

PCB 100
[01-Sep-1995]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 95.56

NOTICE OF DECISION
Decision Number 100

This matter was presented to us by stipulated facts which we adopt as our own and incorporate herein by reference. A brief summary of the event leading to discipline is set forth below.

Facts

Respondent, who has been a member of the Vermont Bar for over 20 years, was involved in litigation in which opposing counsel was ordered in August of 1993 to draft a proposed order. Despite two requests from Respondent, opposing counsel failed to draft the proposed order.

In March of 1994, following a third inquiry from Respondent, opposing counsel asked Respondent to draft the order. Respondent agreed to do so but did not follow through on this promise.

In late May, the court inquired of both counsel as to the whereabouts of the proposed order. In mid-July, Respondent's client wrote to him expressing frustration toward opposing counsel and opposing party that the proposed order had not been filed. Still Respondent did not file the proposed order.

The client then filed a complaint with this Board. Bar Counsel initiated an investigation and in early November, 1994 sent Respondent a copy of the complaint, requesting a response. Within the month, Respondent forwarded the proposed order to opposing counsel which was finally filed in court three weeks later. Respondent, however, did not answer Bar Counsel's inquiry.

Bar Counsel wrote to Respondent on two more occasions, the chair wrote once, and Bar Counsel's investigator wrote once. Each letter requested a response to the complaint. Respondent did not answer any of the letters. At one point, complainant asked that his complaint be withdrawn. Bar Counsel wrote to Respondent, informing him of his client's request and advising him that the complaint could not be withdrawn.

In early March of 1995, Bar Counsel's investigator dropped in at Respondent's office to inquire about Respondent's failure to co-operate with the investigation. That day, Respondent sent Bar Counsel a letter, explaining that he had not responded because his client had told him that he had "taken care of" the complaint. Shortly thereafter, Respondent provided a substantive response to the original complaint.

Conclusions of Law

In failing for a period of nine months to draft and file the proposed

order as agreed, despite inquiries from both the court and his client, Respondent violated DR 6-101(A)(3)(neglect of a legal matter entrusted).

Respondent had no reasonable grounds for failing to respond to Bar Counsel's many requests for information. By his failure to co-operate with Bar Counsel, Respondent violated DR 1-102(A)(5) (conduct prejudicial to the administration of justice) and Administrative Order 9, Rule 6D (failure to respond to Bar Counsel without reasonable grounds).

Sanction

In considering the appropriate sanction, we note that Respondent acted knowingly in not responding to Bar Counsel and negligently in failing to file the proposed order as agreed.

Complainant was not injured by the delay in obtaining a final order. The potential for injury was speculative. Bar Counsel's efforts to speedily resolve complaints was delayed for an additional five months and caused Bar Counsel to incur unnecessary expenses.

In aggravation, we note that Respondent has substantial experience in the practice of law.

In mitigation, we note that Respondent has no prior disciplinary record, had no dishonest or selfish motive, is remorseful, and rectified the consequences of his misconduct in a timely manner.

Consistent with Sections 4.44 and 6.23 of the ABA Standards for Imposing Lawyer Sanctions and with our many other decisions regarding neglect of client matters, we conclude that a private admonition is the appropriate sanction in this case. Although Respondent's disregard of Bar Counsel's investigation is disturbing, the many mitigating circumstances preclude us from recommending a public sanction.

The chair will issue a private letter of admonition.

Dated at Montpelier, Vermont this 1st day of September, 1995.

PROFESSIONAL CONDUCT BOARD

/s/

Deborah S. Banse, Chair

/s/

George Crosby

/s/

Donald Marsh

Joseph F. Cahill, Esq.

Karen Miller, Esq.

/s/

Nancy Corsones, Esq.

/s/

Mark Sperry, Esq.

Charles Cummings, Esq.

Robert F. O'Neill, Esq.

/s/

Nancy Foster

Ruth Stokes

/s/

Rosalyn L. Hunneman

Jane Woodruff, Esq.

/s/

Robert P. Keiner, Esq.

DISSENT: (ON FOLLOWING PAGES)

Paul S. Ferber, Esq.

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DISSENTING OPINION

I respectfully dissent from the decision as to sanction. I believe that a public reprimand rather than an admonition is appropriate in this case. This case is about more than a single incidence of neglect without harm to the client.

First, Respondent did more than merely neglect to file a court order. Respondent knowingly failed to file the order despite requests from the Court as well as his client. Rather than responding to the Court's request in May and his client's request in July, Respondent did not file the order until after his client filed the complaint initiating this proceeding.

Second, as the majority decision recognizes, this case involves more than a single violation. Respondent's ignoring his client's request and the Court's request was a prelude to his ignoring Bar Counsel's request for a response to the complaint. Between November, 1994 and March, 1995, Bar Counsel wrote to Respondent on three occasions, and Bar Counsel's investigator wrote to Respondent once. Respondent ignored all four of the requests for a response to the complaint. Only after Bar Counsel's investigator physically came to Respondent's office did Respondent reply to the complaint.

The only explanation Respondent had for his failure to respond earlier was that his client who had filed the complaint told Respondent that the complaint had been "taken care of." This would be a poor explanation from a lawyer with little experience in the practice of law. Coming from an attorney with substantial experience in the practice of law, it should be treated as an explanation accorded no weight. Lawyer's need to understand their ethical obligations and the rules regarding attorney discipline. Client's cannot "take care" of a disciplinary proceeding.

Furthermore, his conduct in fact interfered with a legal proceeding. It delayed this disciplinary proceeding five months and "causes Bar Counsel to incur unnecessary expenses."

I would find that above sufficient to support a public reprimand.

/s/

Paul S. Ferber, Esq.

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