

## IN RE: CRAIG R. CELLITTI

S.J.C. Order of Term Suspension entered by Justice Spina on September 4, 2002.<sup>1</sup>

SUMMARY<sup>2</sup>

This matter came before the Court on a stipulated recommendation for suspension based on multiple counts of misconduct, as follows.

The respondent represented a client on a personal injury claim and filed a lawsuit on her behalf in the fall of 1997. He took no further action of substance in the matter. The respondent did not notify the client that he had ceased work on her behalf, effect his withdrawal from representing her, or take other measures to protect her interests. The action was dismissed in July 1998 for failure to answer interrogatories. The respondent failed to inform the client of the dismissal or seek to have it vacated. In addition, the respondent failed to answer the client's periodic inquiries about her case. The client eventually consulted another lawyer, who made repeated demands for the client's file. The respondent had temporarily mislaid the file and did not reply until September 1999, after the client had complained to bar counsel. The respondent then located and furnished the file. By that time, however, the one-year period for seeking relief from judgment under Mass. R. Civ. P. 60(b) had expired, and the client's claims were extinguished.

In a second case, the respondent was engaged in October 1997 to represent a client on a larceny charge in the district court. A pretrial conference had already been scheduled for March 1998. The client told respondent that he was leaving the country with court permission for a research project and that he expected to be back in Massachusetts for the pretrial conference. In late 1997, however, the client informed the respondent that he would not be able to return in time for the conference and asked to have it postponed until April 1998 at the earliest. Without ascertaining exactly when the client expected to return, the respondent obtained a postponement until early April 1998, but he failed to take adequate measures to notify the client of the new date. The client, unaware of the date, did not return in time for the conference. The respondent failed to move for a further continuance. When the client did not appear for the conference, he was defaulted and an arrest warrant was issued. The client returned about a week later, learned of the default and warrant, discharged the respondent, and had the default vacated. The larceny charge was subsequently continued without a finding and dismissed.

A third case involved the respondent's representation of a client who had been sued by the executor of his mother's estate to recover Patriots season tickets, then held by the client, for the benefit of the estate. The probate action was tried to a special master in the fall of 1998. The master found for the estate but also made findings supporting the client's defense that the claim was barred by the statute of limitations. Although the respondent knew that confirmation of the master's decision should be contested based on the limitations defense, he failed to file objections or otherwise contest the decision, and the court entered judgment against the client in early 1999. For several months thereafter, the client made repeated inquiries about the status of the case, most of which were not answered by the respondent. When he did reply, the respondent intentionally misrepresented that he had filed a motion to vacate the judgment and was pursuing the limitations defense. After the client consulted other counsel, the respondent intentionally misrepresented to the new lawyer that he had filed or would immediately file a motion to vacate the judgment and then failed timely to reply to the lawyer's further inquiries. The new lawyer moved for relief from judgment in

August 1999. By then, however, the Patriots had threatened to revoke the subscription due to the delay in resolving the dispute over their ownership. The client subsequently relinquished his claim to the tickets.

In a fourth case, a client engaged the respondent in June 1988 for an uncontested divorce and gave him \$150 as a partial fee payment. The respondent negotiated a separation agreement and drafted an affidavit of irretrievable breakdown, both of which were executed by August 1988. The respondent then requested and received from the client another \$110 as a filing fee, and he told the client that he would file for divorce on her behalf in about two weeks. Thereafter the respondent failed to institute a divorce proceeding or take further action for the client, but he failed to notify the client that he had stopped work or take other measures to protect her interests. Over several months, the respondent intentionally misrepresented to the client that he had filed a divorce petition on her behalf, that the divorce was proceeding, and that hearing dates had been scheduled and canceled. The respondent also gave her a fictitious docket number for the supposed divorce action. In the spring of 1999, the client discovered that no divorce had been commenced. She discharged the respondent and demanded her file and a refund of her payments. The respondent failed to comply until June 1999, after the client had complained to bar counsel.

The respondent's failure to seek the clients' lawful objectives, failure to provide diligent representation, and failure to maintain reasonable communications with the clients in these cases violated Mass. R. Prof. C. 1.2(a), 1.3 and 1.4. The respondent's failure to withdraw from representation or take adequate measures to protect the clients' interests after ceasing work and failure timely to return client files and unearned fees violated Mass. R. Prof. C. 1.15(b) and 1.16(a)(1) and (2), (c), (d) and (e). In the third and fourth cases, the respondent's intentional misrepresentations violated Mass. R. Prof. C. 8.4(c) and (h).

During the investigation of his misconduct, the respondent repeatedly failed to reply to bar counsel's inquiries and failed to produce records under subpoena. In addition, on August 15, 2002, the respondent was administratively suspended from practice, pursuant to S.J.C. Rules 4:02 and 4:03, for failure to register with the Board of Bar Overseers. The respondent did not seek reinstatement. In September 2000, he became subject to provisions of S.J.C. Rule 4:01, § 17, requiring him, among other things, give notice of his administrative suspension to all courts, clients and opposing counsel in pending cases; withdraw all appearances; make available all files in pending matters; close his IOLTA account; and file an affidavit of compliance with specified documentation. The respondent did not comply with those requirements in full until September 2001. The respondent's failure to effect timely compliance and failure to cooperate in bar counsel's investigation violated Mass. R. Prof. C. 8.4(d), (g) and (h), and S.J.C. Rule 4:01, §§ 3(1) and 17(1)(e)-(g).

The respondent was admitted to practice in 1986 and had no history of discipline. In aggravation, he engaged in a pattern of misconduct involving multiple disciplinary violations, and he continued to engage in misconduct after the commencement of bar counsel's investigation. In mitigation, starting in about 1998, the respondent experienced increasing personal, family and financial problems that eventually impaired his ability to carry out his professional obligations. In or about late 1999, he was diagnosed with depression and began treatment for his condition. Recognizing the impact of his problems on his professional conduct, the respondent closed his law practice prior to his administrative suspension in August 2000. The respondent's condition improved thereafter, and he gained employment outside the practice of law in about the spring of 2001.

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and an agreed recommendation for a suspension of two and one-half years retroactive to September 4, 2001, the date of his full compliance with the judgment for his administrative suspension. The Board voted to accept the stipulation and recommendation. On September 4, 2002, the Supreme Judicial Court entered an order of suspension in accordance with the stipulation and recommendation.

<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).

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