

149.PCB

[14-Apr-2000]

STATE OF VERMONT  
PROFESSIONAL CONDUCT BOARD

RE: Docket Nos. 99.16, 99.89 and 99.56

NOTICE OF DECISION

Decision No. 149

The Board convened on April 14, 2000, and adopted as its own the stipulated facts and the panel's reports attached hereto, with the following modification in Docket Nos. 99.16 and 99.89: the educational requirements hereby imposed do not necessarily have to be met in Windsor County but do have to be fulfilled within one year.

The chair shall issue a letter of admonition. Docket No 99.56 is dismissed in accordance with the Hearing Panel's recommendation.

Dated at Montpelier, Vermont this 14th day of April, 2000.

PROFESSIONAL CONDUCT BOARD

/s/

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Robert P. Keiner, Esq. Chair

/s/

\_\_\_\_\_  
Charles Cummings, Esq.

/s/

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Barry E. Griffith, Esq.

/s/

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Mark L. Sperry, Esq.

/s/

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Joan Wing, Esq.

/s/

\_\_\_\_\_  
Michael Filipiak

/s/

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Alan S. Rome, Esq.

/s/

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Ruth Stokes

/s/

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Toby Young

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STATE OF VERMONT  
PROFESSIONAL CONDUCT BOARD

IN RE: Docket No. 99.56

HEARING PANEL REPORT

The Hearing Panel accepted the recommendation of the Office of Disciplinary Counsel and the concurrence of the respondent that this Complaint be dismissed and it so recommends.

Dated at Brattleboro, Vermont this 28th day of December, 1999.

/s/

Charles R. Cummings, Esq.  
Hearing Panel Chair

/s/

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Joan L. Wing, Esq.  
Hearing Panel Member

/s/

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Michael Filipiak  
Hearing Panel Member

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STATE OF VERMONT  
PROFESSIONAL CONDUCT BOARD

IN RE: Docket No. 99.16 and 99.89

HEARING PANEL REPORT

The Hearing Panel accepted the Stipulation of Facts (Statement of Facts) filed by respondent and concurred in by Deputy Disciplinary Counsel on October 27, 1999, and recommends that the proposed sanction of Admonition be imposed and that Respondent be required to enroll in and successfully complete a Law Office Management Assistance Program under the Lawyers Assistance Program of the Vermont Bar Association, evidenced by a report of such to the Professional Conduct Board. Attached hereto as Exhibit A is the Stipulation of Facts (Statement of Facts) and concurrence of Deputy Disciplinary Counsel.

Dated at Brattleboro, Vermont this 29th day of December, 1999.

/s/

Charles R. Cummings, Esq.  
Hearing Panel Chair

/s/

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Joan L. Wing, Esq.  
Hearing Panel Member

/s/

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Michael Filipiak  
Hearing Panel Member

Editorial note: The following stipulation of facts, edited here for publication, was submitted to support the violations of DR 6-101(A) (3) (neglect of legal matter entrusted) of the Code of Professional Responsibility.

#### STATEMENT OF FACTS

Docket No. 99.16

1. Respondent represented PB, Ms. B's son, at a sentencing hearing held, sometime around July 1996. Mr. B was convicted of aggravated domestic assault and sentenced to 5<sup>7</sup>/<sub>8</sub> years to serve.

2. Ms. B was extremely distraught that her son was being incarcerated.

3. Mr. B was Respondent's first client to be incarcerated. Respondent was also upset that he was being incarcerated.

4. Ms. B told Respondent that Mr. B was in the process of a divorce with from AB.

5. Respondent told Ms. B that she could seek "grandparent rights" with her grandchildren. Respondent was trying to comfort Ms. B as she was distraught at the sentencing.

6. Respondent accepted a \$55.75 check as a filing fee to file for grandparent rights on behalf of Ms. B. Respondent had no further contact with Ms. B. Respondent never filed any petition for grandparent rights in the divorce case.

7. Grandparents' Visitation (emphasis added) is found at 15 VSA Chapter 18. The statute provides:

A superior, juvenile or probate court which has considered or is considering the custody or visitation of a minor child may award visitation rights (emphasis added) to a grandparent of the child, upon written request of the grandparent filed with the court, if the court finds that to do so would be in the best interest of the child.

15 VSA §1011(a). The court could only award visitation right, not custody, pursuant to this statute.

8. Respondent subsequently learned that Ms. B had received custody of her grandchildren in a confidential juvenile court proceeding. The particulars are not known to Respondent due to the confidential nature of the proceedings.

