

PCB 84

[03-Mar-1995]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: Carlyle Shepperson, Respondent

PCB File 91.40

FINAL REPORT AND RECOMMENDATION TO THE SUPREME COURT

DECISION NO. 84

Pursuant to A.O. 9, Rule 8E, the Professional Conduct Board hereby reports to the Supreme Court its findings of fact, conclusions of law and recommended disposition.

The Board has reviewed the report of the hearing panel dated January 6, 1995, and adopts as its own the findings of fact and conclusions of law contained therein. We also held a hearing on this matter pursuant to Rule 8(D) on March 3, 1995. Although Respondent submitted a brief, he did not appear.

We further adopt as our own the hearing panel's recommended sanction. For the reasons contained in the panel's report, we recommend that Respondent be disbarred.

Dated at Montpelier, Vermont this 3rd day of March, 1995.

PROFESSIONAL CONDUCT BOARD

/s/

Deborah S. Banse, Chair

/s/

George Crosby

Donald Marsh

/s/

Joseph F. Cahill, Esq.

Karen Miller, Esq.

/s/

Nancy Corsones, Esq.

Garvan Murtha, Esq.

/s/

Paul S. Ferber, Esq.

Edward Zuccaro, Esq.

/s/

Nancy Foster

/s/

Ruth Stokes

/s/

Rosalyn L. Hunneman

Jane Woodruff, Esq.

DISSENT

We agree with the findings of facts and conclusions of law, but would recommend that Respondent be suspended indefinitely until he can prove that he is fit to practice law.

/s/

/s/

Robert P. Keiner, Esq.

Robert O'Neill, Esq.

PROFESSIONAL CONDUCT BOARD

IN RE: Carlyle Shepperson

PCB File No. 91-40

HEARING PANEL'S FINDINGS OF FACT,
RECOMMENDED CONCLUSIONS OF LAW AND RECOMMENDED SANCTION
PROCEDURAL HISTORY

In a Petition Of Misconduct dated June 28, 1994, respondent was charged by Bar Counsel with violations of DR 6-101(A)(7) and DR 6-101(A)(2) of the Code of Professional Responsibility. On August 9, 1994, the Petition Of Misconduct was amended by charging that the violation was of DR 6-101(A)(1) instead of (7) which was a misprint.

The matter was heard before a Hearing Panel on December 9, 1994 in the Vermont District Court, Brattleboro, Vermont. The Hearing Panel consisted of J. Garvan Murtha, Esq., who served as Chair; Deborah S. Banse, Esq. and Ms. Rosalyn Hunneman. Present at the hearing was Shelley A. Hill, Esq., Bar Counsel. Respondent did not appear for the hearing. The Board was advised by Kerry B. DeWolfe, Esq. by correspondence dated November 21, 1994 that Mr. Shepperson was aware of the hearing of December 9, 1994, but would not be present. Cathryn Nunlist, Esq. was the only witness appearing at the hearing.

Respondent filed several pre-hearing motions, including a Motion to Dismiss for Lack of Jurisdiction, a Motion for Summary Judgment, a Motion to Strike, all of which were denied by an Order dated November 23, 1994.

Subsequent to November 23, 1994, respondent filed numerous additional motions, including a Motion to Dismiss, Motion to Transfer, Motion to Amend or Reconsider, Notice of Appeal, Motion to Amend, Motion for Summary Judgment and Motion To Transfer To A Legal and Impartial Court. The most recent motion filed by the respondent prior to the hearing on December 9, 1994 was entitled "Motion for Permission to File Motions" and "Notice to Objection To And Appeal of Order 23 November". These motions were received by the Board on December 7, 1994.

The Hearing Panel considered all of respondent's pending motions at the hearing and they were DENIED.

