

6 PRB

[31-May-2000]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In Re: David Singiser, Respondent

PCB File Nos.: 99.20, 99.38, 99.51, 99.54, 99.90 and 99.104

DECISION NO. 6

This matter was before Hearing Panel Number Two, comprising Martha Smyrski, Michael Filipiak and Douglas Richards, Springfield, Vermont, on March 31, 2000. Present at the Hearing, in addition to the members of the Panel, was Michael Kennedy, Deputy Disciplinary Counsel. The matter for consideration concerned filings by Michael Kennedy, Deputy Disciplinary Counsel, in the matters noted as PCB File Nos. 99.20, 99.38, 99.51, 99.54, 99.90 and 99.104 and Petitions Of Misconduct charging David Singiser with violations of the Code Of Professional Responsibility, Notices and Motion

by Mr. Kennedy requesting that admission of the charges in the Petitions Of Misconduct. Because of the nature of this particular matter the Panel transmitted Notice Of Hearing under date of January 24, 2000 to the Sheriffs of Windham County and Bennington County requesting personal service of process, or an attempt at personal service of process, upon Mr. Singiser. The Notice Of Hearing recited that matters to be considered by the members of Hearing Panel Number Two were Motion of Michael Kennedy, Deputy Disciplinary Counsel, dated October 19, 1999, consideration of evidence and exhibits and determination of Conclusions Of Law And Sanctions.

The Sheriff of Windham County, by Return dated January 31, 2000, recited "unable to serve the Defendant, had not lived there for at least one year and had not picked up mail, Post Office is holding mail."

The Sheriff of Bennington County, by Return dated March 8, 2000, recited "returned unserved, unable to locate David Singiser at the address given, 532 Main Street, it being occupied by other persons."

Motion of Deputy Disciplinary Counsel Michael Kennedy, dated October 19, 1999 with attached exhibits, captioned "Motion To Deem That The Respondent Has Admitted The Charges In The Petitions Of Misconduct", as previously received by the Panel, was considered and following oral argument by Mr. Kennedy, granted. The Motion, with attached exhibits, as to Petitions of Misconduct, service of process and exhibits is by adoption

and reference made a part of this Panel's Findings Of Fact. In addition, there is attached and by reference adopted as part of the Findings Of Fact, two-page document, Notice of Probable Cause Decision, captioned "Singiser No. 1, 3-31-00" and single-page letter captioned, "Singiser No. 2, 3-31-00," dated 8/1/98, directed to Shelley A. Hill, Bar Counsel, executed by David R. Singiser, captioned, "David R. Singiser, Kathryn A. Kent, Attorneys At Law, Bennington, Vermont."

As a further part of this Panel's Findings Of Fact, there is attached hereto and by reference made a part of these Findings Of Fact, five (5) separate Petitions Of Misconduct, dated September 24, 1999 and one (1) dated October 11, 1999.

In addition to the foregoing Findings Of Fact, this Panel finds the following as to the conduct of David Singiser as it concerns Roy Spofford:

David Singiser is an attorney licensed to practice law
in the State of Vermont

David Singiser was admitted to practice in the State of
Vermont on April 10, 1991.

Kathryn Kent is an attorney licensed to practice law in
the State of Vermont.

Attorney Kent is David Singiser's associate in a law practice.

On December 5, 1997, Attorney Kent entered an appearance on behalf of Roy Spofford in the matter docketed as Spofford v. Bennington Imports, et al., Dkt. No. 369-12-97 BnCv.

In her Notice of Appearance, Kathryn Kent indicated that she was co-counsel with David Singiser.

The case was one in which the plaintiff alleged that the defendants had improperly terminated his employment.

On January 7, 1998, the defendants filed a Counter-Claim against Mr. Spofford.

On January 16, 1998, David Singiser filed an Answer to the Counter-Claim on behalf of Mr. Spofford.

During the course of the case, Mr. Spofford gave David Singiser original documents relevant to this claim against his former employer. By letter dated August 1, 1998, David Singiser provided notice to the office of Bar Counsel that, as of that date, he was closing his office. The letter stated that David Singiser would close several files that were still open and then would cease practicing law.

The letter directed all future correspondence to P.O. Box 2333, West Brattleboro, Vermont 05301.

