

IN RE: ROBERT J. DELANEY

S.J.C. Order of Indefinite Suspension entered by Justice Ireland on May 27, 2005.¹

SUMMARY²

Bar Counsel filed a three-count petition for discipline against the respondent on January 10, 2005. On May 4, 2005, Bar Counsel and the respondent submitted to the Board of Bar Overseers Respondent's Answer to Petition for Discipline and Stipulation of the Parties. The respondent admitted the truth of the allegations of the petition, as well as the rules violations charged. The parties stipulated that the appropriate discipline for the respondent's misconduct described below is an indefinite suspension.

Count One: In January of 2001, the respondent handled the purchase of a newly constructed house as settlement agent for the lender. Because the landscaping and driveway had not been completed, the buyers and seller executed an escrow agreement providing that \$3,000 would be withheld from the sale proceeds pending completion of the work. The respondent agreed to act as escrow agent and to hold and release the funds as provided in the escrow agreement.

Beginning in February of 2001, the respondent intentionally used without authority over \$2,500 of the escrow funds for his own personal or unrelated business expenses. In the spring of 2001, the seller completed the landscaping and the driveway. Over the next several months, the buyers and the seller telephoned the respondent periodically to request the release of the escrow funds to the seller. The respondent did not answer any of these calls and did not pay any of the escrowed funds to the seller.

The respondent's conduct in knowingly misusing the escrow funds was in violation of Mass. R. Prof. C. 1.15(a), 1.15(b), 8.4(c) and 8.4(h). His failure to promptly deliver the escrow funds to the seller upon notice that the seller was entitled to the funds was in violation of Mass. R. Prof. C. 1.2(a), 1.3, 1.15(b) and 8.4(h).

Count Two: On or about May 3, 2001, the respondent abandoned his law office and law practice. He had no office staff and made no arrangements to have his incoming mail or telephone calls or messages reviewed by anyone. He made no arrangements to have his mail forwarded until late July of 2001. He made no arrangements to have his telephone calls forwarded to another number, and his office telephone service was disconnected by the telephone company by late August of 2001.

When he abandoned his law practice, the respondent referred some of his clients to other attorneys and made their files available. He was, however, representing at least ten clients on personal injury claims that he abandoned. He did not inform these clients that he was withdrawing as their counsel, did not make their files available, did not refer them to or advise them to seek other attorneys and did not make any other effort to protect their interests.

When the respondent abandoned his law office, he left a large number of open and closed files and documents in file drawers and cabinets and on desks and tables. The respondent did not make any of these files available to the clients and former clients, did not inform them

that he was abandoning his office and his practice and did not maintain the confidentiality of information in these files and documents from his landlord or others who might take possession of the premises. The respondent also abandoned a check book, check register and statements on an IOLTA account in his name.

The respondent's abandonment of his law practice and resulting neglect of a number of clients and pending matters was in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 8.4(h). His failure to notify clients with pending matters of his withdrawal as their counsel, his failure to make their files available to them, his failure to refer them to or advise them to seek other attorneys and his failure to make any other effort to protect their interests were in violation Mass. R. Prof. C. 1.4(a) and (b), 1.16(d) and 8.4(h). His abandonment of closed files and records concerning his IOLTA account and his failure to make any of the closed files available to clients and to inform them that he was abandoning his office and his practice were in violation of Mass. R. Prof. C. 1.2(a), 1.3, 1.15(a), 1.16(d) and 8.4(h). His failure to maintain the confidentiality of client information left in his office when he abandoned his practice was in violation of Mass. R. Prof. C. 1.6(a) and 8.4(h).

Count Three: The respondent failed without good cause to cooperate with Bar Counsel's investigation of the matter involving the closing escrow, necessitating the issuance of a subpoena to which the respondent did not respond. On June 3, 2002, the respondent was administratively suspended by Order of the Supreme Judicial Court for failure to register with and pay registration fees to the Board, pursuant to S.J.C. Rule 4:03, §§ 2 and 3. The respondent was not reinstated within thirty days of the order of administrative suspension and did not comply with the order in any respect.

The respondent's failure without good cause to cooperate with Bar Counsel's investigation was in violation of Mass. R. Prof. C. 8.1(b), 8.4(d), 8.4(g) and 8.4(h), and S.J.C. Rule 4:01, § 3. His failure without good cause to comply with the Court's Order of administrative suspension was in violation of Mass. R. Prof. C. 8.4(d) and 8.4(h), and S.J.C. Rules 4:01, § 17 and 4:03, § 3.

In mitigation, the respondent made restitution with a payment of \$3,000 to the seller entitled to the escrow funds as described in Count One. In mitigation of the respondent's abandonment of his practice but not of his intentional misuse of clients' funds, the respondent was suffering from severe depression.

In aggravation, the respondent failed to file a timely answer to the petition for discipline. In mitigation, however, the respondent was then still suffering from depression, for which he remains in treatment.

On May 9, 2005, the Board voted to accept the stipulation of the parties and the joint recommendation that the respondent be indefinitely suspended. On May 27, 2005, the Supreme Judicial Court for Suffolk County (Ireland, J.) entered an order of indefinite suspension, effective immediately.

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.