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[24-May-2001]

STATE OF VERMONT

PROFESSIONAL RESPONSIBILITY BOARD

In Re: Joseph S. Wool, Esq.

PRB File Nos. 2000.164, 2000.171, 2000.196 and 2000.209

ORDER

The Hearing Panel issues this Order based upon its review of the filing of the parties and upon the representations made by the parties during the January 17, 2001 hearing.

I. INTRODUCTION.

In these four cases, the Office of Disciplinary Counsel ("ODC") charged Mr. Wool with 17 violations of the ethics rules. Mr. Wool has

admitted these charges. ODC argues that Mr. Wool's license should be suspended for two years, and that he be ordered to return the retainers that he received in each of the four cases. Mr. Wool argues that he should receive a public reprimand. For the following reasons, the Board rules that Mr. Wool's license be suspended for no less than one year and that he is further directed to reimburse the retainers collected in these four cases.

II. BACKGROUND.

A. File No. 2000.164 - Ryan Garvey.

On November 10, 1999, Ryan Garvey was charged with aggravated assault. He was arraigned eight days later in the Chittenden District Court. In late March, Mr. Garvey met with Mr. Wool outside Mr. Wool's office. During the encounter, Mr. Wool informed Mr. Garvey that he deserved some, if not all, of his money back and stated that he would refund the money the next day. Mr. Wool did not refund the money the next day.

A few weeks later, Mr. Garvey met with Mr. Wool at Mr. Wool's office. Mr. Wool agreed to defend Mr. Garvey in the aggravated assault case. He explained to Mr. Garvey that his fee for the entire case would be $1,000. On or about December 10, 1999, Mr. Garvey returned to Mr. Wool's office and provided Mr. Wool with $1,000 cash.

Later that week, Mr. Garvey decided to change lawyers. On or about December 13, 1999, Mr. Garvey phoned Mr. Wool and told him that he was terminating their attorney-client relationship. At that time, Mr. Wool had yet to enter an appearance on Mr. Garvey's behalf.

Attorney Brad Stetler entered an appearance on behalf of Mr. Garvey on December 14, 1999. By letter dated December 14, 1999, Attorney Stetler asked Mr. Wool to forward to him any paperwork or discovery that he had obtained from the State in Mr. Garvey's case.

Around the same time, Mr. Garvey wrote Mr. Wool and asked for a refund of his $1,000. A few days later, Mr. Garvey phoned Mr. Wool and asked about a refund. Mr. Wool promised Mr. Garvey that the money would be in the mail that day.

Later that day, Mr. Garvey personally delivered a letter to Mr. Wool's office. In the letter, he asked that the refund be mailed to Attorney Stetler.

On January 17, 2000, not having heard from Mr. Wool, Mr. Garvey went to Mr. Wool's office to discuss his refund. Mr. Wool told Mr. Garvey that he had not yet had a chance to finalize the bill but that Mr. Garvey would receive his money by the end of the week. Mr. Garvey repeated his request for a copy of the bill. Mr. Wool became verbally abusive, said he would send the money, and told Mr. Garvey to go away.

By certified letter dated January 31, 2000, Mr. Garvey asked Mr. Wool to send a bill and refund to Attorney Stetler or directly to him. In early March, Mr. Garvey met with Mr. Wool. Mr. Wool was evasive and did not provide Mr. Garvey with an accounting, a bill or a refund.

In late March, Mr. Garvey met with Mr. Wool outside Mr. Wool's office. During the encounter, Mr. Wool informed Mr. Garvey that he deserved some, if not all, of his money back and stated that he would refund the money the next day. Mr. Wool did not refund the money the next day.

As of today, Mr. Wool has not (i) provided Mr. Garvey or Attorney Stetler with an accounting of the $1,000 retainer advanced to him by Mr. Garvey; (ii) returned to Mr. Garvey or Attorney Stetler any portion of the $1,000 retainer advanced to him by Mr. Garvey; or (iii) provided Attorney Stetler with any paperwork, discovery or other information related to Mr. Garvey's case. Mr. Garvey has indicated to counsel that he has sued Mr. Wool in Small Claims Court.

B. File No. 2000.171 - Karin Bluto.

In August 1999, Mr. Wool agreed to represent Jamie Chicoine in a civil suit that Mr. Chicoine had filed against the Vermont Department of Corrections. Mr. Wool was hired by Mr. Chicoine's mother, Karin Bluto. He agreed to take the case for $750, which Ms. Bluto paid.

