

127.PCB

[1-May-1998]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 94.39

DECISION NO. 127

This matter was submitted by stipulated facts. The parties, including counsel for Respondent, appeared before us and argued that a sanction of private admonition be imposed. We agree with that recommendation.

This case concerns a young lawyer whose lack of diligence in attending a legal matter allowed him to be used by a senior lawyer to perpetuate a fraud upon the court. That fraud constituted criminal conduct by the senior lawyer. It is only because Respondent's role was one of an unwitting dupe rather than a co-conspirator that we impose such a minor sanction.

Facts

In August of Year 1, Clients were experiencing personal and business financial difficulties. They had land which they wanted to protect from creditors in the event they might have to declare bankruptcy. They consulted Senior Lawyer who advised Clients to convey the land to him. Senior Lawyer assured Clients that he would ultimately return the land to them.

A few months later, Respondent was admitted to practice law in the state of Vermont and joined Senior Lawyer's law firm. He knew nothing of the land transfer from Clients to Senior Lawyer.

In August of Year 2, Senior Lawyer prepared a Certificate of Title on this land, certifying title in himself. He told a secretary to tell Respondent to sign the Certificate. Respondent did so.

In September of Year 2, Senior Lawyer prepared another Certificate of Title regarding this same land. This second Certificate was false. It stated that Clients held title to the land.

Senior Lawyer again told a secretary to tell Respondent to sign the Certificate. Respondent asked the secretary if it was complete and valid. She said that Senior Attorney had said it was. Based on those representations and without reading the document, Respondent signed it.

By that signature, he certified that he had examined the pertinent land records and that title was vested in Clients. If Respondent had, in

fact, examined the land records, he would have known this was not true. If Respondent had read the certificates before signing them, he would have realized that they pertained to the same land. He would have realized that one of the certificates was false.

A few days later, and without Respondents knowledge, the land was the subject of a straw transfer back to the Clients and then to another member of the firm.

In May of Year 3, Senior Partner assigned Respondent to handle the bankruptcy petition for Clients. Respondent had no bankruptcy experience and this was a complicated matter. In compiling the list of assets, Respondent failed to include the land which had been the subject of the earlier Certificates of Title. Although Clients recall mentioning "their Land" which was being held by one of the members of the firm, Respondent did not understand what they were talking about. If he had read the Certificates of Title which he had signed, he would have understood the reference. He would have realized that the land should have been included in the list of assets.

The bankruptcy petition was signed by Clients under oath, certifying that the information was true and correct, which it was not, since the land was not included. Respondent signed the petition as attorney and filed it with the court.

The Board finds that Respondent did not knowingly file a false document. He was neglectful in failing to read documents and failing to explore all of Clients' assets. There was no intent, however, to perpetuate a fraud.

Conclusions of Law

An attorney, even one of inexperience relying on a trusted, more experienced attorney, has the minimal obligation to read and absorb legal documents before signing them. Any attorney, when informed by a bankruptcy client of property being held by another person, has the minimal obligation to make further inquiry into that potential asset. This attorney, had he read the two Certificates of Title--being familiar with the individuals--reasonably would have placed some significance on the later revelation by his clients of property that was being held by a member of the firm and inquired further. DR 6-101(A)(2) of the Code of Professional Responsibility provides that a "lawyer shall not...[h]andle a legal matter without preparation adequate in the circumstances." By not reading and determining the validity of legal documents before signing them and by not, in preparation for bankruptcy, inquiring about the real property Respondent's clients revealed was being held by another member of the firm, Respondent is in violation of DR 6-101(A)(2).

Sanction

Section 4.43 of the ABA Standards for Imposing Lawyer Sanctions provides that "[r]eprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client."

Section 4.44 of the ABA Standards for Imposing Lawyer Sanctions provides that "[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."

Section 6.13 of the ABA Standards provides that "[r]eprimand is generally appropriate when a lawyer is negligent...in determining whether statements or documents are false...and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding."

Section 6.14 of the ABA Standards provides that "[a]dmonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted...documents are false...and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding."

There was at least the potential for injury to the entity that relied on the false Certificate of Title. The clients that filed a bankruptcy petition with false information faced potential criminal exposure, and the legal proceeding was adversely affected by a false filing.

Respondent was the immediate causative factor for the issuance of the false Certificate of Title and for the false filing. Respondent relied on the much more experienced, and trusted, Senior Lawyer when he signed the false Certificate of Title. Respondent had been admitted for about 1« years before becoming responsible for a complex bankruptcy assigned to him by Senior Lawyer. Respondent, because of his inexperience, either took no notice of the statement by his clients that a member of the firm was holding property for them or did not fully comprehend its significance, for bankruptcy purposes. Had Respondent inquired of Senior Lawyer from whom he was getting periodic legal guidance, it is speculative as to whether or not he would have been forthright with Respondent. It is appropriate to consider the questionable conduct and judgment of a senior attorney as it relates directly to the conduct of a junior one. In re: Mayer, Although Respondent was the vehicle, in each instance, for potential injury or interference with the legal proceeding, the actual culpable conduct was the underlying, secretive, intentional conduct of Senior Lawyer, on whose judgment Respondent naively relied.

There are several mitigating factors in this case:

1. Respondent has no prior disciplinary record;
2. Respondent has cooperated with the disciplinary proceedings;
3. Respondent was inexperienced in the practice of law; and
4. There has been a delay in the disciplinary proceedings through no fault of Respondent.

We find that there are no aggravating factors.

Under the peculiar circumstances of this case, particularly because of the betrayal of Respondent by Senior Lawyer, the Board concludes that a private admonition is the appropriate sanction.

Dated at Montpelier, Vermont this 1st day of May, 1998.

PROFESSIONAL CONDUCT BOARD

RECUSED

Robert P. Keiner, Esq. Chair

/s/

John Barbour

/s/

Joseph F. Cahill, Jr., Esq.

/s/

Charles Cummings, Esq.

NOT PRESENT AT ORAL ARGUMENT

Paul S. Ferber, Esq.

NOT PRESENT AT ORAL ARGUMENT

Michael Filipiak

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Nancy Foster

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Rosalyn L. Hunneman

Robert F. O'Neill, Esq.

/s/

Jessica Porter, Esq.

/s/

Alan S. Rome, Esq.

NOT PRESENT AT ORAL ARGUMENT

Mark L. Sperry, Esq.

/s/

Ruth Stokes

/s/

Jane Woodruff, Esq.

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