

131 PRB

[Filed 17-May-2010]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re PRB File No. 2010.143

Decision No. 131

The parties have filed a Stipulation of Facts and Recommended Conclusions of Law and Proposed Sanctions. The Panel accepts the Stipulation and Recommendations and orders that Respondent be admonished by Disciplinary Counsel for failure to provide a written title opinion in a timely manner and for failure to respond to his client's requests for information in violation of Rules 1.3 and 1.4 of the Vermont Rules of Professional Conduct.

Facts

Respondent represented the purchasers of a residential real estate property. Prior to the closing on August 28, 2009, Respondent completed his title search, but did not provide a written title opinion at closing.

In October of 2009, the purchasers learned that a main municipal water line ran through their property, directly under the garage. They were concerned that the presence of the water line would diminish the value of their property and that it would interfere with planned improvements. On October 16, 2009, the clients called Respondent for advice about the water line, leaving a message on his phone asking for a call back. On October 19, Respondent returned the call. He reached the client's answering machine and left a message.

On October 20, the client called his office again and left a message with an employee asking for a return call. They called again two days later, speaking with Respondent's assistant and again asking for a call back.

On November 4, 2009, the client sent Respondent an email asking for a call about the water line and on November 6, the client mailed a copy of the email to Respondent.

Other than the message he left after the first phone call, Respondent did not answer any of the calls or the email.

Sometime in the fall of 2009 Respondent went to the town clerk's office to update the title opinion. After completing the update, Respondent intended to prepare the written title opinion and send it to the clients but he did not do so and on December 29, 2009, the clients filed a written complaint with the Office of Disciplinary Counsel.

On February 19, 2010, Respondent provided the clients with the written title opinion.

Respondent was admitted to practice law in Vermont in 1973, and thus has substantial experience in the practice of law. Mitigating factors present are, absence of prior discipline, cooperation with the disciplinary proceedings, absence of a selfish motive and remorse.

Conclusions of Law

Rule 1.3 of the Vermont Rules of Professional Conduct provides that a lawyer shall act with reasonable diligence and promptness in representing a client. Respondent failed to provide his clients with a written title opinion until five months after the closing and more than a month after the clients had filed a complaint with the Office of Disciplinary Counsel. This violates the Rule.

Rule 1.4 provides that a lawyer shall keep his clients reasonably informed about the status of a matter and shall promptly comply with reasonable requests for information. Respondent violated this rule by failing to return calls and emails from clients who were concerned about the newly discovered water main on their property.

Sanction

We believe that the recommended sanction of admonition by Disciplinary Counsel is appropriate in this case and is consistent with the ABA Standards for Imposing Lawyer Sanctions and prior Vermont cases.

Respondent violated his duty to his clients to act with reasonable diligence in representing them. His actions were negligent rather than intentional and the only harm reported was the anxiety and frustration his clients experienced from their inability to reach him to discuss

the water main problem. Section 4.44 of the ABA Standards provides that “[a]dmonition 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.” In similar circumstances, the ABA Standards recommend public reprimand where there is “injury or potential injury to a client.” §4.43. Even if we were to find that the injury in this case rises to the level of a presumptive sanction of reprimand, there are significant mitigating factors which convince us that admonition is the appropriate sanction. Respondent has no prior disciplinary record, *ABA Standards*, §9.32(a); he had no selfish or dishonest motive, *ABA Standards*, §9.32(b); he has been open and cooperative with the Office of Disciplinary Counsel, *ABA Standards*, §9.32(e), and has expressed remorse for his handling of the situation, *ABA Standards*, §9.32(l). The one aggravating factor, substantial experience in the practice of law, *ABA Standards*, §9.22i) is of insufficient weight to alter our decision

Admonition is also consistent with prior Vermont cases. In PRB Decision No 107(2008). Respondent was admonished for failing to promptly obtain a mortgage discharge for his clients after closing. There was no injury, other than the frustration of the client due to the delay.

In PRB Decision No. 94 (2006), Respondent was admonished for his failure to return phone calls over a period of months. In this case there was no injury other than the stress and anxiety suffered by the client as a result of not being able to contact the attorney.

Order

Respondent shall be admonished by Disciplinary Counsel for violation Rules 1.3 and 1.4 of the Vermont Rules of Professional Conduct.

Dated: **May 17, 2010**

Hearing Panel No. 3

/s/

Leo Bisson, Esq., Chair

/s/

Oreste Valsangiacomo, Jr., Esq.

/s/

Mitchell Jay