

53 PRB

[14-Apr-2003]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: Lance Harrington, Esq.

PRB File No. 2002.144

Decision No. 53

On January 9, 2003, the parties filed a stipulation of facts as well as conclusions of law and recommendations on sanctions. 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 suspended from the practice of law for three years for commission of a serious crime involving deceit and misrepresentation which adversely reflects on his fitness to practice law in violation of DR 1-102(A)(3) of the Code of Professional Responsibility and Rule 8.4(b) of the Vermont Rules of Professional Conduct.

Facts

Between March of 1996 and August of 2001, Respondent represented claimants before the Social Security Administration Office of Hearings and Appeals (SSA). By statute attorney's fees in these matters may not exceed the lesser of either \$4,000 or 25% of the claimant's past due benefits. 42 U.S.C. § 406(a)(2)(A).

In eight cases before the SSA, Respondent knowingly submitted false information to the SSA. He stated that his fee agreements complied with federal law when he knew that they did not. In five cases Respondent entered into fee agreements in which each client agreed to pay a flat fee equal to 25% of the past due benefits received, an amount which exceeded \$4,000. In three cases Respondent entered into fee agreements in which each client agreed to pay \$3,000, an amount which exceeded 25% of the past due benefits.

In May of 2002, the United States District Attorney for the District of New Hampshire filed an information charging that Respondent "knowingly and willfully falsified, concealed and covered up by trick, scheme and device material facts pertaining to fee agreements" in eight matters before the Social Security Administration in violation of 18 U.S.C. § 1001. Penalties for this offense can include a fine and imprisonment for not more than 5 years, or both. Respondent pled guilty to that offense, was sentenced to two years of probation, and was ordered to make restitution in

the amount of \$32,565.12.

Respondent contends that he always disclosed the law governing fee agreements to potential clients. He informed Disciplinary Counsel that, in some cases, he told a potential client that he could not afford to take the case due to the limits that the government put on fees. He reported that some clients expressed a willingness to pay more than the government might otherwise require. He reported that many clients were not as concerned with their past due benefits as they were with being able to continue to receive benefits in the future. These facts were borne out when Disciplinary Counsel contacted several clients who confirmed that Respondent had disclosed to them the law governing fee agreements. The clients also confirmed that they had voluntarily agreed to pay Respondent more than he was statutorily entitled to receive.

Several months before the plea was entered, Respondent voluntarily disclosed to Disciplinary Counsel the existence of the federal investigation. He cooperated with Disciplinary Counsel by taking steps to wind up his practice in a manner designed to fully protect his clients' interests. Respondent hired an experienced attorney to inventory his client files, and his practice is now closed.

During the same period of time, Respondent was affected by serious health problems requiring stressful chemical therapy. The treatment proved effective, but Respondent began experiencing side effects from the

treatment including depression, fatigue, pain, and a perceived addiction to the medication prescribed for the pain.

In addition, Respondent suffers from Post Traumatic Stress Syndrome (PTSD). He served as a combat soldier in Vietnam and, in 1979, was diagnosed with PTSD. For the next several years, he struggled with depression and substance abuse issues related to the PTSD. Currently, he carries a 70% permanent impairment rating as a result of the PTSD.

Respondent recognizes that it was wrong for him to enter into the fee agreements that led to the federal investigation. He also recognizes that it was wrong for him to lie to the government about the nature of his fee agreements.

Respondent is an attorney licensed to practice law in Vermont. He was admitted to practice law in Vermont in October of 1989. Respondent has no prior disciplinary history. He has cooperated with Disciplinary Counsel throughout the investigation of this matter and has made restitution as required by the United States District Court. He closed his practice in late 2001.

Conclusions of Law

Respondent is charged with three separate violations. Because this misconduct occurred both prior to and after September 1, 1999, he has been

charged with violating both the Code of Professional Responsibility, which was in place prior to that date, and the Vermont Rules of Professional Conduct that superceded it. The Panel accepts the Recommended Conclusions of Law and finds violations of both the Code of Professional Responsibility and the Vermont Rules of Professional Conduct under each charge.

1. Conduct Involving a Serious Crime

Both the Code and the Rules prohibit attorneys from engaging in illegal conduct involving a serious crime. DR 1-102(A)(3), V.R.P.C. 8.4(b). Both disciplinary systems define any felony as a serious crime. The Respondent pled guilty to making false statements in violation of 18 U.S.C. § 1001. The offense is punishable by up to five years in prison and, as such, is a felony. 18 U.S.C. § 3559(a)(5). The Panel finds respondent's submission of false documents to the SSA violated DR 1-102(A)(3) and Rule 8.4(b).

2. Conduct Involving Dishonesty, Deceit, & Misrepresentation

Both the Code and the Rules prohibit lawyers from engaging in conduct involving dishonesty, deceit, or misrepresentation. DR 1-102(A)(4); V.R.P.C. 8.4(c). The Respondent knowingly submitted false paperwork to the SSA stating that his fee agreements complied with the law when, in fact, he knew that they did not. In so doing, the Respondent engaged in conduct involving dishonesty, deceit, and misrepresentation in violation of DR

1-102(A)(4) and Rule 8.4(c).

