

PCB 58

[16-Jul-1993]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

IN RE: Gary A. Strassenburg, Esq.

PCB File Nos. 92.03, 92.04, 92.36, 92.38

NOTICE OF DECISION

DECISION NO. 58

This matter was heard before a Hearing Panel on January 7, 1993. The Hearing Panel was chaired by Christopher L. Davis, Esq. and included Karen Miller, Esq. and Mr. Donald Marsh. Present was special Bar Counsel, Wendy S. Collins. Notice of the hearing was sent to Respondent at his office address but he did not appear.

The Hearing Panel heard evidence from Peter Halfpenny, Carol Halfpenny, Lisa Croce, Michelene Schwarz, Kathleen Cleghorn, Esq., Joanne Welman McKee, Patricia Beu, Esq. and Jean E. Cass.

Based upon all the credible, relevant evidence before the Hearing Panel, the Hearing Panel makes the following findings of fact and conclusions of law. (FN1)

Count I

PCB File No. 92.03

1. Peter and Carol Halfpenny are residents of Connecticut and are employed as teachers in a public school system there. They purchased a vacation home in 1989 in West Dover, Vermont. In 1991 they decided to sell the house in order to help finance their daughter's college education.

2. In mid-October 1991, the Halfpennys entered into a purchase and sale contract to sell their house for approximately \$10,000 less than the amount they had paid for it in 1989. The buyers wanted to close within two weeks. Peter Halfpenny contacted Respondent and asked him if he could represent them regarding this sale. Peter Halfpenny explained that the closing needed to occur within the next two weeks. Respondent assured Mr. Halfpenny that he could handle the matter for him. Respondent told Mr. Halfpenny that his fee would be \$300-\$350 plus recording fees.

3. A week passed and the Halfpennys heard nothing from Respondent. Carol Halfpenny telephoned Respondent. He told her that he had all the

paperwork ready for the closing. Respondent told Mrs. Halfpenny that it was not necessary for them to attend the closing and that he could handle it for them. Respondent stated that he would send a power of attorney form to the Halfpennys for them to execute and return to him.

4. Contrary to his representations to them, Respondent did not send the power of attorney form to the Halfpennys. Respondent's failure to do so concerned the Halfpennys so Carol Halfpenny sent Respondent a letter indicating the Halfpennys' intent to convey a power of attorney to Respondent. The Halfpennys continued to hear nothing from Respondent so Peter Halfpenny telephoned Respondent a few days before the closing. Respondent stated that he would fax a blank power of attorney form to the Halfpennys in care of a friend of theirs who owned a fax machine.

5. The power of attorney did not arrive by fax as promised so Peter Halfpenny telephoned Respondent. Respondent said he would try to fax the document again. This time the document was received and Carol Halfpenny picked it up. The Halfpennys then both signed the document, notarized it, and mailed it back to Respondent by Federal Express.

6. The next day, Friday, November 1, 1991, Peter Halfpenny received a telephone call at his place of employment from Respondent. Respondent was seeking pay-off information regarding the mortgage. Mr. Halfpenny had previously given this information to Respondent. Mr. Halfpenny returned the call at which point Respondent asked additional questions about shared well rights. Mr. Halfpenny had also previously given this information to Respondent, nevertheless Mr. Halfpenny

repeated the information to him.

7. This conversation occurred at 3:45 p.m., 15 minutes before the closing was scheduled to occur. Respondent was still in Brattleboro even though the closing was scheduled to be held in Wilmington. Mr. Halfpenny told Respondent that he was concerned about how the closing would go. Respondent assured Mr. Halfpenny that he would call him after the closing and let him know how everything went.

8. Respondent did not telephone the Halfpennys after the closing.

9. The Halfpennys expected to receive the proceeds from the sale by check on the following Monday. When nothing arrived in the mail on Monday, Mr. Halfpenny called Respondent at his home and asked him where the proceeds were. Respondent replied that there were no proceeds.

10. Mr. Halfpenny was shocked at this news as he expected approximately \$8,000 to be sent to him. He told this to Respondent who said he would recheck his figures.

11. Respondent also stated that \$2,875 had been placed in escrow with the buyer's attorney. He said this money would be held for 30 days to cover any potential capital gains tax due the State because of the sale. However, since no gain was realized on the sale of the property, no tax was due. Respondent said he would file the appropriate documents within 30 days to ensure that the \$2,875 was returned promptly to the Halfpennys.