On August 5, 1998, David Singiser informed the Board of Bar Examiners that his business address was P.O. Box 2333, West Brattleboro, Vermont 05301. Despite the notice he sent to the Office of Bar Counsel, David Singiser never notified Mr. Spofford or the Bennington Superior Court that he had closed his practice.

In January of 1999, the Bennington Superior Court scheduled a Status Conference in the Spofford case after learning that David Singiser and Kathryn Kent had left the State.

The Court sent notice of the Status Conference to David Singiser.

The Court also sent notice to Mr. Spofford, due to its concern that the David Singiser would not notify his client.

Mr. Singiser did not appear for the Status Conference.

Mr. Spofford appeared at the Status Conference and informed the Court that he had been unable to contact David Singiser since November of 1998.

The issues in Mr. Spofford's case are sufficiently complex to require

the assistance of counsel.

Prior to failing to appear at the Status Conference, David Singiser never moved to withdraw from the case.

David Singiser has not contacted the Court regarding Mr. Spofford's case since April of 1998.

Mr. Spofford has not heard from David Singiser since November of 1998.

Mr. Spofford never asked David Singiser to withdraw from the case.

David Singiser never returned the file or any of the original documents that were provided to him by Mr. Spofford.

Mr. Spofford retained Attorney Berkeley Johnson after David Singiser abandoned his case.

David Singiser has not communicated with Attorney Johnson.

David Singiser has not delivered the Spofford file to Attorney Johnson.

Without the file, and the original documents therein, Mr. Spofford's claim against the defendants has been prejudiced.

By letter dated April 23, 1999, the Office of Disciplinary Counsel asked David Singiser to respond to the allegations in a Complaint it had received from Judge Wesley.

The letter was sent to David Singiser, Esq., P.O. Box 2333, West Brattleboro, Vermont 05301. That is the address that is on file with the Board of Bar Examiners as David Singiser's current address.

The address on file with the Board of Bar Examiners is the same address at which David Singiser, in his letter announcing the closing of his practice, informed the Office of Bar Counsel he could be contacted if necessary. To date, David Singiser has not answered the letter.

The letter was returned to the Office of Disciplinary Counsel marked "box closed, unable to forward."

David Singiser has abandoned his law practice.

A Panel of the Professional Conduct Board found probable cause to believe that David Singiser had violated DR1-102(A)(5), DR 1-102(A)(7), DR 2-110(A)(2) and DR 6-101(A)(3) of the Code of Professional Responsibility.

In addition to the foregoing Findings Of Fact, this Panel finds the following as to the conduct of David Singiser as it concerns the Honorable

John P. Wesley.

In August of 1998, David Singiser filed a change of address with the Board of Examiners. The new address was P.O. Box 2333, West Brattleboro, Vermont 05301.

On August 5, 1998, the Office of Bar Counsel received a letter from David Singiser in which he stated that he was closing the practice and ceasing the practice of law.

In the letter, David Singiser directed future correspondence to P.O. Box 2333, West Brattleboro, Vermont 05301.

In February of 1999, the Office of Bar Counsel received a Complaint from the Honorable John P. Wesley.

In his Complaint, Judge Wesley stated on January 15, 1999, he presided over a hearing in the matter of State v. Forte, 1031-7-87, Bcr. The hearing was on the State's Motion To Compel the production of medical records.

According to the letter, David Singiser's client, Mr. Forte, was under a standing Order to produce medical records related to a heart condition that, for years, he had argued rendered him incompetent to stand trial.

The Court had notified David Singiser of the hearing.

David Singiser did not appear at the hearing.

At the hearing, Mr. Forte informed the Court that he was under the impression that David Singiser was responsible for producing the medical records of which the State was asking the Court to compel production. At the hearing, Mr. Forte stated that he had been unable to contact David Singiser.

By letter dated February 2, 1999, the Office of Bar Counsel asked David Singiser to answer the Complaint.

The letter was mistakenly sent to the address that appears in the Bar Association's directory of attorneys rather than to the address that David Singiser had instructed the Office of Bar Counsel to use.

An investigator from the Office of Bar Counsel tried to locate David Singiser. He could not.

The investigator contacted the United Postal Service. The Postal Service did not have a forwarding address for David Singiser.

