STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re: William M. McCarty, Jr. Esq.
PRB File No. 2005.084

Decision No. 141
Violation of the Vermont Rules of Professional Conduct Only

This matter was heard on March 3, 2011, before Hearing Panel No. 4 consisting of Bruce Palmer, Esq., Chair, William Piper, Esq. and Florence Chamberlin. Disciplinary Counsel Beth DiBernardi was present as was Respondent and his attorney, Robert Reis. Respondent is charged with violation of Rules 1.2(d), 4.1, 4.4, 8.4(c), 8.4(d) and 8.4(h) of the Vermont Code of Professional Responsibility in connection with his efforts to have a tenant evicted from property owned by his client. We find a violation of each of these Rules. A hearing on an appropriate sanction will be scheduled.

Prior to the hearing, Respondent moved to dismiss the Petition of Misconduct due to alleged laches, waiver and prejudice to Respondent as a result of the lapse of about nine years between the time of the alleged misconduct and the filing of the petition.

Respondent renewed his motion to dismiss by pleadings filed after the hearing. We consider the motion in the context of our decision.

Facts

Respondent was admitted to practice in Vermont in 1967 and has an office in Brattleboro.

Sandra Glick had been a client of Respondent's for a number of years. Sandra Glick suffered from bipolar disorder and on occasion was incapacitated by manic

episodes. Sandra Glick owned a house in Brattleboro and, in July 2001, entered into an oral agreement with Denise Brennan to rent Ms. Brennan a room. Ms. Brennan moved into the house with Ms. Glick on July 5, 2001. The configuration of the premises was such that Ms. Brennan had access to most of the property.

After Denise Brennan moved into the house, Sandra Glick suffered an acute manic phase of her illness and, on August 8, 2001, she was hospitalized for several weeks.

Gabrielle Glick, who lives in Massachusetts, is Sandra Glick's adult daughter. She was not comfortable having Ms. Brennan living in her mother's house after her mother had been hospitalized. She believed that Ms. Brennan had used Sandra Glick's ATM card without her permission.

On August 10, 2001, Gabrielle Glick left a note for Ms. Brennan on the kitchen table of the premises specifying that she must vacate the premises in thirty days, or by September 9, 2001. Ms. Brennan received the note and began packing her belongings in order to move out by the deadline.

Gabrielle Glick then hired Respondent to evict Ms. Brennan from her mother's home. On August 13, 2001, Respondent sent to Ms. Brennan, by both Certified Mail and First Class mail, a letter informing her that he was representing Sandra Glick, confirming some of the details of Gabrielle Glick's letter and stating, "[t]he desire is that you vacate immediately, however, you are not to be on the premises any later than 9 September 2001." Ms. Brennan received the letter on August 16, 2001.

Gabrielle Glick testified that she spoke to Respondent about five times concerning removing Ms. Brennan from her mother's property. Respondent also wrote a second

eviction letter to Ms. Brennan identical in all material ways to the August 13, 2001, letter with the exception of the fact that, in Respondent's second letter, the date by which Ms. Brennan was to vacate (September 9, 2001) was deleted from the text and, instead, Respondent stated in the letter only that "[t]he desire is that you vacate immediately."

In addition, along with Respondent's second letter, he also included another document, entitled it "Notice to Vacate" and styled it to look like a pleading in a Windham Superior Court case brought by Sandra Glick, Landlord/Plaintiff v. Denise Brennan, Tenant/Defendant, with the docket number left blank. Respondent signed the document on behalf of Sandra Glick.

The text of the Notice to Vacate underneath the stylized caption is as follows:

> Pursuant to the provisions of 9 V.S.A. §4486, you, Denise Brennan are hereby notified to vacate the premises known as 412 Western Avenue, Brattleboro. Vermont.
>
> This termination takes effect asforthwith [sic].
>
> You, the tenant, are ordered to remove all of your property from the premises and to restore the premises to its condition at the beginning of the rental term.
>
> If you remain in possession after August 17, 2001, Landlord Sandra Glick will be compelled to bring an action for possession as authorized by 9 V.S.A. § 4468, et. al.

