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Professional Responsibility Program

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October 17, 2023

BY ELECTRONIC MAIL ONLY

Merrick Grutchfield, Program Administrator
Professional Responsibility Program, Court Administrator's Office
109 State Street, Montpelier, VT 05609-0703
Merrick.Grutchfield@vermont.gov

Re: In Re: Daniel W. Ewald
PRB File No. 013-2023

Dear Merrick:

I have attached for filing with the Professional Responsibility Board in the above-referenced matter 1) a Petition of Misconduct for assignment to a Hearing Panel and 2) a Certificate of Service reflecting service of the Petition on Respondent per A.O. 9, Rule 18.A. The Respondent is represented by John Boylan.

This is a public filing. Thank you for your assistance.

Sincerely,

/s/ Jon T. Alexander

Jon T. Alexander

Attachments

cc: John J. Boylan, III, Esq.

(by email only with attachments to: jboylan@boylanlaw.com)

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Daniel W. Ewald
PRB File No. 013-2023

PETITION OF MISCONDUCT

In accordance with a finding of probable cause dated January 18, 2023, Disciplinary Counsel formally charges Respondent Daniel W. Ewald, Esq. with the following violations pursuant to A.O. 9, Rule 13(D)(1)(b) as set forth below.

NOTICE TO RESPONDENT: This is a formal Petition of Misconduct. Pursuant to A.O. 9, Rule 13(D)(3), you are required to file an Answer within 20 days addressed to the Professional Responsibility Program, 109 State St., Montpelier, VT 05609, with copy to Disciplinary Counsel. Failure to file a timely answer may result in the facts and charges being deemed admitted.

Count 1

On or about August 28, 2014 and December 27, 2019, Daniel W. Ewald, a licensed Vermont attorney, engaged in conduct involving dishonesty and misrepresentation by notarizing the signature of a client on a deed to transfer real property when the client did not appear before him and then recording the deed in 2019 in Town records, thereby misrepresenting the circumstances surrounding a property transfer, in violation of Vermont Rule of Professional Conduct 8.4(c).

Count 2

In September 2014, Daniel W. Ewald, a licensed Vermont attorney, failed to timely record a deed for his clients' purchase of land and a right of way, ultimately resulting in their loss of the right of way, in violation of Vermont Rule of Professional Conduct 1.1.

Count 3

In December 2014, Daniel W. Ewald, a licensed Vermont attorney, failed to inform his clients that a new deed affecting their property rights was drafted and recorded by him, in violation of Vermont Rule of Professional Conduct 1.3.

Count 4

In November 2014, Daniel W. Ewald, a licensed Vermont attorney, failed to obtain informed consent, confirmed in writing from his clients, regarding a concurrent conflict of interest in their property transaction by representing both buyers and seller of land where there was a significant risk that the representation would be materially limited by his responsibilities to the other client, in violation of Vermont Rules of Professional Conduct 1.7(b)(4).

Count 5

On October 7, 2020, Daniel W. Ewald, a licensed Vermont attorney, engaged in dishonest conduct toward his buyer-clients by falsely stating to them that the deceased seller of the property was at fault for neglecting to document and record the buyers' right of way easement in December 2014, in violation of Vermont Rule of Professional Conduct 8.4(c).

Facts alleged in support of Petition

1. Respondent is a licensed Vermont attorney with offices in Killington. He has been practicing transactional law, including land transactions, for more than 20 years.
2. Respondent represented clients Audie and Lisa Bellimer for more than 15 years in several real estate transactions and a sale of a business.

3. Respondent also, over a period of approximately 14 years, represented Raymond Otis Robinson in various small matters.
4. Raymond Otis Robinson, who went by “Otis,” was a cousin to Lisa.
5. Lisa and Otis were part of a large extended family in the Killington and Bridgewater area.
6. In 2013, Otis was the owner of record of a parcel of land in Killington measuring around 1000 acres. The land consisted of woods and working woodlot, a seasonal camp, and orchards. The land was bordered on one side by Little Sherburne Road and on another by Town Highway #25, a discontinued Town road included within ownership of the parcel.
7. Up until around 2013, Lisa’s brother Jeffrey, along with Otis and Otis’ brother Gilman, operated a logging company together using a portion of the family land.
8. Jeffrey and Gilman passed away at some point before 2016, and Otis passed away in 2016.
9. The 1000 acres had been in the extended family since around the 1950s. The seasonal camp structure was added in 1973. Although Otis owned the land, Lisa’s aunt paid the taxes on the camp and many family members used and enjoyed it.
10. In 2013, Otis learned that he was ill and might not live much longer, so he spoke to his extended family about selling off the land. Audie and Lisa wanted to buy a portion of the land that included the camp building, some orchards and woodlot. It was determined that Otis would likely sell the remaining land on the open market.
11. Otis, Lisa, and Audie walked the land to come to agreement about what Audie and Lisa’s parcel of the land would include. The rough idea was for them to

