In re Blais (2002-086)

[Filed 19-Dec-2002]

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-086

NOVEMBER TERM, 2002

In re Norman R. Blais	}	APPEALED FROM:
	}	
	}	
	}	Professional Responsibility Board
	}	
	}	
	}	DOCKET NOS. 1998.033, 1999.043, and 2000.042

In the above-entitled cause, the Clerk will enter:

¶ 1 Respondent Norman Blais appeals from the recommendation of the Hearing Panel of the Board of Professional Responsibility that he be suspended from the practice of law for a period of five months as a result of repeated instances of neglect of client matters and misrepresentation. Respondent puts forth three arguments: (1) the period of suspension recommended by the Hearing Panel is inconsistent with recent decisions of this Court involving similar conduct; (2) the sanction agreed between respondent and disciplinary counsel is more than sufficient to protect the public; and (3) the Hearing Panel's recommendation of a five-month suspension is founded on unproved facts and a mischaracterization of the record. We adopt the Hearing Panel's decision and suspend respondent for a period of five months.

¶ 2 Respondent has been a licensed attorney in the State of Vermont since 1976. In June 2001, respondent was charged with misconduct consisting of five instances of neglecting client matters and three instances of misrepresentation.(FN1) The parties stipulated to the facts of the misconduct before the Hearing Panel, and the Hearing Panel also made additional findings of fact. These facts are summarized below.

¶ 3 PRB File No. 1998.033 – In the Fall of 1994, respondent was hired by Guy and Dianne Henning to pursue a personal injury claim against the parents of a child who had injured their daughter during a Youth Soccer Association-sponsored game in October 1994. Respondent was also hired to file a medical claim under the policy carried by the soccer association. Respondent neglected to file the medical claim within ninety days of the injury, as required by the policy. Payment under the policy was later denied when new counsel took over the case in the summer of 1997 and presented the claim to the soccer association. In July 1996, during a meeting to review and sign the superior court complaint, respondent told the Hennings that he would file the complaint with the court, which he failed to do. During the next year, respondent on several occasions told the Hennings that the case would take more time and that the court docket moved slowly. He never filed the claim with the court, however, nor did he tell the Hennings that he had not filed the claim. In the summer of

1997, the Hennings hired new counsel who eventually brought the personal injury claim to a successful conclusion. Respondent's neglect and misrepresentations between the fall of 1994 and the summer of 1997 exposed his clients to potentially serious injury, but no actual injury resulted other than his clients' anxiety.

¶ 4 PRB File No. 1999.043 - In the summer of 1994, respondent was hired to represent Andrew Henry in connection with two charges of DWI. In February 1995, with respondent's assistance, Mr. Henry pled guilty to the first DWI, and the second DWI was dismissed. After the term of suspension for the first DWI ended, the Department of Motor Vehicles failed to reinstate Mr. Henry's driver's license. Respondent agreed to represent Mr. Henry in this matter, and accepted a retainer for that purpose. Respondent failed to take action on the matter, however, and Mr. Henry eventually hired new counsel who was able to obtain reinstatement of Mr. Henry's license in January 1999. Respondent returned his retainer. Due to respondent's inaction from the summer of 1995 through November of 1998, Mr. Henry was without a driver's license from about April 1995 until January 1999 and suffered a resulting impairment of his employment opportunities.

¶ 5 PRB File No. 2000.042, Count I - In April 1987, Ulla Anderson Kauffman hired respondent to represent her in a claim for injuries resulting from a car accident in 1986. On several occasions , respondent assured Ms. Kauffman that her claim was proceeding appropriately and gave her the impression that progress was slow because the court docket was crowded. Respondent neglected the matter, however, and allowed the statute of limitations for the claim to expire. Ms. Kauffman ultimately filed a malpractice action against respondent and received compensation for her injuries from respondent's malpractice insurance carrier. Respondent's neglect and misrepresentations from the spring of 1987 until late 1990 or early 1991 exposed his client to potentially serious injury, but no actual injury resulted other than delay in the payment of the claim.

¶ 6 PRB File No. 2000.042, Count II - In 1988, Marjorie Bicknell hired respondent to represent her in a divorce action in which the property settlement was the main contested issue. In 1989, respondent told Ms. Bicknell that he would arrange for an appraisal of the parties' house but he failed to do so. Respondent eventually obtained a property settlement for Ms. Bicknell without having gotten an appraisal. Respondent's neglect exposed his client to potential injury. The Hearing Panel was unable to determine whether actual injury had occurred because the client ultimately agreed to proceed without an appraisal in order to expedite the divorce so she could remarry.

¶ 7 PRB File No. 2000.042, Count III - In 1990, Ms. Bicknell hired respondent to represent her and her sister in a personal injury claim arising from a car accident in 1989. Respondent neglected the matter, failed to return telephone calls to his client, and allowed the statute of limitations for the claim to expire. On more than one occasion, respondent falsely assured Ms. Bicknell that her claim was proceeding appropriately. Ms. Bicknell and her sister later filed a legal malpractice claim against respondent and received a settlement through that process. Respondent's neglect and misrepresentations from the fall of 1990 to December 1992 exposed his client to potentially serious injury, but no actual injury resulted other than delay in the payment of

her claim.

¶ 8 In addition to the stipulation of facts and a joint recommendation as to conclusions of law concerning the particular violations of DR 6-101(A)(3) (neglecting a matter entrusted to the lawyer) and DR 1-102(A)(4) (engaging in conduct involving dishonest, fraud, deceit, or misrepresentation), respondent and the Office of Disciplinary Counsel agreed to a sanction recommendation of two months' suspension followed by a probationary period of eighteen to thirty-six months. The Hearing Panel accepted the parties' stipulations of fact and adopted the joint recommendation as to conclusions of law concerning the particular violations of DR 6-101(A)(3) and DR 1-102(A)(4), but did not adopt the recommended sanction. Instead, after a hearing at which respondent and two of his former clients testified, the Panel imposed a suspension of five months, to be followed by a probationary period of eighteen to thirty-six months. Respondent now appeals only the duration of the suspension.

