what steps he had taken to investigate the borrower's credit history. App. Vol. 4 p. 243 (Tr. p. 42 ll. 12-23). Paul did not investigate the borrower's credit history. App. Vol. 4 pp. 243-44 (Tr. p. 42 l. 24 – p. 43 l. 2). Paul adopted this approach to lending money because he trusted Hamer completely; when Hamer told him that the loan was safe, Paul believed him. App. Vol. 4 p. 244 (Tr. p. 43 ll. 3-9).

Hamer presented the loan terms to Paul, and Paul assumed that Hamer acted in a manner to protect Paul's interests and that Hamer attempted to obtain the best loan terms possible. App. Vol. 4 pp. 359-60 (Tr. p. 222 l. 23 – p. 223 l. 17).

When Hamer presented loan proposals to Paul, he did not communicate anything to Paul about the borrowers' financial statements, income statements, balance sheets, or income tax returns. App. Vol. 4 p. 244 (Tr. p. 43 ll. 21-25), App. Vol. 4 p. 245 (Tr. p. 44 ll. 19-24), and App. Vol. 4 pp. 246-47 (Tr. p. 45 l. 24 - p. 46 l. 3).

When Hamer presented loan proposals to Paul from LLCs or corporations, he did not communicate anything to Paul about the borrowers' organizational documents, bylaws, operating agreements, or resolutions that authorized borrowing money. App. Vol. 4 p. 247 (Tr. p. 46 ll. 9-15) and App. Vol. 4 pp. 247-48 (Tr. p. 46 l. 21 – p. 47 l. 3).

When Hamer presented loan proposals to Paul, Hamer presented it as totally secure, but he did not specifically discuss with Paul the borrower's ability to repay the loan. App. Vol. 4 p. 248 (Tr. p. 47 ll. 4-13). Hamer also told Paul that Hamer would take care of steps required to secure the loan. App. Vol. 4 p. 251 (Tr. p. 50 ll. 10-14).

When Hamer presented a loan proposal to Paul, Hamer suggested the amount of the loan, and Paul agreed to that amount with one exception. App. Vol. 4 pp. 248-49 (Tr. p. 47 l. 14 – p. 48 l. 1).

When Hamer presented a loan proposal to Paul, Hamer suggested the interest rate on the loan, and Paul agreed to that rate. App. Vol. 4 p. 250 (Tr. p. 49 ll. 13-18).

Hamer testified that in private transactions, the "whole thing" is based on the comfort of the two parties. App. Vol. 4 p. 441 (Tr. p. 374 ll. 18-23). When Hamer presented a loan proposal to Paul or anyone else, he testified

that he was not in a position "to negotiate this." App. Vol. 4 pp. 441-42 (Tr. p. 374 l. 23 – p. 375 l. 6).

From Hamer's perspective, the most important factor for lenders, including Paul, is the lender's comfort level with the circumstances of the loan. App. Vol. 4 pp. 423-24 (Tr. p. 330 l. 20 – p. 331 l. 12). In answering a question about Paul's expectations about Hamer's services on Paul's behalf, Hamer answered, in part:

> In these transactions where I was bringing them to him, it was important that he have a comfort level with the transaction, he had to have a comfort level with the people, with the situation, and with the transaction, itself. …. When you are in a situation when you have a conflict of this sort, as [I] understood the rules then and followed the rules, I was bringing it. I didn't negotiate. He said I negotiated; I couldn't negotiate. It was here was the offer, here was (*sic*) the other terms. I wasn't negotiating. I was putting together the piece of paper, and it was what the terms were. In those transactions he was comfortable with it, and the other side was comfortable with it, and the loans were paid, and that's what I did.

App. Vol. 4 pp. 457-59 (Tr. p. 431 l. 18 – p. 433 l. 6).

Hamer viewed himself, "[i]n many ways", as a conduit of information between his clients who had money and those clients who needed money. App. Vol. 4 p. 471 (Tr. p. 446 ll. 2-7).

Hamer acknowledged that normally, depending on the individuals and circumstances, a private transaction has a greater risk than a conventional bank loan. App. Vol. 4 p. 465 (Tr. p. 439 ll. 16-23).

Hamer gave a vague answer to the question whether he communicated to Paul that Paul needed to perfect the security interest himself if he wanted that protection; Hamer answered, in part:

> We had discussions early, and we had discussions often about the attorney-client relationship, and about the conflicts. … [H]e understood carefully that I had conflicts. And the more transactions, the conversations became more casual as we did more and more of them because he knew that. But initially we were very careful about that, and I was very careful with him to understand that he could get other counsel, he could do whatever extent that he wanted to. He could get another attorney and he could go through the whole proceedings. But in a private transaction, if he wanted to do that, then that he should take that to someone else and that's what would happen, he would go through that process. It was whatever comfort level he had. And that's the way I felt I had to follow that. And that's the way I have been doing that for many years, is if the client is comfortable with the transaction, that's what I followed, and the comfort level – with them understanding it. Doug understood. He was a sophisticated investor. He understood what we were talking about. We had done UCC transactions before. We had had conflicts before when I had been representing them, we had had conflict situations. We had walked through that before with him, and he understood exactly what we were talking about.

App. Vol. 4 pp. 459-60 (Tr. p. 433 l. 7 – p. 434 l. 20).

In answer to a question whether Paul was on his own in perfecting the security interest, Hamer answered, in part: "Not necessarily. In some cases he wasn't. I didn't expect that he would or wouldn't. …." App. Vol. 4 pp. 460-61 (Tr. p. 434 l. 21 – p. 435 l. 15).

Hamer testified that he never sent Paul a letter "indicating, look, despite the language of this promissory note indicating that this transaction is fully secured, it does not actually become fully secured until that security interest is perfected, and I didn't do that for you, you need to protect your interests[.]" App. Vol. 4 pp. 461-62 (Tr. p. 435 l. 16 – p. 436 l. 2).

Paul expected that Hamer would make certain that everything about the DLP loans would be in order. App. Vol. 4 pp. 253-54 (Tr. p. 53 l. 23 – p. 54 l. 6). With regard to all of the loans that Hamer brought to Paul, Paul thought that Hamer took care of all of the documentation whether Paul saw it or not. App. Vol. 4 pp. 409-10 (Tr. p. 277 l. 6 – p. 278 l. 5).

When the first loan that Hamer brought to Paul came due in early 2006, the borrower, Jacobsen, could not pay the balance. App. Vol. 4 p. 239 (Tr. p. 34 ll. 13-18). When Paul asked Hamer to take control of the collateral, Hamer told him that that would not be easy since the collateral was not liquid. App. Vol. 4 p. 239 (Tr. p. 34 ll. 19-21). Hamer could only offer to talk to Jacobsen; he did not offer to seize the collateral. App. Vol. 4 p. 239 (Tr. p. 34 ll. 22-24). After Hamer told Paul that he could not liquidate the collateral, Paul learned from his new lawyer that most of his loans were not secured since the collateral had not been perfected. App. Vol. 4 pp. 251-52 (Tr. p. 50 l. 15 – p. 51 l. 4).

Count I – Division A
Ted Jacobsen Loan

Hamer knew Ted Jacobsen, a realtor, as a franchise client; Hamer had gotten him out of a franchise relationship, and Jacobsen was looking to get into a different franchise situation. App. Vol. 4 pp. 435-36 (Tr. p. 367 l. 14 – p. 368 l. 1). Jacobsen needed $175,000 to put together a real estate sub-development. App. Vol. 4 pp. 435-36 (Tr. p. 367 l. 14 – p. 368 l. 4).

In March 2004, Hamer presented a loan proposal to Paul. App. Vol. 4 p. 254 (Tr. p. 54 ll. 7-16). Hamer communicated to Paul that a local realtor, with a solid reputation, needed cash and that he had collateral valued at 150% of the cash he needed. App. Vol. 4 p. 254 (Tr. p. 54 ll. 17-24). Hamer communicated to Paul that the loan was completely safe because of the value of the real estate that would be used as collateral. App. Vol. 4 pp. 256 & 257 (Tr. p. 56 ll. 17-22 & p. 57 ll. 5-10). Hamer might have communicated the borrower's name to Paul, but Paul never met him. App. Vol. 4 pp. 254-55 (Tr. p. 54 l. 25 – p. 55 l. 11). This was the first loan proposal that Hamer brought to Paul, and Hamer knew that Paul had to be comfortable with the transaction. App. Vol. 4 pp. 436 & 438 (Tr. p. 368 ll. 15-25 & p. 370 ll. 13-15).

In March, Hamer and Paul had an attorney-client relationship. App. Vol. 1 p. 15 ¶ 15.

Hamer never communicated to Paul about whether Hamer's independent professional judgment on Paul's behalf would be impaired if Paul loaned Jacobsen money. App. Vol. 4 p. 256 (Tr. p. 56 ll. 1-6). Hamer never communicated anything to Paul about how Hamer would handle confidential information he acquired about Paul and Jacobsen. App. Vol. 4 p. 256 (Tr. p. 56 ll. 7-11). Hamer never communicated to Paul about how Paul's rights and interests would be protected if Paul loaned Jacobsen money. App. Vol. 4 p. 256 (Tr. p. 56 ll. 12-16). Hamer never communicated to Paul about whether and why Paul should obtain the advice of another lawyer, independent of Hamer, about this loan proposal. App. Vol. 4 pp. 256-57 (Tr. p. 56 l. 23 – p. 57 l. 4).

On March 15, Paul/DLP loaned Jacobsen $175,000 at 11.75% annual interest for two years. App. Vol. 1 p. 17 ¶ 31 & App. Vol. 4 pp. 159 & 160. Hamer represented Paul/DLP and Jacobsen in this transaction. App. Vol. 1 p. 17 ¶ 32 & App. Vol. 4 p. 219, Request for Admission (RfA) 1. Hamer set the loan terms; he communicated to Paul that he had personally negotiated the terms. App. Vol. 4 pp. 257-58 (Tr. p. 57 l. 16 – p. 58 l. 4). Hamer communicated to Paul that Hamer would take care of the steps required to secure or guarantee the loan. App. Vol. 4 p. 257 (Tr. p. 57 ll. 11-15).

When Paul made this loan to Jacobsen, he had total trust in Hamer; he had no doubt that Hamer would exercise his professional judgment to protect Paul's interests at all costs. App. Vol. 4 p. 258 (Tr. p. 58 ll. 5-12).

Hamer prepared the Jacobsen promissory note; it recited, in part, "This Note is to be fully secured and guaranteed." App. Vol. 4 pp. 159 & 258 (Tr. p. 58 ll. 23-24).

Hamer did not prepare a security agreement or mortgage to secure the Jacobsen loan; Hamer never presented either of these documents to Paul. App. Vol. 4 pp. 398-99 (Tr. p. 266 l. 16 – p. 267 l. 4) & App. Vol. 4 p. 219, RfA 2.

In answering the question, how was the Jacobsen loan, App. Vol. 4 p. 159, to be fully secured and guaranteed, as the note stated, Hamer testified:

> I believe it was secured and guaranteed. I think Ted Jacobsen signed it, and he was guaranteeing it, and it was a comfort level. I mean how much the security was to be would have been really up to Doug, that's where I was on these. When you talk about how much – how comfortable Doug would have to be with this, I don't know how to explain that.

App. Vol. 4 p. 472 (Tr. p. 454 ll. 10-22).

