

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: William M. MaGill, Esq.
PRB File No. 2011.157

Decision No. 148

The parties have filed a Stipulation of Facts, proposed Conclusions of Law and a Recommendation for Sanctions. The Respondent has waived certain procedural rights, including the right to an evidentiary hearing. The panel accepts the stipulated facts and recommendations and orders that Respondent be publicly reprimanded for a lengthy delay in closing an estate and for failure to communicate with his clients, in violation of Rule 1.3 and Rule 1.4(a) of the Vermont Rules of Professional Conduct in effect prior to September 1, 2009, and Rule 1.3, Rule 1.4(a)(3) and Rule 1.4(a)(4), which were effective thereafter.

Facts

Respondent is currently employed as the Assistant Clerk of the Vermont House of Representatives. This job does not involve the practice of law. Respondent also has a small solo law practice, which he operates from his home. He was admitted to practice in Vermont in June of 2003.

Francis F. Sayers died in November of 2004. His sister, Louise Thresher, was named executrix of his estate. The estate was opened in the Washington District Probate Court in February of 2005. At the time, Ms. Thresher was represented by Attorney Peter Young. In the summer of 2006, Mr. Young left the practice of law for another job. He referred the Sayers Estate to Respondent. At that time, Respondent was renting office space from Mr. Young.

By letter dated July 21, 2006, Mr. Young informed the Probate Court that Respondent had assumed responsibility for the Sayers Estate. At the time that Respondent took over the file, an accounting was due. Respondent started to prepare the account, but did not complete it. During that time, Respondent had to take time off from work to attend to matters related to the unexpected deaths of both his father and grandfather.

By letter dated December 19, 2006, the Probate Court asked Respondent to file either an Accounting or a Status Report. Respondent received the letter but filed nothing.

By letter dated March 9, 2007 the Probate Court informed Ms. Thresher that an accounting was past due and asked her to file the appropriate paperwork by April 9, 2007. Respondent received a copy of this letter, but did not file an accounting.

On September 18, 2008, the Probate Court issued a Notice to Appear in which Ms. Thresher and Respondent were instructed to appear on October 20, 2008. Ms. Thresher had been injured in an automobile accident in the summer of 2008 and, as a result, was unable to attend the hearing. Respondent informed the court and the hearing was postponed and never rescheduled.

By late August of 2010, Respondent had yet to complete an accounting. For several years, he had not responded to phone calls and messages from Ms. Thresher or her sister, Phyllis Maxham. Ms. Thresher and Ms. Maxham consulted Attorney Peter Carter. Mr. Carter called Respondent on August 31, 2010. He explained that Ms. Thresher and Ms. Maxham were extremely frustrated by Respondent's failure to respond to repeated telephone messages. Respondent promised to send the file to Mr. Carter immediately.

Respondent did not promptly transmit the file. Mr. Carter called Respondent on September 3, 2010. Respondent informed Mr. Carter that some of his electronic files had been corrupted, and that he was working on restoring them. He said he hoped to have the file restored by the next week.

Mr. Carter and Respondent spoke again on September 21, 2010. Respondent had yet to send the file to Mr. Carter. Mr. Carter asked Respondent to prepare a First and Final Accounting. Respondent agreed to do so. By October 22, 2010, Respondent had not prepared or filed the accounting, nor had he sent any paperwork to Mr. Carter. Mr. Carter sent Respondent an e-mail expressing his frustration. He followed up with telephone messages. Respondent did not reply to Mr. Carter's e-mail or telephone messages.

In fact, in late-September of 2010, Respondent's basement had flooded. The Sayers file was in the basement and was destroyed. Disciplinary Counsel spoke with Respondent's insurance agent, who reported that he had visited Respondent's home office. The agent confirmed the fact of the flood, and told Disciplinary Counsel that Respondent's basement had incurred significant damage.

On November 12, 2010, Mr. Carter received from the Probate Court a copy of the file in the Sayers Estate. Over the next few days, Mr. Carter prepared the First and Final Accounting of the Sayers Estate, all the necessary consents, and met with Ms. Thresher and Ms. Maxham to have them sign various the documents. Mr. Carter filed the accounting and all necessary documents on November 16, 2010.

Respondent caused Ms. Thresher and Ms. Maxham extreme frustration, stress, and anxiety. Mr. Carter reported to Disciplinary Counsel that Ms. Thresher and Ms. Maxham did not suffer any financial loss or harm.

Conclusions of Law

The Vermont Rules of Professional Conduct were amended effective September 1, 2009. The old rules apply to Respondent's conduct, or lack thereof, between July of 2006, and August 31, 2009. The new rules apply from September 1, 2009, to November of 2010.

