

127 PRB

Filed: 09-Aug-2010

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No. 2009-198

John Hansen, Esq., Respondent

This matter came on before the Hearing Panel on Motion to Dismiss dated May 5, 2010, filed by Michael Kennedy, Disciplinary Counsel.

On July 15, 2010 Hearing Panel #2 consisting of Jesse M. Corum, IV, Esquire, Chair, Theodore C. Kramer, Esquire and Christopher G. Chapman convened to consider the aforesaid motion.

ENTRY

On February 2, 2010 the Hearing Panel entered an order (Decision No. 127) suspending Respondent from the practice of law for a period of 30 days and placing Respondent on probation.

On March 25, 2010 the Supreme Court dismissed the appeal and remanded to this Hearing Panel the matter for further proceedings.

On May 7, 2010, Disciplinary Counsel's Motion to Dismiss was filed with the Professional Responsibility Board and the Hearing Panel has met and decided following consideration of the pleadings in this file, the instant motion, as well as matters set forth in the various Orders in the file, to grant the same.

ORDER

The Hearing Panel vacates its Decision No. 127 dated February 2, 2010 and, further, grants Disciplinary Counsel's Motion to Dismiss the petition of misconduct dated May 20, 2009, as amended on May 29, 2009.

Dated at Brattleboro, Vermont this 15th day of July 2010.

FILED AUGUST 9, 2010

Hearing

Panel

/s/

Jesse M. Corum IV, Esq., Chair

/s/

Theodore C. Kramer, Esq.

/s/

Christopher G. Chapman

STATE OF VERMONT

PROFESSIONAL RESPONSIBILITY BOARD

In Re: John Hansen, Esq.

PRB File No. 2009.198

Decision No. 127

This matter was set for hearing on sanctions on December 8, 2009, before Hearing Panel No. 2 consisting of Jesse M. Corum IV Esq., Chair, Theodore C. Kramer, Esq. and Christopher G. Chapman. Respondent received notice of the hearing but did not appear, nor was he represented by counsel.

Respondent is charged with failure to cooperate with Disciplinary Counsel in violation of Rule 8.4(d) of the Vermont Rules of Professional Conduct. Respondent is suspended from the practice of law for a period of thirty days. Upon reinstatement, he shall be placed on probation for a period of ninety days under the terms set forth below.

Facts

In March of 2009, Chrystal Goodrich filed a complaint against Respondent alleging that that he had failed to communicate with her and her now incapacitated husband, that he had not done the work he had agreed to do and did not return money owed to them. Respondent failed to respond to the complaint and to answer inquiries from the Office of Disciplinary Counsel about the substance of the complaint.

Because of difficulties with service, Respondent was not served with the petition alleging failure to cooperate with Disciplinary Counsel until October 5, 2009. Respondent failed to answer the petition within the twenty days required by Administrative Order 9, Rule 11 D (3) and on November 3, 2009, this Hearing Panel issued an order deeming Respondent to have admitted the charges, and the matter was set for hearing on sanctions.

Respondent was admitted to the Vermont Bar in 1963.

No testimony was offered by Disciplinary Counsel and he was unable to tell the panel whether Respondent was still practicing or had retired.

Conclusion of Law

Rule 8.4(d) of the Vermont Rules of Professional Conduct provides that “[i]t is professional misconduct for a lawyer . . . to engage in conduct that is prejudicial to the administration of justice.”^[1] Vermont Hearing Panels have held in a number of cases that failure to cooperate with Disciplinary Counsel in the investigation of a complaint is a violation of this rule. *In re Heald*, PRB Decision No. 67 (2004), *In re Heald*, PRB Decision No. 54 (2003), *In re Grady*, PRB Decision No 96 (2006), *In re Hongisto*, PRB Decision No. 111

(2009), *In re Hongisto* PRB Decision 122 (2009)[\[2\]](#) and *In re Griffin*, PRB Decision No. 98 (2007). We find these cases govern the facts here and we find a violation of Rule 8.4(d).

Sanction

The facts in the *Griffin* case are nearly identical to the facts here. In that case the attorney did not answer the original complaint, Disciplinary Counsel filed a complaint alleging failure to cooperate. Respondent failed to answer and the Hearing Panel deemed the charges admitted and held a hearing on sanctions. There were no other charges and no other facts presented to the Hearing Panel. In that case the Panel imposed a suspension of thirty days followed by probation of 90 days.

We agree with the Panel's reasoning in this case. They stated: "[w]e have two purposes in imposing a sanction in this matter. The first is to underscore to Respondent, the members of the Bar and the public the seriousness of an attorney failing to cooperate with Disciplinary Counsel. The second is to fashion a term of probation that will assist Disciplinary Counsel in investigation of the underlying complaint."

Since we have no information on the details of the underlying complaint of misconduct or on whether or not Respondent is presently practicing law, we are unable to assess the seriousness of the possibility of harm to the public.

Thus, we follow the lead of the *Griffin* case and impose a suspension of 30 days which will serve to protect the public and any clients Respondent may have. We impose probation, the main term of which is a requirement that Respondent answer the underlying complaint and cooperate fully with Disciplinary Counsel in his investigation.

A mandatory component of suspension is the requirement that Respondent notify all clients, co-counsel and opposing counsel of the suspension and take steps necessary to protect client interests and client property. *Administrative Order 9, Rule 23*. Should Respondent fail to comply with A.O.9 Rule 23 A, the presiding judge of the superior court may appoint an attorney to inventory client files and take steps necessary to protect clients. *A.O.9 Rule 24*. In either instance, any clients Respondent may now have are protected.

If upon reinstatement Respondent fails to cooperate with Disciplinary Counsel in the investigation of the underlying complaint, Disciplinary Counsel may move for immediate interim suspension, *A.O. 9 Rule 8.A.(6)(c) and Rule 18*, which will again protect the public.

Order

Respondent is suspended from the practice of law for a period of thirty days commencing on the date this order becomes final. Respondent is placed on probation on the following terms:

1. Respondent shall be placed on probation as provided in Administrative Order No. 9, Rule 8.A.(6). The probation shall commence upon the termination of the suspension and shall be for a period of ninety days.
2. Prior to the expiration of his suspension, Respondent shall engage a probation monitor acceptable to Disciplinary Counsel, and Respondent shall forward to the probation monitor a copy of this decision no later than seven (7) days prior to the commencement of probation.
3. Respondent shall answer the complaint filed by Crystal Goodrich and shall cooperate fully with Disciplinary Counsel in the investigation of the complaint.

4. The probation monitor shall assist Respondent in cooperating with Disciplinary Counsel.

5. Respondent shall bear the costs and expenses related to his compliance with the terms of probation.

6. Respondent's probation shall be renewed or terminated after ninety days as provided in A.O. 9, Rule 8.A.(6)(c).

7. Should Respondent fail to comply with the terms of probation, Disciplinary Counsel may move for an immediate interim suspension under Rule 18 of Administrative Order 9.

Dated: **February 4, 2010**

Hearing Panel No. 2

/s/

Jesse M. Corum, IV Esq., Chair

/s/

Theodore C. Kramer, Esq.

/s/

Christopher G. Chapman

[1] Respondent is charged under the Rules of Professional Conduct in effect at the time of the misconduct. The new Vermont Rules of Professional Conduct became effective September 1, 2009.

[2] The two *Hongisto* cases are on appeal to the Supreme Court on its own motion.