

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No. 2014.115

Decision No. 183

The parties have filed a Stipulation of Facts, Proposed Conclusions of Law and a Recommendation for Sanctions. The 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 by Disciplinary Counsel for failure to protect the confidentiality of client information in violation of Rule 1.6(a) of the Vermont Rules of Professional Conduct.

Facts

Respondent was admitted to practice in Vermont in 1986. She is a sole practitioner and rents office space on the second floor of a large two story building which houses other attorneys and businesses. Her office is at the top of the interior staircase.

Respondent represented a husband and wife in a matter involving a minor child which was pending in both probate and family court. At some point in the representation, the clients became dissatisfied with Respondent's services and asked for their file so they could contact another attorney.

The wife left a voice message for Respondent on a Friday saying that they needed the file by the following Wednesday, and that they would like to pick it up on that day between noon and 2 pm. Respondent called the clients back and left a voice message saying that they could pick up the file at the requested time.

When the wife went to pick up the file at the agreed time she found Respondent's

office door locked and her client file sitting in the hallway outside the office. This hallway was shared by other tenants in the building and anyone who happened to be in the vicinity could have looked inside the file or even taken it. The clients were particularly concerned since the file contained their social security numbers and personal information concerning themselves and the minor child. It is unknown whether anyone looked inside the file, but there is no evidence that this occurred.

Respondent left the file outside her office door because she had to leave and did not want to hinder her client's retrieval of the file at the agreed time. She did not consider the confidentiality of the file at the time she left it in the hall.

The following mitigating factors are present: Respondent had no dishonest or selfish motive, has cooperated with the disciplinary proceedings, has acknowledged her error and has expressed remorse.

Conclusion of Law

Rule 1.6(a) provides that a lawyer shall not reveal information relating to a representation without the consent of the client. This consent can be impliedly authorized, but that is not the case here. Comment 2 to this rule states: “[a] fundamental principle in the client-lawyer relationship is that . . . the lawyer must not reveal information relating to the representation.” A necessary corollary to this is stated in comment 17. “The lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients.” Respondent had a duty to safeguard her clients' information for so long as it was in her possession, which it was until such time as the client picked it up. When she left the file in a public hallway she had no way of insuring that the file would be protected from examination or theft by

anyone in the hallway and this failure violated the rule.

Sanction

The parties have recommended that admonition by Disciplinary Counsel is the appropriate sanction in this matter. In considering this recommendation we look to both the ABA Standards for Imposing Lawyer Discipline and Vermont case law.

Section 4.2 of the ABA Standards provide that: “Admonition is appropriate when a lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes little or no actual or potential injury to a client.”

When Respondent left the file in the hallway, she negligently failed to consider the fact that the file was not in a protected space and could be accessed by persons other than her clients. There was the potential for injury in that someone could have looked at or stolen the file. There is no evidence that anyone looked at it, and thus no evidence of actual injury. The recommendation for admonition is supported by the presence of several mitigating factors. Respondent had no selfish or dishonest motive, *ABA Standards § 9.32(b)*, she has cooperated with the disciplinary process, *ABA Standards § 9.32(e)*, and has expressed remorse, *ABA Standards § 9.32(l)*.

Admonition is also consistent with two similar Vermont cases arising under the predecessor to the present rule. An attorney was admonished for failure to safeguard client files when he sold his office computer without first deleting client information from the hard drive. *In re PRB Decision No. 3* (2000). In another admonition case, a worker’s compensation attorney described to a prospective client the facts of another case in such detail that the client figured out that person’s identity. *In re PRB Decision No. 4*

(2000).

Based upon the foregoing, we accept the recommendation of the parties for admonition.

Order

Respondent shall be admonished by Disciplinary Counsel for violation of Rule 1.6(a) of the Vermont Rules of Professional Conduct.

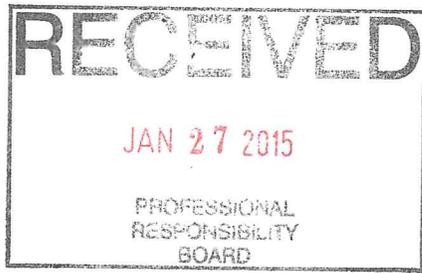
Dated: 1/27/15

Hearing Panel No. 7


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