

PCB 18

[01-Nov-1991]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: PCB File 90.02

NOTICE OF DECISION

PCB NO. 18

Procedural History

This investigation was initiated as a result of a complaint filed with the Professional Conduct Board by one of respondent's former clients. After

an investigation was conducted by bar counsel, bar counsel and respondent stipulated to a statement of facts and certain conclusions of law. Respondent waived all procedural rights under Administrative Order 9, including the right to a hearing.

The Professional Conduct Board accepted the stipulation and issued a private admonition to respondent. The facts and conclusions upon which that

sanction is based are set forth below.

Facts

1. Respondent has been a member of the Vermont Bar since December 1970.

A significant portion of respondent's private practice has involved domestic relations law.

2. Respondent began representing complainant in August of 1987 in connection with a contested divorce and custody proceeding.

3. A final hearing was held in complainant's divorce case in May of 1988. The superior court judge issued findings of fact and conclusions of law from the bench. The judge ordered respondent to prepare a final order for his signature.

4. Complainant moved out of state. Over the next 7 months, on at least three occasions, respondent advised complainant that respondent would soon be

sending complainant a copy of her final divorce order. However, respondent did not do so.

5. In January and February of 1989, complainant wrote to respondent, requesting a copy of her final order of divorce. Respondent received the letters but did not respond.

6. Complainant returned to Vermont on or about April 16, 1989 and spoke

with complainant by telephone. Respondent agreed to meet with complainant on

April 20, 1989.

7. Complainant went to respondent's office on April 20 and found a note pinned to respondent's office door informing complainant that respondent was unable to meet with complainant. Complainant proceeded to the superior court to obtain a copy of the final divorce decree.

8. The clerk of the superior court informed complainant that a final order had not been filed in the matter and, therefore, complainant was not legally divorced. This information was not correct because the judge had entered an order of divorce on the record at the final hearing in November of 1988. Nevertheless, this news was extremely upsetting to complainant.

9. The clerk of the superior court then telephoned respondent's office and inquired about the final order. Respondent advised the clerk that the order was in respondent's file and would be sent to the judge immediately.

10. The next day respondent submitted to the judge the proposed final order and a letter apologizing for the fact that respondent took more than 11 months to comply with the judge's directive. The judge signed the final order on April 24.

11. Subsequently, complainant filed a complaint with the Professional Conduct Board. Respondent cooperated in the investigation of the complaint with the exception that respondent failed to produce respondent's file in the matter. Respondent, who has left private practice, could not find the file.

12. Respondent admits and the Board so finds that respondent neglected to file the final order with the court in a timely manner.

13. Respondent admits and the Board so finds that respondent neglected to respond to complainant's inquiries about the final order for an unreasonable period of time.

Conclusions of Law

Respondent's conduct violated the following provisions of the Code of Professional Responsibility:

1. DR 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice);
2. DR 6-101(A)(2) (a lawyer shall not handle a legal matter without preparation adequate in the circumstances); and
3. DR 6-101(A)(3) (a lawyer shall not neglect a legal matter entrusted to him).

Sanction

Although none of complainant's legal rights were prejudiced by respondent's neglect, respondent's misconduct caused inconvenience and emotional upset which could easily have been avoided by respondent's prompt attention to this matter. In considering what sanction should be imposed, the Board is mindful that respondent has no history of professional misconduct in over twenty years of practice. Therefore, the Board has privately admonished respondent for these violations.

Dated at Montpelier, Vermont, this 1st day of November, 1991.

PROFESSIONAL CONDUCT BOARD

By: /s/

J. Eric Anderson, Chair

/s/
Deborah S. Banse, Esq.

/s/
Hamilton Davis

/s/
Anne K. Batten

/s/
Nancy Foster

/s/
Leslie G. Black, Esq.

Shelley Hill, Esq.

/s/
Richard L. Brock, Esq.

/s/
Rosalyn L. Hunneman

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

/s/
Donald Marsh

/s/
Nancy Corsones, Esq.

/s/
Karen Miller, Esq.

/s/
Christopher L. Davis, Esq.

/s/
Edward Zuccaro, Esq.