By letter dated April 23, 1999, the Office of Bar Counsel again asked David Singiser to respond to Judge Wesley's Complaint.

The letter was sent to the address that is on file with the Board of Bar Examiners.

That address is the same address that David Singiser instructed the Office of Bar Counsel to use when corresponding with him.

To date, David Singiser has not answered Judge Wesley's allegations.

On August 17, 1999, the letter sent on April 23, 1999, was returned to the Office of Bar Counsel marked "box closed - unable to forward."

On June 11, 1999, a Hearing Panel found probable cause to believe that David Singiser had violated DR 1-102(A)(5) of the Code of Professional Responsibility.

In addition to the foregoing Findings Of Fact, this Panel finds the following as to the conduct of David Singiser as it concerns Jennifer Ely.

In August of 1998, David Singiser filed a change of address with the Board of Bar Examiners. The new address was P.O. Box 2333, West Brattleboro, Vermont 05301.

On August 5, 1998, the Office of Bar Counsel received a letter from David Singiser in which he stated that he was closing the practice and

ceasing the practice of law.

In the letter, David Singiser directed future correspondence to P.O. Box 2333, West Brattleboro, Vermont 05301.

In February of 1998, Jennifer Ely retained David Singiser and his associate, Kathryn Kent, to represent her in a divorce.

Ms. Ely provided David Singiser with a \$1,000.00 retainer.

Although David Singiser and Kathryn Kent did some work, they failed to account for their claim that they earned the full retainer that Ms. Ely had advanced to them.

Ms. Ely called David Singiser's office four times and also sent a letter asking for an itemized accounting.

David Singiser never answered Ms. Ely and never provided her with an accounting.

In October of 1998, Ms. Ely filed a Complaint with the Office of Bar Counsel.

On November 23, 1998, the Office of Bar Counsel sent a letter to David Singiser that asked him to answer Ms. Ely's Complaint.

The letter was sent to David Singiser's old address rather than to the address that he had directed Bar Counsel to use in his letter from August of 1998.

Bar Counsel's letter dated November 23, 1998, was returned marked "unable to forward."

By letter dated December 28, 1998, the Office of Bar Counsel again asked David Singiser to answer Ms. Ely's Complaint. The letter was sent to the P.O. Box that David Singiser had listed with the Board of Bar Examiners as his professional address. That P.O. Box is the same address that David Singiser instructed this office to use when corresponding with him.

On August 17, 1999, the letter was returned to the Office of Bar Counsel marked "box closed - unable to forward."

To date, David Singiser has not answered the allegations in Ms. Ely's Complaint.

To date, David Singiser has not provided Ms. Ely with an accounting of the \$1,000 retainer that she advanced to him.

On June 11, 1999, a Hearing Panel found probable cause to believe that David Singiser had violated DR 1-102(A)(5) and DR 9-102(B)(3) of the Code

of Professional Responsibility.

In addition to the foregoing Findings Of Fact, this Panel finds the following as to the conduct of David Singiser as it concerns Marty Thomayer.

In August of 1998, David Singiser filed a change of address with the Board of Bar Examiners. The new address was P.O. Box 2333, West Brattleboro, Vermont 05301.

On August 5, 1998, the Office of Bar Counsel received a letter from David Singiser in which he stated that he was closing the practice and ceasing the practice of law. The letter directed future correspondence to P.O. Box 2333, West Brattleboro, Vermont 05301.

In August of 1998, the Office of Bar Counsel received a Complaint from Marty Thomayer. Mr. Thomayer alleged that David Singiser neglected a legal matter that he had entrusted to him.

On November 23, 1998, the Office of Bar Counsel sent a letter to David Singiser that asked him to answer Mr. Thomayer's Complaint. The letter was sent to David Singiser's old address rather than to his new address.

By letter dated December 28, 1998, the Office of Bar Counsel asked David Singiser to answer Mr. Thomayer's Complaint. The letter was sent to

the P.O. Box that David Singiser had listed with the Board of Bar Examiners as his professional address. That P.O. Box is the same address that David Singiser instructed Bar Counsel to use when corresponding with him.

To date, David Singiser has not filed an Answer.