When asked a second time what the security was for the Jacobsen loan, Hamer testified, in part:

> Ted Jacobsen was proposing that he pay this amount of money. He had a business that he was – as a realtor. He was hoping to get money out of a real estate development, and he was proposing that he would secure it to the level that was needed to get the loan. …. And in terms of there being a mortgage or

> anything of that sort, the property that he had already had mortgages on it. It was a development, and he was hoping to have a profit coming out of that. But in terms of the transaction, as I've mentioned, it was a comfort level. I mean I presented this, this was the terms, this is what Ted had said that he was willing to provide as a secured and guaranteed loan, and that's where it ended.

App. Vol. 4 pp. 472-74 (Tr. p. 454 l. 23 – p. 456 l. 1).

Jacobsen did not fully repay the promissory note, App. Vol. 4 p. 159, by March 15, 2006; about $100,000 remained unpaid. App. Vol. 4 pp. 303-04 (Tr. p. 110 l. 21 – p. 111 l. 4). Prior to the due date of the note, Paul communicated with Hamer that if Jacobsen did not fully repay the loan by the due date, Paul wanted to collect the collateral and liquidate it. App. Vol. 4 p. 304 (Tr. p. 111 ll. 5-15). Hamer communicated to Paul that the collateral was not that easy to liquidate; Hamer communicated to Paul that he would talk to Jacobsen and see what could be done. App. Vol. 4 p. 304 (Tr. p. 111 ll. 16-20). Hamer's response surprised Paul. App. Vol. 4 p. 304 (Tr. p. 111 ll. 21-23).

After Hamer communicated with Jacobsen, Jacobsen brought the accrued interest current and made occasional payments on the unpaid principal. App. Vol. 4 p. 305 (Tr. p. 112 ll. 15-24). To Paul's knowledge, Hamer took no further steps to collect the Jacobsen loan. App. Vol. 4 pp. 305-06 (Tr. p. 112 l. 25 – p. 113 l. 3). After Paul learned that he could not liquidate

Jacobsen's collateral, Paul orally communicated to Hamer to extend the loan term. App. Vol. 4 pp. 367-68 (Tr. p. 234 l. 16 – p. 235 l. 11). Jacobsen finally paid the loan in full in March 2009. App. Vol. 4 p. 306 (Tr. p. 113 ll. 15-17).

In about March 2007, Paul learned that Hamer represented Jacobsen too. App. Vol. 4 p. 305 (Tr. p. 112 ll. 4-11).

Count I – Division B
RBA Loan

Hamer represented Mitch Strang, the owner of a Taco John's franchise. App. Vol. 4 p. 439 (Tr. p. 371 ll. 20-24). According to Hamer, Strang was in over his head; the Strangs had financial problems, they were late on their payments, and they needed to update their restaurant. App. Vol. 4 pp. 439-40 (Tr. p. 371 l. 25 – p. 372 l. 16).

In May 2004, Hamer presented a loan proposal to Paul. App. Vol. 4 p. 259 (Tr. p. 60 ll. 9-20). Hamer communicated to Paul that the owner of a local fast food restaurant needed to borrow $500,000. App. Vol. 4 pp. 259-60 (Tr. p. 60 l. 21 – p. 61 l. 2). Hamer communicated to Paul that the business had financial problems in the past, but now everything looked fine, and they would be able to pay the loan with no problems. App. Vol. 4 p. 260 (Tr. p. 61 ll. 10-19). Paul rejected this proposal. App. Vol. 4 p. 260 (Tr. p. 61 ll. 4-9). Hamer reduced the proposal to $50,000, and Paul accepted this. App. Vol. 4 p. 262

(Tr. p. 63 ll. 15-19). The original security offered was the land and the restaurant. App. Vol. 4 pp. 262-63 (Tr. p. 63 l. 25 – p. 64 l. 5).

Later, Hamer proposed that RBA would offer a stock portfolio, valued between $1,000,000 and $2,000,000, as additional security for the $500,000 loan. App. Vol. 4 p. 263 (Tr. p. 64 ll. 5-11). Hamer communicated to Paul that Hamer would take care of the steps required to secure or guarantee the loan. App. Vol. 4 p. 263 (Tr. p. 64 ll. 12-15).

Hamer structured the terms for both RBA loans, and Paul agreed to them. App. Vol. 4 pp. 263-64 (Tr. p. 64 l. 16 – p. 65 l. 4).

Hamer never communicated to Paul about whether Hamer's independent professional judgment on Paul's behalf would be impaired if Paul loaned RBA money. App. Vol. 4 p. 261 (Tr. p. 62 ll. 18–23). Hamer never communicated anything to Paul about how Hamer would handle confidential information he acquired about Paul and RBA. App. Vol. 4 pp. 261-62 (Tr. p. 62 l. 24 – p. 63 l. 3). Hamer never communicated to Paul about how Paul's rights and interests would be protected if Paul loaned RBA money. App. Vol. 4 p. 262 (Tr. p. 63 ll. 4-8). Hamer never communicated to Paul about whether and why Paul should obtain the advice of another lawyer, independent of Hamer, about this loan proposal. App. Vol. 4 p. 262 (Tr. p. 63 ll. 20-24).

On June 4, Paul/DLP loaned RBA $50,000 at 10.5% annual interest for 11 days. App. Vol. 4 p. 161. Hamer represented Paul/DLP and RBA in this transaction. App. Vol. 1 p. 19 ¶ 55 & App. Vol. 4 pp. 220-22, RfAs 10, 11, 13, & 16.

On June 15, Paul/DLP loaned RBA $500,000 at 10.5% annual interest for five years. App. Vol. 1 p. 19 ¶ 53 & App. Vol. 4 pp. 161 & 162. The $50,000 from the June 4 note was rolled into this one. App. Vol. 4 pp. 265-66 (Tr. p. 66 l. 21 – p. 67 l. 9). Hamer deposited and disbursed the $450,000 of new money from Paul through his client trust account. App. Vol. 4 pp. 163 & 266 (Tr. p. 67 ll. 10-18). Barbara Purdy signed an unconditional personal guarantee in favor of Paul/DLP. App. Vol. 1 p. 19 ¶ 54 & App. Vol. 4 p. 164. This document memorialized the new security that persuaded Paul to loan the additional $450,000. App. Vol. 4 pp. 266-67 (Tr. p. 67 l. 19 – p. 68 l. 6). Paul did not know Purdy. App. Vol. 4 p. 267 (Tr. p. 68 ll. 7-9). Hamer represented Paul/DLP, RBA, and Purdy in this transaction. App. Vol. 1 p. 19 ¶ 55, App. Vol. 4 p. 455 (Tr. p. 422 ll. 19-20), & App. Vol. 4 pp. 220-22, RfAs 10, 11, 13, 14, 16, & 17.

Hamer prepared the second RBA promissory note and the Purdy unconditional guarantee, App. Vol. 4 pp. 162, 164, & 267 (Tr. p. 68 ll. 10-11).

With regard to Purdy's Unconditional Guarantee, App. Vol. 4 p. 164, Hamer wrote that Purdy agreed to mortgage her real estate only if "required by [DLP]". App. Vol. 4 p. 475 (Tr. p. 459 ll. 18-23). Hamer testified that he "did not advise [Paul] specifically to go out of his way and require that …." App. Vol. 4 pp. 164 & 475-76 (Tr. p. 459 l. 24 – p. 460 l. 5).

Hamer did not prepare a security agreement for the other RBA assets. App. Vol. 4 p. 476 (Tr. p. 460 ll. 6-10). Hamer did not advise Paul that he should have a security agreement; Hamer testified, "Again, the comfort level is what we were seeking and the security that he would have." App. Vol. 4 p. 476 (Tr. p. 460 ll. 11-16).

When Paul made these loans to RBA, he had 100% faith in Hamer; Paul relied on Hamer to exercise Hamer's professional judgment to protect Paul's interests. App. Vol. 4 p. 264 (Tr. p. 65 ll. 5-10).

RBA did not repay the loan, App. Vol. 4 p. 162, in accordance with the June 2004 amortization schedule. App. Vol. 4 p. 306 (Tr. p. 113 ll. 18-24). In late 2006 or 2007, Paul communicated with Hamer about the loan because it was, by then, seriously overdue. App. Vol. 4 p. 307 (Tr. p. 114 ll. 12-25). Paul wanted Hamer to liquidate the stock portfolio; instead, Paul learned that Hamer represented RBA and its owners, and Paul would have to seek other legal representation. App. Vol. 4 p. 308 (Tr. p. 115 ll. 1-12) & App. Vol. 4 pp.

315-16 (Tr. p. 125 l. 25 – p. 126 l. 3). Paul was very surprised. App. Vol. 4 p. 308 (Tr. p. 115 ll. 13-15). To Paul's knowledge, Hamer took no further steps to collect the RBA loan. App. Vol. 4 p. 309 (Tr. p. 116 ll. 19-22).

Learning of Hamer's representation of RBA, and having learned of Hamer's representation of Jacobsen, Paul realized that he could not trust the representations Hamer had made about these loans. App. Vol. 4 p. 308 (Tr. p. 115 ll. 13-21).

Paul is still receiving payments from RBA; the loan will be fully paid by 2029. App. Vol. 4 pp. 310-11 (Tr. p. 117 l. 17 – p. 118 l. 1).

Count I – Division C
Mary Beth's Accentz Loan

Hamer had represented Mary Beth Guillaume for many years. App. Vol. 4 pp. 443-44 (Tr. p. 377 l. 21 – p. 378 l. 2). In July 2002, Hamer established a business, Mary Beth Accentz, L.L.C., for Guillaume. App. Vol. 1 p. 15 ¶ 7 & App. Vol. 4 pp. 143-46.

In August 2004, Hamer presented a loan proposal to Paul. App. Vol. 4 pp. 268-69 (Tr. p. 69 l. 22 – p. 70 l. 3). Hamer communicated to Paul that a successful business woman needed temporary financing to get through a period until she received more permanent financing. App. Vol. 4 p. 269 (Tr. p. 70 ll. 4-12). Hamer did not communicate anything to Paul about her credit worthiness, about the profit and loss statement, the balance sheet, or about the

current performance of her business. App. Vol. 4 p. 269 (Tr. p. 70 ll. 13-22). Hamer communicated to Paul that there was security and collateral to cover Paul's loan; the business itself was the security. App. Vol. 4 pp. 270-71 (Tr. p. 72 l. 20 – p. 73 l. 2).

Hamer never communicated to Paul about whether Hamer's independent professional judgment on Paul's behalf would be impaired if Paul made this loan. App. Vol. 4 p. 270 (Tr. p. 72 ll. 3-9). Hamer never communicated anything to Paul about how Hamer would handle confidential information he acquired about Paul and this person. App. Vol. 4 p. 270 (Tr. p. 72 ll. 10-14). Hamer never communicated to Paul about how Paul's rights and interests would be protected if Paul made this loan. App. Vol. 4 p. 270 (Tr. p. 72 ll. 15-19). Hamer never communicated to Paul about whether and why Paul should obtain the advice of another lawyer, independent of Hamer, about this loan proposal. App. Vol. 4 p. 271 (Tr. p. 73 ll. 3-7).

Paul rejected the proposal because the loan term would be too short. App. Vol. 4 p. 271-72 (Tr. p. 73 l. 19 – p. 74 l. 4). Hamer then proposed a prepayment penalty provision, and Paul agreed to make the loan. App. Vol. 4 p. 272 (Tr. p. 74 ll. 4-8).

