

PCB 21

[06-Dec-1991]

ENTRY ORDER

SUPREME COURT DOCKET NO. 90-543

SEPTEMBER TERM, 1991

| | | |
|------------------------------|---|----------------------------|
| In re Thomas B. Bailey, Esq. | } | Original Jurisdiction |
| | } | |
| | } | FROM: |
| | } | Professional Conduct Board |

Docket No. 89.56.2

In the above entitled cause the Clerk will enter:

Respondent is suspended from the practice of law until he complies with A.O. 9, Rule 20B (practice may be resumed upon proof of compliance with requirements of suspension order). For purposes of A.O. 9, this suspension shall be considered one "less than six months." Rule 20B. The requirements of this suspension order as follows:

(1) Respondent shall provide the board with sufficient evidence of the history of his attorney trust account since January 1, 1986, to satisfy it that the integrity of the account, including the procedures and safeguards used to protect client funds, is sufficiently secure to justify respondent's continued practice of law.

(2) Respondent shall provide the Board with sufficient medical evidence to satisfy it that he is physically and mentally able to practice law.

Respondent is advised he must comply with A.O. 9, Rule 21.

BY THE COURT:

Frederic W. Allen, Chief Justice
Ernest W. Gibson III, Associate Justice
John A. Dooley, Associate Justice
James L. Morse, Associate Justice
Denise R. Johnson, Associate Justice

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In Re: Thomas B. Bailey, Esq.
PCB Files 89.56, 89.56.1, 89.56.2

NOTICE OF DECISION
NO. 21

Upon consideration of the stipulation dated December 6, 1991 which was submitted to the Board by respondent and bar counsel and which is attached hereto, the Board hereby accepts the stipulation. The Board finds that respondent violated DR 9-102() and DR 9-102(B) and that a suspension of three months is warranted. The Board is satisfied that respondent complied with the Supreme Court's suspension order of October 11, 1991. The Board finds that respondent complied with that order as of November 11, 1991 and is presently eligible for reinstatement. The Board recommends that the additional period of suspension begin as of November 11, 1991 and expire on February 10, 1992.

Dated at Montpelier this 6th day of December, 1991.

PROFESSIONAL CONDUCT BOARD

/s/

By: _____
J. Eric Anderson, Chair

/s/

Deborah S. Banse, Esq.

/s/

Anne K. Batten

/s/

Leslie G. Black, Esq.

Richard L. Brock, Esq.

/s/

Joseph F. Cahill, Jr., Esq.

/s/

Nancy Corsones, Esq.

/s/

Hamilton Davis

Shelley A. Hill

/s/

Rosalyn L. Hunneman

Karen Miller, Esq.

/s/

Edward Zuccaro, Esq.

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STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In Re: Thomas B. Bailey, Esq.
PCB Files 89.56, 89.56.1, 89.56.2

STIPULATION

Now come respondent Thomas B. Bailey, Esq., by and through counsel, Paul D. Jarvis, Esq., and bar counsel, Wendy S. Collins, and stipulate to the following findings of fact, conclusions of law, and recommended sanctions.

1. Thomas B. Bailey was admitted to practice in Vermont in 1977. For the past 7 years he has been a solo practitioner.

2. The Professional Conduct Board received two complaints regarding respondent's conduct in 1989. One complaint was from a title insurance company alleging that respondent had written an attorney trust account check which was returned for insufficient funds. The other was from a town clerk alleging that respondent had written a bad check on his business account and failed to rectify the mistake.

3. Bar counsel initiated an investigation into this matter. Respondent impeded the investigation by failing to keep appointments with the investigator, ignoring letters from bar counsel, and failing to produce records of his attorney-trust account. As a result, the Professional Conduct Board found that respondent had violated DR 1-102(A)(5) (conduct prejudicial to the administration of justice) and Rule 6D of Administrative Order 9 (failure to respond to reasonable requests from bar counsel for information).

4. Respondent contested the Board's decision, arguing that his lack of co-operation was due to respondent's depression for which he had been subsequently treated. Nevertheless, on October 11, 1991, the Supreme Court suspended respondent from the practice of law until he produced sufficient records to demonstrate the integrity of his attorney-trust account and until he demonstrated that he was fit to resume the practice of law. Respondent is presently under suspension.

5. Respondent substantially complied with bar counsel's request for information within 30 days of the suspension order. However, because respondent had destroyed his ledger sheets, bar counsel could not evaluate the integrity of his account without reconstructing the respondent's trust account. Respondent stated that he destroyed the ledger sheets because he did not know he should keep them.

6. Based upon this reconstruction and based upon statements made by respondent, bar counsel found that respondent commingled his personal funds with that of his clients in violation of DR 9-102(A). Respondent used his attorney trust account to pay his own personal expenses. The overdraft occurred when respondent improperly withdrew at least \$2200 in trust funds. When the overdraft was discovered, respondent deposited personal funds into his trust account to replace the improperly withdrawn client funds.

