

SUPREME COURT OF VERMONT

In re PRB Docket No. 2006-167, 2007 VT 50

925 A.2d 1026 (Vt. 2007) · No. No. 06-287 · Decided May 2, 2007

SUMMARY

The Vermont Supreme Court affirmed dismissal of a professional conduct complaint arising from an attorney's late filing of a criminal appeal. The Court held that, under the circumstances, the isolated negligent act did not violate Vermont Rule of Professional Conduct 1.3 because the error was remedied through post-conviction proceedings and the client's appellate rights were preserved.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Reiber, C.J.; Dooley, J.; Johnson, J.; Skoglund, J.; Burgess, J.
JURISDICTION	Vermont
DECIDED	May 2, 2007
DOCKET	No. 06-287
DISPOSITION	affirmed
PROCEDURAL POSTURE	Disciplinary Counsel appealed the Professional Responsibility Board's dismissal of a professional-conduct complaint after the Hearing Panel found that respondent's missed appellate filing deadline did not violate Vermont Rule of Professional Conduct 1.3.
STANDARD OF REVIEW	The Supreme Court makes its own decisions regarding attorney discipline while according deference to the Board's findings and the Hearing Panel's recommendation. The Court accepts the Panel's factual findings unless clearly erroneous and independently determines the appropriate sanction.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Disciplinary Counsel v. Respondent

TOPICS

- appellate procedure
- post-conviction relief
- standard of review
- criminal procedure

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

criminal appellate procedure

post-conviction relief

QUESTIONS PRESENTED

1. Whether respondent's single, isolated failure to file a notice of appeal by the deadline constituted a violation of Vermont Rule of Professional Conduct 1.3.
2. Whether the Professional Responsibility Board properly dismissed the disciplinary complaint after finding that respondent's negligence was remedied and did not warrant discipline.

HOLDINGS

1. A single isolated act of negligence, without additional conduct compounding the error and absent injury or other aggravating factors, does not necessarily constitute a failure to act with reasonable diligence and promptness under Rule 1.3. On the facts presented, respondent's missed filing deadline did not constitute misconduct.
2. The Supreme Court defers to the Board's findings of fact unless clearly erroneous and gives deference to the Hearing Panel's recommendation, but independently determines the appropriate attorney-discipline sanction.

KEY QUOTATIONS

"A single isolated act of negligence without any further acts compounding the error does not breach the standard of Rule 1.3." (925 A.2d at 1028)

"However, absent injury or other factors, a single mistake does not show a lack of reasonable diligence or promptness." (925 A.2d at 1029)

FACTUAL BACKGROUND

Respondent represented a criminal defendant and agreed to file a notice of appeal, but filed it five days after the deadline, resulting in dismissal of the appeal as untimely. The client's post-conviction proceeding resulted in an additional thirty-day period to file a new notice of appeal, and the client ultimately received appellate review, although the appeal was denied on the merits. Respondent cooperated with the disciplinary process, admitted the error, and took remedial action.

PROCEDURAL HISTORY

Respondent filed a client's notice of appeal five days late, and the Supreme Court dismissed the appeal as untimely. The client later obtained post-conviction relief allowing a new notice of appeal, and the appeal was ultimately denied on the merits. After the client filed a disciplinary complaint, respondent admitted the misconduct and stipulated with Disciplinary Counsel to a Rule 1.3 violation and private admonition, but the Hearing Panel found no violation and dismissed the complaint; the Board affirmed, and Disciplinary Counsel appealed.

DISPOSITION

affirmed

CASES CITED

- In re Keitel, 172 Vt. 537, 538, 772 A.2d 507, 509 (2001) (mem.)
- In re Blais, 174 Vt. 628, 629-31, 817 A.2d 1266, 1269-70 (2002) (mem.)
- In re Berk, 157 Vt. 524, 532, 602 A.2d 946, 950 (1991) (per curiam)
- In re PRB File No. 2005.202, Decision No. 81 (Nov. 22, 2005)
- In re PRB File No. 2005.191, Decision No. 90 (Mar. 17, 2006)
- In re PRB File No. 2004.062, Decision No. 68 (July 3, 2004)
- In re PRB File No. 2002.219, Decision No. 57 (July 7, 2003)
- In re PRB File No. 2003.183, Decision No. 56 (June 9, 2003)
- In re Furlan, Decision No. 65 (May 5, 2004)