

[10-Jan-1997]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

RE: PCB Docket Nos. 94.22 and 95.81

NOTICE OF DECISION

DECISION NO. 114

This matter was presented to us by stipulated facts which we adopt as our own and incorporate herein by reference. A brief summary of the events leading to discipline is set forth below. The parties waived appearance before the Board.

FACTS
PCB File No. 94.22

Respondent, who at this time had been a member of the Vermont bar for approximately three years, undertook representation of plaintiff in obtaining a relief from abuse order and in instituting a tort claim against defendant. Defendant filed a counter suit sounding in defamation, alleging that the plaintiff's supporting affidavit was false. Defendant named both plaintiff and respondent as parties.

Respondent moved to dismiss the allegations against respondent, but filed no answer on behalf of the plaintiff. At a status conference, the presiding judge indicated that she was inclined to grant the motion, although she allowed opposing counsel an opportunity to respond to the motion.

Subsequently, that judge transferred the tort action to another superior court, asking the new judge to decide the matter as quickly as possible so respondent could decide whether respondent had to withdraw as counsel for plaintiff. In the meantime, respondent continued to represent the plaintiff in the family court matter.

The motion to dismiss the claims against respondent were not decided quickly. Some three months later, the family court judge disqualified respondent from further representation of the plaintiff. A few weeks later, defendant filed a similar motion to disqualify respondent from representation of plaintiff in the superior court action. Subsequently, plaintiff discharged respondent and obtained new counsel who filed an answer to the counterclaim.

At no time during these events did respondent disclose to plaintiff the actual or potential conflicts attendant to being named as a counter defendant with the plaintiff in the lawsuit in which respondent was also counsel of record. Respondent did not obtain the plaintiff's informed consent to continue in this representation, despite the conflicting interests. Respondent's conduct violated DR 5-101(A). (FN1)

The tort case went to trial three years late. At that time the

counter suit against respondent was dismissed. The case settled, and all claims were dismissed.

PCB File No. 95.81

A title insurance company agreed to accept applications from respondent on behalf of respondent's real estate clients for commitments for title insurance. Respondent agreed to provide all necessary title insurance information in a timely and professional manner.

Respondent did not do so. The title insurance company had difficulty in obtaining updates of title, other title information and premium payments in order to issue final policies. Over a two year period, a representative of the title insurance company wrote and telephoned respondent on many occasions requesting the information on several clients needed to issue policies. The requested information was not forthcoming. Finally, the title insurance company told respondent that it would no longer accept title insurance applications and demanded final updates on all outstanding commitments no later than February 1. Respondent met the final commitments, but not until July and only after the title insurance company filed a complaint about this matter with this Board.

Respondent's negligent conduct in failing to complete this work as agreed violated DR 6-101(A) (3) ("[a] lawyer shall not...neglect a legal matter entrusted to him.")

SANCTION

We find both Standards 4.34 (FN2) and 4.44 (FN3) of the ABA Standards for Imposing Lawyer Sanctions applicable here.

In both cases, respondent acted negligently. There was little or no actual injury in either of the cases. In the first matter, there was a potential for injury to the client in that her interests were not protected by her attorney in the Superior Court action for four months. However, the potential for injury was small.

Respondent was aware of the conflict issue, raised it with the presiding judge and requested a speedy ruling. However, respondent improperly remained as attorney of record for a lengthy period without making the proper disclosures to the client and obtaining her consent.

In mitigation, we note that respondent has little experience as a member of the bar, having been admitted only three years before this misconduct began. Further, respondent has no prior disciplinary record. Accordingly, respondent will be issued a letter of admonition.

Dated at Montpelier, Vermont this 10th day of January 1997.

PROFESSIONAL CONDUCT BOARD

/s/

Robert P. Keiner, Esq. Chair

/s/

Joseph F. Cahill, Jr., Esq.

/s/

Charles Cummings, Esq.

/s/

Paul S. Ferber, Esq.

/s/

Michael Filipiak

Nancy Foster

/s/

Rosalyn L. Hunneman

/s/

Karen Miller, Esq.

/s/

Robert F. O'Neill, Esq.

/s/

Alan S. Rome, Esq.

Mark L. Sperry, Esq.

/s/

Ruth Stokes

/s/

Jane Woodruff, Esq.

Footnotes

FN1. DR 5-101(A) of the Code of Professional Responsibility provides that "[e]xcept with the consent of [the] client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own...personal interests."

FN2. Section 4.34 provides, in pertinent part, that an admonition is appropriate "when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests...and causes little or no actual or potential injury to a client."

FN3. Section 4.44 provides, in pertinent part, that "[a]dmonition is 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 to a client."