IN RE:

JAMES F. CLOUTIER
FILE NO. 92-K-20

REPORT OF FINDINGS
AND DETERMINATION


By agreement Board Exhibits 1, 1A, 1B, 1C, 1D, 1E, 2 and 3 were admitted without objection.

Three witnesses testified. They were the respondent, the complainant Patricia Young and Peter McLeod, a real estate broker. During his direct examination conducted by bar counsel, the respondent admitted a violation of Bar Rule 3.6(i)(2).

More particularly, he admitted that a client of his, Patricia Young, invested in a partnership, North Cumberland Associates, in which respondent was a 50% partner without Mr. Cloutier advising her completely of his interest in the partnership, without his advising her of the need to seek independent counsel and without providing any of the above advice in writing.

The facts that gave rise to this admitted violation can be summarized briefly. Ms. Young had been a client of Mr. Cloutier's prior to October of 1990. He had secured a cash settlement of
approximately $30,000 in a dispute arising out of the dissolution of a partnership which owned and operated a bakery. She had asked him for advice concerning possible investment opportunities for the proceeds of the settlement.

Over a period of time approximating a year, the two of them had had a number of discussions relating to investment opportunities. At the same time Mr. Cloutier was a partner in the above mentioned North Cumberland Associates which was developing an eight lot subdivision in New Gloucester. The development was to be done in two phases and by October of 1990 approval had been obtained for the first phase and four of the five lots had been sold. At that time an application for approval of the three lots which were to comprise phase 2 of the development was pending and subject to a number of problems revolving around a proposal of the State Department of Transportation to expand Route 26 which bordered on the development.

Because of unanticipated expenses related to the phase 2 application and financial difficulties that Mr. Cloutier's partner, the witness, Mr. McLeod, was encountering, the partners determined that they needed additional investors. Mr. Cloutier called Ms. Young, and generally described the potential investment to her. She indicated she was interested. They arranged for a meeting in Mr. Cloutier's office on October 11, 1990, which was to include Mr. McLeod.

There was a lack of agreement among the three witnesses as to how long Mr. Cloutier participated in the meeting, but it is apparent that he had some substantive role in the discussion which
ensued between Ms. Young and Mr. McLeod about the development and the investment proposal. Ms. Young expressed a desire to be an investor and the terms of the agreement between herself and North Cumberland Associates were memorialized in a document which is Board Exhibit 1A. None of the disclosures required by Maine Bar Rule 3.6(i)(l) were made by Mr. Cloutier either before or during this meeting.

The agreement called for Ms. Young to invest $10,000 in the partnership in exchange for which she was promised by one of the partners, Mr. McLeod and also the partnership, but not by the other partner, Mr. Cloutier, that she would be paid $20,000 one year later or obtain an indefinite partnership interest.

During the ensuing year, 1991, Lot 4, the last of the five lots of phase 1 was sold, but approval for phase 2 was not obtained. Mr. McLeod was unable to continue paying the mortgage and Mr. Cloutier began doing so. No payment was made to Ms. Young in October of 1991 as was required by the agreement between herself, Mr. McLeod and North Cumberland Associates. Soon thereafter, she requested of Mr. Cloutier that he place liens on Mr. McLeod's property and that of North Cumberland Associates to insure repayment to her. He did not do so.

Ms. Young filed a complaint in early 1992 with the Board. Ms. Young was paid in full by Mr. Cloutier in early December of 1992. Mr. Cloutier has also agreed to reimburse Ms. Young for the attorney's fees she expended and owes in collecting the money that she was due.
As noted above, Mr. Cloutier admits a violation of Rule 3.6(i)(2). The Commission now turns to the question of what penalty is appropriate.

Maine Bar Rule 7(e)(3) sets forth three factors which must be established in order to allow the Commission to dismiss a complaint with warning in the event there has been a violation of a Bar Rule Rule 7.1(e)(3)(B).

First, the misconduct must be minor; the Commission does not believe that any violation of Rule 3.6(i) is minor. This Rule is designed specifically to protect clients from becoming enmeshed in a lawyer's (non-professional) business transactions thereby making it impossible for the lawyer to perform one of his/her most basic duties: independently advising a client and protecting that client's interests which cannot be done if the lawyer is the person potentially adverse to the client. No further illustration of that particular point need be made than to note that here the obligated parties to repay Ms. Young were Mr. McLeod and the partnership; Mr. Cloutier's name is conspicuous by its omission from the agreement. There can be little doubt, but that if Ms. Young had independent counsel she would have secured Mr. Cloutier's signature as an obligor as well.

The second requirement for imposition of a dismissal with a warning is that there be little or no injury to the client, the public, the legal system or the profession. The Commission believes that these facts constitute a serious harm to both the public and the profession. In addition, Ms. Young suffered a
direct financial harm. She did not receive repayment of her money until December of 1992. She lost the ability to invest or otherwise earn income on the $20,000 for 14 months.

The third requirement is that there be little likelihood of repetition by the attorney. In this instance, the Commission believes that requirement has been met.

All three requirements must be met in order to justify dismissal with a warning. Only one of those requirements was met.

The facts of this case and the harm which the Rule is designed to prevent and the clear violation of the Rule warrant the imposition of a reprimand and, therefore, the Commission imposes a reprimand.

Dated: 1/11/93
Roger S. Elliott

Dated: 1/13/93
Robert Edmond Mittel

Dated: 1/8/93
Louise James

6139