FINDINGS OF FACT

1. Carlyle Shepperson was admitted to the Vermont Bar in 1982. He is a graduate of Vermont Law School.

2. Between 1985 and 1992 respondent submitted nine (9) legal briefs to the Vermont Supreme Court (Exhibits 1 through 9).

3. All of the briefs were written and signed by the respondent.

4. All but two (2) briefs submitted by the respondent to the Vermont Supreme Court fell below the minimum standard for brief writing expected of a practicing attorney in the State of Vermont.

5. The brief filed in the Supreme Court in the matter of "State of Vermont vs. Aaron Johnson" dated October 19, 1991 and the reply brief filed by respondent in the matter of "State of Vermont vs. Aaron Johnson" dated January 9, 1992 were appropriate and competently prepared.

6. However, the remaining briefs prepared and filed by the respondent were, in general, incomprehensible, did not aid the Court and did not meet the standard of what is expected of a reasonably qualified attorney.

7. The briefs in question consistently failed to identify the issues or the rules by which the issues should be resolved; made arguments without explanation as to what constituted the legal error;

presented no substantiated legal structure to the argument; and devoted large portions of the narrative to philosophical rhetoric.

8. In addition, on a technical basis, the briefs in question contained many citation errors; legal propositions were not often cited at all; citations were so incomplete or inaccurate that identification of the cases was difficult or impossible; cases were inaccurately represented; cases were cited for reasons that were incomprehensible; cases were cited from other jurisdictions that were neither binding, persuasive nor relevant. Further, the briefs were so filled with spelling and grammatical errors as to cast a doubt on the credibility of the respondent.

9. DR 6-101 of the Code of Professional Responsibility entitled "Failing To Act Competently" states in part:

(A) A lawyer shall not:

- (1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.
- (2) Handle a legal matter without preparation adequate in the circumstances.

10. In February, 1993 and April, 1993, the respondent and the Professional Conduct Board entered into a Stipulation whereby the respondent agreed not to engage in the practice of law whatsoever until he completed the requirements for an advanced degree and, subsequent

thereto, retained a legal writing expert, Janis M. Murcic, Esq., to develop respondent's skills in legal analysis, persuasive writing techniques, etc. (Exhibit 10).

11. On September 27, 1993, respondent wrote Bar Counsel indicating ".....I will be unable to complete the stipulation at the present time." (Exhibit 13). Thereafter, Bar Counsel initiated a Petition of Misconduct.

CONCLUSIONS OF LAW

1. Seven of nine briefs filed with the Vermont Supreme Court by the respondent between 1985 and 1992 were not competently prepared.
2. The preparation of the briefs in question fall below the minimum standards expected of a practicing attorney in the State of Vermont.
3. Respondent did not use proper care to safeguard the interests of his clients. He did not diligently undertake the work and study necessary to qualify himself as a competent preparer of briefs submitted to the Vermont Supreme Court.
4. He failed to prepare adequately for and give appropriate attention to his legal work.
6. As a result of his actions respondent failed to act competently and violated DR 6-101(A)(1) and DR 6-101(A)(2).

RECOMMENDED SANCTION

Respondent repeatedly violated the duties owed to his clients, to the Court and to the legal system. Over a period of seven years respondent submitted seven briefs to the Vermont Supreme Court which indicated he did not understand the most fundamental legal doctrines or procedures.

The American Bar Association Standards For Imposing Lawyer Sanctions states:

"Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client". (Section 4.51 of the Standards).

The respondent received a private admonition on April 5, 1991, for a violation of DR 7-106(C)(6).

The respondent engaged in multiple instances of incompetent behavior. Seven briefs submitted to the Vermont Supreme Court demonstrate that Mr. Shepperson cannot or will not master the knowledge and skills necessary for minimally competent practice.

The Hearing Panel is convinced the respondent's unethical conduct is

so significant and wide-ranging that he is a threat to the public, the profession, the courts and his clients. The Hearing Panel recommends he be disbarred from the practice of law.

DATED: January 6, 1995

Respectfully submitted:

/s/

J. Garvan Murtha, Esq.

/s/

Deborah S. Banse, Esq.

/s/

Rosalyn Hunneman