In August 2004, Hamer and Paul had an attorney-client relationship. App. Vol. 1 p. 19 ¶ 60. On August 26, Paul/DLP loaned Accentz $100,000 at

11% annual interest for three years. App. Vol. 1 p. 21 ¶ 76 & App. Vol. 4 pp. 165-66. This loan included a pre-payment penalty. App. Vol. 1 p. 21 ¶ 77. Hamer represented Paul/DLP and Accentz in this transaction. App. Vol. 1 p. 21 ¶ 78 & App. Vol. 4 p. 223, RfA 30.

Paul had total trust in Hamer that he would exercise his professional judgment to protect Paul's interest in the transaction. App. Vol. 4 p. 272 (Tr. p. 74 ll. 9-13).

While the Accentz note, App. Vol. 4 pp. 165-66, contained language that it was secured by a Security Agreement and fully guaranteed, it did not contain any terms regarding what Paul could do in the event of default. App. Vol. 4 pp. 476-77 (Tr. p. 460 l. 17 – p. 461 l. 5). Hamer testified that he could not remember whether he prepared a security agreement. App. Vol. 4 p. 477 (Tr. p. 461 ll. 14-17).

Accentz fully paid the loan, App. Vol. 4 pp. 165-66, almost two years prior to its due date. App. Vol. 4 p. 311 (Tr. p. 118 ll. 2-11). This triggered the prepayment penalty provision; the penalty payment should have been $6416.67. App. Vol. 4 p. 311 (Tr. p. 118 ll. 12-19). Instead, Accentz paid a prepayment penalty of $300 to $400. App. Vol. 4 pp. 311-12 (Tr. p. 118 l. 20 – p. 119 l. 2). Neither Paul nor any of his employees knew about or authorized

Hamer to waive the prepayment penalty. App. Vol. 4 p. 312 (Tr. p. 119 ll. 3-11) & App. Vol. 4 p. 230, RfA 9.

In August 2005, Paul learned about this penalty waiver from his employee, Nelson Robinson; Paul was surprised to learn that the penalty had been reduced. App. Vol. 4 pp. 312-13 (Tr. p. 119 l. 12 – p. 120 l. 3).

Count I – Division D
Tesson Ferry Music Loan

In December 2004, Hamer established Tesson Ferry Music, L.L.C. for Daryl Granner and others. App. Vol. 1 p. 15 ¶ 12 & App. Vol. 4 pp. 151-54. This was a music store in St. Louis. App. Vol. 4 pp. 445-46 (Tr. p. 387 l. 23 – p. 388 l. 3).

In December 2004, Hamer presented a loan proposal to Paul. App. Vol. 4 p. 273 (Tr. p. 76 ll. 13-19). Hamer communicated to Paul that a music store in Missouri needed a loan for operations. App. Vol. 4 p. 273 (Tr. p. 76 ll. 20-25). Hamer did not communicate any information to Paul about the business' corporate and financial circumstances and creditworthiness. App. Vol. 4 p. 274 (Tr. p. 77 ll. 1-5). Hamer communicated to Paul that this loan would be a low or no risk loan since it was fully collateralized. App. Vol. 4 p. 275 (Tr. p. 78 ll. 15-19).

In December 2004, Hamer and Paul had an attorney-client relationship. App. Vol. 1 p. 21 ¶ 84.

App. Vol. 4 pp. 167-73 is a multiple client representation letter, dated December 28, that Hamer prepared for Paul, Tesson Ferry Music, and others. App. Vol. 1 p. 22 ¶ 87 & App. Vol. 4 p. 274 (Tr. p. 77 ll. 6-15). Paul read and signed this letter. App. Vol. 4 pp. 274-75 (Tr. p. 77 l. 16 – p. 78 l. 9). Hamer did not communicate any other disclosures to Paul about his representation of multiple clients other than what he communicated in App. Vol. 4 pp. 167-73. App. Vol. 4 p. 275 (Tr. p. 78 ll. 10-14). From Paul's perspective, Hamer's letter "never disclosed to [Paul] that there was a conflict of interest or the implications of the conflict of interest and never advised [Paul] to seek independent counsel as a result of the conflict of interest." App. Vol. 4 pp. 231-32, RfA 20.

When Paul made this loan to Tesson Ferry, he had complete trust in Hamer that he would exercise his professional judgment to protect Paul's interests. App. Vol. 4 p. 276 (Tr. p. 79 ll. 7-11).

On December 29, Paul/DLP loaned Tesson Ferry $350,000 at 7% annual interest for five years. App. Vol. 1 p. 25 ¶ 101, App. Vol. 4 pp. 174 & 276 (Tr. p. 79 ll. 12-16). Hamer represented Paul/DLP and Tesson Ferry in this transaction. App. Vol. 1 p. 25 ¶ 102. Hamer proposed the loan terms, and Paul accepted them. App. Vol. 4 p. 275 (Tr. p. 78 ll. 20-25). Hamer

communicated to Paul that Hamer had negotiated the terms and that Paul did not need to worry about it. App. Vol. 4 p. 276 (Tr. p. 79 ll. 1-6).

Count I – Division E
The Arizona Group Loan

In June 2005, Hamer established The Arizona Group, L.L.C. of which Paul, he, and others were members. App. Vol. 1 p. 15 ¶ 13 & App. Vol. 4 pp. 155-158. Hamer represented The Arizona Group. App. Vol. 1 p. 25 ¶ 104.

In March 2005, Hamer presented a loan proposal to Paul. App. Vol. 4 p. 278 (Tr. p. 81 ll. 6-12). Hamer communicated to Paul that Hamer was creating an organization by which a number of investors could invest $5,000,000 in a Texas oil company; this organization would be called The Arizona Group. App. Vol. 4 p. 278 (Tr. p. 81 ll. 13-24). Paul knew a couple of people that planned to join the investment group, but he did not have the investor list. App. Vol. 4 p. 279 (Tr. p. 82 ll. 7-15). The name of the Texas company was Platinum Exploration. App. Vol. 4 p. 279 (Tr. p. 82 ll. 20-24).

Hamer never communicated to Paul about whether Hamer's independent professional judgment on Paul's behalf would be impaired if Paul loaned The Arizona Group money. App. Vol. 4 pp. 279-80 (Tr. p. 82 l. 25 – p. 83 l. 5). Hamer never communicated anything to Paul about how Hamer would handle confidential information he acquired about Paul and The Arizona Group. App. Vol. 4 p. 280 (Tr. p. 83 ll. 6-10). Hamer never

communicated to Paul about how Paul's rights and interests would be protected if Paul loaned The Arizona Group money. App. Vol. 4 p. 280 (Tr. p. 83 ll. 11-16). Hamer never communicated to Paul about whether and why Paul should obtain the advice of another lawyer, independent of Hamer, about this loan proposal. App. Vol. 4 p. 280 (Tr. p. 83 ll. 21-25) & App. Vol. 4 p. 232, RfA 24.

In March 2005, Hamer and Paul had an attorney-client relationship. App. Vol. 1 p. 25 ¶ 105.

On March 22, Paul/DLP loaned The Arizona Group $1,500,000 at 8% annual interest for three months. App. Vol. 1 p. 27 ¶ 119 & App. Vol. 4 p. 175. Hamer established the loan terms. App. Vol. 4 p. 281 (Tr. p. 84 ll. 10-13). Hamer prepared and signed the promissory note for The Arizona Group. App. Vol. 1 p. 27 ¶ 120 & App. Vol. 4 pp. 281-82 (Tr. p. 84 l. 20 – p. 85 l. 3).

When Paul made the loan to The Arizona Group, he trusted Hamer to exercise his professional judgment to protect Paul's interests. App. Vol. 4 p. 281 (Tr. p. 84 ll. 14-19).

The Arizona Group did not fully repay its loan, App. Vol. 4 p. 175, by June 30, 2005. App. Vol. 4 p. 314 (Tr. p. 121 ll. 3-8). One of Hamer's companies, Quad Four or Oakcrest, made the last loan payment in July 2005. App. Vol. 4 p. 314 (Tr. p. 121 ll. 4-20).

Count I – Division F
WAM Financing #2 Loan

In September 2004, Hamer established a business, WAM Financing #2, L.L.C. for William Andrew Meardon (William). App. Vol. 1 p. 15 ¶ 11 & App. Vol. 4 pp. 147-50.

In mid-2005, Hamer presented a loan proposal to Paul. App. Vol. 4 p. 283 (Tr. p. 88 ll. 3-6). Hamer communicated that one of William's companies, WAM Financing #2, needed short-term cash. App. Vol. 4 p. 283 (Tr. p. 88 ll. 12-20) & App. Vol. 4 p. 284 (Tr. p. 89 ll. 6-12). Hamer never communicated anything to Paul about WAM's corporate and financial circumstances and its creditworthiness. App. Vol. 4 p. 284 (Tr. p. 89 ll. 1-5). Hamer did not communicate anything to Paul about the risks of this loan, but Hamer communicated to Paul that the loan would be secured with unspecified collateral. App. Vol. 4 p. 285 (Tr. p. 90 ll. 18-24).

Hamer never communicated to Paul about whether Hamer's independent professional judgment on Paul's behalf would be impaired if Paul loaned WAM money. App. Vol. 4 p. 285 (Tr. p. 90 ll. 2-7). Hamer never communicated anything to Paul about how Hamer would handle confidential information he acquired about Paul and WAM. App. Vol. 4 p. 285 (Tr. p. 90 ll. 8-12). Hamer never communicated to Paul about how Paul's rights and interests would be protected if Paul loaned WAM money. App. Vol. 4 p. 285

(Tr. p. 90 ll. 13-17). Hamer never communicated to Paul about whether and why Paul should obtain the advice of another lawyer, independent of Hamer, about this loan proposal. App. Vol. 4 pp. 285-86 (Tr. p. 90 l. 25 – p. 91 l. 4).

In May 2005, Hamer and Paul had an attorney-client relationship. App. Vol. 1 p. 27 ¶ 124.

On May 26, Paul/DLP loaned WAM $500,000 at 20% annual interest for seven days. App. Vol. 1 p. 28 ¶ 139 & App. Vol. 4 p. 176. Hamer represented Paul/DLP and WAM in this transaction. App. Vol. 1 p. 28 ¶ 140 & App. Vol. 4 p. 224, RfA 55.

When Paul made this loan to WAM, he had complete trust in Hamer that he would exercise his professional judgment to protect Paul's interests. App. Vol. 4 p. 286 (Tr. p. 91 ll. 17-21).

Count I – Division G
Benjamin Chait Loan

Hamer had represented Benjamin Chait for a long time. App. Vol. 4 p. 448 (Tr. p. 393 ll. 19-24).

In May 2005, Hamer presented a loan proposal to Paul. App. Vol. 4 p. 287 (Tr. p. 92 ll. 14-20). Hamer communicated to Paul that Chait needed a short-term loan. App. Vol. 4 pp. 287-88 (Tr. p. 92 l. 21 – p. 93 l. 1). Paul knew that Chait was an art gallery owner, and Paul had met him at Hamer's office. App. Vol. 4 p. 288 (Tr. p. 93 ll. 2-7). Hamer did not communicate to Paul

anything about Chait's personal and financial circumstances and his creditworthiness. App. Vol. 4 p. 288 (Tr. p. 93 ll. 12-17). Hamer communicated to Paul that this was a low or no risk loan because it was short term and because Chait owned the building where his gallery was located. App. Vol. 4 pp. 289-90 (Tr. p. 94 l. 23 – p. 95 l. 4).

