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2000 Survey of Rhode Island Law: Cases: Professional Conduct

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Professional Conduct. *In re Long*, 755 A.2d 828 (R.I. 2000). When an attorney admitted to the Rhode Island Bar is disciplined in another state for misconduct in that state, he may also be sanctioned in Rhode Island under the Rules of Professional Conduct, after having an opportunity to be heard by the court regarding any claim that imposition of reciprocal discipline is unwarranted.

FACTS AND TRAVEL

There are two separate incidents of misconduct that led to the instant case.¹ The first began in November 1989, when Peter Pietraszek (Pietraszek) retained Long to represent him with regard to litigation concerning a real estate transaction.² Long filed a complaint in the courts of the Commonwealth of Massachusetts on behalf of Pietraszek in October 1991, but failed to serve the defendants in that case within the required ninety days.³ In addition, on repeated occasions, Long informed Pietraszek that service had been made and any delay was a result of a court backlog.⁴ In April 1992, the case was dismissed by the court, due to Long's failure to serve the defendants.⁵ In April 1993, Long falsely advised Pietraszek that the case was still pending.⁶ In November 1993, Pietraszek contacted the court directly and learned that his case had already been dismissed over a year and a half earlier.⁷ When Pietraszek confronted Long, Long denied any knowledge that the case had been dismissed.⁸ Pietraszek then retained counsel to sue Long for malpractice.⁹

Second, James Farristall (Farristall) hired Long in a guardianship matter that was filed by Albert McSweeney.¹⁰ Approximately a week after Long filed an entry of appearance with the court for Farristall in July 1996, a pretrial conference was scheduled for October 2, 1996.¹¹ The order scheduling the conference

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1. See *In re Long*, 755 A.2d 828, 829-30 (R.I. 2000).
 2. See *id.* at 829.
 3. See *id.*
 4. See *id.*
 5. See *id.*
 6. See *id.*
 7. See *id.* at 829-30.
 8. See *id.*
 9. See *id.*
 10. See *id.*
 11. See *id.*

provided that failure of either party to appear could result in an immediate hearing on the matter.¹² Though Long received the order, he failed to give Farristall a copy and to tell him to appear at the conference.¹³ In September 1996, Long noted that his diary indicated that he was to appear in court on October 2 for the "McSweeney" matter.¹⁴ However, not recognizing the name McSweeney, Long disregarded the notice until the day before the pretrial conference, when he called the court to determine the purpose of the meeting.¹⁵ At that time he realized the meeting pertained to the matter for which Farristall had retained him.¹⁶ When Long called Farristall, Farristall told Long he could not appear in court on such short notice because he would be fired for missing work. Long stated that he would request a continuance.¹⁷ When Long requested the continuance, he misrepresented his reason for making the request by stating he had a trial in another court.¹⁸ Long then provided further false information in response to the judge's inquiry as to where the case was being heard.¹⁹ Though the continuance was granted, the judge called the court where Long claimed he had a trial and learned that Long was not scheduled to appear in that court.²⁰ The judge then referred Long's conduct to the Massachusetts Bar Counsel for disciplinary action.²¹

Based upon the foregoing facts, the Supreme Judicial Court of the Commonwealth of Massachusetts found that Long violated several rules of the Disciplinary Rules of the Code of Professional Responsibility in his representations of both Pietraszek and Farristall.²² Specifically, they found Long, in his representation of Pietraszek, had violated DR 1-102(A)(4),²³ DR 6-101(A)(3),²⁴ DR 7-

12. *See id.*

13. *See id.*

14. *See id.*

15. *See id.*

16. *See id.*

17. *See id.*

18. *See id.*

19. *See id.*

20. *See id.*

21. *See id.*

22. *See id.*

23. *See id.* (citing Model Code of Prof'l Responsibility DR 1-102(A)(4) (1980): "A lawyer shall not: . . . [e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation").

101(A)(1)²⁵, DR 7-101(A)(2)²⁶ and DR 7-101(A)(3).²⁷ In his representations of Farristall, Long was found to have violated DR 1-102(A)(4),²⁸ DR 1-102(A)(5),²⁹ DR 1-102(A)(6),³⁰ DR 6-101(A)(3),³¹ DR 7-101(A)(1),³² DR 7-101(A)(2),³³ DR 7-101(A)(3)³⁴ and DR 7-102(A)(5).³⁵

In May 2000 the Supreme Judicial Court of the Commonwealth of Massachusetts suspended Long from the practice of law in Massachusetts and notified the Rhode Island Supreme Court Disciplinary Counsel of that suspension.³⁶ The Supreme Court Disciplinary Counsel then filed a petition with the Rhode Island Supreme Court for imposition of reciprocal discipline as Long is also a member of the Rhode Island Bar.³⁷ In June 2000, the Rhode Island Supreme Court ordered that Long be suspended from practicing law in Rhode Island for three months.³⁸

24. *See id.* at 830-31 (citing Model Code of Prof'l Responsibility DR 6-101(A)(3) (1980): "A lawyer shall not: . . . [n]eglect a legal matter entrusted to him").

