

IN RE: ROBERT EDWARD DUERR

S.J.C. Judgment of Disbarment entered by Justice Cowin on August 3, 2005.¹

SUMMARY²

The respondent was disbarred for misconduct in a number of unrelated client matters involving a pattern of serious neglect; misrepresentations to clients, Bar Counsel and a court; conversion of a client's advance for costs; and engaging in the unauthorized practice of law after an administrative suspension. The respondent also failed to cooperate with Bar Counsel's investigations of five grievances and was defaulted for failure to respond to a Petition For Discipline.

In the first matter, in 2001 and early 2002, the respondent represented a married couple in three lawsuits involving their real estate business and represented the wife in probating her mother's estate. The respondent neglected all four matters. He failed to oppose a summary judgment motion in a dispute with a construction subcontractor and failed to appear at the motion hearing, which resulted in the entry of summary judgment. He failed to appear at a pre-trial conciliation session on a case seeking forfeiture of a buyer's deposit, and his client's case was dismissed. He failed to file any answer or responsive pleading in a case seeking specific performance of the sale of a parcel of real estate, resulting in the entry of a default. He failed to serve and publish the citation on the probate matter, and his client's appointment as temporary executrix expired.

The respondent failed to respond to several inquiries of his clients concerning the status of the cases in late 2001. In January of 2002, the clients retained another attorney, who obtained relief from the summary judgment and the default and obtained the appointment of the wife as executrix of her mother's estate. The clients decided not to pursue the case involving the real estate deposit.

The respondent's conduct in failing to oppose the motion for summary judgment in the subcontractor matter and in failing to appear at the hearing on the motion, thereby causing a summary judgment to enter; and in failing to appear at the pre-trial conference and conciliation session in the real estate deposit matter, thereby causing the case to be dismissed; was in violation of Mass. R. Prof. C. 1.1 (competent representation), 1.2(a) (lawyer shall seek the lawful objectives of the client), 1.3 (reasonable diligence and promptness), 8.4(d) (conduct prejudicial to the administration of justice) and 8.4(h) (conduct adversely reflecting on fitness to practice law). His conduct in failing to file an answer in the specific performance case, thereby causing a default to enter; and in failing to serve and publish the citation, thereby causing a delay in probating the estate; was in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 8.4(h). His conduct in failing to maintain reasonable communications with the clients concerning the status of their cases was in violation of Mass. R. Prof. C. 1.4(a) (lawyer shall keep client reasonably informed about the status of a matter) and 1.4(b) (lawyer shall explain matter to the extent reasonably necessary to permit the client to make informed decisions).

In another matter, in December of 2001, a client retained the respondent for a bankruptcy and gave him a \$220 check for the filing fee. The respondent converted the client's funds for his own purposes. The respondent never filed a bankruptcy petition for the client, although he

misrepresented to her twice that he had done so. In July of 2003, in response to the client's grievance, the respondent intentionally misrepresented under oath to Bar Counsel that the client's funds were being held in an IOLTA account and would be returned to her. In September of 2003, the respondent intentionally misrepresented to the client that he would return her funds. The respondent has not returned the funds to the client.

The respondent's conduct in intentionally misusing the client's funds for his personal and business use without authority, with actual deprivation resulting and continuing, was in violation of Mass. R. Prof. C. 1.15(a) [as in effect through June 30, 2004] (lawyer shall safeguard clients' funds), 1.15(b) [as in effect through June 30, 2004] (lawyer shall promptly deliver any funds client is entitled to receive), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and 8.4(h). His conduct in intentionally misrepresenting to the client that he had filed her petition for bankruptcy and that he would return her \$220 was in violation of Mass. R. Prof. C. 8.4(c) and 8.4(h). His conduct in intentionally misrepresenting to Bar Counsel under oath that the client's funds had been and were being maintained intact in his IOLTA account was in violation of Mass. R. Prof. C. 8.1(a) (false statement of material fact in connection with bar discipline matter), 8.4(c), 8.4(d) and 8.4(h).

