

[15-Jan-2002]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: PRB File No. 2000.167

Decision No. 30

The Hearing Panel having reviewed the filings, including the Request for Approval of an Admonition by Disciplinary Counsel and the Stipulation of Facts, and having considered the same, makes the following Statements of Facts and Conclusions of Law and based on the same concludes that on the appropriate sanction in this matter is the approval of an imposition of an admonition by Disciplinary Counsel.

Statement of Facts

1. The Respondent is an attorney licensed to practice law in the State of Vermont.
2. On June 10, 1999, the Respondent entered an appearance as executor in a probate case.
3. The will was allowed after a contested hearing on January 25, 2000.
4. On February 29, 2000, the Probate Court issued Letters Testamentary reflecting the Court's decision to appoint the Respondent's client as executor. That day, the Court sent the letters to the Respondent. The Respondent received them the next day.
5. The Respondent did not forward the Letters Testamentary to Respondent's client for six weeks.
6. In March of 2000, the client complained to the Probate Court that he had not received his appointment and that the Respondent was not returning his calls.
7. The Court Register called the Respondent twice. Respondent did not return the calls.
8. By letter dated March 16, 2000, the Probate Judge instructed the Respondent that if Respondent no longer wanted to represent the client, Respondent should file a motion to withdraw and should return the Letters Testamentary to the Court so that they could be forwarded to the client.
9. The Respondent did not respond to the Probate Judge's letter.
10. On March 28, 2000, the Probate Judge called the Respondent and left a message on Respondent's answering machine.
11. On March 29, 2000, the Respondent called the Probate Judge and told the judge that Respondent intended to continue to represent the client and that Respondent would send him the papers on March 31.

12. On April 6, 2000, the client called the Court to complain that he still had not received his papers from the Respondent and that Respondent still was not returning his calls.

13. Without the Letters Testamentary, the client was unable to carry out his duties as executor and was unable to gain official control over the estate's assets.

14. In April of 2000, the Respondent sent the paperwork to the client and asked him if he wanted Respondent to continue to represent him in the post-judgment proceedings. The client did not contact the Respondent.

15. In August of 2000, the Respondent called the Court and learned that the client was representing himself.

16. The assets of this estate were not harmed. A Special Administrator had been appointed. Moreover, although he did not have the Letters Testamentary, the client was, in fact, in possession of most of the estate's assets.

17. On January 7, 2000, the Respondent was offered a job. Respondent accepted the offer and started working three days later. Respondent inherited 52 cases, many of which involved clients who were incarcerated on felony charges.

18. Initially, the Respondent was only supposed to work thirty hours a week at the new job. The workload, however, was much greater than anticipated and prevented Respondent from devoting adequate attention to shutting down Respondent's private practice. During February and March of 2000, Respondent had several jury trials, jury draws and contested hearings.

19. The Respondent does not have a prior disciplinary record.

20. The Respondent has cooperated with the disciplinary investigation.

Conclusions of Law

Respondent violated Rule 1.3 of the Vermont Rules of Professional Conduct by failing to act with reasonable diligence and promptness while representing Respondent's client in a probate matter.

Sanctions

In Vermont, it is appropriate to refer to the ABA Standards For Imposing Lawyer Sanctions in determining the appropriate sanction in a disciplinary case. In *Re Warren*, 167 Vt. 259, 261 (1997); In *Re Berk*, 157 Vt. 524, 532 (1991) (citing *In Re Rosenfeld*, 157 Vt. 537, 546-47 (1991)). In this case, the ABA Standards indicate that an admonition is appropriate. Moreover, the facts meet the criteria, as set out in Administrative Order 9, for the imposition of an admonition.

1. The ABA Standards Call For An Admonition.

In cases involving a lack of diligence, an admonition is "generally 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." ABA Standards for Imposing Lawyer Sanctions, Section 4.44. An admonition is appropriate here.

The Respondent did not act with reasonable diligence when representing the client. Respondent did not provide him with the Letters Testamentary in a prompt fashion. Nor did Respondent diligently respond to requests made by the client and the Court.

The Respondent's lack of diligence caused little or no actual or potential injury. A special administrator protected the estate's assets and, in any event, the Letters Testamentary provided the client with official access to assets that were already in his possession. In that Respondent's lack of diligence caused little or no actual or potential injury, Section 4.44 indicates that an admonition is appropriate.

2. The Facts Meet Rule 8's Criteria For An Admonition.

An admonition is only appropriate when three facts are present: (1) the misconduct is minor; (2) little or no injury results; and (3) there is little likelihood that the lawyer will make the same mistake again. A.O. 9, Rule 8(A)(5). Viewed in context, the Respondent's misconduct was relatively minor. As stated above, the client's interests were not harmed. Based upon Respondent's cooperation and Respondent's assurances that there is little likelihood that the situation will repeat itself, this is a case in which an admonition would be appropriate.

3. Aggravating & Mitigating Factors.

There are no aggravating factors. In mitigation, the Respondent does not have a prior disciplinary record. ABA Standards for Imposing Lawyer Sanctions, Section 9.32(a). Also, the Respondent has exhibited a cooperative attitude towards this proceeding. ABA Standards for Imposing Lawyer Sanctions, Section 9.32(e).

Conclusion

For the reasons stated herein, the hearing panel approves an admonition by Disciplinary Counsel.

Dated: December _____, 2001

Burlington, Vermont

FILED JANUARY 15, 2002

Robert F. O'Neill, Esq. - HP Chair

S. Stacy Chapman, III, Esq.

Ruth S. Stokes