STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellee,

v

David A. Reams, P 62855,

Respondent/Appellant,

Case No 06-180-JC.

Decided: September 5, 2008

Appearances:

Cynthia C. Bullington, for the Grievance Administrator
David A. Reams, In Pro Per

BOARD OPINION

Respondent was convicted for operating a motor vehicle while impaired. The Grievance Administrator filed the judgment with this Board which issued an order to show cause why discipline should not be imposed. A response was filed, and a hearing was conducted, after which the hearing panel entered an order of probation with conditions. Because the requirements of MCR 9.121(C) have not been met, we vacate the order of probation, and, having reviewed the evidence adduced at the hearing, we enter an order imposing no discipline.

On December 7, 2006, the Grievance Administrator filed certified documents from the 43rd District Court in Madison Heights reflecting respondent's July 12, 2005 conviction for operating a motor vehicle while impaired in violation of MCL 257.625(1) (a misdemeanor) on or about June 11, 2005. The matter was assigned to a hearing panel and an order was issued requiring respondent to show cause why a final order of discipline should not be entered pursuant to MCR 9.120(B)(3). Respondent filed a response addressing his participation in outpatient programs pursuant to the order of probation entered in his criminal case. He also discussed various mitigating factors under the ABA Standards for Imposing Lawyer Sanctions and cited *Grievance Administrator v Deutch*, 455 Mich 149, 163; 565 NW2d 369 (1997), for the proposition that hearing panels may enter an order

of discipline which, in fact, orders "no discipline at all." His prayer for relief requested the entry of an order of no discipline.

A hearing was conducted on January 29, 2007. At that time, respondent filed another copy of his response supplemented with statements of two individuals who participate in the Alcoholics for Christ meetings (a twelve step program) attended by respondent, and an affidavit by respondent. Also attached was a statement from a representative of Catholic Social Services who wrote that respondent "successfully completed outpatient counseling" and "was highly motivated in his treatment" (January 12, 2006 letter attached to Response to Order to Show Cause).

Respondent testified and answered questions from the panel as well as counsel for the Attorney Grievance Commission regarding the events leading up to his conviction, his alcohol consumption over the years, and the steps he has taken since his conviction to maintain sobriety. The panel also heard telephonic testimony from a group leader in respondent's Alcoholics for Christ meeting who had been respondent's sponsor for about a year (since January 2006) at the time of the hearing.

The panel ultimately ordered that respondent be placed on probation for a period of one year, during which time he was required to (1) abstain from using alcohol, other intoxicants and any controlled substances, (2) attend two meetings a week held by Alcoholics Anonymous or a similar organization with verification, and (3) be subject to supervision and monitoring by an attorney to "ensure that respondent is sober and is handling his caseload by adequately representing and protecting the interests of his clients."

Respondent has filed a petition for review seeking (1) a remand for further proceedings in order to make the case for entry of an "order of no discipline," and (2) elimination of the third condition of his probation order (monitoring of his practice). Although we afford a certain degree of deference to panel determinations as to the level of discipline imposed, this deference is less than that given to a finding of fact because this Board has an "overriding duty to provide consistency and continuity in the exercise of its overview function" with regard to sanctions. *Grievance Administrator v Rodney Watts*, No. 05-151-GA (ADB 2007). See also *Matter of Daggs*, 411 Mich 304, 319-320 (1981).

I. Condition Requiring a Practice Monitor

With respect to the monitoring condition, respondent argues correctly that the record contains no evidence whatsoever regarding his competence to practice law or the quality of the

services rendered to his clients. Indeed, respondent's record with the Attorney Grievance Commission was addressed, with respondent's consent, and it appears that respondent has received one request for investigation, which was dismissed. We agree with respondent that there is no basis in the record for a condition requiring a practice monitor. This is true whether the "condition" is actually a term of a probation order [see MCR 9.121(C)(3)(c)] or a condition imposed under MCR 9.106(3).

