

123.PCB

[6-Feb-1998]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: PCB Docket No. 94.26

DECISION NO. 123

This matter is before us pursuant to A.O. 9, Rule 8D following the filing of the hearing panel's report. In lieu of a hearing, the parties stipulated to the facts which the hearing panel, in turn, adopted as its own. The hearing panel found that Respondent violated DR 6-101(A) (3) by failing to complete the settlement of Client's case in a timely manner. The panel recommended that respondent be admonished.

Hearing before this Board was waived by the parties. We affirm the recommendations of the hearing panel.

FACTS

Respondent represented Client in a personal injury case involving a defective product. The injury occurred in the summer of 1987 and Respondent's representation began shortly thereafter.

Respondent reached a tentative settlement with the manufacturer in February of 1990 in the amount of \$9,000. For reasons not relevant here, Client did not authorize settlement until March 22, 1993.

Respondent neglected to execute the settlement documents promptly. Client made several calls to Respondent and asked her employer, another member of the bar, to intercede on her behalf. That lawyer wrote to Respondent on October 14, 1993, inquiring as to why the resolution of the case was taking so long and asking for an immediate response. The lawyer also informed Respondent that Client wanted her file, although she did not want to discharge Respondent. Respondent did not answer this letter.

Client filed a disciplinary complaint against Respondent on November 1, 1993. A copy was sent to Respondent on November 8, 1993. Respondent began the final steps toward distribution of the settlement funds on November 18, 1993. Thereafter, Respondent acted expeditiously, and the settlement funds were distributed to Client on February 9, 1994.

CONCLUSIONS OF LAW

DR 6-101(A) (3) of the Code of Professional Responsibility provides that "[a] lawyer shall not...[n]eglect a legal matter entrusted to him." In failing to complete the settlement of a the case in a timely manner and failing to respond to Client's requests for a copy of the file, Respondent violated DR 6-101(A) (3).

SANCTION

Section 4.44 of the ABA Standards for Imposing Lawyer Sanctions provides, "Admonition 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."

The injury here was a delay of some six months in obtaining funds to which the client was entitled. The delay caused Client anxiety as evidenced by soliciting the assistance of her employer to intercede on her behalf. Obviously, clients should not have to go to such lengths to obtain cooperation from their lawyers. Respondent here violated his duty of due diligence to Client. He did so negligently, not knowingly or wilfully.

In mitigation, we find that Respondent has no prior disciplinary history, had no dishonest or selfish motive, and made timely and good faith efforts to rectify the consequences of his misconduct. The only aggravating factor is that Respondent has been a member of the bar for over twenty years and thus has substantial experience.

Under such circumstances, we find that an admonition is the appropriate sanction.

Dated at Montpelier, Vermont this 6th day of February, 1998.

PROFESSIONAL CONDUCT BOARD

/s/

Robert P. Keiner, Esq. Chair

/s/

John Barbour

/s/

Joseph F. Cahill, Jr., Esq.

/s/

Charles Cummings, Esq.

Paul S. Ferber, Esq.

Michael Filipiak

Nancy Foster

Rosalyn L. Hunneman

Robert F. O'Neill

/s/

Jessica Porter, Esq.

/s/

Alan S. Rome, Esq.

/s/

Mark L. Sperry, Esq.

/s/

Ruth Stokes

Jane Woodruff, Esq.

/usr3/dal/9426.opfinal

??