In a third matter, the client agreed in November of 2002, to represent a couple's son on a criminal appeal and a motor vehicle citation, and received a retainer from them. In December, the respondent was administratively suspended for failure to pay registration fees. He was not reinstated within 30 days and became subject to the obligations of S.J.C. Rule 4:01, § 17. He failed without good cause to comply with the suspension order and with § 17 in any respect. He did not inform the client of his suspension, withdraw from the representation or return the unearned portion of the retainer.

The respondent neglected both matters. He failed to appear at a court hearing on the citation matter and a fine of \$100 was assessed. He intentionally misrepresented to the client's mother that he had filed for a continuance and would take care of it. The court then assessed a late fee, and the parents paid the fine and late fee.

On the criminal appeal, the respondent filed an appearance in the trial court in May of 2003 but did not obtain the transcripts and did not file an appeal. He intentionally misrepresented to the parents that he had filed the appeal. The parents paid the respondent an additional \$500 in May of 2003, which the respondent obtained under false pretenses, since he was administratively suspended from practice at the time. The respondent failed to respond to several inquiries from the parents about the status of the appeal. In September of 2003, they retained another attorney to take over the appeal. The respondent failed to respond to the parents' requests that he forward his file to successor counsel.

In 2004, the client's mother filed a small claims action against the respondent for the return of her fee payments and obtained a default judgment for \$2,000 plus interest and costs. The respondent failed to appear for a payment review in October of 2004, and a capias issued. On December 14, 2004, the respondent was brought to court on the capias and knowingly testified falsely under oath that he had been reinstated to the practice of law. The respondent was ordered to pay the judgment by February 14, 2005. He only paid the mother \$200 and did not appear for further review on February 14, 2005. A second capias was issued.

The respondent's failure without good cause to comply with the Court's order of administrative suspension was in violation of Mass. R. Prof. C. 3.4(c) (lawyer shall not knowingly disobey an obligation under the rules of a tribunal), 8.4(d) and 8.4(h), and S.J.C. Rules 4:01, § 17 (actions required of lawyer upon loss of license to practice), and 4:03, § 3 (requirements of Rule 4:01 § 17 apply to lawyer suspended for failure to pay registration fees and not reinstated within 30 days). His conduct in continuing to practice law in the Commonwealth of Massachusetts by representing the client after the order of administrative suspension was in violation of Mass. R. Prof. C. 3.4(c), 5.5(a) (lawyer shall not practice law in violation of bar regulation rules), 8.4(c), 8.4(d) and 8.4(h), and S.J.C. Rule 4:01, §§ 3 and 17.

His conduct in failing to inform the client that he was suspended, failing to withdraw from the representation, failing to make the file available to him and failing to return any unearned portion of the retainer in January of 2003 was in violation of Mass. R. Prof. C. 1.16(a)(1) (lawyer shall withdraw if representation with result in violation of rules of professional conduct or other law), 3.4(c), 8.4(d) and 8.4(h), and S.J.C. Rule 4:01, §§ 3 and 17.

The respondent's conduct in fraudulently obtaining a fee payment of \$500 from the parents in May of 2003 was in violation of Mass. R. Prof. C. 3.4(c), 8.4(c), 8.4(d) and 8.4(h), and S.J.C. Rule 4:01, §§ 3 and 17(3) (after entry of order of suspension, lawyer shall not accept any new retainers). His conduct in failing to obtain the trial transcripts, to pursue the filing of the client's appeal and to pursue the imposition of the fine was in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 8.4(h). His conduct in failing to appear at the hearing on the citation was in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3, 8.4(d) and 8.4(h). His conduct in intentionally misrepresenting to the parents that he had filed the criminal appeal and that he had filed for a continuance of the citation hearing and would take care of the matter was in violation of Mass. R. Prof. C. 8.4(c) and 8.4(h). His conduct in failing to maintain reasonable communications with the client and his parents concerning the status of the appeal was in violation of Mass. R. Prof. C. 1.4(a) and 1.4(b). His conduct in failing to withdraw from the representation of the client, to provide the parents with the requested documents, to refund any unearned fees and to account for his fee upon termination in September of 2003 was in violation of Mass. R. Prof. C. 1.15(b) [as in effect through June 30, 2004] (upon request, lawyer shall render full accounting of clients' funds held), 1.16(a)(3) (lawyer shall withdraw from representation upon discharge), 1.16(d) (upon termination, lawyer shall surrender any papers and property to which the client is entitled, and refund any advance payment of an unearned fee) and 1.16(e) (lawyer shall make available within reasonable time any requested client files). His conduct in intentionally misrepresenting to the court under oath that he had been reinstated to the practice of law was in violation of Mass. R. Prof. C. 3.3(a)(1) (lawyer shall not make a false statement of material fact to a tribunal), 8.4(c), 8.4(d) and 8.4(h). His conduct in failing to pay the small claims judgment and in failing to appear in court on October 15, 2004, and February 14, 2005, thereby necessitating the issuance of a *capias*, was in violation of Mass. R. Prof. C. 3.4(c), 8.4(d) and 8.4(h).

