

29.PRB

[Filed 12-Dec-2001]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: PRB File No. 2001.200

Order
Decision No. 29

On July 18, 2001, Disciplinary Counsel filed a Petition of Misconduct against the Respondent. The Petition charged the Respondent with failing to comply with a request that Respondent answer an ethics complaint that had been filed with Disciplinary Counsel.

The Respondent filed an answer to the Petition of Misconduct. In the answer, Respondent alleged that there were reasonable grounds for Respondent's failure to respond to Disciplinary Counsel's request. At a pre-hearing conference held on October 17, 2001, Disciplinary Counsel agreed that the Panel could dismiss the Petition of Misconduct if the Respondent provided an affidavit setting out the reasons for failure to respond to Disciplinary Counsel's request. The Respondent submitted an affidavit. Having reviewed the affidavit, Disciplinary Counsel advised the Panel that he would not oppose a decision to dismiss the Petition of Misconduct.

I. Facts

The Respondent is an attorney licensed to practice law in the State of Vermont. In April of 2001, an ethics complaint was filed against the Respondent. The complaint alleges facts that, if true, indicate that the Respondent may have neglected a client, failed to communicate with a client, and needlessly delayed pending litigation.

By letter dated May 4, 2001, Disciplinary Counsel asked the Respondent to file a written response to the complaint. The Respondent did not respond and did not contact Disciplinary Counsel to request an extension of time to respond. As a result, Disciplinary Counsel filed a Petition of Misconduct charging the Respondent with failing to comply with a request from disciplinary authorities.

Subsequently, the Respondent submitted an affidavit explaining the failure to respond. In the affidavit, Respondent avers that on June 12, 2001, Respondent underwent surgery for a serious illness. Respondent indicates that due to various hospital visits, Respondent missed work prior to the surgery. In addition, Respondent states that the illness caused a great deal of stress and anxiety.

The affidavit also indicates that, around the same time as Respondent was experiencing health problems, one of the Respondent's immediate family members was suffering from a life-threatening condition. According to the affidavit, this added to the Respondent's stress, anxiety, and inability to

attend to all of Respondent's professional obligations.

The Respondent concludes by indicating that Respondent's own health problems, coupled with the added stress that resulted from a relative's illness, prevented Respondent from providing Disciplinary Counsel with a response to the ethics complaint. Respondent states that the surgery was successful and that Respondent has met with counsel and started preparing a response to the ethics complaint that Disciplinary Counsel asked Respondent to answer in May. The Panel finds the facts in Respondent's affidavit to be true.

II. Conclusions of Law

Discipline may be imposed if, absent reasonable grounds for doing so, a lawyer fails to respond to a request from disciplinary counsel. A.O. 9, Rule 7D. Indeed, Vermont's ethics decisions are clear: an attorney engages in conduct prejudicial to the administration of justice when he or she fails to respond to requests from disciplinary counsel. In Re: PRB File No. 2000.019, Decision No. 15, (Oct. 23, 2000); In Re Blais, PCB No. 118, 1 VPCR 226, 227 (1997) (citing In Re Bailey, 157 Vt. 424 (1991)).

III. Discussion

The Panel agrees with the parties that the Respondent had reasonable grounds for not responding to Disciplinary Counsel's letter of May 4, 2001. Specifically, both the Respondent and a close family member were in the midst of serious and significant health problems. Perhaps the Respondent should have apprised Disciplinary Counsel of this situation. Nonetheless, the Panel concludes that Respondent's significant family and health problems constitute a reasonable basis for failing to respond to Disciplinary Counsel. Moreover, Respondent has begun to cooperate with the investigation process.

IV. Conclusion

The parties agree, and the Panel concurs, that there were reasonable grounds for the Respondent's failure to respond to Disciplinary Counsel. Therefore, the Petition of Misconduct is DISMISSED.

Dated this November 29, 2001.

HEARING PANEL # 6

/s/

/s/

Judith Salamandra Corso, Chair

George Coppenrath

/s/

James Gallagher, Esq.

FILED DECEMBER 10, 2001