

PCB 96

[07-Jul-1995]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In re: Mark E. Warren, Respondent

PCB File No. 93.34

FINAL REPORT TO THE SUPREME COURT

Decision No. 96

This matter was presented to us by way of stipulated facts, which we adopt as our own and incorporate herein as Exhibit 1. Respondent and Bar Counsel appeared before us on June 2, 1995 and presented argument in favor of a jointly recommended sanction of public reprimand. We agree with that recommendation.

Briefly summarized, the facts involve Respondent's abuse of alcohol while representing clients in serious criminal matters.

Respondent joined the Vermont Bar in 1990. Until the autumn of 1993, he was a solo practitioner.

Between early June and late August of 1993, Respondent appeared in Windham District Court on four different occasions under the influence of alcohol.

On the third occasion, the presiding judge warned Respondent not to appear in court again after consuming alcohol. Some six weeks later, Respondent appeared at a sentencing to represent a client charged with a felony.

Respondent was so impaired that he was asked to take an alco-sensor test.

That test showed an alcohol level of .28%. The hearing had to be continued because Respondent was too impaired to represent his client.

During this same summer, Respondent was arrested and subsequently convicted of DWI. This was his fifth arrest for drunk driving since 1985.

In September of 1993, Respondent closed his law practice and checked himself into a residential treatment center that same month. He subsequently moved to Boston and has no current plans to return to Vermont. Presently Respondent is on inactive status.

Respondent currently provides pro bono legal services to individuals involved with an organization called STEP, Inc., an outpatient counselling program for alcoholics and drug addicts. He also provides pro bono legal services to individuals at the New England Shelter for Homeless Veterans. He is an adjunct professor at Quincy College teaching criminal justice and paralegal courses.

Respondent has remained sober since October 1993.

By this conduct, Respondent violated DR 1-102(A)(5)(engaging in conduct prejudicial to the administration of justice), DR 1-102(A)(7)(engaging in conduct adversely reflecting on his fitness to practice law), DR 6-101(A)(1)(handling a legal matter which the lawyer is not competent to handle), and DR 6-101(A)(3)(neglecting a legal matter entrusted).

In considering the appropriate sanction, we find the following mitigating factors present here:

- * Respondent has no prior disciplinary record,
- * Respondent cooperated with the disciplinary proceedings, and
- * Respondent has engaged in interim rehabilitation.

In aggravation we find that there is a pattern of misconduct.

We will not countenance the representation of clients in court or in any context while the attorney is under the influence of intoxicating liquor or drugs. Given Respondent's history of continuing problems with alcohol abuse, were he still actively consuming alcohol, we would have no hesitation in recommending his suspension from the practice of law for six months or longer. Respondent, however, to his credit, has remained sober for one and

1/2 years. We believe, therefore, that Respondent's future clients can adequately be protected by a public reprimand and an extended period of probation.

We, therefore, recommend that Respondent be publicly reprimanded and that the Court recommend to the Supreme Judicial Court of Massachusetts, which will entertain reciprocal discipline there, that Respondent be placed on probation for a period of three years with sufficient terms to ensure no further violations. In addition, if and when Respondent reactivates his Vermont license to practice law, we recommend that Respondent be placed on probation for a period of three years. Conditions of his probation shall be that he not consume alcoholic beverages and that he engage an attorney mentor acceptable to both him and Bar Counsel with whom he consult on a monthly basis about his practice and sobriety. The mentor would report to Bar Counsel on Respondent's status on a quarterly basis. Finally, in regard to the client for whom Respondent appeared in court and was unable to function, we recommend that Respondent be required to reimburse to that former client, Jesse Smith, the entire amount of fee Mr. Smith paid to him.

Dated at Montpelier, Vermont this 7th day of July , 1995.

PROFESSIONAL CONDUCT BOARD

/s/

Deborah S. Banse, Chair

/s/

George Crosby

Donald Marsh

/s/

Joseph F. Cahill, Esq.

Karen Miller, Esq.

Nancy Corsones, Esq.

Mark Sperry, Esq.

/s/

/s/

Paul S. Ferber, Esq.

Robert F. O'Neill, Esq.

/s/

Nancy Foster

Ruth Stokes

/s/

/s/

Rosalyn L. Hunneman

Jane Woodruff, Esq.

/s/

/s/

Robert P. Keiner, Esq.

Charles Cummings, Esq.

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 93.34

Mark E. Warren, Esq.--Respondent

STIPULATION OF FACTS

NOW COME Shelley A. Hill, Bar Counsel, and Mark E. Warren, Respondent, and hereby stipulate to the following set of facts:

1. Mr. Warren was admitted to the bar of the State of Vermont on October 9, 1990, and is currently on inactive status. He had been admitted to the bar of Massachusetts on June 10, 1987, where he is currently on active status.