purchase around 12 acres for \$1,000 per acre. The family flagged off and wrote out descriptors of what parcel would be sold to Audie and Lisa.

12. A key intention of the parties was that the parcel needed to include a right of way across discontinued Town Highway #25 to provide access to the woodlot, because the remaining land would most likely be sold on the open market which would include ownership of this now private road.
13. On December 8, 2013 at a family event, the family members hand-wrote out a “bill of sale” for the intended parcel, signed by the parties and witnessed by some family present.

Respondent’s 2014 work for Audie and Lisa Bellimer on their purchase of land and camp from Otis Robinson

14. In 2014, Audie and Lisa approached Respondent, their long-time attorney, and asked him to help them formalize the transaction by writing up the deed and handling the recording in the Town records. Respondent agreed to assist.
15. At the time, Respondent mentioned to Audie and Lisa that he had also done work for Otis Robinson, but no discussion was held with anyone about some of the potential conflicts that could arise if he were to act as the attorney for both buyers and sellers of property.
16. By email dated August 9, 2014, Respondent wrote in pertinent part to Audie and Lisa as follows:

“Attached please find a Warranty Deed (just print it out) for your use in getting the 12 acre Killington Robinson piece titled into your name. We still need to do

the Exhibit A but hopefully Otis will be fine with signing this as is. It does state on its face that he is intending to convey 12 acres in Killington. If you can get him to sign this I will notarize it for you so no need to get him out to a notary for this. I will continue to work on an Exhibit A and have that for your shortly.”

17. The email quoted in the above paragraph included an attachment of a deed for Audie and Lisa to have Otis sign to convey them the intended property. The reference in the email to an “Exhibit A” is a property description portion of the deed which was to include ownership of a right of way easement across discontinued Town Highway #25.
18. The following day, on August 10, 2014, Respondent emailed Audie and Lisa an “Exhibit A” draft property description, which included description of a right of way easement across discontinued Town Highway #25.
19. After some minor adjustments and with strong counsel by Respondent to have the parcel professionally surveyed, Audie brought the deed with Exhibit A (the property description including the right of way) to Otis on August 27, 2014.
20. Otis signed the deed on August 27, 2014.
21. Either the same day or possibly the next day, Audie hand delivered the deed to Respondent’s office.
22. Otis did not personally appear before Respondent and acknowledge his signature on the August 27, 2014 deed, or acknowledge in person to Respondent that his signature had been his free act. Respondent did not witness Otis actually signing the August 27, 2014 deed.
23. Instead, consistent with Respondent’s email to Audie and Lisa dated August 9,

2014, Respondent notarized Otis' signature on the deed after the fact, falsely attesting that Otis had personally appeared before him on August 28, 2014 to acknowledge his signature on the August 27, 2014 deed and that his signature had been his free act.

24. On September 6, 2014, Audie wrote a check to the Town of Killington for recording fees. The handwritten check register notes provide that the check was for the "Town records fee to record deed to camp," and states the check was sent to Respondent.
25. Audie and Lisa believed that the deed conveying them 12+/- acres of Otis' land plus a right of way across discontinued Town Highway #25 was timely recorded by Respondent and that they owned the land and the right of way as of a presumed September 2014 recording date. They believed this had occurred because Respondent had told them he would do so.
26. Respondent, however, mistakenly did not record the August 27, 2014 deed and did not inform Audie or Lisa that he had failed to record it.

November 2014 Survey of Bellimer Parcel

27. A survey was conducted dated November 1, 2014 of the land Audie and Lisa had purchased from Otis, paid for by Audie and Lisa, with the intention of clarifying the exact portion of the land they purchased and the exact boundary with the remaining land to be sold imminently on the open market.
28. The survey indicates that the Bellimer parcel measured 18.3 acres, not the 12+/- the parties originally thought. Audie and Lisa accordingly paid Otis an added

sum of money for the additional land based on the original agreement of \$1,000 per acre.

