

PCB 9

[10-May-1991]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 90.18

NOTICE OF DECISION
PCB 9

Procedural History

A complaint was filed with the Professional Conduct Board by a former client of Respondent. Bar Counsel investigated this matter and as a result of the investigation, entered into the stipulation of facts with Respondent. Respondent waived all rights to an independent review of that stipulation. Respondent further waived all procedural rights to which Respondent was entitled under Administrative Order 9.

The Professional Conduct Board reviewed the stipulation of facts, conclusions of law, recommendation to the Professional Conduct Board, and waiver of procedural rights.

The Professional Conduct Board accepted that stipulation and hereby incorporates it into the following findings of facts and conclusions of law.

Facts

1. Complainant retained Respondent to defend Complainant against a criminal felony charge. Complainant and Respondent entered into a verbal fee agreement whereby Complainant agreed to pay a flat fee of \$3,000.00. This fee included taking the case to trial. Complainant paid the fee.

2. Approximately one month later, Complainant was seriously injured at at work. The injury necessitated hospitalization. Shortly thereafter Complainant retained Respondent to represent Complainant in a worker's compensation claim. Complainant and Respondent entered into a verbal fee agreement whereby Complainant agreed to pay Respondent a contingency fee of either fifteen or twenty percent plus expenses. A fee agreement embodying these terms was drafted but apparently not fully executed.

3. At the time Respondent agreed to represent Complainant in the worker's compensation case, Respondent was aware that Complainant had been hospitalized due to mental illness and was considered a security risk by the personnel at that hospital.

4. After Complainant was released from the hospital, problems developed between Complainant and Respondent. The worker's compensation carrier asked the Complainant to fill out an income and expense affidavit. This request upset Complainant. Complainant went to Respondent's office where he argued, screamed, and acted irrationally. This behavior frightened Respondent's office personnel.

5. Two more confrontations occurred between Complainant and Respondent in Respondent's office. Both times Complainant raised his voice and acted irrationally.

6. During the third confrontation, approximately nine months after Respondent undertook representation of Complainant, their professional relationship ended. Respondent recalls that Complainant fired Respondent because he was dissatisfied with Respondent's handling of the worker's compensation case. Complainant alleged that Respondent quit. Regardless of which party initiated the withdrawal, Respondent formally withdrew as Complainant's counsel in the worker's compensation case.

7. Shortly thereafter, Respondent filed a motion to withdraw from Complainant's criminal case. This withdrawal was due to Respondent's fear of Complainant and the breakdown in their relationship. Respondent arranged for substitute counsel to consult with Complainant, but Complainant failed to contact substitute counsel. The Court heard the motion to withdraw and granted the motion. Complainant, although notified of the hearing, failed to appear. Respondent cooperated with counsel subsequently employed by Complainant.

8. Complainant told Respondent that he wanted his fee of \$3,000.00 returned to him. Respondent refused to provide a full refund as he believed he was entitled to the reasonable value of the work he had performed. Respondent had serious doubts, honestly entertained, whether Complainant, as matter of law, was entitled to any refund.

9. Respondent prepared one bill for both the criminal and the worker's compensation cases. Despite the fact that the criminal case was a flat fee case, Respondent charged Complainant his normal rate of \$60.00 an hour. Respondent concluded that he had extended professional services and expenses excess of the \$3,000.00 flat fee paid by Complainant. Respondent then decided that Complainant was entitled to some refund because he wanted to be fair to the Complainant. Respondent consulted with his senior partner before making this decision. Respondent decided to extend a \$1,000.00 from which Respondent deducted the following:

\$150 which Respondent had loaned Complainant, and
\$420 for 7 hours of legal work at \$60 an hour performed on the worker's compensation case.

After making these deductions, Respondent sent \$400 to Complainant along with the itemized bill reflecting these calculations. In addition, Respondent authorized the worker's compensation carrier to pay Complainant \$1,500, money which was to be paid to Respondent by the carrier. Respondent concedes that he deducted money from his fee in the criminal case in order to pay himself for hourly services rendered in the worker's compensation case, even though Respondent had agreed to take the worker's compensation case on a contingency basis.

10. Respondent cooperated fully in Bar Counsel's investigation of this matter.

11. Respondent acknowledges that he used poor judgment by deducting his fee for the worker's compensation case from money entrusted to him to pay for the defense of a criminal case. Respondent has revised his contingency fee agreements to include a clear written agreement as to how

attorney's fees will be paid in the event Respondent is asked to withdraw. There was no intent on Respondent's part to defraud the Complainant.

Conclusion of Law

The Board agrees with the stipulation of Respondent and Bar Counsel that Respondent's conduct constituted a violation of DR 9-102(b)(4) (a lawyer shall promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive). A specific, written fee agreement between attorney and client would have obviated the conclusion as to what funds were owed client upon attorney's withdrawal. Without benefit of that written agreement, the Board concludes that Complainant had a legitimate expectation that \$3,000.00 fee for the criminal defense would not be used to satisfy an unrelated bill. By withdrawing those funds to satisfy another debt, Respondent ran afoul of Canon 9. Respondent has been privately admonished for this violation.

Dated at Montpelier, Vermont, this 10th day of May, 1991.

/s/
By: _____
J. Eric Anderson, Chair

/s/

Hamilton Davis

/s/

Anne K. Batten

/s/

Leslie G. Black, Esq.

/s/

Joseph F. Cahill, Jr., Esq.

/s/

Deborah S. Banse, Esq.

/s/

Nancy Corsones, Esq.

/s/

Donald Marsh