

IN RE: EARL D. MUNROE

S.J.C. Order of Term Suspension entered by Justice Botsford on June 21, 2010, with an effective date of July 21, 2010.¹

SUMMARY²

The respondent received a suspension of two and one-half years for his conduct in two matters. The respondent agreed that bar counsel could prove the following by a preponderance of the evidence.

The first matter concerned the respondent's conduct in handling the affairs of a client and close friend prior to and after his death. The client was an alcoholic who died in 2004 from alcoholism. The respondent had represented the client in various matters between 1989 and May of 2004, including the client's purchase of one-half of the stock of his family's insurance business in 1999 and the rest of the stock in 2001. The respondent also represented the business as counsel from 1999 to approximately 2006.

On or about May 8, 2000, the respondent prepared a will for the client that named the respondent as the sole beneficiary of the client's estate and nominated the respondent to serve as executor. The respondent violated Mass. R. Prof. C. 1.7(b), 1.8(c), and 1.16(a)(1) by preparing a will that gave him a substantial testamentary gift. The respondent failed to explain to the client that the will was subject to challenge because it gave the respondent a substantial testamentary gift. His failure to explain the matter to the extent reasonably necessary to permit the client to make informed decisions about the representation violated Mass. R. Prof. C. 1.4(b).

The client died in May 2004. In June 2004, the respondent sought allowance of the will, appointment as temporary and permanent executor of the estate, and authority to operate the insurance business for the benefit of the estate. The respondent did not inform the probate court that he was claiming or planned to claim a 20% ownership interest in the business at the time of the client's death and that he had transferred half of that purported interest to his wife after the client's death. The respondent also did not inform the court that he claimed to be an officer and director of the business; that he was counsel to the business; that he had been using the business's offices for his law office since before the client's death without paying rent; and that he would be claiming a share of the business's profits and compensation for his services as owner, officer, director and attorney for the business.

By failing to advise the court of material facts known to him in connection with his ex parte request to operate the business for the estate, the respondent violated Mass. R. Prof. C. 3.3(d). By seeking and accepting appointment as executor of the estate when his business, professional and personal interests disqualified him as a suitable fiduciary, the respondent violated Mass. R. Prof. C. 8.4(d). The respondent violated Mass. R. Prof. C. 1.7(a) and (b) and 8.4(d) by acting as counsel to the business while asserting a claim of ownership of an interest in the business, seeking and accepting appointment as executor, and offering for probate a will that was likely to be challenged.

The client's next of kin and only heir at law was a brother who resided in Maine. The respondent took no action of substance to notify the client's brother of the petition for

probate and his request to be appointed as temporary executor with authority to manage the business for the benefit of the estate. By failing to take any action of substance to locate and notify the sole heir of the petition for probate and motion for appointment as temporary executor, the respondent violated Mass. R. Prof. C. 3.4(c) and 8.4(d).

In June 2004, the probate court appointed the respondent temporary executor of the decedent's estate, with authority to continue the business for the benefit of the estate. The respondent's appointment expired in ninety days. The respondent was obliged as temporary executor to preserve the assets of the estate.

In late June of 2004, the decedent's brother learned of the decedent's death and contacted the respondent to find out information about the estate. The respondent intentionally misrepresented to the brother that the decedent was deeply in debt and his two properties were "mortgaged to the hilt." The respondent's intentional misrepresentations to the brother about the value of the estate violated Mass. R. Prof. C. 8.4(c) and (d).

On or about July 7, 2004, the respondent liquidated the decedent's 401K plan and deposited approximately \$93,740 to an estate account that he opened. Between July 7, 2004 and September 9, 2004, the respondent distributed over \$30,000 from the estate, including \$15,000 to himself as a distribution. The respondent's distribution of funds from the estate account for his own benefit exceeded his statutory authority as temporary executor and violated his fiduciary and professional obligations to preserve and safeguard the assets of the estate. The respondent restored the \$15,000 to the estate account in November 2004.