Hamer never communicated to Paul about whether Hamer's independent professional judgment on Paul's behalf would be impaired if Paul loaned Chait money. App. Vol. 4 p. 289 (Tr. p. 94 ll. 7-12). Hamer never communicated anything to Paul about how Hamer would handle confidential information he acquired about Paul and Chait. App. Vol. 4 p. 289 (Tr. p. 94 ll. 13-17). Hamer never communicated to Paul about how Paul's rights and interests would be protected if Paul loaned Chait money. App. Vol. 4 p. 289 (Tr. p. 94 ll. 18-22). Hamer never communicated to Paul about whether and why Paul should obtain the advice of another lawyer, independent of Hamer, about this loan proposal. App. Vol. 4 p. 290 (Tr. p. 95 ll. 5-9).

In June 2005, Hamer and Paul had an attorney-client relationship. App. Vol. 1 p. 29 ¶ 142.

On June 2, Paul/DLP loaned Chait $270,000 at 9% annual interest for 30 days. App. Vol. 1 p. 30 ¶ 157 & App. Vol. 4 p. 177. Hamer represented

Paul/DLP and Chait in this transaction. App. Vol. 1 p. 30 ¶ 158 & App. Vol. 4 p. 225, RfA 58.

When Paul made this loan, he was absolutely certain that Hamer would exercise his professional judgment to protect Paul's interests. App. Vol. 4 p. 290 (Tr. p. 95 ll. 21-25).

Count I – Division H
Financial Dynamics Group Loan

In December 1998, Hamer incorporated Financial Dynamics Group, Inc. for William. App. Vol. 4 pp. 139-42.

In June 2005, Hamer presented a loan proposal to Paul. App. Vol. 4 p. 291 (Tr. p. 96 ll. 18-24). Hamer communicated to Paul that one of William's companies, Financial Dynamics Group, needed a short-term loan. App. Vol. 4 pp. 291-92 (Tr. p. 96 l. 25 – p. 97 l. 6). Hamer did not communicate to Paul anything about Financial Dynamics' corporate and financial circumstances and its creditworthiness. App. Vol. 4 p. 292 (Tr. p. 97 ll. 7-12). Hamer communicated to Paul that this was a low risk loan because it was short term and because William would personally guarantee the loan. App. Vol. 4 pp. 293-94 (Tr. p. 98 l. 25 – p. 99 l. 5).

Hamer never communicated to Paul about whether Hamer's independent professional judgment on Paul's behalf would be impaired if Paul loaned Financial Dynamics money. App. Vol. 4 p. 293 (Tr. p. 98 ll. 9-14).

Hamer never communicated anything to Paul about how Hamer would handle confidential information he acquired about Paul and Financial Dynamics. App. Vol. 4 p. 293 (Tr. p. 98 ll. 15-19). Hamer never communicated to Paul about how Paul's rights and interests would be protected if Paul loaned Financial Dynamics money. App. Vol. 4 p. 293 (Tr. p. 98 ll. 20-24). Hamer never communicated to Paul about whether and why Paul should obtain the advice of another lawyer, independent of Hamer, about this loan proposal. App. Vol. 4 p. 294 (Tr. p. 99 ll. 6-10).

In June 2005, Hamer and Paul had an attorney-client relationship. App. Vol. 1 p. 31 ¶ 163.

On June 30, Paul/DLP loaned Financial Dynamics $400,000 at 9% annual interest for three months. App. Vol. 1 p. 32 ¶ 179 & App. Vol. 4 pp. 178 & 179. Hamer communicated to Paul that he had personally negotiated the loan terms, and Paul agreed to them. App. Vol. 4 pp. 294-95 (Tr. p. 99 l. 19 – p. 100 l. 4). Hamer represented Paul/DLP and Financial Dynamics in this transaction. App. Vol. 1 p. 32 ¶ 180 & App. Vol. 4 p. 227, RfA 66.

When Paul made this loan to Financial Dynamics, he had complete trust that Hamer would exercise his professional judgment to protect Paul's interests in this transaction. App. Vol. 4 p. 295 (Tr. p. 100 ll. 5-9).

Count I – Division *I*
Colorado Medical Supply Loan

Colorado Medical Supply supplies nursing homes and home care facilities. App. Vol. 4 p. 449 (Tr. p. 395 ll. 14-19).

In August 2005, Hamer introduced Paul to a proposal to make a secured loan to one of Hamer's clients, Colorado Medical Supply (Colorado Medical); Hamer asked Paul whether he would make a loan to this business, Colorado Medical. App. Vol. 1 p. 32 ¶ 182 & App. Vol. 4 p. 296 (Tr. p. 102 ll. 4-10). Hamer communicated to Paul that Hamer's brother-in-law and his wife owned this business, and it needed operating capital for growth. App. Vol. 4 p. 296 (Tr. p. 102 ll. 11-20). Hamer communicated to Paul that the loan would be secured by a mortgage on real estate in Longmont, Colorado, and by a security interest in the assets of Colorado Medical. App. Vol. 1 p. 36 ¶ 201. Hamer communicated to Paul that this loan would be very low risk because of the high value of the collateral. App. Vol. 4 p. 299 (Tr. p. 105 ll. 12-16).

Hamer did not communicate to Paul any information about Colorado Medical's corporate and financial circumstances and its creditworthiness. App. Vol. 4 pp. 296-97 (Tr. p. 102 l. 21 – p. 103 l. 3).

App. Vol. 4 pp. 180-83 is an August 2005 multiple client representation letter that Hamer prepared, but Paul never saw it and did not sign it. App. Vol. 4 p. 297 (Tr. p. 103 ll. 4-20).

Hamer never disclosed to Paul "that there was a conflict of interest or the implications of the conflict of interest and never advised [Paul] to seek independent counsel as a result of the conflict of interest." App. Vol. 4 p. 235, RfA 39.

Hamer did not communicate to Paul about whether his responsibilities to Colorado Medical or the Schryvers might limit his representation of Paul in this transaction. App. Vol. 4 p. 298 (Tr. p. 104 ll. 16-21). Hamer did not communicate to Paul about reasonably available alternatives to his representation of Paul in this transaction. App. Vol. 4 pp. 298-99 (Tr. p. 104 l. 22 – p. 105 l. 1). Hamer never communicated anything to Paul about how Hamer would handle confidential information he acquired about Paul and Colorado Medical. App. Vol. 4 p. 299 (Tr. p. 105 ll. 2-6). Hamer never communicated to Paul about how Paul's rights and interests would be protected if Paul loaned Colorado Medical money. App. Vol. 4 p. 299 (Tr. p. 105 ll. 7-11). Hamer never communicated to Paul about whether and why Paul should obtain the advice of another lawyer, independent of Hamer, about this loan proposal. App. Vol. 4 p. 299 (Tr. p. 105 ll. 17-21).

In August 2005, Hamer and Paul had an attorney-client relationship. App. Vol. 1 p. 32 ¶ 183.

On August 26, Paul/DLP loaned Colorado Medical $1,000,000 at 11% annual interest for one year; subsequently, the parties extended the loan for one year. App. Vol. 1 p. 36 ¶ 203 & App. Vol. 4 pp. 184-88 & 189-92. Hamer represented Paul/DLP and Colorado Medical in this transaction. App. Vol. 1 p. 36 ¶ 204 & App. Vol. 4 p. 228, RfA 70.

When Paul made this loan to Colorado Medical, he had complete trust that Hamer would exercise his professional judgment to protect Paul's interests in this transaction. App. Vol. 4 p. 300 (Tr. p. 106 ll. 21-25).

Hamer never perfected Paul's mortgage in the Colorado real estate and never perfected Paul's security interest in Colorado Medical's tangible assets. App. Vol. 1 p. 36 ¶ 205, App. Vol. 4 pp. 184-88, & App. Vol. 4 p. 301 (Tr. p. 108 ll. 1-18). The Schryvers did execute a stock pledge agreement in favor of Paul, App. Vol. 4 pp. 193-95. App. Vol. 4 p. 302 (Tr. p. 109 ll. 1-18).

Count II
Loans by Paul to Hamer

On April 15, 2004, Paul closed the sale of Buckle Down; Paul received $23,000,000 in cash and some preferred stock. App. Vol. 4 p. 315 (Tr. p. 125 ll. 6-14). Paul wanted to give a bonus to those persons who had worked hard to make it happen, including Hamer, his secretary, and the accountant, Dennis Craven. App. Vol. 4 pp. 315-16 (Tr. p. 125 l. 15 – p. 126 l. 1). Paul considered giving a bonus of $150,000 to Hamer, $45,000 to Craven, and between $5000

to $10,000 to Hamer's secretary. App. Vol. 4 p. 316 (Tr. p. 126 ll. 2-7). Paul testified that $150,000 was an arbitrary number, and it was not tied to a formula. App. Vol. 4 p. 361 (Tr. p. 227 ll. 1-10).

On April 15, Paul communicated with Hamer about a bonus for him and his secretary. App. Vol. 4 pp. 316-17 (Tr. p. 126 l. 8 – p. 127 l. 6). Hamer agreed with the bonus for his secretary, but he had concerns about a cash bonus for him. App. Vol. 4 p. 317 (Tr. p. 127 ll. 7-17). Hamer preferred receiving a low interest loan from Paul. App. Vol. 4 pp. 317-18 (Tr. p. 127 l. 18 – p. 128 l. 6). Hamer had in mind a five-year loan of $1,000,000 with interest at three percent lower than what he would have to pay elsewhere; this loan would benefit Hamer $30,000 per year for five years. App. Vol. 4 pp. 317-18 (Tr. p. 127 l. 18 – p. 128 l. 17). Paul agreed that he would make that loan to Hamer. App. Vol. 4 p. 318 (Tr. p. 128 ll. 18-22).

On April 20, Hamer communicated to Paul that his bill for the sale of Buckle Down was $268,447.13; the next day, Hamer gave Paul a one-page bill, and Paul paid Hamer. App. Vol. 4 pp. 320-21 (Tr. p. 130 l. 9 – p. 131 l. 13) & App. Vol. 4 p. 199. Paul and Hamer did not discuss a bonus for Hamer on April 20 or 21; Paul did not understand that the amount he paid Hamer in April included a cash bonus. App. Vol. 4 pp. 321-22 (Tr. p. 131 l. 14 – p. 132 l. 4).

Paul denied that he had proposed a bonus of $110,000 to Hamer; he acknowledged that he had misspoken in his March 8, 2017 deposition when he said $110,000. App. Vol. 4 pp. 373-74 (Tr. p. 240 l. 23 – p. 241 l. 8). He attributed his mistake to his recent review of App. Vol. 4 p. 200 that contained Hamer's handwritten note about a bonus of $110,000 included in his Buckle Down bill: $158,499.13 + $110,000 (Bonus) = $268,449.13. App. Vol. 4 pp. 374-75 (Tr. p. 241 ll. 2-8, p. 242 ll. 5-23), & App. Vol. 4 p. 200.