MCR 9.121 provides in part:

> (C) Assertion of Impaired Ability; Probation.
>
> (1) If, in response to a formal complaint filed under subrule 9.115(B), the respondent asserts in mitigation and thereafter demonstrates by a preponderance of the evidence that
>
> (a) during the period when the conduct which is the subject of the complaint occurred, his or her ability to practice law competently was materially impaired by physical or mental disability or by drug or alcohol addiction,
>
> (b) the impairment was the cause of or substantially contributed to that conduct,
>
> (c) the cause of the impairment is susceptible to treatment, and
>
> (d) he or she in good faith intends to undergo treatment, and submits a detailed plan for such treatment, the hearing panel, the board, or the Supreme Court may enter an order placing the respondent on probation for a specific period not to exceed 2 years if it specifically finds that an order of probation is not contrary to the public interest.

There was no finding – nor even an allegation – that respondent's ability to practice law competently was materially impaired. Rather, he was found guilty in a criminal court of driving while impaired, and these proceedings flowed from that conviction pursuant to MCR 9.120. Accordingly, an order of probation is inappropriate in this case.

It is true that when the requisite elements for probation under MCR 9.121 are not met – and therefore "terms" under MCR 9.121(C)(3)(c) cannot be imposed – it may nonetheless be appropriate to impose a reprimand with "conditions relevant to the established misconduct." MCR 9.106(3). However, there has been no evidence introduced showing an inability on the part of respondent to carry out his professional obligations or that respondent's violation of the criminal law by driving while impaired on the evening of June 11, 2005, is connected to such a problem. Because there is no evidence whatsoever that respondent is not rendering service to his clients in a manner that is

competent, diligent and otherwise in compliance with the Rules of Professional Conduct, a condition requiring a practice monitor is also inappropriate in this case.

II. Is Discipline Appropriate?

Respondent also seeks remand to pursue an order of "no discipline." Respondent argues that, the panel's concerns about the length of respondent's period of rehabilitation should have led to an adjournment of the hearing and further testimony regarding his progress at a later date which would enable him to demonstrate that no discipline was more appropriate than probation or another sanction. Respondent cites *In Re Reinstatement of William Leo Cahalan, Jr.*, 04-129-RP (ADB 2006), a case in which the Board upheld the panel's denial of reinstatement, but, instead of dismissing the petition for reinstatement, remanded the matter for a further evidentiary hearing after several more months had elapsed.

At the outset, this case must be distinguished from *Cahalan* because it is a reinstatement matter in which the panel was vested "an element of subjective judgment" in determining whether a respondent previously adjudicated of misconduct serious enough to trigger reinstatement proceedings under MCR 9.124 was fit to regain the privilege of practicing law. See, *Grievance Administrator v August*, 438 Mich 296 (1991). The Board in *Cahalan* deferred to the panel's judgment that the petitioner had made great strides but needed to demonstrate further progress in "cleaning up the wreckage" of his years of substance abuse.

And wreckage there was. Mr. Cahalan was suspended in three separate cases, for nine months, one year, and two years and nine months, respectively, for misconduct including neglect, failure to return unearned fees, and misappropriation of the fees. He battled alcoholism, cocaine addiction, and depression for years before attempting reinstatement. His progress, while very significant, did not convince the panel that he was fit to reenter the practice of law at the time of the hearing. These facts, particularly the clear nexus between the substance abuse and the misconduct in rendering (or failing to render) professional services, further distinguish *Cahalan* from this case.

In this case, the basis for the misconduct is respondent's conviction for the misdemeanor of driving while impaired. This is not a case in which a lawyer has neglected or abandoned clients, or has committed other violations of the Rules of Professional Conduct, and then argues that a chemical dependency justifies an order of probation (see MCR 9.121) or should be considered in mitigation (ABA Standard 9.32(h)). Rather, this is the very unusual case in which the sole basis for the disciplinary prosecution is a criminal act not shown to reflect adversely on the lawyer's honesty,

trustworthiness or fitness as a lawyer, see MRPC 8.4(b), and yet which, technically at least, constitutes professional misconduct. See MCR 9.104(A)(5); *Grievance Administrator v Deutch*, 455 Mich 149; 565 NW2d 369 (1997).

