

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File Nos. 2011.145 & 2011.177

Decision No. 149

The parties have filed a Stipulation of Facts and Joint Recommended Conclusions of Law and Sanctions. Respondent has waived certain procedural rights including the right to an evidentiary hearing. The panel accepts the stipulated facts and recommendations and orders that Respondent be admonished and placed on disciplinary probation for neglecting an estate of which she had been appointed administrator and for failure to cooperate with Disciplinary Counsel in violation of Rule 1.3 and Rule 8.4(d) of the Vermont Rules of Professional Conduct.

Facts

Respondent was admitted to practice in Vermont in 1991. She is a sole practitioner and her practice focuses primarily on bankruptcy.

In March of 2008, the Marlboro Probate Court appointed Respondent Administrator of an estate (hereinafter "the Estate"). The Estate was opened in 1996, but Respondent had no involvement during its first 12 years in probate.

In April of 2008, Respondent filed an Interim Inventory of the Estate showing \$3008.00 in cash held by the State of Vermont Unclaimed Property Division as well as stock in AT&A, Verizon and Idearc. These stock holdings date back to the breakup of AT&T in 1984.

In April of 2008, Respondent claimed the cash that was being held by the State of

Vermont and placed it in a trust account clearly identified as belonging to the Estate with Respondent listed as Administrator.

Soon after her appointment as Administrator, Respondent was in contact with a person familiar with the Estate who provided Respondent with information that led her to believe that, for years, the decedent and her Estate had been receiving dividend checks, and that not all sources of those dividends had been discovered. Specifically, Respondent came to suspect that the decedent might also have owned stock in others of the “Baby Bells.” Respondent was unable to get further information from the third party.

Respondent heard little more. She did not make the Estate a high priority and did not follow up on marshaling the Estate's assets.

On April 3, 2009, the Probate Court sent Respondent a letter asking why the Estate could not be closed. Respondent did not reply to the letter. On August 3, 2010, the Probate Court sent Respondent a second letter, and again received no reply.

On November 30, 2010, an attorney who represented the estate of a now deceased beneficiary of the Estate, wrote to Respondent. Respondent did not reply. The attorney wrote again on December 14, 2010 and January 14, 2011, and in both instances received no reply from Respondent.

In January of 2011, the attorney filed an ethics complaint (hereinafter “the complaint”) against Respondent. This complaint was docketed as PRB File No. 2011.145. On January 12, 2011, Disciplinary Counsel informed Respondent that the complaint had been referred for investigation and asked her to file a written response to the complaint by February 2, 2011.

By letter dated February 4, 2011, Disciplinary Counsel's assistant reminded

Respondent that she had yet to file a response to the complaint, and asked her to do so by February 11, 2011.

Respondent did not file an answer to the complaint and therefore, Disciplinary Counsel opened a new file, PRB File No. 2011.177, and on March 22, 2011, filed a petition of misconduct charging Respondent with failure to cooperate with the investigation of the original ethics complaint.

Respondent's elderly parents reside outside of Vermont. Near the end of 2010, one of Respondent's parents developed a serious health problem. As a result, Respondent ended up spending much of her time over the next several months helping her parents. She traveled to and from their home on a regular basis, often spending more than half of each month out of state.

During this time, Respondent maintained contact with clients and courts mainly by checking e-mail and telephone messages. When she returned to Vermont, she focused on matters that she perceived as the most urgent. In particular, Respondent prioritized bankruptcy clients' hearings.

Eventually, Respondent assisted her parents to move into senior housing. When she was able to return to her office on a more regular basis, she was able to respond to the beneficiary's attorney and to the disciplinary investigation. Respondent contacted both the attorney and Disciplinary Counsel on May 31, 2011. Nevertheless, the Estate remains open.

Respondent continues to devote a significant portion of her time to caring for her parents. She believes this is the cause of her failure to attend to the Estate and to the disciplinary investigation as she should have.

Respondent is working on closing the Estate, though she has yet to liquidate the stock in AT&T, Verizon or Idearc. Respondent is aware that the State of Vermont's Unclaimed Property Division is holding under \$100 of property that belongs to the Estate. She believes the property is un-cashed dividend checks from various companies in which the decedent owned stock.