Respondent was personally acquainted with Deputy Sheriff Charles Lavalla of the Windham County Sheriff's Department. Respondent and Mr. Lavalla were careful to state that the relationship was not a particularly close one. However, their testimony was that they have known each other for about thirty years, both belong to the Vermont Chapter of the Marine Corp League, and their wives worked together for the hospital auxiliary. Respondent's wife was a close friend of Lavalla's mother, and when Lavalla

and his wife were injured in an automobile accident in Chicago, they engaged Respondent to represent them. On one occasion Respondent and Lavalla also had lunch together in the Virgin Islands.

In 2001, Mr. Lavalla had been a Deputy Sheriff in Windham County for about 11 years and regularly served process for the Sheriff's Office, including eviction papers. He testified at the hearing that he had suffered a transient ischemic attack several years prior to the hearing and testified that his memory was not as good as it once was. However, he was able to testify to many of the events that took place in 2001 and the transcript of his former testimony from a civil proceeding was available to the parties.

On August 17, 2001, Deputy Sheriff Lavalla met Gabrielle Glick at Respondent's office and picked up Respondent's second letter to Ms. Brennan and the document styled like a pleading. He received instructions to serve the papers on Ms. Brennan either from Respondent or from a member of his staff. Respondent testified that he was not the one who called the Sheriff's office; however, Respondent's billing records reflect under Respondent's initials the notations "calls to Deputy Lavalla" on August 13 and "calls to and from Sheriff regarding service and schedule" on August 15, 2001. Respondent testified that these were probably "duplicate entries," that he did not make the calls, that instead one of his office staff would have done so, and that at the time of billing this would have been corrected. Other work done by Respondent's staff, however, is indicated on the billing sheet as "para." The panel finds that it was Respondent who called Deputy Sheriff Lavalla.

While at Respondent's office, Deputy Sheriff Lavalla conversed with Respondent. Respondent's recollection was that it was a general conversation not regarding the

eviction. Lavalla testified that he was not sure that he remembered talking to Respondent; however, Disciplinary Counsel refreshed Lavalla's recollection from his prior testimony, where he had testified that he had talked to Respondent who told him that this was to be Ms. Brennan's last day and that he was to secure the property.

The parties also stipulated to the introduction of former testimony of Gabrielle Glick from the prior civil proceeding. Gabrielle Glick testified that she believed, based on conversations with Respondent, that Ms. Brennan would be out of her mother's house that day. She therefore took time off from work and came up from Massachusetts in order to be present when Ms. Brennan left. She testified that she would not have done so had she not believed and understood that Ms. Brennan was to be removed from the property that day.

When Deputy Sheriff Lavalla and Gabrielle Glick arrived at the property, he gave Respondent's second letter and the "Notice to Vacate" document styled like a pleading to Ms. Brennan and told her that she was to vacate the premises immediately.

Ms. Brennan testified that she had been in the real estate business and knew what she had been served with was not a court-ordered writ of possession. She tried to discuss this with Deputy Sheriff Lavalla, and to show him the previous documents which stated that she was not required to vacate until September 9, 2001, and told him she was planning to leave in September and was packing her things. Deputy Sheriff Lavalla refused to look at the earlier papers and continued to insist that Ms. Brennan must leave immediately. He threatened her that he would handcuff and arrest her if she did not leave. This was overheard by Gabrielle Glick, according to her testimony.

The situation thereafter became chaotic. Ms. Brennan was very upset. Her dog

got loose. Eventually Deputy Sheriff Lavalla helped Ms. Brennan pack her things into a room in the house which he locked. An animal control officer was also called to take the dog because she had no place to go. Other police officers also arrived.

Ms. Brennan had no place to go. Eventually, Deputy Sheriff Lavalla took her to the Brattleboro Hospital Emergency Room, at her request.

Oral rental agreements, such as Ms. Brennan had with Sandra Glick, are legally enforceable and are governed by the provisions of Title 9 of the Vermont Statues Annotated, Chapter 137 (Residential Rental Agreements) and Title 12, Chapter 169 (Ejectment). The statutes provide that a landlord must provide adequate notice to terminate a tenancy, and if the tenant does not vacate by the specified termination date, the landlord may only then institute a civil action in the Superior Court. The landlord must prove entitlement to possession and obtain a judgment from the court awarding possession to the landlord. The judgment then must be served on the tenant, and if the tenant does not leave, the landlord may then apply to the Superior Court for a Writ of Possession. Once the Writ of Possession is served on the tenant, the tenant then has five business days to vacate the premises. Only if the tenant does not vacate within that time may a sheriff forcibly remove the tenant.

