

IN RE: LAWRENCE F. McCARTHY

S.J.C. Judgment of Disbarment entered by Justice Spina on January 3, 2011.¹

SUMMARY²

On March 11, 2009, the respondent was administratively suspended for failing to cooperate with bar counsel's investigation into his handling of trust funds. The respondent has not been reinstated from that suspension.

On August 6, 2010, bar counsel filed a multi-count petition for discipline against the respondent.

Count One charged that the respondent had failed to notify his clients -- plaintiffs in consolidated land damages cases he was handling under contingent-fee agreements -- of his settlement of their claims; failed to notify them of his receipt of settlement funds and distributions from those funds; failed to pay those funds promptly when due; failed to deposit them in a separate interest-bearing account; misused some of those funds, with deprivation resulting, when he transferred money to his own account in excess of fees and expenses owed and, in at least one instance, did so intentionally; told clients an accounting would be forthcoming after they independently discovered that the matter had settled, yet took no action of substance to prepare an accounting; later prepared inaccurate accountings declaring them true and complete, then demanded that the clients sign them before receiving their funds.

Count Two charged that the respondent failed to keep required records of his trust accounts.

Count Three charged that the respondent failed to cooperate in bar counsel's investigation, engaged in the unauthorized practice of law by representing two clients after the effective date of his administrative suspension for non-cooperation without notifying them of his suspension, and filed a false affidavit of compliance with the terms of the order of administrative suspension.

Count Four charged that the respondent violated the terms of his divorce judgment by intentionally misusing money that he had been ordered to hold and use solely for the education of his child.

On November 12, 2010, the respondent filed his affidavit of resignation. On November 18, 2010, the respondent submitted a substitute affidavit of resignation. The substitute affidavit acknowledged that certain ultimate facts pleaded in the petition could be proved by a preponderance of the evidence, as follows:

Count One: He failed to deposit the settlement proceeds in a separate interest-bearing account with interest payable as directed by the clients and failed to hold all funds in a trust account; failed to withdraw his earned fees promptly; failed to deliver funds to clients promptly; failed to give written notice of his withdrawals; and failed to render prompt, full and accurate accountings.

Count Two: He failed to keep required records for his IOLTA account.

Count Three: He knowingly failed to respond to certain of bar counsel's requests for information and failed to turn over a client's file.

Count Four: He disobeyed the judgment in his divorce by knowingly misusing funds reserved for his children's education.

The affidavit did not specify the rules of professional conduct violated by the foregoing. In substance, however, the misconduct described in the substituted affidavit constituted violations of the following rules charged in the petition:

Count One: Mass. R. Prof. C. 1.1, 1.4(a) and (b), 1.5(c), 1.15(b)(1) and (2), 1.15(c) and (d), and 1.15(e)(5).

Count Two: Mass. R. Prof. C. 1.15(f)(1)

Count Three: Mass. R. Prof. C. 1.16(d) and (e), 3.4(c), 8.1(b), 8.4(d), and 8.4(g).

Count Four: Mass. R. Prof. C. 3.4(c), 8.4(c), (d) and (h).

Bar counsel objected to the supplemental affidavit on a number of grounds, including the absence of any admission concerning a number of the charges and the respondent's recitation of excuses for the misconduct that, bar counsel argued, negated the charges.

Relying on Matter of Harrison, 22 Mass. Att'y Disc. R. 381 (2006), the board voted to recommend that the Court accept the affidavit of resignation and disbar the respondent. The Court so ordered on January 3, 2011.

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.