12. At this point, Mr. Halfpenny was very irate and concerned about the remaining \$5,000 that was unaccounted for. After two or three days when they heard nothing further from Respondent, the Halfpennys began to call Respondent's office on a daily basis. They left messages with office personnel and on answering machines. None of their calls were returned.

13. At one point the staff person in Respondent's Dover office suggested that they no longer call Respondent at that office because he would not pick up messages there. Therefore, the Halfpennys called Respondent's Brattleboro office and were assured that their calls would be returned. Respondent did not, however, return these calls either.

14. During this two week period, Mr. Halfpenny, who suffers from a heart condition, experienced extreme stress due to Respondent's failure to communicate with him and to disperse the funds to him. Mr. Halfpenny was very anxious and could not sleep. Because of this anxiety, Carol Halfpenny began to assume responsibility for handling this problem.

15. Beginning November 21, Carol Halfpenny began calling a number of state agencies in Vermont asking for help. These agencies included the Vermont Department of Taxes, the Consumer Protection Hot Line and the Vermont Bar Association. She also filed a complaint with the Professional Conduct Board.

16. On Monday, November 25 she took a personal day off from work in order to continue to make telephone calls to various agencies in hopes of finding someone who could help them get their money from Respondent. Among

other persons, she telephoned the buyer's attorney and the Wilmington Police Department .

17. On November 25, Carol Halfpenny faxed a letter to Respondent demanding the remaining \$5,000 in proceeds due them and informing him that they would pursue the matter with the Wilmington Police Department and the Bar Association. (Exhibit 25.)

18. The next day, November 26, a letter arrived by Federal Express from Respondent. (Exhibit 22). The letter was dated November 22, 1991. It transmitted a closing statement, an IRS form, a Vermont Land Gain Tax Form, a real estate commission receipt form, a check dated November 1 drawn on the buyer's attorney's trust account in the amount of \$4,918.33, which Respondent represented to be the remaining net proceeds of the transaction. The Halfpennys noticed that the mortgage payoff was inaccurate by \$789, a sum which they eventually retrieved themselves from their bank.

19. Also enclosed with the letter from Respondent was a blank affidavit which Respondent asked the Halfpennys to complete and return to them. The purpose of this affidavit was to expedite release of the \$2,875 being held in escrow for taxes that were not due.

20. The Halfpennys knew that they only had 30 days from closing to retrieve these escrow funds and were concerned that it was already 26 days after the closing. They promptly signed the enclosed affidavit, had it notarized, and returned it to Respondent that day by Federal Express overnight mail. 1

21. The Halfpennys attempted unsuccessfully to reach Respondent prior to December 1. After that, they contacted the buyer's attorney who told them that he had sent their escrow funds on to the State Tax Department. Vermont State Department of Taxes confirmed that the funds had been transmitted to them.

22. The Halfpennys continued to make numerous telephone to Respondent who did not call them back.

23. On January 14, 1992, the Halfpennys sent a letter to Respondent advising him that the papers he had promised he would submit to the Department of Taxes had not yet been submitted and asking him to do so. (Exhibit 24). They faxed this letter to Respondent. They received no response.

24. Finally, Mrs. Halfpenny telephoned anonymously to Respondent's office and made an appointment to see him. After she was given an appointment date and time, she identified herself. Mrs. Halfpenny took yet another day off from work and drove from her home near Bridgeport, Connecticut to Brattleboro, Vermont in order to meet with Respondent. Her husband did not accompany her on this trip as he was too upset with Respondent. At this appointment Mrs. Halfpenny intended to collect whatever paperwork was necessary to obtain the refund of the \$2,875.

25. The meeting with Respondent lasted approximately 10 minutes. The tone of the meeting was cold. Respondent told Mrs. Halfpenny all she

needed to file was some income tax forms and gave those forms to her.

When Mrs. Halfpenny said she was not familiar with the forms or how to file them, Respondent advised her to have an accountant do it.

Respondent gave no adequate explanation as to why he had failed to retrieve the escrowed funds in a timely manner.