¶ 9 On review, this Court must accept the Panel's findings of fact unless they are clearly erroneous. In re Karpin, 162 Vt. 163, 165, 647 A.2d 700, 701 (1993); A.O. 9, Rule 11(E). The Panel's findings, "whether purely factual or mixed law and fact, are upheld if they are 'clearly and reasonably supported by the evidence.' " In re Anderson, 171 Vt. 632, 634, 769 A.2d 1282, 1284 (2000) (mem.) (quoting In re Berk, 157 Vt. 524, 527, 602 A.2d 946, 947 (1991)). This Court makes its own determination as to which sanctions are appropriate, but we nevertheless give deference to the recommendation of the Hearing Panel. Id.; see also Karpin, 162 Vt. at 173, 647 A.2d at 706 ("Although the Board's recommended sanction of disbarment is not binding upon this Court, it is accorded deference.").

¶ 10 Respondent first argues that the period of suspension recommended by the Hearing Panel is inconsistent with recent decisions of this Court involving similar conduct. Respondent contends that facts similar to those of the present case - the type of conduct, neglect and misrepresentation; the lack of permanent harm to clients; and the particular mitigating and aggravating factors - have previously led this Court to issue only a public reprimand as opposed to a suspension. See In re Wenk, 165 Vt. 562, 678 A.2d 898 (1996) (mem.); In re Cummings, 164 Vt. 615, 669 A.2d 555 (1995) (mem.); In re Bucknam, 160 Vt. 355, 628 A.2d 932 (1993) (per curiam). We disagree.

¶ 11 The Hearing Panel, considering factors listed in Sections 9.22 and 9.32 of the American Bar Association's Standards for Imposing Lawyer Sanctions (1991) (ABA Standards), see In re Warren, 167 Vt. 259, 261, 704 A.2d 789, 791 (1997) (Court looks to ABA Standards for guidance when sanctioning attorney misconduct), found five aggravating factors and three mitigating factors established by the evidence. The five aggravating factors were: (1) two prior disciplinary offenses resulting in disciplinary orders in 1992 and 1997; (2) a dishonest or selfish motive, in that the neglect resulted from respondent's concern with bringing in money for himself and his firm; (3) a pattern of misconduct; (4) multiple offenses in this case involving five separate matters; and (5) substantial experience in the practice of law. The three mitigating factors were: (1) personal or emotional problems stemming from respondent's divorce and the breakup of his law firm; (2) a cooperative attitude toward the disciplinary proceedings; and (3) a delay in disciplinary proceedings through no fault of respondent.

¶ 12 These aggravating and mitigating factors distinguish the present case from Cummings and Bucknam, cited by respondent. The respondent in Cummings had no prior disciplinary history and was sanctioned for neglect and misrepresentation in two client matters; the respondent in the present case has two prior disciplinary matters, and the instant matter involves five separate client matters. The respondent in Bucknam similarly had no prior disciplinary record, and the matter involved a fee dispute, not a neglect of client matters.

¶ 13 The Wenk case cited by respondent concerned only the second of three disciplinary proceedings involving attorney Wenk, all of which were based upon neglect and misrepresentation. While the first resulted in a private reprimand, and the second in a public reprimand, the third led to a six-month suspension that was not appealed. This third disciplinary proceeding was similar to the one before us. See PCB Decision No. 14 (Oct. 16, 2000). The misconduct in both involved neglect of a client matter coupled with misrepresentations that the suit was proceeding. In Wenk, the misconduct resulted in no serious injury to the client; in this case, most, but not all, of the misconduct resulted in no serious client injury. Both respondents had previous disciplinary history, and both were experiencing personal problems during the period of the charged conduct. Unlike respondent here, Mr. Wenk did not cooperate with the proceedings and showed no remorse for his actions. On the other hand, Mr. Wenk was charged with neglecting only one client matter, while respondent here was charged with neglecting five.

¶ 14 Also instructive is the recent Hearing Panel disciplinary decision involving attorney David Sunshine. See PRB Decision No. 28 (Dec. 5, 2001); see also A.O. 9, Rule 11(D)(5)(c) ("If no appeal [of the Hearing Panel's decision] is . . . filed . . . and the Court does not otherwise order review on its own motion, the decision shall become final, and shall have the same force and effect as an order of the Court."). There, Mr. Sunshine was similarly charged with neglecting two client matters and making misrepresentations to one of the clients concerning the status of his case. Like respondent in the present case, Mr. Sunshine had substantial experience in the practice of law, suffered personal difficulties stemming from the breakup of his firm, was remorseful for his conduct, and cooperated with the disciplinary process. Unlike respondent, however, Mr. Sunshine had no prior disciplinary history and neglected only two matters. Mr. Sunshine received a four-month suspension and a two-year period of probation. In light of the sanctions imposed in these recent disciplinary decisions, we find that the Hearing Panel's imposition of a five-month suspension is not inappropriate or inconsistent with Vermont precedent. See also ABA Standards § 4.42 ("Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.").

¶ 15 Respondent next argues that the two-month suspension agreed upon by him and disciplinary counsel is more than sufficient to protect the public. Respondent contends that a five-month suspension would cause him to lose his secretary, an aspect of his practice that he claims has improved his handling of client matters, and that returning him to the practice of law with fewer organizational resources would act to the detriment, rather than the benefit, of the public. We cannot agree. This

Court has cited approvingly the recommendation of the ABA Standards that a suspension should generally have a duration of at least six months. See In re Rosenfeld, 157 Vt. 537, 547, 601 A.2d 972, 978 (1991). "The rationale is that 'short-term suspensions with automatic reinstatement are not an effective means of protecting the public' because rehabilitation cannot be shown in less than six months and a six-month duration is needed to protect client interests." Id. (quoting ABA Standards 2.3, Commentary). But see In re McCarty, 164 Vt. 604, 605, 665 A.2d 885, 887 (1995) (mem.) (recognizing that "periods of suspension of less than six months are appropriate in some circumstances"). Given respondent's previous disciplinary history, the multiple offenses involved here, and respondent's admission that he no longer enjoys the practice of law, we agree with the Hearing Panel that a two-month suspension would be insufficient to provide respondent with the time to plan a new approach to his law practice and to consider whether he would be more satisfied pursuing some other profession. The ability to retain a secretary, assuming such ability exists based on this record, cannot be determinative.

¶ 16 Finally, respondent contends that the Hearing Panel's recommendation of a five-month suspension is founded on unproved facts and a mischaracterization of the record. Again, the Panel's findings of fact must be accepted by this Court unless they are clearly erroneous. Karpin, 162 Vt. at 165, 647 A.2d at 701; A.O. 9, Rule 11(E). We find the Hearing Panel's findings to be clearly and reasonably supported by the evidence, and thus we will not disturb them.