By failing to keep the estate funds in a trust account and separate from his own property and by distributing estate funds when he was not authorized to do so, the respondent violated Mass. R. Prof. C. 1.15(b)(1) and (3), and 8.4(d). The respondent also failed to maintain complete records of the receipt, maintenance, and disposition of the estate account funds in violation of Mass. R. Prof. C. 1.15(f).

On September 9, 2004, the respondent's appointment as temporary executor expired. On September 30, 2004, the brother filed an affidavit of objections to allowance of the will and appointment of the respondent as executor, alleging that the testator had been subject to undue influence from the respondent and that the respondent had violated Mass. R. Prof. C. 1.8(c) in drafting the will. The respondent distributed over \$23,000 from the estate account after his appointment expired to pay estate expenses. On October 20, 2004, the respondent filed a motion to extend his appointment as temporary executor back to the expiration date of his previous appointment, which the probate court denied. By failing to keep the estate funds in a trust account and by distributing approximately \$23,000 from the estate account after his appointment as temporary executor had expired, the respondent violated Mass. R. Prof. C. 1.15(b)(1) and (3), and 8.4(d).

On October 27, 2004, the probate court appointed an independent party to serve as special administrator of the estate. The respondent failed promptly to pay the estate funds to the special administrator and file his inventory and account.

On December 8, 2004, the respondent filed his inventory as temporary executor with the probate court. In the inventory, the respondent intentionally misrepresented the identity and value of the estate assets. On February 5, 2005, the respondent paid the remaining estate funds to the special administrator, but he did not promptly render a full written accounting regarding the estate property. The probate court eventually found the respondent in contempt on two separate occasions for not filing a true and accurate account.

By failing to promptly turn over the funds to the special administrator and file an inventory and account, the respondent violated Mass. R. Prof. C. 1.15(c), 1.15(d)(1), and 8.4(d). By filing a knowingly false inventory and accounts, the respondent violated Mass. R. Prof. C. 3.3(a)(1) and 8.4(c) and (d). The respondent's contempt of court violated Mass. R. Prof. C.

3.4(c) and 8.4(d).

The respondent also impeded the administration of the estate by obstructing the special administrator's access to the business premises and records and by interfering with her effort to sell the business. To justify his actions, the respondent intentionally misrepresented to the administrator of the estate, to the Division of Insurance, and to bar counsel that he and his wife owned an interest in the business. He also filed at least three frivolous lawsuits and state and federal court in which he falsely asserted that he and his wife had an ownership interest in the business. The respondent repeated this claim under oath to the Division of Insurance, in affidavits filed with the courts, and in a deposition. The respondent fabricated stock certificates and minutes that he attached to court pleadings and provided to the special administrator and bar counsel to support his false claim of ownership.

By obstructing the administration of the estate, the respondent violated Mass. R. Prof. C. 3.4(a) and 8.4(d). The respondent's intentional misrepresentations to the Division of Insurance, the special administrator, and bar counsel constituted violations of Mass. R. Prof. C. 8.1(a) and 8.4(c) and (h). The respondent's conduct in filing frivolous lawsuits and his false representation to the courts that he and his wife had an ownership interest in the business violated Mass. R. Prof. C. 3.1, 3.3(a)(1), and 8.4(c), (d) and (h). By falsifying evidence and offering evidence that he knew to be false, the respondent violated Mass. R. Prof. C. 3.3(a)(1) and (4), 3.4(b), 8.1(a), 8.4(c), and 8.4(d) and (h).

On March 29, 2007, the probate court entered a decree disallowing the will and ordering the respondent to pay the brother's attorney over \$35,000 in fees and costs. The respondent appealed from both orders. On November 4, 2008, the Appeals Court denied the respondent's appeal. On May 22, 2009, the Appeals Court awarded the brother's attorney an additional \$23,221.50 in appellate fees and costs. The respondent intentionally and without good cause failed to pay the fees and costs awarded to the brother's counsel. By failing without good cause to comply with the order regarding payment of attorney's fees, the respondent violated Mass. R. Prof. C. 3.4(c) and 8.4(d).

