

[Filed 29-Sep-2006]

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No 2006.015

Decision No. 94

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 failing to keep her client informed about the status of her case in violation of Rule 1.4(a) of the Vermont Rules of Professional Conduct.

Facts

Respondent was retained to represent complainant in a Supplemental Security Income claim and notified the Social Security Administration of the representation in August of 2004. Respondent worked on the claim in an appropriate manner, however, at a point in the representation she stopped returning her client's phone calls and generally failed to communicate with the client.

During the period of February through May of 2005 complainant made fourteen calls to Respondent. At the end of the period the complainant was calling on a daily basis. None of the calls were returned. Respondent acknowledges that she should have returned the calls, but did not do so because the tone of the complainant's message was unpleasant. Despite Respondent's failure to communicate with her client, she was not neglecting her case.

On May 23, 2005, the Social Security Administration's Office of Hearings and Appeals (OHA) sent a notice of hearing directly to the complainant rather than to Respondent. The OHA later told the complainant that Respondent had not filed a representation agreement and would not be allowed to represent her at the hearing.

The final six of the fourteen calls were to inform Respondent of the hearing date and the apparent lack of a representation agreement on file with OHA.

On May 31, 2005 Respondent contacted OHA to correct the representation agreement error and to inform them that she was unavailable on the scheduled date due to a conflict. On June 2, 2005, Respondent wrote to complainant telling her that the hearing would be rescheduled to July.

On Friday afternoon, June 3, 2005, complainant left another phone message. Respondent returned the call the following Monday morning, and the complainant informed her that she wanted to keep the June hearing date and would represent herself. Respondent called OHA and was told that the

June date was no longer available. Complainant still wanted Respondent to withdraw and return her file so that she could represent herself, and Respondent faxed her withdrawal to OHA on June 6, 2005.

On June 13, 2005, OHA rescheduled complainant's hearing for July 6, 2005, and send the notice of hearing directly to complainant.

On June 24, 2005, Respondent wrote complainant a cover letter transmitting the file and informing the complainant that certain medical records in the file needed to be sent to OHA. Respondent did not retain a copy of the file.

Respondent mailed the file to complainant on Saturday, June 25, 2005. She did not send the file earlier because it weighed over one pound and under new postal regulations, packages weighing more than one pound must be handed to a postal employee in person. Respondent employs no assistants, and thus had to deliver the package to the post office personally.

Complainant received her file before the hearing date, but did not have an opportunity to transmit the records prior to the hearing. She went to the hearing but the Administrative Law Judge postponed the case. Complainant engaged another attorney to represent her and in the fall she received a favorable decision. Since SSI benefits are paid retroactively, the delay did not cause complaint to lose benefits. Respondent's failure to communicate and to promptly return the file did cause complainant stress, anxiety and frustration and undermined complainant's confidence in her attorney.

Respondent did not charge complainant any fees and has no intention of doing so. In mitigation, Respondent has no disciplinary record, had no selfish or dishonest motive, cooperated with the disciplinary proceedings, and feels remorse for her conduct.

#### Conclusion of Law

Rule 1.4(a) of the Vermont Rules of Professional Conduct provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Respondent's failure to return fourteen calls over a period of four months violates this rule. The fact that Respondent was taking appropriate steps in her representation of complainant does not excuse her failure to communicate. Keeping a client informed and responding to requests for information are integral parts of client representation and should not be ignored.

#### Sanction

The Hearing Panel accepts the recommendation for admonition by disciplinary counsel. It is consistent with prior cases, with the provisions of the ABA Standards for Imposing Lawyer Sanctions and with Vermont Supreme Court Administrative Order 9.

#### Prior Cases

The three reported cases in Vermont that bear the most similarity to the present case are PRB Decision No. 36 (June 14, 2002), PCB File No. 95 (July 7, 1995), and PCB File No. 43 (December 4, 1992). In each of those

cases, an attorney was admonished for failure to reasonably communicate with his or her client. While the Panel recognizes that the circumstances presented in each of those cases involved conduct more egregious than that involved in the instant matter, the Panel still finds that admonition is appropriate under the facts of this case. Given the number of calls that Respondent failed to return, coupled with the period of time over which those calls were made, sanction is warranted.

#### ABA Standards for Imposing Lawyer Sanctions

The ABA Standards do not address the narrow issue of failure to communicate absent lack of diligence in representation. The most relevant paragraph, Section 4.4, is addressed generally to attorneys whose failure is in the context of the representation. Nonetheless, the ABA Standards are helpful in addressing the mitigating and aggravating factors which can be applied after arriving at a tentative sanction. There are no aggravating factors and several mitigating factors which also lead us to agree that admonition is the appropriate sanction. Respondent has no prior disciplinary record, ABA Standards, § 9.32(a), had no selfish or dishonest motive, ABA Standards, § 9.32(b), has made full and free disclosure to disciplinary counsel and cooperated with the proceedings, ABA Standards, § 9.32(e), and has expressed remorse over her failure to communicate with her client. ABA Standards, § 9.32(1).

#### Administrative Order 9

Rule 8 (A) (5) (a) of A.O.9 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." Here there was no monetary injury to the client, though she did suffer stress and anxiety over her inability to contact Respondent. While Respondent's failure to communicate with her client was not insignificant, it is relatively minor, and we have every expectation that Respondent has learned from this experience and in the future will take more seriously the need for communication with her clients.

#### Order

For the foregoing reasons the Hearing Panel accepts the recommendation of the parties and orders that Respondent be admonished by Disciplinary Counsel for failure to communicate with her client in violation of Rule 1.4(a) of the Vermont Rules of Professional Conduct.

Dated: September 29, 2006

Hearing Panel No. 6

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Alison J. Bell, Esq.

/s/

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Eric A. Johnson, Esq.

/s/

Lisa Ventriss

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