

[05-Jun-1992]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In Re: PCB File 90.30

NOTICE OF DECISION

PCB # 34

This matter was submitted-by stipulation. Respondent waived his procedural rights under Administrative Order 9, including the right to a hearing and the right to appear before the Board.

Upon consideration of the stipulated facts, the Board concludes 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.

FACTS

1. Respondent was admitted to the Vermont Bar in 1969. For a number of years he has served as counsel to a municipality.
2. A non-profit corporation constructed a building within the municipality.
3. Upon completion of the building, a dispute arose between the municipality and the corporation as to whether the corporation was entitled to a certificate of occupancy.
4. At the time this dispute arose, litigation was pending between the municipality and the corporation regarding the municipality's denial of a conditional use permit regarding a different property owned by the corporation.
5. Representatives of the corporation and the municipality, along with their respective counsel, met in an effort to resolve their differences. The meeting did not result in a firm agreement.
6. Subsequently, respondent received a telephone call from the chief executive of the municipality. The chief executive requested respondent to attend a meeting with representatives of the corporation. The chief executive informed respondent that representatives of the corporation had requested a meeting with the chief executive and had specifically asked

that respondent be in attendance.

7. Respondent attended the meeting. Although the corporation was represented by counsel in connection with the pending litigation, counsel was not present at the meeting.

8. Respondent discussed possible resolutions of the pending lawsuit with the corporation's representatives. Because the corporation is a sophisticated party who specifically asked for direct contact with respondent, respondent erroneously assumed that DR 7-104(A)(1) was not applicable.

9. Counsel for the corporation had no knowledge that this meeting occurred.

10. Respondent acknowledges that his discussions with the corporate representatives violated DR 7-104(A)(1) and regrets any confusion that might have resulted from this meeting. Respondent had no intent to exclude opposing counsel from these discussions. Respondent understands that he should have obtained the consent of the corporation's counsel and that he was negligent in failing to do so.

11. Respondent has no record of prior discipline and enjoys an exemplary reputation in the community.

12. Respondent and bar counsel agree that, if the Board imposes a sanction, it should be no greater than a private admonition. Accordingly the Board voted to issue a private admonition to respondent.

Dated at Montpelier, Vermont this 5th day of June, 1992.

PROFESSIONAL CONDUCT BOARD

/s/

J. Eric Anderson, Chairman

Deborah S. Banse, Esq.

/s/

Anne K. Batten

Leslie G. Black, Esq.

/s/

Richard L. Brock, Esq.

/s/

Joseph F. Cahill, Jr., Esq.

Hamilton Davis

/s/

Nancy Foster

/s/

Shelley A. Hill, Esq.

/s/

Rosalyn L. Hunneman

/s/

Donald Marsh

/s/

Nancy Corsones, Esq.

/s/

Christopher L. Davis, Esq.

Karen Miller

/s/

Edward Zuccaro, Esq.