

IN RE: PETER A. ALLEN

S.J.C. Order of Term Suspension entered by Justice Cordy on November 4, 2009, with an effective date of December 4, 2009.¹

(S.J.C. Judgment of Reinstatement with conditions entered by Justice Cordy on May 29, 2012.)

SUMMARY²

The respondent was admitted to the bar in 1977 and concentrated his practice in immigration law. The respondent was suspended from the practice of law for one year and a day for his misconduct in three matters.

In the first case, the client retained the respondent to obtain a work visa from the United States Citizenship and Immigration Service (USCIS). After successfully obtaining the work visa, the respondent was then asked to obtain permanent residence status for the client, i.e. a "green card." To acquire a green card, the client first had to obtain a labor certification from the Department of Labor's Employment and Training Administration (ETA). Once the labor certification was obtained, the client would be eligible to obtain a visa number. After obtaining a visa number, the client could then apply for the green card. The client paid the respondent \$4,150 to assist him in obtaining a green card.

On July 5, 2007, the ETA approved the client's labor certification. Upon approval, the ETA sent the certification to the respondent and to the client's employer. On July 16, 2007, the Department of Labor regulations took effect providing that a labor certification would expire 180 days after the date it was issued. A certification obtained prior to the effective date of the change in the regulation would expire 180 calendar days from July 16th, or January 12, 2008. The 180 days was an absolute bar, and the labor certification could not be renewed once it had expired. It was therefore critical that the respondent petition for a visa number by no later than January 12, 2008.

By September 1, 2007, the client returned the completed petition to the respondent. On October 23, 2007, the respondent obtained from the client \$500 to pay the filing fee and postage necessary to file the visa petition. The respondent did not file the petition, however, and, by December 7, 2007, the respondent had negligently misused the entire \$500 for his own personal needs.

Between October 23, 2007, and January 8, 2008, the client sent the respondent four emails asking for information about his matter. The respondent did not provide the client with any substantive information and did not inform the client that he had not filed the visa petition. On January 12, 2008, the client's labor certification expired.

By March 7, 2008, the respondent had misplaced the client's file and had no knowledge of its status. On March 7, 2008, the client's uncle emailed the respondent for an update on the client's matter. The respondent wrote back "However, I think that everything seems to be on course," intentionally misleading the client's uncle that he had attended to filing the petition. The respondent provided no further information to the client. The respondent did not admit to the client that he had not filed the petition until the summer of 2008, after the client retained new counsel.

The respondent's failure timely to file the client's visa petition violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3. His intentionally false and misleading statements to the client's uncle and his failure to respond to requests for information and to explain his conduct to the client violated Mass. R. Prof. C. 1.4 and 8.4(c) and (h).

The respondent's fee of \$4,150 for the services was clearly excessive in the circumstances in violation of Mass. R. Prof. C. 1.5(a). His failure to return the unearned portion of the fee, his failure to account for and return to the client the \$500 filing upon discharge, and his negligent misuse of a portion of the filing fee were in violation of Mass. R. Prof. C. 1.15(c) and (d), 1.16(d). The respondent's conduct in misplacing the client's file constituted a violation of Mass. R. Prof. C. 1.1, 1.3 and 1.15(a)(3).

In the second matter, the respondent was retained to obtain a work visa and a green card for his client. On August 5, 2002, the USCIS issued the client a work visa, and on June 2, 2005, the ETA issued the client a labor certification. After being informed that he had been granted a labor certification, the client told a paralegal in the respondent's office that he wished to obtain a green card and apply for a change of status for his spouse and daughter. The client gave the office \$2,505 to cover the costs of extending the work visa, the petition, and the applications.

