

PCB 89

[23-May-1995]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 95.36

NOTICE OF DECISION

DECISION NO. 89

This case, involving a neglect of a legal matter for more than two years, was submitted to us by stipulation of the parties. The facts are somewhat unusual from the cases of neglect which normally come before us because the complainant here is Respondent's sister.

FACTS

Respondent, who has been a lawyer in Vermont for nearly ten years, does not usually handle bankruptcy work. However, in 1992 he agreed to file a personal bankruptcy petition for his sister. She gave him a check for \$200 for filing fees and costs, which Respondent deposited in his operating account.

Respondent prepared the necessary documents in a timely fashion and had his sister sign them. He told her to gather up additional financial information necessary to support the petition. She accomplished this some three or four months later and then telephoned Respondent's office for an appointment to

meet with him. She was not successful.

Over the next year she called or saw Respondent about once per month and asked about the filing of her petition. It was important to her that the petition be filed to trigger the seven-year waiting period. Respondent continually assured his client that they would meet to discuss the petition. They never did.

In August of 1993 - over a year after Respondent first agreed to file the bankruptcy petition - Respondent's office staff informed the client that her executed petition had been "misplaced" and that a new set of documents would have to be prepared.

The petition was not filed and in January of 1994, the client wrote to Respondent, imploring him to get her case moving. They met within the next two weeks, and the client signed the new petition. Again, Respondent did not file the petition.

By the fall of 1994 - more than two years after Respondent first agreed to handle the matter - the client could no longer wait for the Respondent to act. She contacted a new attorney. The petition was then filed in a timely manner. Respondent returned the \$200 she had given him for expenses.

CONCLUSIONS

By failing to attend to this case, Respondent violated DR 6-101(A)(3): "A lawyer shall not neglect a legal matter entrusted to him." We find that

Respondent acted negligently and note, in mitigation, that he has no prior disciplinary record, he co-operated with the disciplinary proceedings, and that he is remorseful for his misconduct. We further find that the complainant was injured slightly by the delay and was certainly inconvenienced. There are no aggravating factors.

Under Standard 4.44 of the ABA Standards for Imposing Lawyer Sanctions, "[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." We find that standard applicable here.

A delay of over two years in filing court documents is not an insignificant act of misconduct. We believe, however, that this was an isolated incident. Respondent recognized in his initial response to the complaint that although he was trying to do his sister a favor by handling the bankruptcy for her, his neglect was the result of his failure to treat his sister's case like that of any other client. Respondent has expressed true sorrow that he has damaged a relationship precious to him. That knowledge, Respondent wrote, "has hurt me more than any sanction the board could impose." We agree that the cost of learning diligence has been sufficiently high in this case and that there is little likelihood that Respondent will again neglect a legal matter. We, therefore, impose only a private admonition in accordance with A.O. 9, Rule 7(A)A(5).

Dated at Rutland this 23rd day of May, 1995.

PROFESSIONAL CONDUCT BOARD

/s/

Deborah S. Banse, Chair

/s/

/s/

George Crosby

Donald Marsh

/s/

Joseph F. Cahill, Esq.

Karen Miller, Esq.

/s/

/s/

Nancy Corsones, Esq.

J. Garvan Murtha, Esq.

/s/

/s/

Paul S. Ferber, Esq.

Robert F. O'Neill, Esq.

/s/

/s/

Nancy Foster

Ruth Stokes

/s/

Rosalyn L. Hunneman

Jane Woodruff, Esq.

/s/

/s/

Robert P. Keiner, Esq.

Edward Zuccaro, Esq.

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