

## IN RE: DAVID WYSOCKI

S.J.C. Order (Two-year Suspension) entered by Justice Greaney on October 5, 2000, with an effective date of November 5, 2000. <sup>1</sup>

SUMMARY <sup>2</sup>

The respondent, a bankruptcy practitioner, stipulated to the misconduct charged in a five-count petition for discipline.

Count One of the petition for discipline arose from six complaints from clients whose bankruptcy cases were not filed between 1997 and 1999, four as a result of neglect by the respondent, one because of a misunderstanding over costs, and one because the client had moved out of state. The respondent in each instance refunded the fees paid to the clients only after the complaint to Bar Counsel was filed. In one instance, the respondent also failed to return the client's file upon request until after the complaint to Bar Counsel was filed. The respondent's conduct was in violation of Mass. R. Prof. C. 1.3, 1.4, and 1.16(d),(e).

Counts Two and Three of the petition for discipline involved financial record keeping problems in the respondent's trust account, including commingling cash payments from clients with personal cash and failing otherwise to maintain adequate or complete records. Count Two arose from a complaint by clients whose funds (mortgage payments) the respondent was holding in trust as part of a Chapter 13 bankruptcy plan. The plan was dismissed for unrelated reasons before the payments were remitted to the mortgagee. The respondent thereafter paid the clients the funds that he was holding on their behalf in his trust account. However, because the respondent had commingled certain cash payments from the clients with his own funds, he did not show the receipt of the cash on his client ledger and inadvertently miscalculated the balance that the clients were due. After the complaint to Bar Counsel was filed, the respondent found the discrepancy and reimbursed the clients for the \$870 shortfall caused by his inaccurate accounting. The respondent's conduct in this matter was in violation of Mass. R. Prof. C. 1.15(a),(b) and its predecessor DR 9-102(A),(B)(3),(4).

Count Three arose from two notices of dishonored checks sent to Bar Counsel by the bank in which the respondent maintained his IOLTA account. The first check was dishonored because the respondent had by mistake failed to make a deposit. In the second instance, several checks were dishonored because the respondent mistakenly paid himself, as fees, sums received from clients intended to cover both fees and costs. The respondent then paid the costs from the trust account despite the fact that the monies needed to support these disbursements had already been withdrawn. The dishonored checks were paid upon redeposit or replaced. The respondent's conduct in this matter was again in violation of Mass. R. Prof. C. 1.15(a),(b) and its predecessor DR 9-102(A),(B)(3),(4).

Counts Four and Five of the petition followed Bankruptcy Court decisions. In the first case, described in Count Four, the judge held hearings and made findings that the respondent had assisted a disbarred lawyer, Joseph G. Albiani, in the unauthorized practice of law. The respondent, who viewed Albiani as a friend and mentor, took over cases from Albiani without the clients' consent and allowed Albiani or his staff to sign his name to pleadings prepared by Albiani. The judge also found that the respondent became overwhelmed by the additional caseload. He failed to maintain records of which of Albiani's clients he had undertaken to represent or of files received from Albiani and therefore failed to timely file pleadings or appear for hearings on those matters. The respondent's conduct was in violation of Mass. R.

Prof. C. 1.1, 1.3, 5.5(b), and 8.4(h).

The second case, described in Count Five, involved a Chapter 13 bankruptcy filed by the respondent in which the amount of indebtedness exceeded the jurisdictional limits. Because he did not know the amount of the government's claim against the debtor, the respondent had listed it as "notice only" with a schedule value of zero. The judgment in fact was for \$538,000. The court found that filing the petition without adequate factual investigation violated Rule 9011 of the Federal Rules of Bankruptcy Procedure. The respondent's conduct in this matter was in violation of Mass. R. Prof. C. 1.1, 1.2(a), and 8.4(h).

This matter came before the Board on a stipulation of facts and disciplinary violations and a joint recommendation for a two-year suspension. On September 11, 2000, the Board voted to accept the stipulation and to recommend the agreed-upon disposition to the Supreme Judicial Court. The Court so ordered on October 5, 2000.

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

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record before the Court.

Please direct all questions to [webmaster@massbbo.org](mailto:webmaster@massbbo.org).

© 2001. Board of Bar Overseers. Office of Bar Counsel. All rights reserved.