Respondent testified that he had done landlord/tenant work for other existing clients. It was not a significant part of his practice, but he understood the basic procedures. Knowing that Sandra Glick was in the hospital, and that there was a concern that Ms. Brennan had used her ATM card, he testified that he was anxious to have Ms. Brennan leave the property as soon as possible in order to protect the property and safeguard the personal property of his client. He described Sandra Glick as a fragile

woman and said he felt "protective" of her.

Respondent explained that he removed the date of termination from his second letter in order to emphasize the urgency of the situation. He also acknowledged it was unnecessary to send the second letter since Ms. Brennan had already been given the date in both his client's and his own initial letters. He also testified that the pleading-like Notice to Vacate document was meant only to again emphasize the urgency of the situation, and that a careful reading of the document would have revealed to Ms. Brennan that if she did not leave there would have to be further legal process, and that it was not intended that she leave on that day.

Deputy Sheriff Lavalla had been instructed what to do by Respondent, and further testified that he understood the papers to mean that Ms. Brennan was to be put out that day. Deputy Sheriff Lavalla further stated that he did not read the whole document. He stopped after reading "forthwith" and understood that word and the Notice to Vacate to mean that Ms. Brennan was to be out that day.

Respondent did not express any surprise that Ms. Brennan left on the seventeenth, but instead testified that he was "relieved" that she had vacated. There is no evidence Respondent took any steps to clarify to Ms. Brennan, to Gabrielle Glick or to Deputy Sheriff Lavalla that she was not legally required to leave the premises on August 17, 2001.

In reviewing this rather complicated web of facts it is perhaps helpful to recap those which are not in doubt.

Sandra Glick was a fragile and vulnerable woman who suffered from bipolar disorder and was hospitalized before the attempts to evict Ms. Brennan started. She had

been Respondent's client for a number of years and he felt protective of her.

Both Gabrielle Glick and Respondent were very concerned about the fact that Ms. Brennan remained in Sandra Glick's home with access to the entire property. They believed that Ms. Brennan had used Sandra Glick's ATM card without permission and feared that she might take personal property from the house.

Under the law of landlord/tenant in Vermont, there was no requirement to draft any letter of notice similar to the second letter Respondent wrote to Ms. Brennan which omitted the date of termination of the tenancy, and included the Notice to Vacate "forthwith."

Respondent desired to have Ms. Brennan leave immediately.

Gabrielle Glick talked to both Respondent and Respondent's staff about the case and believed that Ms. Brennan would be gone from the property by the end of the day on August 17. Deputy Sheriff Lavalla also believed that it was his job to see that Ms. Brennan was removed from the property on that day.

While Ms. Brennan did not believe that the papers which were served on her by Deputy Sheriff Lavalla constituted a Writ of Possession, she too came to believe that she had to vacate the property that day.

Against the backdrop of the clear understanding of all of the other parties, the panel cannot credit Respondent's testimony that he did not intend the second letter and Notice to Vacate to communicate that Ms. Brennan was required to leave forthwith, or that she and Deputy Sheriff Lavalla had only to read it carefully to understand that.

Motion to Dismiss

We now turn to Respondent's Motion to Dismiss on the grounds of laches. Prior to hearing, the Panel denied the motion without prejudice stating "[l]aches is a fact-based defense, and in order to persuade us that this case should be dismissed, Respondent must show by specific facts that both the delay in bringing the misconduct complaint was unreasonable and unexplainable and that he has been prejudiced by the delay." Respondent produced no evidence expressly relating to either the reasonableness of the delay or any prejudice to his defense because of delay. Respondent did argue that this case, the prior civil litigation among the other parties after he was dismissed from the case, as well as the Petition for Misconduct, have taken a personal and financial toll on him over a period of years. While this may be true, these facts do not warrant dismissal of this case, though they may be relevant to the sanction phase of this case.

Sandra Glick died prior to this hearing, but Respondent has offered no evidence as to the prejudice this might have caused him, if any. It was clear from the testimony that she was in the hospital during all times relevant to this case and did not participate in the events leading up to the eviction and, thus there is no evidence that she could have offered any testimony that could have assisted Respondent or the panel.

Gabrielle Glick did not appear at the hearing, but portions of her previous testimony were read into the record without objection from Respondent. It is also true that, as a resident of Massachusetts, Gabrielle Glick was beyond the power of subpoena, and apparently chose not to voluntarily appear.

