

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No. 2013.156

Decision No. 159

The parties have filed a Stipulation of Facts, proposed Conclusions of Law and a Recommendation for Sanctions. The Respondent waived certain procedural rights including the right to an evidentiary hearing. The panel accepts the stipulated facts and recommendations and orders that Respondent be admonished by Disciplinary Counsel for failure to keep his client reasonably informed and for failure to comply with reasonable requests for information in the context of a landlord tenant dispute, in violation of Rules 1.4 (a)(3) and 1.4(a)(4) of the Vermont Rules of Professional Conduct.

Facts

This case revolves around the efforts of a landlord to evict tenants from his property. In May of 2012 he contacted an attorney (who shall be referred to as the “referring attorney”) for assistance in the eviction. In July of 2012 this attorney told the landlord that he was referring the matter to Respondent since he did not spend much time in court. The landlord kept in touch with the referring attorney, and both of them tried unsuccessfully to contact Respondent to obtain a status report. Between August and October of 2012 both the landlord and the referring attorney tried to reach Respondent by phone and email to obtain a status report. Finally in mid-October Respondent emailed the landlord with a status report. The landlord immediately emailed back asking Respondent to offer to settle the case by having the tenants vacate in 15 days without further liability.

Eventually the referring attorney, having become frustrated and embarrassed by Respondent's lack of contact, and also upon learning that Respondent's wife was ill, agreed to take the case back and resolve it

In December of 2012 Respondent withdrew from the eviction and, the referring attorney entered an appearance. The tenants vacated the property in March of 2013 and the landlord dismissed the suit.

In late September/early October Respondent's wife became seriously ill requiring 15 days hospitalization. When she returned home, Respondent remained responsible for her care well into 2013. She could not be left alone for the first month and was not able to drive until April of 2013.

The landlord suffered stress and anxiety when Respondent failed to return his calls and emails and failed to keep him up-to-date on his case. The delay in the eviction proceeding itself was not due to lack of action by Respondent but rather due to the actions of uncooperative defendants in their efforts to ignore and then to delay the eviction process.

The following mitigating factors are present in this case; absence of a prior disciplinary record, no selfish or dishonest motive, personal problems, cooperation with Disciplinary Counsel and remorse. There are no aggravating factors.

Conclusion of Law

Rule 1.4 of the Vermont Rules of Professional Conduct covers communications with clients and provides in pertinent part that "[a] lawyer shall:

- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information."

By failing to respond to multiple phone calls and emails in this matter and by failing to provide information about the status of the eviction, Respondent violated this rule.

Sanction

We accept the parties' recommendation of admonition by disciplinary counsel. In doing so, we are guided by the ABA Standards for Imposing Lawyer Discipline and prior Vermont decisions.

The Vermont Supreme Court has long approved the use of the ABA Standards in determining the appropriate sanction. "When sanctioning attorney misconduct, we have adopted the ABA Standards for Imposing Lawyer Discipline which requires us to weigh the duty violated, the attorney's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating or mitigating factors." *In re Andres*, 177 Vt. 511, 513, 857 A.2d 803, 807 (2004).

In this case Respondent violated his duty to keep his client informed and to respond in a timely fashion to his requests for information. Respondent's failure to communicate with his client were due to negligence, compounded by the fact of his wife's illness. The landlord did not suffer any financial injury as a result of Respondent's lack of action, but did suffer anxiety and stress due to the lack of information.

Under the ABA Standards, admonition is the presumptive sanction in this case. Section 4.44 provides that "[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."

The presence of aggravating and mitigating factors can be used to alter this sanction. Here we have no aggravating factors and a number of mitigating factors.

Respondent has no prior discipline, *ABA Standards § 9.32(a)*; he has cooperated with Disciplinary Counsel, *ABA Standards § 9.32(b)*; he has expressed remorse for neglecting this matter, *ABA Standards § 9.32(e)*, and perhaps most significantly, Respondent's wife became seriously ill in the fall of 2012 making it difficult for Respondent to maintain his law practice while caring for his wife. *ABA Standards § 9.32(c)*.

Admonition is also consistent with Administrative Order 9 which provides that admonition is only appropriate "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...." Here there was no financial injury to the client and based upon the mitigating factors, the Panel does not believe that there is any likelihood of repetition.

Order

Based upon the foregoing, we order that Respondent be admonished by disciplinary counsel for violation of Rules 1.4 (a)(3) and 1.4(a)(4) of the Vermont Rules of Professional Conduct.

Dated: **June 24, 2013**

Hearing Panel No. 7

/s/

Harland L. Miller III, Esq., Chair

/s/

Mark Hall, Esq.

/s/

Stephen V. Carbone