

[14-Jun-2002]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: PRB File No. 2001.117

Decision No. 36

In September of 2001, the parties filed a Stipulation of Facts, a Joint Recommendation as to Conclusions of Law, and a Joint Recommendation as to Sanction. A hearing was set for February 13, 2002. The Respondent misread the scheduling order and did not arrive in time for the hearing. The hearing was postponed and re-set for March 21.

The Panel convened on March 21 and heard from the Respondent and Disciplinary Counsel. The Respondent discussed several personal issues affecting her practice with the Panel. For the reasons stated herein, the Panel accepts the parties' Stipulation of Facts and adopts the parties' Joint Recommendation as to Conclusions of Law. In addition, the Panel concludes that the Respondent should be admonished and placed on probation.

I Facts

In 1999 and 2000, the Respondent represented a client in a divorce. As part of the final property division, the Respondent's client was to receive a percentage of her ex-husband's pension and TDSP account. The property division ordered that a portion of the proceeds from the sale of the marital home be put in escrow to pay for the preparation of the Qualified Domestic Relation Orders that would distribute the pension and TDSP. The money, approximately \$2,300, was put into the escrow account of a local attorney. Any money left over was to be used to pay certain of Respondent's client's personal debts.

The Respondent agreed to prepare Qualified Domestic Relations Orders that would distribute the property in a manner consistent with the final property division. Respondent started working on the orders in August of 2000. Respondent did not finalize the orders until March of 2001. In the fall and winter of 2000, Respondent's client left several messages with the Respondent seeking updates on the case. The messages were not returned. In addition, Respondent failed to respond to an inquiry from the attorney holding the escrowed money.

While the preparation of the QDRO's took some time, the delay cannot be attributed to anything unethical on Respondent's behalf. Rather, the Respondent suffered severe computer problems that forced her to start the work over again from scratch. Nonetheless, the Respondent did not inform her client of the computer problem. Nor did Respondent did not return any of the client's calls. In sum, Respondent failed to keep the client reasonably informed as to the status of the case. The QDRO's have been prepared and filed with client's ex-husband's employer.

II Conclusions of Law

Lawyers are required to keep clients "reasonably informed about the status of a matter and [to] promptly comply with reasonable requests for information." Vermont Rules of Professional Conduct, Rule 1.4(a). In this case, the Respondent did not keep her divorce client reasonably informed about the status of the post-divorce matters. She did not respond to the frequent messages left by her client. She failed to keep her client updated on the status of the QDRO's and the reasons for the delay in getting them prepared. For these reasons, the Panel concludes that the Respondent violated Rule 1.4(a) of the Vermont Rules of Professional Conduct.

III Sanction

In Vermont, it is appropriate to refer to the ABA Standards For Imposing Lawyer Sanctions in 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)). In this case, both the ABA Standards and existing case law indicate that an admonition, followed by a period of disciplinary probation, is an appropriate response to the Respondent's ethical lapse. Moreover, this case is of the type for which Administrative Order 9 instructs that an admonition is appropriate. Finally, an admonition followed by a period probation will adequately protect the public, inform the Bar as to the standards expected of lawyers, and provide the Respondent with the support she needs to improve her law practice.

In cases involving a lawyer's failure to keep a client updated, an "admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client." ABA Standards for Imposing Lawyer Sanctions, § 4.44. The Standards indicate that a public reprimand is appropriate when the lack of diligence results in actual or potential injury. ABA Standards for Imposing Lawyer Sanctions, § 4.43. In this case, the Respondent was not diligent in keeping her client updated on the status of the post-divorce matters. She should have been candid with her client regarding the computer problems. Simply returning the client's phone calls would have sufficed. Nonetheless, the client's interests were not prejudiced. In other words, the Respondent's lack of diligence caused little actual or potential injury. Accordingly, an admonition is appropriate.

IV Probation

The Panel is satisfied that an admonition is an appropriate response to the particular misconduct at issue. However, as expressed at the hearing, the Panel is concerned that an admonition, with nothing else, will not provide the Respondent with the structure and/or support she needs to correct some of the problems that resulted in her eventual appearance before a Panel of the Professional Responsibility Board. To that end, the Panel invited the parties to appear at the hearing and discuss possible solutions.

The Respondent was quite candid with the Panel. She indicated that, in the past, she has experienced personal problems that affected her practice. Those problems at times caused the Respondent to become anxious and/or fearful of dealing with people. As a result, she tended to put

things off rather than to address them. In addition, as a solo practitioner without a steady flow of income, the Respondent found it difficult to find and to keep reliable help. The strain of running her own practice without a staff or a guaranteed income added to the Respondent's personal and emotional problems.

The Respondent has taken steps to address her problems. Equally important, she has taken steps to improve her practice. For instance, she adopted many of the Risk Manager's suggestions. She reported to the Panel that 2001 was, by far, her most successful year as an attorney and that she is on the way towards financial and fiscal responsibility.

A support system would benefit the Respondent and, by extension, her clients. Thus, the Panel concludes that the admonition that has been imposed in this matter should be accompanied by a disciplinary probation that, at its core, provides the Respondent with a mentoring arrangement to deal with the stress and the tensions that lawyers have to deal with as a result of running a practice. Specifically, the Panel orders as follows:

1. The Respondent is admonished for violating Rule 1.4(a) and Rule 8.4(d) of the Vermont Rules of Professional Conduct;
2. The Respondent is placed on disciplinary probation for a period of eighteen (18) months. The period of probation shall commence upon the Supreme Court's approval of this decision.
3. The Respondent shall associate with a more experienced attorney who will agree to mentor the Respondent during the course of her probation. The Respondent's choice of a mentor must be approved by Disciplinary Counsel.
4. The Respondent shall meet with her mentoring attorney at least once a month. The Respondent and her mentor shall discuss issues related to the stress, anxiety, and tension associated with running a law practice.
5. The Respondent shall accept and implement any feedback or suggestions offered by her mentor.
6. The Respondent agrees that if she misses a scheduled meeting without informing her mentor, or, if she goes more than 6 weeks without meeting with her mentor, that the mentor shall report the Respondent's failure to attend a scheduled meeting to Disciplinary Counsel.
7. The Respondent shall permit and authorize her mentor to respond to Disciplinary Counsel's requests for information relating to the Respondent's compliance with the mentoring arrangement and this probationary agreement. The Respondent shall secure from her mentor a report summarizing each meeting, including any recommendations made pursuant to paragraph 5 of this agreement. The report shall be filed with Disciplinary Counsel within two weeks of the meeting between the Respondent and the mentor.

8. The Respondent shall bear the costs and expenses related to her compliance with the probation and mentoring agreement.

9. In the event that the mentor is not able to continue to serve as the mentor under this agreement, the Respondent shall immediately notify Disciplinary Counsel. In addition, Respondent shall, as soon as possible, find a replacement mentor. The Respondent's choice of a replacement mentor must be approved by Disciplinary Counsel.

10. The Respondent's probation shall not be terminated unless or until the Respondent complies with Rule 8(a)(6) of Administrative Order 9.

11. The Respondent agrees that any violation of the terms in this agreement may serve as the basis of a disciplinary prosecution.

/s/

6/13/02

Robert O'Neill, Esq.
Chair, Hearing Panel #3

Date

/s/

6/11/02

Ruth Stokes
Member, Hearing Panel #3

Date

/s/

6/06/02

S. Stacy Chapman, III, Esq.
Member, Hearing Panel #3

Date

FILED JUNE 14, 2002