Respondent also argues that the unavailability of a member of his office staff in 2001 prejudiced his case. Again Respondent made no offer of proof to show that he had searched for this staff member unsuccessfully, of the evidence she or he could have

offered or how that would fit with the testimony at the hearing. There is therefore no evidence that staff unavailability resulted in any prejudice.

Respondent also argues that, due to the passage of time, Deputy Sheriff Lavalla's memory of the events has dimmed. As with Gabrielle Glick, however, Deputy Sheriff Lavalla had offered testimony in connection with the prior civil litigation and a transcript of that testimony was available to refresh Lavalla's recollection with respect to any forgotten evidence favorable to Respondent.

The Vermont Supreme Court addressed the issue of laches in general in the case of *American Trucking Ass'ns v. Conway*, 152 Vt 363, 381-82 (1989), stating "[t]he equitable doctrine of laches is applied to prohibit the maintenance of actions where the party requesting relief had failed to assert his right for an unreasonable and unexplained period of time and where the delay has been prejudicial to the defending party."

The Vermont Supreme Court has not addressed specifically the issue of the application of laches to disciplinary proceedings, but refused to apply it in the case of *In re Wright*, 131 Vt. 44473 (1973) stating that "[l]aches is not a mere matter of time. Prejudice must result from the delay that works to the disadvantage and prejudice against the one who claims it."

In a case before the Professional Responsibility Board, *In re PCB Decision No 141* (1999), the Board refused to consider laches as an absolute defense in the matter and chose rather to consider the delay in determining the appropriate sanction.

Respondent has offered no evidence to show that the delay in bringing this case was unreasonable or unexplained, and it was not therefore incumbent on disciplinary counsel to explain that delay. He also offered no evidence that the delay prejudiced his

defense of the charge of misconduct. The Motion to Dismiss is therefore denied.

Conclusions of Law

Respondent has been charged with a number of violations of the Code of Professional Responsibility and we will consider them separately.

Rule 1.2(d)

Rule 1.2(d) of the Vermont Rules of Professional Conduct provides that a "lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent . . . ."

Respondent knew the procedure for evictions and knew that it required both thirty days advance notice to the tenant and the bringing of an action in the Superior Court if the tenant did not leave after receiving proper notice of termination of the tenancy.

Nonetheless, Respondent prepared a document, styled to look like a court pleading in an action in the Windham Superior Court, which was entitled Notice to Vacate and stated "[t]his termination takes effect asforthwith [sic]." There was no such action pending in the Windham Superior Court. He also redrafted the letter to Ms. Brennan to indicate that she was to leave immediately. Both of these documents were designed to achieve his and his client's goal that Ms. Brennan be removed from the property immediately, in contravention of the statutory procedure. Moreover, he put into place a sequence of actions and communications such that both Gabrielle Glick and Deputy Sheriff Lavalla understood from Respondent that Ms. Brennan was to be gone on that day. Respondent's argument that Ms. Brennan and the Deputy Sheriff had only to read the remainder of the document to understand that this was not a writ of possession, and that a civil action would result if she failed to leave is unavailing. If all Respondent

wanted to communicate to Ms. Brennan was that, if she didn't leave, civil litigation would result, that goal had already been achieved by his first letter dated August 13, 2001, in which he specified the date for Ms. Brennan to leave and went on to say "[a]bsent immediate compliance and confirmation, we will be compelled to resort to appropriate legal relief immediately."

The only interpretation we can put on the Notice to Vacate is that it was intended to do more than the two prior letters, one from Gabrielle Glick followed by Respondent's first letter, and that it was in fact designed to deceive the tenant into believing that this was an order from the court granting possession of the premises, when in fact he knew that Sandra Glick was not yet so entitled under the Vermont Landlord Tenant statutes. Tellingly, Respondent also did nothing to correct any misimpression of the second letter and Notice to Vacate, and stated that he felt "relieved" when Ms. Brennan vacated.

The commentary to Rule 1.2 of the Vermont Rules of Professional Conduct provides some guidance here.

> *Scope of Representation*
>
> Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. . . . in questions of means, the lawyer should assume responsibility for technical and legal tactical issues. . . .
>
> *Criminal, Fraudulent and Prohibited Transactions*
>
> A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. . . . However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct.