MRPC 8.4(b) provides that "[i]t is professional misconduct for a lawyer to . . . engage in . . . violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer." However, MCR 9.104(A)(5) contains no limitation on the types of criminal violations that are regarded as professional misconduct. Instead, all "conduct that violates a criminal law of a state or of the United States" is defined as misconduct for which a lawyer may be disciplined under subchapter 9.100 of the Michigan Court Rules. In *Deutch, supra*, a plurality of the Court concluded that MRPC 8.4(b) does not limit MCR 9.104(A)(5) (actually, its predecessor, MCR 9.104(5)), and that even if the conviction does not reflect adversely on the lawyer's fitness to practice law, once the Administrator files a judgment of conviction with the Board, the hearing panels (and the Board and the Court) have no ability to dismiss the formal complaint, but may, however, enter an order of discipline imposing no discipline.

The order of probation in respondent's impaired driving case required him to successfully complete an outpatient program. He arranged with his probation officer and the director of the Lawyers and Judges Assistance Program (LJAP) of the State Bar of Michigan to enter into an agreement for a one year program. Thereafter, he sought and obtained modification of this requirement to allow its completion through Catholic Social Services of Oakland County. The record contains a letter from Catholic Social Services indicating that respondent successfully completed outpatient counseling and "was highly motivated in his treatment." Respondent was discharged from probation on June 23, 2006, on motion of the probation officer.

The judgment of conviction was filed in this case on December 7, 2006. It appears from the record that respondent was offered contractual probation by the AGC under MCR 9.114 and rejected it because the AGC "refused to deviate from the standard two-year LJAP term" even though the LJAP director and the probation officer at the court found one year acceptable. (1/29/2007 Tr, p 23-24.) A member of the hearing panel confirmed respondent's statements in this regard with counsel for the AGC:

> MEMBER ANTONE: So if he would have – if Mr. Reams would have agreed to the two years Lawyers and Judges Program there wouldn't have been a filing of conviction, but rather could have

been an informal agreement and that would be the end of the situation, right?

MS. BULLINGTON: Yes. [*Id.*, p 40.]

Also, the reasons for pursuing disciplinary sanctions in this and similar matters was discussed with counsel for the Administrator at the review hearing.[1]

---

[1] JUDGE SUHRHEINRICH: So we are pretty well convinced that he is a pretty honest guy, maybe naive even, but honest. Why shouldn't we, therefore, take his word today that he has been dry for a year?

MS. BULLINGTON: Again, it is – I have no reason to dispute Mr. Reams' statement. My position and the position I think of my commission is, and I believe that the record will bear out that I asked for a two-year probation because again, there are certain physical changes that occur in an alcoholic's body chemistry that, you know –

JUDGE SUHRHEINRICH: We don't have that in the record.

MS. BULLINGTON: No, and that is – but I am explaining my reasoning for asking for the two years. And that is why my commission when it grants, when it offers contractual probation always makes them for two-year periods. It's a philosophy that you need that time to, in order to recover physically from the substance dependency.

JUDGE SUHRHEINRICH: ... Do you bring these kinds of cases against every attorney that has a misdemeanor?

MS. BULLINGTON: No. . . .If it doesn't impact at all on an attorney's practice of law, let's say they were convicted for taking a duck out of season, we will not pursue the case. . . .

JUDGE SUHRHEINRICH: Does your office then say everybody that is convicted of a drug and/or drink related offense, i.e., that will be prosecuted?

MS. BULLINGTON: No. Well, it will be investigated and an investigative file will be opened, a standardized grievance will issue. We will ask the attorney to provide a response to the allegation that they were convicted and explain the circumstances leading up to the arrest, provide a copy of their substance abuse assessment and also if they have it in their possession a copy of the police report.

Independently, if they don't have the police report, we get the police report. We also get a copy of the court file.

From there, we attempt to discern whether the attorney has a substance abuse dependency. If they do not have a substance abuse dependency and there is no other aggravating factor, the policy of the commission is to close the file and caution the attorney to comply with the law. If there are aggravating factors, it's the policy of the commission to issue an admonishment. If there is a substance abuse dependency and the attorney has had no other, he has never had contractual probation before, then we will offer contractual probation. It's up to the attorney then to say yes or no to contractual probation.