Count II - Division A
Quad Four Loan

In July 2004, Paul made the 2.5% loan to Hamer that he committed to make on April 15, in lieu of a cash bonus for Hamer's work in the sale of Buckle Down. App. Vol. 4 pp. 318-19 (Tr. p. 128 l. 23 – p. 129 l. 4) & App. Vol. 4 p. 326 (Tr. p. 136 ll. 7-12). Hamer communicated to Paul that he could borrow money elsewhere at 5.5%, so Paul saved Hamer $150,000 ($1,000,000 x 3% x 5 years). App. Vol. 4 p. 319 (Tr. p. 129 ll. 15-23) & App. Vol. 4 pp. 325-26 (Tr. p. 135 l. 18 – p. 136 l. 6). A month earlier, Paul made a loan at 11.5%; a month later, Paul made a loan at 10 or 10.5%. App. Vol. 4 pp. 319-20 (Tr. p. 129 l. 24 – p. 130 l. 8).

On July 28, 2004, Paul/DLP loaned Quad Four $1,000,000 at 2.5% annual interest for five years; Hamer prepared and signed the promissory note on behalf of Quad Four. App. Vol. 1 p. 41 ¶¶ 234 & 235 & App. Vol. 4 pp.

196 & 197. The note stated, in part: "This Note is to be fully secured and guaranteed." App. Vol. 4 p. 196. Hamer communicated to Paul that the note would have complete security through a number of rental units and other real estate in the Iowa City area. App. Vol. 4 p. 328 (Tr. p. 138 ll. 11-22). To Paul's knowledge, Hamer never took any steps to fully secure the note. App. Vol. 4 pp. 328-29 (Tr. p. 138 l. 23 – p. 139 l. 1). Paul did not see the promissory note, App. Vol. 4 p. 196, until August 2005. App. Vol. 4 pp. 327-28 (Tr. p. 137 l. 22 – p. 138 l. 1). Hamer repaid the loan by its due date, July 28, 2009. App. Vol. 4 p. 337 (Tr. p. 147 ll. 5-10).

In July 2004, Hamer and Paul had an attorney-client relationship. App. Vol. 1 p. 40 ¶ 220. Hamer had a financial, business, property, or personal interest in Quad Four. App. Vol. 1 p. 40 ¶ 221 & App. Vol. 4 p. 324 (Tr. p. 134 ll. 22-24). Hamer and Paul had differing interests in this low-interest, bonus loan to Quad Four. App. Vol. 1 p. 40 ¶ 222. Hamer's interest in Quad Four was in conflict with, was inconsistent with, or was diverse from Paul's interest in Quad Four. App. Vol. 1 p. 40 ¶ 223. Paul expected Hamer to exercise his professional judgment to protect Paul's interest in this transaction. App. Vol. 4 p. 326 (Tr. p. 136 ll. 13-17).

Hamer did not communicate anything to Paul about Quad Four's corporate and financial circumstances and its creditworthiness. App. Vol. 4 p.

324 (Tr. p. 134 ll. 4-8). Hamer communicated to Paul that the loan would be fully secured. App. Vol. 4 pp. 324-25 (Tr. p. 134 l. 25 – p. 135 l. 4). Hamer communicated to Paul that Hamer would ensure that the loan was secured. App. Vol. 4 p. 325 (Tr. p. 135 ll. 14-17). Hamer never communicated to Paul about whether Hamer's independent professional judgment on Paul's behalf would be impaired if Paul loaned Quad Four money. App. Vol. 4 p. 324 (Tr. p. 134 ll. 9-14). Hamer never communicated anything to Paul about how Hamer would handle confidential information he acquired about Paul and Quad Four. App. Vol. 4 p. 324 (Tr. p. 134 ll. 15-19). Hamer never communicated to Paul about how Paul's rights and interests would be protected if Paul loaned Quad Four money. App. Vol. 4 p. 324 (Tr. p. 134 ll. 20-24). Hamer never communicated to Paul about whether and why Paul should obtain the advice of another lawyer, independent of Hamer, about this loan proposal. App. Vol. 4 p. 325 (Tr. p. 135 ll. 5-9).

Despite several requests from Paul, Hamer did not produce an itemized bill for the sale of Buckle Down. App. Vol. 4 pp. 321-22 (Tr. p. 131 l. 21 – p. 132 l. 14). Over four and one-half years later, in a January 2009 email, Paul asked Hamer again for a copy of the itemized bill for the sale of Buckle Down. App. Vol. 4 pp. 322-23 (Tr. p. 132 l. 15 – p. 133 l. 3), App. Vol. 1 p. 41 ¶ 238,

& App. Vol. 4 p. 198. Hamer still failed to produce an itemized statement for Paul. App. Vol. 4 p. 323 (Tr. p. 133 ll. 4-9).

In February 2010, Hamer produced an itemized bill and related documents only after Paul's attorney, David Dutton, sent a demand letter to Hamer and his law firm; Paul then learned he had paid a cash bonus to Hamer in April 2004, in addition to making the 2.5% bonus loan. App. Vol. 4 p. 323 (Tr. p. 133 ll. 10-16), App. Vol. 4 pp. 342-43 (Tr. p. 205 l. 20 – p. 206 l. 3), App. Vol. 1 p. 41 ¶ 239, & App. Vol. 4 pp. 201-16.

Count II - Division B
Oakcrest Properties Loan

In July 2005, Hamer asked Paul whether he would make a loan to Oakcrest Properties. App. Vol. 1 p. 42 ¶ 243 & App. Vol. 4 p. 329 (Tr. p. 139 ll. 2-8).

In July 2005, Hamer and Paul had an attorney-client relationship. App. Vol. 1 p. 42 ¶ 244.

Hamer had a financial, business, property, or personal interest in Oakcrest. App. Vol. 1 p. 42 ¶ 245, App. Vol. 4 p. 329 (Tr. p. 139 ll. 9-11), & App. Vol. 4 p. 226, RfA 62. In July 2005, Paul "had no knowledge of anything to do with the purpose or finances of [Oakcrest], in particular whether or not [Hamer] had a financial interest in the company. Further, [Hamer] never disclosed to [Paul] that there was a conflict of interest or the implications of

the conflict of interest and never advised [Paul] to seek independent counsel as a result of the conflict of interest." App. Vol. 4 pp. 233-34, RfA 30.

On July 7, 2005, Paul/DLP loaned Oakcrest $500,000 at eight per cent annual interest for one month. App. Vol. 1 p. 43 ¶ 258 & App. Vol. 4 p. 217. Hamer prepared the promissory note and signed it on behalf of Oakcrest. App. Vol. 1 p. 43 ¶ 259, App. Vol. 4 p. 217, & App. Vol. 4 p. 332 (Tr. p. 142 ll. 13-21). Hamer suggested all the terms of the note, including the interest rate. App. Vol. 4 p. 331 (Tr. p. 141 ll. 14-20) & App. Vol. 4 pp. 335-36 (Tr. p. 145 l. 19 – p. 146 l. 2). Paul did not see the note until August or September 2005. App. Vol. 4 p. 332-33 (Tr. p. 142 l. 25 – p. 143 l. 4). Hamer repaid this loan by its due date, August 9, 2005. App. Vol. 4 p. 337 (Tr. p. 147 ll. 11-16).

Paul explained that the difference in the interest rates of the Quad Four loan in July 2004 and the Oakcrest Properties loan in July 2005 related to the bonus that Paul wanted to give to Hamer; the first loan to Quad Four reflected Paul's bonus to Hamer, while the second loan to Oakcrest did not. App. Vol. 4 pp. 331-32 (Tr. p. 141 l. 21 – p. 142 l. 7).

Hamer did not communicate anything to Paul about Oakcrest's corporate and financial circumstances and its creditworthiness. App. Vol. 4 pp. 329-30 (Tr. p. 139 l. 23 – p. 140 l. 2). Hamer did not communicate anything to Paul about whether Hamer's responsibilities to Oakcrest might

materially limit his representation of Paul in this transaction. App. Vol. 4 p. 330 (Tr. p. 140 ll. 3-8). Hamer did not communicate anything to Paul about reasonably available alternatives to his representation of Paul in this transaction. App. Vol. 4 p. 330 (Tr. p. 140 ll. 9-13). Hamer never communicated anything to Paul about how Hamer would handle confidential information he acquired about Paul and Oakcrest. App. Vol. 4 p. 330 (Tr. p. 140 ll. 14-18). Hamer never communicated to Paul about how Paul's rights and interests would be protected if Paul loaned Oakcrest money. App. Vol. 4 p. 330 (Tr. p. 140 ll. 19-23).

Hamer communicated to Paul that the loan would have no material risks because it would be fully secured. App. Vol. 4 pp. 330-31 (Tr. p. 140 l. 24 – p. 141 l. 3). Hamer never communicated to Paul about whether and why Paul should obtain the advice of another lawyer, independent of Hamer, about this loan. App. Vol. 4 p. 331 (Tr. p. 141 ll. 4-8). Paul expected Hamer to exercise his professional judgment to protect Paul's interests in this transaction. App. Vol. 4 p. 332 (Tr. p. 142 ll. 8-12).

Hamer did not present Paul with a document for Paul to sign that addressed any of the communications that Hamer had with Paul about this transaction. App. Vol. 4 p. 331 (Tr. p. 141 ll. 9-13).

Count II - Division C
Quad Four Loan

In March 2006, Hamer asked Paul whether he would make a second loan to Quad Four. App. Vol. 1 p. 43 ¶ 260 & App. Vol. 4 p. 333 (Tr. p. 143 ll. 5-10).

In March 2006, Hamer and Paul had an attorney-client relationship. App. Vol. 1 p. 43 ¶ 261.

Hamer had a financial, business, property, or personal interest in Quad Four. App. Vol. 1 p. 43 ¶ 262 & App. Vol. 4 p. 333 (Tr. p. 143 ll. 11-13).

Hamer communicated nothing new about Quad Four to Paul. App. Vol. 4 p. 333 (Tr. p. 143 ll. 17-21). Hamer did not communicate anything to Paul about Quad Four's corporate and financial circumstances and its creditworthiness. App. Vol. 4 pp. 333-34 (Tr. p. 143 l. 22 – p. 144 l. 1). Hamer did not communicate anything to Paul about whether Hamer's responsibilities to Quad Four might materially limit his representation of Paul in this transaction. App. Vol. 4 p. 334 (Tr. p. 144 ll. 2-7). Hamer did not communicate anything to Paul about reasonably available alternatives to his representation of Paul in this transaction. App. Vol. 4 p. 334 (Tr. p. 144 ll. 8-12). Hamer never communicated anything to Paul about how Hamer would handle confidential information he acquired about Paul and Quad Four. App. Vol. 4 p. 334 (Tr. p. 144 ll. 13-17). Hamer never communicated to Paul about

how Paul's rights and interests would be protected if Paul loaned Quad Four money. App. Vol. 4 p. 334 (Tr. p. 144 ll. 18-23).

With regard to the risk of the loan, Hamer communicated to Paul that the loan would be secured by family/company assets and by him personally. App. Vol. 4 pp. 334-35 (Tr. p. 144 l. 24 – p. 145 l. 4). Hamer never communicated to Paul about whether and why Paul should obtain the advice of another lawyer, independent of Hamer, about this loan. App. Vol. 4 p. 335 (Tr. p. 145 ll. 5-9). Paul expected Hamer to exercise his professional judgment to protect Paul's interests in this transaction. App. Vol. 4 p. 336 (Tr. p. 146 ll. 2-6).