Under this Rule, Respondent had the obligation to achieve his client's goals in

accordance with the law. We find no plausible reason for the creation of the Notice to Vacate other than to deceive Ms. Brennan into believing that she was under court order to leave the premises immediately. It was Respondent's duty to follow the law and to counsel his client in the law. Respondent was ultimately in charge of the legal tactics to be employed. He knew that his client's goal was immediate possession of the property, to which she was not legally entitled, and he successfully assisted her in that process. The tactics that he devised were not in accordance with the statute, a fact that Respondent knew. He changed the eviction letter to read "asforthwith" rather than September 9, 2011, and created a pleading in a non-existent court case. If there was confusion, Respondent was responsible for it. He created the situation, instructed the Deputy Sheriff and put the scheme into motion. In doing so, Respondent violated Rule 1.2(d).

Rule 4.1

Rule 4.1 of the Vermont Rules of Professional Conduct provides that "[i]n the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person." Respondent's statement to Ms. Brennan in the Notice to Vacate that "This termination takes effect asforthwith," was false and material to his client's objective that Ms. Brennan should vacate immediately. Ms. Brennan had no obligation to vacate the premises "forthwith" nor could she be forced from the property without further legal proceedings. We find that Respondent violated Rule 4.1.

Rule 4.4

Rule 4.4 of the Vermont Rules of Professional Conduct provides that "in representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence

that violate the legal rights of such third person."

Respondent arranged to have Ms. Brennan evicted without following the statutory process and ultimately she left the premises without most of her belongings having been threatened with handcuffing and arrest if she did not leave. This embarrassed and burdened Ms. Brennan, and was in direct violation of her statutory rights as a tenant.

In the case of *In re Rice*, PRB Decision No. 64 (2004) the Hearing Panel found a violation of Rule 4.4, stating that "Respondent's intentional efforts to shield his client's assets from known creditors illustrates the fact that the requirement for zealous representation of one's client is not limitless. A lawyer has obligations to the public and to the integrity of the legal system which cannot be neglected even though to do so might be to the benefit of one particular client."

We find a violation of Rule 4.4 for similar reasons. Respondent's desire to assist a vulnerable client cannot be at the expense of third party no matter how harmful the attorney may believe the situation to be.

Rule 8.4(c)

Rule 8.4(c) of the Vermont Rules of Professional Conduct provides that "[i]t is professional misconduct for an attorney to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

The Vermont Supreme Court recently clarified the scope of conduct which would violate this rule and the relationship of this Rule to Rule 4.1. The case involved two criminal defense attorneys who, while interviewing a potential exculpatory witness during a recess in a homicide trial, misled the witness about whether they were recording the telephone conversation. *In re PRB Docket Nos. 2007-046 and 2007-047*, 2009 VT

115(2009). The lawyers were charged with violation of Rules 4.1 and 8.4(c) . The Hearing Panel found, and the Supreme Court affirmed, the violation of Rule 4.1, since they had indeed made a false statement of material fact, but declined to find a violation of Rule 8.4(c).

In discussing the two rules the Court said: "[W]e are not prepared to believe that *any* dishonesty, such as giving a false reason for breaking a dinner engagement, would be actionable under the rules. Rather, Rule 8.4(c) prohibits conduct "involving dishonesty, fraud, deceit or misrepresentation" that reflects on an attorney's fitness to practice law, whether that conduct occurs in an attorney's personal or professional life." *Id.* at ¶ 12 (emphasis in original).

Respondent made false and deceptive statements in the August 16, 2001, documents when he wrote that Ms. Brennan's tenancy was terminated "forthwith." The Notice to Vacate that Respondent created and had served on Ms. Brennan by a Deputy Sheriff was designed to look like a document from a Windham Superior Court case. It misrepresented both the status of any litigation, which was then non-existent, and Ms. Brennan's obligation to leave the property which also did not exist at that time.

Thus, Respondent has met the first test of the Supreme Court opinion. In order to find a violation of Rule 8.4(c) we must also find that the conduct reflect adversely on Respondent's fitness to practice law. We believe that Respondent's conduct calls into question his fitness as a lawyer. Respondent created and had served by a Deputy Sheriff documents that he knew had no legal basis and were designed to and succeeded in evicting a tenant without following the statutory process. It is an elementary obligation of an attorney to follow the law. An intentional effort to bypass statutory provisions

designed specifically to protect the rights of the opposing party, here the tenant, cannot but reflect adversely on Respondent's fitness to practice law. An attorney is obligated to know the law, which Respondent did. More importantly the attorney is obligated to follow the law and not to use his training and understanding of the legal process to deceive third parties without that training and understanding. Respondent identified a goal, to evict Ms. Brennan as quickly as possible, and orchestrated the paperwork and the events necessary to obtain his objectives.