3. Conduct Adversely Reflecting on Respondent's Fitness to Practice Law

Both the Code and the Rules prohibit attorneys from engaging in conduct that adversely reflects on their fitness to practice law. DR 1-102(A)(7); V.R.P.C. 8.4(h). A critical component of the legal system is the expectation that lawyers will counsel their clients to act within the bounds of the law, and that they will provide courts and other tribunals with truthful information. While the Panel recognizes that Respondent informed his clients of the law regarding fees, this action does not relieve him of the responsibility to follow laws created for his clients' protection, nor does it excuse his providing false information to the SSA. Respondent's conduct adversely reflects on his fitness to practice law, and the Panel finds that Respondent violated DR 1-102(A)(7) and Rule 8.4(h).

Sanctions

The Panel accepts the recommendation of Respondent and Disciplinary Counsel that Respondent be suspended from the practice of law for a period of three years. In accepting the recommendation, the Panel is guided by several factors. The Preface to the ABA Standards for Imposing Lawyer Sanctions states that the standards are intended as "a model which can be used initially to categorize misconduct and to identify the appropriate sanctions. The discussion as to the effect of any aggravating or

mitigating circumstances should come only after this initial determination of the sanction."

Section 5.1 of the ABA Standards deals with a lawyer's "Failure to Maintain Personal Integrity," and provides for suspension or disbarment in cases where the lawyer engages in criminal conduct. It provides that:

5.11 Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is generally appropriate when:

Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

Criminal conduct involving misrepresentation can result in either suspension or disbarment. Respondent's plea of guilty to making a false statement adversely reflects on his fitness to practice law and could bring this case within the confines of section 5.11 and disbarment. We decline to impose disbarment because Respondent's conduct, while criminal, is not as serious as that seen in disbarment cases. In addition, there are mitigating facts that point to the lesser sanction.

In looking at the cases cited in the commentary to section 5.11, disbarment was imposed for multiple counts of income tax evasion, subornation of perjury and murder. (citations omitted). We find Respondent's conduct closer to those cases cited in the commentary to the suspension portion of this rule. They include a three year suspension for contributing to the delinquency of a minor and possession of a controlled substance, an indefinite suspension for possession of marijuana, and a three year suspension for child molesting (citations omitted).

There is no large body of Vermont disciplinary case law involving criminal activity by lawyers, but we believe that the recommended sanction of suspension is in line with those cases. The Supreme Court has generally

reserved disbarment for serious criminal activity involving fraudulent behavior and substantial harm. Respondent here has not misused client funds, unlike *In re Mitiguy*, PCB Decision No.59, 9-30-93, where the attorney was convicted of six felonies involving misappropriation of client trust funds. Similarly, although there were multiple instances of misconduct here, the underlying behavior is less serious than both *In re Abel*, PCB Decision No. 117, 2-14-97, where the attorney embezzled large sums from his law firm, and *In re Palmisano*, PCB Decision No. 105, 6-7-96, where the attorney was charged with five cases of fraud, deceit and misrepresentation.

Substantial suspension has been imposed for other instances of misrepresentation. A three year suspension was imposed in *In re Hunter*, PCB Decision No. 110, 10-4-96, for substantial neglect of clients and misappropriation of client funds, and *In re Wysolmerski*, PCB Decision No. 112, 12-6-96, for conduct involving a pattern of deceit and misrepresentation. A similar suspension was imposed in *In re Daly*, PRB Decision No. 49, 4-7-2003, for an attorney's failure to reveal on his bar application a consumer fraud complaint against him and an inquiry from the Committee on Professional Standards, the body responsible for prosecuting violations of ethical rules in New York State. In that case the Panel was also faced with a provision of the ABA Standards suggesting that disbarment was the appropriate remedy. The Panel ultimately determined, as we have, that suspension was appropriate based upon an analysis of the relevant case law.

The mitigating factors present also suggest that suspension is the more appropriate discipline. Respondent has made full restitution as required by the court. ABA Lawyer Standards §9.32(d). He has no prior disciplinary record, ABA Lawyer Standards §9.32(a), has cooperated fully with Disciplinary Counsel, ABA Lawyer Standards §9.32(e), and has been subjected to other penalties under the criminal law. ABA Lawyer Standards §9.32(k).

The Panel believes that a three year suspension adequately protects the public in that Respondent will be prohibited from practicing law and will have to petition for readmission should he desire to return to practice. Under the Court's rules, Respondent may not be reinstated until he has demonstrated by clear and convincing evidence that (1) he has the moral qualifications, competency, and learning required for admission to practice law in this state; (2) the resumption of his practice will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive to the public interest; and (3) he has been rehabilitated. A.O.9, Rule 20D.

Because Respondent has already closed his practice, we accept the recommendation of Disciplinary Counsel that his period of suspension should be measured from January 9, 2003, the date on which the stipulation of facts, conclusions of law and recommendations on sanctions were filed.

Order

Respondent is hereby SUSPENDED from the practice of law for a period of three years commencing January 9, 2003. It is further ordered that Respondent comply with the provisions of A.O.9, Rule 23 concerning the duties of a lawyer whose license to practice law has been suspended.

Dated: April 14, 2003

FILED APRIL 14, 2003

Hearing Panel No. 8

/s/

Eileen M. Blackwood, Esq.

/s/

Peter Bluhm, Esq.

/s/

Patricia Coates