UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, et al.,	)	
Plaintiffs,	)	**Case No: 03-2006 (EGS)**
v.	)	
FELD ENTERTAINMENT, INC.,	)	
Defendant.	)	

REPLY IN SUPPORT OF DEFENDANT FELD ENTERTAINMENT, INC.'S MOTION FOR ENTITLEMENT TO ATTORNEYS' FEES

EXHIBIT 30

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	)	
	)	
DOMENIC ALONGI,	)	Bar Docket No. 399-00
	)	
Respondent.	)	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONDIBILITY

This is a reciprocal discipline matter from New York, where the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department (the "New York Court") suspended Respondent for one year and until further order. For the reasons set forth below, the Board agrees with Bar Counsel that identical reciprocal discipline should be imposed.

Background

Respondent is a member of the Bar of the District of Columbia Court of Appeals (the "Court") having been admitted by motion on October 2, 1989. He also was a member of the Bar of the New York Court.

On November 13, 2000, the New York Court suspended Respondent for one year and until further order. The New York Court further ordered that Respondent establish, in any application for reinstatement to practice, that he possesses the requisite mental capacity to resume the practice of law.

On January 15, 2001, Bar Counsel reported the order of the New York Court to the Court. On January 31, 2001, the Court suspended Respondent from the practice of law pursuant to D.C. App. R. XI, § 11(d) and directed the Board to recommend whether identical, greater or lesser discipline should be imposed as reciprocal discipline or whether the Board instead elects to proceed de novo pursuant to D.C. App. R. XI, § 11.

Bar Counsel filed a brief with the Board supporting the imposition of identical reciprocal discipline. Respondent has not participated in these proceedings.

The New York Misconduct

The findings of misconduct concern Respondent's representation of and relationship to his client, Regina Rolf. In 1992, Respondent was assigned to represent Ms. Rolf in a divorce action. In August 1996, Respondent also agreed to represent Ms. Rolf in a civil action arising from property damage to her car and to represent her infant son in a personal injury matter involving Tops Supermarket. Ms. Rolf executed an undated contingent fee retainer agreement for the personal injury matter. Respondent did not file a copy of the agreement with the Office of Court Administration as required by 22 N.Y.C.R.R. 1022.2.

Respondent falsely advised Ms. Rolf that a settlement offer had been extended in the personal injury matter and prepared a document that reflected a $7,000 settlement, including approval of one-third of that amount as Respondent's fee. In fact, no settlement had been reached. Respondent's conduct was deemed to have involved deceit and misrepresentation, in violation of New York Disciplinary Rule ("N.Y.D.R.") 1-102(A)(4), conduct prejudicial to the administration of justice, in violation of N.Y.D.R. 1-102 (A)(5), and conduct that adversely reflected on his fitness to practice law N.Y.D.R. 1-102 (A)(8).

During the course of the representation, Respondent issued a series of checks from his operating account to Ms. Rolf. Respondent provided additional financial assistance to Ms. Rolf in the form of cash payments, advances of filing fees and costs and rental of a car for her on several occasions, in violation of N.Y.D.R. 5-103(B)(1) (advancing financial assistance to a client in pending or contemplated litigation) and N.Y.D.R. 1-102(A)(8).

During the course of the attorney-client relationship, Respondent had a consensual sexual relationship with Ms. Rolf, which began in November 1998 and lasted for several months. On or about December 8, 1998, Ms. Rolf executed a will drafted by Respondent that

bequeathed one-half of her estate to her son and the remainder to Respondent. The will also designated Respondent as executor, trustee, and guardian of the son's property. Respondent failed to have Ms. Rolf execute a written acknowledgment of disclosure in connection with the will as required by New York law.

In drafting the will, Respondent failed to make full and complete disclosure of the potential effects of his own personal and financial interest on the independent exercise of his professional judgment. While he advised Ms. Rolf on two occasions prior to the execution of the will that she should consider obtaining other counsel, Respondent failed to make full and complete disclosure of the potential effect of their sexual relationship on the independent exercise of his professional judgment and did not advise Ms. Rolf of her right to independent legal advice. Respondent's conduct violated N.Y.D.R. 5-101(A) (conflict of interest), N.Y.D.R. 1-102(A)(8) and N.Y.D.R. 9-101 (appearance of impropriety).

At Ms. Rolf's suggestion, Respondent agreed to represent her former husband, Donald Rolf, in pursuing post-judgment relief relating to his criminal conviction. Mr. Rolf arranged for the retainer fee to be forwarded to Respondent through a law firm. The firm mailed a check to Respondent that he never negotiated. In January 1999, the firm sent Respondent transcripts and other documents regarding the matter. Respondent received one or more telephone calls from Mr. Rolf. The law firm made unsuccessful attempts by telephone and in writing to communicate with Respondent about Mr. Rolf's matter. As a result, the firm informed Respondent that he was being discharged by letter dated February 26, 1999. Respondent was founded to have violated N.Y.D.R. 6-101(A)(3) (neglect) and 1-102(A)(8).

Evidence was offered that Respondent suffers from four medical disorders, including bipolar disorder, for which he began treatment approximately two years prior to the events described above. The Referee found that Respondent was able to understand the

consequences of his actions. The New York Court accepted the Referee's conclusion and imposed a one-year suspension with proof of mental fitness.[1]

Analysis

Under D.C. App. R. XI, § 11(f)(2), identical reciprocal discipline will be imposed in the District of Columbia "unless the attorney demonstrates, or the Court finds on the face of the record on which discipline is predicated, by clear and convincing evidence" that one of the five exceptions set out in D.C. App. R. XI, § 11(c) applies:

> (1) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistently with its duty, accept as final the conclusion on that subject; or
>
> (3) The imposition of the same discipline by the Court would result in grave injustice; or
>
> (4) The misconduct established warrants substantially different discipline in the District of Columbia; or
>
> (5) The misconduct elsewhere does not constitute misconduct in the District of Columbia.

