

137 PRB

[Filed 08-Feb-2011]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re: PRB File No. 2010.162

Decision No. 137

The parties filed a Stipulation of Facts and Joint Recommendations as to Conclusions of Law and Sanctions. The Hearing Panel accepts the stipulated facts and the recommendations and orders that Respondent be admonished for lack of diligence, for failure to keep his client informed of the status of her case, and for failure to cooperate with Disciplinary Counsel in violation of Rules 1.3, 1.4(a)(3) and 8.4(d) of the Vermont Rules of Professional Conduct. Respondent was represented by counsel.

Facts

Representation of A.G.

A.G. hired Respondent in May of 2008 to represent her in connection with a bankruptcy. She provided Respondent with a check for \$300.00, and in August provided Respondent with financial information. Respondent cashed A.G.'s check

Between May of 2008 and December of 2009, A.G. made approximately seven appointments to meet with Respondent. Respondent failed to show up for several of the appointments and canceled the meeting that had been scheduled for December of 2009. Respondent never filed a bankruptcy petition on behalf of A.G.

On April 5, 2010, A.G. wrote to Respondent terminating his services and asking for a refund of her \$300.00.

In January of 2010, A.G. filed an ethics complaint against Respondent. On February 17, 2010, Disciplinary Counsel wrote to Respondent informing him of the complaint and asking that Respondent file an answer by March 10, 2010. On March 30, 2010 Disciplinary Counsel's administrative assistant emailed Respondent stating that they had not received an answer to the complaint. With still no answer from Respondent, Disciplinary Counsel called Respondent on April 12, 2010. He spoke with a woman who identified herself as Respondent's wife. She said she would have Respondent contact Disciplinary Counsel.

On May 3, 2010 Disciplinary Counsel had still not heard from Respondent. He called again that day and spoke with the woman who identified herself as Respondent's wife. She gave Disciplinary Counsel Respondent's cell phone number. Disciplinary Counsel called and left a message asking for a call back. He also emailed Respondent confirming the call.

In May of 2010 Disciplinary Counsel filed a Petition of Misconduct charging Respondent with four counts of violating the Vermont Rules of Professional Conduct. Respondent did not file an answer. Eventually the Hearing Panel granted Disciplinary Counsel's Motion to Deem the Charges Admitted and set the matter for a sanctions hearing.

Sometime after the matter was set for a sanctions hearing, Respondent engaged an attorney who entered an appearance on his behalf. Since then Respondent has refunded \$300.00 to A.G. and, through counsel, has provided Disciplinary Counsel with information tending to explain Respondent's misconduct.

Mitigating Factors

Respondent suffers from Post-Traumatic Stress Disorder (PTSD) and depression. His symptoms first appeared in 2002, and in September of 2009 he sought treatment from a psychologist. Respondent is currently participating in therapy and is taking medication for treatment of his PTSD and depression.

By late 2005, Respondent's illness caused him to avoid stressors and making decisions. This impacted his ability to practice law to the extent that he actively sought employment outside the law. In 2009, he left the law altogether and is currently working as the executive director of an organization which provides social services to area residents.

In June of 2009, Respondent's wife suffered a grand mal seizure while at a hospital for tests. She was diagnosed with an inoperable brain tumor. When medication failed to stop the seizures, she was placed in a medically induced coma for a week. His wife's health adversely affected Respondent's ability to focus on his clients.

Respondent did not renew his license in July of 2010, and as a result his license has been suspended on an administrative basis by the Supreme Court's Attorney Licensing Office. Respondent has no present intention to renew his license to practice law.

A.G. secured the assistance of another attorney to assist her with her bankruptcy. Other than her frustration at the delay, she did not suffer any actual harm.

Respondent has never had a sanction imposed against his license to practice law.

Conclusions of Law

Rule 8.4(d) of the Vermont Rules of Professional Conduct prohibits attorneys from engaging in "conduct that is prejudicial to the administration of justice." In *In re Hongisto*, Decision No. 111 (2009), affirmed Supreme Court Entry Order February 2010, the Hearing Panel stated "[t]he disciplinary system relies on attorneys to cooperate with misconduct investigations. The failure to do so impedes the operation of the system and is prejudicial to the administration of justice." See also *In re Griffin*, PRB Decision No. 98 (2007). We find that these cases govern the facts presented here, and we find a violation of Rule 8.4(d).

