

135.PCB

[9-Jul-1999]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In Re: PCB File 99.99

Decision No. 135

Deputy Bar Counsel Michael Kennedy, Esq., presented the case on behalf of the Office of Bar Counsel. Respondent represented himself.

This matter was presented to us by stipulated facts. Deputy Bar Counsel and Respondent filed a Joint Recommendation as to Conclusions of Law as well as a Joint Recommendation that a Private Admonition Issue. Respondent submitted a Partial Waiver of Procedural Rights and Reservation of Particular Rights.

The parties appeared before the Board and presented oral argument in support of the joint recommendation and an admonition. Upon consideration of the documents filed and the oral argument presented, we adopt the stipulated facts, conclusions of law, and the recommended private admonition.

FACTS

1. The Respondent is an attorney licensed to practice law in the state of Vermont.

2. In 1998, a Vermont town hired the Respondent to perform several tax sales.

3. One of the tax sales that the Respondent was hired to perform concerned property owned by S.W.

4. On or about October 2, 1998, P.W. gave the Respondent a check made out to the Townin the amount of \$440.00. The check was intended to cover the delinquent taxes owed on S.W.'s property.

5. The Respondent did not turn the check over to the town clerk's office.

6. The town clerk called the Respondent several times seeking an explanation.

7. By certified letter dated December 16, 1998, the town clerk asked the Respondent for a full accounting and payment.

8. On December 30, 1998, the Respondent called the town clerk and told her that he had lost the check but that he would keep looking and that the money would be forthcoming.

9. The Respondent had indeed misplaced the check from S.W.

10. On February 13, 1998, the Respondent found the check and forwarded

it to the town clerk's office along with a check from his own account in which he paid the interest that had accrued on the \$440.00.

11. On October 14, 1998, the Respondent conducted a tax sale on a property owned by R.B.

12. At the time of the sale, R.B. owed the Town \$226.23 in delinquent taxes.

13. The R.B. property sold for \$600.00. R.B. was entitled to the amount that exceeded the tax delinquency.

14. On October 15, 1998, the Respondent deposited the \$600.00 into his trust account.

15. By report dated November 4, 1998, the Respondent reported to the town clerk that he had sold the R.B. property for \$600.00 and had paid the excess amount to R.B. At the same time, the Respondent paid the Town the amount owed by R.B. in back taxes.

16. Later, the town clerk learned that R.B. had not received the excess sale amount from the Respondent.

17. On February 13, 1999, the Respondent sent R.B. a check for the amount by which the tax sale exceed R.B.'s delinquent taxes. The Respondent also sent R.B. a check in an amount representing the interest of 12% per annum that had accrued on the amount that R.B. should have received immediately after the tax sale.

18. On October 14, 1998, the Respondent conducted a tax sale of property owned by E.L.

19. At the time of the sale, \$379.81 was owed to the Town.

20. The E.L. property sold for \$4,000.00.

21. The Respondent deposited the proceeds from the sale of the E.L. property into his trust account on October 15, 1998.

22. In a report dated November 4, 1998, the Respondent indicated to the town clerk that he had sold the E.L. property for \$4,000. He also indicated that he was enclosing a check to the Town in the amount owed in delinquent taxes.

23. The report also indicated that he had sent E.L. her share of the excess sale amount.

24. The report also indicated that the Respondent had enclosed a check made out to W.M., for his share of the excess sale amount, for the Town to hold in escrow.

25. The report to the Town did not include a check in the amount owed in delinquent taxes or a check to be held in escrow for W.M.

26. The town clerk learned that E.L. had not received a check from the Respondent in an amount equal to her share of the excess sale amount.

27. By certified letter dated December 16, 1998, the town clerk asked the Respondent for a full accounting and payment.

28. On December 30, 1998, the Respondent called the town clerk and told her that he would get checks right out to the town as well as to E.L..

29. On February 13, 1999, the Respondent sent E.L. a check in an amount equal to her share of the amount by which the sale of the E.L. property exceeded the tax delinquency. He also sent her a check in the amount of the interest that had accrued on the amount.

30. On February 13, 1999, the Respondent sent to the town clerk a check in the amount of the delinquent taxes due on the E.L. property. He also sent a check to cover the amount of interest that had accrued thereupon.

31. On February 13, 1999, the Respondent sent to the town clerk two checks to be held in escrow for W.M.. One check was in the amount owed to W.M. for his share of the amount by which the sale of the E.L. property exceeded the tax delinquency. The other was in the amount of interest that had accrued thereupon.

32. In late 1998, the Respondent was having problems with a new secretary. Those problems caused his office to operate in a less-than-efficient manner.

CONCLUSIONS OF LAW

1. DR 6-101(A)(3) states that a lawyer shall not neglect a legal matter entrusted to him.

2. The facts establish that the Respondent violated DR 6-101(A)(3) by waiting until February 13, 1999, to send to the town clerk the check that he had received for the delinquent taxes owed on the P.W. property.

3. The facts establish that the Respondent violated DR 6-101(A)(3) by waiting until February 13, 1999, to send to the town clerk a check in the amount owed in delinquent taxes on the E.L. property.

4. The stipulated facts establish that the Respondent violated DR 6-101(A)(3) by waiting until February 13, 1999, to send out checks to R.B., E.L. and W.M. in the amount that each was due as a result of their respective properties selling for amounts greater than was owed in delinquent taxes.

SANCTION

1. Section 4.44 of the ABA Standards for Imposing Lawyer Sanctions states that an "[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."

2. In this case, a private admonition is appropriate. The Respondent's mistake was an isolated act of negligence that caused little or no injury to the Town.

3. Section 9.32(a) of the ABA Standards for Imposing Lawyer Sanctions

states that the "absence of a prior disciplinary record" is a mitigating factor. The Respondent has no prior disciplinary record.

4. Section 9.32(b) of the ABA Standards for Imposing Lawyer Sanctions states that the "absence of a dishonest or selfish motive" is a mitigating factor. There is no evidence that the Respondent had a dishonest or selfish motive in waiting so long to pay the town and the property owners.

5. Section 9.32(c) of the ABA Standards for Imposing Lawyer Sanctions states that personal problems present is a mitigating factor. At the time of his neglect in this matter, the Respondent was having problems with his secretary. Those problems caused his office not to operate as efficiently as necessary.

6. Section 9.32(e) of the ABA Standards for Imposing Lawyer Sanctions states that a lawyer's "full and free disclosure to disciplinary board or cooperative attitude toward proceedings" is a mitigating factor. The Respondent has cooperated fully and freely with the Office of Bar Counsel.

For the reasons stated above, we hereby issued a private admonition.

Dated at Montpelier, Vermont this 9th day of July, 1999.

PROFESSIONAL CONDUCT BOARD

/s/

Robert P. Keiner, Esq. Chair

/s/

Steven A. Adler, Esq.

John Barbour

/s/

Charles Cummings, Esq.

Paul S. Ferber, Esq.

/s/

Michael Filipiak

Nancy Foster

/s/

Barry E. Griffith, Esq.

Robert F. O'Neill, Esq.

Alan S. Rome, Esq.

Mark L. Sperry, Esq.

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/s/

Ruth Stokes

Joan Wing, Esq.

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Jane Woodruff, Esq.

Toby Young