The second matter involved the respondent's representation of a dissident faction employed by or affiliated with a church. On September 5, 2008, members of the dissident faction unilaterally appointed themselves the new leaders of the church and barred the church's elected leaders and officers, the associate pastor, and certain members of the congregation from entering the church.

The church and a related entity that held title to the church's real estate immediately filed a complaint in superior court against the respondent's clients seeking declaratory and injunctive relief. Before the hearing scheduled on the plaintiffs' motion for a preliminary injunction, the respondent filed a frivolous motion to remove the case to federal court in order to delay or avoid the hearing.

On September 29, 2004, the superior court conducted a hearing on the plaintiffs' motion for a preliminary injunction. At the same time, the respondent's clients collected rent checks totaling \$30,000 from tenants of an apartment building owned by the church and delivered the checks to the respondent for deposit in his IOLTA account. The respondent and his clients signed an agreement that permitted the respondent to pay the first \$25,000 from the rent checks to himself for his legal fees for work already performed for the clients. On September 29, 2004, before entry of a court order, the respondent deposited rent checks totaling over \$11,000 to his IOLTA account.

On September 29, 2004, the court issued an order allowing the plaintiffs' motion for a preliminary injunction, invalidating the actions taken by the respondent's clients in September, and restoring the *status quo ante* as of September 4, 2008. After the order entered, the respondent's clients had no authority to give the respondent rent funds to pay his fee, and the respondent had no authority to use the rent funds to pay his fee. The

respondent had notice of this order by September 30, 2004.

In knowing violation of the order, on September 30, 2008, the respondent deposited over \$18,800 in rent checks to his IOLTA account and paid himself \$10,000 from those funds as his legal fee. The respondent paid himself another fee of \$12,500 from the funds on October 15, 2008. The respondent did not advise his clients that they were violating the order by appropriating the rent funds and using them to pay his fee. He also did not withdraw from representation.

In October of 2008, the plaintiffs filed complaints for civil contempt against the respondent and his clients for violating the September 29, 2008 order. The respondent did not return the disputed funds to the IOLTA account until February 24, 2009. On March 25, 2009, the parties reached a global settlement agreement that, among other things, permitted the respondent to retain the funds he had taken for his fee.

By knowingly disobeying a court order and by assisting his clients in violating a court order, the respondent violated Mass. R. Prof. C. 1.2(d), 3.4(c), 8.4(a), and 8.4(d). By failing to consult with the clients regarding the relevant limitations on his conduct when he knew that the clients expected assistance not permitted by the rules of professional conduct or other law, and by failing to withdraw, the respondent violated Mass. R. Prof. C. 1.2(e) and 1.16(a)(1). By failing to promptly return the disputed trust funds to his IOLTA account and maintain the disputed trust funds in his IOLTA account until the dispute was resolved, the respondent violated Mass. R. Prof. C. 1.15(b)(2)(ii). By removing the case to federal court in order to avoid or delay the preliminary injunction hearing when there was no basis that was not frivolous for removal, the respondent violated Mass. R. Prof. C. 3.1, 3.2, 4.4, and 8.4(d).

The respondent was admitted to practice in 1988. In aggravation, the respondent received an admonition in 2000 for neglect of an estate matter. Admonition No. 00-31, 16 Mass. Att'y Disc. R. 495 (2000).

The case came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations. The parties jointly recommended that the respondent be suspended for two and one-half years. On May 10, 2010, the board voted to recommend that the Supreme Judicial Court for Suffolk County accept the parties' stipulation and joint recommendation for discipline. On June 21, 2010, the county court (Botsford, J.), ordered that the respondent be suspended from the practice of law for two and one-half years, effective thirty days from the date of the order.

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.