

4 PRB

[20-Apr-2000]

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD

DECISION NO. 4

In re: PRB File No. 99.09

Respondent is charged with violation of DR 4-101(B)(1), disclosing secrets of a client. Respondent is represented by counsel. Deputy Disciplinary Counsel Michael Kennedy represented the Office of Disciplinary Counsel. The parties have filed a Stipulation of Facts, Conclusions of Law and Recommended Sanction. The parties have waived their right to a hearing before a hearing panel, A.O. 9, Rule 8 C. After review of the Stipulations and filings of the parties, the hearing panel finds as follows:

FINDINGS OF FACT

1. Respondent was admitted to practice law in Vermont in 1994. She is a sole practitioner.

2. In 1998, Respondent was contacted by Complainant about a possible worker's compensation claim, which involved Complainant's exposure to toxic chemicals.

3. Respondent advised Complainant that she was not a worker's compensation attorney, and did not have much experience in that area of law. She also told Complainant, however, that she had recently been contacted by another person who claimed a similar injury, and described that injury. Respondent also told Complainant that it was her advice that persons who had suffered any kind of psychological injury should go to a counselor to establish a record.

4. In describing the previous person's case, Respondent disclosed enough information about his situation and injuries that Complainant was able to identify him. When Complainant told Respondent that she thought she knew him and stated his name, Respondent confirmed his identity and advised Complainant not to pass the information on to anyone else.

5. Respondent's disclosure of the other person's identity and the circumstances of his case to Complainant exposed him to potential embarrassment in the community.

6. Respondent was 68 years old at the time of the complaint. She intends to retire shortly and is actively working toward closing her

practice.

7. Respondent has no prior record of disciplinary action.

8. Respondent co-operated fully with disciplinary counsel, and all stages of the disciplinary process.

#### CONCLUSIONS OF LAW

The conduct complained of in this case occurred in 1998; therefore, the rules of the former Professional Conduct Board apply. See A.O. 9 (effective through 9/1/99). DR 4-101(B)(1) provides that a lawyer "shall not knowingly reveal a confidence or secret of his client." The attorney's obligation to preserve his client's confidences is the core component of the attorney/client relationship. In re: Pressly, 160 VT 319, 325 (1993). The lawyer's duty extends not only to clients who have formally retained him, but also to persons who seek his advice. The obligation to preserve the client's secrets also extends not only to information revealed during attorney/client conferences, but also to information the attorney learns during his or her investigation of a case. EC 4-1, 4-2.

The American Bar Association's Standards for Imposing Lawyer Sanctions (ABA Standards) recommend suspension when a attorney knowingly discloses a client's confidences, and causes injury or potential injury to the client.

ABA Standard 4.22. A public reprimand is recommended when the attorney's state of mind is negligence, and he causes real or potential injury to the client. ABA Standard 4.23. A private admonition is appropriate only when the lawyer discloses client information negligently, and little or no potential harm to the client results. ABA Standard 4.24.

The Vermont Supreme Court has adopted these standards in holding that a public reprimand is generally appropriate when an attorney discloses a client's secrets. In *In re: Pressly*, 160 VT 319 (1993), a divorce client advised her attorney that she believed her husband was sexually abusing their young daughter, but asked him not to disclose her suspicions to her husband. The respondent disclosed that information to the husband's attorney during a conversation about why the wife was insisting on supervised visitation. The Professional Conduct Board found that respondent had acted negligently; although he knew that the information was confidential, the Board found that either he did not realize his disclosure would cause his client harm or he misunderstood his duty not to disclose the information under the circumstances. The Supreme Court approved the Board's recommendation of a public reprimand, in part, based on evidence that respondent's disclosure had caused his client increased emotional distress. *Id.* at 324-25.

In *In re: Billewicz*, 161 Vt. 631 (1994), the Board recommended a public reprimand when an attorney unnecessarily disclosed details about a client's case in filing a motion to withdraw. In approving that

recommendation, the Supreme Court noted that the attorney's state of mind was "nothing more culpable than negligence," and that her misconduct was probably a result of inexperience. It held, however, that even an inexperienced practitioner should understand the importance of protecting a client's confidences. *Id.*

In the instant case, the parties stipulated to a private admonition. Although Respondent's conduct would usually call for a more serious sanction, the Hearing Panel approves that recommendation for a number of reasons. First, it appears that Respondent's state of mind was "nothing more culpable than negligence." She either misunderstood her duty to keep the circumstances of the other person's secret or erroneously believed she could disclose the circumstances of his case without revealing his name. In either case, she did not intend to cause him harm or was unaware that her conduct could potentially cause harm. *Billewicz*, 161 Vt. at 632; *Pressly*, 160 Vt. at 323.

Second, there is no evidence here that the first person suffered any injury as a result of the disclosure. The facts indicate only the potential that he "might be embarrassed." Cf., *Pressley*, 160 VT at 324 (recognizing evidence that client suffered increased anguish as a result of her attorney's disclosure). Third, there is no risk that Respondent will repeat her misconduct. See *id.* at 324 (fact that respondent would not commit a like offense in the future considered mitigating factor). In this case, Respondent intends to retire and has taken steps to close

her practice. There is no danger that she will endanger future clients or potential clients. Finally, Respondent has no other record of disciplinary action and has co-operated fully in all stages of the disciplinary process.

#### RECOMMENDATION

Based on the above Findings and Conclusions, and in accordance with the ABA Standards 4.23 and 4.24, it is the recommendation of this Hearing Panel that Respondent be privately admonished for violating the secrets of a client or potential client, and disclosing his name and the circumstances of his case to a potential client. Dated at Montpelier, Vermont this 20th day of April, 2000.

/s/

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Barry E. Griffith, Esq.,  
Chair, Hearing Panel No. 1

/s/

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Stephen Anthony Carbine

/s/

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Martha M. Smyrski, Esq.

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