Norman R. Blais is hereby suspended from the practice of law for a period of five months. The suspension will commence thirty days from the issuance of this order to allow Mr. Blais to comply with A.O. 9, Rule 23. Following the period of suspension, Mr. Blais will be on probation in accordance with the terms set out in PRB Decision No. 31 (January 31, 2002).

BY THE COURT:

_____
Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

_____
Marilyn S. Skoglund, Associate Justice

_____
Ernest W. Gibson III, Associate Justice (Ret.)

Specially Assigned

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31 PRB

[14-Feb-2002]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re: Norman R. Blais, Esq.
PRB File Nos. 1998.033;1999.043;2000.042

DECISION NO. 31 OF HEARING PANEL

This matter came on for hearing on the issue of sanctions on January 14, 2002 at 10:00 A.M. in the District Court Courthouse in White River Junction, Vermont. Respondent was represented by Paul Jarvis, Esq. Office of Disciplinary Counsel was represented by Deputy Disciplinary Counsel Beth DeBernardi.

FINDING OF FACTS in 1998.033

Pursuant to stipulation of the parties, the following are the facts relating to PRB File No. 1998.033.

1. Norman R. Blais is an attorney licensed to practice law in the State of Vermont.

2. He was admitted to practice before the Vermont Supreme Court in 1976.

3. In October of 1994, Guy and Dianne Henning ("Hennings") hired Mr. Blais to pursue claims on their behalf as parents and next friends of 6-year-old Meghan Henning, who was injured by a fellow participant in a Youth Soccer Association sponsored soccer game on or about October 15, 1994; the primary claim was to be asserted against the parents of the fellow participant who attacked and injured Meghan Henning at the soccer game.

4. In October of 1994, the Youth Soccer Association had in force a medical insurance policy to provide coverage of up to $ 1,000 for injuries to participants in Youth Soccer Association sponsored events ("Med-Pay" coverage); this "no fault" Med-Pay coverage was separate from the liability insurance that the parents of the fellow participant had in effect.

5. In October or November of 1994, the Hennings obtained a medical claim form from the Youth Soccer Association to apply for Med-Pay coverage for Meghan's injuries.

6. Guy Hennings filled out the "parents" section of the Med-Pay claim form and then turned the form over to Mr. Blais for handling.

7. Mr. Blais indicated to the Hennings that he would file the medical insurance claim form with the Youth Soccer Association or its agent on their behalf.

8. When the Hennings inquired of Mr. Blais as to the status of the Youth Soccer Association insurance claim from time to time, he assured them that he was taking care of the matter.

9. Mr. Blais never filed the claim form with the Youth Soccer Association or its agent or otherwise presented the claim for payment.

10. The Hennings paid medical bills out-of-pocket which otherwise would have been covered by the Youth Soccer Association Med-Pay policy.

11. Mr. Blais never submitted a demand for settlement of Meghan's primary claim to the parents of the fellow soccer participant or to their insurance carrier, nor did he file a complaint with the court asserting this claim.

12. It is not uncommon to wait for an injured person to finish medical treatment before presenting a settlement demand or filing a complaint, and in any event, there is no allegation that Mr. Blais violated any duty of diligence by not presenting the claim to the liability insurance carrier sooner.

13. Nevertheless, the Hennings were anxious to pursue their daughter's claim,, and they called, Mr. Blais often to inquire about the status of the claim.

14. By the summer of 1996, the Hennings were anxious for the claim to move forward, and they communicated this to Mr. Blais by telephone.

15. On or about July 12, 1996, Mr. Blais met with the Hennings in his office, where the Hennings signed a Superior Court complaint prepared by Mr. Blais.

16. Mr. Blais told the Hennings at the meeting that he would file the complaint with the court to get Meghan's claim on the court docket.

17. Following the meeting, Mr. Blais did not file the complaint with the court.

18. At various times over the following year (approximately summer 1996 to summer 1997), the Hennings called Mr. Blais to ask about the progress of the case.

19. On the occasions of some of those calls, Mr. Blais told the Hennings that their case would take more time and that the court docket moves slowly.

20. On the occasions of those calls, Mr. Blais did not tell the Hennings that the complaint had not been filed with the court.

21. On or about June 17, 1997, the Hennings wrote a letter to Mr. Blais expressing their discouragement with the lack of progress on the case.

22. After receiving no response to the June 17, 1997 letter, Guy Henning wrote a second, undated letter to Mr. Blais asking him to terminate the attorney-client relationship and to forward the file to substitute counsel named in the letter. This letter was written between

June 17, 1997 and July 21, 1997.

23. When substitute counsel took over the case, he filed the Youth Soccer Association medical insurance claim form on behalf of the Hennings, and he filed the underlying complaint with the Superior Court.

24. The agent for the Youth Soccer Association Med-Pay program denied coverage for Meghan's medical bills on March 11, 1998, on the grounds that the claim form had not been filed within ninety (90) days of the injury.

25. Substitute counsel was able to bring the Hennings' claim against the parents of the fellow soccer player to a successful conclusion after the complaint was filed with the Superior Court.

26. Mr. Blais neglected the Hennings' Med-Pay claim, missed the filing deadline for the Med-Pay claim, and made misrepresentations to the Hennings about the status of the primary claim, causing potentially serious injury to his clients but no actual injury to them other than his clients' anxiety.

FINDING OF FACTS in No. 1999.043

Pursuant to stipulation of the parties, the following are the facts relating to PRB File No. 1999.043.

27. In the summer of 1994, Andrew Henry ("Henry") was charged with two counts of DWI.

28. Henry hired Mr. Blais to represent him in District Court on both charges.

29. Henry entered pleas of not guilty to each charge in August of 1994.

30. In February of 1995, Henry pled guilty to the first DWI, and the second DWI was dismissed.

31. For unknown reasons, the DMV was never notified that the second DWI charge had been dismissed.

32. As part of the sentence for the first DWI, Henry's driver's license was suspended, and he was required to complete one course of alcohol counseling before his license could be reinstated.

33. Henry completed one course of counseling on or about April 18, 1995.

34. Shortly thereafter, Henry went to the DMV to get his license reinstated.

35. There, Henry discovered that the DMV thought that Henry stood convicted of two DWIs, and accordingly they would not reinstate his license until he showed proof of completion of two courses of alcohol counseling, rather than the one course that he was actually required to undergo and which he had successfully completed.

