

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In re: William Cobb, Esq.
PRB No. 2020-99, 2020-103

PETITION OF MISCONDUCT

In accordance with a finding of probable cause dated October 5, 2020, Disciplinary Counsel formally charges William Cobb (Respondent) with the following violations pursuant to A.O. 9, Rule 11(D)(1)(b) as set forth below.

NOTICE TO RESPONDENT: This is a formal Petition of Misconduct. Pursuant to A.O. 9, Rule 11(D)(3), you are required to file an Answer within 20 days addressed to the Professional Responsibility Program, 109 State St., Montpelier, VT 05609, with copy to Disciplinary Counsel. Failure to file a timely answer may result in the facts and charges being deemed admitted.

Count 1 of 5

In January 2020, William Cobb, a licensed Vermont attorney, engaged in conduct prejudicial to the administration of justice, to wit: mishandled and unlawfully disclosed confidential juvenile court information in violation of Vermont Rule of Professional Conduct 8.4(d).

Count 2 of 5

Between June 2019 and January 2020, William Cobb, a licensed Vermont attorney, failed to provide competent representation to criminal defendant-client MK, to wit: failed to obtain or review recordings of alleged victim interviews, in violation of Vermont Rule of Professional Conduct 1.1.

Count 3 of 5

Between August 2019 and January 2020, William Cobb, a licensed Vermont attorney, failed to provide diligent representation to criminal defendant-client MK, to wit: failed to file a motion to amend MK's conditions of release so that he could request contact with his children despite multiple requests that he do so, in violation of Vermont Rule of Professional Conduct 1.3.

Count 4 of 5

On January 28, 2020, William Cobb, a licensed Vermont attorney, disclosed confidential client information regarding client BA, to wit: wrote an email to client MK's new attorney, with a copy to client MK, containing details about BA's criminal case and using BA's full name, without BA's knowledge and in the absence of other permissible circumstances, in violation of Vermont Rule of Professional Conduct 1.6.

Count 5 of 5

In May 2020, William Cobb, a licensed Vermont attorney, engaged in conduct involving dishonesty or misrepresentation, to wit: misrepresented to disciplinary counsel the substance and circumstances of timekeeping records for client MK, in violation of Vermont Rule of Professional Conduct 8.4(c).

Facts alleged in support of petition

1. Respondent is an attorney licensed to practice in Vermont who maintains a solo practice in St. Johnsbury and sits part time as a probate court judge in Caledonia County.

2. The misconduct alleged arises out of two separate, unrelated client matters. In the first matter, Respondent represented client KH (father) in a civil action against the mother of KH's deceased child who died in the custody of the Vermont Department for Children and Families (DCF).
3. In the second matter, Respondent represented client MK in a criminal sex assault case involving alleged victims in both Windsor and Caledonia Counties.

KH's Civil action (Rule 8.4(d) – unlawful disclosure of confidential juvenile material)

4. In KH's civil action, Mother (KL) of the deceased juvenile sought to settle the disposition and apportionment of a monetary settlement from DCF for the death of KL and KH's child. Respondent's client father-KH's position was that mother was barred from receiving any portion of the settlement funds because of her own neglect of the juvenile.
5. Respondent filed motions for summary judgment in the matter setting out his view of the facts and law in support of KH's position.
6. The pleadings filed by Respondent in this public civil action described in detail confidential juvenile court information and referenced "Exhibits A-L" in support of the recitations. According to Respondent's filing letter filed with the pleadings, "Exhibits A-L" were filed "under seal" with the Washington Civil Division.
7. Aside from the "under seal" exhibits, Respondent's public pleadings disseminated confidential juvenile information within the public filings.
8. For example, in a public filing, Respondent named by first and last name and date

of birth another child of Mother's, AC, who is still living. The pleading provided intimate details of AC's involvement in DCF proceedings and information from DCF documents about the nature of the juvenile's circumstances and situation.

9. Respondent took no steps to notify AC's attorney, who had no opportunity to intervene to protect AC's interests before the disclosures were publicly filed.
10. Respondent's conduct surrounding his handling of the juvenile court information violated the statute that governs access to and dissemination of juvenile court material. *See* 33 V.S.A. section 5117.
11. Under that statute, the court designates juvenile court records confidential: "such records and files shall not be open to public inspection nor their contents disclosed to the public by any person." 33 V.S.A. section 5117(a).
12. The statute does permit "inspection" of the records for some individuals in some circumstances, but strictly prohibits further dissemination and states: "Files inspected under this subsection shall be marked: UNLAWFUL
DISSEMINATION OF THIS INFORMATION IS A CRIME PUNISHABLE BY
A FINE UP TO \$2,000.00." 33 V.S.A. section 5117(b)(2) and (c)(3) (Emphasis in original).
13. The records protected include "Any records or reports relating to a matter within the jurisdiction of the Court prepared by or released by the Court or the Department for Children and Families, any portion of those records or reports, and information relating to the contents of those records or reports." 33 VSA 5117(e).

