

[Filed 26-Jun-2006]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No 2006.127

Decision No. 91

The parties filed a stipulation of facts and recommended conclusions of law. Respondent waived certain procedural rights including the right to an evidentiary hearing. The Panel accepts the stipulation and recommendation and orders that Respondent be admonished by Disciplinary Counsel for revealing confidential juvenile information in the course of cross examination in violation of Rules 8.4(d) and 8.4(h) of the Vermont Rules of Professional Conduct.

Facts

Respondent represented a client charged with violation of probation based upon charges brought by his ex-wife. At the hearing a major issue was the relative credibility of the client and his ex-wife. Respondent was in possession of a confidential SRS disposition report pertaining to a juvenile child of the client and his ex-wife. Respondent believed that the report contained information which formed a basis for impeaching the ex-wife, and began a line of cross-examination in which he referred to the probation report and to the juvenile by name. Opposing counsel objected on the grounds that SRS reports are confidential by statute. The court sustained the objection; respondent withdrew the question and apologized to the court.

Respondent has experience in juvenile court where SRS reports are properly used. When he used the report in the district court he was simply not focusing on the confidentiality issue, and did not intend to violate the juveniles confidentiality.

Respondent's action caused injury in that he made public the existence of juvenile proceedings regarding a specific juvenile, though there is no evidence of any specific harm or injury as a result of the disclosure.

Respondent was admitted to practice in Vermont in 2001 and in another jurisdiction some twenty years ago. Some time prior to this incident Respondent's wife had been diagnosed with a terminal illness, and on the day of the hearing he had accompanied his wife to a chemotherapy session before arriving at court. Respondent was under emotional stress and distracted by his family situation and his wife's health. Several months after the hearing, Respondent left the practice of law, at least temporarily, to spend time at home with his wife.

Respondent has substantial experience in the practice of law, and the victim, a juvenile was vulnerable. Respondent has no prior discipline, had no dishonest or selfish motive, made full and free disclosure to disciplinary authorities and has expressed remorse.

Conclusions of Law

The Hearing Panel accepts the parties' recommendation and finds that Respondent violated Rules 8.4 (d) and (h) of the Vermont Rules of Professional Conduct.

Rule 8.4 provides that "[i]t is professional misconduct for a lawyer to:

. . .

(d) engage in conduct that is prejudicial to the administration of justice;

. . .

(h) engage in any other conduct which adversely reflects on the lawyer's fitness to practice law."

By statute, juvenile proceedings and all court records and reports pertaining to the juvenile are confidential. 33 V.S.A. § 5536. Respondent's disclosure of the existence of juvenile proceedings involving the child of his client and the ex-wife violated this statute and was prejudicial to the administration of justice.

There is no evidence that Respondent intentionally or knowingly violated the confidentiality provision of the juvenile statute. The disclosure resulted from his failure to remember that the report was subject to the confidentiality provisions during a personally stressful time. Respondent has experience in family court and is responsible for knowing the law pertaining to evidence he offers. His failure to do so reflects adversely on his fitness to practice law.

Sanctions

The Hearing Panel accepts the recommendation for admonition by disciplinary counsel. Administrative Order 9, Rule 8 (A) (5) (a) provides for admonition "in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession, and where there is little likelihood of repetition by the lawyer."

In this case there was little or no actual injury, and due to the fact that Respondent has temporarily left the practice to care for his wife, there is little likelihood of recurrence of the stressful situation that led to Respondent's misconduct and thus little likelihood of repeated misconduct. While there are certainly circumstances where use of confidential juvenile information could not be deemed minor misconduct, we believe that in this context, the violation was a minor one.

It is well accepted that consideration of the provision of the ABA Standards for Imposing Lawyer Sanctions is appropriate in determining sanctions. In *re Andres*, Supreme Court Entry Order, July 6, 2004, citing *In re Warren*, 167 Vt. 259, 261 (1997). The Standards require a determination of a presumptive sanction followed by consideration of aggravating and mitigating circumstances. Section 4.2 deal with a lawyer's failure to preserve his client's confidences. Where the failure is

negligent, it provides for reprimand in cases where there is injury or potential injury, and for admonition if there is little or no actual or potential injury. Respondent has not been charged with revealing client confidences, but these provisions establish parameters for the similar misconduct with which Respondent is charged. Section 6.1 deals with a lawyer's duties to the legal system and again, where the conduct is negligent, the difference between reprimand and admonition is based upon consideration of the injury. §§ 6.13 and 6.14. While there was the potential for injury in this case, there is apparently no actual injury.

The consideration of the aggravating and mitigating factors leads us to conclude that despite the potential for injury, admonition is appropriate in this case. The most compelling of the mitigating factors is the presence of serious personal problems in Respondent's life. ABA Standards §9.32(c). Respondent's wife is suffering from a terminal illness which has been stressful for Respondent. On the day of the hearing he had just returned from accompanying his wife to a chemotherapy session and was understandably upset and distracted. The fact that Respondent has at least temporarily left the practice of law to care for his wife shows that he appreciates the nature of his situation. Also in mitigation, Respondent has no prior disciplinary record, ABA Standards §9.32(a), had no selfish or dishonest motive, ABA Standards §9.32(b), has cooperated with disciplinary counsel, ABA Standards §9.32(e), and has expressed remorse for his conduct, ABA Standards §9.32(l).

The aggravating factors, Respondent's substantial experience in practice, ABA Standards §9.22(i), and the fact that the victim was a juvenile and thus vulnerable, ABA Standards §9.22(h), are not sufficient to raise the level of sanction above admonition.

Conclusion

For the foregoing reasons we hereby ORDER that Respondent be admonished by Disciplinary Counsel for violation of Rules 8(d) and 8(h) of the Vermont Rules of Professional Conduct.

Dated: _____

Hearing Panel No. 9

FILED JUNE 26, 2006

/s/

Stephen Dardeck, Esq., Chair

/s/

Shannon Aldridge Bertrand, Esq.

/s/

Barbara Carris