26. Mrs. Halfpenny pointed out to Respondent that he had not done all the work he had promised to do and should not have received his full fee. Respondent apologized for the delays but declined to refund any of his fees. Mrs. Halfpenny left the office upset with Respondent's attitude.

27. The Halfpennys had an accountant complete the state tax forms and did not receive their refund until May, 1992.

28. Bar counsel made numerous unsuccessful attempts to investigate the Halfpennys' complaint. The Halfpennys' complaint arrived in bar counsel's office on November 25, 1991. That same day bar counsel wrote to Respondent at his Dover office, enclosing a copy of the complaint and asking that he provide a response to the allegations contained therein. When no answer was received, the same letter was sent on December 2, 1991 to Respondent at his Brattleboro office. No response was received.

29. On February 6, 1992 the chair of the Professional Conduct Board wrote to Respondent advising him that the Halfpenny complaint was under investigation and requested a written response within 20 days. Respondent failed to answer this letter as well. On April 1, 1992 bar counsel again wrote to Respondent, recounted the history of his lack of

cooperation, and asked that he give the matter his immediate attention. As in the other correspondence, bar counsel warned Respondent that failure to cooperate with the investigation could result in disciplinary action. Respondent did not answer this letter.

30. The Halfpennys were injured by Respondent's negligent conduct. Mrs. Halfpenny lost two days of work. Mr. Halfpenny suffered physical side effects of stress. They were overcharged by Respondent by at least \$75. They lost the use of their \$5,000 for three weeks and the use of their \$2,875 for over six months. The Halfpennys also incurred incidental expenses for long distance telephone calls and overnight mail expenses which would not have been necessary if Respondent had handled the closing in a professional manner.

31. Respondent engaged in a course of conduct over a significant time period in which he failed to cooperate with bar counsel's and the Board's legitimate requests for information. His conduct in this regard violated DR 1- 102(A)(5)(conduct prejudicial to the administration of justice), and Rule 6D of Administrative Order 9 (failure to furnish information to or respond to requests from the Board and/or bar counsel).

32. In failing to communicate with Mr. and Mrs. Halfpenny, failing to produce client's funds in a timely manner, failing to retrieve the escrowed funds within 30 days of closing, and charging fees in excess of what he agreed to charge without just cause, Respondent violated the following provisions of the Code of Professional responsibility: DR 1-102(A)(7)(conduct adversely reflecting on fitness to practice law); DR

6-101(A)(3)(neglect of a legal matter entrusted); DR 9-102(failure to render an accounting).

Count II

PCB File No. 92.04

33. In early 1991, Lisa Croce, who was suffering from a debilitating physical ailment, was unable to pay her debts and was being harassed by her creditors. She and her mother, Michelene C. Schwarz, determined that she needed to file bankruptcy and contacted Attorney Kathleen Cleghorn, an associate at that time of the Respondent, to make an appointment.

34. Ms. Croce and Mrs. Schwarz met with Ms. Cleghorn on February 11, 1991. Respondent appeared during the meeting and discussed the fee agreement. Respondent stated that he required an initial retainer of \$400 and that he estimated the total legal bill would be \$800. Mrs. Schwarz promptly paid the \$400 retainer and stated that, if her daughter could not pay the balance, she would be personally responsible for payment. The parties entered into a fee agreement (Exhibit 3).

35. Ms. Cleghorn began work on Ms. Croce's bankruptcy petition by writing to all of Ms. Croce's creditors and informing them that Ms. Croce was filing for Chapter 7 Bankruptcy protection. Ms. Cleghorn also sent Ms. Croce work sheets and instructions for filing the bankruptcy petition and asked her to complete and return them. Ms. Croce did so.

36. Ms. Cleghorn left Respondent's employment in April of 1991 at which time Respondent took over responsibility of Ms. Croce's file. Ms. Croce and the Respondent reached an agreement whereby Ms. Croce would pay \$25.00 per month toward the estimate final fee of \$800. Ms. Croce began making these payments in May, 1991.

37. Ms. Croce's last meeting with Respondent was on May 6, 1991 at which time she gave him all of the documents which he had requested for use in filing the bankruptcy petition. At this time Respondent told Ms. Croce that he would file the petition shortly.

38. Ms. Croce heard nothing further from Respondent and began to telephone his office on a regular basis. She left numerous telephone messages for him to telephone her. He did not return her calls or communicate with her in any other way regarding the status of her case.

