

IN RE: DOUGLAS M. CALLAGHAN

SUMMARY¹

The respondent was disbarred for two unrelated matters involving neglect, withdrawal from representation without protecting his clients' interests, and commingling and converting unearned portions of retainers. In addition, the respondent failed to respond to bar counsel's requests for information, resulting in his administrative suspension from the practice of law.

In October 2003, two different clients retained the respondent to represent them in unrelated domestic relations matters. The respondent signed fee agreements with each client that provided for retainers "on account" and refunding the unearned balance of the retainer to the client at the end of the representation or termination of the respondent's services.

Each client gave the respondent a \$2,000.00 retainer. The respondent converted at least \$3,875.00 of these funds to his own use with the intent to deprive the clients of their funds at least temporarily, and with actual deprivation resulting.

The respondent filed his appearance on behalf of one client and attended one hearing in the probate court for the other. The respondent took no further action of substance in either matter.

On July 12, 2004, the respondent wrote to the clients that he was closing his law practice and sent each client their files. The respondent advised the clients that he needed several weeks to return the unused portions of their retainers. The respondent never provided an accounting of his use of the funds and never returned the unearned portion of the retainers.

Neither client had prior notice that the respondent intended to withdraw from their case, nor did the respondent give them his new address. The respondent also did not notify the registration division of the Board of Bar Overseers of his new address. In addition, the respondent failed to respond to the clients' requests for information about the return of the balance of their retainers.

On August 23, 2004, bar counsel received a request for investigation of the respondent's conduct. Between September 3, 2004 and December 3, 2004, bar counsel sent at least two letters by first class mail and/or by certified mail return receipt requested, to the respondent at his home and office address listed with the registration division of the Board of Bar Overseers asking that the respondent respond to the allegations of misconduct. The letters were returned to bar counsel with notices that the respondent had moved and left no forwarding address.

On December 21, 2004, the respondent was administratively suspended from the practice of law pursuant to Supreme Judicial Court Rule 4:01, § 3(2), for his failure without good cause to respond to requests for information made by bar counsel. Matter of Callaghan, S.J.C. No. BD-2004-098. Pursuant to S.J.C. Rule 4:01, § 3(3), and the terms of the order of suspension, the respondent was required thirty days after the date of his administrative suspension to comply with S.J.C. Rule 4:01, § 17, including, but not limited to, closing his IOLTA account, refunding to his clients all unearned fees, and providing a current street address to bar counsel. The respondent failed to comply with the provisions of S.J.C. Rule 4:01, § 17.

The respondent's failure to seek his clients' lawful objectives and his lack of diligence in their matters violated Mass. R. Prof. C. 1.2(a) (lawyer shall seek the lawful objectives of his client through reasonably available means) and Mass. R. Prof. C. 1.3 (lawyer shall act with reasonable diligence in representing a client). The respondent's failure to advise his clients of an address where he could be contacted and his failure to respond to his clients' requests for information violated Mass. R. Prof. C. 1.4(a) and (b) (lawyer shall keep a client reasonably informed of the status of their matter and explain the matter to a client so that the client can make informed decisions regarding the representation). The respondent's withdrawing from representation without protecting his clients' interests and without refunding the unearned portion of their fees violated Mass. R. Prof. C. 1.16(d) (upon termination of representation, a lawyer shall take steps to protect his clients interests and shall refund any advance payment of a fee that has not been earned).

The respondent commingled client and personal funds, failed to account for the retainers, and converted the unearned portion of the retainers to his own use, in violation of Mass. R. Prof. C. 1.15(a) and (b), as in effect prior to July 1, 2004, (lawyer shall hold property of clients separate from the lawyer's own property, maintain complete records of the receipt, maintenance, and disposition of such funds, promptly deliver to the client his funds, and shall promptly render and full accounting of such funds) and Mass. R. Prof. C. 8.4 (c) and (h) (conduct involving dishonestly, fraud, deceit or misrepresentation and conduct adversely reflecting on his fitness to practice law). The respondent's failure to return the unearned portion of the retainers was also in violation of the order of administrative suspension and S.J.C. Rule 4:01, § 17, and therefore violated Mass. R. Prof. C. 3.4(c) (lawyer shall not knowingly disobey an obligation under the rule of a tribunal) and Mass. R. Prof. C. 8.4 (d) and (h) (conduct prejudicial to the administration of justice). Finally, the respondent's failure without good cause to respond to bar counsel's requests for information was in violation of S.J.C. Rule 4:01, § 17, and therefore violated Mass. R. Prof. C. 8.1(b) (lawyer shall not knowingly fail to respond to a lawful demand for information from bar counsel) and Mass. R. Prof. C. 8.4(d) and (g) (lawyer shall not fail without good cause to cooperate with bar counsel).

Bar counsel filed and served on the respondent a petition for discipline on June 20, 2005. As a further matter in aggravation, the respondent failed to file an answer to the petition, and was therefore defaulted.

On October 17, 2005, the Board of Bar Overseers voted unanimously to recommend that the respondent be disbarred for his misconduct. On December 8, 2005, a hearing was held before the Supreme Judicial Court for Suffolk County (Cowin, J.), at which the respondent failed to appear. On December 16, 2005, a judgment of disbarment entered, effective immediately.

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

Please direct all questions to webmaster@massbbo.org.

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