36. Upon being so notified by the DMV, Henry made multiple attempts

from the summer of 1995 through late winter or early spring of 1996 to contact Mr. Blais by telephone to find out what the problem was, but Mr. Blais didn't return his calls.

37. Beginning in the early spring of 1996, Henry moved back to Burlington and thereupon made several appointments to see Mr. Blais to find out how to resolve the license issue.

38. Henry met with Mr. Blais several times between the spring of 1996 and December of 1997 (a period of about a year and a half).

39. At these meetings, Mr. Blais told Henry that he would take care of the problem and that Henry need not undergo a second round of counseling because this was just a mistake at the DMV.

40. In December of 1997, then Henry again met with Mr. Blais. He gave Mr. Blais a $250 retainer, and Mr. Blais agreed to file a petition on Henry's behalf to fix the license problem.

41. Henry heard nothing from Mr. Blais after that, his calls were not returned, and Mr. Blais failed to keep an appointment with Henry in February 1998.

42. In May of 1998, Henry filed a complaint with the Professional Responsibility Program alleging that Mr. Blais had neglected his case. As a result of the complaint, in July of 1998, Mr. Blais attempted to return the retainer to Henry, but Mr. Blais did not have Henry's then current address.

43. Mr. Blais later located Henry and returned his retainer.

44. In November of 1998, Henry retained the services of substitute counsel to assist him in getting his license back.

45. On December 21, 1998, substitute counsel filed a motion to re-open the civil suspension proceeding and a motion to strike the prior civil suspension. These motions were granted on or about January 6, 1999, and Henry's license was reinstated.

46. Due to the inaction and neglect of Mr. Blais, Henry was without a driver's license from about April 18, 1995, until after January 6, 1999, and he suffered an impairment of his employment opportunities as a result.

FINDING OF FACTS in No. 2000.042

Pursuant to stipulation of the parties, the following are the facts relating to PRB File No. 2000.042.

COUNT ONE

47. A vehicle driven by Ulla Andersen Kauffman ("Kauffman") was rear-ended at a toll booth on or about December 13, 1986.

48. Ms. Kauffman hired Mr. Blais to represent her in a claim for her injuries on a contingent fee basis on or about April 29, 1987, and Mr. Blais agreed to represent her.

49. From time to time, Ms. Kauffman would call Mr. Blais to inquire into the progress of her claim, and Mr. Blais on those occasions assured her that the claim was proceeding appropriately; Ms. Kauffman was left with the impression that progress was slow because the court docket was crowded.

50. Mr. Blais never settled the claim and never filed a complaint with the court.

51. The three-year statute of limitations on Ms. Kauffman's claim ran on or about December 12, 1989.

52. In 1990, Ms. Kauffman planned to move out of state.

53. Before moving out of state, Ms. Kauffman met with Mr. Blais to review the status of her personal injury claim.

54. At that meeting, Mr. Blais assured Ms. Kauffman that her case was proceeding appropriately, and Ms. Kauffman was again left with the impression that progress was slow because the court docket was heavy.

55. After she moved out of state, Ms. Kauffman called Mr. Blais from time to time to inquire about her case.

56. Mr. Blais did not accept or return most of Ms. Kauffman's calls.

57. When Mr. Blais did speak with Ms. Kauffman, he assured her that the case was moving forward.

58. In late 1990 or early 1991, Ms. Kauffman made a trip back to Vermont on unrelated business, and she scheduled an appointment with Mr. Blais while she was in Vermont to discuss her personal injury claim.

59. When he met with Ms. Kauffman at this time, Mr. Blais informed her for the first time that he had missed the statute of limitations on her personal injury case.

60. Mr. Blais told Ms. Kauffman that a legal malpractice suit against him was now the appropriate way to proceed, and he encouraged her to file such a suit against him.

61. In late 1991, Ms. Kauffman hired an attorney to represent her in a legal malpractice action against Mr. Blais.

62. This attorney filed the malpractice claim against Mr. Blais on or about April 29, 1992.

63. The legal malpractice action was settled with Mr. Blais's insurance carrier for the amount of the responsible driver's policy limits.

64. Mr. Blais neglected Ms. Kauffman's personal injury claim, missed the statute of limitations, and made misrepresentations to her about the status of the claim; Mr. Blais caused potentially serious injury to his client but no actual injury other than delay in the payment of his client's claim.

COUNT TWO

65. In 1988, Marjorie Bicknell ("Bicknell") hired Mr. Blais to represent her in a divorce action.

66. Mr. Blais filed the divorce action with the Superior Court on or about October 21, 1988.

67. The parties were in basic agreement on the issues in the divorce except for that issue of the property settlement.

68. Ms. Bicknell informed Mr. Blais that her position on the property settlement was that she was entitled to one half of the equity in the parties' home, and she estimated the value of this one half interest at $75,000.00.

69. Mr. Blais conveyed to the opposing party an offer to settle the property issue for that amount, and the offer was rejected.

70. Mr. Blais advised Ms. Bicknell that the next step was to obtain an appraisal of the parties' house, and Mr. Blais told Ms. Bicknell that he would arrange for the appraisal.

71. From time to time, Ms. Bicknell would call Mr. Blais to check on the appraisal and the status of her divorce.

72. Ms. Bicknell estimates that she called Mr. Blais on average one to two times a month during this time period.

73. On the occasions of most of these calls, Mr. Blais did not take Bicknell's calls, nor did he return her calls. On the occasions when Bicknell was able to speak with Mr. Blais, he assured her that he was making arrangements for the appraisal of the parties' house.

74. Mr. Blais never made arrangements for the appraisal of the parties' house, and the appraisal never took place.

75. As time continued to pass, Ms. Bicknell became anxious for the completion of her divorce and frustrated by the delay, in part because she was contemplating re-marriage when the divorce became final.

76. Due to this time pressure, Ms. Bicknell finally told Mr. Blais that she could not wait any longer for an appraisal, and she instructed him to take whatever property settlement he could get for her, so that the divorce could be completed.

77. Mr. Blais was able to get Ms. Bicknell a property settlement offer of $25,000.00, which she accepted.

78. A Final Divorce Order and Decree, reflecting this settlement amount, was entered by the Court on March 20, 1990.

79. Mr. Blais neglected Ms. Bicknell's divorce case, causing injury or potential injury to his client. It is unknown whether the client suffered actual injury, as no appraisal of the value of the property as of 1989 was ever done.

