

PCB 79

[02-Dec-1994]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

IN RE: PCB File No. 94.38

NOTICE OF DECISION

DECISION NO. 79

This disciplinary matter, submitted to us based on facts stipulated to by Special Bar Counsel and Respondent, arose as the result of a complaint filed by the executor of an estate which the Respondent represented. Respondent here neglected the estate for three years and failed to communicate with the executor, all in violation of DR 6-101(A)(3).

The reason for Respondent's lack of attention to the estate was the fact that, sometime after beginning representation, the executor moved. Respondent incorrectly assumed that the forwarding address provided to him by the executor was a Vermont address when, in fact, it was an address in New York. When he could not reach the executor, he performed no more work on the estate, assuming that the executor would eventually contact him. Respondent did not learn of the correct address and telephone number until he received a

copy of the complaint. After this disciplinary matter was initiated, Respondent closed the estate within the next two months.

We find that Respondent has substantial experience in the practice of law, having been admitted for nearly 20 years, an aggravating factor in considering imposition of sanction. We also find that Respondent has a record of one other significant disciplinary violation, charging a clearly excessive fee, which resulted in imposition of public discipline. However, that violation occurred nearly 15 years ago and no other complaint, absent this one, has resulted in discipline since that time.

While the executor was inconvenienced by Respondent's lack of diligence, there was no damage to the estate as a result of Respondent's neglect. Therefore, we find no actual injury.

Section 4.4 of the ABA Standards for Imposing Lawyer Discipline provides that, absent aggravating or mitigating circumstances, "[a]dmonition 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 or potential injury to a client."

Given the confusion over the executor's whereabouts, the neglect, in this case, constituted minor misconduct. Because there is little likelihood of repetition, there was no injury, and there is no threat of harm to the public, we will impose a private admonition in this case.

The chair will issue a private letter of admonition to Respondent and this

matter will be closed.

Dated at Montpelier, Vermont this 2nd day of December , 1994.

PROFESSIONAL CONDUCT BOARD

s/s

Deborah S. Banse, Chair

s/s

George Crosby

Donald Marsh

s/s

s/s

Joseph F. Cahill, Esq.

Karen Miller, Esq.

s/s

s/s

Nancy Corsones, Esq.

J. Garvan Murtha, Esq.

Paul S. Ferber, Esq.

Robert F. O'Neill, Esq.

s/s

s/s

Nancy Foster

Ruth Stokes

s/s

s/s

Rosalyn L. Hunneman

Jane Woodruff, Esq.

s/s

s/s

Robert P. Keiner, Esq.

Edward Zuccaro, Esq.