If the attorney has in the Commission's determination, not my determination, in the Commission's determination the attorney has a substance abuse dependency or is on the cusp of developing one and the attorney refuses to enter into contractual probation, then the matter is filed with the Attorney Discipline Board, yes, sir.

At the hearing conducted by the panel on January 29, 2007, respondent testified that, during his one year probationary period in his criminal case, he "did fairly well" on the abstinence requirement. (Tr, p 10). The panel acknowledged respondent's candor in testifying as to the fact that he slipped "a few" times (Tr, p 15) and had a drink, the latest being in December, 2006 (approximately a month before the hearing). This slip was "not a drunken binge"; rather, he picked up a bottle of wine in a weak moment at the grocery store. (Tr, p 45). The Administrator contends, in his brief, that respondent drove a vehicle while intoxicated during probation. The panel made no such finding and we have reviewed the record and conclude that there is insufficient support for such a finding in any event.

This case is similar to *Deutch* (no discipline), although that was a case involving a lawyer having had two contacts with the authorities after consuming alcohol (one careless driving and one impaired driving conviction), and this case involves a single conviction. As in *Deutch,* the respondent here was candid and volunteered information during the proceedings. Other similarities include competence in the practice of law, the exercise of poor judgment as opposed to a deliberate or repeated disregard of the law, and the absence of prior misconduct. However, we note that in *Deutch*, the panel expressly declared that it was "satisfied that the respondent is not an alcoholic [and] does not have an alcohol problem." In this case, respondent has participated in a weekly program for recovery from alcohol dependency since the time of his conviction in July, 2005.

Thus, this case presents us with the question whether professional discipline is appropriate under the circumstances of this case which include misconduct established solely by virtue of a single conviction for drunk driving, no evidence that the lawyer's ability to practice law is impaired, and that the lawyer has admitted a need or desire to abstain from alcohol use and has succeeded in doing so with "slips" for approximately 1 and ½ years, and then completely from January 1, 2007 forward. In other words, where the criminal process has run its course, and there is no adverse reflection on his fitness to practice, and the evidence shows that the lawyer has taken steps to manage his consumption of alcohol appropriately (in this case abstinence), should discipline be imposed pursuant to the filing of a judgment of conviction? This question is different than the question whether it may be advisable or prudent for the prosecutorial arm of the Court to seek a voluntary agreement of a lawyer under similar circumstances to accept a longer period of monitoring, treatment and other conditions related to substance usage as a condition of an agreement by the Administrator to forego formal prosecution.

This Board and our Court have repeatedly held that even acts or omissions not involving an attorney-client relationship or arising out of the practice of law may constitute professional misconduct where it reflects adversely on a lawyer's very qualifications to act as a fiduciary, an advisor, an officer of the court. Specific rules such as MCR 9.104(A)(3), MRPC 4.1, and MRPC 8.4(b) speak to honesty, trustworthiness and fitness. The general principles guiding the attorney discipline process are also summed up in MCR 9.103(A), which requires that Michigan lawyers remain "fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and counselor and as an officer of the court."

Therefore, in our opinion issued after remand by the Supreme Court in *Deutch*, we explained that fitness to practice remained a fundamental criteria in the assessment of what level of discipline, if any, is appropriate in a particular case:

> We recognize that under *Deutch* a lawyer's criminal conduct will be considered "misconduct" irrespective of whether it "reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer." MRPC 8.4(b). However, there can be no question that these are relevant considerations in determining the level of discipline, if any, to be imposed. Indeed, the concept of "fitness" is central to the function of regulating the bar. It is a prerequisite to acquiring (State Bar Rule 15, §1), maintaining (MCR 9.103(A)), and regaining (MCR 9.123(B)(7)) the license to practice law. "Fitness" is arguably the touchstone or key variable to be addressed whenever the level of discipline is assessed. See, e.g., Standards for Imposing Lawyer Sanctions (ABA, 1991), §9.1. [*Grievance Administrator v Deutch (After Remand)*, 94-44-JC (ADB 1998), lv den 460 Mich 1205 (1999)]

