

[10-Jan-1997]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

IN RE: PCB File No. 95.25

NOTICE OF DECISION NO. 115

This case was presented to us by stipulated facts which we adopt as our own and incorporate herein by reference. The parties waived appearance before the Board. A brief summary of the events leading to discipline is set forth below.

FACTS

Respondent, a member of the Vermont bar for more than 30 years, represented a client in a divorce case. Unable to obtain certain documents and financial information in the normal course of discovery requests, respondent issued a subpoena duces tecum to the opposing party. Respondent sent it by mail personally to the party, who was represented by counsel. Included in the mailed packet was a cover letter, requesting that he respond to the subpoena in the time frame allotted. A copy of the cover letter and subpoena was sent to the opposing attorney.

At about the same time, respondent issued subpoenae duces tecum to several non-parties. A month later, when several had not complied, respondent wrote to these individuals, informing each that he would proceed by deposition if the requested information was not produced. Through inadvertence, one of the letters was sent to the represented opposing party. This direct contact was made without the knowledge or consent of opposing counsel.

CONCLUSIONS OF LAW AND SANCTION

Respondent violated DR 7-104(A) (1) by so contacting an opposing party. (FN1) Although Respondent was authorized by law (FN2) to issue a subpoena duces tecum directly to the opposing party, he was not authorized by law to send letters to the opposing party. Respondent acted negligently.

In mitigation, we find that he is remorseful, had no selfish or dishonest motive, and has co-operated fully with the disciplinary proceedings. In aggravation, we find that he has substantial experience at the bar and a history of three prior admonitions, albeit those were incurred over twenty years ago.

No injury resulted from Respondent's conduct, and the potential injury was slight.

Section 6.34 of the ABA Standards for Imposing Lawyer Sanctions provides that an "[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."

Based upon this Standard and the aggravating and mitigating factors present, we conclude that a private admonition is the appropriate sanction in this case. A letter of admonition will issue.

Dated at Montpelier, Vermont this 10th day of January , 1997.

PROFESSIONAL CONDUCT BOARD

/s/

Robert P. Keiner, Esq. Chair

/s/

Joseph F. Cahill, Jr., Esq.

/s/

Charles Cummings, Esq.

/s/

Paul S. Ferber, Esq.

Michael Filipiak

/s/

Nancy Foster

Rosalyn L. Hunneman

/s/

Karen Miller, Esq.

/s/

Robert F. O'Neill, Esq.

/s/

Alan S. Rome, Esq.

Mark L. Sperry, Esq.

/s/

Ruth Stokes

/s/

Jane Woodruff, Esq.

Footnotes

FN1. DR 7-104(A) (1) prohibits an attorney from "communicat[ing]...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 or is authorized by law to do so."

FN2. V.R.C.P. 45(c).