

PCB 17

[27-Sep-1991]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In Re: PCB File 90.20

NOTICE OF DECISION

PCB NO. 17

Facts

1. Respondent has been a member of the Vermont Bar since December of 1974.
2. In 1985, a client retained Respondent to represent him in the sale of a condominium unit. When the buyers failed to perform the purchase and sale contract, client asserted his right to retain the deposit. Litigation commenced in 1987. A settlement was reached in June of 1989.
3. Client had paid Respondent a \$750 retainer in March of 1989. In June of 1989, when Respondent telephoned client to tell him of the settlement, client asked how much he had incurred in legal fees. Respondent estimated that the bill was between \$500 and \$600 but could not be more specific at the time because he did not have the accounting in front of him. Client requested and was assured by Respondent that he would receive an itemized bill for Respondent's services.
4. Respondent completed the settlement documents during July of 1989 and received the settlement check in August of 1989. Pursuant to his client's request, he held the check pending further instructions.
5. During 1989, client moved at least three times. In March 1989, he lived in California. As of September 1989, he was living in the State of New York. By December 1989, he had moved to Charlottesville, Virginia. Client kept Respondent informed of his changes of address.
6. On September 5, 1989, Respondent received word from client to forward the check to client's new address in Clifton Park, New York. On September 5, 1989, Respondent sent the settlement check to client's New York address with cover letter advising, "I will be sending my itemized bill as requested shortly."
7. Respondent received a telephone call from client in late September requesting the itemized bill. Respondent compiled an accounting dated September 25, 1989, but erroneously sent it to client's California address. The bill was never received by client.
8. Client subsequently telephoned Respondent, again requesting the

itemized accounting. Respondent recalls directing his office staff to send out a copy of the bill but this was not done.

9. Respondent received a letter from the client in early November, again requesting the itemized bill. Respondent did not answer or acknowledge this letter.

10. In December 1989, client sent Respondent a certified letter, requesting that the itemized bill be sent to him at his new address in Charlottesville, Virginia. Respondent did not answer or acknowledge the letter.

11. In late December, 1989, client filed a complaint with the Professional Conduct Board against Respondent for failure to provide an accounting of his bill. Respondent was notified of this complaint in March 1990.

12. As a result of the complaint, Respondent sent a letter to client on March 28, 1990, advising him that the bill had previously been sent to his California address. Respondent enclosed another copy of the bill dated September 25, 1989.

13. The letter of March 28th was incorrectly addressed and was never received by client.

14. In June of 1990, bar counsel informed the Respondent that client was still without a copy of the bill. Shortly thereafter, Respondent submitted to bar counsel a copy of his September 25, 1989 itemized bill which bar counsel, in turn, forwarded to client at his Virginia address.

15. Subsequently, client informed bar counsel that Respondent charged him .5 hours of services he had already paid for in 1985.

16. Respondent admits he neglected to render an accurate accounting of his bill for services to his client in a timely manner.

17. Respondent admits he inadvertently double billed client in 1989 for legal services provided and paid for in 1985. Respondent has refunded to client, through bar counsel, the legal fees which were erroneously double billed.

Conclusions of Law

Respondent and bar counsel stipulated to the above facts which the Professional Conduct Board accepts. Respondent and bar counsel also stipulated that Respondent's conduct herein constitute a violation of DR 9-102(B) (3) (a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them). The Board finds that Respondent did so negligently, not knowingly.

The Board agrees with the stipulation of bar counsel and Respondent that the appropriate sanction in this case is a private admonition. A private admonition will therefore issue.

Dated in Montpelier, Vermont this 27th day of September, 1991.

PROFESSIONAL CONDUCT BOARD

By: /s/
J. Eric Anderson, Chair

/s/
Deborah S. Banse, Esq. Hamilton Davis

/s/
Anne K. Batten Nancy Foster

Leslie G. Black, Esq. Shelley Hill, Esq.

/s/ /s/
Richard L. Brock, Esq. Rosalyn L. Hunneman

/s/ /s/
Joseph F. Cahill, Jr., Esq. Donald Marsh

/s/ /s/
Nancy Corsones, Esq. Karen Miller, Esq.

/s/
Christopher L. Davis, Esq. Edward Zuccaro, Esq.