

## IN RE: W. DAVID MARCELLO

S.J.C. Judgment of Disbarment entered by Justice Greaney on December 9, 2002.<sup>1</sup>

SUMMARY<sup>2</sup>

On May 8, 2002, the respondent was disbarred on consent by the Supreme Court of Pennsylvania pursuant to Rule 215 of the Pennsylvania Rules of Disciplinary Enforcement. In violation of S. J. C. Rule 4:01, § 16(6), the respondent failed to notify the Massachusetts Board of Bar Overseers and bar counsel of his disbarment.

The grounds for disbarment were set forth in a resignation submitted to the Disciplinary Board of the Supreme Court of Pennsylvania. The basis for disbarment was as follows.

The respondent had neglected three cases involving separate defendants whom he had represented in criminal proceedings. In each of these cases, the respondent filed notices of appeal but failed to file briefs on behalf of his clients, causing the appeals to be dismissed. The respondent also failed to respond to his clients' requests for information and did not notify his clients that their appeals had been dismissed. These actions violated Pennsylvania Rules of Professional Conduct 1.3 (lawyer shall act with reasonable diligence and promptness in representing a client), 1.4(a) (lawyer shall keep client informed about status of matter and promptly comply with reasonable requests for information), and 1.4(b) (lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation).

In addition, the respondent acknowledged that he had handled a criminal case on behalf of a client whom he had not regularly represented without explaining the basis of his fee in writing as required by Pennsylvania RPC 1.5(b). The respondent had received \$3,000 as a fee from the client's father, at least \$2,000 of which was required to be kept in a trust account until it was earned. The respondent had spent the funds immediately for his personal benefit, thereby violating RPC 1.15(a). The respondent's client committed suicide approximately seventeen months after the respondent had been retained. The respondent failed to provide an accounting to the client's father for his time and failed to refund the unearned portion of the fee, thereby violating RPC 1.15(b) and 1.16(d).

Finally, the respondent acknowledged that he had represented a trust in two civil matters, both of which he neglected in violation of RPC 1.3. The respondent failed to respond to numerous telephone calls from the trustee seeking information about the cases, violating RPC 1.4(a) and (b). The respondent borrowed \$3,000 from the trust without memorializing the loan or making the client aware of the potential conflict of interest, advising the client to seek the advice of independent counsel, and obtaining from the client written acknowledgement of and consent to the conflict, all in violation of RPC 1.8(a).

In 1995, the respondent was suspended in Pennsylvania from the practice of law for one year, retroactive to 1993, based on his conviction in federal court of structuring deposits to evade reporting requirements. This conduct led to a suspension in Massachusetts for one year in Matter of Marcello, 11 Mass. Att'y Disc. R. 167 (1995). The respondent was never reinstated in Massachusetts from that suspension. In December 1995, the respondent was privately reprimanded in Pennsylvania in an case involving the probate of an estate and prosecution of a wrongful death claim. The respondent had failed to communicate to the clients the basis of his fee in writing and had commingled the proceeds of the wrongful death case with personal

funds in his business account.

On September 27, 2002, bar counsel filed in the Supreme Judicial Court for Suffolk County a petition for reciprocal discipline. On October 2, 2002, bar counsel served an order of notice on the respondent that required him to notify the court within thirty days of the reasons why reciprocal discipline ought not to be imposed. The respondent did not file any response to the order of notice.

On November 18, 2002, the court notified the parties that a hearing on the petition for reciprocal discipline was scheduled for December 5, 2002. The respondent did not appear for the hearing on that day. On December 9, 2002, the court entered a judgment of disbarment.

<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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