25. *See id.* (citing Model Code of Prof'l Responsibility DR 7-101(A)(1) (1980): "A lawyer shall not intentionally: . . . [f]ail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules . . .").

26. *See id.* (citing Model Code of Prof'l Responsibility DR 7-101(A)(2) (1980): "A lawyer shall not intentionally: . . . [f]ail to carry out a contract of employment entered into with a client for professional services . . .").

27. *See id.* (citing Model Code of Prof'l Responsibility DR 7-101(A)(3) (1980): "A lawyer shall not intentionally: . . . [p]rejudice or damage his client during the course of the professional relationship . . .").

28. *See id.* (citing Model Code of Prof'l Responsibility DR-1-102(A)(4) (1980)).

29. *See id.* (citing Model Code of Prof'l Responsibility DR 1-102(A)(5) (1980): "A lawyer shall not: . . . [e]ngage in conduct that is prejudicial to the administration of justice").

30. *See id.* (citing Model Code of Prof'l Responsibility DR 1-102(A)(6) (1980): "A lawyer shall not: . . . [e]ngage in any other conduct that adversely reflects on his fitness to practice law").

31. *See id.* (citing Model Code of Prof'l Responsibility DR 6-101(A)(3) (1980)).

32. *See id.* (citing Model Code of Prof'l Responsibility DR 7-101(A)(1) (1980)).

33. *See id.* (citing Model Code of Prof'l Responsibility DR 7-101(A)(2) (1980)).

34. *See id.* (citing Model Code of Prof'l Responsibility DR 7-101(A)(3) (1980)).

35. *See id.* (citing Model Code of Prof'l Responsibility DR 7-102(A)(5) (1980): "In his representation of a client, a lawyer shall not: . . . [k]nowingly make a false statement of law or fact").

36. *See id.* at 829.

37. *See id.*

38. *See id.*

ANALYSIS AND HOLDING

Though the Code of Professional Responsibility was superceded by the Rules of Professional Conduct in Rhode Island in 1988, most of the same principles are embodied by the present rules.³⁹ The court found that if the misconduct had occurred in Rhode Island, the following rules would have been violated: rule 1.3,⁴⁰ rule 3.2,⁴¹ rule 8.4(c)⁴² and rule 8.4(d).⁴³

After it received the petition from the Supreme Court Disciplinary Counsel, the Rhode Island Supreme Court issued an order to Long requiring that he inform the court of any reason why imposition of reciprocal sanctions was not warranted.⁴⁴ Pursuant to article III, rule 14(d), the Rhode Island Supreme Court was required to impose identical sanctions unless the record clearly demonstrated that: 1) the attorney's right to due process was violated; 2) there was a clear "infirmity" of proof of misconduct; 3) a "grave injustice" would result; or 4) substantially different sanctions were warranted.⁴⁵

When Long appeared before the court on June 22, 2000, he agreed to accept a suspension.⁴⁶ Because there was no showing that reciprocal discipline should not be imposed by the Rhode Island Supreme Court, the court ordered Long suspended from the practice of law in the State of Rhode Island for ninety days beginning June 26, 2000.⁴⁷

39. *See id.* at 831.

40. *See id.* (citing S. Ct. Rules of Prof'l Conduct R. 1.3 (2000), "A lawyer shall act with reasonable diligence and promptness in representing a client").

41. *See id.* (citing S. Ct. Rules of Prof'l Conduct R. 3.2 (2000), "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client").

42. *See id.* (citing S. Ct. Rules of Prof'l Conduct R. 8.4(c) (2000), "It is professional misconduct for a lawyer to: . . . [e]ngage in conduct involving dishonesty, fraud, deceit or misrepresentation").

43. *See id.* (citing S. Ct. Rules of Prof'l Conduct R. 8.4(d) (2000), "It is professional misconduct for a lawyer to: . . . [e]ngage in conduct that is prejudicial to the administration of justice.").

44. *See id.*

45. *See id.*

46. *See id.*

47. *See id.* at 831-32.

CONCLUSION

This case involved an attorney admitted in both Rhode Island and Massachusetts. The attorney was disciplined by the Massachusetts Supreme Judicial Court for conduct violating Massachusetts's code of responsibility for attorneys. The Rhode Island Supreme Court determined that the attorney's conduct in Massachusetts violated Rhode Island's own code of conduct. Accordingly, the Rhode Island Supreme Court imposed identical reciprocal sanctions, as there was no showing that this action was unwarranted.

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