STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No. 2013.024

Decision No. 158

The parties have filed a Stipulation of Facts, proposed Conclusions of Law and a Recommendation for Sanctions. The Respondent waived certain procedural rights including the right to an evidentiary hearing. The panel accepts the stipulated facts and recommendations and orders that Respondent be admonished by Disciplinary Counsel for failing to promptly attend to a worker's compensation case, in violation of Rule 1.3 of the Vermont Rules of Professional Conduct. In addition, Respondent is placed on probation for a period of nine months as further detailed in this opinion.

Facts

Respondent was admitted to the Vermont bar in 1982 and is currently licensed to practice in Vermont.

The complainant in this matter, V.L., suffered repetitive motion injury to both hands and shoulders as a result of her work as a school sign language interpreter. She underwent months of physical therapy, medication therapy and test which were covered by workers' compensation. In January of 2007, as a result of the repetitive motion injury, she resigned from her job as interpreter.

In July of 2008, V.L. underwent surgery to her right shoulder for impingement syndrome and rotator cuff injury. Workers' compensation did not cover V.L.'s costs for surgery, subsequent physical therapy or loss of work. Within a month following the

surgery V.L. sent her medical records to Respondent. At no cost to V.L. Respondent reviewed the records and provided her with general advice about workers' compensation. About a year later V.L. and Respondent entered into representation agreement covering her claim with the insurance company and, if necessary, before the Department of Labor. Respondent was to be paid a contingent fee one-third of any recoveries.

V.L. sent Respondent her medical bills, medical records, test results and other information, and Respondent told her that he would contact the insurance company and request a hearing with the Department of Labor.

In August of 2011, V.L. had a bike accident, suffering bone fractures which required surgery to repair.

In September of 2010, V.L. called Respondent and requested that he move her case forward since she was not working and needed any potential reimbursement from the workers' compensation claim. Respondent requested additional medical records which were sent to him within two weeks.

In February of 2012 V.L. called Respondent to inquire about the status of her case. Respondent advised her that he had obtained additional information from her current doctors and physical therapists and was going to request a hearing before the Department of Labor. He told V.L. that it would take approximately six weeks to hear from the Department and that she should contact him again in May.

On June 12, 2012, V.L. left messages for Respondent on both his business and cell phones. The following day she called again and spoke with Respondent. He told her he had been on vacation, and that he would call her back by the end of the week when he had had an opportunity to catch up with his work.

On June 17, 2012, Respondent called V.L. and apologized for being late and requested documents that V.L. had already provided to him. He told her that he would be requesting a hearing and that he would mail her a copy of his letter to the Department of Labor which she could expect by the end of the following week. He told her to call back if she did not receive the letter.

V.L. did not hear back from Respondent and on July 30, 2012, she filed the complaint in this matter.

On August 23, 2012, Respondent requested a hearing before the Department of Labor. The matter has not yet been heard.

V.L. suffered actual injury in the stress and anxiety from the delay due to Respondent's negligence. Since the case has not been concluded, we cannot know if there is any financial injury, but there is the potential for financial injury.

Respondent is in the process of winding down his law practice. He has stopped advertising and is not taking new clients or cases. At present he has nine active cases. Once these matters have been concluded, Respondent intends to take a break from practicing law and to evaluate whether he wishes to continue practicing or to retire. He also intends to refurbish and sell the building housing his law office.

Approximately nine years ago Respondent was publicly reprimanded for violation of Rules 1.3 and 1.4 of the Vermont Rules of Professional Conduct, as well as DR 6-101(A)(3), the predecessor to the present Rule 1.3. In that matter the underlying conduct was similar to that in the present case, though of longer duration.

The following mitigating factors are present; the absence of a dishonest or selfish motive, cooperation with the disciplinary proceedings, remorse and the remoteness of the

prior offense.

There are also aggravating factors. Respondent has a prior disciplinary offense and substantial experience in the practice of law.

Conclusion of Law

Rule 1.3 of the Vermont Rules of Professional Conduct provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."
V.L. retained Respondent to handle her workers' compensation claim in July of 2009. V.L. was prompt in her providing requested materials to Respondent, and was clear with Respondent that she wanted a hearing as soon as possible, since she was not working and had additional medical bills. Despite the fact that Respondent told V.L. several times that he would file the claim with the Department of Labor, he did not do so until after she filed her complaint with Disciplinary Counsel some three years after he was retained.

Clients have a right to expect that their attorneys will act with reasonable promptness in handling their legal problems. There was no evidence presented of any compelling reason for the delay and we find a violation of Rule 1.3.

Sanction

Addressing the purpose of disciplinary sanctions, the Vermont Supreme Court said in *In re Hunter*, that "disciplinary sanctions are not intended to punish attorneys, but rather to protect the public from harm and to maintain confidence in our legal institutions by deterring future misconduct." 167 Vt. 219, 226 (1997).

We are concerned about both the necessity of deterrence and the need to protect the public. We turn first to the need for deterrence.

In determining the appropriate sanction it is appropriate to look to the ABA

Standards for Imposing Lawyer Sanctions (ABA Standards), as well as case law. *In re Warren*, 167 Vt. 259,261 (1977); *In re Berk*, 157 Vt. 524, 532 (1991)(citing *In re Rosenfeld*, 157 Vt. 537, 546-47 (1991)).

