

PCB 12

[07-Jun-1991]

ENTRY ORDER

SUPREME COURT DOCKET NO. 91-300

JUNE TERM, 1991

In re John G. Hutton

Original Jurisdiction

FROM:
Professional Conduct Board

Docket No. 89.15

In the above entitled the Clerk will enter:

Pursuant to the recommendations of the Professional Conduct Board filed June 20, 1991, and approval thereof, it is hereby ordered that John G. Hutton, Esq., be publicly reprimanded for violation of DR 9-102 by misuse of client trust funds. A.O. 9, Rule 8E.

It is further ordered that Attorney Hutton be placed on probation for a period of ten years from the date of issuance of this order. The conditions of probation are that an accountant, at Attorney Hutton's expense, shall submit to the Professional Conduct Board quarterly audits in the first two years, semi-annual audits in the third through fifth years, and annual audits during the last five years of probation. Failure to timely submit these reports, attributable to conduct of Attorney Hutton, or discrepancies in the audited reports which the Board concludes manifest misconduct by Attorney Hutton will subject Attorney Hutton to suspension. A.O. 9, Rule 19 .

BY THE COURT:

/s/

Frederic W. Allen, Chief Justice

/s/

Ernest W. Gibson III, Associate Justice

/s/

[x] Publish

John A. Dooley, Associate Justice

/s/

[] Do Not Publish

James L. Morse, Associate Justice

/s/

Denise R. Johnson, Associate Justice

State of Vermont

Professional Conduct Board

In re: John G. Hutton, Jr., Esq., Respondent
PCB File 89.15

NOTICE OF DECISION

PCB 12

Bar Counsel and Respondent entered into a stipulation whereby Respondent acknowledged violating DR 9-102 and waived his procedural rights under Administrative Order 9 including the right to issuance of a petition of misconduct only after a finding of probable cause, the right to conduct discovery, the right to a hearing, and the right to appear before the full Board. This stipulation is not binding on the Supreme Court; the stipulation cannot be withdrawn by Respondent or Bar Counsel in the event the Supreme Court chooses to impose a different sanction.

The Board accepted the stipulation and hereby recommends to the Supreme Court that a sanction of public reprimand be imposed. The Board has also imposed conditions of probation with Respondent's consent as specified below. The Board's findings of fact, conclusions of law, and recommendations to the Supreme Court are set forth below.

Facts

1. Respondent, John G. Hutton, Jr., Esq., has been a member of the Vermont Bar since 1959. Since 1972, he has been in the private practice of law in Waitsfield, Vermont.

2. Respondent was treated for clinical depression, first in 1962-1963, then in 1978-1979, and lastly in 1983-1984. He was last examined by his physician for this last course of treatment in January 1984. At that point, Respondent appeared to be making progress.

3. Beginning in 1984, Respondent's gross income began to decline. Respondent attributes this decline in income to depression and personal problems.

4. Between April 3, 1986 and July 15, 1988, Respondent periodically withdrew funds from his attorney trust account. These funds, totaling \$5,145, were used by Respondent for personal expenses. Respondent withdrew these funds with the intent to repay the money to his trust account.

5. In January of 1989, Respondent voluntarily brought this matter to the attention of the Professional Conduct Board. He noted that improper withdrawals were made in 1986, 1987 and 1988.

6. The supreme Court appointed a temporary trustee to insure that no further sums would be improperly withdrawn. The trustee, Dennis Bache, RPA, reviewed all available books, records, checks, and underlining data for the trust account for the period August 26, 1982 to September 1990. Mr. Bache advised that the trust account was not in balance and that the sum of \$1,004.01 was needed to bring the account into balance. This sum was deposited by Respondent on October 25, 1990. Mr. Bache's examination shows that all persons entitled to payment from the trust account have either been paid, or payment is not yet due, and that funds are available for payment when performance is due.

Conclusions of Law

An attorney is ethically obligated to maintain client funds in a separate attorney trust account. Although not specifically stated in DR 9-102, it is axiomatic that these funds are not available for the attorney's personal use. An attorney who withdraws client trust funds for his own personal use, regardless of an intent to repay the funds, is in violation of his ethical obligations under DR 9-102. Respondent has acknowledged that his conduct was a violation of the Code of Professional Responsibility and has accepted full responsibility for that violation.

Recommendations

Attorney misuse of client trust funds is normally sanctioned by suspension or disbarment pursuant to the ABA Standards for Imposing Lawyer Sanctions. However, there are a number of mitigating circumstances in this case. Most importantly, Respondent himself brought this matter to the attention of the Professional Conduct Board and fully cooperated with the Board's review of this matter. Additionally, there is no evidence that any client funds were lost. It appears that all client funds were returned to the attorney trust account.

Although Respondent's history of depression and personal difficulties is unfortunate, these personal medical problems do not justify Respondent's conduct.

This Board recommends to the Supreme court that Respondent be publicly reprimanded and placed on probation for a term of ten (10) years during which time the following condition shall be met. An accountant, at the expense of Respondent, shall submit to the Professional Conduct Board quarterly audits in the first two years, semi-annual audits in the third through fifth years, and annual audits during the last five years of probation. The purpose of the audit is to ensure that the trust account has been correctly used by Respondent. Failure to submit the audited reports or discrepancies in the audited report will result in immediate suspension.

Dated at Montpelier this 7th of June 1991.

/s/
J. Eric Anderson, Chair

/s/

Deborah S. Banse, Esq. Hamilton Davis

/s/ /s/
Anne K. Batten Rosalyn L. Hunneman

/s/
Leslie G. Black, Esq. Donald Marsh

/s/ /s/
Richard L. Brock, Esq. Karen Miller, Esq.

/s/ /s/
Joseph F. Cahill, Jr., Esq. Joel W. Page, Esq.

/s/
Nancy Corsones, Esq. Edward Zuccaro, Esq.

/s/
Christopher L. Davis, Esq.