Mr. Chicoine's case was entitled Chicoine v. Lanman, et al, Dkt. No. 80-3-99, Oscv. Mr. Chicoine had filed the case pro se in March 1999. He alleged that the Vermont Department of Corrections had improperly classified him as a violent offender. If he succeeded on his claims, Mr. Chicoine's new classification would have expedited his release from prison.

For a time, the Prisoners' Rights Office represented Mr. Chicoine. The Prisoners' Rights Office withdrew in September 1999. On or about September 13, 1999, Mr. Wool entered an appearance on behalf of Mr. Chicoine.

The Department of Corrections had filed a motion to dismiss in July 1999. During a status conference held on October 13, 1999, the attorney for the Department of Corrections agreed to allow Mr. Wool thirty (30) days to review a box of materials he had received from the Prisoners' Rights Office upon entering an appearance.

By letter dated October 21, 1999, Mr. Wool informed Mr. Chicoine that he would "do everything [he] can to get you released for the holidays." On November 19, 1999, the Orleans Superior Court instructed the Department of Corrections to file a motion for summary judgment and/or an updated motion to dismiss. The Court instructed Mr. Wool to file an answer to the Department's motion(s) within thirty days of receipt thereof.

The Department of Corrections filed a motion for summary judgment on January 14, 2000. Mr. Wool failed to file a response to the Department's motion. On March 3, 2000, the Orleans Superior Court granted the Department's motion and entered summary judgment against Mr. Chicoine. Mr. Wool did not inform Mr. Chicoine or his mother of the Court's ruling. Ms. Bluto learned of the decision when she called the Court herself in March 2000.

Therefore, Ms. Bluto called Mr. Wool several times to ask for a refund of the $750. To date, Mr. Wool has neither contacted Ms. Bluto nor returned any of her money. Ms. Bluto has informed Disciplinary Counsel that she has commenced proceedings against him in the Small Claims Court.

C. File No. 2000.196 - Michelle Marchant.

In October 1999, Michelle Marchant hired Mr. Wool to represent her in a divorce case. Ms. Marchant advanced a $1,000 retainer to Mr. Wool. Mr. Wool never filed a divorce complaint for Ms. Marchant. Eventually, Ms. Marchant's husband prepared and filed the paperwork after he and Ms. Marchant grew tired of waiting for Mr. Wool to act.

Mr. Wool appeared at an early hearing on Ms. Marchant's behalf. At the conclusion of the hearing, Ms. Marchant fired Mr. Wool. Mr. Wool told Ms. Marchant that he would prepare a bill and mail her a refund by the end of the week. He did not.

Ms. Marchant is a poor, single, mother who works several jobs. She has repeatedly called Mr. Wool to ask about her refund. On occasions when she spoke with him, Mr. Wool promised to send a bill and a refund to Ms. Marchant.

Attorney Suzanne Brown eventually completed Ms. Marchant's divorce. For several months, Mr. Wool repeatedly promised to provide Attorney Brown with a refund of Ms. Marchant's retainer. He never did.

D. File No. 2000.209 - William and Patricia Siple.

In July 1998, Mr. and Mrs. William Siple hired Mr. Wool to represent Mr. Siple in a sexual harassment claim against Mr. Siple's former employer - the Grand Union. When the Siples first met Mr. Wool, he told them that he would need $1,000 to take the case.

The Siples took out a loan from the Merchants Bank in order to pay the retainer. They paid via Treasurer's Check.

Over the course of the next year, the Siples heard very little from Mr. Wool. The extent of the contact was three phone conversations and two ten-to-fifteen minute meetings.

The statute of limitations for Mr. Siple's claim was due to render an

accounting to the Siples.

5. He violated Rule 1.16(d) of the Vermont Rules of Professional Conduct by failing to refund an advanced payment that was never earned.

6. He violated Rule 8.4(h) of the Vermont Rules of Professional Conduct by engaging in conduct that adversely reflects on his fitness to practice law.

IV. SANCTION.

The issue of the appropriate sanction will be addressed below. However, given the facts peculiar to this case, it is important to point out two things that are not relevant to the Hearing Panel's determination.

A. Attorney Langrock's Representation Of Attorney Wool Is Not A Mitigating Factor.

Mr. Wool argues that a sanction more severe than a public reprimand would be inappropriate because of the assistance Attorney Langrock has provided in winding down Mr. Wool's practice. The Hearing Panel is aware of the assistance Mr. Langrock provided Mr. Wool and Mr. Wool's clients during the past 18 months. Such assistance, however, is not a mitigating factor. Indeed, recognizing it as relevant would indicate that hearing

panels are prepared to impose more lenient sanctions upon attorneys who are fortunate enough to be represented by lawyers and law firms who are willing to do that which their client was unwilling to do: take actions to protect clients. There is simply no basis in the law to create such a mitigating factor.

