

[File 22-Nov-2005]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No 2005.202

Decision No. 81

Respondent missed a child support hearing due to a calendaring error and is charged with failure to represent her client with "reasonable diligence and promptness" in violation of Rule 1.3 of the Vermont Rules of Professional Conduct. The parties filed stipulated facts and recommended conclusions of law. Respondent also waived certain procedural rights including the right to an evidentiary hearing. The Hearing Panel accepts the stipulated facts, but declines to find a violation on the facts presented and the case is dismissed.

Facts

In October of 2004 Respondent was retained to represent the complainant in a divorce action. Following a contested hearing in mid-December, custody was awarded to the husband. On January 4, 2005, the court sent out a notice of child support hearing set for January 19, 2005. Respondent received notice of the hearing but failed to enter the date on her calendar and failed to notify complainant. In the stipulated facts this failure was attributed to a "calendaring error." A few days before the hearing, the complainant was speaking with her husband about another matter and the issue of the hearing came up in conversation. This was the first knowledge complainant had of the hearing. Complainant tried to reach Respondent, but she was unavailable. On January 18 complainant called the court and learned that the hearing was set for the next day. She informed the court clerk that she was firing her attorney and planned to hire a new one. Complainant attended the hearing and requested a continuance to permit her to obtain new counsel. The continuance was granted. There was no prejudice or injury to the complainant's case as a result of Respondent's oversight, though the complainant was stressed and inconvenienced by her attorney's oversight.

Respondent was admitted to practice in Vermont in 1992. She has no disciplinary record and no dishonest or selfish motive. She made a full and free disclosure to Disciplinary Counsel and has expressed remorse for her actions.

Conclusions of Law

Rule 1.3 of the Vermont Rules of Professional Conduct requires that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." The definitions in the preamble to the Rules state that reasonable "when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer." The standard of proof for charges of misconduct is "clear and convincing evidence." A.O.9

Rule 16(C). Thus, we are asked to find by clear and convincing evidence that a single instance of a missed court date due to a calendaring error is misconduct. To do so would result in bringing all instances of an attorney's inadvertence or negligence within the realm of misconduct. We do not believe that the Rule is this broad and far reaching. Attorneys are held to a high standard of conduct, but absent injury or other factors a single instance of mistake does not show a lack of "reasonable diligence or promptness" (emphasis added).

The misconduct in *In re Furlan*, PRB Decision No 65 (May 3, 2004), began in much the same way we find here. The attorney did not attend two court hearings due to a heavy case load and poor office practices. In each instance the client's case was dismissed. It is what happened after the missed court dates that changes *Furlan* from a case of poor office practices to one of misconduct. Upon receipt of the notices of dismissal, *Furlan* took no action for his clients. In the present case the attorney missed the court date, but no further action was required since the client had attended the hearing, received a continuance and obtained new counsel. This standing alone is not misconduct.

Order

For the foregoing reasons, the complaint is hereby DISMISSED and the Hearing Panel recommends that this matter be referred to an Assistance Panel.

Dated NOVEMBER 22, 2005

Hearing Panel No. 5

/s/

Mark Sperry, Esq.

/s/

Jane Woodruff, Esq.

/s/

Sara Gear Boyd