

IN RE: THOMAS G. POLIMENI

S.J.C. Order of Term Suspension entered by Justice Ireland on May 11, 2009.¹

SUMMARY²

This attorney discipline matter involves misconduct with respect to three separate clients, failure to maintain an IOLTA account in compliance with Mass. R. Prof. C. 1.15, and failure to cooperate with bar counsel's investigation.

In the first matter, the respondent represented a woman in a personal injury claim against a town and a restaurant. The respondent was retained on July 24, 2002, and filed suit on June 7, 2005. During the three years prior to filing suit, the respondent often failed to respond to his client's e-mails and calls requesting updates.

On June 27, 2005, the town filed an answer with the court and sent the respondent interrogatories and a request for the production of documents. The respondent obtained answers from his client to the interrogatories, but failed to finalize them for his client or forward them to the town. The respondent also failed to produce any documents on behalf of his client to the town.

On August 24, 2005, the restaurant filed its answer with the court and sent the respondent interrogatories and a request for the production of documents. The respondent never sent the town's discovery requests to his client and never responded to the requests.

On or about January 20, 2006, the town filed an application for final judgment pursuant to Mass. R. Civ. P. 33(a). The respondent failed to inform his client that the town had moved for final judgment and failed to respond to the motion. On February 1, 2006, final judgment was entered for the town, and the claims against the town were dismissed.

On or about March 16, 2006, the restaurant filed an application for final judgment pursuant to Mass. R. Civ. P. 33(a). The respondent failed to inform his client that the restaurant had moved for final judgment and failed to respond to the motion. On March 24, 2006, final judgment was entered for the restaurant, and the client's claims were dismissed. The respondent failed to inform his client that her claims had been dismissed.

The client continued to call and email the respondent for information, to which the respondent failed to respond. The client eventually found out that the claims were dismissed and demanded a return of her file. The respondent did not promptly hand over her file.

By failing to respond to the defendants' discovery requests and take any action of substance on her behalf other than to file a complaint, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3. By failing to keep his client informed about the status of her case and failing to respond to her reasonable requests for information, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By failing to make the client's file available to her within a reasonable period of time upon her request, the respondent violated Mass. R. Prof. C. 1.16(d) and (e).

In the second matter, the respondent was retained in or around November 2002 by two business owners to represent them in an action against a maker of custom made walk-in freezers. The freezer purchased by the business owners failed to work within a few months

after being installed. Other than gathering invoices, contracts, and the like from the owners, the respondent failed to do any work of substance on the case.

For two years after being retained, the respondent replied to the clients' queries on the status of the case by saying that the case was "moving along". By the fall of 2005, the owners began to experience difficulty getting in touch with the respondent. The owners called, wrote letters and asked other lawyers to contact the respondent on their behalf, but the respondent failed to reply to most of these efforts.

In about October 2006, the four-year statute of limitations for a 93A claim ran on the client's case. In the winter of 2006, the clients demanded the return of their file. The respondent failed to comply with their requests until July 31, 2007, when he delivered the file to new counsel.

By failing to take any action of substance to advance his client's claims, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3. By failing to keep his clients informed about the status of their case and failing to respond to their reasonable requests for information, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By failing to make the client's file available to the clients within a reasonable period of time after their request, the respondent violated Mass. R. Prof. C. 1.16(d) and (e).

In the third matter, the respondent represented a minor child in a personal injury claim. On September 11, 2006, the respondent received a settlement check from the insurance company and deposited it into his personal account instead of a proper trust account. On September 14, 2006, the respondent sent his client a check drawn on the personal account for the full amount due under the settlement, but the client did not negotiate it immediately.

Beginning in November 2006, the respondent negligently used a portion of the settlement funds for expenses unrelated to his client's case. When the client attempted to negotiate the check in December 2006, the check was dishonored due to insufficient funds. On or about February 27, 2007, the respondent issued a second check to his client from his IOLTA account, drawing from earned fees from a check recently deposited in the account. By failing to deposit his client's funds in a trust account and to maintain those funds intact, the respondent violated Mass. R. Prof. C. 1.3 and 1.15(b).

The respondent failed to maintain adequate records of his receipt and maintenance of client funds in violation of Mass. R. Prof. C. 1.15(f). From at least January 1, 2005, the respondent failed to maintain a chronological and accurate check register for his IOLTA account that specified for each deposit and withdrawal the identity of the client matter for which funds were deposited or disbursed, and he failed to retain copies of deposit tickets and checks with information identifying the proper source or client. The respondent also failed to maintain individual client ledgers, and he did not reconcile his IOLTA account at least every sixty days.

During the course of bar counsel's investigation in 2006 and 2007, the respondent repeatedly failed without good cause to respond to bar counsel's requests for information. On July 5, 2007, the Court entered an order for the respondent's immediate administrative suspension. After receiving the Court's order, the respondent complied with bar counsel's requests and was reinstated on August 6, 2007.

On or about November 13, 2007, bar counsel sent the respondent a letter requesting information concerning his IOLTA account. The respondent failed without good cause to respond to several bar counsel inquiries on this matter and was again administratively suspended on February 6, 2008. The respondent did not comply with the order of administrative suspension until March 19, 2009.

In aggravation, the respondent was admitted to the bar on June 16, 1976, and had substantial experience in the practice of law at the time of these offenses. The cumulative effect of the

respondent's multiple violations of the rules in several different matters was also a matter in aggravation.

In mitigation, the respondent had never previously been involved with the running of his own law office and was inexperienced in the administrative handling of a law office. The respondent also made restitution to the clients for their losses.

The matter came before the Board of Bar Overseers on a stipulation of facts and rule violations and a joint recommendation for a suspension of one year and one day, retroactive to March 19, 2009, the date of the respondent's compliance with the order of administrative suspension. On April 16, 2009, the Board voted to accept the stipulation and joint recommendation.

An Information was filed with the Supreme Judicial Court for Suffolk County on May 5, 2009. On May 11, 2009, the county court (Ireland, J.) entered an order suspending the respondent from the practice of law for one year and one day, retroactive to March 19, 2009.

FOOTNOTES:

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 filed with the Supreme Judicial Court.

Please direct all questions to webmaster@massbbo.org.

© 2005. Board of Bar Overseers. Office of Bar Counsel. All rights reserved.