

[6-Dec-1996]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 96.34

DECISION NO. 113

This matter was presented to us by stipulated facts as well as stipulated recommendations regarding conclusions of law and sanctions. Bar counsel, respondent, and respondent's counsel appeared before the Board and presented oral argument in favor of their jointly entered into stipulations.

We accept the stipulated facts as our own and incorporate them by reference. A brief summary of those facts follows.

FACTS

At the time of the events describe herein, Respondent had been a member of the Vermont bar for nearly two years.

Respondent appeared on behalf of the state at a violation of probation hearing. Complainant represented the defendant.

Prior to the hearing the respondent informed complainant that the state would be seeking revocation and imposition of the entire underlying sentence.

The parties proceeded to hearing which was very heated. Comments of a personal nature were exchanged by both counsel. At one point, the presiding judge interrupted an exchange with "Okay, both of you stop."

After the judge stepped out of the courtroom, complainant approached respondent to discuss further the possibility of settlement. Respondent interpreted complainant's actions as patronizing and offensive. Respondent told complainant he was "full of shit." A law clerk of complainant, the defendant, a court officer and a probation officer were all present in the courtroom when respondent made this remark.

Complainant proceeded to leave the courtroom, and respondent raised his voice and repeated his comment. The two left the courtroom and went into the foyer, where other people were present. Respondent continued his loud haranguing to complainant, saying he was "a piece of shit" and that he was "going to shove this case up [his] ass" and that he would "seek maximum incarceration for [his] client."(FN1)

Complainant left the courthouse with his law clerk and proceeded up the street toward respondent's office. Respondent proceeded in the same direction. He walked approximately 20 feet behind complainant and continued to loudly berate complainant in the same manner as described above.

CONCLUSIONS OF LAW

DR 7-106(C) (6) of the Code of Professional Responsibility provides that "[i]n appearing in his professional capacity before a tribunal, a lawyer shall not...engage in undignified or discourteous conduct which is degrading to a tribunal."

The purpose of this rule is explained at EC 7-37:

In adversary proceedings, clients are litigants and though ill feelings may exist between clients, such ill feeling should not influence a lawyer in his conduct, attitude, and demeanor towards opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no part in our legal system.

Respondent's conduct here clearly violated DR 7-106(C) (6) and cannot be tolerated. Indeed, we have disciplined such unprofessional conduct in the past and will continue to do so whenever it is brought to our attention. See, for example, In re PCB Docket 91.07, Decision #30 (1992) (defense lawyer admonished for swearing at prosecuting attorney in courtroom).

In this case, there are a number of mitigating factors which persuade us to follow the jointly recommended sanction of private admonition.

First, respondent wrote a letter of apology to complainant for his conduct. He demonstrated feelings of true remorse in his appearance before the Board.

Second, respondent enrolled in an anger management class. As a result, he has shown dramatic improvement in controlling his emotions. Respondent has developed a positive professional relationship with complainant.

Third, Respondent was highly unexperienced when this incident occurred. He has no prior disciplinary record and co-operated fully with these disciplinary proceedings.

Consistent with Section 7.4 of the ABA Standards for Imposing Lawyer Sanctions, and in consideration of the mitigating factors, we conclude that a private letter of admonition is warranted here. Respondent will be so admonished.

Dated at Montpelier, Vermont this 6th day of December , 1996.

PROFESSIONAL CONDUCT BOARD

/s/

Robert P. Keiner, Esq. Chair

/s/

Joseph F. Cahill, Jr., Esq.

/s/

Charles Cummings, Esq.

/s/

Michael Filipiak

Rosalyn L. Hunneman

/s/

Karen Miller, Esq.

Alan S. Rome, Esq.

/s/

Ruth Stokes

Nancy Corsones, Esq.

/s/

Paul S. Ferber, Esq.

Nancy Foster

/s/

Donald Marsh

/s/

Robert F. O'Neill, Esq.

/s/

Mark L. Sperry, Esq.

Jane Woodruff, Esq.

Footnotes

FN1. The substance of the latter comment, although made in anger,
was consistent with respondent's position on sentencing before the hearing.