2. Mr. Warren began abusing alcohol in high school in the late 1970's. He realized he had a problem with this substance in college. In 1985, he was convicted in Massachusetts of driving under the influence. In 1988, he was again picked up for DWI, but pled guilty to a lesser offense. In October 1991, he was arrested in Springfield, Vermont and subsequently convicted of DWI. In November 1991, he was again arrested for DWI in Springfield, Vermont but not processed since he was within days of checking into a residential treatment program. He completed the program at Spofford Hall. In April 1992, Mr. Warren violated his probation by flunking an alco-sensor test. Thereafter, he remained sober until early 1993, when he again began drinking. He was again arrested in Vermont for DWI on July 1, 1993 for which he was convicted on March 7, 1994.

3. Mr. Warren came to Vermont in 1989. He worked at the law firm of Kiel & Boylan for a short period. He then had a small solo practice in Springfield, Vermont from 1990 through the summer of 1993.

4. On June 8, 1993, Mr. Warren appeared in Windham County District Court at a status conference in the felony cases against his client, Salvatore Russo. Mr. Warren, his client and the state worked out an agreement at the hearing. With Mr. Warren representing him, Mr. Russo pled guilty to one felony count of false pretenses and was sentenced to a five-year deferred sentence. Mr. Warren had the odor of alcohol on him at the time of this hearing.

5. On June 9, 1993, Mr. Warren was in Windham County District Court representing his client, Jesse Smith, at a settlement conference in a felony case of lewd and lascivious behavior with a child. During the hearing Mr.

Warren made suggestions to the court and to the deputy state's attorney that were contrary to the most basic criminal and ethical law tenets. Mr. Warren was under the influence of alcohol during this court appearance.

6. On July 12, 1993, Mr. Warren was again in court on behalf of Salvatore Russo, this time for an arraignment on a violation of probation charge. Mr. Warren conceded to the presiding judge that he had consumed alcohol prior to the hearing. Mr. Warren was under the influence of alcohol for this court appearance. The court entered a pro forma denial on behalf of Mr. Russo. The presiding judge obtained a commitment from Mr. Warren that he would never again appear in court after having consumed alcohol.

7. On August 27, 1993, Mr. Warren again appeared in court on behalf of Jesse Smith, this time for sentencing in the L&L with a child case. Mr. Warren was under the influence of alcohol for this court appearance. The deputy state's attorney alerted the presiding judge to her concerns about Mr. Warren's condition. Mr. Warren accepted the judge's offer of an alco-sensor test, the results of which were 0.28. The case was continued as the result of Mr. Warren's condition and his inability to represent his client.

8. Mr. Warren closed his Springfield, Vermont practice in September 1993. He checked himself into a residential treatment center that same month, where he remained until his insurance ran out. He then started treatment at another treatment center. He then decided to return to Boston to get his life back on track.

9. Mr. Warren currently provides pro bono legal services to individuals

involved with an organization called STEP, Inc., an outpatient counselling program for alcoholics and drug addicts. He also provides pro bono legal services to individuals at the New England Shelter for Homeless Veterans. He is an adjunct professor at Quincy College teaching criminal justice and paralegal courses.

10. Mr. Warren has remained sober since October 1993.

11. Mr. Warren is no longer in Vermont and has no current plans to return to this state. He placed himself on inactive status on November 17, 1994.

12. Mr. Warren is in violation of DR 1-102(A)(5), DR 1-102(A)(7), DR 6-101(A)(1) and DR 6-101(A)(3).

13. Mr. Warren has no prior disciplinary record.

14. Mr. Warren has cooperated with the disciplinary proceedings.

15. Mr. Warren has engaged in interim rehabilitation.

16. There is a pattern of misconduct in this case.

Dated at Montpelier, Vermont this 21st day of April 1995.

/s/

Shelley A. Hill

Bar Counsel

Dated at Boston , Vermont this 19th day of April 1995.

/s/

Mark E. Warren

Respondent

ENTRY ORDER

SUPREME COURT DOCKET NO. 95-355

OCTOBER TERM, 1995

In re Mark E. Warren, Esq. } APPEALED FROM:

 }

 } Professional Conduct Board

 }

 } DOCKET NO. 93.34

In the above entitled cause the Clerk will enter:

Pursuant to the recommendation of the Professional Conduct Board filed July

17, 1995, and approval thereof, it is hereby ordered that Mark E. Warren, Esq., be publicly reprimanded for the reasons set forth in the Board's Final Report attached hereto for publication as part of the order of this Court.

A.O. 9, Rule 8E.

Furthermore, reactivation of Attorney Warren's license to practice law in Vermont shall be contingent on his having made restitution to his former client, Jesse Smith. For the first three years following return to active practice in Vermont, Attorney Warren shall be on probation subject to the conditions set forth in the last paragraph of the Board's Final Report.

BY THE COURT:

/s/

Frederic W. Allen, Chief Justice

/s/

Ernest W. Gibson III, Associate Justice

/s/

John A. Dooley, Associate Justice

/s/

James L. Morse, Associate Justice

/s/

Denise R. Johnson, Associate Justice