

[06-Dec-1991]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: PCB File 91.38

NOTICE OF DECISION
PCB NO. 23

Procedural History

This matter was brought to the Professional Conduct Board's attention through a complaint filed by the mother in a child custody matter in which respondent represented the father.

Bar Counsel investigated this matter and, as a result of that investigation, entered into a stipulation of facts and conclusions of law with the respondent. Respondent waived all rights to an independent review by a hearing panel of that stipulation. Respondent further waived all procedural rights to which she was entitled under Administrative Order No. 9.

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

Board accepted that stipulation on November 1, 1991. Based upon that stipulation, the Board hereby issues this notice of decision.

Facts

1. Respondent was admitted to the Vermont bar in 1990.
2. Respondent represented the father in a post-divorce custody/visitation proceeding. The mother (complainant) and the children were each represented by counsel. one of the issues in this litigation was the children's refusal to visit with their father at his home.
3. Respondent obtained a court order on June 18, 1991, which gave her client visitation with his two children for the first five weeks of the summer.
4. On June 20, 1991, respondent and complainant's attorney discussed transportation arrangements for the visit. Complainant's attorney informed respondent that complainant preferred not to transport the children to the father's home because complainant refused to physically force the children to go with him. Respondent reluctantly agreed that the father, who resides in Vermont, would pick up his children at complainant's home in New Hampshire.
5. At the scheduled time, the father and his fiance arrived at the complainant's home. They were accompanied by respondent. Upon arrival, the father and respondent waited outside of complainant's residence for the children. The children came out to their father's car and informed him that they did not wish to go with him.
6. At this point, respondent intervened and spoke with the children. Respondent encouraged the children to go with their father. The children refused and returned to the house.
7. Respondent went to the house, knocked on the door, and attempted to speak directly with the complainant who refused to speak to her. In an attempt to convince one child to come with the father, respondent sternly told the child that the court had ordered the child to go with the father. The child

became upset and refused to discuss the matter further.

8. Respondent waited a while, then knocked again, and spoke with another child. Respondent asked the child if the child would come out and speak with the father, but the child refused and closed the door.

9. Respondent then asked complainant to ask the children what their final decision was. Complainant conferred with the children and told respondent that the children were not going with their father. Respondent and her client left the area and did not return. The entire exchange lasted approximately 45 minutes.

10. Respondent subsequently filed a motion to hold complainant in contempt for failure to transport the children to the father's home.

11. Respondent admits she communicated directly with a represented party of adverse interest without the consent of that party's counsel. She regrets her decision to speak with complainant and her children and agrees she will not do it again.

Conclusions of Law

The parties stipulated and the Board so finds that respondent violated DR 7-104(A)(1) (during the course of his representation of a client, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so).

Sanction

Bar counsel recommended that respondent be privately admonished because of a number of mitigating factors present here: respondent was relatively inexperienced at the time of this incident, respondent promptly acknowledged the wrongful nature of her conduct and has sincerely expressed her remorse, respondent co-operated fully with these disciplinary proceedings, and respondent's misconduct was not due to a dishonest or selfish motive. An aggravating factor present is the vulnerability of the children.

The Board accepted bar counsel's recommendation and issued a private admonition to respondent.

Dated at Montpelier this 6th day of December, 1991.

PROFESSIONAL CONDUCT BOARD

/s/

J. Eric Anderson, Chair

/s/

Deborah S. Banse, Esq.

/s/

Anne K. Batten

/s/

Leslie G. Black, Esq.

Richard L. Brock, Esq.

/s/

Joseph F. Cahill, Jr., Esq.

Nancy Corsones, Esq.

Christopher L. Davis, Esq.

/s/

Hamilton Davis

Nancy Foster

Shelley Hill, Esq.

/s/

Rosalyn L. Hunneman

Donald Marsh

/s/

Karen Miller, Esq.

Edward Zuccaro, Esq.

Dissent:

/s/

Nancy Corsones, Esq.