

15 PRB

[24-Oct-2000]

STATE OF VERMONT
DECISION 15
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: PRB File No. 2000.019

DECISION OF
PROFESSIONAL RESPONSIBILITY BOARD
HEARING PANEL NO. 5

This matter is before the panel on the Joint Recommendation of the parties as to Conclusions of Law and Sanction ("Joint Recommendation").

Essentially, the Joint Recommendation concerns an alleged violation of Rule 8.4(d) of the Vermont Rules of Professional Conduct relating to a charge of failure to respond to a request from the Office of Disciplinary Counsel without reasonable grounds for doing so.

Paragraph 3 of the "Facts" section of the Joint Recommendation states that the underlying ethics complaint alleges "among other things, that the Respondent had neglected a legal matter."

The "Conclusion" section of the Joint Recommendation states:

"For the reasons stated herein, the parties join to recommend that the Panel admonish the Respondent. The underlying ethics complaint will be resolved in the normal course of business."

On August 14, 2000, the Panel held a telephonic hearing with Michael Kennedy, Deputy Disciplinary Counsel, and John C. Holler, Esq., attorney for the Respondent. The reason for the hearing was the Panel's expressed concern about bifurcating the claims, that is, resolving the Rule 8.4 (d) complaint without also resolving the underlying claim of neglect of a legal matter.

Both parties indicated they had no objection to both claims being heard at the same time.

The Chair indicated that he would confer with Robert Keiner, Esq., Chair of the Professional Conduct Board, and make inquiry as to whether there was any Board policy which would guide the panel one way or the other, that is, in the direction of allowing bifurcation of the claims, or

hearing them together. The Chair has conferred with Mr. Keiner, who has indicated that the Board has adopted a policy of treating "Failure to Respond" cases as separate complaints.

Accordingly, the Panel hereby adopts the Joint Recommendation, and in accordance therewith, makes the following findings and conclusions of law and imposes the following sanction:

Findings

1. The Respondent is an attorney licensed to practice law in the State of Vermont.

2. The Respondent was admitted to practice in the State of Vermont in 1987.

3. In August of 1999, the Office of Bar Counsel (now Disciplinary Counsel) received an ethics complaint from an out-of-state attorney who alleged, among other things, that the Respondent had neglected a legal matter.

4. By letter dated August 19, 1999, the Office of Bar Counsel asked the Respondent to answer the complaint no later than September 14, 1999.

5. The Respondent neither filed an answer nor contacted the Office of

Disciplinary Counsel.

6. By letter dated December 27, 1999, the Office of Disciplinary Counsel asked the Respondent to answer the complaint no later than January 14, 2000.

7. The Respondent neither filed an answer nor contacted the Office of Disciplinary Counsel.

8. On February 10, 2000, the Office of Disciplinary Counsel filed a petition of misconduct charging the Respondent with violating the Vermont Rules of Professional Conduct by failing to respond to the requests to answer the ethics complaint.

9. On March 1, 2000, the Respondent admitted the allegations set forth in the petition of misconduct.

10. By letter dated March 1, 2000, the Respondent provided the Office of Disciplinary Counsel with an answer to the ethics complaint that had been filed by the out-of-state attorney.

Conclusions of Law

Rule 8.4(d) of the Vermont Rules of Professional Conduct prohibits a lawyer from engaging in conduct that is prejudicial to the administration

of justice. The Professional Conduct Board has held that the failure to reply to requests from bar counsel is prejudicial to the administration of justice. In *Re Blais*, 1 V.P.C.R 226, 227 (1997) (citing *In Re Bailey*, 157 Vt. 424 (1991)). Moreover, discipline may be imposed upon a lawyer who refuses to respond to a request from the Office of Disciplinary Counsel without reasonable grounds for doing so. See, A.O. 9 Rule 7(d).

Sanction

In Vermont, the Supreme Court has stated that it is appropriate to use the ABA Standards For Imposing Lawyer Sanctions in determining the appropriate sanction in a disciplinary case. In *Re Berk*, 157 Vt. 524, 532 (1991) (citing *In Re Rosenfeld*, 157 Vt. 537, 546-47 (1991)). Factors relevant to the determination are: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury; and (4) any mitigating and/or aggravating factors. In *Re Berk*, 157 Vt. at 532. An analysis of these factors indicates that an admonition is appropriate.

1. The Respondent violated the duty to cooperate with the disciplinary system.

Vermont lawyers have a duty to cooperate with the disciplinary system. Indeed, the system "is essentially a system of self-regulation that requires the co-operation of all members of the bar if it is going to work fairly and efficiently." In *Re Blais*, 1 V.P.C.R. at 227-28. The Respondent violated that duty by neglecting to respond to the requests from

the Office of Disciplinary Counsel.

2. The Respondent's State of Mind

The Respondent acted negligently in failing to respond to the requests from the Office of Disciplinary Counsel. There is no evidence to support a finding that the Respondent intended to avoid disciplinary investigation.

3. The Respondent's negligence caused little injury to the disciplinary system.

The Respondent's negligence did not cause a great deal of injury to the disciplinary system. Moreover, the complainant was not injured by the Respondent's failure to answer the Office of Disciplinary Counsel's requests for information.

4. Aggravating & Mitigating Factors

There are no aggravating factors. In mitigation, the Respondent does not have a prior disciplinary history. See ABA Standards For Imposing Lawyer Sanctions, § 9.32(a). Moreover, the Respondent has expressed remorse for his failure to respond to Disciplinary Counsel's requests. See ABA Standards for Imposing Lawyer Sanctions, § 9.32(l).

5. The Sanction

Under the ABA Standards, an admonition "is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding." See ABA Standards for Imposing Lawyer Sanctions, § 6.24. An admonition is appropriate here. The Respondent's single instance of negligence caused little or no actual or potential injury to a party or to this disciplinary proceeding.

Accordingly, the Panel hereby issues an Admonition to the Respondent pursuant to A.O.9, Rule 8(A)(5) for failure to respond to the requests of Disciplinary Counsel, in violation of Rule 8.4(d) of the Vermont Rules of Professional Conduct.

DATED this 23rd day of October, 2000. (Filed on October 24, 2000)

/s/

Mark L. Sperry, Esq.

Hearing Panel No. 5 Chair

/s/

Jane Woodruff, Esq.

Panel Member

/s/

Sarah G. Board

Panel Member