COUNT THREE

80. On or about December 10, 1989, Marjorie Bicknell ("Bicknell") and her sister were involved in an automobile collision in Milton, Vermont.

81. Thereafter, and prior to October 18, 1990, Ms. Bicknell and her sister hired Mr. Blais to represent them in personal injury claims arising from the accident.

82. Mr. Blais neglected their personal injury claims.

83. From time to time throughout the representation, Ms. Bicknell would call Mr. Blais to inquire into the status of her personal injury claim.

84. Ms. Bicknell often had trouble reaching Mr. Blais on the telephone, and he would seldom return her calls.

85. On more than one occasion when Ms. Bicknell was able to speak with Mr. Blais, Mr. Blais assured her that her claim was proceeding appropriately.

86. Ms. Bicknell's claim was not proceeding appropriately, as Mr. Blais failed to file the claim with the Superior Court prior to the expiration of the statute of limitations.

87. On or about December 9, 1992, the statute of limitations expired on the two personal injury claims.

88. Ms. Bicknell and her sister later hired a different lawyer to represent them in a legal malpractice claim against Mr. Blais arising out of this matter.

89. Although Mr. Blais hired an attorney to represent him and to negotiate on his behalf in the legal malpractice actions, he did not contest liability in the legal malpractice action, and the matter was settled.

90. Mr. Blais had no malpractice insurance in effect at the time of the claims of Bicknell and her sister, and he paid compensation to both clients out of his own pocket.

91. Mr. Blais neglected Bicknell's personal injury claim, missed the statute of limitations, and made misrepresentations to her about the status of the claim, causing potentially serious injury to his client but no actual injury, other than the delay in the payment of her claim.

92. Mr. Blais has substantial experience in the practice of law.

93. Mr. Blais had been sanctioned in two prior proceedings, a public reprimand for failing to provide an accounting to a client in a timely fashion and a private admonition for neglecting a client matter.

94. Mr. Blais has cooperated with Disciplinary Counsel in these disciplinary proceedings.

CONCLUSIONS OF LAW

The Vermont Code of Professional Responsibility applies to all conduct in these proceedings since all of it took place prior to September 1, 1999. Based on the above findings of fact, the Panel accepts the parties stipulation that the following violations have occurred.

1. In PRB No. 1998.033, Mr. Blais neglected filing the Med-Pay claim form to apply for interim payment of a portion of his client's medical bills, pending settlement of the underlying personal injury claim in violation of DR 1-102(4) (conduct "involving dishonesty, fraud, deceit or misrepresentation). Further, Mr. Blais misled his clients into believing that he had filed the Med-Pay claim and a Superior Court complaint which the clients had signed in violation of DR 6-101(A)(3) (neglecting "a legal matter entrusted to him").

2. In PRB No. 1999.043, Mr. Blais neglected to take necessary action to have his client's driver's license reinstated in violation of DR 6-101(A)(3).

3. In PRB No. 2000.042, Count One, Mr. Blais misrepresented the status of the personal injury claim by falsely giving the client the impression that the complaint had been filed and that the court docket was the reason the matter had not come to trial, in violation of DR 1-102(4). Further, Mr. Blais neglected his client's personal injury claim and allowed the statute of limitations to run on the claim without filing a complaint in violation of DR 6-101(A)(3).

4. In PRB No. 2000.042, Count Two, Mr. Blais failed to obtain an appraisal of the marital home as he had told his client he would in violation of DR 6-101(A)(3).

5. In PRB No. 2000.042, Count Three, Mr. Blais misrepresented to his client that her personal injury claim was proceeding in court when he had not filed the complaint in violation DR 1-102(4). Further, Mr. Blais neglected his client's personal injury claim and allowed the statute of limitations to run on the claim without filing a complaint in violation of DR 6-101(A)(3).

SANCTIONS

Additional findings of fact.

Based on the testimony of Andrew Henry, Marjorie Bicknell, and Mr. Blais at the hearing on January 14, we make the following additional findings of fact:

1. Mr. Blais's neglect in PRB No. 1999.043 in failing to have his client's driver's license reinstated resulted in his client losing his current full-time job as an insurance agent, and later losing a permanent but part-time job with Airborne Express. The client further suffered from feelings of abandonment and depression as a result of Mr. Blais' neglect.

2. The client in 1999.043 took advantage of the lack of a driver's license to return to school for a degree which would further his career in finance. The client's life was

disorganized because he needed to get rides from friends and family members. He often did not go places he wanted to because he could not find a ride.

3. Mr. Blais' neglect in PRB No. 2000.042, Count Two, did not result in financial harm. Although the client received less than 50% of the equity in the family house, that did not result from Mr. Blais' failure to obtain a new appraisal but from the client's desire to finalize the divorce because she wished to remarry.

4. In 1991, Mr. Blais and his wife were divorced. Their six and four year-old children continued to live with his wife. Mr. Blais was very upset over being separated from his children.

5. As a result of disagreements over firm financial matters and one partner's desire to become a judge, the law firm of which Mr. Blais had been a partner was disbanded in 1994. During this period, Mr. Blais focused his efforts on matters which would generate cash for the firm. As a result, he neglected what he referred to as "smaller matters." Mr. Blais recognizes that the matters involved in these proceedings was of great importance to the clients and that he should not have taken on the matters but sent the clients to other lawyers.

6. Mr. Blais became a sole practitioner, sharing a secretary with another lawyer until 1996 or 1997 when he hired a full-time secretary for his exclusive use.

7. Mr. Blais candidly stated that he was not enjoying practicing law in view of the way the practice has changed over the years although he still enjoys helping his clients.

8. If he is suspended for longer than one month, he will be unable financially to retain his current secretary.

9. Mr. Blais sincerely regrets having neglected his clients.

Sanctions imposed

Deputy Disciplinary Counsel and Mr. Blais have jointly recommended a two month suspension and 18 month probationary period. The Hearing Panel agrees that a suspension is the appropriate sanction in this case but do not believe that two months are sufficient to protect the public. American Bar Association Standards for Lawyer Sanctions, III. A. 1.1. The A.B.A. Standards list four categories of factors to consider in determining discipline: the duty violated, the lawyer's mental state, actual or potential injury caused by the misconduct, and the existence of aggravating and mitigating factors. Standard, III. A. 3.

