

ETHICS

Partner Sanctioned for Associate's Errors

Need for ethics training and supervision stressed

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Law firm partners may feel a chill up and down their spines upon reading a recent ethics decision sanctioning a lawyer with 30 years' experience, primarily for transgressions by one of his associates. The District of Columbia Court of Appeals affirmed the sanction of a partner in a 12-lawyer firm for violations of the Washington, DC, Rules of Professional Conduct. *In re Cohen*. The clear message of the decision is that firms should re-examine their systems for ensuring associates' compliance with rules of professional responsibility.

The firm undertook a trademark prosecution on behalf of a nonprofit corporation and its exclusive distributor. While the trademark proceedings were pending, the corporation and its distributor had a falling out. By this time, however, the firm viewed the distributor as its client.

It took steps toward securing the mark for the distributor but failed to respond to

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the corporation's requests for information. The sanctioned partner eventually intervened and resolved the problem.

In proceedings before the Board of Professional Responsibility, the partner conceded that his firm lacked a system to train associates with regard to the rules of professional conduct, and that he had not timely consulted with the client. The Board found that the partner violated Rule 1.4(a) (failure to keep the client informed), Rule

1.7(b) (conflict of interest between clients), Rule 5.1(a) (failure to make reasonable efforts to ensure firm complies with the rules), and Rule 5.1(c)(2) (responsibility for violation by another).

Although some of the Board's findings concerned the partner's direct errors, the junior associate committed the primary and more serious offenses without the partner's knowledge. But the court rejected what it characterized as an "ostrich-like excuse [of] 'I didn't know and didn't want to know,'" ruling that the partner "reasonably should have been aware of [the associate's] acts."

Despite noting the partner's 30 years in practice without prior professional discipline and his cooperation and candor during the investigation, the court of appeals affirmed his 30-day suspension from the practice of law.

Francis G. X. Pileggi, Wilmington, DE, Co-Chair of the Ethics Subcommittee

of the Section's Business Litigation Committee, comments that he is "troubled not because there is anything novel about this infraction but because there are broader ramifications for any partner who supervises associates." Says Pileggi, "For larger firms, it could mean that younger associates will be given less responsibility." ■

Resources:

In re Cohen, 847 A 2d 1162 (D.C. 2004)

In re Cohen, Report and Recommendation of the Board on Professional Responsibility on Remand, Bar Docket No. 280-97 (D.C. Ct. App. Bd. Prof. Resp., May 13, 2003), available at www.dcbbar.org/bprReports/reports/Cohen2.pdf.

In re Cohen, Report and Recommendation of the Board on Professional Responsibility, Bar Docket No. 280-97 (D.C. Ct. App. Bd. Prof. Resp., July 31, 2002), available at www.dcbbar.org/bprReports/reports/cohen.pdf.