

PCB 70

[17-Jun-1994]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 91.27

NOTICE OF DECISION NO. 70

In 1992, a Probable Cause Subcommittee of the Professional Conduct Board found probable cause that Respondent charged an excessive fee and handled a legal matter without adequate preparation. Upon further review, the Board concludes that the subcommittee incorrectly found probable cause, and thus dismisses the complaint.

This case concerns Respondent's representation of the estate of a Vermont attorney. When the attorney died, he was representing the complainant's minor child, pursuant to a contingency fee agreement in which the attorney was to receive one-third of any recovery. Before his death, the attorney conveyed to the Complainant an offer to settle, and recommended acceptance.

When Respondent was retained by the estate following the attorney's death, Respondent wrote the Complainant about the status of the case and Respondent's understanding of the settlement offer. Respondent told complainant that if he accepted the offer, the estate was entitled to a one-third fee. Respondent further stated that even if the case was not

settled, the matter of the fee would have to be addressed.

The Board finds Respondent did nothing improper in requesting payment on behalf of the estate of one-third of the recovery. If the case had settled, the estate was entitled to that amount pursuant to the fee agreement. Nor does the Board conclude that Respondent acted unethically in suggesting that the one-third was due, even if Complainant rejected the offer. While the majority of jurisdictions hold that when an attorney is discharged from a contingency fee case, the attorney is entitled only to a quantum meruit fee, a minority support an attorney receiving the percentage specified in the fee agreement if there has been an offer rejected by the client.

Since there was some legal support for Respondent's claim and since the fee claim was asserted on behalf of the client and not the Respondent, we conclude Respondent did not charge an excessive fee.

Dated at Montpelier, Vermont this 17th day of June, 1994.

PROFESSIONAL CONDUCT BOARD

/s/

Deborah S. Banse, Chair

/s/

Anne K. Batten

/s/

Donald Marsh

/s/

Joseph F. Cahill, Esq.

Karen Miller, Esq.

Nancy Corsones, Esq.

J. Garvan Murtha, Esq.

/s/

Paul S. Ferber, Esq.

Robert F. O'Neill, Esq.

/s/

Nancy Foster

Ruth Stokes

/s/

/s/

Rosalyn L. Hunneman

Jane Woodruff, Esq.

/s/

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Edward Zuccaro, Esq.

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