1. The duties violated

Mr. Blais's conduct in the five matters involves neglect over a period extending from 1987 (PRB File No. 2000.042, Count One) through

December, 1998 (PRB File No. 1999.043) in violation of DR 6-101(A)(3). In two cases, Mr. Blais allowed the statute of limitations to run on clients' claims. Mr. Blais's neglect began before Mr. Blais's marital difficulties and extended well beyond the breakup of the law firm and a reasonable opportunity to get organized in his own office. Mr. Blais's conduct in at least three of the matters involved express or implied misrepresentation that complaints had been filed and/or that a matter was proceeding properly although little or no action had been taken in violation of DR 1-102(4).

Mr. Blais violated two duties to his clients which go to the heart of the lawyer-client relationship. If clients cannot rely on lawyers' statements as to the progress of the matter, it will be impossible to develop the relationship of trust which lawyers must have to properly represent clients and for the legal system to function properly. Similarly, a lawyer's failure to perform the representation is obviously fundamental to the lawyer-client relationship.

2. The lawyer's mental state

Mr. Blais acted knowingly. This is not a case where a lawyer was unconsciously neglectful. Mr. Blais's neglect and misrepresentations resulted from a conscious decision setting law firm priorities. As Mr. Blais testified, at least through 1994, he made a decision to focus on matters which would generate funds for his law firm and put "smaller matters" aside.

3. Actual or potential injury

Mr. Blais's neglect resulted in actual harm to several clients. Virtually every client was subjected to the stress of being unable to have their matters handled within an appropriate period of time. Even more seriously, one client lost two jobs resulting from Mr. Blais's neglect (PRB File No. 1999.043), in addition to having the rest of his life disrupted by the delay in having his license reinstated. In two matters (PRB File No. 2000.042), clients had to file malpractice actions against Mr. Blais to receive compensation on claims which should have been resolved much earlier but for Mr. Blais's neglect. Ultimately, Deputy Disciplinary Counsel has failed to establish that in the end any client sustained financial harm.

It is difficult to measure the harm resulting from a lawyer's misrepresentation to clients that matters are properly proceeding. Certainly this has a serious potential adverse impact on people's faith in the legal system.

ABA Standard, 4.42 provides that suspension Is generally appropriate when:

> (a) a lawyer knowingly fails to perform services for a client and causes injury or potential Injury to a client, or
>
> (b) a lawyer engages In a pattern of neglect and causes Injury or potential injury to a client.

ABA Standard, 4.62 provides that suspension is generally appropriate "when a lawyer knowingly deceives a client, and causes Injury or potential

Injury to the client.

The above facts clearly meet both Standards.

4. Aggravating and mitigating factors

Aggravating factors under ABA Standards 9.2

We find that there are five aggravating factors established by the evidence:

(a) prior disciplinary offenses;
(b) dishonest or selfish motive;
(c) a pattern of misconduct;
(d) multiple offenses; and
(e) substantial experience in the practice of law.

Mr. Blais has two prior disciplinary offenses, one in 1992 and one in 1997. One offense, for failing to provide an accounting to a client in a timely fashion, resulted in a public reprimand and the other offense, for neglecting a client matter, resulted in a private admonition.

We believe that Mr. Blais acted from a selfish motive, at least in part. As indicated above, Mr. Blais's testimony established that much of the neglect in these matters resulted from Mr. Blais's concern with bringing in money for himself and his firm.

The record also establishes a pattern of misconduct and multiple offenses. The charges in the three matters before us involve neglect of five different matters. The neglect and misrepresentations stretched over eleven years. The neglect continued although Mr. Blais had been sanctioned for client neglect in 1992.

As the parties have stipulated, Mr. Blais has substantial experience in the practice of law.

Mitigating factors under ABA Standards 9.2

We find that there are three mitigating factors established by the evidence:

(a) personal or emotional problems;
(b) cooperative attitude toward proceedings;
(c) delay in disciplinary proceedings.

For part of the time covered by these proceedings, Mr. Blais was suffering marital problems which led to a divorce in 1991. However, Mr. Blais' acts of neglect and misrepresentation began before the time of those difficulties and lasted until well after the divorce. At some point the failure to address personal or emotional problems ceases to be a mitigating factor. A lawyer has responsibility to seek help with matters which are impairing his or her practice of law.

As for stress created by the financial problems of the law firm, here too, Mr. Blais' neglectful actions occurred both before the problem arose

and after it was resolved. While Mr. Blais attributed some of his neglect to not having a full-time secretary, there is no evidence that matters improved after Mr. Blais hired a full-time secretary in 1996 or 1997.

Mr. Blais cooperated with Disciplinary Counsel after the complaints were filed. Although this is listed as a mitigating factor under the A.B.A. Standards, it is difficult to give it much weight since the failure to cooperate could constitute an independent violation. That is, Mr. Blais complied with his ethical obligation to cooperate. DR 1-101(A)(5) and Rule 8.4(d).

There has been some delay in some of the disciplinary proceedings through no fault of Mr. Blais. The hearing on sanctions originally was scheduled in 2001 and was postponed as a result of Mr. Blais' counsel's schedule. The oldest petition was filed in 1998, dealing with neglect in 1997. Thus, there was a delay of three years in the oldest matter.

Mr. Blais and Deputy Disciplinary Counsel stipulated that a two-month suspension was appropriate. We do not believe that a two-month suspension is sufficient to protect the public.

The A.B.A. Standards do not provide specific guidelines for determining the length of a suspension. A.B.A. Standard 2.3 states that "Generally, suspension should be for a period of time equal to or greater than six months". Shorter term suspensions appear more as a punishment than as a sanction necessary to protect the public. Going back to 1990, the Vermont Professional Conduct Board and the Vermont Professional Responsibility Board have recommended and the Supreme Court has imposed or approved a suspension in 24 cases. Of those, 3 were for three years, 1 was for two years, 1 was for 18 months, 1 was for one year, and 12 were for six months, and 6 were for less than six months. Fully half of all suspensions were for the A.B.A. Standard's recommended six month period. One quarter of the suspensions were for less than six months. Recently, a Hearing Panel imposed a four-month suspension stipulated to by the parties. See, In Re: David Sunshine, Esq., PRB File Nos. 2001.001 & 2001.075.

