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[25-Jul-2000]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: PCB File No. 97.28

DECISION NO. 12

A Hearing in this matter was held before Hearing Panel Number Two, comprising Michael Filipiak, Lawrin Crispe and Douglas Richards, on June 28, 2000.

Present were Respondent and his attorney. Michael Kennedy, Deputy Disciplinary Counsel was present for the office of Disciplinary Counsel.

Before the Panel, for its consideration, was a Stipulation Of Facts, dated April 20, 2000, the Parties' Recommended Conclusions Of Law and

Jointly Recommended Sanctions, dated April 20, 2000, and Respondent's Partial Waiver Of Procedural Rights, dated April 20, 2000.

The Panel, first, considered Stipulation Of Facts and oral presentations by Respondent, his attorney and Michael Kennedy.

The Panel, next, considered the Parties' Recommended Conclusions Of Law and Jointly Recommended Sanctions, as well as oral presentations by the Respondent, the Respondent's attorney and Michael Kennedy.

The Respondent was admitted to the practice of law in the State of Vermont in 1981 and is currently on active status.

In January of 1993, clients of the Respondent suffered damages as the result of a fire, with the damages being to buildings, equipment and livestock.

The Respondent was retained in June of 1993 to assist in the recovery from an insurance company.

The Respondent worked diligently in his representation of his client, making recoveries on their behalf in July and September of 1993.

In the context of these recoveries, the insurance company refused to honor the damage claims for loss of the livestock.

Based upon the insurance company's refusal to honor the losses of the livestock, a civil action was commenced against the insurance company in January of 1996. The insurance contract between the Respondent's clients and the insurance company with a two year statute of limitations on its face set forth that the date for the filing of a claim had expired in January of 1995. The civil action as commenced by the Respondent was in January of 1996.

The liability insurance carrier for the Respondent's firm was immediately notified of the situation and ultimately there was a settlement of the outstanding claim for livestock with that insurance company.

Commencing in April of 1994, the Respondent suffered an onset of emotional turmoil, resulting from a personal crisis, which lasted until the Spring of 1995. During this period of time the Respondent had great difficulty focusing on his professional responsibilities. The Respondent's clients, during this period, suffered from lack of attention during which the limitations period under the policy had expired.

The Respondent at the times in questions, had substantial experience in the practice of law.

The Respondent has no prior disciplinary record.

The Respondent had no dishonest or selfish motive.

The Respondent experienced personal and emotional problems during a substantial portion of the time periods in question.

The Respondent's firm made a timely good faith effort to rectify the consequences of the misconduct.

The Respondent has cooperated fully in the disciplinary process and the Respondent is remorseful.

The Respondent's state of mind was one of neglect.

The Respondent confirmed that he and his firm have, since this incident, supplemented and adopted an enhanced case management system.

The Panel next considered the Parties' Recommended Conclusions Of Law and Jointly Recommended Sanctions, as previously filed and as presented at the time of the Hearing.

After consideration, the Panel concludes that Respondent violated DR 6-101(A)(3) of the Code of Professional Responsibility, which provides that "(a) lawyer shall not . . . [neglect] a legal matter entrusted to him."

By not noting and/or office-docketing the contractual statute of

limitations for future reference by not tending to his clients' interest for a period of two years and by missing the statute of limitations, Respondent is in violation of DR 6-101(A)(3).

On the matter of sanctions and as noted the Panel considered the parties' recommendations and oral argument.

It is the Decision of this Panel that the sanction in this matter is a private admonition.

Dated at Springfield, Vermont this 24th day of July, 2000.

HEARING PANEL NO. TWO

/s/

Douglas Richards, Chairman

/s/

Michael Filipiak

/s/

Lawrin Crispe