

IN RE: LARRY MICHAEL VAN HOOZER

S.J.C. Order of Term Suspension entered by Justice Cowin on June 3, 2004, with an effective date of July 3, 2004.¹

SUMMARY²

The respondent was suspended from the practice of law for three years arising out of misconduct charged in a four-count petition for discipline relating to his representation of a divorce client.

Count One of the petition alleged that the respondent was retained in or before 1999 to represent a wife in a divorce from her husband. In May 2000, a settlement agreement was signed by the parties, requiring, among other terms, the husband to make certain payments to the wife by July 19, 2000. On July 27, 2000, the husband paid the wife a sum representing his calculation of the monies that she was due pursuant to the settlement agreement. On August 3, 2000, the respondent filed suit on behalf of the wife against the husband, alleging damages to the wife as a result of the husband's breach of contract resulting from his purported failure to make timely payment pursuant to the settlement agreement. The husband filed an answer and counterclaim, alleging in the counterclaim that the wife had failed to account for personality as required by the settlement agreement.

In September 2000, and without the authorization of his client, the respondent filed a motion to amend the complaint, which was allowed, and an amended complaint. The amended complaint added the husband's sister and the husband's attorney as additional defendants. On November 27, 2000, the respondent filed a motion to remove the husband's attorney on the grounds of conflict of interest because he was now a defendant. The respondent then filed a further amended complaint on December 11, 2000. The second amended complaint alleged, in Count Two, that the husband, his sister and his attorney had libeled the wife, and in Count Three, that the husband and his attorney had committed the tort of abuse of process.

On February 13, 2001, after hearing, the Superior Court allowed motions filed by counsel for the husband to dismiss Counts Two and Three as to the husband and his attorney. The Court also denied the respondent's motion to remove the husband's counsel. The Court found that the respondent had failed to plead any facts as to either defendant that could serve as the basis for the libel or abuse of process claims. The Court also allowed a motion for attorney's fees, finding, among other matters, that the claims against the husband's counsel were brought in bad faith for the purpose of intimidating the attorney and forcing him to withdraw. The Court in addition allowed a motion to file a cross claim against the respondent.

In and after March 2001, the respondent ceased communicating with either his client or opposing counsel. In May or June of 2001, the respondent left Massachusetts. The wife for a time represented herself. On April 23, 2001, the wife pro se executed a stipulation of dismissal as to the claims against the husband's sister and paid \$2,277 in legal fees to counsel for the sister. The wife eventually retained new counsel, who in 2002 entered an appearance on her behalf in the ongoing Superior Court litigation.

The respondent's filing of an amended complaint that added additional defendants and counts without any factual basis for doing so, and that added the husband's attorney as an additional

defendant in bad faith to intimidate him and force him to withdraw, was conduct in violation of Mass. R. Prof. C. 1.1, 3.1, and 8.4(d),(h). The respondent's filing of the amended complaint without the authorization of his client was conduct in violation of Mass. R. Prof. C. 1.2(a) and 1.4(a),(b).

Count Two alleged that, in 1999 or 2000, and while the divorce case was still pending, the respondent borrowed \$11,000 from the wife in order to purchase a motor vehicle. The wife was not represented by other counsel in this transaction. The respondent did not fully disclose the terms of the loan to the client and did not transmit the terms of the loan in writing to the client. The respondent also did not advise the client to seek the advice of independent counsel and the client did not consent in writing to the transaction. The respondent to date has not repaid this loan. The respondent's conduct in entering into a business transaction with a client in the circumstances described above is conduct in violation of Mass. R. Prof. C. 1.8(a).

Count Three alleged that, in the same divorce matter, the respondent's client paid substantial legal fees to the respondent for representing her in the divorce matter in Probate Court and the civil suit against the husband. The client paid the respondent in cash and by check, but did not retain complete records and is unsure of the total amount paid. The respondent did not send the client itemized bills. After the client filed a complaint with Bar Counsel, Bar Counsel wrote the respondent two letters asking that he provide an accounting of his fees. The respondent did not reply. The respondent's failure to render a full accounting as to fees paid by the client is conduct in violation of Mass. R. Prof. C. 1.15(a),(b).

Count Four arose from the respondent's failure to cooperate with Bar Counsel. In March 2002, the respondent's client filed a complaint against him with Bar Counsel. The respondent by this date had been administratively suspended by the Supreme Judicial Court for failure to register with the Board of Bar Overseers. The respondent repeatedly failed to respond to letters from Bar Counsel requesting his reply to the client's complaints. The respondent's failure to reply to Bar Counsel's inquiries or otherwise to cooperate with Bar Counsel's investigation is conduct in violation of Mass. R. Prof. C. 8.4(g) and Supreme Judicial Court Rule 4:01, § 3.

Bar Counsel filed a petition for discipline against the respondent on December 9, 2003. The respondent failed to file an answer to the petition. By letter dated January 5, 2004, the Board of Bar Overseers notified the respondent that the allegations in the petition were deemed admitted and that he had waived his right to be heard in mitigation. The respondent's failure to cooperate in the disciplinary process was considered as a matter in aggravation.

On April 12, 2004, the Board voted to recommend to the Supreme Judicial Court that the respondent be suspended from the practice of law for three years. The Court so ordered on June 3, 2004.

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.