

[04-Dec-1992]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In Re: PCB File 91.42

NOTICE OF DECISION
NO. 44

FACTS

1. Respondent was admitted to the Vermont Bar in 1988. Complainant is a former client of respondent.

2. Complainant retained respondent in February 1989 to represent her in a divorce action filed by her husband. Complainant paid a retainer of approximately \$850.

3. Respondent represented complainant through the conclusion of a two day contested hearing. The attorney-client relationship deteriorated due to the client's abusive behavior. In April of 1989 respondent filed a motion to withdraw which was granted.

4. Subsequently, respondent brought a suit against complainant to collect money owed for legal services rendered. Summary judgement was entered on behalf of respondent. A judgement of nearly \$4,000 was entered against complainant.

5. Complainant did not pay the judgement. Respondent filed an action against complainant in order to enforce the judgement. Complainant failed to answer. Respondent moved for a default judgement.

6. Complainant then retained new counsel who filed an appearance, answer, and counterclaim alleging malpractice.

7. Respondent contacted his insurance carrier, who hired counsel to defend him against the counterclaim.

8. Settlement negotiations began following execution of a stipulation staying legal action by the parties. On several occasions the matter was close

to being settled. In late November 1990 respondent offered to compromise his judgement to \$2500 with the condition that both parties sign general releases.

In late January 1991, complainant formally agreed to accept respondent's offer, but then refused to execute the release necessary to dismiss the counterclaim.

9. During or shortly after an April 1991 status conference held in superior court, complainant announced that she was going to file a complaint

against respondent with the Professional Conduct Board.

10. Within the week, complainant's counsel contacted respondent's counsel and offered a settlement of \$1000 in exchange for a general release which would release respondent from any claims complainant has or ever had.

11. Respondent's counsel discussed the offer with respondent. Respondent told his counsel he would not consider the offer if complainant was going to file a complaint with the Professional Conduct Board.

12. Shortly thereafter, respondent's counsel wrote to complainant's counsel and inquired whether complainant intended to provide respondent with a general release that stated complainant would not report respondent to the Professional Conduct Board.

13. Complainant's counsel sent his client a release which he drafted at his client's request. Her counsel patterned the release after respondent's previously proposed release, but added, "including any claims the said [complainant] may have against [respondent] that the said [respondent] may have violated any provisions of either the New Hampshire or Vermont Rules of Professional Conduct."

14. In June of 1991, the settlement fell through and in July of 1991 complainant filed a complaint with the Professional Conduct Board.

15. Respondent cooperated with the investigation of that complaint.

16. Respondent admitted that he was remiss in his attempt to limit his former client from filing a complaint with the Professional Conduct Board.

17. Respondent's conduct caused no prejudice to his client.

18. Respondent was inexperienced in the practice of law at all times material hereto.

The Board finds that respondent's conduct violated DR 1-102(A)(5) (a lawyer shall not engage in conduct prejudicial to the administration of justice). Members of the bar should not discourage persons from reporting matters to the Professional Conduct Board. See DR 1-103. In light of mitigating circumstances and the lack of injury to the complainant, the Board imposes a private admonition.

Dated in Montpelier, Vermont this 4th day of December 1992.

PROFESSIONAL CONDUCT BOARD
/s/

J. Eric Anderson, Chairman

/s/

Deborah S. Banse, Esq.

Nancy Foster

/s/

Anne K. Batten

Joseph F. Cahill, Jr., Esq.

/s/

Rosalyn L. Hunneman

Nancy Corsones, Esq.

/s/

Robert P. Keiner, Esq.

Christopher L. Davis, Esq.

/s/

Donald Marsh

Hamilton Davis

/s/

Karen Miller

Paul S. Ferber, Esq.

/s/

Edward Zuccaro, Esq.