



BAR BULLETIN

Official Publication of the State Bar of New Mexico

What's Inside

In the Matter of the Suspension of Active and Inactive Members of the State Bar of New Mexico for Nonpayment of Annual Bar License Fee and for Noncompliance with Rule 17-203 NMRA.

ADVANCE OPINIONS

Marcia J. Rosen, f/k/a Marcia J. Lantis v. Roy W. Lantis

In the May 1, 1997, issue of the *Bar Bulletin*, pages 22-26 were incorrectly dated. The date line should have read Vol. 36, No. 18, May 1, 1997. The *Bar Bulletin* regrets the error.

NOTICES

N.M. SUPREME COURT Disciplinary Board

In the Matter of James C. Compton, Esq., an attorney licensed to practice before the courts of the State of New Mexico. Disciplinary No. 10-95-284.

FORMAL REPRIMAND

Beginning in the fall of 1988 and continuing until the spring of 1993, you were an officer and director of a law firm which maintained offices in Albuquerque and Santa Fe. You were the only partner who officed in Albuquerque on a regular basis. With the knowledge and approval of your former law firm (hereinafter referred to as the "Firm"), you undertook to act as bond counsel on two separate bond issues. You informed your partners that the Firm would be paid \$15,000 and \$12,500 respectively for the legal services provided on the two bond issues. Without the knowledge or approval of the Firm, however, you also acted as disclosure counsel for the bond underwriter in both bond issues.

When the bond issues closed and the proceeds were disbursed, proceeds were disbursed to the Firm for bond counsel services and additional monies were disbursed directly to you, acting as the "Compton Law Firm," for disclosure counsel services. You did not advise your partners at the Firm that you had been paid for disclosure counsel services in both bond issues.

You attempted to explain the fees you received as disclosure counsel in two ways. You stated that separate payment was necessary because of statutory procurement code issues. You asserted there were concerns that if the same firm performed both bond and disclosure services, the counties would need to request proposals from various interested attorneys, and that the counties did not wish to do so. You further claimed that this issue was discussed with the county attorneys and others advising the counties. Contrary to your assertion, however, the attorney also stated that the procurement code was not an issue because the attorney for the underwriter is in a contractual relationship with the underwriter, not the county.

Second, you asserted that the Firm could not have performed both services because the Professional Services Agreements you drafted precluded the Firm from performing such services. These agreements were not signed by either county and, contrary to your assertion, the language of these agreements did not preclude the Firm from performing other legal services in connection with the bond issues.

Despite earning approximately \$38,000 from your activities as the Compton Law Firm over the two-year period of 1989 and 1990, you neither informed your partners of your outside legal activities nor offered legal work to the Firm prior to performing it through the Compton Law Firm. Your Compton Law Firm letterhead reflected the Albuquerque and Santa Fe addresses of the Firm, along with the telephone and fax numbers for the Firm. You did not re-

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imburse the Firm for your use of the Firm's facilities and equipment for your outside law practice.

In 1992, you agreed to provide legal services in return for 1% of the stock in a factoring business. The written consent of the clients to this arrangement was not obtained, nor were the clients advised to seek the advice of independent counsel. You utilized the Firm's resources, including staff and equipment, for your work on this project, but no fees received by the Firm. You received compensation personally, in the form of dividends, for work for the factoring business. You attempted to explain your behavior regarding this business arrangement by stating that you entered into this arrangement as a "loss leader" for the Firm. Nonetheless, the stock you received was placed in your name, not the Firm's name and the Firm was neither informed of the engagement nor received any compensation from it.

In addition to forming your own law firm, you managed to make even more money from the Firm (aside from that which you may have earned as a director), by forming your own paralegal company. During the first months of 1991 you informed your partners at the Firm that you needed the assistance of a contract paralegal. The paralegal was retained through a company called "Manzano Paralegal." You misrepresented to the Firm that Manzano Paralegal was the paralegal's own business

when in reality, Manzano Paralegal was your business. You charged the Firm an hourly rate for the paralegal's services, but paid her less than that amount. During the first four months of 1991, the Firm paid Manzano Paralegal in excess of \$5,000 for paralegal services. You never told your partners that you were charging the Firm for services provided by a paralegal employed by a business you owned.

To explain your disloyalty to your former law firm, you relied upon the fact that there was no formal agreement prohibiting partners from practicing law "on the side." It is questionable whether the absence of an agreement prohibiting competition with one's partners would make such activities permissible, even if they were performed with full disclosure. It is the fact that your activities were carried on secretly, however, that concerns the Disciplinary Board. Your lack of candor was not an isolated event; it occurred repeatedly over a period of several years.