In hindsight, Respondent acknowledges that it was a mistake not to respond to the beneficiary's attorney or to Disciplinary Counsel. She also acknowledges that she should have been more proactive in marshaling the Estate's assets and bringing the matter to a close. She believes that she should have finalized an accounting with known assets of the Estate, however, Respondent also thinks it would have been somewhat dishonest to file a "final accounting" when she had reason to believe that she had not yet located all of the Estate's assets.

Since June of 2011, Respondent has cooperated with Disciplinary Counsel's investigation. No disciplinary sanction has ever been imposed against Respondent's law license.

Conclusions of Law

Rule 1.3 of the Vermont Rules of Professional Conduct requires lawyers to act with reasonable diligence. Respondent failed to answer inquiries from the Probate Court and from the attorney for a beneficiary over a period of several years beginning in 2009. She has yet to close the Estate. This conduct violates Rule 1.3.

Rule 8.4 (d) of the Rules of Professional conduct prohibits lawyers from engaging in conduct that is prejudicial to the administration of justice. In a number of cases, Hearing Panels have found a violation of this rule where the Respondent failed to

cooperate with Disciplinary Counsel.

In the case of *In re Griffin*, PRB Decision No. 98 (2007), the Hearing Panel stated “The administration of the lawyer discipline system is predicated on the cooperation of the attorneys involved. Vermont ethics decisions make it clear that without this cooperation the system is prejudiced and the Rule violated.” Citing, *In re Heald*, PRB No. 19 (June 5, 2001); *In re PRB File No. 2000.019*, Decision No. 15, (October 23, 2000); *In re Blais*, PCB No. 118, 1 V.P.C.R. 226, 227 (1997). See also, *In re Hansen* PRB Decision No 127 (Feb. 2010) and *In re PRB File No. 2010.162*, Decision No. 137 (Feb. 2011).

Respondent's failure to respond to inquiries from Disciplinary Counsel's office violates this rule.

Sanctions

The parties have recommended that we admonish Respondent and placed her on probation for a period of one year. The recommended sanction is consistent both with the ABA Center for Professional Responsibility, *Standards for Imposing Lawyer Sanctions* (1986) (amended 1992) [hereinafter “ABA Standards] and prior Vermont decisions.

Both the Supreme Court and hearing panels “look to the ABA's Standards for Imposing Lawyer Sanctions to ‘guide [the] determination of the appropriate sanction in an attorney disciplinary matter.’ ” *In re Strouse*, 2011 VT 77 ¶ 19, ___ Vt. ___, ___ A.3d ___ (quoting *In re Neisner*, 2010 VT 102, ¶ 14, ___ Vt. ___, 16 A.3d 587).

The determination of the appropriate sanction involves weighing four factors: “(1) the duties violated, (2) the attorney's mental state, (3) the actual or potential injury caused by the misconduct, and (4) the existence of aggravating or mitigating factors.” *Neisner*,

2010 102 ¶ 14; see also *ABA Standards* § 3.0.

Application of the first three factors results in the presumptive sanction. *Strouse*, 2011 VT 77 ¶ 19 (citing *In re Fink*, 2011 VT 42, 35, ___ Vt. ___, ___A.3d ___). The presumptive sanction can be modified depending upon the aggravating or mitigating factors. *Strouse*, 2011 VT 77, ¶ 19.

Considering first Respondent's failure to act with reasonable diligence in the Estate, the ABA Standards suggest that reprimand is the presumptive sanction. Section 4.43 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 to a client.” Despite having made initial efforts to locate the Estate's assets, she failed to follow through, and as a result, the Estate has lingered for several years. While there is no allegation of actual monetary injury, there is injury in the aggravation and inefficiency caused by the long delay.

