

PCB 65

[01-Apr-1994]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 93.14

NOTICE OF DECISION

NO. 65

This matter came before us by way of stipulated facts presented by Bar Counsel and Respondent. In addition, we heard argument from both parties at a hearing held February 4, 1994 pursuant to Administrative Order 9, Rule 8(D), and considered the parties joint recommendation as to conclusions of law and sanctions.

Based upon all the relevant, credible information presented, we find that Respondent has been a member of the Vermont bar for over thirty years. He was previously disciplined more than ten years ago. Otherwise, he has no

other record of professional misconduct.

The current matter arose out of his negligent handling of an estate in which he was appointed administrator in late 1990. Although Respondent was timely in publishing the notice to creditors, Respondent was not timely in filing an inventory of the estate nor did he file a motion for an extension in which to file the inventory. Despite a reminder from the probate court that the inventory was long overdue, Respondent did not file it until over two years after it was due.

Just prior to Respondent's appointment as administrator, a creditor filed a claim against the estate for a sum of money. Respondent filed a disallowance of the claim a few months later and, after a hearing, the claim was disallowed. Although the probate judge instructed Respondent to draft an order to that effect and file it with the court, the Respondent did not do so until six months later. The delay was due to the fact that Respondent was making an effort during this time to follow the instructions of the heirs who wanted Respondent to find some means of paying this creditor a just amount of the debt.

Respondent was required by law to file an accounting of the estate within one year of his appointment. At a minimum, Respondent was required to file an interim accounting. Although the probate judge reminded Respondent to file either a final or interim accounting, and although the probate judge issued two notices to comply with the rules, Respondent did not file the required accounting until three years after he was appointed administrator.

Among the estate's assets were two parcels of land. One was sold approximately a year and a half after Respondent was appointed administrator. The other was sold approximately two and a half years after Respondent was appointed administrator. Although Respondent maintains the belief that the properties did not sell because of the decline in the housing market during the time period, Respondent did not adequately market the properties in a reasonable attempt to expedite their sale at an acceptable price. The delay in their sale was a direct cause of the long delay in the probate of the estate.

Individual items of personal property were ultimately appraised for little or no value. Respondent permitted the release of some small, seemingly valueless items to individual heirs without permission of all heirs and before appraisal. While this release caused consternation among several of the heirs, we find that Respondent acted reasonably under the circumstances.

The final decree was signed over three years after Respondent was appointed administrator. The appeal period is currently open.

Several of the heirs, all of whom live out-of-state, contacted Respondent on several occasions over the years to inquire and complain that the process was taking so long, as they were in need of the money due to them from the estate. Respondent spent considerable energy responding to their concerns. The final accounting reflected that the estate was valued at almost \$118,000. The total value of the estate was not diminished over the time period.

Initially, Respondent was not totally cooperative with the disciplinary

proceedings. Respondent failed to respond to many of Bar Counsel's letters, requiring follow-up letters to be sent. When Respondent did respond to Bar Counsel's inquiries, quite often he was beyond the imposed deadline. Respondent did meet with Bar Counsel's investigator in June 1993 in a timely manner after request. He was fully cooperative in the interview. Respondent explained his neglect in meeting statutory and court-imposed deadlines and his neglect of Bar Counsel's inquiries was the result of being overworked. In his appearance before the Board, Respondent was co-operative and sincere.

We find that Respondent's conduct violated DR 6-101(A)(3)(a lawyer shall not neglect a legal matter entrusted to him) and privately admonish Respondent for this violation. In issuing this private admonition, we rely upon ABA Standard 4.44 which provides, in pertinent part:

Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual potential injury to a client.

Dated at Montpelier this 1st day of April, 1994.

PROFESSIONAL CONDUCT BOARD

/s/

Deborah S. Banse, Chair

/s/

Anne K. Batten

/s/

Donald Marsh

/s/

Joseph F. Cahill, Esq.

Karen Miller, Esq.

/s/

Nancy Corsones, Esq.

J. Garvan Murtha, Esq.

Paul S. Ferber, Esq.

Robert F. O'Neill, Esq.

/s/

Nancy Foster

/s/

Ruth Stokes

/s/

Rosalyn L. Hunneman

/s/

Jane Woodruff, Esq.

/s/

Robert P. Keiner, Esq.

Edward Zuccaro, Esq.