

59 PRB

[24-Oct-2003]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

Decision No. 59

In Re: PRB File No. 2003.271

On September 8, 2003, the parties filed a stipulation of facts as well as joint recommendations on sanctions and conclusions of law. Respondent, who was represented by counsel, also waived certain procedural rights including the right to an evidentiary hearing. The Hearing Panel accepts the facts and recommendations and orders that Respondent, a sole practitioner, be admonished by Disciplinary Counsel for use of law office letterhead which indicated that he had associates, in violation of Rule 7.5(d) of the Vermont Rules of Professional Conduct.

Facts

Respondent is an attorney licensed to practice law in the State of Vermont. He was admitted to practice in Vermont in 1995.

In June of 2003, Respondent's bank notified Disciplinary Counsel of an overdraft to Respondent's client trust account. Disciplinary Counsel wrote to Respondent and asked for a written explanation of the circumstances surrounding the overdraft. Respondent provided a response on letterhead indicating that the name of Respondent's firm was "Respondent & Associates Law Offices," however, his explanation of the overdraft suggested that he was a sole practitioner. Disciplinary Counsel requested an explanation of the firm name and, through counsel, Respondent admitted that the name was misleading since Respondent did not have, and never had, any associates.

Respondent has ceased using letterhead containing the name "Respondent and Associates Law Office" and now uses letterhead that accurately reflects his status as a sole practitioner. There is no evidence that Respondent's letterhead or firm name injured the public, the bar, or the legal system.

Disciplinary Counsel concluded that the overdraft to Respondent's trust account was the result of an error that does not warrant a disciplinary sanction, but in conjunction with his consent to an Admonition by Disciplinary Counsel for using improper letterhead, Respondent has agreed to attend a CLE on trust account management within the next six (6) months. Respondent has no record of discipline and has fully cooperated

with Disciplinary Counsel's investigation.

Conclusion of Law

Rule 7.5(d) of the Vermont Rules of Professional Conduct states that lawyers "may state or imply that they practice in a partnership or other organization only when that is the fact." A case similar to this arose under the comparable provision of the Code of Professional Responsibility, predecessor to the Vermont Rules of Professional Conduct, That case involved an attorney who practiced alone in a firm named "Attorney and Associates." The Professional Conduct Board admonished the attorney for using a misleading firm name. In re: PCB File 90.52, PCB Decision 38, (August 28, 1992).

The Panel finds that Respondent has violated Rule 7.5(d) by his use of a letterhead which implied a partnership that did not exist. The use of this letterhead also violated Rule 7.1 which prohibits "false or misleading statement about the lawyer or the lawyer's services."

Sanction

Admonition by disciplinary counsel is appropriate in this case. The misconduct was minor and there is no evidence that Respondent's letterhead caused any injury to the public, the bar, or the legal system. A.O. 9, Rule 8(A)(5). Respondent has changed his letterhead and it is unlikely

that the misconduct will be repeated. In addition, admonition is consistent with the decision in PCB Decision No. 38.

Conclusion

Based upon the foregoing, the Hearing Panel orders that Respondent be Admonished by Disciplinary Counsel for violation of Rule 7.5(d) of the Vermont Rules of Professional Conduct.

In addition, pursuant to the parties stipulation, Respondent shall attend a CLE on trust account management within six months of the date of this decision.

FILED: 10/24/03

Hearing Panel No.7

/s/

Richard H. Wadhams, Esq.

/s/

Keith J. Kasper, Esq.

/s/

Samuel B. Hand