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Examining ETHICS

Dodge Cupid's arrow when it comes to relationships with clients

In light of the amorous atmosphere surrounding Valentine's Day, a refresher on the prohibitions when it comes to intimate relationships between lawyers and clients is appropriate. Relationships with clients are difficult to justify, particularly given the lawyer's fiduciary responsibility towards the client. Indeed, the New York Rules of Professional Conduct (Rules) instruct that "the lawyer occupies the highest position of trust and confidence" and violates his ethical obligation where he uses that trust to the detriment of a client.

Also, it is evident that a conflict can arise and impinge a lawyer's ability to exercise professional judgment if the lawyer becomes emotionally involved with a client. Although in some cases a client can consent to the conflict, the client may not fully grasp the ramifications of such consent if he or she is emotionally attached. For these reasons, sexual relations with a client are never a good idea.

The Rules define "sexual relations" as "sexual intercourse or the touching of an intimate part of the lawyer or another person for the purpose of sexual arousal, sexual gratification or sexual abuse." Rule 1.0 (u). In addition, the Rules contain two provisions that address intimate relationships with clients: Rule 1.7 titled "Conflict of Interest: Current Client" and Rule 1.8 titled "Current Clients: Specific Conflict of Interest Rules." In the early 1990s, late Chief Judge Judith S. Kaye spearheaded the addition of what is now Rule 1.7 to the Code of Professional Responsibility — the precursor to the



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Rules of Professional Conduct. While the text of Rule 1.7 does not specifically mention any prohibition on sexual relations between lawyers and clients, the comments to that Rule ban sexual relationships where an attorney is representing a client in a domestic relations matter. This is because clients

involved in domestic relations matters are "emotionally vulnerable" and are, therefore, more susceptible to abuse.

Rule 1.8, which was added in 1999, codified the prohibition of engaging in a relationship with a domestic relations client and also added further restrictions on sexual relations between an attorney and a client outside of the domestic relations arena. Rule 1.8 specifically prohibits (1) requiring sexual relations as a condition of entering into or continuing legal representation; and (2) a lawyer entering into a sexual relationship with a client for purposes of coercion, intimidation or undue influence related to representation of the client ... [Rule 1.8(j)(1)], in addition to the ban regarding domestic relations clients.

There are some situations in which sexual relations with a current client do not apply under the Rules. For example, Rule 1.8(j) does not apply to lawyers and their spouses, or to consensual sexual relationships that began between a client and an attorney prior to the representation. In addition, it ap-

pears that an attorney at a firm can be intimately engaged with a client if he or she is not involved in representing that client. This is even the case where a firm represents a client in a domestic relations matter.

The Courts in New York do not take violations of Rule 1.8(j) lightly. For example, in the case of *In the Matter of Raab*, 139 AD3d 116 (1st Dep't 2016), an attorney, who was admitted to practice in New York by the First Department, was charged by the Florida Bar (where he was also admitted to practice law) with having improperly engaged in sexual relations with a matrimonial client during the representation. The Florida Bar filed a complaint against the attorney and the attorney thereafter entered into a stipulation and consent judgment in which he admitted to being involved in "one isolated and consensual improper personal encounter" with his matrimonial client. With the consent judgment, the attorney subjected himself to a public reprimand and was required to repay the Florida Bar for the costs of the disciplinary proceeding.

The First Department's Departmental Disciplinary Committee asked the Appellate Division, First Department to grant reciprocal discipline based upon the order issued by the Florida court, seeking to impose a two-year suspension on the attorney or, alternatively, any sanction the First Department felt was proper. In response to the Disciplinary Committee's request, the attorney asked that he be allowed to resign from the practice of law in New York State. The First Department disre-

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garded the Disciplinary Committee's suggested punishment of a two-year suspension and instead accepted the attorney's resignation.

The Court indicated that the attorney's transgression "contravenes New York's strong public policy prohibiting lawyers from engaging in sexual relations with clients in domestic relations

matters during the course of their representation." Clearly even one improper encounter can put an attorney's license to practice in jeopardy.

What is obvious from the foregoing is that sexual relations with a current client is never a good idea and is prohibited in certain cases. As attorneys, our fiduciary duty to the client must not be compromised. And one thing is for cer-

tain — Cupid cannot help you if you find yourself on the wrong side of these rules.

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