

20 PRB

[13-Jul-2001]

STATE OF VERMONT

PROFESSIONAL RESPONSIBILITY BOARD

Decision No. 20

In Re: PRB File No. 2000-091

Respondent is charged with violation of Rule 1.11(c)(1) of the Vermont Rules of Professional Conduct. Respondent represented himself. Deputy Disciplinary Counsel Michael Kennedy represented the Office of Disciplinary Counsel. The parties have filed a Stipulation of Facts and Conclusions of Law, and Joint Recommendation as to the sanction of an admonition pursuant to Rule 8(A)(5)(a) of A.O. 9. Based upon the parties' stipulation, the Hearing Panel Finds:

FINDINGS OF FACT

1. The Respondent is an attorney licensed to practice law in the State of Vermont.

2. The Respondent is the Chair of a Town Board of Civil Authority.
3. A School owns property in the Town.
4. In 1999, the school asked the town's Board of Listers for a tax exemption.
5. By letter dated September 7, 1999, the Respondent advised the Board of Listers to deny the school's request.
6. The Board of Listers denied the school's request.
7. The school appealed the decision to the Board of Civil Authority.
8. The Board of Civil Authority considered the appeal at two separate meetings.
9. The Respondent chaired each meeting but did not participate in the discussion or the vote.
10. The Respondent did not leave the meeting while the school's appeal was discussed.
11. The Board of Civil Authority denied the school's appeal.

12. The Board's decision is signed by the Respondent. Id.

13. The Respondent could have delegated the duty to sign the notice of decision to another member of the Board.

14. The Respondent does not have a prior disciplinary history.

15. The Respondent cooperated with the Office of Disciplinary Counsel.

16. Respondent consents to the imposition of an Admonition by Disciplinary Counsel.

## CONCLUSIONS

The events relevant to this case took place subsequent to September 1, 1999. Thus, as a matter of law, the Vermont Rules of Professional Conduct apply.

Unless expressly permitted by law, "a lawyer serving as a public officer or employee shall not . . . participate in a matter which the lawyer participated personally while in private practice or non-governmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter . . ." V.R.P.C. Rule 1.11(c)(1). The parties join to recommend

that the Panel conclude that the Respondent violated Rule 1.11(c)(1). The parties' recommended conclusions of law are guided, in large part, by a case that the Professional Conduct Board decided last year. See *In Re PCB* File No. 99.105, PCB Decision No. 137 (Dec. 2, 1999). The case involved a factual scenario quite similar to the scenario present here.

In the case, the Board considered an incident involving its former chair. A disciplinary complaint had been filed against one of the chair's clients. Bar Counsel recommended that the Board dismiss the complaint. The Board discussed the recommendation at one of its meetings. The chair did not participate in the discussion relating to the recommendation. Nor did the chair vote on the issue. Nevertheless, the chair presided over the meeting at which the issue arose and signed the letter indicating that the Board had accepted Bar Counsel's recommendation that the complaint be dismissed. For chairing the meeting and signing the letter, the chair was deemed to have participated in the PCB matter involving a former client. *Id.*, at 5. As a result, the chair was admonished. *Id.*, at 7.

This case is strikingly similar. While chairing the Board of Civil Authority, Respondent presided, however minimally, over a meeting at which an issue in which Respondent had participated as a private attorney arose. Respondent did not participate in the discussion or vote. Nevertheless, Respondent participated by continuing to chair the meeting and by signing the notice of the Board's decision. Respondent did not delegate the duty to sign the notice of decision to another member of the Board.

In sum, the Respondent advised the Listers to deny the school's request for an exemption. Then, the Respondent presided over the meeting at which the school appealed the Listers' decision. As such, while acting as a public officer, Respondent participated in a matter in which Respondent had participated as a private attorney.

## SANCTION

In Vermont, it is appropriate to refer to the ABA Standards For Imposing Lawyer Sanctions in determining the appropriate sanction in a disciplinary case. In *Re Warren*, 167 Vt. 259, 261 (1997); In *Re Berk*, 157 Vt. 524, 532 (1991) (citing *In Re Rosenfeld*, 157 Vt. 537, 546-47 (1991)). The ABA Standards recommend sanctions for particular types of violations and enumerate four factors relevant to the determination of whether the recommended sanction is appropriate. Those factors are: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury; and (4) any mitigating and/or aggravating factors. In *Re Warren*, 167 Vt. at 261.

### 1. The Duty Violated

A lawyer has a duty to maintain the public trust. ABA Standards for Imposing Lawyer Sanctions, Section 5.2. The Respondent violated that duty

by presiding over the meeting at which the Board of Civil Authority considered the appeal of a matter in which the Respondent had participated while in private practice.

## 2. Mental State

The Respondent's mental state was one of neglect.

## 3. Injury

There was little or no actual injury.

## 4. Aggravating Factors

There are no aggravating factors.

## 5. Mitigating Factors

The Respondent does not have a prior disciplinary history. ABA Standards for Imposing Lawyer Sanctions, Section 9.32(a). There is no evidence that the Respondent had a dishonest or selfish motive. ABA Standards for Imposing Lawyer Sanctions, Section 9.32(b). The Respondent has exhibited a cooperative attitude towards this proceeding. ABA Standards for Imposing Lawyer Sanctions, Section 9.32(e).

## 6. The Sanction

This case is quite similar to PCB Decision No. 137. In that case, the Professional Conduct Board admonished the Respondent. Thus, an admonition would be appropriate here as well.

Moreover, an admonition is appropriate "when a lawyer in an official or governmental position engages in an isolated instance of negligence in not following proper procedures or rules, and causes little or no actual or potential injury to a party or the integrity of the legal process." ABA Standards for Imposing Lawyer Sanctions, Section 5.24. In this case, Respondent, while acting as a public official, engaged in an isolated act of negligence by failing to delegate the duties of the Chair to another member of the Board of Civil Authority. Little injury resulted. However, Respondent's presence at the meeting was enough to cause potential injury in that it could have exerted some type of influence over the other members of the Board. See PCB Decision No. 137, Hearing Panel's Recommendation at 9, ("her mere physical presence at the conference table or in the boardroom could have exerted a subtle influence over the Board's deliberations during discussion of the case."). Considering all the relevant factors, the parties agree that an admonition is appropriate. In this case, the admonition, by rule, would be one imposed by Disciplinary Counsel and approved by the Panel. See A.O. 9, Rule 8(A)(5)(a).

APPROVAL OF SANCTION

Based on a the above, the undersigned Hearing Panel No. 5 hereby approves the imposition of an admonition by Disciplinary Counsel of the Respondent for violation of Rule 1.11.(C)1 of the Vermont Rules of Professional Conduct.

Dated this 13th day of July, 2001.

HEARING PANEL NO. 5

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Mark L. Sperry, Chair

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Jane Woodruff, Esq., Panel Member

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Sara G. Boyd, Panel Member