

IN RE: THOMAS M. MANGAN

S.J.C. Order (Disbarment) entered by Justice Sosman on October 3, 2001.¹

MEMORANDUM OF DECISION²

This matter came before the court on a Petition for Reciprocal Discipline. The respondent, Thomas M. Mangan, was disbarred by the Maine Supreme Judicial Court after a single justice of that court concluded, and the full bench affirmed, that the respondent (1) made inappropriate use of his client escrow account; (2) neglected legal matters entrusted to him and failed to account for receipts related to his work; and (3) engaged in a sexual relationship with a client which adversely affected his representation of the client and abused the attorney-client relationship. See *Board of Overseers of the Bar v. Mangan*, 763 A.2d 1189, 1190 n.1, 1195 (Me. 2001). The respondent contends that the conduct in question in the Maine proceeding did not comprise the "practice of law," and asks the court to determine that the imposition of identical discipline in Massachusetts is not warranted.

The judgment of suspension or disbarment in another jurisdiction shall be conclusive evidence of misconduct unless the procedure in the other jurisdiction fails to provide reasonable notice or opportunity to be heard, or there was significant infirmity of proof establishing the misconduct. See S.J.C. Rule 4:01, § 16, as appearing in 425 Mass. 1319 (1997). Absent such a showing, the court may impose the identical discipline unless (a) imposition of the same discipline would result in grave injustice; (b) the misconduct established does not justify the same discipline in this Commonwealth; or (c) the misconduct established is not adequately sanctioned by the same discipline in this Commonwealth. See *id.* The exercise of discretion in reciprocity is informed, however, by our "deference to the lawful procedures [and decisions] of our sister States." See *Matter of Watt*, 430 Mass. 232, 236 (1999) (quotation and citation omitted).

The respondent does not seriously contend that he did not receive reasonable notice or opportunity to be heard, or that there was significant infirmity of proof establishing his misconduct. He makes passing reference to denial of a fair and impartial trial, but the record plainly indicates that respondent was afforded ample opportunity to be heard: first by a single justice of the Maine Supreme Judicial Court in a three day hearing conducted in January, 2000; and subsequently, by the full bench of that court on appeal. See *Mangan*, *supra*, at 1194-1195. Thus, the judgment of disbarment in that matter is conclusive evidence before me of misconduct, and I look to the facts as developed by the Maine Supreme Judicial Court to determine whether identical discipline is appropriate. See S.J.C. Rule 4:01, § 16; see also *Watt*, *supra*, at 233 (relying upon facts developed in Rhode island disciplinary proceeding to assess reciprocal discipline).

The relevant facts are summarized as follows. The respondent, asked by a woman he represented in a separate and unrelated matter to locate the fathers of her two adult children, agreed to undertake that search. The two men in question had been in the armed services at the time they had fathered the two children. The respondent assured his client that he was good at searches and expected that it would take six months. He advised the client that she could pay him when the search was completed. Some time later, the respondent entered into a consensual sexual relationship with his client, a relationship that lasted for a number of years. During that time, he did not diligently pursue the search for the fathers of his client's children; instead, he used that pending search to manipulate the client and their sexual relationship, withholding information that he had located one of the two men

and telling her only that he was "getting close" to finding them. When the relationship between the respondent and his client soured, approximately five years after he had undertaken the search, the respondent destroyed the results of his search. See Mangan, supra, at 1191-1192.

The crux of respondent's argument is that the search for the fathers of his client's children is not the "practice of law" as that term is understood in Massachusetts, and so any misconduct in that context does not justify the same discipline in the Commonwealth. I reject such a cramped view. Although respondent cites Opinion of the Justices, 289 Mass. 607, 613 (1935) for the proposition that the practice of law consists only of services provided in anticipation of litigation, that advisory opinion actually states that [p]ractice of law under modern conditions consists in no small part of work performed outside of any court and having no relation to proceedings in court." Id. The respondent had already acted as the client's attorney in another matter, and undertook a search that involved personal and confidential relationships between the client and the fathers of her children. While searches to locate an individual may be undertaken by someone without legal training, the professional skills of a lawyer may be germane to investigating the whereabouts of (former) servicemen (e.g., use of Freedom of Information Act to obtain records). I conclude, as did the Maine Supreme Judicial Court, that the respondent was engaged in the practice of law with respect to this engagement.

Moreover, I agree with the Maine Supreme Judicial Court that the respondent allowed his interest in a sexual relationship with his client to adversely affect his duties to her in that matter, in violation of Maine's rules for attorney conduct. See . Mangan, supra, at 1190 n.1, 1193-1194. Both the Massachusetts Rules of Professional Conduct, and the predecessor Canons of Ethics in force in Massachusetts at the time the misconduct occurred, contain parallel provisions forbidding such conduct. See, e.g., Mass. R. Prof. C. 1.7(b), 426 Mass. 1330 (1998); S.J.C. Rule 3:07, Canon 5, DR 5-101(A), as appearing in 382 Mass. 768 (1981) (superseded). I conclude that the respondent's misconduct merits reciprocal discipline in Massachusetts.

Therefore, it is ORDERED that the respondent, Thomas M. Mangan, be disbarred and his name stricken forthwith from the Roll of Attorneys.

Martha B. Sosman
Associate Justice

DATED: October 3, 2001

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

² Compiled by the Board of Bar Overseers based on the record before the Court.

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