B. The Hearing Panel Will Not Give Undue Consideration To Mr. Wool's Resignation.

The fact that an attorney has resigned prior to the completion of disciplinary proceedings is not a mitigating factor. ABA Standards for Imposing Lawyer Sanctions, § 9.4(d). Moreover, Administrative Order 9 sets out a very clear resignation process with which attorneys under disciplinary investigation must comply. See A.O. 9, Rule 19. Mr. Wool has not complied with Rule 19. Given that his resignation did not meet the requirements of Rule 19, Mr. Wool's "resignation" amounts to nothing more than a decision to transfer his license to inactive status.

Lawyers who have resigned pursuant to Rule 19, have been disbarred, or have been suspended must petition for reinstatement and bear the burden of proving, among other things, that they possess the moral qualifications necessary to practice and that their reinstatement will not be detrimental to the integrity of the bar. A.O. 9, Rule 22(D). Attorneys who are publicly reprimanded do not face a similar burden. Id.

Moreover, the rules governing the Licensing of Attorneys do not place a similar requirement upon attorneys who chose to re-activate their licenses from inactive status. The Rules are silent as to what happens, if anything, when an attorney moves from inactive to active status. The only requirement of an attorney returning from inactive status is the requirement relating to Continuing Legal Education credits that appears in Rule 8 of the Court's Rules for Mandatory Continuing Legal Education. See Attachment A.

In sum, if Mr. Wool is not suspended, it is entirely possible that he could resume practicing law without having to prove that his reinstatement will not be detrimental to the integrity of the bar. In the Hearing Panel's opinion, that would be disastrous. The very purpose of lawyer discipline proceedings "is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlike to properly discharge their professional duties to clients, the public, the legal system, and the legal profession." ABA Standards for Imposing Lawyer Sanctions, § 1.1. Thus, when considering what type of sanction to impose, the Hearing Panel will not give undue consideration to the fact that Mr. Wool has "resigned."

C. Referring To ABA Standards To Determine Appropriate Sanction.

In Vermont, it is appropriate to refer to the ABA Standards For Imposing Lawyer Sanctions when determining the appropriate sanction in a

disciplinary case. In Re Warren, 167 Vt. 259, 261 (1997); In Re Berk, 157 Vt. 524, 532 (1991) (citing In Re Rosenfeld, 157 Vt. 537, 546-47 (1991)). When applying the facts to ABA Standards, the Hearing Panel also considers: (i) the duty violated; (ii) Mr. Wool's mental state; (iii) the actual or potential injury; and (iv) any mitigating and/or aggravating factors. In Re Warren, 167 Vt. at 261.

D. The Neglect Cases.

Mr. Wool's most serious violations relate to the complaints filed by Mr. Siple and Ms. Bluto. Mr. Wool took the Siples' case in July 1998. He met with them twice and talked to them three times over the next year. He tried to pass their case off to another firm. He ignored their phone calls. His utter lack of diligence eventually culminated in the statute of limitations running on Mr. Siple's claim.

With regard to Ms. Bluto, Mr. Wool's neglect resulted in the Court receiving nothing in response to the State's motion for summary judgment. Thus, Mr. Chicoine's quest to hasten his release from prison ended without even a whimper from the attorney to whom his mother had paid $750.

1. The Duty.

Mr. Wool owed a duty of diligence to Ms. Bluto and to Mr. and Mrs. Siple. ABA Standards for Imposing Lawyer Sanctions, § 4.4. In each case,

he violated his duty of diligence.

2. Injury.

Mr. Wool's lack of diligence caused actual injury to Mr. Siple in that his right to bring his claim was extinguished due to Mr. Wool's neglect. In addition, Mr. Siple suffered actual injury in that he lost $1,000 that he advanced to Mr. Wool.

Similarly, Ms. Bluto's son, Mr. Chicoine, suffered actual injury in that no voice was ever raised on his behalf in the suit he had filed against the Department of Corrections. Ms. Bluto also suffered actual injury in that she received nothing for the $750 that she advanced to Mr. Wool.

3. Mr. Wool's Mental State.

There can be little doubt that Mr. Wool knew he was not attending to the Siples or Mr. Chicoine in a diligent fashion. Each party made repeated efforts to spur him into action. Their efforts were to no avail.

