

Matter of Solomon
Del. Supr. Ct. No. 284, 1999 (4/15/99)
Board Case Nos. 121, 1997; 16, 25, 26, 57, 59, 73, 74, 1998

Disciplinary Rules: DLRPC 1.2(a), 1.3, 1.4(a), 1.4(b), 1.16(b), 1.16(d), 3.4(c),

Sanctions Imposed: Permanent Conditions and Limitations on Practice;
Restitution; Four-Year Probation with Practice Monitor;
and Public Reprimand.

The Delaware Supreme Court issued an Order on December 21, 1999 in an attorney disciplinary matter involving Francine R. Solomon, Esquire. The Court's decision followed a hearing before the Board on Professional Responsibility ("Board") on a petition for discipline by the Office of Disciplinary Counsel ("ODC"). The ODC and Ms. Solomon had submitted to the Board stipulated findings of facts, and Ms. Solomon had agreed that she had violated certain Rules of the Delaware Lawyers' Rules of Professional Conduct ("Rules"). The Supreme Court imposed the following sanctions as a result of Ms. Solomon's violations of the Rules:

- permanent conditions and limitations on Ms. Solomon's law practice;
- the award of restitution to certain of Ms. Solomon's former clients; and
- the imposition of a public reprimand and four-year period of probation, also subject to certain, terms, conditions and limitations.

The imposition of these sanctions were the result of complaints filed with the ODC about Ms. Solomon's conduct in the course of representing clients in domestic matters pending in the Family Court. Ms. Solomon admitted that she had violated the following Rules:

- 1.2(a) by failing to abide by a client's decisions concerning the objectives of the representation and by failing to consult with the client as to the means by which the objectives were to be pursued;
- 1.3 by failing to act with reasonable diligence and promptness in representing three separate clients;
- 1.4(a) by failing to communicate with or respond to a client and by failing to respond to the client's reasonable requests for information.
- 1.4(b) by failing to explain matters to the extent reasonably necessary to

- permit two separate clients to make informed decisions;
- 1.16(b) by abandoning representation of a client without first resolving outstanding matters;
- 1.16(d) by failing to return two separate clients' unearned advance fees after the clients terminated Ms. Solomon's representation; and
- 3.4(c) by failing to obey an obligation to the Family Court.

In addition, Ms. Solomon failed to maintain the books and records of her law practice in compliance with Rule 1.15. Ms. Solomon admitted that she had violated Rules 1.15(a) and 1.15(d), which detail specific accounting requirements. In all, Ms. Solomon admitted thirteen violations of the Rules, which involved seven different clients and accounting problems.

In consideration of the appropriate discipline to be imposed, there were several aggravating factors. Ms. Solomon has substantial experience in the practice of law. She engaged in a pattern of misconduct involving her failures to abide by her obligations to properly maintain her law practice accounts, books and records; to protect the interests of her clients through appropriate consultation, communication and diligent representation; to comply with her obligations to the Family Court; and to otherwise properly manage her law practice as a solo practitioner. Ms. Solomon committed multiple violations of the rules; and initially failed to cooperate with the ODC in several matters.

Mitigating factors were also considered. Ms. Solomon has no prior disciplinary record and her misconduct does not reflect any dishonest or selfish motive. At a certain point in the ODC's investigation, Ms. Solomon began to cooperate with the ODC and made full and free disclosure to the Board. Ms. Solomon suffered from various physical disabilities and impairments during the time(s) that the misconduct occurred. Finally, Ms. Solomon agreed to make restitution to several of her clients in connection with the consensual resolution of the disciplinary matters.

The Court imposed permanent conditions and limitations on Ms. Solomon's future practice of law. Ms. Solomon closed her solo practice on April 14, 1999 and joined the law firm of Louis B. Ferrara, P.A. on April 15, 1999. One of the permanent conditions is that Ms. Solomon will never again practice as a solo practitioner. In addition, Ms. Solomon is not permitted to have any duties or obligations regarding law office management or bookkeeping. Ms. Solomon will not have check-writing privileges and will not be responsible for processing her own time records. Mr. Ferrara will monitor Ms. Solomon's mail, phone messages and calendar to determine whether she is meeting her obligations to her clients and the Family Court. Ms. Solomon is also required to permanently maintain adequate staffing for her domestic relations practice such that the size of Ms. Solomon's support staff and the amount of work performed by other attorneys under her supervision is commensurate with the volume of Solomon's case

load.

Ms. Solomon will be on probation for four years, effective April 15, 1999, which was the day she became affiliated with Mr. Ferrara's firm and began consulting with David J. Ferry, Jr., Esquire as a practice monitor. During the four-year probation, Ms. Solomon will have a practice monitor who is a member of the Delaware Bar. The Court approved Mr. Ferry as Ms. Solomon's practice monitor. Ms. Solomon is required to obtain her client's consent to the consultation with Mr. Ferry, but there is no waiver of the attorney-client privilege in connection with this consultation. During the probationary period, Ms. Solomon is not permitted to have a full-time practice.

Ms. Solomon is required to cooperate promptly and fully with the ODC's efforts to monitor compliance with her probation and any investigation of Ms. Solomon's conduct. If the ODC concludes, after giving Ms. Solomon an opportunity to respond and upon consultation with her practice monitor, that Ms. Solomon has violated the terms of her probation, the ODC may seek Ms. Solomon's suspension on an interim basis and Ms. Solomon will not oppose such a suspension. New complaints will be handled on an expedited basis.

Ms. Solomon agreed to pay restitution to certain of her clients for attorneys' fees and other costs which were incurred as a result of Ms. Solomon's failure to fulfill her professional obligations. Ms. Solomon is also required to pay the costs of the disciplinary proceedings and the investigatory audits of her books and records.

During the entire probationary period, Ms. Solomon is required to maintain malpractice insurance commensurate with her current coverage and must make the following disclosure to all current and prospective clients:

I am required to inform you that I am on disciplinary probation for violation of the Delaware Lawyers' Rules of Professional Conduct. However, the Supreme Court has noted that this disclosure to my clients is not intended to have adverse implications with regard to my character or fitness to practice law.

This disclosure must be made in writing and at the same time the disclosure is made about the role of the practice monitor. The acknowledgment and agreement by the client must also be in writing that is witnessed by another member of the Delaware Bar.

Finally, the Court commended Louis B. Ferrara and David J. Ferry, Jr. for their efforts which "are in accordance with the highest traditions of the Delaware Bar."