There is a critical difference between a six month suspension and a suspension shorter than six months. A lawyer who receives a suspension of six months or more must go through the process of a reinstatement hearing at which Mr. Blais must establish by clear and convincing evidence that the lawyer is qualified to practice law. Administrative Order 9, Rule 22 (B) and (D).(FN2) A lawyer suspended for less than six months is automatically reinstated at the end of the suspension period.

We believe that the length of suspension should be considered in light of whether provision for probation combined with a short term suspension can adequately protect the public from future violations by Mr. Blais. In this case, we are presented with a lawyer who has neglected clients over a long period of time. Mr. Blais had also been put on notice through two other disciplinary proceedings in which he was sanctioned, that he needed to revise his methods of practice. Combined with that, Mr. Blais has candidly admitted that he no longer enjoys practicing law as it has evolved during the time he has been a lawyer. A substantial suspension will provide both the time for him to plan a new approach to law practice and time to consider whether he would be more satisfied pursuing some other profession. A two month suspension clearly will not be

sufficient.

The Hearing Panel spent substantial time struggling with the question of suspension duration. Particularly, the Panel considered whether a six month suspension was appropriate or whether less than six months would provide sufficient protection for the public. We have concluded that a five month suspension, plus a substantial probation period is sufficient to protect the public in this case.

The parties submitted a stipulation to probation, including a provision for mentoring. We accept that stipulation with an additional provision to run from the termination of the probationary period involving mentoring.

Probation with Period of Mentoring:

1. Mr. Blais shall be placed on probation with mentoring, as provided in Administrative Order No. 9, Rule 8A(6) and a written Mentoring Agreement in the form attached hereto as Exhibit A, for a minimum term of eighteen (18) months, which term may be renewed for an additional period as provided by A.O. 9, Rule 8A(6)(a) or by the provisions of Paragraph 9, to be followed by a further eighteen months of probation without mentoring in accordance with paragraph 11.(FN3)

2. At the commencement of probation, Mr. Blais shall undergo a Risk Management Audit at his expense, conducted by a professional risk management auditor, encompassing at least calendar management, caseload management, client communications, and general law office management practices. Mr. Blais shall obtain a written report from the risk management auditor and shall promptly review the report with his probation monitor, as provided in the Mentoring Agreement attached hereto as Exhibit A and incorporated herein by reference. The Risk Management Audit shall be completed no later than fourteen (14) days after the commencement of probation (and may take place prior to the commencement of probation).

3. Disciplinary Counsel and Mr. Blais, through counsel, agreed that Stephen Blodget was an acceptable mentor and that Mr. Blodget has agreed to perform as mentor under Exhibit A. The Hearing Panel finds that Mr. Blodget is an acceptable mentor. Mr. Blais shall send an executed copy of Exhibit A no later than seven (7) days before the commencement of probation.

4. Mr. Blais shall meet with his mentor at least two weeks prior to the date on which his license is reinstated, in order to begin implementing the recommendations of the risk management auditor and of the mentor.

5. Within two weeks of this decision, Mr. Blais shall meet with his mentor to devise a plan to comply with the terms of the suspension, to protect Mr. Blais's clients and their interests, and to ensure that Mr. Blais does not engage in the unauthorized practice of law during the period of any such suspension.

6. Mr. Blais shall not engage in the practice of law during his probationary period except in compliance with the terms of his probation and the terms of the Mentoring Agreement. It shall be Mr. Blais' responsibility to ensure that he has a probation mentor attorney at all

required times.

7. During the period of probation with mentoring, Mr. Blais shall not take on any new clients or new matters without approval of the mentor, after the mentor determines that Mr. Blais can take on the new client or matter without jeopardizing the interests of the new or of existing clients.

8. Mr. Blais shall promptly and fully respond to requests from the Office of Disciplinary Counsel that relate to his compliance, or lack thereof, with the terms of his probation and with the Mentoring Agreement.

9. Mr. Blais's probation with mentoring shall be for a minimum period of eighteen (18) months and may be renewed for additional period(s) of six months each, consistent with A.O. 9, Rule 8(A)(6)(b). Probation shall be terminated anytime after the initial eighteen month period or any renewal term thereof upon the filing of an affidavit by Mr. Blais showing compliance with the conditions of his probation and an affidavit by the current mentor stating that probation is no longer necessary and summarizing the basis for that conclusion. Such affidavits shall be filed with the Administrative Assistant to the Professional Responsibility Board, with copies to the Office of Disciplinary Counsel. The absence of the filing of such affidavits after eighteen (18) months shall be considered a recommendation of continued probation with mentor by the current mentor; in accordance with A.O. 9, Rule 8(A)(6), the probation monitor shall then file a brief written recommendation for continued probation to the Office of Disciplinary Counsel. The Office of Disciplinary Counsel shall then send notice of intent to renew probation for an additional six month period to Mr. Blais via certified mail, return receipt requested. If Mr. Blais wishes an opportunity to be heard on whether his probation should be renewed, Mr. Blais shall file a request for a hearing and serve a copy of the request on the Office of Disciplinary Counsel, in accordance with A.O.9, Rule 8(A)(6).

10. The costs of probation are hereby assessed against Mr. Blais.

Probation subsequent to period of mentoring:

11. After the mentoring phase of probation ceases and for a period of 18 months thereafter, Mr. Blais shall submit a list of pending cases and their status to Disciplinary Counsel on a quarterly basis with a certificate that he has reviewed the status of each case and that the matters he is handling are being attended to in accord with his professional responsibilities.

We feel that this additional period is necessary for the protection of the public. Many of the acts of misconduct in this matter did not manifest themselves until several years after the representation began. This period will provide additional protection against a repeat of that misconduct.

Therefore, we suspend Mr. Blais from the practice of law for five months beginning on the date this decision becomes final. Mr. Blais shall comply with A.O. 9, Rule 23. Further, Mr. Blais will be on probation in accordance with the above terms upon reinstatement at the end of the suspension.

Executed this 31 st day of January, 2002 by:

FILED 2/14/02

_____
Paul S. Ferber Esq., Chair

_____
Robert Bent, Esq.

_____
Toby Young

EXHIBIT A

MENTORING AGREEMENT

Norman R. Blais, Esq. (Blais) and Stephen S. Blodgett (probation monitor and mentor or mentoring attorney) hereby enter into this agreement, the terms of which are as follows:

1. Risk Assessment. As soon as the risk management auditor's report becomes available, Blais and the mentor shall meet to review the report and shall devise a plan for implementing the recommendations set forth therein. The mentor shall send the Office of Disciplinary Counsel a copy of the risk management auditor's report along with the date on which Blais and the mentor met to review the report.

