

IN RE: MELVIN M. GLUSGOL

S.J.C. Order of Term Suspension entered by Justice Greaney on July 23, 2003, with an effective date of August 22, 2003.¹

Summary²

The respondent received a suspension of a year and a day as a consolidated disposition of two separate petitions for discipline.

Bar Counsel filed a four-count petition for discipline against the respondent on June 22, 2001. An evidentiary hearing was held before a hearing committee of the Board, which issued its report on April 12, 2002.

In Count One, the committee found that the respondent was suspended from the practice of law by the Supreme Judicial Court on July 28, 1998 for failure to register with the Board of Bar Overseers. On August 11, 1998, the respondent signed the certified mail receipt for a letter sent by the Board of Bar Overseers, informing him of the suspension. Despite actual knowledge of his suspension, the respondent continued to practice law. He failed to take action to obtain reinstatement until April 2000, after the complaint described in Count Two was filed and Bar Counsel became aware that he was practicing law while suspended.

On April 5, 2000, the respondent applied for reinstatement and paid all arrearages. In the addendum to the affidavit accompanying his application for reinstatement, the respondent acknowledged that he had been aware of the administrative suspension and had continued practicing law while suspended.

The committee found that the respondent's conduct in continuing to practice law while administratively suspended constituted unauthorized practice of law and conduct prejudicial to the administration of justice and reflecting on fitness to practice law, in violation of Mass. R. Prof. C. 5.5(a) and 8.4(d) and (h), as well as of S.J.C. Rule 4:01, §§ 3(1) and 17.

In Counts Two and Three, the committee found that the respondent neglected two unrelated motor vehicle personal injury cases undertaken for clients who were father and son. In both matters, the respondent was retained by the clients in March 1998 following the death of their original attorney.

The father had been a passenger in a car involved in an accident on May 14, 1996. Prior counsel had collected \$13,000 in PIP and medical payments funds, but no suit had been filed when the respondent received the file. The client had medical bills of at least \$16,620, including those paid by PIP and medical payments funds.

The committee further found that the respondent failed to reply to letters, in June, July and October 1998, from the insurer for the driver of the car that hit the car in which the client was riding. The respondent also failed to contact the insurer for the driver of the car in which the client was a passenger. The respondent did not file suit on behalf of the client prior to the expiration of the statute of limitations in May 1999. The client only learned that suit had not been filed when he retained new counsel in December 1999.

The son was a passenger in a motor vehicle involved in an accident that occurred on November 8, 1997. Although prior counsel had obtained PIP payments for certain medical bills, other bills that were in the file when the respondent received it had not yet been

submitted for payment and the respondent never submitted them for payment. One of the unpaid providers, by letter dated June 30, 1998, contacted the respondent regarding payment, then filed suit and obtained a default judgment against the son in September 1999.

The respondent never contacted the insurers for either the driver of the car in which the son was a passenger or the drivers of the other two cars involved in the collision. In December 1999, the son retained new counsel, who filed suit prior to the expiration of the statute of limitations, settled the liability claim for \$8,000, and collected a further \$2,135 in PIP coverage.

The committee found the respondent's conduct in Count Two constituted lack of diligence and inadequate communication in violation of Mass. R. Prof. C. 1.3 and 1.4 and in Count Three violated Mass. R. Prof. C. 1.3.

In Count Four, the committee found that both the father and son discharged the respondent by separate letters dated December 6, 1999 and asked that their files be forwarded to successor counsel. The respondent did not reply. Despite additional requests by letter and telephone call from successor counsel, the respondent did not forward the files until after a complaint was filed with Bar Counsel. Bar Counsel sent an investigator to the respondent's office on March 27, 2000. The respondent was not there, but the investigator left her card. The respondent telephoned the investigator that day and delivered the files on March 31.

The committee found that the respondent's failure to return the clients' files on request after being discharged, and until after a complaint was filed with the Office of Bar Counsel, violated Mass. R. Prof. C. 1.16(d) and (e).

In mitigation, the committee found that the respondent suffered from ongoing depression which affected his judgment and was a causal factor in his failure to register, his neglect of the automobile accident cases, and his failure to timely turn over the files.

In aggravation, the committee found that the respondent has prior discipline, specifically, he received an admonition for failure to cooperate with Bar Counsel. Admonition No. 94-87, 10 Mass. Att'y Disc. R 486 (1994). The committee also found that the respondent did not have malpractice insurance and had not, at the time of the committee hearing, compensated the father for the losses resulting from the respondent's negligence. At the time the appeal was argued, however, the parties agreed that respondent and the father had reached an agreement and had settled the dispute between them arising out of respondent's neglect.

