

PCB 51

[16-Apr-1993]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In re: PCB File 92.35

NOTICE OF DECISION
NO. 51

This matter was submitted to the Board by stipulations of respondent and bar counsel. upon consideration of these stipulations, the Board voted to impose a private admonition upon respondent for violating DR 5-105(A). Below are the Board's findings of fact, conclusions of law, and reasons for imposing discipline.

Facts

1. In July of 1990, Respondent undertook representation of a client regarding a number of issues including a dispute with a contractor. The client was dissatisfied with the contractor's shoddy work and refused to pay the full amount of the contractor's bill.

2. In January of 1991, Respondent negotiated a settlement of this problem with contractor's counsel. The parties agreed that respondent's client would pay the contractor approximately \$25,000 of the original bill for \$30,000.

3. About two weeks later, respondent entered into an agreement with counsel for the contractor and with counsel for a bank to act as trustee charged with collecting accounts receivable that had been pledged by the contractor to the bank. When respondent agreed to serve as trustee, it was his belief that his client's dispute with the contractor had been settled. He received no list identifying specific accounts pledged by the contractor to the bank.

4. At about this same time, respondent became seriously ill.

5. In February of 1991, the client informed respondent that it was no longer happy with the settlement to which it had previously agreed. Respondent informed the client that he could no longer represent it in regard to its dispute with the contractor because he was serving as trustee. The client obtained other counsel.

6. In June of 1991, counsel for the contractor brought suit against respondent's former client to collect the disputed bill. Although respondent had no personal involvement with the suit, the suit was brought in his name as trustee .

7. Respondent learned of this Suit in September of 1991. Respondent advised counsel for the contractor that use of respondent's name in the law suit might suggest an appearance of impropriety, a concern discounted by counsel for the contractor.

Conclusions of Law

The Board finds that respondent's conduct here violated DR 5-105(A) (A lawyer shall decline proffered employment if the exercise of his independent

professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105(C). None of the exceptions in Subsection C are applicable here.

Sanction

The Board has imposed a private admonition, consistent with Standard 4.3 of the ABA Standards for Imposing Lawyer Sanctions.(FN1)

Mitigating factors present include no prior disciplinary offenses, personal problems at the time the violation occurred, and full and free disclosure to the disciplinary board. Aggravating factors include substantial experience in the practice of law.

Dated at Montpelier this 16 day of April 1993.

PROFESSIONAL CONDUCT BOARD

/s/

J. Eric Anderson, Chairman

/s/

Deborah S. Banse, Esq.

Rosalyn L. Hunneman

/s/

Anne K. Batten

/s/

Robert P. Keiner, Esq.

/s/

Joseph F. Cahill, Jr., Esq.

/s/

Donald Marsh

Nancy Corsones, Esq.

Karen Miller, Esq.

/s/

Christopher L. Davis, Esq.

Ruth Stokes

/s/

Paul S. Ferber, Esq.

Jane Woodruff, Esq.

/s/

Nancy Foster

/s/

Edward Zuccaro, Esq.

FN1. That standard provides, in pertinent part, "Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client ... will adversely affect another client, and causes little or no actual injury to a client."