

PCB 57

[16-Jul-1993]

STATE OF VERMONT  
PROFESSIONAL CONDUCT BOARD

Re: PCB File No. 91.22

NOTICE OF DECISION

NO. 57

This matter was submitted to the Board by stipulation between Respondent and Bar Counsel. Based upon that stipulation, the Board makes the following findings of fact and imposes a sanction of private admonition.

Facts

1. Respondent was admitted to the Vermont bar in 1961.

2. The Complainants owned a piece of property with a trailer located on it. In the course of a title search by a buyer's attorney a cloud on their title was discovered. This defect could only be cured through probate court proceedings. The Complainants retained Respondent to bring an action in probate court to resolve the question in title in July of 1990.

3. The Complainants maintain that they informed Respondent that the title needed clearing as soon as possible, that the contracted buyer was living in the trailer but that the closing could not occur until the title was cleared.

4. Respondent maintains that he was never informed that time was of the essence. He maintains that he understood that the sale to the person living in the trailer had already been completed and that his services were solicited to clear title for future sales.

5. Respondent neglected this matter and failed to carry out his contract of employment.

6. The property owner telephoned Respondent's office approximately twice a month from August of 1990 through February of 1991, inquiring as to the status of the title. She was repeatedly told by Respondent's secretary that Respondent would return her calls. Respondent failed to respond to her calls.

7. In December of 1990, Respondent appeared in probate court with one of the property owners on another, unrelated matter. At that time, Respondent told the owner that he only needed one signature and the title matter would be concluded. He further represented that he would complete the task within a few days.

8. Respondent did not complete the task within a few days. In January, the owner contacted Respondent again and asked when the title would be cleared. Respondent repeated the statements he had made to her in December.

9. On February 21, 1991, the buyer told the owners that if the sale was to be concluded, it had to happen immediately.

10. The owner telephoned Respondent on February 22, 1991. She left a message for Respondent to call her. Respondent failed to return her call.

11. The owner sought help from her daughter, who telephoned Respondent's office several times between February 25 and 28, 1991 and left messages for Respondent. Respondent did not return any of the calls.

12. Finally, the owner contacted another attorney in late February or early March and asked him to undertake representation. The substitute attorney resolved the title problem in a prompt and professional manner. However, the buyer withdrew from the sale contract of the real estate before substitute counsel could reasonably be expected to complete the task.

13. Respondent cooperated with substitute counsel by promptly relinquishing his file. He also cooperated fully with Bar Counsel's investigation of Complainant's allegations against him.

14. Respondent's neglect of this matter prejudiced his clients by precluding a prompt closing on the pending real estate sale. Because of Respondent's neglect, Complainants lost the opportunity to sell the real estate as they had contracted to do.

15. Respondent reimbursed the owners the sum of \$10,250 out of his own funds in the fall of 1992.

#### CONCLUSIONS OF LAW

Respondent violated DR 6-101(A) (3) (a lawyer shall not neglect a legal matter entrusted to him) and DR 7-101(A)(2) (a lawyer shall not fail to carry out a contract of employment).

The Standards for Imposing Lawyer Discipline provide that the following factors should be considered: the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of any aggravating or mitigating factors. Standard 3.0 (1986).

The duty violated was the duty of diligence owed to the client. The Respondent's mental state was one of negligence. Actual injury resulted. Mitigating factors include absence of a prior disciplinary record, good character and reputation, restitution to mitigate harm to the clients, full disclosure to the disciplinary authority, and remorse. Aggravating factors include substantial experience in the practice of law and the vulnerability of the victims of the misconduct.

Respondent acknowledges his neglect and failure to complete the contract of employment with his clients, the property owners, within a reasonable period of time.

#### Sanction

Based upon the above, the mitigating factors and the few aggravating factors, and the monetary reimbursement to the Complainants, the Board has issued a private admonition to respondent.

Dated at Montpelier, Vermont this 16 day of July, 1993.

PROFESSIONAL CONDUCT BOARD

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Deborah S. Banse, Chair

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Anne K. Batten

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Nancy Foster

*/s/*

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Joseph F. Cahill, Esq.

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Donald Marsh

*/s/*

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Nancy Corsones, Esq.

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Karen Miller, Esq.

*/s/*

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Paul S. Ferber, Esq.

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Ruth Stokes

*/s/*

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Rosalyn Hunneman

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Jane Woodruff, Esq.

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Robert P. Keiner, Esq.

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Edward Zuccaro, Esq.