

119.PCB

[14-Feb-1997]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

RE: PCB Docket No. 96.33

NOTICE OF DECISION

DECISION NO. 119

This case was presented to us by stipulated facts, as well as stipulated recommendations regarding conclusions of law and sanction. The parties waived their right to appear before the Board.

We accept the stipulated facts as our own and incorporate them herein by reference. A brief summary of the event leading to discipline is set forth below.

FACTS

Respondent, a lawyer with less than two years of experience at the time of this incident, represented the husband in a divorce. One of the issues in the divorce concerned health insurance.

A court hearing was scheduled and respondent appeared at the court house. She checked the schedule and then, observing the opposing party, went over to her and sat down. Respondent then began to discuss with the opposing party the difficulty of her client providing health insurance coverage. It was a very short conversation, terminated when opposing counsel appeared.

Respondent did not have the prior permission of complainant's attorney to speak with complainant regarding an issue in the divorce, nor was respondent authorized by law to do so. Respondent does not remember the conversation but does not dispute complainant's version of events.

CONCLUSIONS OF LAW

DR 7-104(A) (1) provides that "[d]uring the course of [her] representation of a client, a lawyer shall not...[c]ommunicate ...on the subject of the representation with a party [s]he knows to be represented by a lawyer in that matter unless [s]he has the prior consent of the lawyer representing such other party or is authorized by law to do so."

In speaking to the represented opposing litigant in a divorce about an issue in the divorce without the consent of the opposing attorney and without authorization by law, respondent violated DR 7-104(A) (1).

SANCTION

Section 6.34 of the ABA Standards for Imposing Lawyer Sanctions provides that "[a]dmonition is generally appropriate when a lawyer engages in an isolated instance of negligence in improperly communicating with an individual in the

legal system, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with the outcome of the legal proceeding."

In mitigation, we find that respondent has no prior disciplinary record; had no selfish or dishonest motive; cooperated fully with the disciplinary proceedings; was very inexperienced at the time of the incident; and is remorseful that the conversation occurred.

There are no aggravating factors.

The chair will issue a private letter of admonition to the respondent.

Dated at Montpelier, Vermont this 14th day of February 1997.

PROFESSIONAL CONDUCT BOARD

/s/

Robert P. Keiner, Esq. Chair

/s/

Joseph F. Cahill, Jr., Esq.

Nancy Corsones, Esq.

/s/

Charles Cummings, Esq.

/s/

Paul S. Ferber, Esq.

/s/

Michael Filipiak

Nancy Foster

/s/

Rosalyn L. Hunneman

Karen Miller, Esq.

Robert F. O'Neill, Esq.

Alan S. Rome, Esq.

/s/

Mark L. Sperry, Esq.

/s/

Ruth Stokes

Jane Woodruff, Esq.

/usr3/dal/9633.op