39. Frustrated by her inability to communicate with her lawyer, Ms. Croce stopped making monthly payments in September. In October, however, she resumed making monthly payments for two more months.

40. Throughout the fall of 1991, both Ms. Croce and Mrs. Schwarz made numerous attempts to communicate with Respondent. All were unsuccessful.

41. Finally, in January 1992, Mrs. Schwarz telephoned the United States Bankruptcy Court in Rutland to find out the status of her daughter's bankruptcy petition. At this time she learned that Respondent had failed to institute any proceedings on Ms. Croce's behalf.

42. Ms. Croce demanded and received her file back from Respondent's office. The file indicates that with the exception of the form letter sent to creditors and the initial Consultation, Respondent's law office performed no legal Services on Ms. Croce's behalf. Ms. Croce requested an itemized statement from Respondent but never received one.

43. Ms. Croce retained new counsel, Patricia Beu, who promptly filed the bankruptcy petition and resolved the matter within a few months. Ms. Croce paid Ms. Beu \$700 for her services, including the filing fee.

44. Ms. Croce instituted a small claims case against Respondent to recover the payments she had made to him. Respondent failed to answer the complaint and a default judgment was entered against him. Respondent has failed to pay this judgment.

45. Ms. Croce brought her complaint to the attention of the Professional Conduct Board in January 1992. The Board sent a copy of the complaint to him on or about February 6, 1992 and asked for a response to the complaint within 20 days. Respondent failed to answer. (Exhibit 5).

46. On April 1, 1992, bar counsel wrote to Respondent, again requesting a response and advising him that failure to respond could result in disciplinary proceedings. (Exhibit 6) Respondent did not answer this letter either.

47. The Hearing Panel finds that Respondent injured his client by

causing her unnecessary anxiety which given the nature of her existing medical condition (a condition known to Respondent) could have exacerbated her condition.

48. By delaying the filing of the bankruptcy petition by almost a year, and by failing to cooperate with bar counsel's investigation of this complaint, Respondent violated DRI- 102(A)(5)(conduct prejudicial to the administration of justice).

49. By failing to communicate with his client and by apparently abandoning her case, Respondent engaged in conduct which adversely reflects on his fitness to practice law in violation of DR 1-102(A)(7).

50. By neglecting to file the bankruptcy petition and by failing to render any legal services, other than the initial consultation, and the form letters to the creditors, Respondent neglected a legal matter entrusted to him in violation of Dr 6-101(A)(3).

51. Finally, by failing to furnish information to or respond to requests from the Professional Conduct Board and the Bar Counsel, Respondent violated DR 1-102(A)(5) and Rule 6D of Administrative Order 9.

Count III

PCB File No. 92.36

52. On March 11, 1992, Ms. Mary Thompson, a resident of Colorado, wrote to the Professional Conduct Board complaining that her lawyer had

mishandled the closing of some Vermont real estate which Ms. Thompson had sold in October of 1991. Her complaint was that \$500 in water and sewer taxes was withheld from the proceeds of the sale and was to have been sent to the Coldbrook Fire District. However, according to Ms. Thompson, the fire district had not yet received the money.

53. Bar counsel assigned this matter to an investigator, Jean Cass, who learned that, at the closing on October 17, 1991, the attorney for Ms. Thompson had given the proceeds to Respondent as attorney for the buyers. Respondent had told Ms. Thompson's attorney that he would forward the money to the fire district. Respondent did not forward the money until March of 1992.

54. Ms. Cass telephoned Respondent's office on April 24 and again on May 1 to discuss this matter. Each time she left a message for Respondent to call. Respondent did not return the investigator's call.

55. Ms. Cass wrote to Respondent on May 12, 1992, explaining that she would like to interview him about the complaint, and advising him of his obligation to cooperate with bar counsel's investigation. (Exhibit 10). She suggested two days in May when they might meet. Respondent did not reply to this letter.

56. On May 22, Ms. Cass wrote to Respondent again regarding his refusal to communicate with her. (Exhibit 12). The letter was addressed to Respondent at P.O. Box 386, 20 Western Avenue, Brattleboro and sent by certified mail. This address appears on his letterhead and is the one he

reported as his address in his attorney licensing statement filed with the Supreme Court.

