

PCB 25

[14-Feb-1992]

STATE OF VERMONT  
PROFESSIONAL CONDUCT BOARD

In re: PCB File 91.10

NOTICE OF DECISION

PCB # 25

This matter was submitted by stipulation to the facts and conclusion of law. Respondent waived his procedural rights under Administrative Order 9, including the right to a hearing and the right to appear before the Board.

Upon consideration of the stipulated facts, the Board concludes that respondent violated DR 6-101(A) (3) in neglecting a legal matter entrusted to him. The Board's findings of fact in support of this conclusion and its decision as to the appropriate sanction to be imposed are set forth below.

Facts

1. This matter was brought to the Board's attention by the Judicial Conduct Board. The Judicial Conduct Board received this information from the

heir of an estate. The estate had remained open for seven years with no activity either from the probate court or the executor.

2. The testator's will was allowed in probate court in November of 1981. For various reasons not material here, the named executor and then the

second executor resigned. The probate court appointed respondent as administrator d.b.n.c.t.a. in March of 1982.

3. When respondent took over from the preceding executor, the preceding executor told him he only had to sell the testator's home, which he did; supervise the distribution of the personal property, which he did; and pay the

bills, which he did. After this, approximately \$1,000 remained in the estate as well as two insurance policies which had not been collected.

4. From 1982 until 1989, respondent took no action to close the estate and distribute the proceeds to the heir, the testator's daughter. No final accounting was filed.

5. The heir was upset by the delay which she attributed to the probate court. She brought this problem to the attention of the probate judge. In response, the probate judge issued to respondent a Notice to Comply by February 9, 1989.

6. Respondent did not comply by that date. On March 1, 1989 the probate court issued to respondent a Notice to Appear for failure to file the final accounting. This hearing was originally scheduled for March 4, 1989, rescheduled for March 17, 1989, and finally held on July 25, 1990 at which time the inventory showed a balance of \$1,104.73. There were also two

insurance policies listed in the estate totalling \$6,000.

7. After the hearing, respondent pursued payment of those policies and the estate was then closed.

8. Respondent acknowledged responsibility for the delay in closing this estate. He attributed the delay to a failure in his case monitoring system within his office. Respondent has taken steps to insure that other matters are not neglected. Respondent forfeited his fee to the estate to amend for his error. Although the delay in closing the estate was upsetting to the heir, the estate suffered no monetary loss as a result of the delay.

#### Sanction

The Board is concerned with the number of neglect cases which have come to its attention, particularly in probate practice. Given the pressures and

volume of the modern law office, it is easy for some client matters to "slip through the crack." However, it is the responsibility of every lawyer to ensure that client matters are not neglected. The beneficiaries of estates should not have to tolerate inactivity nor have to go to extraordinary lengths to secure the attention of counsel.

Standard 4.4 of the ABA Standards for Imposing Lawyer Sanctions provides that a private admonition is the appropriate sanction where a lawyer is negligent and does not act with reasonable diligence in representing a client. This standard assumes that the neglect caused little or no actual or potential harm to the client.

Respondent co-operated fully with this inquiry. Respondent has demonstrated remorse. He made every effort to rectify his error, voluntarily, before this matter was brought to the Board's attention. Respondent has no disciplinary record and enjoys a reputation of competence and integrity.

The Board agrees with the recommendation of bar counsel and respondent that a sanction no greater than a private admonition is warranted here. A private admonition is consistent with the ABA guidelines as well as our prior

decisions involving neglect. See Re: PCB 88.110, Decision 2, August 3, 1990 (respondent failed to pursue client's breach of contract claim for six years because the file was misplaced); Re: PCB 89.44, Decision 5, October 12, 1990 (respondent neglected to pursue client's request that he renegotiate

a loan and neglected to provide the client with a requested status report); Re: PCB 89.64, Decision 8, May 10, 1991 (respondent accepted client's retainer and then failed to pursue modification of visitation order); Re: PCB 90.02, Decision 18, November 1, 1991 (respondent failed to file proposed

final divorce decree for 11 months after judge so ordered, despite repeated requests from client for a copy of the final divorce order).

Accordingly, the chairman will issue a private letter of admonition to respondent.

Dated at Montpelier this 14th day of February, 1992.

PROFESSIONAL CONDUCT BOARD

By: /s/  
J. Eric Anderson, Chair

/s/  
Deborah S. Banse, Esq.

/s/  
Anne K. Batten

/s/  
Leslie G. Black, Esq.

/s/  
Richard L. Brock, Esq.

Joseph F. Cahill, Jr., Esq.

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

Hamilton Davis

/s/  
Nancy Foster

/s/  
Shelley Hill, Esq.

/s/  
Rosalyn L. hunneman

/s/  
Donald Marsh

/s/  
Karen Miller, Esq.

/s/  
Edward Zuccaro, Esq.