

The Commission issued private letters of reprimand to the three associates after considering the aggravating circumstances that the Secretary's Office and not the law firm discovered the breach; that the breach was not discovered until 19 days after the brief had been filed and served; and that the BPI may have been read by one or more non-signatories to the APO. The Commission noted that, although the attorneys stated that no recipients of the brief informed their firm that they had read, copied, or transmitted the public version of the brief, it was not clear that non-signatories did not review the BPI.

In reaching its decision to issue private letters of reprimand, the Commission also considered the mitigating circumstances that the breach was unintentional, that corrective measures were taken immediately after the breach was discovered, that there were internal APO procedures before the breach that were followed, and that these procedures were strengthened after the breach.

*Case 8:* The Commission determined that two attorneys breached the APO by e-mailing an electronic version of a public prehearing brief, which contained electronically masked but recoverable CBI, to their clients and to parties that had agreed to that type of service. Although the brief appeared to be a public document with CBI omitted from within the brackets, the deleted CBI was retrievable electronically. Both attorneys believed that they were e-mailing a document from which CBI was deleted and not retrievable.

The Commission, deciding not to sanction the attorneys, sent them warning letters. The Commission reached that decision after giving consideration to the facts that this was the only breach in which either attorney had been involved within the prior two year period considered by the Commission in determining sanctions, that the breach was unintentional, that the breach was discovered by the attorneys, that there was no indication that anyone not on the APO viewed the CBI, that prompt action was taken to remedy the breach, and that new procedures had been established by the firm to avoid a similar APO violation in the future.

*Case 9:* The Commission determined that a lead attorney breached the APO by failing to provide adequate supervision over his firm's personnel regarding the care of CBI. Another law firm had been added to the public service list late in an investigation. The clerical personnel in charge of serving documents manually created mailing labels for the firm rather than creating

computer generated labels that were segregated between public and APO lists. The secretary who typed the labels mistakenly typed them for service of APO materials. The newly added firm received APO materials for two days. The outer envelopes were opened but the inner envelopes remained sealed and were returned to the original law firm.

Upon inquiry, the law firm was unable to provide the Commission with the name of the person responsible for the mislabeling. However, the Commission did determine that the lead attorney was responsible for the breach. He had signed the APO application for the clerical personnel indicating he was responsible for their compliance with APO requirements.

The Commission issued a warning letter to the lead attorney after considering that the breach was unintentional, that his firm took immediate steps to reeducate its personnel regarding the proper handling of CBI, that non-signatories had not reviewed the BPI, and that the lead attorney had not breached an APO within a prior two year period considered by the Commission in determining an appropriate sanction.

*Case 10:* The Commission considered whether two attorneys and one clerical employee breached the APO. The breach occurred when a clerical employee served a law firm with the BPI version of a post-conference brief although the firm was not a signatory to the Commission's APO. The recipient firm notified the law firm that the package was opened, but the brief was viewed only to the extent of determining that it was a document containing BPI covered by the Commission's APO, not Commerce's APO, to which the firm was a signatory. The Commission determined that, in addition to the clerical employee, the attorney supervising the clerical employees and the lead attorney in the investigation were both responsible for the breach.

In a previous APOB investigation concerning the same Commission investigation, the Commission had found that five clerical employees, including the one responsible for this breach, and the same attorney who supervised the clerical employees in the investigations had breached the APO. Warning letters were issued at that time. The Commission did not find that the lead attorney had breached because he had reasonably delegated the responsibility of supervising the clerical employees to an experienced attorney who had no prior violations.

In the current APOB investigation, the Commission determined that the lead attorney was responsible for the breach because he was aware that both the supervising attorney and the clerical employee had previously breached the APO. Since the lead attorney had recently received a private letter of reprimand in a different breach investigation, the Commission issued a private letter of reprimand to the lead attorney with a requirement that he update the firm's APO procedures and conduct a training session for attorneys and staff involved in APO practice in his firm. The supervising attorney and the clerical employee both received private letters of reprimand. The Commission considered the unintentional nature of the breach, the fact that corrective measures were immediately taken to retrieve the document from the non-signatory law firm and to remove the project assistant from the APO, the immediate reporting of the incident to the Commission, and that no non-signatory viewed the BPI as mitigating circumstances and the prior breaches of both attorneys and the clerical employee as an aggravating circumstance.

*Case 11:* The Commission determined that two attorneys and a legal secretary breached the APO. An associate attorney and the secretary worked together to prepare the public version of a draft post-conference brief. The attorney e-mailed the brief in an electronic form that masked the BPI. However, one footnote contained unredacted BPI. The Microsoft Word macro that was used to mask BPI in the brief did not mask BPI in the footnotes. The secretary missed the BPI in one of the footnotes when she did a manual review of the brief before the attorney e-mailed it to eight clients. The attorney did not check the brief to be sure all BPI was masked before he e-mailed the document. The information provided in the APOB investigation indicated that the persons involved in the breach did not know that the BPI was recoverable by the recipients of the e-mail.

When the lead attorney who had been out of the office while the public brief was prepared and transmitted to the client returned, he reviewed the brief and discovered that one of the footnotes contained unmasked BPI. The associate attorney was directed to take immediate action to contact the Commission, to inform the recipients of the draft brief to destroy all paper and electronic versions of it, and to prepare a revised electronic brief with masked BPI and e-mail that to the same clients.

The Commission found that the lead secretary breached the APO by failing to