

PCB 94

[07-Jul-1995]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 95.15

NOTICE OF DECISION

Decision No. 94

The stipulated facts in this case, which we adopt and incorporate as our own, warrant a private admonition for neglecting a client.

Respondent had been a Vermont lawyer for nearly 10 years when he agreed to represent Complainant in connection with certain child support matters. He obtained a \$400 retainer from Complainant and then failed to communicate with her for six weeks while he was reorganizing his law practice.

Complainant telephoned him at that point and gave him additional information necessary to her case.

Complainant heard nothing further and telephoned him again after another month had passed. She made clear that she wanted him to resolve her case within the next two months. Respondent then sent Complainant an Affidavit of Income and Assets. She promptly completed and returned these forms to Respondent.

Another month passed. Complainant heard nothing from Respondent until she telephoned him. At this time, Respondent promised to take certain actions, including contacting her, within twenty-four hours. Respondent did not contact Complainant. A few weeks later, Complainant contacted Respondent's offices and requested that her retainer be refunded. She received no response. Complainant then contacted Bar Counsel who notified Respondent of the complaint against him. At that point, Respondent returned the \$400 retainer to Complainant.

As a result of Respondent's neglect, Complainant, who was not receiving necessary child-support payments, was financially unable to hire another attorney to represent her. She was unsure of how to proceed in these matters and became understandably distressed. Her lawyer was not being responsive to her need for child support. Eventually, Complainant was able to resolve these matters herself. Therefore, Respondent's neglect did not cause permanent harm.

Respondent's misconduct violated DR 6-101(A)(3) of the Code of Professional Responsibility which provides that "a lawyer shall not neglect a legal matter entrusted to him."

In mitigation, we find that Respondent has received no prior discipline from this Board, is remorseful over his actions and concedes his mistake. He has cooperated fully and completely with these disciplinary proceedings and attempted to rectify the consequences of his misconduct.

In aggravation, we note that Respondent has substantial experience in the practice of law.

Section 4.4 of the ABA Standards for Imposing Lawyer Sanctions states "[a]dmonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client."

Given the isolated nature of this violation, the lack of actual permanent harm, the remorse of the respondent and the other mitigating factors, we agree with Bar Counsel's recommendation that a private admonition is appropriate.

A private letter of admonition will issue.

Dated at Montpelier, Vermont this _____ day of July 1995.

PROFESSIONAL CONDUCT BOARD

/s/

Deborah S. Banse, Chair

/s/

George Crosby

Donald Marsh

/s/

Joseph F. Cahill, Esq.

Karen Miller, Esq.

/s/

Nancy Corsones, Esq.

Mark Sperry, Esq.

/s/

Paul S. Ferber, Esq.

Robert F. O'Neill, Esq.

/s/

Nancy Foster

Ruth Stokes

/s/

/s/

Rosalyn L. Hunneman

Jane Woodruff, Esq.

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Robert P. Keiner, Esq.

Charles Cummings, Esq.