Hamer did not present Paul with a document for Paul to sign that addressed any of the communications that Hamer had with Paul about this transaction. App. Vol. 4 p. 335 (Tr. p. 145 ll. 10-14).

On March 23, 2006, Paul/DLP loaned Quad Four $500,000 at eight per cent annual interest for one month. App. Vol. 1 p. 45 ¶ 275, App. Vol. 4 p. 218, & App. Vol. 4 p. 336 (Tr. p. 146 ll. 7-12). Hamer prepared and signed the promissory note on behalf of Quad Four. App. Vol. 1 p. 45 ¶ 276, App. Vol. 4 p. 218, & App. Vol. 4 p. 336 (Tr. p. 146 ll. 13-16). Hamer suggested all the terms of the note. App. Vol. 4 pp. 335-36 (Tr. p. 145 l. 15 - p. 146 l. 1) & App. Vol. 4 pp. 378-79 (Tr. p. 245 l. 19 – p. 246 l. 2). Paul did not intend

this loan to contain the reduced interest rate that the first Quad Four contained. App. Vol. 4 p. 336 (Tr. p. 146 ll. 17-23). Hamer repaid this loan by its due date, April 23, 2006. App. Vol. 4 p. 337 (Tr. p. 147 ll. 17-20).

Count IV
Collecting a Clearly Excessive Fee

After Paul agreed to extend a bonus to Hamer through a five-year loan, rather than through a cash bonus, Hamer communicated to Paul that he could borrow money at 5.5%. App. Vol. 4 p. 319 (Tr. p. 129 ll. 15-23).

On July 28, 2004, Paul/DLP loaned Hamer/Quad Four $1,000,000 at 2.5% annual interest for five years; Hamer signed the promissory note on behalf of Quad Four; this was Paul's bonus to Hamer. App. Vol. 1 p. 57 ¶¶ 380, 381, & App. Vol. 4 pp. 318-19 (Tr. p. 128 l. 23 – p. 129 l. 4). A month earlier, Paul made a loan at 11.5%; a month later, Paul made a loan at 10 or 10.5%. App. Vol. 4 pp. 319-20 (Tr. p. 129 l. 24 – p. 130 l. 8). Other than this loan, the lowest rate at which Paul made a loan was 7%. App. Vol. 4 p. 463 (Tr. p. 437 ll. 1-5).

Despite several requests from Paul, Hamer did not produce an itemized bill for the sale of Buckle Down. App. Vol. 4 pp. 321-22 (Tr. p. 131 l. 21 – p. 132 l. 14). Over four and one-half years later, in a January 2009 email, Paul asked Hamer again for a copy of the itemized bill for the sale of Buckle Down. App. Vol. 4 pp. 322-23 (Tr. p. 132 l. 15 – p. 133 l. 3) & App. Vol. 4 p. 198.

Hamer still failed to produce an itemized statement for Paul. App. Vol. 4 p. 323 (Tr. p. 133 ll. 4-9).

In February 2010, Hamer produced an itemized bill and related documents only after Paul's attorney, David Dutton, sent a demand letter to Hamer and his law firm; Paul then learned he had paid a cash bonus in April 2004. App. Vol. 4 p. 323 (Tr. p. 133 ll. 10-16), App. Vol. 4 pp. 342-43 (Tr. p. 205 l. 20 – p. 206 l. 3), App. Vol. 1 p. 41 ¶ 239 & App. Vol. 4 pp. 201-16.

App. Vol. 4 pp. 201-16 is Hamer's itemized statement that Paul received in 2010. App. Vol. 4 p. 343 (Tr. p. 206 ll. 4-15). App. Vol. 4 pp. 201-16 did not contain any reference to the amount of time worked by Hamer or anyone else, and it did not disclose an hourly rate. App. Vol. 4 p. 343 (Tr. p. 206 ll. 13-22). Because Hamer typically did not include the amount of time spent on a particular activity in his bills, Paul never asked Hamer for that detail for the sale of Buckle Down bill, App. Vol. 4 pp. 201-16. App. Vol. 4 pp. 407-08 (Tr. p. 275 l. 9 – p. 276 l. 10). Paul did not know what Hamer's hourly rate was at the time of the Buckle Down sale; Paul just expected a fair bill from Hamer. App. Vol. 4 p. 411 (Tr. p. 283 ll. 9-15).

Hamer testified that he did block billing; he provided an itemized bill if the client requested it. App. Vol. 4 p. 452 (Tr. p. 413 ll. 15-22).

Hamer testified that all of his work for Paul was billed on an hourly basis. App. Vol. 4 p. 452 (Tr. p. 413 ll. 7-14).

When Paul received App. Vol. 4 pp. 201-216, he also received App. Vol. 4 p. 200. App. Vol. 4 p. 343 (Tr. p. 206 ll. 16-23). App. Vol. 4 p. 200 included a photocopy of the front of Paul's Profiles Corporation check 8799 with which Paul paid the balance due on App. Vol. 4 p. 199. App. Vol. 4 pp. 343-44 (Tr. p. 206 l. 24 – p. 207 l. 5). Paul recognized the handwriting in the lower left corner of App. Vol. 4 p. 200 as being Hamer's handwriting. App. Vol. 4 p. 345 (Tr. p. 208 ll. 2-14).

Paul gave this interpretation of Hamer's notes in the lower left hand corner of App. Vol. 4 p. 200: 1) DLP's bills will be paid independently from Profiles' bills; 2) Harvest's real estate bills will be paid independently; 3) the Profiles' bill of $268,000 is composed of $158,000 for services and $110,000 for a bonus. App. Vol. 4 pp. 345-46 (Tr. p. 208 l. 15 – p. 209 l. 3). With regard to Hamer's notation of "CF Doug Paul 4/20/04", Paul acknowledged that Hamer and he spoke on April 20, 2004, about the Profiles' bill, but he denied that they spoke about a bonus of $110,000. App. Vol. 4 p. 346 (Tr. p. 209 ll. 4-19).

When Paul saw App. Vol. 4 p. 200 in 2010, he was surprised because Hamer had double dipped on the bonus, once in the Profiles' billing, App.

Vol. 4 p. 199, and again in the low interest loan, App. Vol. 4 p. 196. App. Vol. 4 pp. 346-47 (Tr. p. 209 l. 20 – p. 210 l. 2). In April 2004, when Paul wrote the Profiles' check 8799, he did not know that he was paying Hamer a bonus of $110,000. App. Vol. 4 p. 347 (Tr. p. 210 ll. 3-7) & App. Vol. 4 p. 200.

Hamer never communicated to Paul that the July 2004 $1,000,000 loan, with the 2.5% interest rate, was an inadequate bonus. App. Vol. 4 p. 347 (Tr. p. 210 ll. 16-20) & App. Vol. 4 p. 196. In July 2004, when he loaned Hamer $1,000,000, Paul did not realize that he had already paid Hamer a cash bonus of $110,000. App. Vol. 4 pp. 347-48 (Tr. p. 210 l. 21 – p. 211 l. 1). Paul never agreed to pay, nor did he ever intend to pay, Hamer two bonuses, one in the form of cash and one in the form of a low interest loan. App. Vol. 4 p. 348 (Tr. p. 211 ll. 2-10).

Argument

Assessment of Credibility

In Count I, the Commission found "both Hamer and Paul lacked credibility in at least portions of their testimony at the Hearing …." App. Vol. 1 p. 114 ¶ 2.

In Count II, the Commission found "Hamer [not] to be credible regarding his assertion that he advised Paul about the risks of loaning money

to his attorney or the need for independent legal advice." App. Vol. 1 p. 126 ¶ 2.

In Count III, the Commission found "Paul's testimony that he relied on Hamer for investment advice was inconsistent." App. Vol. 1 p. 131. The Commission also found "Paul's testimony that Hamer handled all the communications and negotiation with UWT regarding the loans was again inconsistent." App. Vol. 1 p. 132.

In *Attorney Disciplinary Bd. v. Arzberger,* 887 N.W.2d 353, 367 (Iowa 2016), the Court wrote that it is "free to disagree with the credibility findings of the Commission. [citing *Sobel*, 779 N.W.2d 782, 787 (Iowa 2010) and *McGrath,* 713 N.W.2d 682, 702 (Iowa 2006).]" The *Arzberger* opinion continued, "We do, however, give deference to the commission's credibility findings because the commission is in the best position to make credibility determinations. (citations omitted)."

In *Attorney Disciplinary Bd. v. Sobel,* 779 N.W.2d 782, 787-88 Iowa 2010), the Court disagreed with the Commission's conclusion that Scott "Sobel was untruthful in expressing his contrary account of the proceedings during the postconviction relief action." Sobel's testimony about the events of a November 2002 guilty plea and sentencing hearing before Judge Cynthia Moisan disagreed with the testimony of Moisan and her staff. The

postconviction hearing occurred two years after the guilty plea hearing, and the attorney disciplinary hearing occurred six years after the guilty plea hearing. The Court concluded: "While the record supports no substantial doubt that Sobel's account of the plea and sentencing proceeding was inaccurate, it does not supply the same level of confidence that Sobel intended to be deceptive in his recollection of the event." The Court concluded that Sobel did not violate DR 1-102 (A)(1), (4), (5), and (6) and DR 7-102(A)(8).

In *Attorney Disciplinary Bd. v. McGrath,* 713 N.W.2d 682, 701-02 (Iowa 2006), the Court disagreed with the Commission's credibility assessment of a Board witness who had "given two, contradictory versions of her relationship with [James] McGrath." The Court noted that the fact that the witness had not always told the truth was "not the end of the analysis." The Court's analysis caused it to agree with the dissenting commissioner who found the witness credible: "Although this court does not often disregard the credibility determinations of the commission, we do so here."

The Court, as did the Commission, should find credible evidence, exhibits as well as testimony, that establish, by a convincing preponderance of the evidence, that Hamer violated several Code provisions and Rules in arranging loans between Paul and other Hamer clients, in arranging loans

between Paul and himself, and in collecting two bonuses from Paul for his services with regard to the sale of Buckle Down.

Paul's Motivation

Hamer urges the Court to excuse his misconduct by asking it to focus on Paul's anger toward Hamer, his greed, and other improper motives. The Board asks the Court to reject this argument for two reasons. Firstly, the evidentiary record does not support it. Secondly, in *Attorney Disciplinary Bd. v. Santiago,* 869 N.W.2d 172, 182-83 (Iowa 2015), the Court reiterated a position it has held since at least 1942: "We have consistently held that the motivation of the accuser does not excuse the respondent attorney's misconduct or mitigate the sanction. (citations omitted)."

Hamer Has Not Met His Burden to Make a Full Disclosure to Paul

Hamer had a concurrent conflict of interest when he represented Paul in initiating and arranging loans from Paul to other of his clients or to himself. From the Court's decision *Heninger & Heninger, P.C. v. Davenport Bank & Trust Co.,* 341 N.W.2d 43, 49 (Iowa 1983), we know that Hamer had the duty to recognize the conflict of interest.

In *Comm. on Prof'l Ethics & Conduct v. Mershon,* 316 N.W.2d 895, 899 (Iowa 1982), the Court established that it will place the burden on Hamer

to make a full disclosure to Paul, and to show that all of the transactions involving Paul were fair and equitable. Hamer did not meet that burden because

- he misrepresented or concealed from Paul the identity of the borrower, the relationship Hamer had with the borrower, the credit-worthiness of the borrower, the nature and value of the borrower's collateral, the steps needed to perfect Paul's security interest in the collateral, and the borrower's ability to repay the loan as promised;

- he failed to fully inform Paul of the nature and effect of the transactions;

- he failed to fully inform Paul of his rights and interests in the transactions; and

- he failed to insist that Paul received independent advice about the transactions.