"The rule thus creates a rebuttable presumption that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction." In re Zilberberg, 612 A.2d 832, 834 (D.C. 1992).

If a respondent does not make a showing that an exception applies, the Board may independently consider whether any exceptions are applicable. See In re Bielec, 755 A.2d 1018, 1022 n.3 (D.C. 2000) (per curiam); In re Spann, 711 A.2d 1262, 1263 (D.C. 1998) (citing In re Gardner, 650 A.2d 693, 696 (D.C. 1994)). Where neither Bar Counsel nor the

[1] N.Y. Comp. Codes R. & Regs. tit. 22, § 1022.28 (2000) governs the New York reinstatement procedure. Reinstatement proceedings in New York are substantially similar to the reinstatement procedure requiring proof of fitness in this jurisdiction, pursuant to D.C. App. R. XI, § 16 and In re Roundtree, 503 A.2d 1215 (D.C. 1985).

attorney opposes the imposition of identical discipline, the Court has cautioned that "we think the role of the Board should be a limited one." Spann, 711 A.2d at 1265; see also Bielec, 755 A.2d at 1022 n.3. "The most the Board should consider itself obliged to do in cases where neither Bar Counsel nor the attorney opposes imposition of identical discipline is to review the foreign proceedings sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline - a situation that we anticipate would rarely, if ever, present itself." Id.

Respondent was accorded due process, the misconduct violates the ethical rules of the District of Columbia, and there was no infirmity of proof. Although the D.C. Rules of Professional Conduct do not have rules addressing the conduct prohibited in N.Y.D.R. 1-102(A)(8) (conduct that adversely reflects on fitness to practice) and N.Y.D.R. 9-101 (appearance of impropriety), Respondent's conduct violated New York Rules with direct counterparts in the District of Columbia, namely Rule 8.4(c) (dishonesty, fraud, deceit and misrepresentation), Rule 8.4(d) (conduct that seriously interferes with the administration of justice); Rule 1.7(b)(4) (conflict of interest between lawyer's professional judgment and personal interests); Rule 1.8(b) (conflict of interest in preparing an instrument giving the lawyer a testamentary gift) and Rule 1.8(d) (advancing financial assistance to client in pending or contemplated litigation). Reciprocal discipline is therefore appropriate.

We agree with Bar Counsel that the gravamen of Respondent's misconduct was improper financial assistance to a client, deceit and conflict of interest in (i) drafting a will where he was named beneficiary, and (ii) engaging in a sexual relationship with his client, without proper disclosure and waiver. In addition, he also engaged in neglect.[2]

[2] Bar Counsel notes that the short duration of the neglect in connection with the representation of Mr. Roth might not constitute neglect in an original case. However, by not participating in this reciprocal discipline matter, Respondent has conceded that the imposition of discipline based on all the violations found in New York is appropriate. Spann, 711 A.2d at 1263.

Because Respondent has not participated in this proceeding, identical discipline is appropriate, unless the imposition of identical discipline would amount to a "miscarriage of justice." Spann, 711 A.2d at 1265. In this case, the identical discipline would be a one-year suspension with a fitness requirement, including proof of mental fitness, a sanction that is within the range of sanctions for dishonesty and conflict of interest. We agree with Bar Counsel that the most analogous case in this jurisdiction is In re McGean, No. M-43-80 (D.C. Nov. 6, 1980) (mem) (appended to Bar Counsel's Statement), cert. denied, 454 U.S. 869 (1981) (mem). In McGean, the respondent represented a husband in a domestic relations matter while he had a romantic relationship with the wife. He then assisted the wife in preparing a divorce complaint after having represented the husband in negotiating a separation agreement. He thereafter represented the wife in a proceeding to vacate the divorce decree on the grounds of fraud without disclosing his relationship with the wife or his role in preparing the complaint. The Court suspended the respondent for one year and a day, a sanction that included a fitness requirement.[3] See In re Thornton, 421 A.2d 1 (D.C. 1980) (one year and a day suspension for failure to recognize conflict of interest in representation of both the driver and passengers in a personal injury action and submission of false documents); see also In re Shay, 756 A.2d 465 (D.C. 2000) (per curiam) (90-day suspension for conflict of interest and dishonesty); In re Jones-Terrell, 712 A.2d 496 (D.C. 1998) (60-day suspension for conflict of interest and dishonesty by solo practitioner with limited experience); In re McClain, 671 A.2d 951 (D.C. 1996) (90-day suspension for conflict of interest where lawyer borrowed money from a client, failed to repay it and failed to disclose his adverse interest).

[3] Prior to 1989, any suspension that exceeded one year automatically included a fitness requirement. D.C. App. R. XI, § 16(c).

Conclusion

For the foregoing reasons, the Board recommends that the Court impose identical reciprocal discipline of a one-year suspension with a fitness requirement, including proof of mental fitness. Respondent's suspension should be deemed to run, for reinstatement purposes, from the time he files an affidavit pursuant to D.C. App. R. XI, § 14(g).

BOARD ON PROFESSIONAL RESPONSIBILITY

By: _____
Elizabeth B. Frazier

Dated: July 31, 2001

All members of the Board concur in this Report and Recommendation except Ms. Taylor, who did not participate.