On August 17, 1999, the letter was returned to the Office of Bar Counsel marked "box closed -unable to forward."

On May 17, 1999, a Hearing Panel found probable cause to believe that David Singiser violated DR 1-102(A)(5) by failing to respond to a request from Bar Counsel.

In addition to the foregoing Findings Of Fact, this Panel finds the following as to the conduct of David Singiser as it concerns Barbara Clairmont.

In August of 1998, David Singiser filed a change of address with the Board of Bar Examiners. The new address was P.O. Box 2333, West Brattleboro, Vermont 05301.

On August 5, 1998, the Office of Bar Counsel received a letter from David Singiser in which he stated that he was closing the practice and ceasing the practice of law. The letter directed future correspondence to P.O. Box 2333, West Brattleboro, Vermont 05301.

In December of 1998, the Office of Bar Counsel received a Complaint from Barbara Clairmont. In her Complaint, Ms. Clairmont stated that David Singiser and his associate, Kathryn Kent, represented her in a divorce.

She alleged that David Singiser and his partner over billed her, agreed to a final divorce order that she had not approved, and abandoned her once they closed their practice.

By letter dated December 28, 1999, the Office of Bar Counsel asked David Singiser to answer the Complaint.

The letter was sent to the address that appears in the Bar Association's directory of attorneys and not to the address which David Singiser had asked that future correspondence be directed to.

The letter was eventually returned to the Office of Bar Counsel marked "box closed, unable to forward."

An investigator from the Office of Bar Counsel tried to locate David Singiser. He could not.

The investigator contacted the United Postal Service. The Postal Service did not have a forwarding address for David Singiser.

By letter dated April 23, 1999, the Office of Bar Counsel asked David Singiser to respond to the allegations in Ms. Clairmont's Complaint.

The letter was sent to the address that is on file with the Board of Bar Examiners and is the address that David Singiser instructed Bar Counsel to use when corresponding with him.

To date, David Singiser has not answered the allegations in Ms. Clairmont's Complaint.

On August 17, 1999, the letter was returned to the Office of Bar Counsel marked "box closed - unable to forward."

On June 11, 1999, a Hearing Panel found probable cause to believe that David Singiser violated DR 1-102(A)(5) of the Code of Professional Responsibility.

In addition to the foregoing Findings Of Fact, this Panel finds the following as to the conduct of David Singiser as it concerns Stephen Piegari and his wife.

In September of 1995, Stephen Piegari and his wife retained David Singiser to represent them in an action to evict a tenant in a property that they owned in Pownal, Vermont.

Mr. Piegari and his wife gave David Singiser \$750 as a retainer.

On November 27, 1995, David Singiser, acting on behalf of the Piegaris, filed a Complaint for Ejectment and Motion for Payment of Rent into Court in the Bennington Superior Court. The case was docketed as Piegari v. Twomey, S0390-95 BcCe. (hereinafter "Piegari I")

David Singiser asked the Bennington County Sheriff's Department to serve the defendants with the Complaint.

In December of 1995, the Court scheduled a Hearing on the Motion for Payment of Rent into Court for February 1, 1996.

By Memorandum dated January 8, 1996, the Bennington County Sheriff's Department informed David Singiser that it had been unable to locate and serve the defendants.

David Singiser instructed the Piegaris to appear in Court on February 1, 1996, and to be prepared for a Hearing.

David Singiser did not inform the Court that he had been unable to serve the defendants.

David Singiser did not inform the Piegaris that he had been unable to serve the defendants.

David Singiser did not take any further action to locate and serve the defendants.

On February 1, 1996, the Piegari appeared in the Bennington Superior Court in anticipation of a Hearing on their Motion for Payment of Rent into Court.

The Court canceled the Hearing due to David Singiser's failure to serve the defendants.

On March 14, 1996, David Singiser, acting on behalf of the Piegari, filed a Complaint for money damages against the very people who were the defendants in the Complaint for ejectment. The new Complaint was docketed as Piegari v. Twomey, S0096-96 BcCe. (hereinafter "Piegari II").

On the very same day, David Singiser moved to withdraw from Piegari II. However, he did not move to withdraw from Piegari I.