Hamer never made a full disclosure to Paul of the possible consequences of Hamer's dual representation of the lender and the borrower as required by the Court in *Attorney Disciplinary Bd. v. Barnhill,* 847 N.W.2d 466, 476-77 (Iowa 2014). In these transactions in which Paul made loans to other Hamer clients or to Hamer himself, Paul did not receive the complete loyalty from Hamer to which he was entitled.

Refusing Employment When the Interests of the Lawyer May Impair the Lawyer's Independent Professional Judgment: Violation of DR 5-101(A)

In Count II, Hamer violated DR 5-101(A) in initiating and arranging a loan in July 2004 from Paul to an entity in which Hamer had ownership, Quad Four.

Hamer put himself in a similar, if not the same, position as Robert Clauss found himself when the Court suspended his law license for representing a judgment creditor and judgment debtor simultaneously. *Attorney Disciplinary Bd. v. Clauss,* 711 N.W.2d 1, 3-5 (Iowa 2006). Hamer went further than Clauss when, while he represented Paul as a creditor, he borrowed money from Paul, through Quad Four, and became one of Paul's debtors.

Refusing to Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer: Violations of DR 5-105(C) & (D)

In Count I, Hamer violated DR 5-105(C) & (D) in initiating and arranging loans from March 2004 through June 2005 from Paul to Jacobsen, RBA, Accentz, Tesson Ferry, The Arizona Group, WAM #2, Chait, and Financial Dynamics.

Like John Wagner, Hamer represented both sides, creditor and debtor, in commercial transactions. *Bd. of Prof'l Ethics & Conduct v. Wagner,* 599 N.W.2d 721, 728-29 (Iowa 1999). While Hamer testified that he informed Paul of this fact, Hamer never testified that he explained the pitfalls that might arise in the course of the transaction that would make it desirable for Paul to obtain independent counsel. Rather, Hamer testified that he strove to make disclosures to his clients, including Paul, which achieved a mutual comfort level for them to proceed with the transaction.

While Hamer wrote a longer letter to Tesson Ferry, Paul, and others than Robert Clauss wrote to his clients, the Court's critique of Clauss' letter applies to Hamer as well. *Attorney Disciplinary Bd. v. Clauss,* 711 N.W.2d 1, 2-4 (Iowa 2006). Like Clauss' letter, Hamer's letter simply warned his clients that he had a conflict of interest and asked them to waive it. Clauss' letter was inadequate; Hamer's letter is inadequate too.

The Court suspended Gregory Johnston's law license for, in part, demonstrating a general indifference to the core responsibilities he owed to his client. *Attorney Disciplinary Bd. v. Johnston,* 732 N.W.2d 448, 456 (Iowa 2007). In arranging these multiple transactions Hamer demonstrated the same general indifference to the core responsibilities that he owed to Paul.

In *Attorney Disciplinary Bd. v. Barnhill,* 847 N.W.2d 466, 476-77 (Iowa 2014), the Court summarized the requirements of the conflict of interest rules that Hamer faced and failed to implement:

- make full disclosure to Paul of the possible consequences of the dual representation;
- provide complete loyalty to Paul; and
- ensure Paul has received independent advice.

Conflict of Interest: Current Clients: Violation of Rule 32:1.7(a)(2) & (b)

In Count I, Hamer violated Rule 32:1.7(a)(2) & (b) in initiating and arranging a loan in August 2005 from Paul to Colorado Medical Supply.

Loyalty and independent judgment are essential elements of the lawyer-client relationship.

The Rule identifies four steps for Hamer to take, ending with obtaining Paul's informed consent, confirmed in writing. While Hamer had a concurrent conflict of interest due to the fact that a significant risk existed that his representation of Paul would be materially limited by his responsibilities to other clients, Hamer failed to successfully complete all four steps.

Hamer did not obtain informed consent from Paul with regard to the Colorado Medical loan; Paul never saw Hamer's letter that attempted to provide this information.

Hamer never obtained Paul's confirmation in writing for any transactions on or after July 1, 2005.

Hamer needed to advise Paul that no attorney-client privilege would attach to Paul's communications to Hamer. Hamer did not do so.

Hamer needed to advise Paul that confidential communications from Paul will be shared with Colorado Medical and vice versa. Hamer did not do so.

The Court reprimanded Samuel Marks for, in part, violating Rule 32:1.9, Duties to former clients. *Attorney Disciplinary Bd. v. Marks,* 814 N.W.2d 532, 540, 542 (Iowa 2012). The Court concluded that Marks did not obtain informed consent confirmed in writing from his former client. *Id.* at 540. In discussing Marks' failure to obtain informed consent, the Court rejected Marks' argument that he did not have a conflict of interest with his former client because he did a good deed for her. *Id.* Hamer argues he should be excused from complying with the conflict of interest rules because his good deed was making a lot of money for Paul; the Court should reject Hamer's

"altruistic intentions" and sanction him for failing to comply with the conflict of interest rules.

The Court suspended Larry Stoller's law license for violating Rule 32:1.7. *Attorney Disciplinary Bd. v. Stoller,* 879 N.W.2d 199, 211, 216, 222 (Iowa 2016). The Court referenced the definition of a materially adverse effect from the Restatement of the Law Governing Lawyers: does the conflict limit the ability of the lawyer to fulfill the obligations "necessarily assumed" in the representation. *Id.* at 209. The lawyer's duties include competence, diligence, and communication. *Id.* Hamer's conflict of interest with Paul and Colorado Medical limited his ability to fulfill these obligations.

The Court suspended Bruce Willey's law license for violating Rule 32:1.7. *Attorney Disciplinary Bd. v. Willey,* 889 N.W.2d 647, 656, 658 (Iowa 2017). In continuing its discussion of "material limitation", the Court posed these questions: 1) whether it is likely a difference in interests will occur, and 2) whether that difference will interfere with the lawyer's ability to offer independent, professional judgment to each client. *Id.* at 653-54.

Willey's conduct is very similar to Hamer's conduct. Willey learned that one of his clients was looking for investment opportunities, and he knew that another client needed investors. *Id.* at 650. Willey put together a loan of $100,000, but he did not tell the lender that the borrower was also a client of

Willey's. *Id.* at 650-51.Willey did tell the lender, however, that this investment/loan was a "safe and common investment." *Id.* at 650.

Willey never obtained informed consent confirmed in writing from the lender; Willey believed this to be unnecessary because he acted only as an "intermediary" between two "sophisticated" business people. *Id.* at 651. Willey did not recommend to the lender that he consult with independent counsel. *Id.* The borrower never paid the loan. *Id.*

The Court recognized that the interests of lender and borrower, Wiley's clients, "were at odds from the beginning." *Id.* at 656. Because of his relationship with the borrower, Willey never could adequately pursue the lender's interests. *Id.* Willey did nothing to advance the lender's legal interests. *Id.*

With only slight modifications, the names of Hamer, Paul, and Colorado Medical could be substituted for the names in this *Willey* opinion. Hamer violated Rule 32:1.7.

Limiting Business Relations with a Client: Violation of DR 5-104(A)

In Count II, Hamer violated DR 5-104(A) in initiating and arranging a loan in July 2004 from Paul to an entity in which Hamer had ownership, Quad Four.

The Court concluded that Leo Baker violated DR 5-104(A) even though the Committee could not show that the client suffered any economic disadvantage from Baker's misconduct. *Comm. on Prof'l Ethics & Conduct v. Baker,* 269 N.W.2d 463, 466 (Iowa 1978). The Court acknowledged that a lawyer's misconduct that causes economic disadvantage is an aggravating factor in determining the appropriate sanction. *Id.* at 466.

In *Comm. on Prof'l Ethics & Conduct v. Mershon,* 316 N.W.2d 895, 898 (Iowa 1982), the Court identified these elements of a DR 5-104(A) violation: 1) differing interests in the transaction, 2) the client expected the lawyer to exercise professional judgment to protect the client, and 3) the client consented to the transaction without full disclosure. The Board has established these elements in this case against Hamer. Paul testified that he trusted and relied on Hamer's judgment in proceeding with this transaction. Hamer's testimony focused on his desire to find the parties' comfort zone rather than to rigorously disclose the potential pitfalls of these deals. As the Court wrote in *Mershon,* full disclosure means more than making Paul "fully aware of the nature and terms of the transaction …." *Id.* at 899. Hamer, like Robert Mershon, did not direct his client, Paul, to seek independent advice nor did Hamer give Paul the kind of advice Paul would have expected from Hamer if Paul's transaction had been with a stranger. *Id.*

The fact that Mershon did not profit from his dealings with his client, Leonard Miller, did not dissuade the Court from finding a DR 5-104(A) violation. *Id.* In contrast, Hamer did profit from putting this deal together; Hamer violated DR 5-104(A).

In *Comm. on Prof'l Ethics & Conduct v. Oehler,* 350 N.W.2d 195, 198-99 (Iowa 1984), the Court noted the conflict of interest rules are: 1) in the public interest, 2) to be rigidly adhered to, and 3) to be strictly enforced.

In *Comm. on Prof'l Ethics & Conduct v. Postma,* 430 N.W.2d 387, 392 (Iowa 1988), the Court reiterated that a conflict of interest can exist "even when the client suffers no economic disadvantage."

The Court revoked the law license of James Hall when his client, Walter Ronk, lost several hundred thousand dollars in joint business ventures with Hall. *Comm. on Prof'l Ethics & Conduct v. Hall,* 463 N.W.2d 30, 36 (Iowa 1990). Paul testified that as a whole, he lost money in the loans and investments that Hamer arranged.

In *Comm. on Prof'l Ethics & Conduct v. Carty,* 515 N.W.2d 32, 35-36 (Iowa 1994), the Court reprimanded John Carty for violating DR 5-104(A) for, in part, failing to make a full disclosure of all material facts to his clients, including the "current market value" of the collateral and the ability of the clients' corporation to make the contract payments.

In *Bd. of Prof'l Ethics & Conduct v. Sikma,* 533 N.W.2d 532, 537 (Iowa 1995), the Court gave DR 5-104(A) a broad sweep: the Rule applies "as long as the attorney has influence arising from a previous or current attorney-client relationship, and the client is looking to the attorney to protect the client's interests." Hamer and Paul had a current attorney-client relationship in July 2004.

In *Bd. of Prof'l Ethics & Conduct v. Wagner,* 599 N.W.2d 721, 726 (Iowa 1999), the Court clarified that in this conflict of interest case the Board did not have to prove that John Wagner "acted with fraudulent or other improper motive." The Court reiterated that the lawyer "must *insist* that the client secure independent counsel and explain why the client would benefit from independent counsel." *Id.* at 728.

The *Wagner* opinion also addressed the issue of financial loss in determining the appropriate sanction for a DR 5-104(A) violation. *Id.* at 730. Financial loss was an aggravating factor; the fact that the buyer, Childers, recovered some of his economic loss in his civil lawsuit against Wagner did not "remove the need for a sanction." *Id.* While Paul made a substantial recovery from Hamer and his former law firm, $2,300,000, the Court should still impose a significant public sanction against Hamer.