The committee recommended a one-year suspension, of which eight months would be suspended upon compliance with certain conditions. A suspension of one year or less carries eligibility for automatic reinstatement at the end of the term. Bar Counsel appealed the recommended sanction, seeking a two-year suspension. An appeal panel of the Board recommended, and the full Board subsequently voted, that the respondent be suspended for six months but that his resumption of the practice of law be conditioned upon the allowance of a petition for reinstatement filed in accordance with Supreme Judicial Court Rule 4:01, §§18(4) and (5).

In the interim after the Board vote and before the Board filed an information with the Supreme Judicial Court for Suffolk County, Bar Counsel on May 27, 2003, filed a second petition for discipline against the respondent, along with a motion to vacate the Board's vote on the original petition and consolidate the two petitions for disposition. At the same time, the parties filed an answer of the respondent admitting to the allegations in the second petition and to the findings of the hearing committee and appeal panel in the first petition, and a stipulation of the parties as to the disposition of all pending matters.

The first count of the second petition concerned the respondent's representation of a client in the sale of his home in June 2000. On or about June 9, 2000, the respondent deposited a

check for \$8000 from the prospective buyer of the client's property to an account. This check represented the deposit on the sale of the real estate. The sale closed on June 29, 2000. The net proceeds of \$137,923.33 were remitted directly by the lender's counsel to the respondent's client.

The client, who suffers from mental illness, was assisted in the sale by his brother. For over fourteen months, and despite several requests from the brother commencing not later than June 2001, the respondent failed to remit the funds in his possession that were due the client. The respondent did not finally send the money to the client's brother until September 13, 2001, after the brother advised the respondent that he would be contacting Bar Counsel. On that date, the respondent remitted two checks, one in the amount of \$153.38, representing a utility bill adjustment, and the other in the amount of \$6440.55, representing the deposit plus interest less legal fees.

The respondent's failure to promptly deliver funds that the client was entitled to receive was in violation of Mass. R. Prof. C. 1.15(b) and 1.3.

The second count of the petition involved trust account violations. The respondent maintained an IOLTA account that he did not use after January 1996. The respondent also maintained two additional clients' accounts. Neither was an IOLTA account: one was a business checking account and the other was an interest-bearing money market account. Both accounts were active between 1995 and 2002.

The two non-IOLTA bank accounts were commingled accounts. These accounts were used by the respondent for the deposit and maintenance of earned fees, as well as for the deposit and maintenance of trust funds held both long-term and short-term for multiple clients. The respondent used these commingled accounts to disburse client funds. However, he failed to withdraw his legal fees from the accounts on a timely basis.

The respondent's record keeping for the two commingled accounts was generally inadequate. His check registers were incomplete, he did not maintain individual client ledgers, and he did not reconcile the accounts.

The respondent's commingling of client funds with personal or business funds, and his inadequate and improper record keeping, is conduct in violation of Canon Nine, DR 9 102(A),(B)(3), and Mass. R. Prof. C. 1.15(a). In addition, the respondent's failure to maintain pooled short-term client funds in an IOLTA account from 1995 until 2002, and his failure to maintain long-term client funds in individual trust accounts during this same time period, is conduct in violation of Canon Nine, DR 9 102(C), and Mass. R. Prof. C. 1.15(e).

The third count of the petition arose from the respondent's failure to cooperate with Bar Counsel. On or about September 19, 2001, Bar Counsel opened a disciplinary file and sent the respondent correspondence requiring that, within twenty days of the date of the letter, he provide a reply explaining the delay in disbursing the \$8000 deposit described in Count One of the petition.

The respondent failed to answer either the letter of September 19, 2001, or follow-up correspondence from Bar Counsel dated November 2, 2001. As a result, the Board of Bar Overseers at the request of Bar Counsel issued a subpoena to compel the respondent's appearance at the offices of the Board on November 20, 2001. The respondent failed to appear on November 20, 2001, as required by the subpoena. After further communication between Bar Counsel and the respondent's counsel, the respondent appeared before Bar Counsel on November 21, 2001.

The respondent's failure to cooperate with Bar Counsel's investigation necessitating the issuance of a subpoena to compel his appearance, and his initial failure to appear pursuant to the subpoena on the date required, is conduct in violation Supreme Judicial Court Rule 4:01, §

3, and Mass. R. Prof. C. 8.4(g).

The stipulation of the parties filed on May 27, 2003, contained the parties' joint recommendation for disposition of all matters pending in both petitions with a suspension of a year and a day. On June 9, 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 July 23, 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 filed with the Supreme Judicial Court.

Please direct all questions to webmaster@massbbo.org.

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