The hearing Panel Decisions in the above cited cases *In re PRB Decisions No.109 and 110* looked at several Vermont cases in which a violation of Rule 8.4(c) was found and noted that all of them "involve some level of deliberate and calculated deceit, as well as a selfish motive." p. 12.

In the case of *In re Griffin*, PRB Decision No. 76 (2005) the Hearing Panel found a violation of Rule 8.4(c) when an attorney forged a fee agreement with his client. In *In re Heald*, PRB Decision No. 67 (2004) the attorney failed to file state income tax returns for three years and made false statements on his attorney licensing statement.

Respondent's actions involved a similar level of calculated deceit, and while the motive was not to personally benefit Respondent as in *Griffin* and *Heald*, the actions were designed to benefit his client at the expense of her tenant and we find a violation of Rule 8.4(c).

Rule 8.4(d).

Rule 8.4(d) of the Vermont Rules of Professional Conduct provides that a "lawyer shall not engage in conduct that is prejudicial to the administration of justice."

In the case of *In re Harwood*, PRB Decision No. 83 (2005), affirmed, 2006 VT

15, the attorney was found to have co-mingled and misappropriated client funds over a seven year period. In finding a violation of Rule 8.4(d), the Hearing Panel wrote:

> Rule 8.4(d) . . . . is typically applied to misconduct that interferes with a judicial proceeding or compromises the integrity of the legal profession. Respondent's conduct falls in the latter category. The integrity of the legal system is founded on the premise that attorneys will be truthful and honest in their dealing with courts, with clients and with those whose job it is to ensure that appropriate standards of professional conduct are maintained. *Id.* at 6.

The principle has been applied in a variety of Vermont disciplinary cases. In *In re PRB Decision No. 91* (2006), the attorney used a confidential report from a juvenile proceeding in a separate court case, thereby making public confidential juvenile information. Although he made the disclosure unwittingly, the Hearing Panel found that the disclosure of information concerning a named juvenile was prejudicial to the administration of justice and found a violation of Rule 8.4(d).

In an earlier case, *In re Sunshine*, PRB Decision No. 28 (2001), the attorney was notified by a court that his client's case was to be dismissed if he failed to act. The Hearing Panel found that the attorney's failure to act which resulted in the dismissal of the client's case was prejudicial to the administration of justice.

Respondent's actions here were neither inadvertent as in *Decision No. 91* or a result of failure to act as in *Sunshine*. Respondent intentionally crafted a plan to avoid the clear provisions of the eviction procedure, and his plan was designed to circumvent the very safeguards for tenants contained in the statute. As a result of Respondent's actions Ms. Brennan had no opportunity to present any evidence or defense that she could have offered had she been afforded the protections of the statute. This conduct is prejudicial to the administration of justice and violates Rule 8.4(d).

Rule 8.4(h)

Rule 8.4(h) provides that a lawyer shall not "engage in any other conduct which adversely reflects on his fitness to practice law." We have already found in connection with Respondent's violation of Rule 8.4(c) that his conduct adversely reflected on his fitness to practice law. Fitness to practice is more that competency in the law. It involves a respect for and understanding of the importance of legal procedures established by statute and a willingness to abide by these procedures. In *In re Andres*, 170 Vt. 599 (2000), the attorney was found to have violated Rule 8.4(h) for engaging in a fight outside a bar. A willful failure to file income tax returns has also been found to violate Rule 8.4(h). *In re Massucco*, 156 Vt. 617 (1992).

Respondent's conduct exhibits the same disregard for obligations to follow the law and we find a violation of Rule 8.4(h).

Order

The Hearing Panel finds that Respondent has violated Rules 1.2(d), 4.1, 4.4, 8.4(c), 8.4(d) and 8.4(h) of the Vermont Rules of Professional Conduct. A Hearing on the appropriate sanction will be scheduled.

Dated: June 9, 2011 Hearing Panel No. 4

Bruce C. Palmer, Esq., Chair

William Piper, Esq.

Florence Chamberlin