

121 PCB

[5-Sep-1997]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: PCB Files No. 94.17 and 94.44

DECISION NO. 121

This is a case involving neglect and incompetence. Two different clients were affected by respondent's misconduct. The case was presented to us by stipulated facts.

The Divorce/Worker's Compensation Case

The first complainant, DC, represented herself in her own divorce. In June of 1991 she obtained a temporary order requiring that her husband provide health insurance. Her husband subsequently lost his job and his health insurance coverage.

Health insurance was important to DC because she had medical problems as the result of a work injury. She paid the premiums herself until she could no longer afford to do so. In October she hired Respondent to represent her in the divorce. Soon thereafter, Respondent also undertook representation in the worker's compensation claim.

On December 11, 1991, after a contested divorce hearing, the court ruled in DC's favor. Ninety days after entry of the final order, DC's husband would have to pay \$2,200 to DC to cover medical expenses incurred when the required insurance coverage was not in place.

Respondent was obligated to submit the proposed divorce order to the family court. However, he forgot to do so and did not do so until three months later. The court promptly entered the final order. After some further difficulties not relevant here, DC eventually collected the monies owed.

Respondent also neglected DC's worker's compensation claim. Respondent entered an appearance in her case in March of 1992. Other than answering one of four letters sent by Blue Cross/Blue Shield about the case, Respondent did nothing over the next 17 months. DC notified Respondent that she had filed a complaint about him with this Board. Respondent then asked Labor and Industry to schedule a status conference.

Respondent subsequently withdrew from the case. The worker's compensation case was eventually settled in the fall of 1996, with DC receiving \$4,000.

By neglecting for three months to file his client's proposed final divorce order with the court and by neglecting to pursue actively his client's worker's compensation claim for 17 months, Respondent violated DR 6-101(A) (3) (neglect of a legal matter entrusted).

FELA Case

In January of 1987, Respondent undertook to represent OB, a former railroad

company employee who suffered a substantial hearing loss as a result of his work.

Respondent promptly filed a worker's compensation claim with the State of Vermont. The State soon advised him that such claims are potentially compensable under the Federal Employer's Liability Act (FELA) and not under the state worker's compensation law.

Respondent was not familiar with claims under FELA and apparently did not research that law. He erroneously believed there was a six-year statute of limitations.

Respondent neither prosecuted his client's claim under FELA nor advised or assisted his client to obtain alternate counsel within the statute of limitations.

In October of 1993, more than six years after Respondent undertook representation, OB's wife contacted the attorney for the railroad company. That lawyer told her that the statute of limitations on a FELA claim was three years and that the statute had tolled on her husband's claim on December 11, 1989.

OB fired Respondent and obtained new counsel who brought a malpractice action against Respondent. The case settled promptly. Respondent paid OB \$3,000 of his own funds; the balance was paid by the malpractice insurer.

By failing to research the applicable statute of limitations for a Federal Employer's Liability Act claim and by not pursuing actively his client's work-related injury in the proper federal forum within the statute, Respondent violated DR 6-101(A) (3).

Sanction

Normally, we would not hesitate to recommend a public sanction in a case of repeated and harmful neglect like this one. Protection of the public would compel us to do so. There are several mitigating factors here, however, that, taken as a whole, lead us to conclude that a public sanction is not appropriate.

Respondent has been practicing law, without any other disciplinary problems, since the mid-seventies. At some point he became mentally and physically impaired and this condition existed when some of these incidents of neglect occurred. In mid-1991, Respondent was able to bring the cause of this impairment under control.

Moreover, the neglect described here occurred between four and ten years ago. The instant complaints are all over four years old. Bar Counsel has received no valid complaints against him since that time. These disciplinary proceedings have taken four years to complete, apparently not due to the fault of Respondent.

A public reprimand at this late date would serve only to shame Respondent, not protect the public. Imposition of needless embarrassment is not the purpose of the lawyer disciplinary system.

We note that Respondent has substantial experience in the practice of law, had no selfish or dishonest motive, and has fully co-operated with Bar

Counsel. Respondent is remorseful and has engaged in interim rehabilitation. He has paid for personal damages to his client, OB. He has instituted law office procedures and case management systems to reduce or eliminate the likelihood of reoccurrence of such neglect in the future.

The Chair will issue a letter of private admonition.

Dated at Montpelier, Vermont this 5th day of September, 1997.

PROFESSIONAL CONDUCT BOARD

/s/

Robert P. Keiner, Esq. Chair

/s/

Joseph F. Cahill, Jr., Esq.

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