

[12-Sep-2001]

PROFESSIONAL RESPONSIBILITY PROGRAM
HEARING PANEL NUMBER TWO

In Re: PRB File No. 2001.176

DECISION NO. 24

This matter for determination was before Hearing Panel Number Two comprising Lawrin P. Crispe, Michael Filipiak and Douglas Richards, on July 31, 2001.

The matter for consideration was to act upon a Request For Approval of An Admonition approved by Deputy Disciplinary Counsel Beth DeBernardi and the Respondent on the dates of July 9 and 10, 2001.

The Hearing Panel had for its consideration Stipulation Of Facts, as approved and executed by Deputy Disciplinary Counsel Beth DeBernardi and the Respondent on the date of July 9, 2001, Joint Recommendation As To Sanction, as approved and executed by Deputy Disciplinary Counsel Beth DeBernardi and Respondent, Joint Recommendation As To Conclusions Of Law, approved and executed by Deputy Disciplinary Counsel Beth DeBernardi and the Respondent and Respondent's Acknowledgment Partial Waiver Of Procedural Rights And Reservation Of Particular Rights, as executed by Respondent on July 9, 2001.

FINDINGS OF FACT

The following facts are found by the Panel, based upon the Stipulation Of Facts submitted by Deputy Disciplinary Counsel and Respondent:

- The Respondent is an attorney licensed to practice law in the State of Vermont.
- The Respondent was admitted to the practice of law in Vermont in 1980.
- This matter involves a credit counseling service that contracts with debtors to negotiate debt reduction on their behalf with their creditors.
- The credit counseling service on occasion hires attorneys to represent debtors in collection actions that are brought during the debt reduction negotiation process.
- The attorney's fees for his legal work are paid by the credit counseling service, but the client in each case is the individual debtor on whose behalf the attorney enters his appearance in court.
- The above credit counseling service contacted Respondent to see whether he would be available on occasion to represent debtors who are customers of the credit counseling service when they are sued in collection actions. Respondent indicated that he would be available.
- Respondent has been contacted by the credit counseling service on just two occasions concerning representation of debtors who have been sued in collections: both cases involved the same debtor (hereinafter "Debtor"), who was a customer of the credit counseling service.
- Debtor had contracted with the credit counseling service to negotiate a reduction of his debts, including a debt owed to a certain credit card

company.

· Despite the ongoing debt reduction negotiations, the credit card company brought suit against Debtor in Superior Court to collect amounts due under the applicable credit card agreement.

· The credit counseling service thus contacted Respondent and asked him to enter his appearance and file an answer in the collection action on behalf of Debtor.

· The Respondent entered his appearance and filed an answer on behalf of Debtor in the collection action.

· Shortly thereafter, the attorney for the creditor ("opposing counsel") filed a discovery certificate with the court and served Debtor with a set of Interrogatories by sending them to Respondent, as counsel of record.

· Respondent sent a copy of the Interrogatories to the credit counseling service, but he did not send a copy to Debtor.

· Respondent never filed or served answers to the interrogatories, and opposing counsel never sought to file a Motion To Compel.

· Less than a month after serving the Interrogatories (and before the response was even due), opposing counsel filed a Motion For Summary Judgment in the collection action and served a copy of the Motion on the Debtor by sending it to Respondent, as counsel of record.

· Respondent never told Debtor that a Motion For Summary Judgment had been filed, nor did he file any Memo In Opposition.

· Respondent never spoke with Debtor in person or on the telephone to inquire whether there were any defenses to the collection action which should be raised in a Memo In Opposition to the Motion For Summary Judgment; however, no information has been put forward to date that would suggest that Debtor had any defense to the collection action whatsoever.

· In the absence of any Memo In Opposition filed by the Respondent, the Superior Court issued summary judgment in favor of the creditor and against Debtor in the collection action.

· The court erroneously sent the Judgment Order to the Debtor himself, rather than to the Respondent, as counsel of record, such that Respondent was unaware that summary judgment had been granted.

· Four days later, opposing counsel filed a Discovery Certificate evidencing service of post-judgment discovery (Notice to Take Oral Deposition/Request To Produce) on the Debtor by sending a copy to Respondent, as counsel of record. The deposition of Debtor was scheduled to take place about sixty (60) days from the date of the notice.

· About three weeks after Summary Judgment was entered, and more than a month prior to the scheduled deposition date, Debtor's wife spoke with Respondent about the status of the collection action, and Respondent informed her about the recent post-judgment discovery that had been served.

· Despite the notation in the court Docketing Statement that the Summary Judgment Order had been sent to Debtor, Debtor and his wife were apparently unaware that Summary Judgment had been entered against Debtor in the collection action.

· Respondent offered to copy Debtor's file, including the post-judgment discovery request for Debtor and his wife, but the offer was declined.

· A few days later, Debtor entered his pro se appearance in the collection action and filed a Motion To Set Aside The Judgment.

· Debtor's Motion was later denied, in part because Debtor had still not alleged any facts showing that he had a defense to the collection action.

· Debtor suffered potential injury when Respondent neglected the collection action and failed to explore with him whether or not there was a defense to the action. However, as there is no evidence that Debtor had

any defense to the collection action that could have been raised in opposition to the Motion For Summary Judgment, there was no actual injury in this regard.

- Debtor was nevertheless upset that Respondent did not diligently defend the Summary Judgment Motion on his behalf.

- The following mitigating factors are present in this case:

- The absence of a prior disciplinary record.

- The absence of a dishonest or selfish motive.

- Cooperation with the disciplinary proceedings.

- The neglect in this matter was compounded by the court's mistakenly considering that Debtor was a pro se defendant from the outset, such that the court did not send correspondence from the court or the Judgment Order to the Respondent, but rather to the Debtor himself.

CONCLUSIONS OF LAW

That pursuant to Rule 11(D) (1) of Administrative Order No. 9 concludes that the Respondent violated Rule 1.3 of the Vermont Rules Of Professional Conduct. The events relevant to this matter took place subsequent to September 1, 1999, thus, as a matter of law, the Vermont Rules Of Professional Conduct apply.

Rule 1.3 provides as follows: "a lawyer shall act with reasonable diligence and promptness in representing a client." In the instant matter, Respondent failed to discuss with his client whether he had any defenses to the collection action filed against him and Respondent failed to file a Memo In Opposition to the opposing party's Motion For Summary Judgment. Based upon the foregoing, the Panel concludes that Respondent violated Rule 1.3 of the Vermont Rules Of Professional Conduct.

It is the Decision of the Panel that the sanction imposed is an Admonition.

An Admonition is 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. In this case, Respondent acted negligently when he failed to explore with his client whether there might be any defenses to the collection action. He further acted without diligence or promptness when he neglected to file any opposition to the Motion For Summary Judgment. Fortunately, little or no injury resulted.

Dated at Springfield, in the County of Windsor and State of Vermont this 12th day of September, 2001.

HEARING PANEL NUMBER TWO

/s/

Douglas Richards, Esq., Chairman

/s/

Lawrin P. Crispe, Esq.

/s/

Michael Filipiak