

IN RE: MAUREEN POMEROY

S.J.C. Order of Temporary Suspension entered by Justice Botsford On October 30, 2009.¹

MEMORANDUM OF DECISION AND ORDER

Bar counsel has filed a petition for temporary suspension of Maureen Pomeroy pursuant to S.J.C. Rule 4:01, § 12A (§ 12A), pending further disciplinary proceedings before the Board of Bar Overseers (board). A hearing on the petition was held on September 4, 2009. Thereafter, bar counsel and the respondent filed additional materials with the court.

An order of temporary suspension under § 12A may be entered if (1) bar counsel establishes by a preponderance of the evidence that the lawyer violated a disciplinary rule, and (2) on balance of the harm to the lawyer and the public, the lawyer poses a threat of substantial harm to present or future clients. *Matter of Ellis*, 425 Mass. 332, 334 (1997). The facts on which an order of temporary suspension is based must be "explicit and persuasive." *Id.*

1. Violation of disciplinary rule. The following facts are alleged by bar counsel. On July 9, 2008, the respondent began her representation of an eighty-three-year old client, Georg Hoffmann, who sought her assistance in closing several bank accounts that he held jointly with his stepdaughter. The client authorized the respondent to liquidate two bank accounts at Provident Bank and seven accounts at Capital One Bank (Capital One). The total value of all the accounts was \$2,151,180.30.

The respondent corresponded with both banks and demanded the proceeds from her client's accounts. With respect to Provident Bank, cancelled check records indicate that the bank issued and sent to the respondent two checks totaling \$526,407.96. The respondent appears to have deposited the checks in her IOLTA account, and then issued checks to her client totaling \$294,607.96 on or about August 17, 2008. The difference is \$231,800. Regarding Capital One cancelled check records indicate that on or about August 29, 2008, the bank sent the respondent seven checks totaling \$1,624,772.36. These checks were deposited in the respondent's IOLTA account. On September 10, 2008, the respondent remitted \$1,044,280.26 of these funds to her client, leaving \$580,492.10 that was not remitted. In response to her client's inquiries regarding the status of his accounts, the respondent indicated on more than one occasion that she received only three checks from Capital One, totaling \$778,541.19.²

Bank records indicate that the respondent transferred \$225,000 of the proceeds from Provident Bank to her personal account maintained at Citizens Bank. Additionally, bank records indicate that on September 12 and September 26, 2008, respectively, the respondent withdrew \$500,000 and \$30,000 from her IOLTA account and deposited these funds in her Citizens Bank account. In total, \$812,292.10 of the client's funds are unaccounted for, and the respondent has paid no amount of money in restitution.

As explanation, the respondent maintains that she had a contingent fee agreement with the client whereby she was entitled to one third of all the monies she helped recover. She claims the contingent fee agreement was separate from a flat fee and hourly billing arrangement that she had with the client for her estate planning services. The only writing evidencing a contingent fee agreement is a letter dated July 11, 2008, which the respondent states in her affidavit she had sent to her client. In Hoffmann's affidavit, however, he states that he never

received the July 11 letter, and never agreed to a contingent fee agreement.

Based on the copies of bank records and cancelled checks produced by bar counsel, I conclude that bar counsel has satisfied her burden of showing by a preponderance of evidence that respondent has violated a disciplinary rule. On the most fundamental level, the respondent has violated Massachusetts Rule of Professional Conduct 1.5 (c) (contingency fee agreements must be in writing and state, among other items, the nature of the claim or controversy, the services to be performed, and the contingency upon which compensation is to be paid). Moreover, the evidence shows at least by a preponderance of the evidence that the respondent's actions violated rules 1.15(a) (lawyer shall not collect a clearly excessive fee); 1.15(b) (lawyer shall safeguard and keep separate client funds); 1.15(c) (lawyer should promptly notify client upon receiving client funds); 1.15(d) (lawyer shall render full accounting of trust property upon request by the client); and 8.4(c) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentations). These violations amount to a likely intentional misappropriation of client funds that resulted in actual deprivation to the client, Hoffmann. The presumptive sanction for such conduct is disbarment or indefinite suspension. *Matter of Schoepfer*, 426 Mass. 183, 187(1997).

2. Balancing of harms. On the one hand, the Commonwealth has "a significant interest in protecting the public from attorneys who engage in serious misconduct, particularly when the misconduct involves misuse of clients' funds.... There is also a strong interest in maintaining the integrity of the bar." *Matter of Kenney*, 399 Mass. 431, 436 (1987). On the other hand, however, the respondent asserts that the harm and hardship that would result from an order of temporary suspension would damage both her professional reputation and client base, as well as her ability to care for her autistic son. She also offers several mitigating factors, such as the deaths in the fall of 2007 and winter of 2008 of her mother-in-law, father-in-law, and brother-in-law. According to the respondent, these deaths caused her husband of nine years to experience depression and to abuse drugs and alcohol. In February, 2008, when the respondent interfered with her husband's attempt to strike their autistic son, she became the victim of a violent domestic assault. The respondent subsequently fled the home, cooperated in her husband's prosecution, sought a divorce, and became a single mother.

While the events of the respondent's personal life are undoubtedly tragic, they do not provide an adequate basis for foregoing suspension, even under her suggested condition that an independent attorney monitor her IOLTA account. The amount of a client's money at issue here is substantial. At the very least, the respondent had a clear obligation to account for her client funds. I have carefully reviewed her submissions and the bank records. Even accepting for present purposes that she was entitled, by agreement with her client, to take a contingent fee of \$683,562.73 (Pomeroy affidavit, ¶132), there is still \$128,729.05 unaccounted for, a very large sum, and no restitution has been made or offered. These facts, combined with the respondent's shifting explanations of what transpired, lead me to conclude that the respondent poses a threat of substantial harm to present or future clients. A temporary suspension of the respondent's license to practice law pursuant to S. J.C. Rule 4:01, § 12A, is called for.

ORDER

For the foregoing reasons, an order of temporary suspension of Maureen Pomeroy is to enter.

FOOTNOTES:

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

² I note that in her affidavit filed with this court and dated September 13, 2009, the respondent states that she

received only two checks from Capital One, together totaling \$1,524,280.26. This is a different total than the \$1,624,772 that the Capital One records reflect and also different than the \$778,541.19 the respondent originally mentioned.

Please direct all questions to webmaster@massbbo.org.