Failure to act with reasonable diligence is covered in ABA Standards §4.4. In determining the severity of the sanction, we look to the duty violated, the lawyer's mental state, the injury and the presence of aggravating and mitigating circumstances.

Respondent violated his duty to his client by failure to do the work in a timely fashion. His state of mind was one of negligence which the ABA Standards define as "a deviation from the standard of care that a reasonable lawyer would exercise in the situation." *ABA Standards IV Definitions*. While we do not know whether V.L. suffered any direct financial injury from Respondent's conduct, she suffered actual injury in the stress and anxiety from the delay and the strain which that delay put on her personal finances since she was out of work. These facts fit within Section 4.4 of the ABA Standards which provides that admonition is "appropriate when a lawyer is negligent and does not act with reasonable diligence when representing a client and causes little of no actual or potential injury to a client."

Having looked at these factors, it is necessary to determine whether the sanction should be modified due to the existence of any aggravating or mitigating factors. In aggravation, Respondent has been practicing in Vermont for 22 years and thus has substantial experience in the practice of law. *ABA Standards* §9.22(i). He also has prior discipline for neglecting a client matter for a substantial period. *ABA Standards* §9.22(a).

In mitigation, this prior misconduct was about eight years ago. *ABA Standards* §9.23(m). In addition, Respondent has expressed remorse for his neglect of this matter.

ABA Standards §9.23(l). He did not act from a selfish or dishonest motive, *ABA Standards* §9.23(b), and he has cooperated with the disciplinary process. *ABA Standards* §9.23(e).

Taken as a whole the aggravating and mitigating factors are not enough to warrant a sanction more severe than admonition.

We turn now to our concern for the protection of the public. Since Respondent is preparing to stop practicing law, we are concerned more for his existing clients that the general public. This concern is addressed by the probation agreement proposed by the parties. The agreement sets for a plan to insure that Respondent's remaining cases are concluded in a timely and professional manner. The probation monitor will meet regularly with Respondent and report to Disciplinary Counsel. This will insure that none of Respondent's remaining clients will have to resort to a professional conduct complaint to spur Respondent to conclude their cases.

Admonition is also consistent with prior Vermont cases. In *In re PRB Decision No. 57* (2003), Respondent failed to resolve a permit issue following a real estate closing. As in the present case, the Respondent failed to return phone calls or answer letters for a period of three years after which the attorney resolved the matter. In this case the attorney was admonished for neglect and for failure to communicate with her client and placed on probation for a period of three years.

Order

Respondent shall be admonished by Disciplinary Counsel for violation of Rule 1.3 of the Vermont Rules of Professional Conduct and placed on probation pursuant to

Administrative Order 9 Rule 8 (A)(6) on the following terms:

1. Probation shall be for a period of nine months, commencing on the date on which the decision in this matter becomes final.
2. Respondent shall select an experienced attorney, (the probation monitor) acceptable to Disciplinary Counsel, to oversee his work during the period of probation.
3. Respondent shall meet with the probation monitor at least every six weeks to discuss issues related to Respondent's practice and caseload. At each meeting Respondent shall inform the probation monitor of the status of every case.
4. If the probation monitor has any concerns about Respondent's practice, he or she shall share those concerns with Disciplinary Counsel in a timely manner.
5. The probation monitor shall make any suggestions to Respondent that he or she thinks are warranted or advisable, and Respondent shall give due consideration to such suggestions.
6. If Respondent misses a scheduled meeting without notifying his probation monitor in advance, or if Respondent goes more than nine weeks without meeting with the probation monitor, the probation monitor shall report this to Disciplinary Counsel. Failure to meet with the probation monitor on a regular basis shall constitute a violation of probation.
7. Respondent shall permit and authorize the probation monitor to respond to Disciplinary Counsel's requests for information relating to Respondent's compliance with his probation.
8. Respondent shall take appropriate steps to address client confidentiality issues.

9. Respondent shall secure from the probation monitor a brief report summarizing each meeting, including any recommendations made by the probation monitor. Respondent shall file a copy of the report with Disciplinary Counsel within 30 days of each meeting. The report may be sent by mail or email and shall outline the date of the meeting, the topics covered and the probation monitor's opinion as to whether Respondent is handling his practice and caseload in a prompt and diligent manner.
10. Respondent shall bear any costs related to his compliance with the terms of his probation including any charges for the probation monitor.
11. In the event that the probation monitor is unable to continue to serve, Respondent shall immediately notify Disciplinary Counsel and as soon as possible find a replacement probation monitor acceptable to Disciplinary Counsel. If Respondent is not able to secure a new probation monitor within eight weeks of the departure of the initial probation monitor, Respondent shall be considered in violation of his probation.
12. Respondent's probation shall be renewed or terminated after nine months as provided in A.O.9, Rule 8(A)(6).

Dated: April 1, 2013

Hearing Panel No. 5

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Erin J. Gilmore, Esq.

/s/

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Cara L. Cookson, Esq.

/s/

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Christopher Bray