Rule 1.3 of the Vermont Rules of Professional Conduct, which was unchanged by the revision, provides that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.” The Comment to this rule in the 2009 Amendment states:

Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time with the change of condition; in extreme instances, as when a lawyer overlooks the statute of limitations, the client's legal position may be destroyed. **Even when the client's interests are not affected in substance, however, unreasonable delay can cause the client needless anxiety and undermine confidence in the lawyer's trustworthiness.** *V.R.P.C. 1.3 Comment [3]. Emphasis added.*

Respondent took no steps to complete the Sayers Estate and delayed as well in the transfer of the file to Mr. Carter. This conduct violates Rule 1.3.

Rule 1.4 of the Vermont Rules of Professional Conduct deals with client communication. Prior to September 1, 2009, Rule 1.4 (a) required a lawyer to “keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.” This rule was amended in 2009. As amended, the Rule requires a lawyer to “keep the client reasonably informed about the status of the matter,” V.R.P.C. 1.4(a)(3), and to “promptly comply with reasonable requests for information....” V.R.P.C. 1.4(a)(4). Respondent violated both the earlier and later provisions by his complete failure to respond to his client's and Mr. Carter's reasonable requests for information.

Sanction

Failure to act with reasonable diligence and failure to reasonably communicate with clients are among the most often violated of the Vermont Rules of Professional Conduct. In cases where there are no other violations and no significant harm to clients, the sanction generally is private admonition or public reprimand. The parties have recommended that we impose public reprimand in this case. We find this recommendation in accord with previous cases involving of violations of Rules 1.3 and/or 1.4.

There are several factors that affect the severity of the sanction; the number of clients involved, the duration of the neglect, the injury or potential injury to the client or to the legal system, and the presence of aggravating and mitigating factors.

Admonition has been imposed where the delay was short and the only injury the client frustration. *In re PRB Decision No. 131* (May 2010). In that case, the attorney delayed five months in providing a title opinion after a real estate closing.

Admonition has also been imposed where the neglect and failure to communicate were of longer duration, but where there were substantial mitigating factors. *In re PRB Decision No. 137* (Feb. 2011). In that case, the neglect was for a period of two years. There was no harm other than the client's frustration, and there was a substantial mitigating factor. Specifically, the attorney suffered from a medical problem and had decided to terminate his practice since the stress of practice was affecting his health.

Admonition was also imposed in *In re PRB Decision No. 125* (Sept. 2009). There, the time period in question was several years. There was potential for injury but, again, there were several mitigating factors.

Public reprimand was imposed in the case of *In re Buckley*, PRB Decision No. 118 (Dec. 2008). In that case, the attorney neglected more than one matter for a client. Although the Hearing Panel was unable to determine if there was any actual injury beyond the client's frustration and discouragement with the legal system, there was the potential for injury in a missed opportunity for a child support review before the Magistrate.

Reprimand was also imposed in the case of *In re Farrar*, PRB Decision No.82 (Nov. 2005). In that case, the attorney failed to contact the client about a decision on an appeal unfavorable to the client. There was the potential for actual injury, and the only reason that the client did not suffer injury was that the attorney made him whole on a judgment for interest and attorney's fees.

In comparing the facts of the present case to those cited above, we find that the neglect and failure to communicate was total, and Respondent did no work on the Estate during the time he had the file. It was of a long duration, slightly more than four years from the time he received the file until Mr. Carter took over. There were no substantial mitigating factors, such as the Respondent's medical problems evident in Decision No. 137. While the deaths of Respondent's father and grandfather may have had some effect, there is nothing in the facts to indicate that this was a cause of more than the initial delay, and we do not find it to be a mitigating factor. *ABA Standards for Imposing Lawyer Sanctions* §9.32(c). Nor do we find the flood in Respondent's basement to be a mitigating factor, since it happened after Mr. Carter had asked for the file.

While Respondent's relative inexperience in the practice of law -- three years at

the time he received the file -- may be considered a mitigating factor in some circumstances, we give it little weight here. *ABA Standards §9.32(f)*. The need to complete in a timely fashion work one has been retained to do for a client, and the need to maintain contact with one's clients, are basic to the attorney-client relationship. A complete failure to do so cannot be excused by relative inexperience.

In accepting the recommendation for public reprimand rather than admonition, we are persuaded that, considering all the relevant factors, the more serious sanction is warranted. It appears that Respondent made no meaningful effort to do the work he had been retained to perform, and, despite numerous requests, he failed to communicate with the client, the Court and the attorney seeking to complete the work. In addition, there are no mitigating factors that would persuade us to reduce the sanction.

Order

Based upon the foregoing, we order that Respondent William M. MaGill be PUBLICLY REPRIMANDED for violation of Rule 1.3 and Rule 1.4(a) of the Vermont Rules of Professional Conduct in effect prior to September 1, 2009, and Rule 1.3, Rule 1.4(a)(3), and Rule 1.4(a)(4) in effect thereafter.

Dated: **January 17, 2012**

Hearing Panel No. 6

/s/

Alison J. Bell, Esq., Chair

/s/

Eric A. Johnson, Esq.

/s/

Lisa Ventriss