With respect to the charge of failure to cooperate with Disciplinary Counsel, Standard 7.3 of the ABA Standards provides that a reprimand is warranted “when a lawyer negligently engages in contact that is a violation of a duty owed as a professional, and causes injury or potential injury to client, the public, or the legal system.” Respondent's negligence in not responding to the beneficiary's attorney's complaint impeded Disciplinary Counsel's investigation. Her actions caused injury both to the public and the legal system. The privilege of self-regulation is important to the bar, and it is essential that the disciplinary system operate promptly and effectively. Unreasonable delays can cause an erosion of the public trust and needlessly consume Disciplinary Counsel's finite time and resources.

There are, however, mitigating factors which argue for the reduction of the sanction from reprimand to admonition. Respondent has no prior disciplinary record. *ABA Standards 9.32 (b)*. Her misconduct was a result of neglect rather than due to a dishonest or selfish motive. *ABA Standards 9.32 (b)*. Her failure to respond to the beneficiary's attorney and to Disciplinary Counsel came at a time when she was coping with significant family problems that often required her to be out of the state and out of her office. *ABA Standards 9.32 (c)*. Her work life having somewhat returned to normal, Respondent is making a good-faith effort to close the Estate and has rectified her original failure to cooperate with the disciplinary investigation of the original complaint. *ABA Standards 9.32 (d)*.

The purposes of disciplinary sanctions are "to protect the public from harm and to maintain confidence in our legal institutions by deterring future misconduct." They are not intended to punish lawyers. *In re Hunter*, 167 Vt. 219, 216, 704 A. 2d 1154 (1997). An admonition and a period of probation to insure that Respondent does indeed close the Estate in a timely fashion, will protect the public and, at the same time, deter future misconduct by putting the bar on notice that even relatively low-level neglect will result in the imposition of a disciplinary sanction.

Admonition is also consistent with prior hearing panel decisions. Earlier this year in *In re PRB File No 2010.162*, PRB Decision No. 137 (Feb. 8, 2011), the attorney was admonished for neglecting a client matter for several years and not cooperating with Disciplinary Counsel. In that case, the attorney finally ended up cooperating and there were other substantial mitigating factors. The Panel took into account the fact that the attorney was no longer practicing and therefore there was no danger of harm to the

public. In the present case, the attorney is still practicing and we have the year of probation to insure that the public is protected. We see no reason not to follow this case and to impose admonition.

Order

Respondent is hereby Admonished for violation of Rule 1.3 and Rule 8.4(d) of the Vermont Rules of Professional Conduct and placed on probation on the following terms:

1. Respondent shall be placed on probation as provided in Administrative Order No. 9, Rule 8A(6).
2. Probation shall be for a period of one year commencing on the date this decision becomes final.
3. The probation shall be supervised by a probation monitor acceptable to Disciplinary Counsel.
4. During the period of probation Respondent shall provide to Disciplinary Counsel monthly reports detailing her progress in resolving the Estate.
5. The reports to Disciplinary Council shall be provided no later than the 15th of each month and may be filed electronically.
6. Respondent shall promptly reply to all requests for information on the Estate received from either the beneficiary's attorney or Disciplinary Counsel.
7. All expenses of probation shall be the responsibility of Respondent.
8. Respondent's probation shall be renewed or terminated after one year as provided in A.O. 9, Rule 8(A)(6).

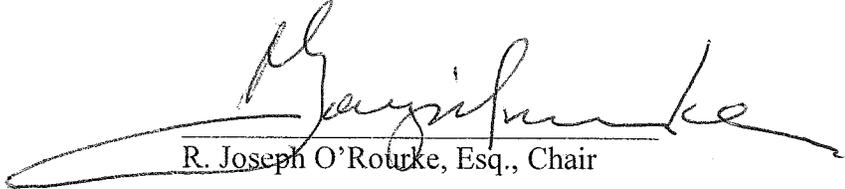
Dated: 1-18-12

Hearing Panel No. 1

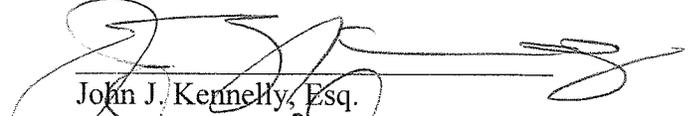
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R. Joseph O'Rourke, Esq., Chair



John J. Kennelly, Esq.



Diane Drake