After his administrative suspension in December of 2002, the respondent held himself out as a lawyer and engaged in the unauthorized practice of law. He began practicing from his home in Salem and distributed new business cards through a local merchant. From January through September of 2003, he represented a father in a visitation matter in the Middlesex Probate Court. He appeared before the court on the father's behalf and executed a stipulation and agreement for modification as the father's attorney.

In February of 2004, the respondent gave his business card to a woman and intentionally misrepresented to her that he was a lawyer. She retained the respondent to represent her in a personal bankruptcy and paid him a total of \$609 in legal and filing fees. Since the respondent was administratively suspended at the time, he fraudulently obtained these funds on false pretenses. The client retained another lawyer to represent her in May of 2004, when she learned that the respondent had been suspended from practice.

In July of 2004, the respondent received a \$500 retainer under false pretenses to represent a man in a child support modification. The respondent misrepresented to the client that his case was scheduled for a hearing on at least two occasions. When the client learned in November of 2004 that the respondent had been suspended, the respondent returned his file and his \$500 retainer.

The respondent's conduct in holding himself out as a lawyer, distributing business cards holding him out as a lawyer and continuing to practice law in the Commonwealth of Massachusetts after the order of administrative suspension was in violation of Mass. R. Prof. C. 3.4(c), 5.5(a), 7.1 (lawyer shall not make false or misleading communications about himself or his services), 8.4(c), 8.4(d) and 8.4(h), and S.J.C. Rule 4:01, §§ 3 and 17. His conduct in

intentionally misrepresenting to the bankruptcy client that he was a lawyer and in intentionally misrepresenting to the child support client that his case had been scheduled for hearings was in violation of Mass. R. Prof. C. 8.4(c) and 8.4(h). The respondent's conduct in fraudulently obtaining fee payments from the bankruptcy and child support clients and was in violation of Mass. R. Prof. C. 3.4(c), 8.4(c), 8.4(d) and 8.4(h), and S.J.C. Rule 4:01, §§ 3 and 17(3).

The respondent failed to cooperate with Bar Counsel's investigation of all five grievances involved in this proceeding. Two subpoenas were issued by the Board requiring his testimony. On July 31, 2003, the respondent appeared in response to one of the subpoenas and knowingly testified falsely under oath that he had closed his law practice and had not been practicing law since December of 2002.

The respondent's conduct in failing without good cause to cooperate with Bar Counsel's investigations 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 conduct in intentionally misrepresenting to Bar Counsel under oath that he had closed his law practice and was not practicing law was in violation of Mass. R. Prof. C. 8.1(a), 8.4(c), 8.4(d) and 8.4(h).

Bar Counsel filed and served a Petition For Discipline on April 4, 2005. As a further matter in aggravation, the respondent failed to file an answer to the petition, was defaulted and failed to take any action for relief from the default.

On June 20, 2005, the Board of Bar Overseers voted unanimously to recommend that the respondent be disbarred forthwith for his misconduct. On July 27, 2005, a hearing was held before the Supreme Judicial Court for Suffolk County (Cowin, J.), at which the respondent failed to appear. On August 3, 2005, the Court entered an order disbaring the respondent from the practice of law, effective immediately, and striking his name from the Roll of Attorneys.

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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