The American Bar Association's Standards for Imposing Lawyer Sanctions do not figure prominently in the decision below or the arguments of the parties. This is understandable in light of gaps in Standard 5.1 which we have discussed in *Grievance Administrator v Arnold M. Fink*, 96-181-JC (ADB 2001), lv den 465 Mich 1209 (2001), at p 8. In brief, Standard 5.1 deals with criminal conduct and dishonesty, and simply does not carry forward those types of conduct consistently as the severity of discipline descends from disbarment down to admonition. Specifically, no reference to criminal conduct is made, and thus no guidance is afforded, in the standard dealing with reprimand. The text of the standard reads, in its entirety:

> 5.1 Failure to Maintain Personal Integrity
>
> Absent aggravating or mitigating circumstances, upon application Of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer s honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty fraud, deceit, or misrepresentation.
>
> 5.11 Disbarment is generally appropriate when:
>
> (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of Justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
>
> (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer s fitness to practice.
>
> 5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer s fitness to practice.
>
> 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer s fitness to practice law.
>
> 5.14 Admonition is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

However, what is clear is that the Standards do not contemplate the imposition of discipline for criminal conduct not reflecting adversely on a lawyer's fitness to practice law. *Fink, supra.*

Here, the Administrator contends briefly that "Respondent's conduct arguably falls under ABA Standard 5.12, calling for a suspension," but then immediately concedes that "Petitioner does not believe that suspension is called for in Respondent's matter." We disagree that a colorable argument for Standard 5.12's applicability here could be made. Plainly, there has been no showing that the conduct here reflects adversely on respondent's fitness to practice at all, much less in a serious manner. Finally, we are puzzled by the Administrator's argument regarding the harm element of the Standards analysis: "The harm is to the public by bringing lawyers into disrepute. The public is exposed to potential harm of client neglect where attorneys who suffer from substance dependency may not seek or accept appropriate help and supervision." As to the second prong of

this argument, it is entirely inapposite in light of the record in this case. There is not a scintilla of evidence that respondent is not accepting "appropriate help and supervision." To the contrary, all of the evidence shows the opposite. As to the question whether this single conviction casts lawyers in a bad light, we find appropriate the following observations which we made in *Deutch (After Remand)*, while upholding the hearing panel's order imposing no discipline:

> Professional discipline does not exist to enhance or multiply the effects of criminal penalties or other consequences suffered by an attorney. It serves a purpose more narrow and yet more critical to the protection of the bar, the courts, and the members of the public utilizing legal services. Under long standing principles, we are bound to treat discipline proceedings as "fact sensitive inquiries that turn on the unique circumstances of each case." Discipline is imposed when the "specific facts" presented at the hearing demonstrate that discipline is called for. Our role is to fashion orders of discipline designed to protect the public, the courts and the legal profession from the harm caused by errant lawyers. If we are to succeed at that critical mission, it is important to maintain our focus.
>
> It does not necessarily follow that an individual whose driving privileges have been curtailed or who has otherwise been subject to criminal sanctions for driving offenses must also have his or her professional privileges curtailed. [Footnotes omitted.]

Respondent has committed the crime of operating a motor vehicle while impaired, and he has satisfied his criminal sentence. He has continued to participate in a recovery program, has been exceedingly forthcoming, and by all accounts is managing his alcohol problem. Under the circumstances in this case, we do not find a sound reason for the imposition of professional discipline. Accordingly, in lieu of remanding for further proceedings, we will vacate the order of probation and enter an order imposing no discipline.

Board members Lori McAllister, William J. Danhof, William L. Matthews, C.P.A., Billy Ben Baumann, M.D., and Hon. Richard F. Suhrheinrich concur in this decision.

Board member George H. Lennon did not participate.

Andrea Solak & Thomas G. Kienbaum (concurring)

We concur in the result arrived at by the majority, but write separately to express concerns we have with the concept of an order of discipline imposing no discipline as elucidated in the plurality opinion in *Grievance Administrator v Deutch*, 455 Mich 149, 163; 565 NW2d 369 (1997).

