

[17-Sep-2002]

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD

Decision No. 40

In re: PRB File No. 2002.201

On August 5, 2002 the parties filed a stipulation of facts as well as joint recommendations on sanctions and conclusions of law. The Respondent, who was represented by counsel, also waived certain procedural rights including the right to an evidentiary hearing. The panel accepts the facts and recommendations and orders that Respondent be privately admonished by Disciplinary Counsel for failure to promptly comply with his client's reasonable request for an accounting of his fee in violation of Rule 1.4(a) of the Vermont Rules of Professional Conduct.

Facts

In January of 2000 the complainant, DH, retained the Respondent to defend him on charges of DLS and DUI including a contested civil suspension related to the DUI. DH provided the Respondent with a \$2,000 retainer which respondent asserted would cover all of his fees, including a trial. DH eventually pled guilty and was fined \$300 plus various surcharges. DH wrote to Respondent in May of 2001 and again in December of 2001 requesting an accounting of his retainer. Respondent did not answer either of DH's letters. On April 17, 2002, DH filed an ethics complaint against the Respondent. On May 7, 2002, the Respondent provided DH with an accounting. The accounting showed that the Respondent had expended time and incurred expense in an amount greater than the \$2000 original retainer. Based on the terms of the original retainer agreement, Respondent told DH that this difference need not be paid. The Respondent has cooperated fully with the investigation of DH's ethics complaint.

The Respondent is an attorney licensed to practice law in the State of Vermont. He was admitted to practice law in Vermont in 1970 and has never been disciplined for violating the ethics rules.

Conclusions of Law

Rule 1.4(a) of the Vermont Rules of Professional Conduct requires a lawyer to "promptly comply with reasonable requests for information." DH paid the Respondent a retainer of \$2,000 to represent him which the Respondent asserted would cover all of his fees. Once the representation ended, DH wrote the Respondent two letters asking him to explain how this money had been spent. The requests for an accounting were reasonable. The Respondent took nearly a year to provide DH with an itemized bill. The evidence clearly and convincingly establishes that the Respondent did not promptly comply with DH's reasonable requests for information, and the Panel concludes that the Respondent violated Rule 1.4(a) of the Vermont

Rules of Professional Conduct.

#### Sanctions

The Panel agrees that admonition by Disciplinary Counsel is the appropriate sanction in this matter.(FN1) It is in accord with the ABA Standards for Imposing Lawyer Sanctions and previous Vermont disciplinary cases.

Failure to promptly communicate with a client is covered under §4.4 of the ABA Sanctions (FN2), which provides that "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."

Respondent concluded the criminal matter in May of 2001 but did not provide an accounting to DH until nearly a year had passed and not until DH had filed a complaint with the Professional Responsibility Program. A more prompt accounting from Respondent would have saved DH from filing a complaint, but this delay caused little or no harm to DH. The accounting showed that the Respondent did not owe any money to DH. Rather, DH's account stood at an amount above the original retainer of \$2000, and the Respondent appropriately followed the original retainer agreement by waiving payment of the difference. DH has not raised any question about the reasonableness of the fee.

Neither aggravating nor mitigating factors warrant a departure from an admonition. In aggravation, the Respondent has substantial experience in the practice of law and should have known of his obligation to respond promptly to DH's billing questions. ABA Standards, § 9.22(i). This is tempered by the following mitigating factors; Respondent has no disciplinary record, ABA Standards, § 9. 32(a); there is no evidence of a dishonest or selfish motive; ABA Standards, § 9. 32(b); and Respondent has cooperated with the disciplinary investigation. ABA Standards, § 9.32(e).

In 1991, the Professional Conduct Board admonished a lawyer under similar circumstances.(FN3) In that case, the lawyer failed to respond to

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client's requests for an itemized bill and did not do so until after a complaint was filed. When a bill was finally issued, there was an error which resulted in an overcharge. If anything, the facts in the present case are less severe than those in the 1991 case. While there was a delay in the accounting, it was accurate and did not reflect any monies due back to DH.

#### Conclusion

For these reasons the Panel approves the imposition of an Admonition by Disciplinary Counsel.

Dated 9/17/02

Hearing Panel No.8

/s/

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Eileen Blackwood, Esq.

/s/

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Peter Bluhm, Esq.

/s/

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Patricia Coates

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Footnotes

FN1. This sanction may only be imposed if the respondent consents to the sanction, the hearing panel approves and no formal charges have been filed. A.O.9, Rule 8(5) (a). All of these criteria are met.

FN2. ABA Standards for Imposing Lawyer Sanction, Appendix 1.

FN3. In Re:PCB No. 17, File No. 90.20,1 Vt.P.C.R. 24 (Sept. 27,1991).