NYPRR | May 2003

A Lawyer's Private Misconduct Can Lead To Suspension

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The New York Code of Professional Responsibility anticipates that a lawyer will be held "to the highest standards of ethical conduct" in the management of his private affairs, as well as in the management of his law practice. *Matter of Rowe,* 80 N.Y.2d 336, 590 N.Y.S.2d 179 (1992). Although most disciplinary proceedings against lawyers involve misconduct either in the management of client relations or litigation, or in the handling of client funds, there is the occasional proceeding which reminds us that the courts can come down hard on lawyers who transgress in private matters.

A recent case of private misconduct involved a NY lawyer named Charla R. Bikman, who was admitted in 1980. *Matter of Bikman*, NYLJ, April 10, 2003. The misconduct concerned an apartment in Soho. The apartment was rented by Bikman's sister, who died in 1997. At her death, the sisters maintained a joint survivorship account. Checks on the account displayed only the name and address of Bikman's sister. Without informing the landlord of her sister's death, Bikman moved into the apartment and continued to pay the rent by writing checks on the joint account and signing her sister's name.

When the landlord learned the facts two years after the sister's death, he brought an action to evict Bikman, who ultimately vacated the apartment. In the disciplinary proceeding which followed, Bikman was charged with conduct involving fraud, deceit or misrepresentation and with other conduct that adversely reflected on her fitness as a lawyer.

In reviewing the findings and recommendations of the Referee and the Departmental Disciplinary Committee, the Appellate Division, First Department cited DR 1-102(A)(4) and DR 1-102(A)(7). These Rules read as follows:

> DR 1-102 (22 NYCRR § 1200.3) Misconduct
> A. A lawyer or law firm shall not:...
> (4) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation...
> (7) Engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.

DR 1-102(A)(4) copies verbatim ABA MR 8.4(c). There is no Model Rule provision corresponding to New York's DR 1-102(A) (7).

Court Imposes 18-month Suspension

There was no history of prior misconduct by Bikman. On the contrary, the Court described her as a solo practitioner with a "previously unblemished career of 22 years for the most part representing the poor and unprotected as 18-B counsel..." Nevertheless, the Court adopted the recommendation of the Disciplinary Committee and imposed the penalty of suspension for eighteen months. Bikman's undoing

was her refusal to admit that she had done anything "legally, morally or ethically wrong" and "her failure to cooperate with and [her] efforts to impede the Committee's investigation." The Court rejected Bikman's argument that her conduct did not involve either the practice of law or a fiduciary relationship with one of her clients.

> ...lawyers must be held to the 'highest standards of ethical conduct' because the legal profession needs the respect and confidence of society if it is to play its critical role in sustaining the rule of law and the concept of justice upon which our free and democratic society depends. A lawyer's unethical conduct, even when it occurs outside the practice of law, is a proper concern of the Disciplinary Committee because it tends to reflect adversely on the legal profession as a whole. ...This Court also has made it clear that professional standards require the highest degree of ethical conduct both in the practice of law and outside it (citing *Matter of Wong*, 275 AD2d 1, 6)...

The Court relied on several cases in which New York lawyers were disciplined for conduct "having nothing to do with the practice of law." *Matter of Rowe, supra,* involved a lawyer who had been charged with second degree murder in the death of his wife and three children. Acquitted of the charges by reason of insanity, Rowe was hospitalized and eventually discharged. During his hospitalization, he was suspended from practice by reason of his mental disability. Applying for reinstatement, he was met with eight charges of misconduct, four of which related to the four homicides.

The Court of Appeals rejected Rowe's application for reinstatement. The Court said:

> [Respondent's] argument fails to recognize the distinction between conduct that is criminal and conduct that disqualifies an attorney from entitlement to practice law. A disciplinary proceeding is concerned with fitness to practice law, not punishment....the inquiry is not directed to the attorney's subjective mental processes, but to the objective and qualitative nature of the conduct, for it is the acts themselves which the public sees and which guide its perception of the Bar....

Matter of Wong, 275 AD2d 1, 710 N.Y.S.2d 57, concerned a proceeding against a lawyer for misconduct which had occurred prior to his admission. While Wong was still a law student, he engaged in sexual contact with a 10-year old girl. Following his admission to the bar in New Jersey and New York and after a complaint by the girl, Wong confessed to the assault. He was admitted to a Pre-Trial Intervention Program in New Jersey and the criminal charges against him were dropped. In disciplinary proceedings in New Jersey, Wong received a public reprimand for violating the New Jersey Code. New York then instituted a proceeding for reciprocal discipline. The Court found that Wong's pre-admission sexual misconduct constituted misconduct requiring public censure.

Matter of Kaufman, 29 AD2d 298, 287 N.Y.S.2d 437 (1st Dept., 1968) involved the conduct of a lawyer in an unrelated real estate business which did not involve either the practice of law or contact with clients. Kaufman's misconduct consisted of issuing checks without sufficient funds and of "slovenly bookkeeping" which led to overdrafts on his accounts. In all, Kaufman had issued 212 bad checks.

The First Department imposed the sanction of censure.

> While a lawyer may engage in business, if he wishes to remain a member of the Bar, he must conduct himself in that business with the standards imposed upon members of the Bar....The

> issuance of checks without sufficient funds on deposit is a violation of professional standards. Slovenly bookkeeping resulting in the overdrawal is not in itself a defense...Nor does the fact that the checks were later made good excuse the practice.

The court cited *Matter of Buttles,* 23 AD2d 446, 261 N.Y.S.2d 461 (1st Dept., 1965), an earlier case involving a lawyer 's string of bad checks. Buttles was charged under a prior version of the disciplinary rules controlling lawyer conduct. The Court conceded that Buttles had made good on all the checks and that many of them were drawn in reliance on anticipated funds.

Lawyers should make careful note of the distinction made by the Court between *Buttles and Bikman:*

> The Court "inclined toward leniency" in Buttles...because the attorney, who had a previously unblemished record of 32 years at the Bar, admitted the charge, admitted that he conducted himself 'lamentably,' threw himself upon the leniency of the Court, and made good on the worthless checks. In this proceeding, in distinction, respondent's cross motion demonstrates...that she does not admit to doing anything legally, morally or ethically wrong... respondent's conduct was aggravated by her failure to cooperate with and efforts to impede the Committee's investigation.

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