57. It was Respondent's practice to retrieve the mail from his box at the post office. Generally he did not allow his employees to perform this task.

58. The post office gave Respondent two notices that he had a certified letter to be picked up. The post office returned the letter as undeliverable when Respondent failed to pick it up. (Exhibit 13).

59. Bar counsel initiated an investigation against Respondent for failure to cooperate and so advised the chair of the Professional Conduct Board. The chair wrote to Respondent on June 3, 1992 explaining the reasons why he was under investigation, and requesting a response. Respondent never replied to this letter.

60. The investigator's efforts to investigate this matter were prejudiced by Respondent's failure to cooperate.

61. By delaying, without cause, six months in forwarding the \$500 to the Fire District, Respondent violated DR 1- 102(A)(5)(conduct prejudicial to the administration of justice); DR 1-102(A)(7)(conduct adversely reflecting on fitness to practice law); DR 6-101(A)(3)(neglect of a legal matter entrusted).

62. Respondent further violated Rule 6D of Administrative

Order 9 in failing to furnish information to or respond to request from the Board and bar counsel relative to this matter.

Count IV

PCB File No. 92.38

63. on or about April 7, 1992, the First Vermont Bank notified the Professional Conduct Board that Respondent's IOLTA account was overdrawn. (Exhibit 8). The Bank advised that the account was overdrawn in the amount of \$25,432.77.

64. Bar counsel wrote to Respondent on April 22 requesting an explanation for the overdraft. (Exhibit 9) Respondent did not reply.

65. On May 13, bar counsel again wrote to Respondent advising him of his failure to respond to the April 22 letter and requesting an explanation for the overdraft by May 20. (Exhibit 11). Respondent did not reply.

66. On May 28, 1992, bar counsel sent a third letter requesting an explanation for the overdraft. (Exhibit 14) This letter was sent by certified mail and addressed to Respondent at P.O. Box 386, 20 Western Avenue, Brattleboro. This address appears on his letterhead and is the one he reported as his address in his attorney licensing statement filed with the Supreme Court.

67. As stated earlier, it was Respondent's practice to retrieve the mail from the post office and he generally did not allow his employees to

perform this task.

68. The post office gave Respondent two notices that he had a certified letter to be picked up. The post office returned the letter as undeliverable when Respondent failed to pick it up. (Exhibit 13).

69. Bar counsel initiated an investigation against Respondent for failing to cooperate with the inquiry into the overdraft. The chair of the Professional Conduct Board notified Respondent on June 9, 1992 that he was under investigation for failing to provide any explanation for the overdraft. (Exhibit 16). Respondent did not reply to the chair's letter.

70. Bar counsel's efforts to investigate this matter were prejudiced by Respondent's failure to cooperate. As a result, the petition of misconduct was filed.

71. Because of the existence of this overdraft and without suitable explanation, Respondent violated DR 1-102(A)(5)(conduct prejudicial to the administration of justice); DR1-102(A)(7)(conduct adversely reflecting on fitness to practice law);and DR 6-101(A)(3)(neglect of a legal matter entrusted).

72. Respondent also violated Rule 6D of Administrative Order 9 by failing to furnish information to or respond to requests from board and bar counsel relative to this matter.

Sanctions

In determining an appropriate sanction the Board must consider both aggravating and mitigating factors. In aggravation Respondent has engaged in a pattern for more than a year of ignoring the lawyer disciplinary system. After the petition of misconduct was filed, Respondent filed an answer denying misconduct. For a brief period of time he was represented by counsel and was interviewed by bar counsel and her investigator in September of 1992. At this meeting, bar counsel requested copies of documents which Respondent agreed to produce. Shortly thereafter, Respondent's counsel withdrew. The promised documents were never produced.

Bar counsel made at least three oral and written requests to Respondent during, October, November and December 1992 requesting production of his files relating to his representation of the parties described in Counts I through III above. Respondent failed to respond to any of these requests. Bar counsel's investigator telephoned Respondent's office on almost a daily basis from December through the date of the hearing. She left a message each time on the answering machine. Although Respondent was seen in the Brattleboro area during this time period, he never returned any of the telephone calls.

A subpoena issued, requiring Respondent to attend the January 7 hearing and to bring the requested documents with him. The sheriff, however, was unable to find the Respondent and serve the subpoena.