9. The Family Court did not have jurisdiction to award Ms. B custody of her grandchildren in the divorce case, and could not have made such an award even if Respondent had filed a timely petition for grandparent visitation in the case of AB v. PB.

10. Respondent did not have Ms. B's address or any way to return Ms. B's check until receiving the address from Deputy Bar Counsel.

11. Respondent returned the filing fee to Ms. B on October 15, 1999 by mailing it to the address supplied by Deputy Bar Counsel. The funds had been held in Respondent's IOLTA account and any interest would have been for the benefit of the Vermont Bar Foundation.

Docket No. 99.89

1. On February 28, 1998, DC met with Respondent to seek advice regarding a situation in which two people had failed to make good on a promissory note in which they had promised to pay DC \$15,000 plus interest by December 1, 1997.

2. On February 28, 1998, Respondent agreed to represent DC in an action seeking recovery under the note.

3. By letter faxed on March 5, 1998, DC asked Respondent to provide him with a plan of action as well as an estimate as to how long the case would take to complete.

4. By letter faxed on March 21, 1998, DC asked Respondent to provide him with the information he had requested in his previous fax.

5. Respondent did not contact DC until April 19, 1998. That day, the Respondent prepared and sent a letter to DC. In that letter, Respondent stated that she would file a complaint against the signatories to the promissory note the next day.

6. Respondent filed the complaint June 2, 1998. By letter dated June 9, 1998, Respondent informed DC that she had filed the complaint and stated that she would prepare a motion for summary judgment that weekend.

7. The defendants did not file an answer to the complaint. However, on June 26, 1998, one of the defendants did send a letter to the court.

8. On September 30, 1998, DC received a draft motion for default judgment and affidavit of costs ? documents which Respondent had prepared for DC's signature. DC signed the motion and the affidavit and returned it to the Respondent on October 5, 1998. Respondent did not file the motion for default judgment until February 4, 1999. In the meantime, Respondent did not inform DC that she had not filed the motion. DC learned that the motion had not been filed when he called the Court himself in December of 1998.

9. The motion for default judgment was granted on March 1, 1999. Respondent was to prepare and submit an order reflecting the court's decision. Respondent did so in June of 1999.

10. Respondent obtained a default judgment in the amount of \$24,000 plus costs and interest on behalf of DC. Respondent obtained an ex?parte writ of attachment against land of JL, one of the defendants, on June 28, 1999.

11. DC is a private investigator in Texas. He has family in the town where Respondent lives. In the summer of 1999, he traveled from Texas to New England to attend races in Loudon, New Hampshire and to visit family

in Vermont. During his visit, he located the lands of JL, which Respondent attached.

12. Part of the costs awarded to DC was for some of his travel costs to Vermont, during which trips DC also attended to personal matters. DC wanted Respondent to seek additional costs for his travel up in the summer, which Respondent declined to do.

13. JL sold land in June, 1999, and DC received \$14,000 (minus a portion of attorney's fee of \$700) from the proceeds of the sale in partial satisfaction of the judgment.

14. JL has additional lands to be sold and these remain attached by the writ of attachment described above. It is anticipated that these lands will be sold with sufficient proceeds to satisfy the judgment of DC.

15. Respondent was unsure if she was permitted to contact DC once DC filed a complaint against her.

16. DC indicated that DC was satisfied with Respondent's work after receiving the partial payment of judgment.

#### MITIGATING CIRCUMSTANCES

1. Respondent's husband suffered from cancer and underwent rigorous medical treatment from January 1998 to December 1998. Respondent devoted a great deal of time and emotion to supporting her husband during his treatment. He is still being monitored and treatment is ongoing.

2. Respondent suffered medical problems herself from October 1998 to February 1999. She underwent surgery and had a period of recovery.

3. Respondent is a newly admitted attorney, having been admitted in 1996. Respondent had little or no experience in private practice before March 1996, when she began in private practice.

4. Respondent is a "contractor" for the Defender General. The resources of the Defender General are very limited and Respondent has at times been assigned cases by the Courts over and above the caseloads contemplated by her contracts or agreed to by her.

5. Respondent's contract practice involves numerous hearings, and travel to jails and other locations to meet with low-income clients.

6. Respondent has not had the resources to maintain a staff on a consistent basis. Respondent's secretary unexpectedly quit in December 1998, due to personal problems of her own. She later returned in the spring of 1999.