

IN RE: ANDREW R. FANARAS

S.J.C. Order of Term Suspension entered by Justice Sosman on August 27, 2004.<sup>1</sup>

SUMMARY<sup>2</sup>

The respondent was suspended for a year and a day for his misconduct in three matters, as well as for his failure to cooperate with Bar Counsel's investigation.

The first matter came to Bar Counsel's attention in June 2002, as the result of a notice of a dishonored check in the amount of \$500.00 from the bank in which the respondent's IOLTA account was maintained. The check was payable to the respondent as a legal fee drawn against a retainer.

The respondent regularly deposited personal funds into his IOLTA account and regularly issued checks from the account to pay his own personal and business expenses. His record keeping for his IOLTA account was inadequate. His check register was not current and he did not regularly reconcile his accounts. The respondent's commingling of personal funds in his IOLTA account and his use of the account to pay his own personal and business expenses violated Mass. R. Prof. C. 1.15(a) and (d). His failure to maintain adequate records of his receipt and maintenance of client funds violated Mass. R. Prof. C. 1.15 (a).

In the second matter, the respondent was retained in or around June 2001 to advise a client with regard to her talent agency business, to represent her in collections matters, and to assist her in preparing a management contract between her and a group of musicians. The client discharged the respondent in or around August 2002 and requested, among other issues, that he return her legal files. The respondent did not return the files and the client filed a complaint with the Bar Counsel in May 2003. The respondent failed to return the files until April 14, 2004, after Bar Counsel filed a petition for discipline. His failure to timely return the client's files upon request after he was discharged as her attorney violated Mass. R. Prof. C. 1.16 (e).

In the third matter, the president of company retained the respondent to perform a trademark search and to file a trademark application on behalf of the company. The respondent was paid \$350.00 for his services on or about May 23, 2001. The respondent failed to communicate with the client, never filed the trademark registration on behalf of the company and did not refund the fee paid until April 23, 2004, after the client filed a complaint with Bar Counsel and Bar Counsel filed a petition for discipline.

The respondent's failure to file the trademark application on behalf of his client, and his failure to communicate with his client, violated Mass. R. Prof. C. 1.2(a), 1.3 and 1.4. His failure to timely refund his unearned fee violated Mass. R. Prof. C. 1.16 (d)

The respondent also failed to respond to Bar Counsel's inquiries regarding these matters, resulting in the issuance of a subpoena for his appearance at the Office of Bar Counsel on July 1, 2003. The respondent failed to appear pursuant to the subpoena. The respondent's conduct was in violation of Supreme Judicial Court rule 4:01 § 3, and Mass. R. Prof. C. 8.4(g).

In mitigation, the respondent was suffering from depression and alcoholism at the time of his

failure to respond to the clients' inquiries and to cooperate with Bar Counsel's investigation. He sought treatment for his depression and began attending meetings with Alcoholics Anonymous.

The respondent was admitted to practice in Massachusetts on January 8, 1998. He was administratively suspended on May 13, 2003, for failure to register with the Board of Bar Overseers and was not reinstated.

Bar Counsel filed a petition for discipline on October 9, 2003. The respondent subsequently stipulated to the facts and disciplinary violations as alleged in the petition for discipline on June 14, 2004, and agreed to a suspension for one year and a day, retroactive to April 23, 2004. On July 12, 2004, the Board of Bar Overseers voted to accept the parties' stipulation and recommendation for discipline, and on August 27, 2004, the Court so ordered.

<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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