IN RE: MICHAEL J. CONLEY

S.J.C. Order of Disbarment entered by Justice Cordy on January 30, 2009.[1]

<u>MEMORANDUM OF DECISION</u>

On November 3, 2008, the Board of Bar Overseers (board) filed an Information with this court regarding the character and conduct of Michael J. Conley, Esquire, recommending his disbarment. Having reviewed the Information and the record of disciplinary proceedings below, I am entering an order that Michael J. Conley be disbarred forthwith.

Bar counsel filed a petition for discipline on May 6, 2008, which was amended later that month. As amended, it alleges six counts of misconduct by the respondent, Michael J. Conley. Briefly, those counts allege that:

1. Conley failed to comply with the requirements of administrative suspension orders as required by SJC Rule 4:01, § 17, as amended, 426 Mass. 1301 (1997); and in violation of Mass. R. Prof. C. 3.4 (c) , 426 Mass. 1389 (1998); and 8.4 (d) , 426 Mass. 1429 (1998); and abandoned client files without notifying those clients how to obtain their files in violation of Mass. R. Prof. C. 1.6 (a), 426 Mass. 1322 (1998); and 1.15 (b) (3), 426 Mass. 1363 (1998) [BBO Pet. for Disc., p. 2];
2. As an administrator or executor of several estates, he failed to timely notify clients that he had received at least $766,414.00 on their behalf in violation of Mass. R. Prof. C. 1.4 (a), 1.4 (b), 426 Mass. 1314 (1998); 1.15 (b) , and 1.15 (c); converted at least $532,000.00 for his personal use in violation of Mass. R. Prof. C. 8.4 (c), and failed to carry out his duties as an estate administrator and executor in violation of Mass. R. Prof. C. 1.1, 426 Mass. 1308 (1998); 1.2 (a), 426 Mass 1310 (1998); and 1.3, 426 Mass. 1313 (1998).
3. Conley transferred a client's property to a trust without adequately informing the client of the transfer in violation of Mass. R. Prof. C. 1.8 (a), mortgaged the property without the client's consent and converted the resulting $20,000 loan, later sold the property, and converted about $238,000 from the closing proceeds in violation of Mass. R. Prof. C. 1.15 (a), 1. 15 (b) (3), and 8.4 (c)
4. On behalf of his mother's estate, Conley filed a wrongful death suit against the administratrix of an estate of which Conley was a named coadministrator, thereby creating an impermissible and unwaivable conflict with the interests of his clients in violation of Mass. R. Prof. C. 1.7 (a) and (b), as amended, 426 Mass. 1330 (2000).
5. Conley drew eight checks on his IOLTA accounts that were returned for insufficient funds, failed to respond to bar counsel requests for explanations of his handling of client funds in violation of SJC Rule 4:01, § 3 (1) (b); and Mass. R. Prof. C. 3.4 (c), 8.1 (b), 426 Mass. 1427 (1998); and 8.4 (g) , and failed to respond to a subpoena duces tecum issued by bar counsel in violation of SJC Rule 4:01, § 3 (1) (a), and Mass. R. Prof. C. 3.4 (c), 8.1 (b), 8.4 (d), and 8.4 (g)
6. In the Lynn District Court, he pleaded guilty on March 10, 2008, to two counts of violating an abuse prevention order as set forth in G. L. c. 209A, § 7, and then failed to notify bar counsel that he had been convicted of a "serious crime" as required by SJC Rule 4:01, § 12 (8), as appearing in 425 Mass. 1314 (1997).

Conley was given notice of the petition for discipline and was directed to respond to it by

June 19, 2008. Conley did not respond and a default judgment entered, the facts being deemed admitted pursuant to SJC Rule 4:01, § 8 (3). The board then sent Conley a letter advising him of his right to move for relief from default for good cause, and advising him of his right to file a brief before the board on the disposition of his case. Again, Conley did not respond within the required time limits.

Conley subsequently filed a motion to remove the default judgment and for leave to file a responsive pleading. That motion was allowed by the vice chair of the board on September 8, 2008, and Conley was ordered to file an answer to the petition on or before the close of business on October 1, 2008. No answer was filed. On October 13, 2008, Conley filed a motion to dismiss (but no answer), which was denied on October 16, 2008. On October 20, 2008, the board voted to file the Information with the Supreme Judicial Court recommending that Conley be disbarred.

After the Information was filed in this court, a hearing was scheduled for December 11, 2008. Conley, now represented by Attorney Andrew W. Pasquina, filed a motion to continue the hearing to December 19, 2008, which was allowed.[2] On December 18, Attorney Pasquina filed a motion to remand the complaint to the board for a hearing. The motion was not accompanied by an affidavit from Conley. A hearing on the Information and the motion was then scheduled for January 15, 2009, at 10 A.M. The respondent was given notice but failed to attend. His attorney was present, but was unable to explain respondent's absence.

I decline to grant the relief requested by the respondent. Conley has made no showing, through affidavit or otherwise, that any extenuating circumstances caused his failures to file timely responses (or any responses at all) during the course of the disciplinary proceedings, or that there is any sound basis to conclude that a defense exists to the underlying charges. The respondent has been afforded ample due process, of which he has not taken advantage. He has "a long history of failure to respond," and "has failed to show excusable neglect for those failures." In the Matter of Steven L. Winniman, No. BD-2007-023, slip op. at 3 (Mass., June. 23, 2008). The motion to remand the complaint for a hearing by the board is denied.

I further accept the recommendation of the board and ORDER that a judgment disbarring the respondent from the practice of law enter forthwith.

FOOTNOTES:

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

[2] The hearing scheduled for December 19, 2008, was cancelled.