

PCB 8

[10-May-1991]

STATE OF VERMONT  
PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 89.64

NOTICE OF DECISION  
PCB 8

Procedural History

A complaint was filed with the Professional Conduct Board by a former client of Respondent. Bar Counsel investigated this matter and, as a result of the investigation, entered into the stipulation of facts with Respondent. Respondent waived all rights to an independent review of that stipulation. Respondent further waived all procedural rights to which Respondent was entitled under Administrative Order 9.

The Professional Conduct Board reviewed the stipulation of facts, conclusions of law, recommendation to the Professional Conduct Board, and waiver of procedural rights.

The Professional Conduct Board accepted that stipulation and hereby incorporates it into the following findings of facts and conclusions of law.

Facts

1. Complainant, who lives outside the State of Vermont, telephoned Respondent and asked Respondent to represent Complainant in Vermont. Complainant was seeking improved visitation rights with her child. The child had recently moved with Complainant's ex-husband to the State of Vermont.

2. During the initial telephone consultation, Respondent declined to represent Complainant because the child lived in a county some miles from Complainant's office. Respondent referred Complainant to an attorney practicing in the area where the child resided.

3. Complainant was unable to find representation in that county. She telephoned Respondent again. This time Respondent requested a retainer of \$400. This was acceptable to Complainant. Respondent agreed to represent Complainant.

4. Complainant sent Respondent the retainer and a copy of the foreign state divorce decree, as well as other relevant information regarding Complainant's ex-husband's whereabouts.

5. Over the next several months, Complainant made numerous telephone calls to Respondent's office and sent a certified letter to Respondent in an attempt to ascertain the status of her case. Respondent failed to respond to Complainant's calls or letter.

6. Complainant eventually reached Respondent by telephone. During that conversation, Respondent told Complainant that Respondent had prepared a motion. Respondent told Complainant that she would be receiving papers to sign. Respondent never filed the motion.

7. When Complainant did not receive any correspondence from Respondent, she began telephoning Respondent's office. She attempted to contact Respondent for the next three months. Complainant sent another certified letter to Respondent. Respondent failed to answer any of Complainant's calls or letters.

8. Due to Respondent's failure to reply, Complainant finally retained substitute counsel - months after she had retained Respondent.

\* (see transcription below)

9. Complainant filed a written complaint with the Professional Conduct Board which initiated an investigation.

10. The chair of the Board notified Respondent of the complaint and asked Respondent to reply to the Board within twenty days. Respondent failed to reply, necessitating a second request for information.

11. Subsequently, Respondent spoke with Complainant by telephone after which Respondent returned the full retainer to Complainant.

12. That same date, Respondent filed a response with the Board. However, Respondent's answer failed to address the allegations of neglect. Respondent stated merely that by returning the retainer to Complainant, the matter had been resolved.

13. When interviewed by Bar Counsel's staff, Respondent acknowledged that Respondent had violated the Code of Professional Responsibility by neglecting a matter entrusted to Respondent by a client.

#### Conclusions of Law

The Board finds that Respondent violated DR 6-101(a) (3) (a lawyer shall not neglect a legal matter entrusted to lawyer). See also Notice of Decision PCB 2, Vol. 1, Pg. 6.

The Board is troubled by Respondent's lack of cooperation with the Board's inquiry into this matter. Respondent has evidenced clear neglect of Respondent's duties to the client, as well as to the Court. While the Board would normally consider this failure of cooperation as an aggravating factor in deciding what sanction should be imposed, the Board will refrain from doing so in this matter and will accept the recommendation that an admonition issue. In accepting the sanction of admonition, the Board has in mind the length of period of delay. The Board understands that Respondent has left the private practice of law, a factor influencing the Board's willingness to resolve this matter without imposition of public

discipline.

Dated at Montpelier, Vermont, this 10th day of May, 1991.

PROFESSIONAL CONDUCT BOARD

/s/

By

\_\_\_\_\_  
J. Eric Anderson, Esq. -Chair

/s/

\_\_\_\_\_  
Anne K. Batten

/s/

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Leslie G. Black, Esq.

/s/

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Joseph F. Cahill, Jr., Esq.

/s/

\_\_\_\_\_  
Deborah S. Banse, Esq.

/s/

\_\_\_\_\_  
Richard Brock, Esq.

/s/

\_\_\_\_\_  
Nancy Corsones, Esq.

/s/

\_\_\_\_\_  
Donald Marsh

/s/

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Hamilton Davis

/s/

\_\_\_\_\_  
Edward R. Zuccaro, Esq.

\*months after she had retained Respondent.