

IN RE: WILLIAM C. McPHEE

S.J.C. Judgment of Disbarment entered by Justice Sosman on July 19, 2001.¹

SUMMARY²

This matter came before the Court on an affidavit of resignation submitted under S.J.C. Rule 4:01, § 15, and a recommendation by the Board of Bar Overseers for the respondent's disbarment upon his resignation based on numerous instances of misconduct.

In one case, the respondent wrongfully endorsed a client's signature to a \$13,000 personal injury settlement check in 1997, converted the client's proceeds, and made subsequent misrepresentations to the client to conceal his misconduct. In addition, the respondent did not execute a written fee agreement with the client, investigate or pursue other claims arising from the client's accident, pay over personal injury protection (PIP) benefits obtained for the client, or hold the PIP funds at interest. The respondent failed to make any restitution of the settlement proceeds, maintain adequate records of his receipt and distribution of the funds, or account for the funds.

In two other cases, the respondent commingled, converted and failed to repay or account for client retainers received in 1997 and 1998. In one of those matters, an estate case, the respondent also neglected the case and made repeated misrepresentations to the client about the status of the estate. In the second of those matters, a divorce, the respondent misrepresented the value of his services, and he charged and collected a clearly excessive fee for the limited services rendered.

The respondent's commingling and conversion of the settlement proceeds and retainer payments, misrepresentations to clients, wrongful endorsement of a check, failure to hold client funds at interest, and failure to account for or keep required records of client funds violated Canon One, DR 1-102(A)(4) and (6), Canon Six, DR 6-102(A), Canon Nine, DR 9-102(A), (B)(3) and (4) and (C), and, from and after January 1, 1998, Mass. R. Prof. C. 1.15(a), (b), (d) and (e), Mass. R. Prof. C. 1.16(d), and Mass. R. Prof. C. 8.4(c) and (h). The respondent's failure to execute a written fee agreement in the personal injury case violated Canon Two, DR 2-106(C), and S.J.C. Rule 3:05(4). The respondent's neglect and failure of zealous representation in the estate case to the client's detriment violated Canon Six, DR 6-102(A)(2) and (3), Canon Seven, DR 7-101(A)(1)-(3), and, from and after January 1, 1998, Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4. His conduct in charging and collecting a clearly excessive fee in the divorce case violated Mass. R. Prof. C. 1.5(a).

Further, in several additional divorce and criminal cases between 1997 through 2000, the respondent received flat fees from the clients, failed to take any action of substance in the cases, misrepresented the status of the cases to the clients, and, upon his discharge, failed to refund his unearned fees. The respondent's neglect of those cases, cases, handling of cases without adequate preparation, failure of zealous representation with ensuing damage or prejudice, failure to pursue the clients' lawful objectives, failure to act with reasonable diligence, and failure to maintain reasonable client communications violated Canon 6, DR 6-101(A)(2) and (3), Canon Seven, DR 7-101(A)(1)-(3), and Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4. The respondent's failure to refund the unearned fees in all the cases violated Mass. R. Prof. C. 1.15(b) and 1.16(d).

The respondent failed to answer grievances filed against him, provide requested information

and documentation, or otherwise cooperate in bar counsel's investigation. The respondent was administratively suspended in December 1999 for failure to register with the Board of Bar Overseers, reinstated in February 2000, and suspended again for the same reason in October 2000. The respondent failed to seek reinstatement after his second administrative suspension. As a result, in November 2000, he became subject to provisions of S.J.C. Rule 4:01, § 17, requiring him to give notice of his suspension, withdraw his appearances, make available files in pending matters, return his unearned fees, distribute and account for trust funds in his custody, and file an affidavit of compliance. The respondent failed to comply with those requirements. Moreover, from November 2000 through about February 2001, the respondent solicited and accepted new retainers and fee payments, held himself out as an attorney, and appeared in court on behalf of clients. In April 2001, the respondent was adjudicated in contempt of the Supreme Judicial Court for continuing to practice law after his October 2000 suspension.

By engaging in the unauthorized practice of law in violation of his suspension order and by failing after his suspension to give required notice, withdraw his appearances, return client files, close his fiduciary accounts, distribute and account for trust funds, remit his unearned fees or file a timely affidavit of compliance, the respondent violated Mass. R. Prof. C. 1.15(b), Mass. R. Prof. C. 1.16(a)(1), (c) and (d), Mass. R. Prof. C. 5.5(a), Mass. R. Prof. C. 8.4(c), (d) and (h), and S.J.C. Rule 4:01, § 17(1) and (3). By failing to cooperate in bar counsel's investigation, the respondent violated Canon One, DR 1-102(A)(5) and (6), Mass. R. Prof. C. 8.4(d) and (h), and S.J.C. Rule 4:01, § 3(1).

Bar counsel commenced formal disciplinary proceedings by filing a petition for discipline against the respondent in May 2001. On May 29, 2001, the respondent submitted his affidavit of resignation with an acknowledgement that the material facts underlying the charges against him could be proved by a preponderance of the evidence. On June 11, 2001, the Board voted to recommend that the respondent's affidavit of resignation be accepted and that an order of disbarment be entered. On July 19, 2001, the Court, Sosman, J., issued a judgment accepting the resignation and disbarring the respondent effective immediately upon entry of the judgment.

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

² Compiled by the Board of Bar Overseers based on the record before the Court.

Please direct all questions to webmaster@massbbo.org.

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