

# Reciprocal Discipline Imposed For Deceptive Advertising

BY LAZAR EMANUEL

Attorney John M. Power is admitted to practice and maintains an office in New York and in New Jersey. In 2002, the Supreme Court of New Jersey issued an order reprimanding Power for statements made in an advertising flyer published in several New Jersey papers. The statements provided information about living trusts and invited readers to attend a free public seminar.

Several individuals complained about the advertising to the New Jersey Committee on Attorney Advertising, and the Committee issued a letter to Power advising that his advertising appeared to violate one of its opinions and asking for Power's response. In lieu of a formal complaint and hearing, Power entered into a stipulation with the Committee.

The stipulation recited several misstatements by Power concerning a comparison of the costs, expenses and time associated with probate of a will and those associated with a living trust; the impact of having a living trust in the event of incapacity; the avoidance of probate by the creation of a living trust; the tax consequences of having a living trust; and the inadequacy of a will to protect assets without a living trust. The stipulation recorded that the flyer "had the potential to mislead prospective clients." It included a recommendation that Power receive a public reprimand and that he be required, for two years, to submit any advertising to the Committee for its approval before publication.

The New Jersey Disciplinary Review Board and the New Jersey Supreme Court concurred with the Committee.

Following the proceedings in New Jersey, the Departmental Disciplinary Committee of New York's First Department applied for an order pursuant to 22 NYCRR 603.3, imposing a public censure upon Power. Power requested an order dismissing the Committee's petition, arguing that the misconduct for which he was disciplined in New Jersey does not constitute misconduct in New York.

The Appellate Division, First Department responded that in a reciprocal-discipline proceeding, the respondent can raise only three defenses: that there was a lack of notice constituting a lack of due process; that there was an infirmity in the proof presented to the foreign jurisdiction; that the conduct for which the respondent was disciplined in the foreign jurisdiction does not constitute misconduct in New York.

Power did not dispute that he had adequate notice or that the findings of the New Jersey authorities were supported by the record. As to his argument that his misconduct in New Jersey is not misconduct in New York, the record shows that the advertising rules for New York and New Jersey are substantially similar. New York's DR 2-101(a) proscribes dissemination of any public communication containing "statements or claims that are false, deceptive, misleading or cast reflection (sic) on the legal profession as a whole."

In reciprocal proceedings, the Court "normally defers to the sanction determination made in the State where the misconduct occurred. In this matter, the New Jersey Supreme Court imposed a public reprimand, which is the equivalent of public censure in this State." *Matter of Power*, App. Div. First Dept., NYLJ, December 15, 2003.

© Copyright 2008 –The New York Professional Responsibility Report (NYPRR)