

IN RE: CARLOS M. GOMEZ

S.J.C. Order of Indefinite Suspension entered by Justice Greaney on March 5, 2003.¹

SUMMARY²

The respondent was admitted to the Bar of the Commonwealth on December 17, 1985. Until the spring of 2001, the respondent was a solo practitioner in Springfield with an active practice emphasizing personal injury and real estate matters.

In or about May 3, 2001, the respondent abandoned his law office and his law practice and never returned to his law office except briefly on two occasions in the spring of 2001. The respondent had disappeared for short periods of time on prior occasions and, in the several weeks immediately following the respondent's departure, his support staff believed that he would return. They therefore kept the office open and attempted to deal with the nonlegal aspects of client matters.

Clients whose matters required the immediate attention of a lawyer were forced during this period to retrieve their files from the respondent's staff and to retain successor counsel, including a client whose real estate closing had to be postponed and rescheduled a week later with another closing attorney. Other client matters went unattended in the weeks following the respondent's disappearance, including personal injury cases on which settlements had been received but could not be disbursed, several bankruptcy cases for which fees had been paid but that were never filed, a divorce matter on which a retainer had been paid but that was not pursued, and personal injury and real estate matters that required additional work post-settlement to resolve creditor claims.

After being notified by another attorney of the respondent's disappearance from his office, Bar Counsel on June 12, 2001 sent correspondence to the respondent requesting an explanation of his absence. The respondent did not answer and the Board of Bar Overseers therefore issued a subpoena to compel his appearance. When the respondent failed to appear for the subpoena meeting, Bar Counsel filed a petition for temporary suspension against the respondent with the Supreme Judicial Court for Suffolk County on June 29, 2001. An order of temporary suspension entered on July 26, 2001.

On Bar Counsel's motion pursuant to Supreme Judicial Court Rule 4:01, §17(2), and in conjunction with the order of temporary suspension, the Supreme Judicial Court on July 26, 2001, also appointed a commissioner. The commissioner took possession of the respondent's files, sent letters to approximately 100 clients with active files, and returned files to the 68 of those clients who responded. The commissioner also organized all of the closed files in the respondent's office and sent 107 boxes of the respondent's files to Bar Counsel's offsite storage facility.

The respondent's neglect of his clients and his clients' cases; his abandonment of his law practice and his concomitant failure to notify clients, courts, and other parties concerning his withdrawal as counsel; and his further failure to return client files, thereby necessitating the appointment of a commissioner, was conduct in violation Mass. R. Prof. C. 1.1, 1.2(a), 1.3, 1.4, 1.16(c)-(e) and 8.4(h). The respondent's failure to cooperate with Bar Counsel's investigation was conduct in violation of Mass. R. Prof. C. 8.4(g) and Supreme Judicial Court Rule 4:01, § 3.

When the respondent abandoned his law practice in May 2001, he left open two trust accounts. On September 17, 2001, the commissioner transferred the funds in these accounts to two IOLTA accounts in the commissioner's name. The combined balance in the two accounts was \$50,836.

The respondent was responsible for maintaining financial records for the trust accounts. His record keeping for both trust accounts was generally inadequate. He did not maintain individual client ledgers. The check registers, both manual and electronic, were incomplete and insufficiently detailed. Reconciliation of the accounts was not current when the respondent disappeared.

Bar Counsel and the commissioner definitively identified four persons entitled to funds from the trust accounts. Three were individuals whose cases had settled just prior to the respondent's disappearance and whose settlement funds had not been disbursed. The fourth was an entity seeking the return of a deposit on a sale of real estate that did not occur. By order of the Supreme Judicial Court for Suffolk County on a joint motion of Bar Counsel and the commissioner, the commissioner remitted a total of \$23,360.37 to these four persons from the trust accounts.

Commencing in the summer of 2001, additional clients contacted Bar Counsel or the commissioner, claiming to be owed sums by the respondent. These claimants included clients and third parties seeking funds withheld from the proceeds of personal injury case settlements to pay medical providers or other liens or debts; clients who claimed to have paid unearned retainers or flat fees; a borrower seeking disbursement of funds withheld from a real estate closing to pay taxes; and an individual seeking return of a deposit on a sale of real estate that did not go forward.

Bar Counsel and the commissioner in numerous instances could not locate the underlying files both of clients whose names appeared in the check registers and of clients on whose files claims were being made. In other instances, the client files that were located were incomplete. Bar Counsel and the commissioner therefore could not identify the purpose and source of certain of the deposits to the trust accounts and, in other situations in which deposits on individual matters could be identified, either could not account with certainty for the amount remaining to be disbursed or could not ascertain the proper recipient.

By order of the Supreme Judicial Court on joint motion of Bar Counsel and the commissioner, the commissioner on May 13, 2002, remitted the balance of \$27,472.44 remaining in the respondent's trust accounts to the Clients' Security Board. Persons seeking payment from the respondent were notified that they would need to make application to the Clients' Security Board for determination of claims.

The respondent's failure to account to the clients regarding his handling and distribution of funds, and his inadequate and improper record keeping including his failure to maintain and preserve sufficient records of the handling, maintenance and disposition of client trust funds in his possession from time of receipt to time of final distribution, constituted conduct in violation of Mass. R. Prof. C. 1.15(a), (b). The respondent's failure to refund unearned fees constituted conduct in violation of Mass. R. Prof. C. 1.16(d).

Commencing in November 2001, the respondent on occasion corresponded with Bar Counsel. He finally met with Bar Counsel on August 9, 2002.

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation for an indefinite suspension retroactive to July 26, 2001, the date of his temporary suspension. On February 10, 2003, the Board voted to accept the stipulation and to recommend the agreed-upon disposition to the Supreme Judicial Court. The Court so ordered on March 5, 2003.

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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