

122 PCB

[5-Sep-1997]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: PCB Docket No. 96.56.1

DECISION NO. 122

This is a case of failure to co-operate with Bar Counsel. The hearing panel has recommended that an admonition be imposed.

Introduction

We begin with an explanation of the operation of the disciplinary system, in hopes of impressing upon Respondent and others the importance of responding to requests for information.

The Professional Conduct Board receives between 200 and 300 complaints a year about possible lawyer misconduct, a small fraction of which result in imposition of discipline. Bar Counsel is required to review every one of these complaints and to decide which ones warrant formal investigation and which ones should be closed after a preliminary review. A.O. 9, Rule 8 A.

Formal investigations are more expensive and time consuming than a simple preliminary review by bar counsel. The Board encourages Bar Counsel to resolve as many minor cases as possible at the preliminary review stage and to reserve the formal disciplinary process for serious allegations of misconduct.

It is often the case that a complaint cannot be evaluated without additional information from the responding lawyer. In these situations, Bar Counsel sends a letter to the respondent, along with a copy of the complaint, and asks for her response. In the vast majority of cases, once Bar Counsel receives the additional information from respondent, she is able to close the matter without further investigation.

If respondent does not answer, Bar Counsel's only recourse is to initiate a formal process to compel compliance - a process which is time consuming, expensive, and detracts from the investigation or prosecution of more serious matters.

In short, the Supreme Court's rules governing the lawyer disciplinary system depend upon the co-operation of the members of the bar in order to work smoothly. When respondent lawyers do not co-operate, the system is unnecessarily impeded. It is for this reason that failure to furnish information or respond to requests from bar counsel, absent reasonable grounds, is itself grounds for imposition of discipline. A.O. 9, Rule 6 D.

Further, the disciplinary system is financed by all members of the bar through the biannual licensing system. Those respondents whose uncooperative conduct wastes the resources of the disciplinary program are wasting their own funds and those of their colleagues.

Facts

In this case, Bar Counsel received a complaint which, on its face, raised a number of allegations. Bar Counsel felt that further information from respondent was necessary before initiating a full scale investigation. Bar Counsel sent a copy of the complaint to Respondent on December 6, 1995. She asked for a response within 20 days. Respondent did not answer.

Bar counsel waited a few more weeks and wrote to Respondent again on January 17, 1996. This time, Respondent answered promptly. She ended by stating that she would provide further information upon request.

After reviewing the answer, Bar Counsel concluded that it did not fully address her inquiry and wrote to Respondent again, on March 19, 1996, asking for more detail. Bar Counsel sent the letter to the address provided by Respondent. Respondent received the letter but did not respond.

After three months passed, Bar Counsel initiated a formal investigation. The chair of the Professional Conduct Board wrote to Respondent on May 17, 1996, advising her of the formal investigation and requesting an answer.

Respondent did not receive the May letter or another follow up letter sent by Bar Counsel in August. Each of these letters was sent to the home address as provided by Respondent. Respondent was having problems with her roommates and her mail at that time.

Respondent did, however, receive a letter which Bar Counsel sent on September 3, 1996. In this letter, Bar Counsel informed Respondent that if Respondent did not file a substantive response by September 20, 1996, Bar Counsel would initiate formal disciplinary proceedings.

Respondent telephoned Bar Counsel shortly after receiving the September 3rd letter, but failed, as requested, to file the written response. On October 16, 1996, Bar Counsel wrote again to Respondent, informing her that she would initiate disciplinary proceedings unless an answer was received by November 1, 1996. Respondent did not answer.

Bar Counsel initiated disciplinary proceedings at the end of November by filing an affidavit in support of a request for a probable cause finding that Respondent had violated A.O. 9, Rule 6 D, as well as DR 1-102(A)(5) for failing to respond to Bar Counsel's many requests for information. The hearing panel reviewed the matter and found probable cause. Bar Counsel then filed a Petition of Misconduct and served it on Respondent.

The next day, January 9, 1997, Respondent finally provided the information which Bar Counsel had asked for on March 19, 1996. She also answered the Petition of Misconduct, admitting responsibility for failing to answer. Special Bar Counsel reached a stipulated resolution of the charges which was accepted by the hearing panel. The hearing panel reported the matter to the full Board which took it up on the record without oral argument or briefs by the parties.

Conclusions of Law

DR 1-102(A) (5) provides that a lawyer should not engage in conduct that is prejudicial to the administration of justice. By not diligently attending to her responsibilities to respond to Bar Counsel, Respondent violated DR 1-102(A) (5) as well as A.O. 9, Rule 6 D.

Sanction

Rule 7(A) (5) (b) of Administrative Order No. 9 explains the sanction of admonition following the filing of formal charges. The rule sets forth that an admonition should be imposed:

Only in cases of minor misconduct, when 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...

We agree that the facts of this case call for the imposition of an admonition. Respondent had been recently admitted to the Bar and was inexperienced. Respondent is now associated with a supportive law firm. Respondent appears now to understand the importance of diligence in responding to professional communications. It is unlikely that Respondent will make the same mistakes again.

The Chair of the Board will issue a letter of admonition to Respondent.

Dated at Montpelier, Vermont this 5th day of September, 1997.

PROFESSIONAL CONDUCT BOARD

/s/

Robert P. Keiner, Esq. Chair

/s/

Joseph F. Cahill, Jr., Esq.

John Barbour

/s/

Paul S. Ferber, Esq.

Charles Cummings, Esq.

/s/

Michael Filipiak

/s/

Nancy Foster

/s/

Rosalyn L. Hunneman

Robert F. O'Neill, Esq.

/s/

Alan S. Rome, Esq.

Ruth Stokes

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/s/

Karen Miller, Esq.

Jessica Porter, Esq.

/s/

Mark L. Sperry, Esq.

/s/

Jane Woodruff, Esq.