2. Disclosure of Mentoring Arrangement. Blais shall, for the duration of his probation, use a client engagement letter with all of his clients in order to disclose the attorney mentoring arrangement, which shall in substance state:

> "I have agreed to represent you in this (lawsuit, claim, matter, etc.). I will personally handle your case and will ensure that no client confidences are disclosed without your specific authorization. However, as I have advised you, I have established a mentoring relationship with attorney Stephen S. Blodgett of Burlington, Vermont, to assist me in ensuring that the highest quality legal services will be provided on your behalf.
>
> "I have specifically requested and obtained your permission to discuss generally your claim or legal matter with my mentor without discussion of the specific substantive issues of your claim or legal matter. I will limit these discussions to the general areas of client needs, client expectations, client communications, deadlines, and schedules, and my administrative plan for prompt resolution of your claim or legal matter. If, in my opinion, it becomes advisable to discuss the substantive basis of your

claim with my mentor, I will request from you specific permission to do so in writing, and will do so only after you have given me that permission.

"You will not be billed or charged in any way for the time I spend in discussion with my mentoring attorney."

The above information may be incorporated into Blais' retainer letter with the client or may be provided to the client as a separate letter at the outset of the representation. During the term of his probation, Blais will not accept or represent any clients who do not receive the letter set forth in this Paragraph. Blais will ensure that the mentor has no conflict of interest before discussing any client's case with the mentor.

3. Case Management and Office Management. Blais and the mentor shall implement office management and case management procedures and safeguards to ensure the proper handling of all client matters. These procedures and safeguards shall include recommendations from the Risk Management Audit, recommendations from the mentor, and the following recommendations:

a. Blais and/or his agent or employee shall create and maintain a log book of all incoming telephone calls, indicating the dates of such calls, the identity of the caller, and the date on which Blais successfully returned the call (meaning reached the caller or left a message for the caller). The log book shall be reviewed with the mentor at the monthly meetings.

b. Blais and the mentor shall create and maintain a master list of Respondent's open cases, including identifying information for each case, the date the case was most recently worked on, and setting forth the statutes of limitations, as applicable. The list of open cases shall be reviewed with the mentor at the monthly meetings.

c. Blais shall prepare a plan of action for each of his open client files, which plan shall be reviewed with the mentor at the monthly meetings for appropriateness and timely implementation.

d. Respondent and the mentor shall create and maintain a main calendaring system and a backup calendaring system for all deadlines related to the Respondent's practice. The calendars shall be reviewed with the mentor at the monthly meetings.

e. Respondent shall not accept new cases or clients if, in the judgment of the mentor, his caseload is such that additional cases or clients would pose a risk of jeopardizing Respondent's current cases and clients.

4. Meetings with Mentor. Throughout the probationary period, Blais shall meet once a month with his mentor to review case management and office management issues, including without limitation the following issues: client needs, client expectations, client communications, status and progress of pending matters, deadlines, schedules, and statutes of limitation, billing and payment issues, and any other issues that, in the

mentor's judgment, would benefit from review. Blais and the mentor shall meet more often than once a month if, in the mentor's judgment, it is necessary or beneficial to do so.

5. Personal Issues. During the meetings with the mentor referred to in Paragraph 4 above, if the mentor or Blais believe it would be helpful, then the mentor and Blais shall also discuss any issues of a personal nature which might impact upon Blais' practice.

6. Progress Reports. Within three weeks of each monthly meeting referred to in paragraph 4 above, the mentor shall submit a written report to the Office of Disciplinary Counsel discussing Blais' progress under and compliance with the terms of his probation. In the event that Blais and the mentor meet more often than once a month, it shall not be necessary to submit interim reports, but the monthly report shall include all important information not previously reported.

7. Communication. Blais permits and authorizes the Office of Disciplinary Counsel and the mentor to communicate with each other at all reasonable times as to Blais'compliance with and progress under the terms of his probation and this mentoring program, and as to the mentor's recommendation for any extensions of the term of the probation beyond the initial eighteen month period. The mentor agrees to provide all pertinent information to the Office of Disciplinary Counsel and to report to the Office of Disciplinary Counsel any violations of the Rules of Professional Conduct that come to the attention of the mentor, as required by Rule 8.3 of the Rules of Professional Conduct.

8. Costs and Expenses. Blais shall pay all costs and expenses associated with his probation and this mentoring agreement, including without limitation the cost of a Risk Management Audit and all charges of his mentor, including the mentor's charges, if any, for meeting with Blais and for preparing reports to the Office of Disciplinary Counsel.

9. Termination of Mentoring Agreement and Probation. As set forth in the Stipulation to Terms of Probation, the minimum term of the probation shall be eighteen months. Blais' probation shall terminate after eighteen months, provided that Blais submits the affidavit required under A.O. 9, Rule 8A(6) and provided that the probation monitor/mentoring attorney submits the affidavit required under A.O. 9, Rule 8A(6). Blais and the mentor shall send copies of any such affidavits to the Office of Disciplinary Counsel. If such affidavits are not submitted, then the probation shall be renewed as set forth in the Stipulation to Terms of Probation and in A.O. 9, Rule 8.

10. Unavailability of the Mentor. In the event that the mentor is unable to continue to act as mentor under this agreement, he or she shall give notice to Blais and to the Office of Disciplinary Counsel as soon as practicable, to allow Blais sufficient time to find a substitute mentor. The choice of substitute mentor shall be submitted to the Office of Disciplinary Counsel for approval before a Mentoring Agreement is entered into between Blais and the substitute mentor.

DATED this _____ day of January, 2002.

_____
Norman R. Blais, Esq.

_____
Stephen S. Blodgett, Esq.

Footnotes

FN1. All of these incidents took place prior to September 1, 1999; thus the Vermont Code of Professional Responsibility applies.

FN2. While the current provisions of (D) seek to provide expedited procedures for ensuring that reinstatement proceedings not unduly lengthen the suspension period, in a six month suspension, the evidence needed to establish rehabilitation by clear and convincing evidence may not be available after three months. Therefore, a six month suspension is likely to be longer than six months.

FN3. Anything in the Mentoring Agreement which is inconsistent with the provisions A.O. 9 is superseded by the A.O. 9 provision.