29. The survey reflects that Town Highway 25 is discontinued, but the survey does not note any easements or rights of way across it. The survey further reflects that “Parcel #1,” the parcel to be sold outside the family, borders Audie and Lisa’s parcel, measures 783 +/- acres and is owned by Otis.
30. The Bellimers did not record the survey, but they recalled possibly providing a copy to Respondent.
31. The Bellimers did not have any communications with Respondent in December 2014, and were unaware of the details and circumstances surrounding the sale of Otis’ remaining property, though they were generally aware that Respondent was doing work for Otis.
32. Again, Respondent did not discuss with Audie or Lisa any of the possible conflicts of interest at issue in representing Otis as Otis sold the remaining portion of his land, over which Audie and Lisa believed they owned a right of way across the discontinued Town Highway #25 portion.
33. Town records indicate the survey paid for by the Bellimers was recorded on December 3, 2014 by someone.

Otis Robinson’s sale of 783+/- acre Parcel on the open market to Ying Ding

34. “Parcel #1,” as reflected on the survey, was sold by Otis on the open market, listed through Peak Property Real Estate.
35. A purchase and sale contract (with addenda) for Parcel # 1 was signed by Otis and

Ying Ding, respectively, on November 4 and 6, 2014. The terms of the contract indicate a cash sale to Ying Ding for \$450,000.

36. Respondent represented Otis in the sale and was paid \$750 for the transaction, which closed on December 17, 2014.
37. Paragraph 16 of the purchase and sale contract states that Seller Otis was to prepare the deed for the sale.
38. Addendum 1 to the contract states in part that buyer Ding agreed to “review the survey already in place for the adjoining approximate 18 acre parcel of land which is not being conveyed,” a clear reference to the Bellimer parcel with a survey date of less than a week before the contract date.
39. The deed for the Otis to Ding transaction was prepared by Respondent and signed by Otis on December 16, 2014.
40. The December 16, 2014 Otis to Ding deed referred specifically to the Bellimer parcel, stating that the land conveyed did not include “the lands and premises conveyed by Raymond Otis Robinson to Audie Bellimer[] and Lisa A. Bellimer[], husband and wife, of even date herewith and to be recorded simultaneously herewith in the Town of Killington Land Records which are described and depicted on the survey prepared by Farnsworth Surveys entitled ‘Lands Surveyed for Audie and Lisa Bellimer[] Land of Otis Robinson’ dated November 1, 2014 . . . [and] recorded on December 3, 2014 . . . to which survey reference may be had for a more particular description.”
41. Contemporaneously with preparing the Otis to Ding deed, Respondent prepared a new deed from Otis to Audie and Lisa.

42. This new deed was also signed by Otis on December 16, 2014, the day before he closed on the sale of the other parcel to Ding.
43. Neither Audie nor Lisa were informed at the time of this “new” December 16, 2014 deed for their purchase from Otis. They did not review the December 16, 2014 deed prior to its signature or recording. No one timely informed the Bellimers that the December 16, 2014 deed had been prepared by Respondent, signed by Otis and recorded in the Town land records by Respondent.
44. The December 16, 2014 deed from Otis to Audie and Lisa changed the acreage to reflect the survey results from 12+/- acres to 18.3 +/- acres , but omitted any reference to the right of way easement across discontinued Town Highway # 25.
45. Respondent recorded the December 16, 2014 deeds from Otis to Ding and from Otis to Audie and Lisa on December 17, 2014.
46. Unbeknownst to Audie and Lisa, nothing was ever timely recorded reflecting their right of way easement across the parcel owned by Ding as of December 17, 2014.

Neighbor disputes regarding the right of way

47. Five years later, in October 2019, a dispute arose among the neighbors over the Bellimers’ use of the right of way easement.
48. In an effort to show them they had rightfully purchased the right of way easement, the Bellimers asked the Town clerk’s office to pull the recorded transaction records. They then learned for the first time that no documents regarding their ownership of the right of way easement had been recorded.
49. The August 27, 2014 deed that the Bellimers believed described their property

ownership was not in Town land records. The pertinent deeds from Otis to the Bellimers and to Ding that were in Town land records, dated December 16, 2014 and recorded December 17, 2014, both omitted any reference to a right of way for the Bellimers.

