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[Filed 12-May-2005]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: Vaughan H. Griffin, Jr. Esq.
PRB File No. 2004.122

Decision No 76

The parties filed a stipulation of facts as well as conclusions of law and a recommendation on sanctions. The Respondent also waived certain procedural rights including the right to an evidentiary hearing. The panel accepts the facts and recommendations and orders that the Respondent be suspended from the practice of law for a period of 30 months for forging a fee agreement in violation of Rule 8.4(c) of the Vermont Rules of Professional Conduct.

Facts

In 1998 AM and her son retained Respondent to represent them in connection with injuries sustained in an automobile accident in which they were not at fault. In 2002 Respondent settled AM's claims against the other driver for the policy limits. Though there was no written fee agreement, Respondent took a fee of one-third of the settlement amount with his client's consent. The damages exceeded the limit of the other driver's policy and Respondent agreed to represent AM in an underinsured motorist claim against her own carrier. Again there was no written fee agreement, and at no time did Respondent and AM discuss how Respondent would be compensated in the event that the attorney client relationship was terminated prior to resolution of the underinsured motorist claim.

AM did indeed terminate the professional relationship prior to its resolution. Upon receiving notice of the termination, Respondent wrote to AM advising her that "there is still a matter of settling my fees for work done in your files to date." AM responded that she believed that her account had been "paid in full" at the time of the initial settlement.

In 2003, AM retained attorney Lawrence Behrens to represent her. He and Respondent discussed the case, and subsequently Respondent wrote to Attorney Behrens stating "I have fees due for my time, both per agreement and quantum meruit." On August 27, 2003, Respondent delivered the file to Attorney Behrens, including with it a bill for his services in the amount of $2,360.25.

Respondent also delivered with the file a document purporting to be a fee agreement between himself and AM. The agreement is dated after AM had fired Respondent and retained Attorney Behrens, and the signature purporting to be that of AM was forged by Respondent.

Respondent is currently 60 years old. He was admitted to the Vermont Bar in 1970 and is currently licensed to practice. In 1993 and 1977 Respondent was admonished for misconduct which is unrelated to the

misconduct in this case.

Since May of 2002 Respondent has been under treatment by a psychiatrist who believes that Respondent suffers from Post-Traumatic Stress Disorder and Major Depression and that these conditions existed at the time of misconduct in this case.

Conclusion of Law

Rule 8.4(c) provides that "[i]t is professional misconduct for a lawyer to . . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation," It requires no analysis to conclude that the forging of a fee agreement with a client violates this rule. The parties have stipulated to a violation and the panel so concludes.

Sanctions

The forging of a client's signature by an attorney for his own financial gain is a serious matter which goes to the heart of the trust and confidence that should characterize the attorney-client relationship. The panel has accepted the recommendation for a thirty month suspension, but not without considering whether or not disbarment would be a more appropriate sanction.

In reaching our decision to accept the recommendation, we have looked at the ABA Standards for Imposing Lawyer Sanctions and Vermont case law.

ABA Standards for Imposing Lawyer Sanctions

The Vermont Supreme Court has long approved the use of the ABA Standards in determining the appropriate sanction. "When sanctioning attorney misconduct, we have adopted the ABA Standards for Imposing Lawyer Discipline [sic] which requires us to weigh the duty violated, the attorney's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating or mitigating factors." In re Andres, Supreme Court Entry Order, August 6, 2004.

Section 4.6 of the ABA Standards applies when a lawyer deceives a client. Disbarment is called for "when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client." ABA Standards, § 4.61. "Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client." ABA Standards, § 4.62.

Respondent's conduct appears to fall more closely within the disbarment standard. It was clearly intentional and was carried out for the purpose of securing payment of a fee which would have benefitted Respondent. While there was no actual injury to the client, the potential for injury was present.

We consider the fact that Respondent was suffering from Major Depression and Post Traumatic Stress Disorder, to be a substantial mitigating factor. ABA Standards, § 9.32(c). In aggravation, Respondent has substantial experience in the practice of law. ABA Standards, § 9.22(i), and a prior disciplinary history, ABA Standards, § 9.22(a), though the discipline is unrelated to the present misconduct and one instance is

very remote. ABA Standards, § 9.32(m).

We do not need to reach the question of whether the mitigating factor removes this matter from the realm of disbarment, because an analysis of recent Vermont cases persuades us that the lengthy suspension agreed to is in line with these decisions.

Vermont Case Law

In In re Heald the attorney was suspended for three years for failure to file state income tax returns, making a false statement on his licensing application and failure to cooperate with disciplinary counsel. Despite the serious nature of the offenses and the presence of the aggravating factor of substantial prior discipline, the Hearing Panel rejected disbarment as a sanction. PRB Decision No. 67, at 7 (June 15, 2004).

In re Harrington, involved the charging of fees in excess of statutory limits. A three year suspension was imposed in this case. The Hearing Panel rejected disbarment stating that "[t]he Supreme Court has generally reserved disbarment for serious criminal activity involving fraudulent behavior and substantial harm." PRB Decision No 53 at 6, (April 14, 2003).

In In re Daly a three year suspension was imposed for making a false statement on an application for admission on motion. Daly failed to disclose the fact that he was the defendant in a consumer fraud complaint and that his firm was the subject of an inquiry by the New York Committee on Professional Standards. PRB Decision No. 49, (March 7, 2003). Disbarment was again rejected by the Hearing Panel, which noted that this sanction was generally reserved for felonies and cases involving embezzlement and misappropriation.

The facts in this case bring it clearly in line with these decisions. While disbarment is not appropriate, a lengthy suspension clearly is. We agree with the Daly Panel which noted that "our judicial system is premised on the fact that an attorney's relationships with courts, clients and fellow members of the bar will be truthful and candid. An attorney's failure to meet this standard . . . is of grave concern." Daly, 7. The forging of a fee agreement for the attorney's personal gain harms not only the client but serves to erode the respect and confidence of the public in lawyers and the legal system.

Disciplinary sanctions are not intended to punish lawyers, but rather they are intended "to protect the public from harm and to maintain confidence in our legal institutions by deterring future misconduct." In re Hunter, 167 Vt. 219, 226 (1997). The thirty month suspension recommended in this matter will serve both of these goals. In order to be reinstated following the suspension, Respondent will have to meet the substantial evidentiary burden of A.O.9, Rule 22.D which provides that:

> The respondent-attorney shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency, and learning required for admission to practice law in the state, and the resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest and that the respondent-attorney has been

rehabilitated.

During the period of suspension, and until Respondent has met this burden, the public will be protected.

Order

Vaughan H. Griffin, Jr. is suspended from the practice of law for a period of thirty months commencing on the later of thirty days from the date of this opinion or June 1, 2005. Respondent shall promptly comply with the provisions of Rule 23 of A.O. 9.

Dated May 12, 2005
FILED 5/12/05

Hearing Panel No. 2

/s/
_____
Lawrin P. Crispe, Esq.
Chair

/s/
_____
Jesse M. Corum IV, Esq.

/s/
_____
Michael Filipiak