David Singiser never explained to the Piegari the basis for his withdrawal. Rather, he informed them that the attorney-client privilege prevented him from telling them, the clients, why he was withdrawing. In his Motion To Withdraw, David Singiser informed the Court that his relationship with the clients had broken down. The Piegari do not believe the relationship had broken down and never asked David Singiser to

withdraw.

David Singiser's Motion To Withdraw from Piegari II was granted in April of 1998. In the meantime, he managed to serve the defendants with the Complaint in Piegari II. Although he had located them, he did not serve them with the Complaint for ejectment that had been filed, but never served, in Piegari I.

On June 24, 1996, the Court sent a letter to David Singiser instructing him that Piegari I would be dismissed for failure to prosecute if he did not contact the Court by July 25, 1996.

David Singiser did not do anything in response to the letter.

On July 25, 1996, Piegari I was dismissed due to David Singiser's failure to respond to the letter dated June 24, 1996.

Due to the dismissal, the Piegaris did not receive an opportunity to be heard on their Complaint For Ejectment or Motion For Payment of Rent into Court. As a result, the Piegaris were unable to collect for eight months in which the defendants failed to pay the \$750 monthly rent.

By fax letter dated November 8, 1996, Mr. Piegari asked David Singiser for an accounting of the \$750 retainer she and her husband had given him. She made the request after reviewing David Singiser's work and concluding

that he owed them \$150.

David Singiser sent a letter back to Mrs. Piegari the same day.

Rather than provide her with an accounting, he informed Mrs. Piegari that she owed him money, but that he would not try to collect it because he had "written the debt off" because he had "no reasonable expectation of being paid."

By letter dated November 12, 1996, Mrs. Piegari asked David Singiser for an accounting of the \$750 retainer.

David Singiser did not reply.

By letter dated December 6, 1996, Mrs. Piegari asked David Singiser for an accounting of the \$750 retainer.

David Singiser did not reply.

The Panel next turned its attention to consideration of Conclusions Of Law to be applied in this matter. After consideration of oral argument by Michael Kennedy, Deputy Disciplinary Counsel and the Petitions Of Misconduct, this Panel concludes that David Singiser has violated the Code of Professional Responsibility in the following manner:

David Singiser violated DR 1-102(A)(5) of the Code of

Professional Responsibility by engaging in conduct prejudicial to the administration of justice: to wit, abandoning Mr. Spofford and taking his file with him.

David Singiser violated DR 1-102(A)(7) of the Code of Professional Responsibility by engaging in conduct that adversely reflects on his fitness to practice law: to wit, abandoning Mr. Spofford and failing to return the file and the original documents.

David Singiser violated DR 1-110(A)(2) by failing to take reasonable steps to protect Mr. Spofford from prejudice prior to effectively withdrawing from the case by abandoning it.

David Singiser violated DR 6-101(A)(3) by neglecting a legal matter entrusted to him by Mr. Spofford.

David Singiser violated DR-1-102(A)(5) of the Code of Professional Responsibility by failing to respond to a request from the Office of Bar Counsel and by failing to provide the Office of Bar Counsel and Board of Bar Examiners with a current address.

David Singiser violated DR 9-102(B)(3) of the Code of

Professional Responsibility by failing to render an appropriate accounting of the retainer that Ms. Ely had advanced to him.

David Singiser violated DR 1-102(A)(4) of the Code of Professional Responsibility by instructing Mr. Piegari to attend a scheduled Merits Hearing despite knowing that the Hearing would not be held due to David Singiser's own failure to serve the defendants with the Complaint.

David Singiser violated DR 1-102(A)(4) of the Code of Professional Responsibility by falsely communicating to the Court that the relationship with Mr. Piegari had rendered it unreasonably difficult to continue the relationship.

David Singiser violated DR 2-110(C) of the Code of Professional Responsibility by seeking permission to withdraw from Mr. Piegari's case without having a valid reason to do so.

It is the Decision of this Board, based upon the foregoing, that the sanction to be imposed in this matter, as to David Singiser, that he be permanently disbarred as an attorney and for the practice of law.

Dated at Springfield, Vermont on this 30th day of May, 2000.

HEARING PANEL NUMBER TWO

/s/

Douglas Richards, Chairman

/s/

Martha Smyrski

/s/

Michael Filipiak