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[8-Jun-2000]

STATE OF VERMONT

PROFESSIONAL RESPONSIBILITY BOARD

HEARING PANEL 4

In re: PCB File No. 2000.015

HEARING PANEL DECISION NO. 9

This matter was submitted on a stipulation of facts dated March 8, 2000. We find the following facts by clear and convincing evidence.

FACTS

1. The Respondent is an attorney licensed to practice law in the State of Vermont.
2. The Respondent was admitted to practice in 1997.
3. The Respondent represented the defendant in a litigation

matter.

4. The Complainant was represented by an attorney.

5. The Complainant was the sole proprietor of the company which was the plaintiff in the underlying matter.

6. The Respondent was aware that Complainant was represented by an attorney and, in fact, dealt with the attorney during the course of the case and prior to the conduct involved herein.

7. On July 30, 1998, the Respondent became concerned that Complainant had contacted his client without going through the attorneys.

8. After not reaching Complainant's attorney, the Respondent called Complainant's company directly.

9. The Respondent spoke briefly with Complainant about the case. Respondent and Complainant disagree as to exactly what was said during the conversation. However, there is agreement that the basis of the phone call had to do with concern about contact between lower level business employees on both sides. Both sides were uncomfortable with any contact, during the pending litigation and the conversation between complainant and Respondent was brief, with each side stating all conversations should go through attorneys and not between employees of either side. No substantial harm is

alleged by either Complainant or Respondent, but both agree that the request for no contact should have occurred between the two attorneys and not between Complainant and the Respondent.

10. Prior to making the phone call, the Respondent did not have permission from Complainant's attorney to communicate directly with Complainant.

#### CONCLUSIONS OF LAW AND SANCTION

We find that the facts establish by clear and convincing evidence that Respondent violated D.R. 7-104(A)(1) of the Code of Professional Responsibility by communicating with Complainant, an adverse represented party, on the subject matter of the litigation without receiving permission from opposing counsel.

The parties made a joint recommendation that a private admonition be imposed for such conduct. The Hearing Panel agrees that these facts merit at least a private admonition. Under the A.B.A. Standards for Imposing Lawyer Sanctions, 6.32:

Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or

causes interference or potential interference with the outcome of the legal proceeding.

Section 6.33 suggests that a Reprimand is appropriate where the lawyer's conduct is negligent in determining whether the communication is proper, resulting in actual or potential injury or interference. Since no such actual or potential injury or interference is established on this record, neither 6.32 nor 6.33 would apply. Under 6.34, an Admonition is appropriate in the case of an isolated instance of negligently making improper contact resulting in little or no actual or potential injury or interference with the legal proceeding. However, under the facts presented, Respondent's conduct cannot be deemed negligent. Respondent knew Complainant was represented, knew the name of the attorney representing Complainant, and tried to call opposing counsel first.

The facts do not establish the existence of any aggravating factors pursuant to section 9.2. The only mitigating factor presented affirmatively by the record is inexperience in the practice of law, section 9.32(f). However, because the nature of the violation, we do not find inexperience to be a mitigating factor. In order to become a member of the bar, Respondent was required to pass the Multi-state Professional Responsibility Examination. The Rule violated is straightforward and should have been learned by Respondent as part of the process of preparing for and taking that examination. As such, it ought to have occurred to Respondent to check the "non-contact rule" before making the phone call to Complainant.

Finally, the parties cite eight recent cases imposing an Admonition for violation of D.R. 7-104(A)(1). We find only one to be similar to the facts of this case. Indeed, the Hearing Panel is concerned that attorneys continue to communicate with represented clients in violation of D.R. 7-104(A)(1) despite numerous cases emphasizing the impropriety of such contacts.

Nevertheless, under the facts of this case, particularly the fact that the subject matter of the conversation was unrelated to the merits of the case, we agree that a private admonition is the appropriate sanction.

Dated this 22nd Day of May, 2000.

/s/

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Paul S. Ferber, Esq.

Chair

/s/

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Robert Bent, Esq.

/s/

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Toby Young