

[7-Jan-2005]

State of Vermont
Professional Responsibility Board

In re: James P. Carroll, Esq.
PRB File No. 2004.059

Decision No. 73

Respondent is charged with neglecting a client matter and failure to keep his client informed in violation of Rules 1.3 and 1.4(a) of the Vermont Rules of Professional Conduct. The parties filed a stipulation of facts, together with recommended conclusions of law and a recommendation on sanctions. The Panel accepted the stipulation of facts and the recommended conclusions of law, and ordered that the matter be set for hearing on the issue of sanctions.

The matter was heard on October 20, 2004 before Paul S. Ferber, Esq., Robert M. Butterfield, Esq. and George Coppenrath. Disciplinary Counsel Beth DeBernardi was present as was Respondent who appeared pro se. The Panel declines to follow the parties recommendation for a private admonition with probation, and orders that Respondent be publicly reprimanded.

Facts

Respondent was admitted to the practice of law in Vermont in 1964 and is currently licensed to practice law.

In September of 2000 Respondent met with Marion Ackley on behalf of her husband Scott Ackley in connection with the estate of Francis Shaw. Scott Ackley had grown up believing that Francis Shaw was his father although another man, his mother's husband, was named on his birth certificate.

In July of 2000, Mr. Shaw was hospitalized with cancer. Nine days before his death, while in the hospital, Mr. Shaw executed a will leaving the bulk of his estate to his wife and sons with only a token bequest to Scott Ackley. Mr. Ackley believes that Mr. Shaw's will was the product of a lack of mental capacity and/or of duress. Mr. Ackley testified that Mr. Shaw had told him on many occasions that he would make up to Mr. Ackley that he had not acted as his father, and Mr. Ackley believed that this meant that Mr. Shaw would provide for him in his will.

Mr. Ackley was recommended to Respondent by an acquaintance as someone who would be able to handle a contested estate matter. Marion Ackley met with Respondent on Scott Ackley's behalf and asked Respondent for advice and assistance with her husband's potential claim against the Shaw Estate. Respondent agreed to investigate the matter with the understanding that, if the results of the investigation so warranted, Respondent would pursue a claim on his behalf.

Two of the issues central to any claim against the estate were whether the will was valid and whether Mr. Shaw was Mr. Ackley's biological father. Respondent made minimal efforts to investigate the matter over the next three years. He made no investigation into Mr. Shaw's mental competence, medical status, or the circumstances surrounding the signing of his will and made minimal investigation into Mr. Ackley's paternity.

Mr. Ackley and his wife made at least 83 phone calls to Respondent's office between January of 2001 and June of 2003. Respondent did not return most of these calls. After June of 2003, they gave up trying to reach Respondent and filed a complaint with the Office of Disciplinary Counsel on September 11, 2003.

Respondent's failure to move the matter forward and to communicate caused the Ackley's emotional stress individually and in their relationship. The passage of time also has the potential for a detrimental effect on Mr. Ackley's claim due to the loss of evidence as witnesses are harder to find and their memories less clear.

At the same time that the Ackleys consulted Respondent, his niece who lives in California experienced serious medical problems for which Respondent became responsible. This illness was an emotional and financial burden to Respondent who made thirteen trips to California in the three years following the spring of 2001.

Respondent candidly acknowledges that he neglected Mr. Ackley's case and expressed sincere and credible remorse over his handling of the matter. He acknowledges that Mr. Ackley deserved better from him, and that he should have either filed suit or quickly returned the file so that they could find other counsel. In Respondent's words, "They deserved vigorous pursuit whatever the result."

There are two aggravating factors: a private admonition in 1973 and substantial experience in the practice of law. There are four mitigating factors: the absence of a dishonest or selfish motive, cooperation with the disciplinary proceedings, sincere remorse and the remoteness of the prior discipline.

Conclusion of Law

The Panel accepts the recommended conclusions of law and finds that Respondent's failure to pursue Mr. Ackley's case and his failure to respond to his client's inquiries and to keep him informed violate Rules 1.3 and 1.4(a) of the Vermont Rules of Professional Conduct.

Sanctions

The parties have recommended that this Panel impose a private admonition with probation. We reject both recommendations.

A.O.9 Rule 8 (A) provides that "[o]nly in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should admonition be imposed." Respondent's failure to take any meaningful steps on his client's behalf over a lengthy period of time goes beyond minor misconduct. In addition, there is real injury to the client from the uncertainty and frustration he and his family lived with for years as a result of Respondent's misconduct. Finally, there

is a serious potential for harm to his claim against his father's estate. We believe that reprimand is the appropriate sanction in this matter. This is supported by ABA Standards for Imposing Lawyer Sanctions, §4.43, which provides that "[r]eprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury." Respondent acknowledges the harm to his client and now understands that, faced with time consuming family problems, he should have either dealt with the case or passed it on to another attorney. It is incumbent on attorneys to manage their case loads despite other difficulties in their lives.

We do not believe that probation would serve any purpose in this case and therefore decline to impose probation in connection with this reprimand. There has been no showing of a pattern of difficulty in managing client cases. There has been no showing that Respondent lacks basic office management skills. Respondent's family problems have resolved and there is no evidence that there is any threat to his ability to effectively deal with clients.

Probation was imposed in two cases: In re Blais, PRB Decision No. 31 (Jan. 31, 2002), affirmed by Vermont Supreme Court December 19, 2002, and PRB Decision No. 48, (Dec. 20, 2002). Both involved a substantial pattern of neglect. Probation was a way of insuring that the pattern was not carried forward to new clients after the attorney's reinstatement. In re Furlan, PRB Decision No. 65 (May, 2004), involved a similar pattern of neglect. There, Respondent had neglected several matters as a contract public defender, and there was concern about his ability to manage his substantial criminal case load in the future.

Disciplinary Counsel cites us to PRB Decision No. 57 (July 7, 2003), as authority for the use of probation in this matter. As here, the attorney in Decision No. 57 consented to probation, but unlike Respondent whose family problems have resolved, the attorney in Decision No. 57, continued to experience the health problems that contributed to the neglect. Respondent's conduct in this matter does not resemble Blais where we find a long history of client neglect, nor Furlan which involved a relatively inexperienced attorney faced with a daunting case load, nor Decision No. 57 where the attorney faced continued health problems. Respondent is a highly experienced attorney who has managed the practice of law with no disciplinary sanctions for thirty years. He fully understands what led him to the present complaint. His family problems have resolved, and it appears that he has cut back on his practice to a manageable level and is planning for retirement.

Probation is a mechanism which permits an attorney to continue in practice under conditions which are necessary to insure that the public is protected. We do not believe that this is necessary in this matter.

Conclusion

James P. Carroll is PUBLICLY REPRIMANDED for violation of Rules 1.3 and 1.4(a) of the Vermont Rules of Professional Conduct.

Dated: January 7, 2005

Hearing Panel No. 4

/s/

Paul Ferber Esq.

/s/

Robert M. Butterfield, Esq.

/s/

George Coppenrath

FILED JANUARY 7, 2005