

PCB 40

[09-Oct-1992]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: PCB File 90.38

NOTICE OF DECISION

PCB No. 40

Respondent was charged with violating DR 1-102(A) (1) (violation of a Disciplinary Rule); DR 1-102(A) (4) (conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-102(A) (5) (conduct prejudicial to the administration of justice); and DR 7-102(A) (5) (knowingly making a false statement of law or fact). We agree with the recommendation of the hearing panel and dismiss the petition.

While representing a defendant in a criminal matter, respondent filed a motion to dismiss the charges on, inter alia, speedy trial grounds. Respondent's theory was that previous charges against his client involving a burglary had been dismissed a year before. The new charges, while not involving the same victim, were based in part upon the testimony of the same co-conspirator who would have testified in the first case. The new charges involved a pattern of criminal activity which occurred during the same time as the previously dismissed charges. The motion, while not clearly drafted, was not frivolous.

An initial status conference was held on these new charges. Respondent inadvertently referred to the pending charges as the same charges as had been previously dismissed. Respondent stated that because these were the same charges, his motion to dismiss might be dispositive of the proceedings.

The prosecuting attorney immediately corrected the record and stated that none of the pending charges had been previously filed against respondent's client. The respondent said nothing.

The presiding judge was confused. The judge stated that there might be a problem if what the prosecuting attorney said was true. The judge then moved on to other matters.

The hearing panel found that the respondent's use of words, while careless, did not constitute an intentional misrepresentation. Respondent's choice of words were the result of carelessness and misunderstanding of the law, and not an intentional attempt to deceive the court. Further, respondent did not realize at the time that respondent's remarks were confusing to the court.

The panel found, and the Board agrees, that it is not unusual for an attorney to be less than crystal clear in making certain factual or legal arguments, especially when the issue is complicated and particularly

susceptible to misunderstanding by both attorneys and courts.

Under the facts of this case, as found by the hearing panel, we find no violation of the Code of Professional Responsibility.

Dated at Montpelier this 9th day of October, 1992.

PROFESSIONAL CONDUCT BOARD

J. Eric Anderson, Chairman

Deborah S. Banse, Esq.

/s/

Anne K. Batten

/s/

Joseph Cahill, Jr., Esq.

Nancy Corsones, Esq.

/s/

Christopher L. Davis, Esq.

Hamilton Davis

/s/

Paul S. Ferber, Esq.

Nancy Foster

/s/

Shelley Hill, Esq.

Rosalyn L. Hunneman

/s/

Robert P. Keiner, Esq.

/s/

Donald Marsh

Karen Miller

/s/

Edward Zuccaro, Esq.