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Brian Casto

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ATTORNEY GRIEVANCE COMMISSION
OF MARYLAND v. CULVER:

*Attorney's Sexual Relationship with his Client Violated the
Maryland Rules of Professional Conduct*

By: Brian Casto

The Court of Appeals of Maryland held that an attorney's sexual relationship with his client violated the Maryland Rules of Professional Conduct ("MRPC"). *Att'y Grievance Comm'n of Md. v. Culver*, 381 Md. 241, 849 A.2d 423 (2004). In so holding, the court relied primarily on language it recently added to the Comments to the MRPC. *Id.* at 268-69, 849 A.2d at 440.

Client (opinion does not disclose client's identity) retained Allan J. Culver, Jr. ("Culver") to represent her in a divorce action in March 1993. On the evening of September 9, 1993, following a hearing earlier in the day, Culver arrived unexpectedly at Client's home. Client allowed Culver into her home on the premise that he needed to inspect the condition of the house to prepare a response to an allegation asserted by Client's estranged husband. Culver eventually led Client to the basement of her home where he physically forced Client to have sexual intercourse with him. According to Client, during two subsequent meetings with Culver at his office, Culver induced Client to perform oral sex on him. Client conceded at the disciplinary hearing that these two events were consensual. Client, fearing that revealing Culver's conduct would cause her to lose custody of her children, continued to be represented by him throughout her divorce proceedings and her appeal. Culver withdrew his representation of Client after receipt of his fee for her appeal. Subsequently, Culver did not refund the fees paid and she retained an attorney to institute a civil claim against Culver for legal malpractice and forcible sexual contact.

Bar Counsel subsequently filed a Petition for Disciplinary Action against Culver for various violations of the MRPC. The court of appeals referred the matter to a judge in the Circuit Court for

Baltimore County for an evidentiary hearing, and proposed conclusions of law. At the close of the hearing, the circuit court judge found Culver in violation of numerous Rules, including MRPC 1.7 and 8.4, for his sexual relationship with Client. The court of appeals then reviewed the circuit court judge's finding *de novo*.

The court of appeals looked first at the circuit court judge's finding that Culver violated MRPC 1.7 and 8.4 by engaging in a sexual relationship with Client. *Id.* The court agreed with the hearing judge's conclusion that the sexual encounters between Culver and Client were non-consensual because of their "exploitative and coercive" nature. *Id.* at 267, 849 A.2d at 438. In reaching this conclusion, the court noted that there was no relation between a finding of non-consensual sexual activity for purposes of an attorney disciplinary proceeding and the relation necessary to sustain criminal charges. *Id.* at n. 12.

The court next discussed recent developments in the field of attorney ethical rules that resulted from an amendment of the American Bar Association's Model Rules. *Id.* at 267-68, 849 A.2d at 438-39. The revised Model Rules include a black-letter prohibition on attorney-client sexual relationships. *Id.* at 267, 849 A.2d at 439. The court noted that this Rule has not been unanimously adopted by the states. *Id.* at 268, 849 A.2d at 439.

The court observed that Maryland considered, but rejected, adopting the black-letter prohibition on attorney-client sexual relationships in its Rules. *Id.* at 269 n.15, 849 A.2d at 440. Thus, the MRPC contains no black-letter restriction on attorney-client sexual relationships. *Id.* at 269, 849 A.2d at 440. Instead, the MRPC relies on language in the Comments to construe MRPC 1.7 and 8.4 to encompass sexual relationships between attorneys and their clients. *Id.* at 269-70, 849 A.2d at 440.

The Comment to MRPC 1.7 explains that a sexual relationship between an attorney and client creates an impermissible conflict when "the representation of the client would be materially limited by the sexual relationship." *Id.* at 269, 849 A.2d at 440 (quoting MRPC 1.7 cmt.). The Comment to MRPC 8.4 adds that "sexual harassment involving . . . clients . . . may violate paragraph (d)[,]" which precludes "conduct prejudicial to the administration of justice." *Id.* (quoting MRPC 8.4 & cmt.). Without analyzing whether Culver's

conduct actually limited the representation of Client or constituted sexual harassment, the court found Culver in violation of both MRPC 1.7 and 8.4. *Id.* at 269-70, 849 A.2d at 440.

The court found support for its conclusion in a Louisiana opinion stating that a black-letter rule prohibiting conduct similar to Culver's is not necessary to find a violation of MRPC 1.7 and 8.4. *Id.* (citing *In re Ashy*, 721 So.2d 859, 864 (La. 1998)). Further, the court found that the Arizona Supreme Court deemed that any unwanted sexual advances violated MRPC 1.7. *Id.* (citing *In re Piatt*, 951 P.2d 889, 891 (Az. 1997)). Finally, the court pointed to an Indiana decision holding that a sexual relationship between attorney and client violates MRPC 1.7. *Id.* (citing *In re Grimm*, 674 N.E.2d 551, 554 (Ind. 1996)). Based on its analysis of the relevant case law, the court opined that although "approaches" to dealing with attorney-client sexual relations may vary from state-to-state, it is unquestionable that exploitative sexual advances by an attorney are in violation of the disciplinary rules. *Culver*, 381 Md. at 271, 849 A.2d at 441.

The court further noted that a sexual relationship between an attorney and his or her domestic relations client creates an "inherent conflict in violation of Rule 1.7." *Id.* at 272, 849 A.2d at 442. The court recognized that an attorney-client sexual relationship in the context of a divorce proceeding would likely impede the execution of the client's case. *Id.* at 274, 849 A.2d at 443. For instance, the opposing spouse in a divorce proceeding may gain an advantage should an attorney-client sexual relationship constituted adultery. *Id.* Also, the relationship may result in the attorney becoming a witness to the action. *Id.* Thus, an attorney-client sexual relationship, in the context of a domestic proceeding, is a *per se* violation of Rule 1.7. *Id.* at 275, 849 A.2d at 443.

The Court of Appeals of Maryland held an attorney's sexual relationship with his client violates the Maryland Rules of Professional Conduct. The Rule is simple, yet the method by which it is derived, at least with respect to MRPC 8.4, is troublesome. In an attempt to govern attorney conduct, while allowing ample room for judicial discretion, the court of appeals relies heavily on the non-authoritative Comments to the MRPC. Such reliance leads one to consider the actual weight of the Comments. It leaves open the question of whether they are merely guides to interpretation, as

indicated by the Preamble to the Rules, or whether they should be heeded with the same respect as the black-letter law. Until the court of appeals conclusively answers this question, attorneys will be left to guess the effect of future amendments to the Comments.