

70 PRB

[27-Jul-2004]

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No. 2002.194

Decision No. 70

On June 2, 2004, the parties filed a stipulation of facts as well as conclusions of law and recommendations on sanctions. Respondent also waived certain procedural rights including the right to an evidentiary hearing. The panel accepts the facts and recommendations and orders that Respondent be admonished by Disciplinary Counsel for using letterhead stationery that identified his practice as "Respondent & Associates," when he was in fact a sole practitioner, in violation of Rules 7.1 and 7.5(d) of the Vermont Rules of Professional Conduct.

Facts

Respondent is an attorney licensed to practice law in the State of Vermont and was admitted to the practice of law in Vermont in 1970. Respondent had employed a number of associates in the past, but has had no associates since sometime in 1997. From 1997 to 2004, Respondent continued to use letterhead stationery which identified his law practice as "Respondent & Associates." Shortly after the Office of Disciplinary Counsel brought this matter to Respondent's attention, he ceased using letterhead containing the name "Respondent and Associates," and his letterhead now 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. Respondent has no record of prior discipline and cooperated fully with Disciplinary Counsel's investigation.

#### Conclusions of Law

Rule 7.5(d) of the Vermont Rules of Professional Conduct provides that lawyers "may state or imply that they practice in a partnership or other organization only when that is the fact." In addition, Rule 7.5(a) provides that a lawyer shall not use a firm name, letterhead or other professional designation that is false or misleading.

This issue has been addressed twice by the Vermont disciplinary system. In 2003, a Hearing Panel of the Professional Responsibility Board found that an attorney who identified his practice as "Respondent & Associates," when in fact he had no associates, violated Rules 7.5(d) and

7.1. Decision No. 59 (October 23, 2003).

An almost identical case was decided under the Code of Professional Responsibility. In that case the respondent practiced alone in a firm named "Respondent and Associates". The Professional Conduct Board admonished the attorney for using a misleading firm name, in violation of the Code of Professional Responsibility. Decision No. 38 (August 28, 1992).

Respondent' conduct falls squarely within these cases and we find that his conduct violated Rules 7.5(d) and 7.1 of the Vermont Rules of Professional Conduct.

#### Sanction

Both of the above cited cases resulted in admonition, and we find nothing in the record that argues for a greater sanction in this case. Admonition is also consistent with the ABA Standards for Imposing Lawyer Sanctions and Administrative Order 9.

Section 7 of the ABA Standards for Imposing Lawyer Sanctions deals with "violation of duties owed as a professional." Section 7.4 provides that "[a]n admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public or the legal system." There is no evidence of any

injury to a client, the public or the legal system. The aggravating and mitigating factors do not alter our decision. In mitigation, Respondent has no prior disciplinary record, ABA Standards, §9.32(a), and has cooperated with the disciplinary proceedings, ABA Standards, §9.32(e). In aggravation, Respondent has substantial experience in the practice of law, ABA Standards, §9.22(i), and was in fact a member of the Vermont bar at the time of the decision in both disciplinary cases addressing the issue of use of a misleading letterhead identical to his. This is not, however, of sufficient weight to raise the level of sanction beyond admonition.

Administrative Order 9 provides that admonition is appropriate when there is little or no injury and little likelihood of repetition. Here no injury resulted, and there is little likelihood of repetition since Respondent changed his letterhead when the matter was brought to his attention by Disciplinary Counsel.

#### Conclusion

For the above reasons the Hearing Panel orders that Respondent be admonished by Disciplinary Counsel for violation of Rules 7.1 and 7.5(d) of the Vermont Rules of Professional Conduct.

FILED: July 27, 2004

Hearing Panel No. 10

/s/

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Lon T. McClintock, Esq.

/s/

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Marianne Kennedy, Esq.

/s/

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Donald Keelan