

PCB 2

[03-Aug-1990]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 88.110

NOTICE OF DECISION

PCB 2

Procedural History

A complaint was filed with the Professional Conduct Board by clients of Respondent, a member of the Vermont Bar.

Bar Counsel investigated this matter and, as a result of the investigation, entered into a stipulation of facts with the Respondent. A duly impaneled hearing panel reviewed the stipulation pursuant to Administrative Order 9, Rule 8, and determined that there was probable cause to believe that a violation had occurred. A petition alleging a violation of DR 7-104(A)(I) subsequently issued.

Respondent did not contest the allegations of the petition. A hearing panel appointed pursuant to Rule 8C reviewed the stipulation and concluded that Respondent had, in fact, violated DR 6-101(A)(3) and recommended that a sanction of private admonition be imposed.

The Professional Conduct Board reviewed the recommendation of the hearing panel and accepted it. Set forth below are the Board's findings of fact and conclusions of law.

Facts

1. The complainants were married on June 23, 1978. Photographs taken at their wedding were defective and the complainants wished to assert a claim against the photographer.

2. On or about August 23, 1978, the complainants consulted with Respondent concerning a possible claim.

3. Respondent received a retainer of \$50 from the complainants and agreed to assert a claim against the photographer.

4. The fee agreement between Respondent and the complainants was contingent; Respondent would receive one third of the amount collected in the event the case went to trial, and 25% of the amount collected if the case was settled prior to trial.

5. During the autumn of 1978, Respondent contacted, by letter and by telephone, a representative of the insurance carrier for the defendant photographer.

6. The defendant offered to settle the matter for \$500 and Respondent

duly communicated this offer to the complainants. The complainants declined to settle for that amount.

7. Between the end of autumn, 1978 and late spring or early summer of 1984, neither Respondent nor anyone on his behalf performed any work on the claim of the complainants.

8. One of the complainants telephoned Respondent's office on several occasions after she and her husband had declined the settlement offer of \$500 in 1978, but Respondent did not receive the calls and did not return the calls.

9. The file of the complainants essentially "slipped through the cracks" at Respondent's office, and it did not come to his attention again until he was preparing to move files from his old office to a new office in 1984.

10. When the file resurfaced in Respondent's office, Respondent's partner initiated a suit on behalf of the complainants against the defendant photographer.

Conclusions of Law

The Code of Professional Responsibility provides, in relevant part: DR 6-101 Failing To Act Competently.

(A) A lawyer shall not:

(3) Neglect a legal matter entrusted to him.

The Board finds that Respondent violated the above provision and has issued a private admonition to Respondent. Private admonition is an appropriate level of sanction where 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. See section 4.4, ABA Standards for Imposing Lawyer Sanctions at page 33.

Dated at Montpelier, Vermont, this 3rd day of August 1990.

PROFESSIONAL CONDUCT BOARD

/s/

J. Eric Anderson, Chair

/s/

/s/

Donald Marsh

Richard Brock

/s/

/s/

Nancy Corsones

Leslie G. Black

/s/

/s/

Christopher Davis

Nancy Corsones

/s/

/s/

Edward Zuccaro

Rosalyn L. Hunneman

/s/

Edith L. Patenaude