

[25-Mar-2002]

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD

In Re: File No. 2001.184

HEARING PANEL DECISION NO. 32

The within matter came before the hearing panel based on a Stipulation of Facts submitted by Beth DeBernardi, Deputy Disciplinary Counsel and Respondent. The parties requested the hearing panel's approval of an admonition by Disciplinary Counsel pursuant to A.O. 9, Rule 8 (A)(5)(a) as the appropriate sanction. We hereby accept the stipulation and approve the issuance of an admonition by Disciplinary Counsel.

FINDINGS OF FACT

1. Respondent agreed to represent a client in an automobile accident case based on a one third contingency fee agreement which was reduced to writing. During the following five months, Respondent diligently pursued the claim with the insurance carrier involved, but was unable to effectuate a settlement.

2. When it became clear that suit would need to be filed, Respondent advised the client that she would need to hire a firm which handled litigation to bring the suit. The client followed Respondent's advice and retained a firm which dealt with litigation matters. The client told Respondent the name and address of the lawyer she had hired, and Respondent agreed to forward the file when asked.

3. When the replacement counsel called to obtain the file, Respondent initially said any work product from the file would not be provided, but eventually indicated a willingness to yield the file. Respondent said that Respondent wanted to be paid. New counsel communicated her belief that Respondent had not done much work on the file which was not accurate as Respondent had made substantial efforts on the matter. Respondent responded strongly to new counsel and ultimately concluded the phone call by telling her to, "Go to hell." Respondent's client then contacted Respondent personally to obtain the file by going to Respondent's home office to obtain it. Respondent gave her a lien agreement to sign. Respondent did not actually condition release of the file on execution of the lien, but the client believed that to be the case and executed the lien as a result. The lien agreement itself was not unreasonable.

4. While in Respondent's office at that time, Respondent made deprecating comments about the new counsel which reflected on her youth.

5. Later, new counsel concluded that there were some documents missing from the file. She wrote to Respondent for them but received no response from Respondent.

6. Respondent had substantial experience in the practice of law. Respondent had no prior disciplinary record and cooperated with Disciplinary Counsel.

#### CONCLUSIONS OF LAW

The parties have stipulated that the above conduct reflects a violation of Rule 8.4(h) of the Vermont Rules of Professional Conduct which provides that, "It is professional misconduct for a lawyer to ... engage in any other conduct which adversely reflects on the lawyer's fitness to practice law." The Panel concurs with that stipulation and finds that Respondent violated Rule 8.4(h). Deprecation of another lawyer, especially making unjustified comments reflecting such attorney's youth, which presumably implies criticism because of lack of experience, as well as rudeness toward that attorney reflect adversely on Respondent's judgment. Likewise, the manner Respondent handled the turnover of the file and claim of a lien by allowing the two issues to be coupled in the client's mind reflects adversely on Respondent's judgment.

#### SANCTIONS

Under A.O.9 Rule 8(A)(5), an admonition is appropriate where the misconduct is minor, little or no injury results, and there is little likelihood of repetition. The misconduct in this case was in fact minor, little or no injury resulted and it does not seem likely that the problem will reoccur.

#### Aggravating and Mitigating Factors:

There are no aggravating factors which the panel considers significant. Further, in mitigation, Respondent does not have any past disciplinary record and has been cooperative.

#### CONCLUSION

For the reasons stated herein, the hearing panel approves the stipulated sanction of admonition by Disciplinary Counsel.

Dated this 25th day of March, 2002.

FILED 3/25/02

/s/

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Robert R. Bent, Esq.

/s/

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Toby Young

/s/

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Paul S. Ferber, Esq.