

106 PCB

[07-Jun-1996]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 94.32

NOTICE OF DECISION

DECISION NO. 106

This is a neglect case which we feel warrants imposition of a private admonition. This matter came before us by stipulated facts which we adopt as our own and incorporate herein by reference. Parties waived appearance before the Board.

FACTS

Respondent has been a member of the Vermont Bar for over 20 years. In May of 1986, Complainant consulted with Respondent about a possible worker's compensation claim as the result of an injury sustained at a previous job approximately a year earlier. Respondent undertook representation on this issue as well as several others.

Respondent obtained Complainant's medical records which showed a lengthy history of minor ailments. Respondent set up an appointment for complainant to see another physician and also asked Complainant to forward to Respondent a copy of Complainant's Notice of Injury as filed with the Department of Labor and Industry. Apparently unbeknownst to Respondent, Complainant had never filed such a notice with either his employer or the Department of Labor and Industry.

Respondent's file indicates that he worked on this matter sporadically over the next year. For instance, he consulted and corresponded with one treating physician in July who provided information helpful to Complainant. The physician opined that the work injury aggravated a pre-existing problem. However, this physician did not respond to Respondent's request for records of the examination nor did Respondent ever follow up on this request.

In April of 1987, Respondent again wrote to Complainant, informing him that he needed the notice of injury in order to locate his claim at the Department of Labor and Industry. Two weeks later, Complainant told Respondent that he had not filed such a notice. Two months later, Respondent filed the notice of injury with the Department of Labor and Industry.

Respondent did nothing further in the case until late November when he wrote to DLI asking for a status report. In January, Respondent learned that DLI had been requesting information on the accident from the wrong

employer. There is no indication in the stipulated facts that he did anything to correct this error. Although Respondent was handling other matters for Complainant and did so in a professional manner, it appears that he did no further work on the worker's compensation claim.

In March of 1991, after two years of inactivity, Respondent was discharged. Complainant retained another lawyer and, within the next year, received a worker's compensation package of \$52,000.

CONCLUSIONS

Respondent's representation of his client reflects two long periods of time in which there was little, if any, activity on behalf of the client. By the time Respondent was discharged in March 1991, almost five years had elapsed from the time of their initial consultation. Yet, the client was hardly any closer to a resolution of his claim in 1991 than he was in 1986. He was understandably frustrated by such a lengthy and unjustifiable delay.

By so neglecting Respondent's worker's compensation claim, Respondent violated DR 6-101(A) (3) (a lawyer shall not neglect a legal matter entrusted to him).

In regard to the appropriate sanction, we note that Respondent acted negligently, not wilfully, and that, while the delay was certainly aggravating to Complainant, no financial injury resulted. In mitigation, we find that Respondent has no previous disciplinary history and that he co-operated fully with these proceedings. In aggravation, we find that Respondent has substantial experience in the practice of law and that the events here involve a pattern of neglect within one case.

Applying Section 4.44 of the ABA Standards for Imposing Lawyer Sanctions, and considering all of the above factors, we believe that a private admonition is appropriate here. Respondent does not represent a threat to the community nor is he likely to repeat his misconduct. We are confident that he has learned from this mistake and hopeful that he will endeavor in the future to comply with all the requirements of the Code of Professional Responsibility.

A private letter of admonition will issue. The confidentiality provisions of Administrative Order 9, Rule 11 preclude public release of Respondent's name or any identifying information about this case.

Dated at Montpelier, Vermont this 7th day of June, 1996.

PROFESSIONAL CONDUCT BOARD

/s/

Deborah S. Banse, Chair

/s/

RECUSED

Joseph F. Cahill, Jr., Esq.

Nancy Corsones, Esq.

/s/

Charles Cummings, Esq.

/s/

Michael Filipiak

/s/

Rosalyn L. Hunneman

/s/

Donald Marsh

/s/

Robert F. O'Neill, Esq.

/s/

Ruth Stokes

Paul S. Ferber, Esq.

/s/

Nancy Foster

/s/

Robert P. Keiner, Esq.

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Karen Miller, Esq.

Mark L. Sperry, Esq.

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