

[14-Jun-2002]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: PRB File No. 2000.161

Decision No. 37

In February of 2001, Disciplinary Counsel filed a Petition of Misconduct in PRB File No. 2000.161. The Respondent did not file an answer and Disciplinary Counsel moved the Panel to deem the Respondent to have admitted the charges. The Panel granted the motion and a sanctions hearing was set for May of 2001.

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 appeared and 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 April of 2000, an ethics complaint was filed against the Respondent. The complaint alleged that the Respondent neglected a legal matter that had been entrusted to her. Eventually, the matter was referred to an Assistance Panel for non-disciplinary resolution.

A non-disciplinary resolution was reached. One aspect of the agreement required the Respondent to pay for a Risk Manager from a Professional Liability Company to visit her office, assess her office procedures, and issue a report outlining his findings and recommendations. The Respondent agreed to provide the Assistance Panel with the Risk Manager's findings by September of 2000.

In September of 2000, a member of the Assistance Panel agreed to provide the Respondent with an extension of time in which to comply with the agreement reached at the hearing. The Respondent reported to the Assistance Panel that she would file the required written report by October 14, 2000.

The Respondent did not file the report by October 14, 2000. The Risk Manager did not even visit the Respondent's office until October 13, 2000. The Risk Manager issued a report and assessment on November 2, 2000. Nevertheless, the Respondent never filed the report with the Assistance Panel. The Assistance Panel referred the matter to Disciplinary Counsel.

By letter dated November 1, 2000, Disciplinary Counsel asked the Respondent to provide a written explanation of the failure to comply with the agreement reached before the Assistance Panel. The Respondent did not respond until April of 2001. On May 2, 2001, the Respondent provided Disciplinary Counsel with a copy of the Risk Manger's report.

The Risk Manager suggested several areas in which Respondent's office procedures could be improved. The suggestions focused on Respondent's office systems and described manners in which Respondent could improve mail handling, calendaring, file maintenance, and computer back-ups. The Risk Manager did not discover any significant problems with the Respondent's law office management. The report cited the Respondent's "very high level of cooperation and the preparation accomplished before" the Risk Manager's visit. The Respondent has implemented several of the Risk Manager's suggestions.

II. Conclusions of Law

Rule 8.4(d) of the Vermont Rules of Professional Conduct prohibits an attorney from engaging in conduct that is prejudicial to the administration of justice. Vermont's ethics decisions are clear: an attorney engages in conduct prejudicial to the administration of justice when he or she fails to cooperate with disciplinary authorities. In Re: PRB File No. 2000.019, Decision No. 15, (Oct. 23, 2000); In Re Blais, PCB No. 118, 1 VPCR 226, 227 (1997) (citing In Re Bailey, 157 Vt. 424 (1991)). As noted in Blais, the lawyer discipline system "is essentially a system of self-regulation that requires the co-operation of all members of the bar if it is going to work fairly and efficiently." In Re Blais, PCB No. 118, 1 VPCR at 227-28.

The Assistance Panels play an important role in resolving disputes between attorneys and clients. For the process to succeed, it is critical that attorneys comply with any requirements imposed upon them by an Assistance Panel. Otherwise, the process results in a resolution that has no meaning: an outcome that would certainly lessen public confidence in the Bar. The Panel concludes that the Respondent violated Rule 8.4(d) by failing to carry out the agreement that she reached with the Assistance Panel and, thereafter, by failing to respond to Disciplinary Counsel's request for an explanation of her non-compliance.

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.

Vermont lawyers have a duty to cooperate with the disciplinary system. Indeed, the system "is essentially a system of self-regulation that requires the co-operation of all members of the bar if it is going to work

fairly and efficiently." In *Re Blais*, 1 V.P.C.R. at 227-28. The Respondent violated that duty by failing to provide the Assistance Panel with the Risk Manager's report. She also violated that duty by failing to respond to Disciplinary Counsel once the Assistance Panel reported her non-compliance.

Under the ABA Standards, an admonition "is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding." ABA Standards for Imposing Lawyer Sanctions, § 6.24; See generally A.O. 9, Rule 8(A)(5) (Admonition is only appropriate when three factors are present: (1) the misconduct is minor; (2) little or no injury results; and (3) there is little likelihood that the lawyer will make the same mistake again). An admonition is appropriate here.

Potentially, the failure to comply with an Assistance Panel's order could cause significant interference with a legal proceeding. If the participants do not comply with Assistance Panels' orders, a key component of the disciplinary system will not function. The same can be said about the failure to cooperate with requests from Disciplinary Counsel. Nonetheless, given the facts peculiar to this case, the Respondent's failures can be characterized as minor offenses that caused little actual injury. Thus, both the ABA Standards and A.O. 9 indicate that a private admonition is an appropriate response to the Respondent's misconduct.

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

/s/

Date

06/06/02

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

Date

FILED JUNE 14, 2002