

[28-Mar-2005]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

Decision No. 74

In Re: PRB File No. 2005.117

On February 23, 2005, the parties filed a stipulation of facts as well as joint recommendations on sanctions and conclusions of law. Respondent also waived certain procedural rights including the right to an evidentiary hearing. The Hearing Panel accepts the facts and recommendations and orders that Respondent be admonished by Disciplinary Counsel for threatening criminal prosecution to gain advantage in a civil matter in violation of Rule 4.5 of the Vermont Rules of Professional Conduct.

Facts

Respondent is an attorney licensed to practice law in the State of Vermont. He was admitted to practice in Vermont in 1987.

Respondent represented clients in a civil matter involving a dispute with a landscaper. In correspondence with the landscaper's attorney dated December 6, 2004, Respondent stated:

My clients are not prepared to accept as settlement anything less than Five Thousand Dollars (\$5000.00). Payment thereof is demanded within fifteen (15) days of the date of this letter. If payment is not forthcoming, I have been instructed to {sic} by my client's {sic} to pursue appropriate legal action to recover the damages arising from [name of client]'s actions. I shall likewise refer this matter to the [County] State's Attorney for review.

Upon receiving the letter, the landscaper's attorney called Respondent. He told him that the letter violated Rule 4.5 of the Vermont Rules of Professional Conduct and asked Respondent to self-report the violation. On December 9, Respondent wrote to opposing counsel withdrawing his letter of December 6, and on the following day he reported the matter to the Disciplinary system. Respondent did not report the matter to the police.

Respondent has no disciplinary history and made a timely effort to rectify his misconduct. He made a full and free disclosure of his misconduct to Disciplinary Counsel and has cooperated with the subsequent proceedings.

Conclusion of Law

Rule 4.5 of the Vermont Rules of Professional Conduct provides that "[a] lawyer shall not present, participate in presenting, or threaten to present criminal charges in order to obtain an advantage in a civil

matter." The Comment to the rule sets for the important rationale for this prohibition: The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of that process; further, the person against whom the criminal process is so misused may be deterred from asserting the person's legal rights, and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

Respondent's actions fall squarely within the prohibition of the rule, a fact which Respondent understood as soon as it was pointed out to him, and we find a violation of the rule. Sanction

Admonition by disciplinary counsel is appropriate in this case. There is no evidence that Respondent's conduct caused injury either to his client or the opposing party, since the threat was not carried out, and the letter was withdrawn within a few days. The fact that Respondent reported the violation and that he has no prior disciplinary record leads us to believe that it is unlikely that the misconduct will be repeated. While a violation of this rule has the potential for serious consequences in some cases, no such circumstances exist in this case, and we conclude that the violation is minor and thus within the bounds of A.O. 9, Rule 8(A) (5).

Order

Based upon the foregoing, the Hearing Panel orders that Respondent be Admonished by Disciplinary Counsel for violation of Rule 4.5 of the Vermont Rules of Professional Conduct.

Dated March 28, 2005

Hearing Panel No. 8

/s/

Eileen Blackwood, Esq., Chair

/s/

Peter Bluhm, Esq.

/s/

Tim Volk

FILED MARCH 28, 2005