

IN RE: WILLIAM J. BAILEY

S.J.C. Judgment of Disbarment entered by Justice Ireland on November 17, 2003, with an effective date of December 17, 2003.¹

SUMMARY²

In December 2003, the respondent was disbarred based on his lack of compliance with Bar Counsel, Board of Bar Overseers and Supreme Judicial Court, as well as for his misconduct in the three matters described below.

In the first matter, the respondent was hired in June 2000, to perform legal work associated with an exchange of land between the client and the client's neighbor. The client paid the respondent \$1150 to do the work necessary to create and record new deeds and obtain a partial release of mortgage from the bank that held the client's mortgage.

In the two-year period after the client hired the respondent, the respondent failed to record the deeds or obtain the partial release. During this period, the client made numerous attempts to reach the respondent by telephone and e-mail. The respondent failed to respond to the vast majority of those contacts. When the respondent did speak to the client, he apologized and made excuses and assured the client he would do the work very soon.

In the spring of 2002, the client's neighbor attempted to get a mortgage on his property, and discovered that the deed had never been recorded. The client contacted the respondent, who again apologized and finally recorded the deed. Several months later, however, the client learned that the respondent had made several errors in the deed and had still not obtained the partial release of mortgage from the bank. In July 2002, the client gave up on the respondent and hired a new attorney to complete the work that the respondent had failed to do.

Successor counsel attempted to contact the respondent by telephone, e-mail and registered letters to obtain the client's file concerning the land exchange. Successor counsel also requested, on the client's instructions, the client's wills and health care proxies, which the respondent had written for the client in 1994. The respondent never responded to any of successor counsel's messages or letters. He never sent the client the land exchange file or the client's wills or health care proxies. The client spent \$735 in legal fees to obtain the mortgage release and correct the errors contained in the deed drafted by the respondent.

By failing to respond to the client's telephone calls, letters and e-mails, the respondent failed to keep him reasonably informed about the status of a matter, and failed to promptly comply for reasonable requests for information, in violation of Mass. R. Prof. C. 1.4 (a).

By failing to complete the legal work that the client hired him to do, the respondent violated Mass. R. Prof. C. 1.2(a), 1.3.

By effectively terminating his representation of the client, without protecting the client's interests, the respondent violated Mass. R. Prof. c. 1.16(d).

By failing to turn over to the client or to his attorney, the client's file, wills and health care proxies, the respondent violated Mass. R. Prof. C. 1.16(e).

In the second matter, the respondent was retained to initiate an action, pursuant to G.L. c. 93A, against the DeWolfe Company. The client's claim against DeWolfe arose from a real estate transaction in which DeWolfe had acted as agent for the client. The client gave the respondent a retainer in the amount of \$1000.

As of August 2001, the respondent had still not written a demand under c. 93A to DeWolfe. In August 2001, however, the respondent requested that the client give him an additional \$1000. The client gave the respondent a check for an additional \$1000. Between August and October 2001, the client attempted to contact the respondent by telephone and e-mail to discuss the status of the 93A letter. The respondent did not respond to the client's telephone calls and e-mails.

In early 2002, the respondent told the client that he had finalized and mailed the 93A letter. Several weeks thereafter, the respondent telephoned the client to tell him that DeWolfe had requested an extension of time to respond to the 93A letter. That was the last contact between the respondent and the client. The client does not know if the respondent even wrote the 93A letter, because he never saw it or any response from DeWolfe.

Through July 2002, the client attempted to contact the respondent by telephone and e-mail. The respondent did not respond to the client's telephone calls and e-mails. He never returned any portion of the client's retainer and never sent the client an invoice or statement showing the amount of time he had spent performing legal work for the client.

In August 2002, the client filed a grievance with Bar Counsel. The respondent failed to respond to any of Bar Counsel's letters concerning the client's grievance.

By failing to respond to telephone calls and e-mails, the respondent failed to keep his client reasonably informed about the status of a matter, and failed to comply promptly for reasonable requests for information, in violation of Mass. R. Prof. C. 1.4 (a).

By failing within a reasonable period of time to complete the legal work that the client engaged him to do, the respondent violated Mass. R. Prof. C. 1.2(a) and 1.3.

By failing to account for the client's retainer, and failing to return any unearned portion of the retainer, the respondent violated Mass. R. Prof. C. 1.15(b) and 1.6(d).

By abandoning the client's case without taking appropriate steps to protect the client's interests, the respondent violated Mass. R. Prof. C. 1.16(b) and (d).

The respondent charged the client a clearly excessive fee within the meaning of Mass. R. Prof. C. 1.5.

