

PCB 27

[13-Mar-1992]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In Re: PCB File 90.54

NOTICE OF DECISION

PCB # 27

This matter was submitted by stipulation to the facts and conclusions of law. Respondent waived her procedural rights under Administrative Order 9, including the right to a hearing and the right to appear before the Board.

Upon consideration of the stipulated facts, the Board concludes that respondent violated DR 6-101(A) (2) in handling a legal matter without preparation adequate in the circumstances and DR 6-101(A) (3) in neglecting a legal matter entrusted to her.

The Board's findings of fact in support of this conclusion and its decision as to the appropriate sanction to be imposed are as follows:

FACTS

1. Client, who is complainant here, retained respondent to represent her in a warranty action regarding her home. No mention was made of the cost of respondent's legal services. At the time this professional relationship began, respondent had been a member of the Vermont bar for approximately 18 months.

The client expected respondent to take immediate action before the warranty period expired.

2. Respondent promptly contacted the guarantor who, after an inspection, denied liability and asserted the defect was due to inferior installation practices by the building contractor.

3. Respondent then notified the contractor, requesting a response. The contractor did not answer. Respondent wrote to him again but heard nothing.

4. The matter remained inactive for nearly two months until the contractor's attorney contacted respondent. They attempted to negotiate a settlement but were unsuccessful.

5. Respondent did nothing with this case over the next nine months. During this time period of inactivity, respondent's client complained to her

that nothing was happening on the case. Also during this time period, respondent billed her client for \$233 in legal services, a bill which her client paid.

6. After this nine month period of inactivity, respondent attempted to

revive negotiations with the contractor's lawyer by sending a demand letter.

The contractor's lawyer did not respond.

7. Approximately one month later, the client telephoned respondent to learn the status of her case. Respondent told her client that respondent had

taken no action on the matter. Respondent then billed her client for that telephone conversation.

8. The client became angry when she received the bill. The client wrote to respondent, complaining about receiving bills for services that consisted

merely of "(a)nswering the phone and saying you have done nothing." The client refused to pay the bill and refused to pay respondent to read her letter of complaint. The client demanded that respondent satisfactorily complete the case as soon as possible.

9. Respondent did not answer this letter. More than four months passed.

Finally, the client telephoned respondent and asked the status of her case. Respondent told her client that she and the contractor's attorney had reached

an arrangement several months before. Respondent told her client that the contractor was to have contacted the client directly to arrange a date to perform the work.

10. The client responded that she had heard nothing from the contractor.

The respondent said she would call the contractor herself to find out where matters stood. Respondent told her client that she would call her back and report the outcome of her conversation.

11. Respondent failed to call her client and failed to return client's subsequent telephone calls.

12. Approximately one month after this conversation, the client wrote to respondent. The client recounted their last telephone conversation and chastised respondent for not keeping her apprised of the case, for failing to

keep her word, and for failing to return client's telephone calls. The client

advised respondent that she intended to report respondent's conduct to the Professional Conduct Board if respondent did not show proof of substantial progress within the next ten days.

13. Respondent telephoned her client shortly after receiving this letter.

Respondent told her client that she was going through a divorce and was having

a difficult time. Respondent apologized for her lack of attention and promised that things would be better.

14. Within the next month, respondent filed a complaint against the contractor. The matter continued in pretrial litigation for the next two years. Respondent was attentive to the case throughout this period.

15. About a week before trial, the contractor's lawyer told respondent that the contractor was filing a bankruptcy petition. Respondent passed on this information to her client. The client decided to withdraw her suit because there was no guarantee that the contractor could pay a judgment, even

if the client prevailed at trial. The client authorized respondent to dismiss

the complaint, which respondent did.

16. After the case was dismissed, the client filed a complaint with the

Professional Conduct Board. Respondent cooperated with the investigation. Respondent expressed sincere remorse for her misconduct. Respondent admitted

that, prior to filing the law suit, she neglected her client's case and failed

to adequately record the progress of the case.

17. Respondent did not charge her client for any legal services rendered

after she received the letter described above at paragraph 8. Respondent was

highly inexperienced at the time she neglected complainant's case.

SANCTIONS

Respondent's misconduct here was serious and, absent mitigating circumstances, would justify imposition of a strong public sanction. However,

a number of mitigating factors are present.

First, respondent was highly inexperienced in the practice of law at the time these events occurred. Second, respondent made a timely good faith effort

to rectify the consequences of her neglect and to recompense her client by rendering many hours of professional services at no charge. Third, respondent

has expressed sincere remorse for her misconduct. Fourth, respondent has no

prior disciplinary record. This is her first brush with the disciplinary process. Fifth, respondent was highly co-operative toward these proceedings

and co-operative in reaching a just resolution.

In light of these considerations, the Board has voted to issue a private admonition and has directed the chair to issue such a letter to respondent.

Dated at Montpelier, Vermont this 13th day of March, 1992.

PROFESSIONAL CONDUCT BOARD

By: /s/
J. Eric Anderson, Chair

Deborah S. Banse, Esq. Hamilton Davis

/s/ /s/
Anne K. Batten Nancy Foster

/s/ /s/
Leslie G. Black, Esq. Shelley Hill, Esq.

Richard L. Brock, Esq. Rosalyn L. Hunneman

/s/ /s/
Joseph F. Cahill, Jr., Esq. Donald Marsh

/s/ /s/
Nancy Corsones, Esq. Karen Miller, Esq.

/s/ /s/
Christopher L. Davis, Esq. Edward Zuccaro, Esq.