

54 PRB

[5-May-2003]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re: Arthur Heald, Esq.,

PRB File Nos. 2003.141 & 2003.142

Decision No. 54

By petition dated December 30, 2002 Respondent was charged with two counts of failure to cooperate with Disciplinary Counsel in violation of Rule 8.4(d) of the Vermont Rules of Professional Conduct. He failed to respond to the petition, and Disciplinary Counsel moved to deem the charges admitted. The Panel granted the motion on January 30, 2003.

The issue of sanctions was heard on March 10, 2003, before Hearing Panel Number 6, consisting of Judith Salamandra Corso, Esq., James Gallagher, Esq. and Toby Young. Disciplinary Counsel Michael Kennedy was present. Respondent appeared pro se.

Based upon the admitted charges and the presentations by Respondent and Disciplinary Counsel, the Panel suspends Respondent from the practice of law for a period of thirty days for violation of Rule 8.4(d) of the Vermont Rules of Professional Conduct.

Facts

In August of 2002, CL filed an ethics complaint against Respondent. On October 15, 2002, Bar Counsel informed Respondent that she was referring CL's complaint to Disciplinary Counsel for additional investigation and directed Respondent to provide Disciplinary Counsel with a written response by November 5, 2002.

In October of 2002, FB filed an ethics complaint against Respondent. On November 4, 2002, Acting Bar Counsel informed Respondent that she was referring FB's complaint to Disciplinary Counsel for additional investigation and directed Respondent to provide Disciplinary Counsel with a written response by November 27, 2002.

On November 27, 2002, a member of Disciplinary Counsel's staff called Respondent to inquire about the status of his responses. He acknowledged receipt of the two complaints and stated that he would file responses on December 2, 2002.

Respondent did not meet that deadline, and on December 26, 2002, Disciplinary Counsel filed his petition alleging that Respondent had failed to cooperate with Disciplinary Counsel. Respondent did eventually file responses to the complaints by CL and FB but never responded to the petition of misconduct dealing with his failure to cooperate.

Respondent is 76 years old and has practiced law for 50 years. His practice is primarily in the area of real estate.

Conclusions of Law

Failure to cooperate with disciplinary authorities violates Rule 8.4(d) of the Vermont Rules of Professional Conduct, which prohibits lawyers from engaging in conduct prejudicial to the administration of justice. The disciplinary system can function only with the active cooperation of members of the bar. An attorney's failure to cooperate undermines the system and places undue burdens on disciplinary counsel. In a number of previous cases attorneys have been disciplined for failure to cooperate. The cases are very like the present situation; requests from Bar Counsel for a response to the underlying complaint are ignored and as a result charges are brought. *In re Blais*, 166 Vt. 621 (1997), *In re PCB* File No. 2000.019, PRB Decision No. 15 (October 23, 2000), *In re PCB* File No. 955.96, PCB Decision No. 122, (Sept. 5 1997).

The admitted facts establish that Respondent failed to respond to the

two ethical complaints, and the Panel finds that Respondent violated Rule 8.4(d) in these two instances.

Sanctions

In suspending Respondent for these violations the Panel is aware that, with one exception, attorneys have been admonished, or occasionally publicly reprimanded for failure to cooperate with the disciplinary system. The one exception to this is the case of *In re Bailey*, 157 Vt. 425 (1991), where the attorney was suspended for failure to make his trust account records available for inspection. This case is of little value to the Panel here because there the potential for serious harm was apparent at the time Disciplinary Counsel began the investigation. The complaints concerned bounced checks in the attorney's trust account and he was refusing to permit inspection.

Administrative Order 9

The facts in the present case are much closer to those in the cases in which admonition was imposed. If, however, we look to the underlying philosophy of the use of admonitions, we find that Respondent's conduct does not fit within those parameters. A.O. 9, Rule 8(b) provides that admonition is only appropriate "in cases of minor misconduct when there is little or no injury to a client, the public, the legal system, or the profession and where there is little likelihood of repetition by the

lawyer."

Unlike Bailey there is here no apparent threat of serious harm to clients, but there is harm to the legal system. The profession takes seriously its obligation for self regulation. There are finite resources available for the investigating and prosecuting of complaints of misconduct, and the system works efficiently only when attorneys cooperate fully with Disciplinary Counsel. When they fail to do so, resources of time and effort are expended to obtain the cooperation that is every lawyer's responsibility to provide. In addition, an attorney's failure to cooperate damages the public perception of the profession by delaying the investigation complainants believe warranted.

The present case does not meet the requirements of the second part of rule on imposition of admonition. The Panel has no confidence that there is little likelihood of a repetition of the misconduct. The reasons for this become apparent in our discussion of Respondent's disciplinary history which follows.