On June 30, 2005, the respondent's office submitted to the USCIS on behalf of the client a visa petition and a petition to obtain a green card. The respondent's office also submitted petitions on behalf of the client's spouse and his daughter requesting a change in their immigration status. On July 25, 2005, the respondent's office received notice from the USCIS that the client's visa petition was being denied because of the unavailability of visa numbers. The USCIS returned the checks uncashed. By August 31, 2005, the respondent had negligently misused all of the client's funds to pay fees and expenses unrelated to the client's matter.

On July 28, 2005, the respondent's office informed the client that the USCIS petitions and filing fees for the client's spouse and child had been returned and that the office would take the necessary action once visa numbers became available. Visas became available in August 2005. The respondent took no action, however, to secure a visa for the client, nor did he tell the client that he was not taking any action. Instead, starting in August, the respondent's office and the client exchanged emails for a period of six weeks regarding the \$500 fee paid by the client to get his work visa extended.

By June 2007, the client had become frustrated by the respondent's failure to respond to his questions and refund the unused filing fees, and he hired new counsel. On June 21, 2007, the client discharged the respondent and demanded that he turn over his files to the new lawyer. The client also demanded that the respondent return his funds. The respondent replied that he would comply with these requests but asked that the client sign "a form waiving all potential legal claims against our office." The client did not sign the form, but the respondent gave the client his files.

The respondent's failure to seek his client's objectives and lack of diligence violated Mass. R. Prof. C. 1.1; 1.2(a); and 1.3. His failure to keep the client apprised of the status of his matter and respond to requests for information violated Mass. R. Prof. C. 1.4(a) and (b). His failure to return to the client the unused USCIS filing fees violated Mass. R. Prof. C. 1.15(c) and 1.16(d), and his negligent misuse of those funds violated Mass. R. Prof. C. 1.1, 1.3, and 8.4(h). The respondent's request that the client agree to waive potential legal claims against him without advising the client that he should have independent counsel constituted an attempt to violate Mass. R. Prof. C. 8.4(a) and 1.8(h).

In the final matter, the respondent was retained in December 2006 to obtain a green card for a client's mother and was paid \$2500. The respondent did not provide complete information to the USCIS, and he was advised in February 2007 that additional information was required by no later than May 2007. The client gave the information to the respondent in March, but the

respondent never filed the documentation with USCIS. As a consequence, the petition was denied in May 2007.

The respondent did not inform the client of the dismissal until the middle of June, when the client called the respondent for information. The respondent told the client that he would move to reopen the matter and that, once it was in front of an immigration judge, it would be resolved. These statements were intentionally false and misleading because the respondent knew that there were no grounds to reopen the matter. The respondent took no further action.

The client made many unsuccessful efforts to reach the respondent for information before finally speaking with him in March 2008. The respondent told the client that he would send him the notice from the USCIS denying the mother's application for the green card. The respondent never sent the denial notice to the client. The client, at additional expense, then did the work himself that he had paid the respondent to perform.

The respondent's failure to seek the client's objective, his lack of diligence, and his failure to keep his client informed and to respond to requests for information violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3, and 1.4. His misrepresentations to the client about the remedies available after the petition was denied violated Mass. R. Prof. C. 1.4 and 8.4(c) and (h). The respondent's conduct in charging a fee that was excessive in light of the actual services violated Mass. R. Prof. C. 1.5(a). His failure to return the unearned portion of the fee violated Mass. R. Prof. C. 1.15(c) and 1.16(d).

In mitigation, the respondent made restitution to the three complainants. During the relevant time, the respondent was experiencing depression and arrhythmia brought on or aggravated by personal and professional problems. The respondent was in treatment for these conditions.

On October 1, 2009, the parties submitted to the Board of Bar Overseers the respondent's amended answer to the petition for discipline and stipulation of the parties recommending that the respondent be suspended from the practice of law for one year and a day. On October 19, 2009, the Board of Bar Overseers voted to accept the stipulation of the parties. On November 4, 2009, the Supreme Judicial Court for Suffolk County ordered that the respondent be suspended from the practice of law for one year and one day effective December 4, 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.