4. Aggravating and Mitigating Factors.

There are several aggravating factors. Mr. Wool has prior disciplinary offenses. ABA Standards for Imposing Lawyer Sanctions, §

9.22(a) (See Attachments B & C). The evidence establishes a pattern of misconduct. ABA Standards for Imposing Lawyer Sanctions, § 9.22(c). There are multiple offenses. ABA Standards for Imposing Lawyer Sanctions, § 9.22(d). Mr. Wool has substantial experience in the practice of law. ABA Standards for Imposing Lawyer Sanctions, § 9.22(i). Finally, regarding Ms. Bluto's complaint, Mr. Chicoine was especially vulnerable given that he was in prison and could not take the steps that a free person might be able to take to prod his attorney into action. ABA Standards for Imposing Lawyer Sanctions, § 9.22(h).

There are no mitigating factors.

5. The Sanction.

In cases involving neglect, a suspension is appropriate when a lawyer (i) "knowingly fails to perform services for a client and causes injury or potential injury to a client"; or (ii) "engages in a pattern of neglect and causes injury or potential injury to a client." ABA Standards for Imposing Lawyer Sanctions, § 4.42(d). In these cases, Mr. Wool knowingly failed to perform services for Mr. Chicoine and Ms. Siple. He caused injury to each. Moreover, taken together with his failure to file a divorce complaint for Ms. Marchant, the facts establish a pattern of neglect that caused Mr. Wool's clients to be injured. Thus, according to § 4.42, a suspension is appropriate.

E. Failing To Render Accountings And Refund Retainers.

In each of the cases before the Hearing Panel, Mr. Wool failed to account for client funds and failed to return funds that he did not earn.

1. The Duty Violated.

A lawyer has a duty to preserve a client's property. ABA Standards for Imposing Lawyer Sanctions, § 4.1. In each of the instant cases, Mr. Wool violated this duty by failing to preserve, account for, or refund client property.

2. Mr. Wool's Mental State.

Mr. Wool knew that he owed accountings and refunds to the complainants. Indeed, in the Garvey and Marchant cases, Mr. Wool acknowledged that he owed money to the complainants and made several promises to provide them with refunds. Promises that have never been fulfilled.

3. Injury.

Each complainant has suffered actual injury. They have not received money that they are owed.

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5. The Sanction.

When a lawyer fails to preserve client property, a suspension is appropriate if the lawyer "knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client." ABA Standards for Imposing Lawyer Sanctions, § 4.12. The facts establish that Mr. Wool knew or should have known that he was dealing improperly with the monies advanced to him by Mr. Garvey, Ms. Marchant, Ms. Bluto and the Siples. Specifically, faced with their repeated request for accountings, he acknowledged his debts. Nevertheless, he has yet to make good on those debts. Mr. Wool's impropriety caused actual injury. Accordingly, a suspension is appropriate.

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A. Mr. Wool's Prior Discipline Order Is Relevant To The Sanction.

In 1999, Mr. Wool was reprimanded and placed on probation for violating DR 9-102(B)(3) and DR 9-102(B)(4) of the Code of Professional

Responsibility. Specifically, Mr. Wool was disciplined for failing to account for funds and failing to pay funds to clients. In Re: Joseph S. Wool, Esq., 2 V.P.C.R. S-112.

According to the ABA Standards, a suspension is appropriate "when a lawyer has been reprimanded for the same or similar misconduct and engages in similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession." ABA Standards for Imposing Lawyer Sanctions, § 8.2. As the cases at bar establish, Mr. Wool has, yet again, failed to account for funds and failed to pay funds to clients. His failure has caused actual injury to his clients as well as to the profession by casting attorneys in a bad light. Accordingly, he should be suspended.

4. Restitution Order.

Pursuant to A.O. 9, Rule 8(A)(7), Mr. Wool is directed to reimburse the retainers he received in each of these matters.

/s/

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FILED MAY 24, 2001 Robert F. O'Neill, Chair

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S. Stacy Chapman, III

/s/

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Ruth Stokes

DISSENTING AND CONCURRING OPINION

Although I concur that the conduct of Mr. Wool justifies the imposition of the sanctions as determined by the majority members of this Hearing Panel, I do not believe that the sanction of a suspension upon this individual will serve to protect the interests of the public or the legal profession. Mr. Wool has not only "resigned," but he has also retired from the practice of law. While his actions, and those of his Attorney, Mr. Langrock, may not technically constitute "mitigating factors" under the applicable ABA Standards for Imposing Lawyer Sanctions, it is my opinion that a public reprimand is more appropriate on the facts of this particular case. For these reasons, I therefore concur with the majority opinion with respect to the restitution order; however, I dissent from that portion of this order which imposes a suspension.

/s/

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S. Stacy Chapman, III