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[13-Apr-2000]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re: PCB File No. 98.28

HEARING PANEL DECISION NO. 3

On February 14, 2000, the Panel convened a hearing via telephone. Attorney William Dorsch represented the Respondent. Deputy Disciplinary Counsel Michael Kennedy appeared for the Office of Disciplinary Counsel.

Prior to the conference, the parties submitted a stipulation of facts. The parties also filed a joint recommendation that the panel conclude that the Respondent violated DR 4-101(B)(1) of the Code of Professional Responsibility. Finally, the parties joined to recommend that the Panel impose a private admonition.

The Panel accepts the stipulation of facts. The Panel concludes that the facts clearly and convincingly establish that the Respondent violated DR 4-101(B)(1) of the Code of Professional Responsibility. Given the circumstances, the Panel agrees with the parties' recommended sanction and

hereby approves Disciplinary Counsel's imposition of an admonition. See A.O. 9, Rule 8(A)(5).

I Facts

The Respondent is an attorney licensed to practice law in the State of Vermont. The Respondent was admitted in 1992.

In the spring of 1995, while working as a solo practitioner, the Respondent decided to sell a computer. The Respondent located a prospective purchaser and the two agreed upon a date for the purchaser to pick up the computer at the Respondent's office.

When the date arrived, the Respondent asked the purchaser if the Respondent could keep the computer for an extra day since the Respondent had not yet had time to delete all the work files from the computer's hard drive. The purchaser agreed to wait one more day. The next day, the purchaser arrived to pick up the computer. The Respondent still had not had the time to delete all of the work files from the computer's hard drive. Before the purchaser left, the Respondent asked him to delete the files as he came across them. With that understanding, the purchaser left with the computer.

There were between 50 and 60 work-related files still on the computer when the Respondent sold it. The purchaser eventually identified several

of the Respondent's work files on the computer's hard drive. The purchaser did not read the files, but copied the files to discs that were eventually provided to the Office of Bar Counsel. The purchaser then deleted the files from the hard drive.

The files contained letters, pleadings, and notes on several cases. Almost all did not violate client confidentiality. However, one of the files on the computer related to a matter in which the Respondent represented a client who was having serious personal problems with a relative that lived with her. The file included a letter that detailed some of the problems the client was having with her son. Another of the files on the computer contained letters that referenced problems that a juvenile client's parents were having with a visitation schedule. The Respondent has suffered from depression for years, has actively and effectively sought treatment for the depression, and currently has the depression under control.

A direct result of the depression is being overwhelmed by the demands of day to day life and being unable to attend to matters effectively. At the time of the events that are the basis of this complaint, the Respondent was depressed and overwhelmed.

The Respondent does not have a prior disciplinary history. The Respondent cooperated with the Office of Disciplinary Counsel (and its predecessor) since this complaint was filed in October of 1997. The delay

in bringing this matter to conclusion was not caused by the Respondent.

The Respondent has expressed remorse for failing to delete the files from the computer prior to letting the purchaser take it. The Respondent's remorse and effective participation in the treatment of the depression make it unlikely that any similar or other depression related violation of the Respondent's ethical duties will occur in the future.

II Conclusions of Law

The Code of Professional Responsibility applies to this case. DR 4-101(B)(1) of the Code of Professional Responsibility prohibits a lawyer from knowingly revealing a confidence or secret of a client. The panel concludes that by selling a computer that the Respondent knew to contain client files, the Respondent violated DR 4-101(B)(1) of the Code of Professional Responsibility.

III Sanction

In Vermont, the Supreme Court has stated that it is appropriate to use the ABA Standards For Imposing Lawyer Sanctions in determining the appropriate sanction in a disciplinary case. In *Re Berk*, 157 Vt. 524, 532 (1991) (citing *In Re Rosenfeld*, 157 Vt. 537, 546-47 (1991)). Factors relevant to the determination are: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury; and (4) any mitigating

and/or aggravating factors. In *Re Berk*, 157 Vt. at 532. Analyzing each of these factors in conjunction with the ABA's Standards for Imposing Lawyer Discipline it is clear that a private admonition is appropriate in this case.

A. The Respondent violated the duty to maintain client confidences and secrets.

A lawyer has a duty to maintain client confidences and secrets. ABA Standards For Imposing Lawyer Sanctions, § 4.2; In *Re Pressley*, 160 Vt. 319, 324 (1993). By selling a computer that contained confidential client files, the Respondent violated the duty to maintain client confidences and secrets.

B. The Respondent's Mental State.

The panel concludes that the Respondent was negligent. The Respondent did not intentionally disclose confidences or secrets. Although the Respondent knew that the computer contained work files, the Respondent did not know that the hard drive still contained files that had client confidences and secrets.

C. The Respondent may have caused potential injury to clients.

The purchaser did not read any of the Respondent's work files. However, the Respondent failed to delete a file that related to a matter

in which a client was having serious personal problems. If revealed, the information may have proven embarrassing or detrimental to the client. Furthermore, the file relating to a juvenile matter that the Respondent was handling referenced problems that the client was having with a visitation schedule. If that information had been disclosed, it may have proven embarrassing or detrimental to the Respondent's client.

D. Aggravating and Mitigating Factors

The panel finds no aggravating factors. In mitigation, the panel concludes that the Respondent:

1. Does not have prior disciplinary history; ABA Standards for Imposing Lawyer Sanctions, § 9.32(a);
2. Did not have a dishonest or selfish motive; ABA Standards for Imposing Lawyer Sanctions, § 9.32(b);
3. Suffered from personal and emotional problems at the time of the violation; ABA Standards for Imposing Lawyer Sanctions, § 9.32(c);
4. Made a full and free disclosure to the Office of Disciplinary Counsel and cooperated with the Office of Disciplinary Counsel throughout the course of this case; ABA

Standards for Imposing Lawyer Sanctions, § 9.32(e);

5. Was relatively inexperienced in the practice of law at the time of this violation; ABA Standards for Imposing Lawyer Sanctions, § 9.32(f);

6. Suffered from a mental impairment at the time of the violation; ABA Standards for Imposing Lawyer Sanctions, § 9.32(h); and

7. Expressed remorse; ABA Standards for Imposing Lawyer Sanctions, § 9.32(l).

E. The Sanction

A private admonition is "generally appropriate when a lawyer negligently reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes little or no actual or potential injury to a client." ABA Standards for Imposing Lawyer Sanctions, § 4.24. No actual injury resulted in this case. Little or no potential injury resulted. Moreover, the Respondent's mental condition was the direct cause of the violation. The Respondent has taken effective steps to deal with that condition. Thus, the Panel concludes that a private admonition is appropriate.

WHEREFORE, for the reasons stated herein, the Panel approves
Disciplinary Counsel's imposition of an admonition.

/s/

3-28-00

Judith Salamandra Corso, Esq.

Date

Chair

/s/

3-31-00

James Gallagher, Esq.

Date

/s/

4-01-00

George Coppenrath

Date