

103 PRB

[Filed 26-Jun-2007]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: Lorin Duckman, Esq.
PRB File No 2005.087

Decision No. 103

Respondent is charged with violation of Rules 3.5(c) and 8.4(d) of the Vermont Rules of Professional Conduct as a result of conduct during a sentencing hearing which culminated in the Judge finding Respondent guilty of criminal contempt and sentencing him to serve 45 minutes in the court's lockup. The parties filed a Stipulation of Facts and a Joint Recommendation as to Conclusions of Law and Sanctions. The Hearing Panel accepts the recommendations and orders that Respondent be publicly reprimanded.

Facts

In August of 2004, Respondent represented a client at a sentencing proceeding in Vermont District Court based on a written plea agreement signed by Respondent's client. Before accepting the plea agreement, the presiding Judge, the Honorable Helen Toor, began an inquiry of the Defendant under V.R.Cr.P. Rule 11 to provide a basis for accepting or rejecting the plea agreement. Respondent objected to having his client speak, and asked that the court rule on acceptance of the plea agreement prior to addressing his client. Judge Toor declined to change her procedure, and at that point Respondent indicated that he would withdraw the plea agreement. Judge Toor explained to Respondent that he had no authority to withdraw his client's plea without consulting with him first. Respondent refused to consult with his client, arguing that the court was interfering with the attorney-client relationship. The court then ordered Respondent to speak with his client. When Respondent refused, Judge Toor found him in contempt for expressly refusing to comply with the court's order and directed a court officer to place him in a holding cell until 1:00 p.m., approximately forty-five minutes later (FN1).

In a written order Judge Toor certified the contempt finding explaining that Respondent's "direct refusal of the court's order, along with [his] angry, confrontational, and disrespectful manner . . . made it impossible to proceed with the case, evidenced an utterly inappropriate manner for a lawyer to use in the courtroom towards a judge, and constituted contempt of court."

Respondent moved to vacate the order of contempt. Judge Toor denied the motion and in her order cited other instances of inappropriate conduct

by Respondent, and stated that

These incidents were not the basis for the contempt finding, but they contributed to the court's decision that there was no less severe action that would adequately address the situation. They also contributed to the court's decision to impose the sanction it chose, rather than a monetary sanction.

Respondent appealed to the Vermont Supreme Court which affirmed Judge Toor's decision to hold Respondent in contempt of court.

Conclusion of Law

Rule 3.5(c) of the Vermont Rules of Professional Conduct provides that

A lawyer shall not engage in undignified or discourteous conduct which is degrading or disrupting to a tribunal.

The Comment to the rule further clarifies this:

The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics."

Respondent's conduct was undignified, discourteous and degrading and disrupting to the court and violates Rule 3.5(c).

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. Respondent's contemptuous conduct violates this rule.

Sanction

It is well settled that it is appropriate to look to the ABA Standards for Imposing Lawyer Discipline as well as case law in determining sanctions.

ABA Standards

The ABA Standards for Imposing Lawyer Discipline look to four factors in determining a presumptive sanction. The first is the duty violated. Here we have found Respondent violated his duty to the court and to the legal system. The second inquiry is to determine the attorney's mental state whether he acted intentionally, knowingly or negligently. In the present case, the actions were clearly intentional. Despite warnings from the judge, Respondent continued in his refusal to speak with his client.

The next inquiry is into the extent of harm. The harm in this case is to the court and to the public perception of the legal system. There is also the potential for harm to the client when an attorney engages in conduct that directs the focus of the court to the attorney rather than to his client.. The final inquiry is into the presence of aggravating and mitigating factors. None are presented, though it is clear from Judge Toor's order denying the motion to vacate, that this was not an isolated instance of disrespect to the court. In general, under the ABA Standards public discipline is warranted in cases where the attorney acted intentionally, where there is actual or potential for harm and no significant mitigating factors. ABA Standards Section II Theoretical Framework.

Case Law

The facts in PRB Decision No. 72 (December 23, 2004) bear some similarity to the present circumstances. In that case the lawyer, also a public defender, used inappropriate language in a courtroom exchange with the judge. The Hearing Panel found a violation of Rule 3.5(c) and considered the imposition of public reprimand because the conduct was more than mere negligence, and there was harm to the client and the legal system. The Panel chose admonition due to the presence of significant mitigating factors that we do not find in the present case. There, Respondent apologized promptly to all parties involved and was under extreme stress due to medical problems and an extremely high case load.

In *In re Andres*, PRB Decision No. 75, (March 28, 2005), Respondent made disrespectful comments about a judge in pleadings filed in a violation of probation case in which he was the defendant. The Panel in that case also found that disrespect to the court causes harm to the legal system. There were no mitigating factors and a public reprimand was imposed.

We find the facts in the case much closer to that of *In re Andres* and we accept the recommendation of the parties for a public reprimand.

Order

Lorin Duckman is hereby PUBLICLY REPRIMANDED for violation of Rules 3.5(c) and 8.4(d) of the Vermont Rules of Professional Conduct.

FILED: June 26, 2007

Hearing Panel No. 1

/s/

Lawrence Miller, Esq., Chair

Susan P. Ritter, Esq.

/s/

Barbara Carris

Footnotes

FN1. The following is a transcript of the exchange between Respondent and the Court:

THE COURT: Well Mr. Duckman, hold on. I think you need to consult with your client. I don't think you have the right to now withdraw his plea without consulting him. And I'm sure . . .

MR. DUCKMAN: I think you're interfering with my relationship with him right now, Judge. I'm withdrawing . . .

THE COURT: Well, I'm going to ask you-stop.

MR. DUCKMAN: Okay.

THE COURT: Or I will hold you in contempt of court.

MR. DUCKMAN: I haven't done anything contemptuous.

THE COURT: Stop. Stop. I don't think it is an appropriate thing for a lawyer to withdraw a client's plea without discussing it with the client, the pros and cons, the costs and benefits. You did this once before, I didn't say anything about it. I do not think it's appropriate. I think you need to consult with your client about the risks of going to trial if he does that. If after you have spoken with him, he comes in and tells me he wishes to not go forward, I will accept that, but I need to hear it from him, okay?

MR. DUCKMAN: I think, Judge, what you're doing is interfering with my relationship with my client.

THE COURT: You can . . .

MR. DUCKMAN: I would ask for, I would ask for a continuance right now so I can prepare appropriate papers and perhaps I will come back and ask for a change of venue. But I don't think that I am prepared to proceed.

THE COURT: Well, I'm not going to accept that request. So why don't you go out . . .

MR. DUCKMAN: Well, I'd ask for a continuance.

THE COURT: Go speak with your client.

MR. DUCKMAN: I think it is inappropriate to threaten me with contempt.

THE COURT: Stop. Mr. Duckman, I've told you what to do. Go speak with your client. I will be available in ten minutes once you've talked to him.

MR. DUCKMAN: Judge, I don't think you can tell me to go talk to my client.

THE COURT: Well, I just did.

MR. DUCKMAN: But I'm not going to do it.

THE COURT: In that case you are in contempt of court, put him in there and we'll speak at one o'clock under shackles.

MR. DUCKMAN: Judge, I think I'd like an opportunity to be represented by counsel.

THE COURT: Mr. Duckman, I've just found you in summary contempt by ignoring the Court's orders.

MR. DUCKMAN: It may well be an order that the Court shouldn't have given me.

THE COURT: Excuse me. If you continue talking when I am speaking, I will hold you overnight, do you understand. I am holding you until one o'clock. I find that you are in contempt by ignoring my orders. We will see you at one.