Rule 1.3 of the Vermont Rules of Professional Conduct requires lawyers to act with reasonable diligence in representing a client. Rule 1.4(a)(3) requires that a lawyer keep a client reasonably informed about the status of her matter. It does not appear that Respondent did any work on A.G.'s case nor did he ever respond to her numerous requests for a meeting. This conduct violates both provisions.

Sanction

The Hearing Panel accepts the parties' recommendation for admonition in this case. In discussing our decision we will first look at the violations of Rule 1.3 and 1.4(a)(3) and then consider the violation of Rule 8.4(d). In reaching our decision to accept the recommendation, we have looked at the ABA Standards for Imposing Lawyer Sanctions and Vermont case law.

ABA Standards for Imposing Lawyer Sanctions

The Vermont Supreme Court has long approved the use of the ABA Standards in determining the appropriate sanction. "When sanctioning attorney misconduct, we have adopted the ABA Standards for Imposing Lawyer Discipline [*sic*] which requires us to weigh the duty violated, the attorney's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating or mitigating factors." *In re Andres*, 177 Vt. 511 (2004), *See also*, *In re Berk*, 157 Vt. 524 (1991).

Respondent violated his duty to act diligently and to keep his client informed. His actions were not intentional and the only harm reported was the client's frustration at the delay and lack of contact. Section 4.43 of the ABA Standards provides an "[a]dmonition 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."

Admonition for violation of these two rules is also consistent with prior Vermont cases. In *In re PRB Decision No. 131* (2010) Respondent was admonished for failure to provide a title opinion until five months after the closing and after a complaint was filed with the Office of Disciplinary Counsel.

In another recent case, *In re PRB File No. 125* (2009), the Respondent failed to deal with a property tax adjustment after a real estate closing. In this case there was the potential for actual injury, but the Hearing Panel weighed the mitigating factors and ordered admonition.

We now turn to the violation of Rule 8.4(d). In this situation, Respondent violated his duty not to a client but to the profession and to the legal system which requires that lawyers cooperate in the disciplinary process. This failure to cooperate required that the Office of Disciplinary Counsel expend its finite resources on investigation and preparation that would have been unnecessary had Respondent cooperated from the beginning. Thus, it can be argued that there is actual injury in the violation of this rule.

Section 7.3 of the ABA Standards provides that “[r]eprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public or the legal system.”

If we were to accept that reprimand is the presumptive sanction under the ABA Standards, there are substantial mitigating factors which we believe confirm our opinion that admonition is the appropriate sanction. Respondent has no prior disciplinary record, *ABA Standards §9.32(a)*, and was faced with severe personal and emotional problems, *ABA Standards §9.32(c)*. In addition, it appears that once he obtained counsel he cooperated with disciplinary counsel, *ABA Standards §9.32(e)*.

It remains to distinguish the sanction imposed here from the suspensions imposed in the two cases cited in our discussion of the violation of Rule 8.4(d). In *In re Hongisto*, Decision No. 111 (2009), affirmed Supreme Court Entry Order February 2010, there were a number of

violations, the failure to cooperate had gone on for a substantial period and the Hearing Panel felt that suspension was necessary in order to protect the public.

In *In re Griffin*, Decision No. 98 (2007), Disciplinary Counsel had no response to requests for information. Respondent was suspended for thirty days and then placed on probation for ninety days with a condition of probation that he cooperate with Disciplinary Counsel's investigation. The Hearing Panel felt that suspension was appropriate to protect the public since they had no knowledge of the details of the underlying complaint.

This is not the case here. Once Respondent obtained counsel, Disciplinary Counsel was able to determine the facts of the underlying complaint. In addition, since Respondent is not practicing and has no intention of returning to practice, there is no need for the public protection.

Order

Respondent is hereby admonished for violation of Rules 1.3, 1.4(a)(3) and 8.4(d) of the Vermont Rules of Professional Conduct.

Dated: **February 8, 2011**

Hearing Panel No. 10

FILED February 8, 2011

/s/

Danielle D. Fogarty, Esq., Chair

/s/

Joseph O'Dea, Esq.

/s/

Robert Bergman D.V.M