In the third matter, the client, an elderly woman, sought an attorney to assist her with estate planning for her and her husband. The client's son heard of the respondent through a friend, and set up an initial consultation for his mother with the respondent. The meeting took place on April 10, 2002, at her home. She understood from the respondent that there was no charge for this consultation.

The respondent and the client discussed the possibility of creating a trust. The respondent had trust documents with him, but the client was not ready to make a decision to create a trust. The respondent, however, requested that she give him a retainer of \$1600, and she thus gave the respondent a check in the amount of \$1600. The client also gave the respondent two deeds to real estate owned by her and her husband.

The respondent gave the client a business card that had a telephone number, but no office address. The day following the initial consultation, the client telephoned the respondent and left a message saying that she needed more time to decide what she wanted him to do with

respect to the estate planning. Several months later, the client attempted to contact the respondent at the telephone number he had given her. She tried to speak to him by telephone repeatedly during the months of August, September and October 2002, but was only able to reach an unidentified voice mailbox that played a recorded message stating that the voice mailbox was full. The client finally was able to leave a message for the respondent in October 2002.

A few weeks later, in late October or early November, the respondent finally telephoned the client and gave her a new telephone number. He said that he was busy setting up a new office in Harvard Square. During that conversation, the client told the respondent she was ready to proceed with creating the trust. The respondent promised to create estate planning documents and send them to the client the following week. He also said he would come to her house the following week, so that she could sign the trust papers. The client did not receive any documents from the respondent the following week or any time thereafter.

Between mid-November and mid-December, the client again attempted repeatedly to contact the respondent. She left a message saying that she intended to seek recourse against him from the Attorney General's Office. The respondent did not reply to her messages until after she mentioned the Attorney General's Office, when he telephoned the client and apologized for his delay and non-responsiveness. The client, however, had lost patience with the respondent. In the course of the telephone conversation, she told him that she wanted to terminate the relationship and that she expected him to refund her \$1600 retainer and return her two deeds. A few days later, the respondent sent the client a check in the amount of \$952, thus retaining \$647, although he had not earned any fees. The client was not satisfied with the amount of the check but cashed it because she was concerned that if she delayed, the check might bounce. As of the date of the petition, the respondent had not returned the two deeds to the client.

By failing to respond to the client's telephone calls, the respondent failed to keep her reasonably informed about the status of a matter, and failed to comply promptly for reasonable requests for information, in violation of Mass. R. Prof. C. 1.4(a).

By failing to complete the legal work that the client hired him to do, the respondent violated Mass. R. Prof. C. 1.2(a) and 1.3.

By retaining \$647 when he never produced any estate planning documents for the client, the respondent charged a clearly excessive fee, in violation of Mass. R. Prof. C. 1.5(a).

By failing to return the client's two deeds, the respondent violated Mass. R. Prof. C. 1.15(b) and 1.16(e).

The respondent was entirely unresponsive to the three clients from whom Bar Counsel has received complaints over a period of several years. He did not respond to any of the many letters sent to him by Bar Counsel from August 2002, through April 2003, failed to appear in response to Bar Counsel's subpoena, and failed to file any response to the Petition for Discipline. The respondent apparently is no longer at his registered address, but made no effort to provide Bar Counsel or the registration office of the Board of Bar Overseers with a new one. In addition, the respondent ignored the Supreme Judicial Court's Order of Administrative Suspension, making no effort whatsoever to comply with the terms therewith.

By failing to respond to numerous requests for information from Bar Counsel, and failing to comply with the subpoena issued by the Board of Bar Overseers, the respondent failed without good cause to cooperate with the Bar Counsel and with the Board of Bar Overseers, as provided in Supreme Judicial Court Rule 4:01, § 3, in violation of Mass. R. Prof. C. 8.1 (b) and 8.4 (d) and (g).

By failing to comply with the S.J.C. 's Order of Immediate Administrative Suspension, the

respondent engaged in conduct prejudicial to the administration of justice, in violation of Mass. R. Prof. C. 8.4(d); and engaged in conduct that adversely reflects upon his fitness to practice law, in violation of Mass. R. Prof. C. 8.4(h).

By failing to provide the registration division of the B.B.O. with his current office and home addresses, the respondent violated S.J.C. Rule 4.02(1) and Mass. R. Prof. C. 8.4(d) and (h).

Bar Counsel filed a petition for discipline in the current matters on July 7, 2003. The respondent failed to file an answer and the charges were deemed admitted pursuant to Section 3.15(e) of the Rules of the Board of Bar Overseers. The board voted to disbar the respondent on October 20, 2003. The Court so ordered on November 17, 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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