In *Deutch*, three justices opined that a hearing panel could not dismiss a judgment of conviction case where the crime did not implicate lawyer fitness notwithstanding that MRPC 8.4(b) provides that, "It is professional misconduct for a lawyer to . . . engage in conduct involving . . . violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer." This rule follows a similar and apparently universally adopted ABA Model Rule. The plurality opinion relied on what is now MCR 9.104(A)(5) ("conduct that violates a criminal law of a state or of the United States" is misconduct) and further opined that though a panel could not dismiss a case initiated by a criminal conviction in light of MCR 9.104(A)(5), a panel could issue an "order of discipline [that], in fact, order[ed] no discipline at all." 455 Mich 163. Two Justices would have interpreted the rules to have required a conviction to have reflected adversely on a lawyer's honesty, trustworthiness, or fitness to practice. One Justice did not participate, and Justice Boyle concurred with the plurality, writing that she was "constrained to agree with the majority's reading of the current rule," presumably what is now MCR 9.104(A)(5). However, Justice Boyle also wrote that the Court, in adopting the Rules of Professional Conduct in 1988, "did not indicate that any misdemeanor conviction, however attenuated, would constitute misconduct" but, rather, contemplated a case-by-case inquiry into whether a particular criminal violation reflected on the lawyer's fitness to practice law.

Thus, in *Deutch*, three of the six Justices participating believed that not all criminal conduct constituted professional misconduct, but only criminal conduct reflecting adversely on a lawyer's honesty, trustworthiness, or fitness in other respects should be considered professional misconduct.

We respectfully urge that it may be time to revisit the lead opinion's conclusion that all crimes equate to professional misconduct as well as the notion that the rules permit of a finding of misconduct without the imposition of some form of discipline.

Under *Deutch*'s reading of MCR 9.104(5), the following convictions (actually reported to the Board by attorneys) establish *professional misconduct*:

- Operating a personal watercraft (Seadoo) without a motor vehicle registration;
- Hunting without duck stamps (wrong permit purchased on advice of clerk);
- Possession of fireworks (accepted advice of vendor that permit not needed);
- "Foul-hooking" a spawning salmon;
- Improper plates on a trailer (attorney had two boat trailers, one for a sailboat and one for a motor boat; renewed license for wrong trailer);
- Walking a dog without a leash (a misdemeanor in the municipality at issue);
- Fishing in a closed stream (no notice posted)
- Operating a watercraft with not enough personal floatation devices.

Deutch requires that a hearing panel presented with evidence of a conviction *must* find these and other crimes constitute attorney misconduct irrespective of the circumstances and whether or not they reflect adversely on the lawyer's fitness to practice. We respectfully submit that this makes no sense, and, further, that it is unwise to vest a prosecutorial agency with the power to exact a finding of misconduct merely upon the filing of a judgment of conviction with the Board. Instead, we believe that hearing panels should have the authority to dismiss a case, even one commenced pursuant to MCR 9.120, when the conduct, though found to be criminal, does not in fact reflect adversely on the lawyer's trustworthiness, honesty, or fitness to practice.

Under *Deutch*, if the conviction is valid, a panel must enter an order declaring such conduct to be professional misconduct, and may only mitigate this consequence by entering an "order of discipline [which] may, in fact, order no discipline at all." 455 Mich at 163. Thus, a panel is given two poor choices instead of the appropriate one of dismissal. We oppose an order of discipline imposing no discipline not only when it follows a finding of misconduct that should not have been made, and because it is awkward and sounds internally inconsistent. We also think that when true misconduct has been committed, the discipline agencies should not send the "odd and mixed message that misconduct has occurred, but that discipline – even a simple declaration affirming the purpose of the rule – is not warranted." *Grievance Administrator v Ralph E. Musilli*, 98-216-GA (ADB 2000), p 7.

For all of these reasons, we would prefer to hold that the respondent's conduct in this case does not constitute professional misconduct. However, recognizing that this Board has considered the *Deutch* plurality opinion to be binding precedent, we concur in the result.