A second aggravating factor was Wagner's 16 years of practice "with a heavy emphasis in real estate transactions …." *Id.* Hamer had more than twice the years of practice that Wagner had, and Hamer too emphasized the focus of his practice on transactional work.

In *Bd. of Prof'l Ethics & Conduct v. Walters,* 603 N.W.2d 772, 775 (Iowa 1999), the Court found a DR 5-104(A) violation when N. Leroy Walters borrowed money from a client; the Board did not need to show that Walters acted with a bad or fraudulent intent or that the client suffered economic harm. Walters, however, had a duty to explain to his client why the client should consult independent counsel before deciding whether to loan him money. *Id.* Hamer had the same duty, but he failed to do so.

In *Bd. of Prof'l Ethics & Conduct v. Fay,* 619 N.W.2d 321, 324-25, 326 (Iowa 2000), the Court decided that Michael Fay violated DR 5-104(A) even though Fay argued that the landlord-tenant deal he arranged with his client "was beneficial to both parties and he did not engage in any dishonest or deceitful conduct." During the period of the lease, Fay and the client maintained a lawyer-client relationship; the Court concluded that it was reasonable for the client "to expect Fay to exercise his professional judgment in the course of that relationship for her benefit." *Id.* at 325. Likewise, Paul and Hamer had a lawyer-client relationship in July 2004. Paul's belief that

Hamer was exercising his professional judgment to protect Paul is also reasonable. The Court required Fay to take “affirmative action” to fully disclose the conflict of interest. *Id.* at 326. The evidence in this record does not establish “affirmative action” by Hamer. The Court again noted that the client’s civil recovery from Fay did “not change the fact that Fay’s actions produced harm to a client.” *Id.*

In *Attorney Disciplinary Bd. v. Wintroub,* 745 N.W.2d 469, *472* (Iowa 2008), the Court considered Edward Wintroub’s conflicts of interest with his client, Ronald Bergman, a “sophisticated investor”. Without advising Bergman to seek the advice of independent counsel, Wintroub sold Bergman a minority position in a corporation for $150,000 and borrowed $275,000 from Bergman. *Id.* at 472, 474. Wintroub offered no collateral to secure the loan, and the promissory note bore zero percent interest. *Id.* at 472. In writing about Wintroub’s duty of full disclosure, the Court used the phrase “active diligence”. *Id.* at 474. The Court noted that Wintroub did not disclose the financial performance of the corporation that he sold to Bergman through the presentation of financial statement or annual reports. *Id.* at 474-75. With regard to Bergman’s loan to Wintroub, the Court noted that the advice to Bergman from independent counsel would have included the concerns raised by its unsecured status, the lack of interest accruing on the unpaid balance,

and the lack of a repayment timetable. *Id.* The Court concluded that Wintroub violated DR 5-104(A). *Id.*

Conflict of Interest: Current Clients: Specific Rules: Violations of Rule 32:1.8(a)

In Count II, Hamer violated Rule 32:1.8(a) in initiating and arranging loans in July 2005 and March 2006 from Paul to entities in which Hamer had ownership, Oakcrest and Quad Four.

Hamer had an obligation to discuss and explain to Paul the material risks of these loans, the existence of reasonably available alternatives, and why the advice of independent council is desirable. He did not do so.

Hamer had a duty to disclose to Paul the risks of his dual role as advisor and participant, and he had a duty to obtain Paul's informed consent confirmed in writing. Hamer failed to perform either duty in these transactions.

In *Attorney Disciplinary Bd. v. Qualley,* 828 N.W.2d 282, 288-89 (Iowa 2013), the Court concluded that George Qualley IV and Thomas Bleyhl violated Rules 32:1.7 and 32:1.8 when they failed to provide written disclosures to their clients, failed to advise them to seek the advice of independent counsel, and failed to obtain their clients informed consent in writing. Hamer failed to do these three obligations as well.

In *Attorney Disciplinary Bd. v. Wright,* 840 N.W.2d 295, 301-02 (Iowa 2013), the Court concluded that Robert Wright, Jr. violated Rule 32:1.8(a) when he arranged loans from two of his clients to another of his clients because, in part, he failed to explain the importance of the advice of independent counsel and he failed to obtain his clients' written informed consent. The Court wrote that Wright had "a duty to explain carefully, clearly and cogently why independent legal advice is required." *Id.* at 301-02. Hamer failed to meet this duty also.

Communication: Violations of Rule 32:1.4 (a)(1), (a)(2), & (b)

In Counts I and II, in the August 2005 Colorado Medical loan, in the July 2005 Oakrest loan, and in the March 2006 Quad Four loan, Hamer violated Rules 32:1.4 (a)(1), (a)(2), and (b) in failing to reasonably consult with Paul about Paul's investment objectives, in failing to explain, to the extent reasonably necessary, the ramifications of proceeding with transactions in which Hamer had a conflict of interest, and in failing to inform Paul of decisions to which Paul had to give informed consent.

In *Attorney Disciplinary Bd. v. Qualley,* 828 N.W.2d 282, 291 (Iowa 2013), the Court noted that a lawyer's "mere negligence" in communicating with his or her client will not violate the Communication rule. The Court

required the lawyer, in communicating with a client, to "exercise sufficient diligence." *Id.* at 291. The Court suspended the law licenses of Qualley and his partner, Bleyhl, in part, because of their failure to "communicate adequate information and explanation" to their two clients with whom they had a conflict of interest. *Id.* at 289.

Similarly, the Court should suspend Hamer's law license due to his failure to "communicate adequate information and explanation" to Paul about the risks inherent in loaning money to one of Hamer's clients and to loaning money to Hamer himself. Hamer failed to adequately communicate to Paul the credit-worthiness of the borrower and the borrower's ability to repay the loan. Hamer failed to adequately communicate to Paul the limitations on Hamer's ability to represent him if the borrower, including himself, did not pay as promised. Hamer failed to adequately communicate to Paul whether the offered collateral had any equity and what additional steps needed to be taken to perfect Paul's security interest in the collateral. Hamer failed to adequately communicate to Paul the importance and necessity of having independent counsel review the proposed transaction's terms before Paul accepted the proposal. Hamer never presented the required disclosures in writing to Paul, and he never obtained Paul's informed consent, confirmed in writing.

Fees for Legal Services: Violation of DR 2-106(A)

In Count IV, Hamer violated DR 2-106(A) in collecting two bonuses from Paul related to his services in the sale of Buckle Down – one cash bonus of $110,000 added to his bill, which Paul did not know about, and one discounted-interest bonus on his $1,000,000 loan from Paul, to which Paul had agreed. In allowing Paul to pay himself a generous bonus twice, Hamer abused the professional relationship he had with Paul and collected a clearly excessive fee.

Misconduct: Violation of DR 1-102(A)(4)

In Count IV, Hamer violated DR 1-102 (A)(4) in collecting two bonuses from Paul related to his services in the sale of Buckle Down – one cash bonus of $110,000 added to his bill, which Paul did not know about, and one discounted-interest bonus on his $1,000,000 loan from Paul, to which Paul had agreed.

Under *Attorney Disciplinary Bd. v. Kress,* 747 N.W.2d 530, 538 (Iowa 2008), the Board must prove intent to establish a violation of DR 1-102 (A)(4). The Board established Hamer's intent to engage in dishonesty by showing that Hamer withheld his itemized bill for the Buckle Down sale from Paul until long after Hamer had obtained the five-year $1,000,000 loan at a significantly reduced interest rate. While Hamer's bill that included the $110,000 cash

bonus, and that Paul paid, is not a model of transparent, understandable billing, the "natural and logical consequences" of delaying its release to Paul was to intentionally mislead Paul and dishonestly obtain a second bonus through the low-interest rate loan.

Hamer easily meets the "intent" standard articulated in *Attorney Disciplinary Bd. v. Barnhill,* 847 N.W.2d 466, 474-75 (Iowa 2014); Hamer showed a reckless disregard for the truth in delaying the release of his bill, in failing to clearly inform Paul that his bill for the sale of Buckle Down included a bonus of $110,000, and in failing to clearly inform Paul about the circumstances under which he accepted a discounted-interest loan of $1,000,000.

Aggravating Factors

In determining the appropriate sanction, the Court should find that Hamer demonstrated these aggravating factors: a pattern of misconduct, multiple offenses, a refusal to acknowledge the wrongful nature of the conduct, harm to the client[1], and substantial experience in the practice of law.

[1] Throughout this case, Hamer denied doing anything wrong or unethical, and he denied harming Paul in any way. App. Vol. 4 p. 430-31 (Tr. p. 351 l. 24 – p. 352 l. 8) & App. Vol. 4 p. 453 (Tr. p. 416 ll. 7-16).

Conclusion

Hamer gained the unquestioning trust of Paul over an extended period. Hamer's abuse of his professional relationship with Paul manifested itself in how he ignored the conflict of interest rules and in how he collected a clearly excessive fee.

In Counts I and II, Hamer brought each of these proposals to Paul's attention. Hamer had a relationship with each of the borrowers; he had a conflict of interest with each of these proposals.

Paul relied on Hamer to protect his interests. Paul did not consider himself to be a sophisticated investor, and a candid assessment of his investment track record confirms his self-assessment. Hamer offers little objective evidence that Paul was a sophisticated investor. Hamer offered no evidence that he provided Paul with the type of information and documentation from which a sophisticated investor could analyze the proposals. If Paul had been a sophisticated investor, it seems likely that few or none of these deals would have occurred; he would have found the proposals too risky and speculative. In *Attorney Disciplinary Bd. v. Wintroub*, 745 N.W.2d. 469, 472 (Iowa 2008), the Court agreed that Edward Wintroub's client, Ronald Bergman, was a sophisticated investor, but the Court did not

consider the client's sophistication a factor in analyzing the lawyer's compliance with the conflict of interest rules.

Paul understood a broken promise, however, and when Jacobsen did not make the loan payments as promised, Paul looked to his lawyer, Hamer, to take action to resolve the problem. Only then did Hamer have to confess to Paul that he could not protect his interests and represent him. Paul then learned that his new lawyer had a weak hand too because Hamer had done nothing to perfect Paul's interest in the borrower's collateral.

The Court should reject Hamer's premise about the application of the conflict of interest rules; he proposes that the conflict of interest rules should be ignored if the transaction makes money for the client. The language of the rules and the Court's interpretation of them make abundantly clear that the lawyer is to comply with the rules at the outset.

In Count IV, Hamer abused Paul's generosity by collecting two bonuses, in addition to his fees, for his services in the sale of Buckle Down. Throughout the case, Hamer attempted to paint Paul as a money-hungry, sophisticated businessman. If that picture is true, then why would Paul agree to give Hamer two bonuses, cash and a low-interest five-year loan, on top of Hamer's fees? The more credible picture from this record paints Paul as a trusting, generous, education/publishing businessman and client from whom

Hamer surreptitiously collected a cash bonus alongside a low interest loan to Quad Four.

The Board has met its burden of proof.

The Board respectfully requests the Court to impose an appropriate disciplinary sanction against Hamer.

Iowa Supreme Court
Attorney Disciplinary Board

By: /s/ Wendell J. Harms

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Request for Nonoral Submission

The Board requests submission of the case without oral argument.

/s/ Wendell J. Harms
Wendell J. Harms

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type-Style Requirements

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because the proof brief contained 13,940 words and the final brief contains 15,770 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in 14 point Times New Roman.

Wendell J. Harms

Date