The hearing panel also heard evidence that Respondent had been

ignoring the local probate court. That Court had written to Respondent in November 1992 requesting the status of four probate matters for which Respondent is responsible. In one case, Respondent is holding some \$10,000 in trust. As of the date of the hearing, Respondent had failed to reply to this inquiry or to account for the \$10,000.

On January 19, 1993 the Chair of the Professional Conduct Board received a letter from Respondent, copies of which were forwarded either by the Chair or Respondent to each of the Panel members. In that letter Respondent claimed that he did not learn of the January 7, 1993 hearing until the night before when he received a phone message while he was in Dedham, Massachusetts training for a new job. Respondent, in the letter, advised that he was receiving counselling and medication for clinical depression. He acknowledged that because of his condition he had been unable to attend to routine aspects of his law practice. He also asked that the January 7 hearing be reopened. The Hearing Panel declined to reopen that hearing. Respondent was given repeated notices of the ongoing investigations against him and repeated attempts were made to notify him of the January 7 hearing including notice duly sent to his business address. See Administrative Order No. 9 Rule 13H. Furthermore, issues raised in Respondent's letter were more appropriately raised in an 8(D) hearing which was afforded to Respondent.

A lawyer who absents himself or herself from the control of the courts and the lawyer disciplinary system poses a substantial danger to clients and the public. The lawyer possesses a license to practice law but is beyond disciplinary control. In such a situation for the protection of

the public, the lawyer should be immediately suspended from practice.

Suspension of Respondent is warranted in light of Standards 4.12, 4.41, and 7.2 of the ABA Standards for Imposing Lawyer Sanctions. In aggravation, we find a pattern of misconduct, multiple offenses, avoidance of the disciplinary proceedings, and substantial experience in the practice of law. We, therefore, recommend that Respondent should be suspended from practice for six months. This period is recommended as it will require Respondent to seek reinstatement under the provisions of Administrative Order No. 9 II Rule 20.

On February 26, 1993 the Supreme Court entered the following Order:

"Pursuant to A.O. 9, Rule 15 B Gary A. Strassenburg is suspended from the practice of law as an attorney in the State of Vermont, effective immediately. Respondent shall comply fully with the provisions of A.O. 9, Rule 21."

This matter was then reopened at the request of the Respondent and a hearing was held before the Hearing Panel on March 6, 1993 for the limited purpose of allowing Respondent and Bar Counsel to provide information regarding mitigating and aggravating factors relative to an appropriate disposition. The Hearing Panel was chaired by Christopher L. Davis, Esq. and included Karen Miller, Esq. and Mr. Donald Marsh. Present were special bar counsel, Wendy S. Collins, Esq. and her investigator Jean Cass and the Respondent, Gary A. Strassenburg, Esq. Testimony was taken from the Respondent and at the request of the Hearing Panel a letter from

Dr. Ray Abney, M. D. to Respondent dated January 19, 1992 was admitted by stipulation.

Based upon the evidence presented including the evidence presented before the Hearing Panel at the hearing on January 7, 1993, the Hearing Panel made the following supplemental findings of fact:

1. In the spring and summer of 1992 Respondent began suffering from depression.

2. Following a meeting in the late summer of 1992 with special bar counsel Wendy Collins, Respondent decided to close his law practice. He released his secretary and began not accepting new clients.

3. In the early fall of 1992, Respondent realized he was unhappy and began failing to attend to matters including his law practice.

4. Some time in October 1992, the Respondent went into a severe depression. He was unable to deal with any potentially stressful issue. He had an almost complete inability to cope with basic matters. He hid at home for almost two months.

5. In December 1992 Respondent sought psychiatric help. On December 22, 1992 he saw Ray Abney, M.D. Following that session he began treatment with Dr. Abney which treatment included taking anti-anxiety and anti-depression medication as well as regular sessions with Dr. Abney who is a psychiatrist.

6. Dr. Abney diagnosed Respondent as suffering from panic disorder and major depression and recommended treatment involving a combination of appropriate medications and psychotherapy which Respondent has followed.

7. Respondent is improving with treatment. He is presently closing down his practice and has received training in and has accepted a position as a salesperson for health and accident insurance for a company in Massachusetts. He has begun contacting clients and arranging for the transfer of all open cases. He has not yet, however, informed all past clients of the termination of his practice. He is also still in the midst of obtaining substitute counsel for real estate files that require updated title searches following closings that have already occurred.