Disciplinary History

The principal factor in the Panel's decision to impose suspension in this matter is the nature and extent of Respondent' history with the disciplinary system.

Less than two years ago, Respondent was before another Hearing Panel of the Professional Responsibility Board under very similar facts. A complaint was received, Respondent failed to answer, and the Panel deemed the charges admitted upon motion of Disciplinary Counsel. The Panel imposed a sixty day suspension for failure to cooperate as well as the violation on the underlying charge. In re Heald, PRB Decision No. 19 (May 24, 2001). Upon appeal to the Supreme Court, the sanction was reduced to public reprimand by stipulation of the parties. In re Heald, 2001-264 (Jan. 18, 2002).

In 1995 Respondent was publicly reprimanded and ordered to complete 6 hours of time management training for neglecting a probate estate. In that case the Board noted that while there was little actual injury there was potential for serious injury since Respondent had failed to obtain insurance for real estate owned by the estate. In re Heald, 163 Vt. 640 (1995).

In 1994 Respondent was admonished for neglecting his duties as administrator of an estate. In its decision the Board noted that Respondent was initially unresponsive to inquiries from the disciplinary system. In re Heald, PCB Decision No. 65 (Apr. 1, 1994).

In 1985 Respondent was suspended for four months for failure to file his federal income tax return. Though Respondent was convicted of an intentional crime, his behavior in this matter is similar to the

disciplinary cases that followed it. His failure to file returns was not a result of a desire to avoid paying taxes, but because he believed that he owed no taxes due to large losses. This turned out to be substantially correct. Had Respondent attended to this responsibility, he would have paid little or no tax and would have avoided fines and a criminal conviction. 140 Vt. 651 (1982). PCB Hearing Panel Report dated Jan. 8, 1982. Shortly before this case, Respondent received his first discipline, a private admonition. In re File No. 80.002, (Feb. 6, 1981).

In reviewing Respondent's twenty-two year history with the disciplinary system, we see a strong pattern of neglect of both his own obligations and those of his clients. Furthermore, we see no indication that Respondent has ameliorated his behavior. If anything, it has deteriorated. In his two most recent cases, the present one and the 2001 case, Respondent failed to attend to the petitions of misconduct even when faced with motions to deem the charges admitted.

ABA Standards for Imposing Lawyer Sanctions

In determining the sanctions to be imposed, we have also looked for guidance to the ABA Standards for Imposing Lawyer Sanctions (hereinafter ABA Standards § x.xx) which have been routinely applied in Vermont disciplinary cases. The ABA Standards include a number of aggravating and mitigating factors which may be considered in determining the level of

discipline to be imposed. ABA Standards, § 9.21, § 9.31. The three aggravating factors which are of greatest concern here are prior discipline, ABA Standards, § 9.22(a), a pattern of misconduct, ABA Standards, § 9.22(c), and multiple offenses, ABA Standards, § 9.22(d) Respondent's record of prior discipline is substantial, and all of the cases follow a similar pattern of failure to attend to either his clients' or his own obligations.

Respondent's Testimony

It was apparent from Respondent's testimony that he believed that there was no merit to the underlying complaints, but he had no explanation for his failure to respond. Respondent expressed regret at the trouble that he caused the Board, but nothing in his testimony gives the Panel any assurances that this pattern of behavior will not continue. It seems apparent that the public reprimand imposed less than two years ago has not gotten his attention and compelled him to change his ways. If he has completed the six hours of time management training required by the Supreme Court in 1995, we see no evidence of its affect on his behavior.

Conclusion

Faced with this situation, the Panel feels that the only appropriate response is to impose suspension. To do less would be to reward an attorney who ignores the disciplinary process until the last moment and would be

insufficient to protect the integrity of the system.

We have chosen to impose a minimum suspension with the hope that Respondent will use this time to reorder his office management procedures and rethink the size of his caseload. The requirement that he notify all clients of his suspension will force him to make arrangements for others to address the needs of each client during this period of time, and we sincerely hope that when he returns to practice, he will succeed in managing his client's affairs as well as his own with more care.

Order

Respondent, Arthur Heald, is SUSPENDED from the practice of law for a period of thirty days, commencing forty-five days from the date of this opinion, for violation of Rule 8.4(d) of the Vermont Rules of Professional Conduct.

Respondent shall promptly comply with the provision of Rule 23 of A.O.9 which sets forth the responsibilities of suspended attorneys, including the obligation to notify clients and opposing attorneys, duties with respect to clients' property and representation and affidavits to be filed with the Professional Responsibility Board.

Dated: May 5, 2003

Hearing Panel No. 6

/s/

Judith Salamandra Corso

/s/

James Gallagher, Esq.

/s/

Toby Young

FILED MAY 5, 2003