

PCB 95

[07-Jul-1995]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 93.42

NOTICE OF DECISION

Decision No. 95

Respondent and Bar Counsel appeared before us on this matter on June 2, 1995. They submitted stipulated facts and conclusions of law, which we accept and adopt as our own, but disagreed as to the appropriate sanction. Bar Counsel recommended reprimand; Respondent recommended admonition. For the reasons set forth below, we feel that an admonition is appropriate in this neglect case.

Respondent has been a member of the Vermont Bar since 1964, but has been in and out of the practice of law. He is presently employed as an associate in an established firm.

Complainants contacted a partner in that firm in March of 1991, regarding construction defects in the roof of their newly purchased home. The partner referred the case to Respondent who told the Complainants that he would file suit against the sellers as well as the builder.

In June of 1991, Respondent attempted to serve the sellers in New York via a sheriff. When the Complainants heard nothing further, they telephoned Respondent who looked into the matter. He learned that the New York sheriff had failed to serve the sellers because of an incorrect address. The Complainants then obtained the correct address and gave it to Respondent.

In August of 1991, Respondent wrote to Complainants and informed them that the sellers had in fact been served and that he would let them know when he got any results.

The Complainants had informed Respondent in May that they wanted to be kept fully informed of all activity and decisions in the case. They answered Respondent's letter by reiterating these instructions and requesting a copy of the complaint. They also informed Respondent that they wanted to review all documents and correspondence before they were sent out.

Respondent filed the lawsuit on September 19, 1991; an answer was filed the same day. Respondent did not send Complainants copies of either document.

On October 3, the Complainants wrote to Respondent asking whether the sellers had yet answered the complaint. The Respondent did not respond.

On November 11, Complainants telephoned the partner in the law firm and expressed dissatisfaction with the manner in which Respondent was handling their case. On that same day, Respondent wrote a letter to Complainants. He apologized to them and enclosed a copy of the complaint and the answer. Respondent expressed a continuing desire to represent them and committed to keep them informed immediately on all developments in their case.

When Complainants received the complaint, they were surprised to learn that the lawsuit had been commenced only against the sellers and not the builder as well. Upon inquiry, Respondent told them that Respondent's revised strategy was to sue only the sellers and that the sellers would implead the builder. This revision of strategy was contrary to their instructions that they be notified and consulted before any action were taken on their case. Nevertheless, they agreed to this alternate plan.

On December 4, 1991, after several weeks of consideration, Complainants wrote to Respondent agreeing to allow Respondent to proceed. They wrote:

As we wrote to you this fall, we urgently need to resolve the roof problem because of health concerns. We pointedly reiterate our request to be kept abreast of all developments, and we insist on reviewing all correspondence before they are implemented. (emphasis in original).

After this episode, Respondent was more responsive and communicative with Complainants. Eventually, however, Respondent ceased to keep in touch with these clients. Complainants tried to contact Respondent repeatedly from May 1992 through February 1993, without receiving any response from him at all.

Finally, on May 6, 1993, Complainants wrote to a senior partner in the law firm to express extreme dissatisfaction with the way the firm has handled their case. Thereafter, partners at the firm took over the case and provided representation that was satisfactory to the Complainants. In addition, the firm renegotiated its fee agreement to make it more beneficial to the Complainants.

The sellers never impleaded the builder. One of the partners finally filed a complaint against the builder, but the Superior Court ruled that it was barred by the statute of limitations. Complainants elected not to spend the resources necessary to appeal that decision or to bring a legal malpractice claim.

Complainants repaired the defect in their house for \$13,000. The case settled for \$14,000, and Complainants will pay \$4,600 in legal fees to the law firm. Although they were extremely annoyed by the delays, they were not damaged by Respondent's neglect and lack of communication.

Respondent violated DR 6-101(A)(3) by repeatedly failing to communicate with his clients and by failing to consult with them before changing the litigation strategy. Moreover, there is a pattern of neglect that continued for a considerable period of time.

But for the fact that Respondent practices in a law firm that appears to be in a position to monitor Respondent's professional conduct, we would not hesitate to recommend a public sanction in order to protect the public.

However, it appears Respondent's law firm is aware of Respondent's conduct and anxious to take steps to avoid repeated instances. Moreover, this misconduct was isolated only to these particular clients and was due more to personality conflicts than to any other one factor. Respondent found it difficult to work with these clients and responded to that discomfort by staying away from them, a tactic which only exacerbated the situation. Respondent has come to understand the dynamics of his conduct and is not likely to repeat this same mistake. He has learned not to take on cases where it is likely that the attorney-client relationship will not be a positive one.

Respondent has been a member of the Vermont Bar for over 30 years without any other allegations of misconduct. He has co-operated fully with disciplinary counsel and had no dishonest or selfish motive. In light of all of these circumstances, a private admonition will issue.

Dated at Montpelier, Vermont this 7th day of July, 1995.

PROFESSIONAL CONDUCT BOARD

/s/

Deborah S. Banse, Chair

George Crosby

Donald Marsh

/s/

Joseph F. Cahill, Esq.

Karen Miller, Esq.

/s/

Nancy Corsones, Esq.

Mark Sperry, Esq.

/s/

/s/

Paul S. Ferber, Esq.

Robert F. O'Neill, Esq.

/s/

Nancy Foster

Ruth Stokes

/s/

Rosalyn L. Hunneman

Charles Cummings, Esq.

/s/

Robert P. Keiner, Esq.

DISSENTING:

/s/

Jane Woodruff, Esq.