

121 PRB

[Filed 9/17/09]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re: PRB File No. 2009.117

Decision No. 123

The parties filed a Stipulation of Facts and Joint Recommendations as to Conclusions of Law and Sanctions. The Hearing Panel accepts the stipulated facts and the recommendations and orders that Respondent be admonished by Disciplinary Counsel for failure to withdraw from representing an individual charged with a crime when he had previously consulted with the victim and her family about the same crime, in violation of Rules 1.9(a) and 1.7(b) of the Vermont Rules of Professional Conduct.

Facts

Respondent, who was admitted to the Vermont Bar in 1997, is a staff attorney in a County Public Defender's Office. In March 2006, KG's parents contacted Respondent telling

him that their daughter had been a victim of a crime, but did not say which daughter. Respondent told them how to file a complaint with the police, and also spoke with representatives of the Department of Corrections, the State's Attorney's office and the local police department on behalf of KG's family.

In July of 2006, GV was arraigned in the Vermont District Court on a charge of lewd and lascivious conduct in violation of 13 V.S.A. §2601. The State alleged that the offense had occurred on March 6, 2006, and that the victim was KG. At arraignment the court set bail and imposed conditions including a condition that GV have no contact with KG.

Respondent did not appear at the arraignment, but on July 20, 2006, he was appointed to represent GV. The case was the same case about which KG's parents had contacted him in March of 2006.

As of July 2006, Respondent's office had represented several members of KG's family, and Respondent had previously represented at least four of KG's relatives in at least eleven different cases in both Family and District Court. As a result, the lawyers in Respondent's office had extensive knowledge of the family's history.

In December 2006, CG, KG's sister, was charged with simple assault. Respondent was assigned to represent her. KG was a defense eyewitness in CG's case.

In January 2007, respondent filed a motion to withdraw from representation of GV. The court granted the motion and in its entry wrote that the Court "cannot understand why this request is so delayed if counsel knew of the facts . . . even before arraignment."

In April 2007, GV was found guilty as charged and sentenced to 30-40 months to the custody of the Commissioner of Corrections. GV appealed his conviction which was affirmed in March 2009. The Court did not focus on Respondent's conflict of interest in affirming GV's conviction, other than to note that the conflict was real. The Court did not find that Respondent's withdrawal caused any undue delay or prejudice.

Between the date that he was appointed to represent GV and the date that he filed his motion to withdraw, Respondent received and reviewed discovery material that made it clear that the victim of the assault was KG.

There is no evidence that Respondent betrayed or divulged any confidences belonging to KG and her family while representing GV, and there is no evidence that he betrayed or divulged any of GV's confidences to KG or her family.

Respondent cooperated fully with Disciplinary Counsel in the investigation of this matter and has no previous disciplinary record.

Conclusions of Law

Rule 1.9(a) of the Vermont Rules of Professional Conduct provides that:

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interest of the former client unless the former client consents after consultation.

KG was the victim of the crime committed by GV, and GV's interests were materially adverse to those of KG and her family. Since Respondent did not recognize the conflict, he

never asked KG's parents to consent to his representation of GV. Respondent's conduct violates Rule 1.9(a) of the Vermont Rules of Professional Conduct.

Rule 1.7(b) of the Rules provides that:

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibility to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after consultation. . . .

Respondent's representation of GV was materially limited by the duty of loyalty and confidentiality that Respondent owed to KG and her parents as a result of providing them with advice and assistance when KG's parents called to report that their daughter had been a victim of a crime.

Since Respondent did not recognize the conflict, he did not fully consider whether his representation of GV would be materially limited by his responsibility to KG's family and thus violated Rule 1.7(a).

Sanctions

The parties have recommended that admonition by disciplinary counsel is the appropriate sanction in this matter. Under Administrative Order 9, Rule 8(A)(5)(b) admonition is appropriate "[o]nly in cases of minor misconduct, where there is little or no

injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer. . . ."

In this case, there is no evidence that Respondent betrayed any confidences of either client, and there is no evidence that his withdrawal caused any delay or prejudice.

In addition, admonition is consistent with the ABA Standards for Imposing Lawyer Sanctions. Section 4.34 provides that: [a]dmonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client . . . will adversely affect another client, and causes little or no actual or potential injury to a client."

While there was no actual injury in this case, there is always the potential for injury when an attorney is involved in representing clients in related matters. We do not, however, believe that this potential alone is enough to preclude imposing admonition here. We have also considered the mitigating factors present. Respondent has fully cooperated with Disciplinary Counsel's investigation, *ABA Standards* § 9.32(3), and has no prior disciplinary record. *ABA Standards* §9.32(a).

Order

For the foregoing reasons we accept the recommendation of the parties and order that Respondent be admonished by Disciplinary Counsel for violation of Rules 1.9(a) and 1.7(b) of the Vermont Rules of Professional Conduct.

Dated: 9/17/09

Hearing Panel No. 5

/s/

Robert Keiner, Esq., Chair

/s/

Elizabeth H. Miller, Esq.

/s/

Kim Montgomery, D.V.M.