

PCB 81

[03-Feb-1995]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 93.40

NOTICE OF DECISION

DECISION NO. 81

This matter came before us by stipulated facts which we hereby adopt as our own. It involves another incident of an attorney dealing directly with opposing counsel's client without opposing counsel's knowledge or consent in violation of DR 7-104(A)(1).

FACTS

Respondent was admitted to the Vermont Bar in late 1991 and was employed as a young associate in an established law firm a year later when the incident which gave rise to this action occurred.

Respondent represented a corporation in a deficiency action against an

individual and another company. The defendant individual was represented by a Vermont attorney.

The plaintiff corporation (Respondent's client) and the defendant individual negotiated a settlement agreement without the involvement of counsel. As part of the agreement, the case against the defendant individual was to be dismissed.

Respondent drafted a stipulation of dismissal and forwarded it to the defendant's attorney for his signature. After some months of delay, the opposing attorney signed it and forwarded it to the court.

The next day, Respondent received a FAX from her client which was a letter to it from the defendant individual dated the week before. The defendant individual outlined his understanding of the parties' agreement upon which he was relying in withdrawing his significant third-party claim in the lawsuit. It appeared to Respondent that the defendant individual's understanding of the settlement was incorrect and that he may have been giving up an avenue of significant recovery for incorrect reasons.

Respondent promptly called the opposing attorney to discuss the issue but was told that he was out of the office for the remainder of the week.

Respondent was concerned that if the court acted on the stipulation to dismiss and the opposing attorney's client did not have an accurate understanding of the agreement, significant time and expense would be required of both litigants in order to straighten out the misunderstanding.

Respondent discussed these concerns with the attorney supervising her on this case and with another partner in the law firm.

After that discussion, Respondent wrote a lengthy letter to the opposing party explaining not only her client's understanding of the agreement, but also advising the opposing party in some detail on the law of indemnification. She directed that a copy of the letter be sent to opposing counsel. Before anything was mailed, however, Respondent showed a draft copy of the letter to the attorney supervising this case for his review. The supervising attorney did not notice that the letter was addressed to the opposing party, not to the opposing counsel.

Respondent then sent the letter, thereby violating DR 7-104(A)(1).

A few days later, Respondent received a call from the opposing attorney complaining about the direct contact with his client. Respondent was extremely remorseful and immediately apologized. She followed up with a written letter of apology. Respondent has co-operated fully with these disciplinary proceedings and has no record of any prior or subsequent violations.

CONCLUSIONS

One of the purposes of the anti-contact rule is to prevent one attorney from interfering with another's attorney-client relationship. By presuming to give another attorney's client legal advice, Respondent clearly violated the

rule.

Given the number of reported cases in which we have disciplined or recommended imposition of public discipline of attorneys for such conduct over the past five years, we are surprised that Respondent was apparently unaware of her duty to refrain from such interference with another attorney's client. We trust that the obvious violation of the anti-contact rule in this instance was not due to a confusion about the ethical duties involved, but due to this particular attorney's inexperience at the bar.

Respondent could easily have avoided the impermissible direct contact. One solution to the problem presented to Respondent was to call or write the court, explain the problem, and ask that no action be taken on the stipulation until Respondent could discuss the matter further with opposing counsel. Another viable option would have been to discuss the matter with one of the opposing counsel's several law partners.

For whatever reason the Respondent thought that direct contact was the solution, it is clear that she did not act with a dishonest or selfish motive and that she now understands her duty to refrain from such direct contact. In further mitigation, we note that Respondent's misconduct caused little or no actual injury.

Such a clear violation of the anti-contact rule, absent mitigating circumstances, would normally call for imposition of public discipline. However, applying the mitigating circumstances to Section 6.34 of the ABA Standards for Imposing Lawyer Sanctions as well as Rule 7A of Administrative

Order 9, we feel that a private admonition is the appropriate sanction here. Finally, we are cognizant of the fact that it can be extremely mortifying for a young attorney to run afoul of the Code of Professional Responsibility so early in her career and that imposition of any discipline at all is taken very seriously. We are confident that Respondent will learn from this experience to carefully weigh the ethical ramifications of her professional judgments.

We authorize the chair to issue such a letter of admonition on the Board's behalf.

Dated at Montpelier this 3rd day of February, 1995.

PROFESSIONAL CONDUCT BOARD

/s/

Deborah S. Banse, Chair

/s/ /s/

George Crosby

Donald Marsh

/s/ /s/

Joseph F. Cahill, Esq.

Karen Miller, Esq.

/s/ /s/

Nancy Corsones, Esq.

Garvan Murtha, Esq.

Paul S. Ferber, Esq.

Robert F. O'Neill, Esq.

Nancy Foster

Ruth Stokes

/s/

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Jane Woodruff, Esq.

/s/

Robert P. Keiner, Esq.

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