14. There is no ability for a party to any proceeding to waive confidentiality of the material under the statute and the fact that juvenile may be deceased also has no bearing on the designation of the records as nonpublic and confidential.
15. These statutory controls are something Respondent was aware of and chose to affirmatively disregard.
16. On January 9, 2020, Respondent sought court permission from Washington Family Division to access the records but the request was denied.
17. Respondent was on notice of the Family Division's prohibition but took no steps to remedy the disclosures he had already made in publicly-filed civil pleadings and the dissemination of the records themselves to the civil division.
18. As a probate division judge, Respondent was aware of the confidential nature of DCF material and juvenile court files and the prohibition on dissemination.
19. The Probate Division handles adoptions and guardianships and a specific provision of 33 V.S.A. 5117 addresses the probate court's access and handling of juvenile court records under subsections (c)(2) and (3).
20. Nevertheless, Respondent disseminated the information publicly and provided the records themselves "under seal" to the Civil Division without first obtaining court approval under subsection (b)(1)(E) or (F).
21. As a direct result of Respondent's conduct, the details of a now 11-year old child's history of involvement with DCF are available as a public record.

MK's criminal matter: Rule 1.1 (failure to obtain and review discovery material) and Rule 1.3 (failure to pursue amended conditions of release)

22. MK knew Respondent from several years ago when they both coached a sports team together for their sons. Over the years since, they had spoken from time to time, and Respondent had hired MK to help with a few moving chores.
23. In June 2019, MK was arrested and charged with several sex crimes in Caledonia and Windsor counties.
24. Not knowing who to ask for help, he called on Respondent and Respondent agreed to represent him.
25. MK qualified for assistance from a court-appointed attorney and was appointed counsel for the Caledonia County docket.
26. MK's relatives pooled funds to pay Respondent to also perform work for MK's defense, although Respondent explained to MK that in his view of the judicial conduct code, he was not permitted to represent clients in Caledonia County matters because of his probate court judge position in that county.
27. Respondent arranged for a flat rate monthly charge to be paid for his services and payments were covered each month between June 2019 and January 2020 by either MK's fiancée or his sister.
28. MK was initially held without bail on the charges but eventually released on conditions to the custody of his sister.
29. His conditions of release did not permit him to have contact with his daughters.
30. Much of the communication and organizing for MK's defense was coordinated through the fiancée because at first, MK was incarcerated and after his release, the

fiancée continued to strongly advocate for MK.

31. Repeated requests were made that Respondent seek an amendment to MK's conditions so that he could have contact with his daughters.
32. In October 2019, Respondent asked the Caledonia deputy state's attorney whether he would consent to an amendment but the deputy indicated he would not.
33. Respondent never pursued the matter further and never filed a motion despite the family's continued requests.
34. When MK decided to hire new counsel in January 2020, his new attorney filed a motion right away, the matter was set for hearing, and by February 2020 the conditions were ordered amended so that MK could have contact with his daughters.
35. The discovery material in MK's criminal matter included recorded interviews with the alleged victims. At arraignment, the State notified Respondent in the initial disclosures that the recordings had to be obtained directly from law enforcement and would be given to him upon request.
36. At no time during his representation of MK through January 2020 did Respondent obtain or review the recorded interviews despite the fact that one of MK's dockets was set for jury draw in January 2020 and despite that Respondent listed on the stipulated scheduling order the names of alleged victims as individuals he intended to depose (but never made arrangement to do so).
37. And, in August 2019, MK received a time-sensitive offer to resolve the Windsor County charge, which Respondent would have had to advise MK on in light of the

strength of the evidence, which Respondent had not fully reviewed because he had not viewed the interviews.

Rule 1.6 disclosure of confidential client information

38. By January 2020, MK decided to hire new counsel.
39. Respondent transferred MK's file to the new attorney. In a cover letter email, Respondent laid out some additional information to the new attorney, including some of his thoughts on the approach he purportedly was pursuing for MK and ideas about what he had planned for the upcoming months.
40. In the email, Respondent disclosed confidential client information about an unrelated case, regarding client BA's charges and the tentative offer to resolve that resulted. The email specifically stated that BA admitted to some of the charged conduct.
41. At the time of the disclosure, Respondent was covering BA's matter for a scheduled weight of the evidence hearing set for February 3, 2020 while BA's primary assigned counsel was out of the country for much of January and February.
42. At the time, BA's only entered plea was not guilty and he was being held without bail awaiting further proceedings.
43. BA was neither aware of nor consented to the disclosure.

Dishonest conduct in the course of disciplinary investigation: Rule 8.4(c)

44. In the course of the disciplinary investigation into the conduct related to the MK matter, Respondent produced a written response, through counsel, dated May 29, 2020. One of the issues he was responding to related to a complaint by MK that he had not received much for the \$8,000 in fees he had paid over the course of eight months from MK's arraignment in June 2019 through January 2020 when MK decided to hire different counsel.
45. The written response material included Respondent's "contemporaneous" notes of work performed in descriptive entries in dated billing records using a software called freshbooks.
46. When asked specific questions about when Respondent opened the matter in freshbooks, he conceded that "some" of the entries might have been entered later from notes from MK's file in response to the disciplinary inquiry and there might be some mistakes.
47. The freshbooks "invoice autobiography" for the MK matter showed log-in history only on the following dates: May 20, 2020 and May 21, 2020. These dates are nearly four months after the representation had ended, showing the records were created in response to the disciplinary inquiry days before responding to the complaint, and not the contemporaneous entries they were represented to be.

Dated: October 29, 2020

Respectfully submitted,



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