

IN RE: ROBERT MICHAEL FUSTER, SR.<sup>1</sup>

S.J.C. Order of Term Suspension entered by Justice Cordy on February 13, 2008, with an effective date of April 14, 2008.<sup>2</sup>

(S.J.C. Judgment of Reinstatement entered by Justice Cordy on February 2, 2010.)

SUMMARY<sup>3</sup>

This matter came before the Supreme Judicial Court for Suffolk County on a stipulated recommendation for suspension based on the following misconduct.

In three cases between 1998 and 2004, the respondent negligently commingled and misused client funds with subsequent restitution of all the funds. Two of the clients sustained no deprivation. In the third case, the client was deprived of her funds for a significant period before restitution was made. The respondent failed to inform the clients of the dissipation of their funds and failed to account adequately for all their funds. The respondent also failed to maintain or assure his employees' maintenance of complete records of funds in his IOLTA account. Further, the respondent knowingly failed without good cause to respond promptly in bar counsel's investigation, resulting in his administrative suspension.

The respondent's failure to provide competent representation and act with reasonable diligence in the three cases violated Mass. R. Prof. C. 1.1 and 1.3, and his failure to communicate adequately with the clients violated Mass. R. Prof. C. 1.4(a) and (b). The respondent's failure to segregate and safeguard the clients' funds, account adequately for the funds, and maintain adequate IOLTA records violated Mass. R. Prof. C. 1.15(a), (b) and (d) through June 30, 2004, and 1.15(c) and (d)(1) thereafter. The respondent's failure to supervise his employees adequately violated Mass. R. Prof. C. 5.1(a) and (b) and 5.3(a) and (b). His knowing failure without good cause to cooperate with bar counsel violated Mass. R. Prof. C. 3.4(c) and 8.1(b) and (g) as well as S.J.C. Rule 4:01, § 3(1).

In aggravation, the respondent had a history of discipline consisting of a 2002 public reprimand for conflict of interest, 18 Mass. Att'y Disc. R. 222 (2002); a 1990 private reprimand for signing a client's name to an offer without authority, 6 Mass. Att'y Disc. R. 399 (1990); and a 1983 informal admonition for neglect. In addition, the respondent had extensive experience in the practice of law at the time of his misconduct; he engaged in multiple disciplinary violations; and his misconduct spanned over six years, during which time he was under investigation for the conduct eventually resulting in his public reprimand. In mitigation, the respondent had serious illnesses during the period in issue; his illnesses resulted in ongoing treatment with surgery and radiation therapy and absences from his office; and the distractions of his illnesses contributed to his failure to supervise his employees' maintenance of his IOLTA records and his negligent misuse of client funds.

Bar counsel commenced disciplinary proceedings against the respondent by a petition for discipline filed and served in March 2007. In December 2007, prior to hearing on the petition, the parties submitted a supplemental answer by the respondent and a stipulated recommendation that the respondent be suspended for eighteen months for his admitted misconduct. The Board of Bar Overseers voted to accept the stipulation and recommendation. On February 13, 2008, the Court entered an order for the respondent's eighteen-month suspension effective April 14, 2008.

FOOTNOTES:

<sup>1</sup> See 18 Mass. Att'y Disc. R. 222 (2002) and 6 Mass. Att'y Disc. R. 399 (1990) for prior proceedings.

<sup>2</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>3</sup> Compiled by the Board of Bar Overseers based on the record before the Supreme Judicial Court.

Please direct all questions to [webmaster@massbbo.org](mailto:webmaster@massbbo.org).

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