7. Respondent also failed to maintain adequate records of the trust funds as required by DR 9-102(B). Because respondent never kept a running balance of the trust account, never used client ledger cards, and did not keep ledger sheets, respondent never knew exactly how much money was in the account and precisely whose money it was.

8. Respondent was aware of his obligation to maintain attorney trust accounts separate from his own funds. He claims that he failed to do so because he knew very little about book keeping, was suffering from depression, and was too inattentive and disorganized to establish a proper system. He also claims that no client ever lost any funds which he held in trust.

9. No one has reported the loss of any client funds to bar counsel. However, because respondent could not produce his ledger sheets, bar counsel cannot audit his books to ensure that no client funds were lost. Respondent

promptly complied with bar counsel's request that he return all trust funds to his clients and reduce his trust fund account to zero.

10. There is no clear and convincing evidence that respondent knowingly misappropriated funds. Whether through ignorance or inattentiveness, respondent's accounting procedures were entirely inadequate. As a result, respondent invaded his client's funds.

11. Respondent asserts that he is now physically and mentally fit to practice law and to maintain the integrity of his attorney trust accounts and is, thus, fit to resume the practice of law in satisfaction of the Supreme Court's order of October 11, 1991. Respondent and bar counsel agree that any reinstatement must include the requirement that respondent:

a) set up a record system that will conform to the requirements of DR 9-102(C) as enacted in 1990;

b) hire an accountant or book keeper to maintain the system for at least the first two years; and

c) ensure the integrity of this account by submitting quarterly audit reports to the Board or bar counsel for the first two years.

12. Respondent accepts full responsibility for his professional misconduct.

13. Respondent has a good reputation in the community and among his peers at the bar.

14. Respondent and bar counsel agree that an appropriate sanction for respondent's violations of DR 9-102(A) and DR 9-102(B) is a three month suspension from practice. This is in conformity with the guidelines set forth

in Matter of Gallo, 117 NJ 365, 568 A.2d 522 (NJ 1989), a case with substantially the same facts as this one.

15. Respondent and bar counsel also agree that the sanction period for these violations should not be completely concurrent with the suspension period imposed for failure to co-operate with bar counsel's investigation.

16. Respondent and bar counsel request that the Board recommend to the Vermont Supreme Court that an order be entered finding respondent in violation

of DR 9-102(A) and DR 9-102(B) and that a suspension of three months is warranted. Respondent and bar counsel further request that the Board recommend

to the Vermont Supreme Court that the three month period of suspension begin on November 11, 1991 -- the date when respondent produced the requested documents in accordance with the Supreme Court's order of October 11 -- and expire on February 10, 1992.

17. Respondent and bar counsel also request that the recommended sanction

include a probationary period of two years during which respondent's trust account will be maintained by a book-keeper or accountant and during which respondent will be required to demonstrate, by prompt submission of quarterly reports prepared by an independent accountant, that his records conform to the requirements of DR 9-102(C).

18. This stipulation is entered into without any contingencies and will remain in effect regardless of whether the Professional Conduct Board or the Vermont Supreme Court imposes the recommended sanction. In entering into this stipulation, it is the intention of bar counsel and respondent to resolve all disciplinary matters presently pending before the Vermont Supreme Court and the Professional Conduct Board.

Dated at Montpelier this 6th day of December, 1991.

Respectfully submitted,

/s/

Wendy S. Collins
Bar Counsel

/s/

Paul D. Jarvis, Esq.
Counsel for Respondent

/s/

Thomas B. Bailey, Esq.
Respondent

ENTRY ORDER

SUPREME COURT DOCKET NO. 90-543

DECEMBER TERM, 1991

In re Thomas B. Bailey, Esq. } Original Jurisdiction
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 } FROM:
 } Professional Conduct Board

 } DOCKET NOS. 89.56, 89.56.1
 } and 89.56 2

In the above entitled cause the Clerk will enter:

The December 6, 1991, decision of the Professional Conduct Board, which accepted the stipulation between bar counsel and respondent of the same date, is hereby approved.

Pursuant thereto:

(1) respondent has complied with the terms of this Court's October 11, 1991, suspension order;

(2) respondent is suspended for an additional period, which began on November 11, 1991, and shall expire on February 10, 1992; and

(3) respondent is on probation for a period of two years, during which

respondent's trust account will be maintained by a bookkeeper or accountant and during which respondent will be required to demonstrate, by prompt submission of quarterly reports prepared by an independent accountant, that his records conform to the requirements of Dr 9-102(C).

BY THE COURT:

/s/

Frederic W. Allen, Chief Justice

/s/

Ernest W. Gibson, III, Associate Justice

/s/

John A. Dooley, Associate Justice

/s/

James L. Morse, Associate Justice

/s/

Denise R. Johnson, Associate Justice

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Do Not Publish