

PCB 4

[12-Oct-1990]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 88.70

NOTICE OF DECISION

PCB No. 4

Procedural History

A complaint was filed with the Professional Conduct Board by an attorney who alleged that the Respondent, a member of the Vermont Bar, had improperly failed to obey a court order.

Specially assigned bar counsel investigated this matter and, as a result of the investigation, entered into a stipulation of facts with the Respondent. The Respondent did not contest the allegations nor bar counsel's allegation that the Respondent violated DR 7-106(A).

A hearing panel appointed pursuant to Rule 8C reviewed the stipulation. The panel, with one member abstaining, concluded that Respondent violated Dr 7 106(A).

The Professional Conduct Board reviewed the stipulation and accepted it. Set forth below are the Board's findings of fact and conclusions of law.

Facts

1. The Respondent represented a client in a contested divorce matter.
2. The complainant, a Vermont attorney, represented the opposing party in the divorce action.
3. As part of its final order in the case, the court ordered the Respondent's client to "execute all necessary documents to effectuate a transfer" of the former homestead to the client's spouse by a time certain.
4. The Respondent oversaw the execution of the appropriate transfer deed by the client, but refused to convey the deed to the complainant because the disposition of the parties' wood stove had not been resolved.
5. The Respondent indicated that the deed would be delivered only when the parties' had resolved the ownership of the stove.
6. Subsequently, other disputes arose between the parties concerning

visitation and insurance coverage.

7. The Respondent delivered said deed after being so directed by the court at a hearing.

8. By that time, the complainant had perfected his client's title by a filing pursuant to 15 V.S.A. Section 754.

Conclusions of Law

The Code of Professional Responsibility contains the following Disciplinary Rule:

DR 7-106 Trial Conduct

(A) A lawyer shall not disregard or advise his client to disregard standing rules of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps to test the validity of such rule or ruling.

In this case, the Respondent failed to follow a valid court order and took no steps to question its validity. Therefore, the Board finds that Respondent violated DR 7-106(A).

Respondent stipulated that the Respondent "did not intend to violate the Professional Responsibility Code nor did she believe that her actions violated the Code." Intent to violate a particular disciplinary rule,

however, is largely irrelevant in the disciplinary process. The relevant consideration is whether Respondent knowingly advised her client to disregard a tribunal's ruling. The Board concludes that Respondent acted knowingly.

In imposing sanctions this Board considers, among other factors, the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors.

Respondent here violated the duty owed to the legal system. Respondent's actions were purposeful and not the result of mistake. Actual injury was caused in that the opposing party had to resort to additional legal process in order to perfect title.

Such circumstances would normally require this Board to recommend to the Supreme Court that a public sanction be imposed. However, several mitigating factors are presented here including the absence of a prior disciplinary record, the absence of a selfish motive, and the remoteness of the offense. Additionally, bar counsel's recommendation that a sanction no greater than a private admonition be imposed is a recommendation which carries great weight with the Board in this case.

Accordingly, the Board has voted to issue a private admonition to Respondent with the specific warning that the Board considers such conduct a serious violation which may be sanctioned more severely in the future.

Dated at Montpelier this 12th day of October, 1990.

PROFESSIONAL CONDUCT BOARD

/s/

J. Eric Anderson, Esq., Chair

/s/

/s/

Anne K. Batten

Joseph F. Cahill, Jr., Esq.

/s/

/s/

Christopher L. Davis, Esq.

Hamilton Davis

/s/

/s/

Deborah S. McCoy, Esq.

Donald Marsh

/s/

/s/

Karen Miller, Esq.

Joel W. Page, Esq.

/s/

/s/

Edith Patenaude

Edward Zuccaro, Esq.