8. Respondent is in the midst of obtaining substitute counsel for two pending probate and guardianship estate matters. At the time of the March 5, 1993 hearing plans had been made to transfer bank accounts and statements regarding these estate matters but these transfers had not yet been fully completed.

9. Respondent has closed his IOLTA account. He acknowledged that retainers that he had received in two instances he had placed in his general account and used up even though he had not performed sufficient work to bill for the full amounts of the retainers and even though the two matters had not been completed.

CONCLUSIONS OF LAW

The Board finds that Respondent did suffer from a mental disability or impairment (to wit, a panic disorder and severe depression) during the periods of time that he violated the disciplinary rules as more particularly set forth in the Panel's Findings of Fact and Conclusions of Law dated January , 1993. The Board considers this disability or impairment to be a mitigating factor. See ABA Standards for Imposing Lawyers Sanctions, Section 9.32(h).

Although the Respondent appears to no longer suffer from severe depression and although his condition appears to be improving with medication and psychotherapy to best assure protection of the interests of Respondent's clients counsel should be appointed for that purpose pursuant to Administrative Order Rule 22. Further, given Respondent's acknowledged disability, his plans to close down his practice and, for the immediate future, to leave the practice of law, and given our earlier conclusions, it is still appropriate that Respondent's suspension last six months. Therefore, when and if Respondent seeks reinstatement under the provisions of Administrative Order No. 9 II Rule 20, this Board can assess whether or not Respondent's disability still exists.

CONCLUSION

Respondent should be suspended from the practice of law as an attorney in the State of Vermont for six months. Due to the fact that the violations found were principally, if not solely, attributable to

Respondent's severe medical problems, the six month suspension should not be punitive in nature and should commence from the date of his suspension by the Supreme Court, i.e., 2/26/93. This recommendation should in no way be construed that there is a finding that Respondent is presently either suitable or not suitable for reinstatement.

It is further recommended that the appropriate Superior Court appoint counsel to assist Respondent in the closing of his practice and in complying with A.O. pursuant to A. O. 9, Rule 22.

Dated at Montpelier, Vermont, July, 16, 1993.

PROFESSIONAL CONDUCT BOARD

/s/

Deborah S. Banse, Chair

BOARD MEMBERS:

Anne K. Batten

Nancy Foster

/s/

/s/

Joseph F. Cahill, Esq.

Donald Marsh

/s/ /s/

Nancy Corsones, Esq. Karen Miller, Esq.

/s/

Paul Ferber, Esq. Ruth Stokes

/s/ /s/

Rosalyn Hunneman Jane Woodruff, Esq.

/s/

Robert Keiner, Esq. Edward Zuccaro, Esq.

Concurring: I agree with the 6 month suspension but would have it begin at a time after June 4, 1993, the date he appeared before us at the Rule 8D hearing.

/s/

Nancy Foster

FN1. As Respondent did not appear and as no evidence was presented on his behalf, to a large extent the Hearing Panel adopted Bar Counsel's proposed findings of fact and conclusions of law. This adoption should not be construed as abandonment by the Hearing Panel of its duty to make an independent appraisal of the testimony and exhibits introduced but rather an acknowledgement that the evidence was uncontroverted and the witnesses credible.

APPENDIX TO NOTICE OF DECISION #58

ENTRY ORDER

SUPREME COURT DOCKET NO. 93-046

OCTOBER TERM, 1993

In re Gary A. Strassenburg, Esq. } APPEALED FROM:

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} Professional Conduct Board

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} DOCKET NOS. 92.03/04/36/38

In the above entitled cause the Clerk will enter:

Pursuant to the recommendation of the Professional Conduct Board filed on July 26, 1993, and approval thereof, it is hereby ordered that Gary A. Strassenburg, Esq., be suspended for six months commencing on February 26, 1993.

BY THE COURT:

/s/

Frederic W. Allen, Chief Justice

/s/

Ernest W. Gibson III, Associate Justice

/s/

John A. Dooley, Associate Justice

/s/

James L. Morse, Associate Justice

Publish

/s/

Do Not Publish

Denise R. Johnson, Associate Justice