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Attorneys

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ATTORNEYS

I. CONTEMPT

The District of Columbia Court of Appeals, in *In re Gratehouse*,[1] upheld the contempt conviction of an attorney who, because of a scheduling conflict, had returned late to the courtroom after a recess. The hearing had been due to start at 9:00 a.m. but did not begin until 1:10 p.m., and recessed shortly thereafter. The attorney did not tell the judge that he had business scheduled in two other courtrooms in the afternoon. He was forty-five minutes late when the court reconvened. The court of appeals held that the attorney's failure to inform the trial judge before the lunch recess of his anticipated scheduling conflicts was enough to sustain the finding that the attorney's failure to make a timely appearance resulted from disregard of his professional obligations.

Rule 104(c) of the Civil Rules of the Superior Court of the District of Columbia requires an attorney to inform the court of such conflicts.[2] The court of appeals said that the appellant's scheduling conflict did not justify making the judge wait for forty-five minutes. The attorney violated his "clear obligation to avoid scheduling conflicts which disrupt the efficient administration of the judicial system."[3]

The court of appeals also sustained the trial judge's use of Superior Court Criminal Rule 42(a)[4] to punish the attorney for tardiness. Rule 42(a) allows the judge summarily to punish criminal contempt if the conduct was committed in the presence of the court.

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1. 415 A.2d 1388 (D.C. 1980) (per curiam).

2. D.C. SUPER. CT.—CIV. R. 104(c):

> It is the professional responsibility of attorneys to avoid the setting of conflicting engagements in the courts, to inform the courts of expected difficulties or conflicts which may arise, and to achieve the resolution of such conflicts or problems at the earliest possible time. The following particular obligations are imposed upon counsel:
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> . . . .
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> (3) Attorneys are obliged to take action immediately upon becoming aware of any conflict and specifically to call the conflicting engagements to the attention of the judge being asked to yield, and to pursue the matter until the conflict is resolved. Such matters may be presented to the judge in open court as a preliminary matter, with advance notice to other counsel.

3. 415 A.2d at 1390.

4. D.C. SUPER. CT.—CR. R. 42(a).

II. Ineffective Assistance of Counsel

In *Tillery v. United States*,[5] the District of Columbia Court of Appeals applied a "totality of the circumstances" test to determine whether counsel had provided the defendant with ineffective assistance. The court concluded that counsel had provided ineffective assistance and reversed the defendant's murder conviction. The defendant was charged with the shooting death of his girlfriend. His only defense was insanity. However, his attorney never tried to obtain medical records of the defendant's stay in a psychiatric hospital, which occurred after the shooting. Counsel also failed to discover that the diagnoses of two of the defendant's doctors at the hospital supported the diagnosis of the defense's only expert witness. Finally, counsel predicated the insanity plea upon the *Durham*[6] standard of "productivity," a standard rejected in *Bethea v. United States*[7] nearly sixteen months earlier.

The court noted that the sixth amendment right to effective assistance of counsel is an "inevitably nebulous" area of constitutional law.[8] Reversal is required, the court said, when "appellant's trial counsel's gross incompetence in the preparation, investigation, and presentation of appellant's insanity defense effectively blotted out a substantial defense, thereby depriving him of his sixth amendment right to the effective assistance of counsel."[9]

III. Suspension

In *In re Thornton*,[10] the District of Columbia Court of Appeals upheld a recommendation by the Board on Professional Responsibility that an attorney be suspended for a year and a day for failure to recognize or appreciate a conflict of interest and for submitting false documents. The Hearing Committee of the Board recommended only a one-month suspension. The action arose as a result of litigation over an automobile accident. Thornton had represented a driver (Aycox) and his five passengers in a damage suit against the driver of the other vehicle. A potential conflict of interest arose from the possibility of claims against Aycox by one or more of the five passengers. The judge warned the attorney of this potential

5. 419 A.2d 970 (D.C. 1980).

6. Durham v. United States, 214 F.2d 862, 874-75 (D.C. Cir. 1954) (an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect).

7. 365 A.2d 64 (D.C. 1976), *cert. denied*, 433 U.S. 911 (1977).

8. 419 A.2d at 976 n.22 (quoting Ohio v. Roberts, 448 U.S. 56, 73 n.12 (1980)).

9. 419 A.2d at 976.

10. 421 A.2d 1 (D.C. 1980).

conflict. There was sufficient evidence to indicate that the passengers were not informed of the possibility of claims by them against Aycox.

In addition, since no "norm" of discipline for a case such as Thornton's had been established by the Board, the court could not say that the discipline recommended was inconsistent with that which the Board had previously meted out for comparable conduct. The court thus adopted the sanction recommended by the Board.

The District of Columbia Court of Appeals, in *In re Fogel*,[11] again upheld a recommendation by the Board on Professional Responsibility of a penalty more stringent than that recommended by the Hearing Committee. The Board recommended suspension of the attorney for a year and a day and an adequate showing of rehabilitation for readmission to the bar, while the Committee had recommended suspension for only six months plus an adequate showing of rehabilitation for readmission. Fogel had lied to the court, to his client, and to the Hearing Committee, and had failed both to file pleadings and to appear for court dates. After an independent study of similar prior disciplinary actions, the court found the Board's disposition consistent with that of cases involving comparable conduct.[12]

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11. 422 A.2d 966 (D.C. 1980) (per curiam).
12. *Id.* at 968 n.2.