The New Mexico Supreme Court has stated that "[m]isrepresentation in any form is unacceptable conduct by an attorney." *Matter of Ruybalid*, 118 N.M. 587, 884 P.2d 478 (1994). "When dealing with an attorney, another person (whether an attorney or a lay person) has the right to expect that the attorney will be honest and straightforward." *Matter of Ellis*, 29 State Bar Bulletin 27 (1990). Certainly, your law partners had

the right to expect honesty, candor and fair-dealing from you. This they did not get. The fact that your conduct primarily involved a failure to inform your partners of your activities provides no excuse. Misrepresentation can occur by omission as well as overtly.

You were charged with having violated the following provisions of the Rules of Professional Conduct:

- Rule 16-804(C), by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;
- Rule 16-108(A), by engaging in a business transaction with clients without obtaining written consent; and
- Rule 16-804(H), by engaging in conduct which reflects adversely on your fitness to practice law.

Pursuant to NMRA 17-211, you executed a Conditional Agreement Not

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COMING UP

MAY 10

Advisory Opinions, 10 a.m.,
Singer, Smith & Williams
Firm

MAY 15

*Membership Services
Committee*, noon, Bar Center

MAY 16

ADR Committee, noon,
Bernalillo County District
Court (Judge Brennan's
Courtroom)

JUNE 4

*ANLIR-SBNM Lawyers
Professional Liability Insurance
Committee*, noon, Bar Center

JUNE 5

*Technology Utilization
Committee*, 3 p.m.,
NM Technet

*Changes or cancellations in the published
meeting schedule may occur.*

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to Contest and Consent to Discipline. The consent agreement provided for a one-year suspension from the practice of law, with the suspension deferred in favor of supervised probation with specific conditions. You met the conditions of your probation admirably. You were required to provide twenty-five hours of pro bono legal services per month, but you provided many hours more than that amount. You also successfully completed the multistate professional responsibility examination during the probationary period and paid the costs of the proceeding. Because you have met the terms of your probation, you are being issued this formal reprimand in lieu of suspension.

The formal reprimand will be filed with the Supreme Court in accordance with SCRA 1986, Rule 17-206(D) and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you. In addition, in accordance with SCRA 1986, Rule 17-206(D) (1996 Repl. Pamp.), the entire text of this reprimand will be published in the State Bar of New Mexico *Bar Bulletin*.

The Disciplinary Board
Richard L. Gerding, Esq.
Chairman
April 25, 1997

Disciplinary Board

In the Matter of Jonathan E. Zorn, Esq., an attorney licensed to practice before the courts of the State of New Mexico. Disciplinary No. 11-69-309.

FORMAL REPRIMAND

You are before the Disciplinary Board due to your admitted failure to respond to Disciplinary Counsel's requests for information regarding a complaint filed against you by Mr. Hendrick. Based upon the fact that you finally returned Mr. Hendrick's file, an agreement was reached with Disciplinary Counsel to drop Count 1 of the Specification of Changes, thus the details of Mr. Hendrick's complaint need not be recited herein.

Pursuant to Rule 17-211, a Conditional Agreement Not to Contest and Consent to Discipline (hereinafter "Agreement") was signed by you on January 20, 1997. The Decision and Recommendation of the Hearing Committee accepting the Agreement was entered January 23, 1997, and the Board Panel acceptance of the Hearing Committee's Recommendation was entered February 17, 1997. The Supreme Court accepted the Agreement and entered its Order on March 10, 1997. In executing the Agreement, you agreed not to contest the charges filed against you and you admitted to violations of 16-801 (B), 16-803(D), and 16-804(D) of the Rules of Professional Conduct.

The Office of the Disciplinary Counsel receives and must investigate approximately eight hundred complaints against attorneys each year. Many of these complaints can be dismissed quickly, once all the facts are known. When an attorney fails to respond or provides incomplete information, however, disciplinary counsel is required to keep the file on the complaint open and to spend time attempting to communicate with the attorney. Not only is this an unnecessary and uneconomical use of disciplinary counsel's time, it is a negative reflection on the professionalism required of attorneys licensed to practice before the Supreme Court of the State of New Mexico.

After the initial complaint was filed against you in early June 1996, the office of disciplinary counsel wrote to you in both the months of June and July, requesting a response. You failed to respond to either letter. On August 8, the office of disciplinary counsel notified you by letter that, unless you respond by August 19, 1996, formal disciplinary charges would be filed. When you again failed to respond, chief disciplinary counsel called you on August 28, 1996, to inquire as to why you had not responded to her letters. During this conversation, you advised Ms. Ferrara that your response had been sent in July. As this response had not been received by disciplinary counsel, you agreed to mail a copy the following day. Disciplinary counsel did not receive that copy.

After approximately one month, Ms. Ferrara called your office and again gave you additional time to respond. When no response was received by November 8, 1996, disciplinary counsel had no choice but to proceed with formal charges.

You are hereby formally reprimanded for these acts of misconduct pursuant to Rule 17-206(A)(5) of the Rules Governing Discipline. In addition, you must successfully complete the Multistate Professional Responsibility Examination on or before March 10, 1998. Upon a showing of medical

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for

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