50. Audie contacted Respondent about this problem. As a result, Respondent realized that he had never recorded the August 27, 2014 deed and property description which included reference to the right of way easement. Respondent admitted to Audie that this failure was his fault.

Respondent's attempts to "fix" the problem

51. Although Respondent readily admitted to Audie that he had not recorded the August 27, 2014 deed that included the intended right of way easement, he did not acknowledge or point out to Audie his other mistake, which was that he also failed to note the Bellimers' right of way easement in the December 16, 2014 deeds from Otis to Ding and from Otis to the Bellimers that Respondent had prepared and recorded.
52. Instead, in emails to Audie on October 7, 2020, Respondent attempted to place blame on Otis (who by this time was deceased) for omitting the right of way, writing, "Otis did not give [Ding] notice of your right of way" and "It is a shame that Otis did [not] have mention of your right of way put in neighbor's deed. But he didn't have put in there as he needed that sale apparently . . . and that one is on Otis."
53. Respondent's October 2020 suggestion to Audie that Otis was at fault for

Respondent's own 2014 mistakes and that Otis may have intentionally cheated his cousin and Audie is not credible and is entirely contradicted by other evidence.

54. When the problem with the deeds and missing right of way easement was first discovered by Audie in 2019, Respondent prepared an affidavit for Audie's signature stating that it was the parties' intention to include a right of way easement across discontinued Town Highway # 25, but that "unbeknownst to Grantor and Grantees the August 27, 2014 Warranty deed [containing the right of way easement] was not recorded in the Killington Land Records and the December 16, 2014 supplemental warranty deed did not contain the language granting the right of way over the former Killington Town Highway #25 to the Bellimers."
55. Audie signed this affidavit on December 26, 2019.
56. Around this time, Respondent also located a copy of the August 27, 2014 deed in his client files, bearing the signature of Otis, but with a blank notary clause. The notary clause was blank because, as described above, although Respondent notarized the August 2014 deed in 2014, he never actually witnessed Otis sign.
57. On or about December 27, 2019, Respondent again filled out the notary clause on this copy of the August 27, 2014 deed, falsely attesting again -- more than five years later -- that Otis had personally appeared before him on August 28, 2014 to acknowledge his signature on the August 27, 2014 deed and that his signature had been his free act.
58. On or about December 27, 2019, Respondent also misleadingly wrote in the notary clause of the August 27, 2014 deed that his notary commission would

expire “2/10/2015,” which would have been the appropriate date for Respondent to write for a notarization that actually took place in 2014.

59. On December 27, 2019, Respondent recorded the falsely notarized and backdated August 27, 2014 deed, as well as Audie’s December 26, 2019 affidavit, in the Town land records, with the objective of trying to fix mistakes that he had made in both property transactions five years before.
60. Respondent’s attempts to fix the problem were not successful, and the Bellimers lost use of the right of way they had intended to purchase and believed they had purchased in 2014.
61. In fall 2022, as the result of a malpractice claim against Respondent, the Bellimers received monetary compensation from Respondent’s insurer in a negotiated pre-suit settlement for their loss of the right of way.
62. After settlement, the Bellimers’ malpractice attorney reported Respondent in a complaint to the Professional Responsibility Program filed pursuant to Rule of Professional Conduct 8.3(a), with consent of the Bellimers.

Dated at Burlington, Vermont this 17th day of October 2023.

OFFICE OF DISCIPLINARY COUNSEL

/s/ Jon T. Alexander

Jon T. Alexander
Disciplinary Counsel
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*Counsel for Petitioner Office of Disciplinary
Counsel*

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Daniel W. Ewald
PRB File No. 013-2023

CERTIFICATE OF SERVICE

I certify that on October 17, 2023, Respondent Daniel W. Ewald, Esq. was served with the Petition of Misconduct in the above-referenced matter by certified mail with restricted delivery and return receipt requested at the following address:

Daniel W. Ewald, Esq.
Reis, Urso & Ewald, P.C.
1995 Route 4, PO Box 282
Killington, VT 05751

with copy by email to his attorney John J. Boylan, III, Esq. at jboylan@boylanlaw.com
in accordance with A.O. 9, Rule 18.A and Vermont Rule of Civil Procedure 5.

Dated at Burlington, Vermont this 17th day of October 2023.

OFFICE OF DISCIPLINARY COUNSEL

/s/ Jon T. Alexander

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