NO. BD-2010-072

IN RE: STEPHEN A. LAGANA

S.J.C. Order of Term Suspension/Stayed entered by Justice Cowin on September 23, 2010.[1]

SUMMARY[2]

This matter came before the Court on the report of a hearing committee adopted by the Board of Bar Overseers without objection or appeal by either party.

The committee made the following findings:

The respondent, admitted to the Massachusetts bar on June 28, 1994, focuses on immigration law which he practices before the immigration court, the Board of Immigration Appeals, and various Circuit Courts of Appeal. Under Counts One and Two the committee found that the respondent had not charged or collected clearly excessive or illegal fees and had not failed to return unearned fees at the completion of his representation.3 Still, where the respondent typically charges flat fees for his services, the committee expressed concern about the respondent's office systems for tracking time and services for clients for the purpose of justifying his fees in the event a representation terminates before its purposes are realized, as occurred in the events underlying Counts One and Two.

Under Count Three, in 1998, an El Salvadoran national retained the respondent to legalize her immigration status, with the goal of obtaining a work permit. The respondent filed an application for withholding of removal and for asylum, and on that basis obtained a work permit. Meanwhile, the client became eligible for Temporary Protected Status, which would also allow her to work in the United States legally, and the respondent succeeded in obtaining TPS for the client. The respondent successfully moved to close the removal proceedings intended to review her claims for asylum and withholding of removal.

A foreign national designated with TPS must file periodic applications to renew the designation. During 2002, the respondent filed the required application for the client along with a new request for work authorization. These were returned because the client had not signed the TPS application, and because certain fees were not paid. The respondent corrected these errors and caused the papers to be re-filed.

The immigration authorities then requested additional evidence of the client's eligibility for TPS by March 1, 2003. The respondent did not receive this request because he had moved his office, and he had not given immigration the notice required by regulation. The respondent did not check the status of the TPS application between its re-filing in October 2002 and the March 2003 deadline. In August 2003, immigration notified the respondent that the client's application for renewal of TPS had been treated as abandoned and was denied, and that the client had until September 10, 2003 to move to reopen. In the circumstances, the lack of notice to the respondent did not constitute grounds to reopen.

The respondent's office filed a timely motion to reopen, but it was rejected because an associate had signed for the respondent. He then filed a corrected motion after the September 10 deadline. It was denied as untimely and because it failed to state grounds for relief.

The respondent did not advise the client of the reason why she had lost TPS, and did not advise the client to retain another attorney to reopen the matter based on ineffective assistance of counsel. The respondent's later effort to obtain TPS was unsuccessful because of the August 2003 denial.

The client's work permit expired, and she was unable to obtain a new one.

The client remained in the United States with her children until her husband, residing in Mexico, fell ill. When the client attempted to return to the United States after visiting him, she was arrested in Arizona. The committee concluded, in aggravation, that the arrest was causally related to the respondent's misconduct because if the client had obtained renewed TPS status a brief absence from the United States to visit her husband and her return would have been permissible, yet the respondent's errors foreclosed that option. The client retained new counsel, who obtained her release and is seeking to reopen the TPS matter based on the respondent's ineffective assistance.

The committee concluded that the respondent's failure to notify immigration of his new address, failure to respond to the notice requesting evidence in support of the client's application for TPS, and failure to file a proper and timely motion to reopen violated Rule 1.3 (diligence), and that the respondent violated Rule 1.2(a) (pursue client's lawful objectives through reasonably available means) by failing to file a timely motion to reopen. The committee also found that these violations were aggravated by the respondent's failure to recognize his errors and failure to suggest that the client seek different counsel to pursue relief based on ineffective assistance of counsel.

Under Count Four, a national of the Dominican Republic who had been granted lawful permanent resident status was arrested and placed in deportation proceedings based on criminal convictions. He retained the respondent to represent him, but failed to cooperate with the respondent's office. As a scheduled hearing approached and the client's non-cooperation continued, the respondent assigned his associate, a relatively new attorney, to draft and file a motion to withdraw. The motion the associate drafted disclosed confidential and potentially prejudicial information, yet the respondent did not review the motion and it was filed as drafted. The client was ordered deported, but the committee found that this resulted from the client's failure to appear at the hearing.

The committee concluded that the respondent's conduct violated Mass. R. Prof. C. 1.6 (protection of client confidences), and 5.1 (a) and (b) (institution of systems to ensure ethical conduct by subordinate lawyer, duty to supervise directly subordinate lawyer).

In further aggravation, the committee found that (i) the respondent had substantial experience in the law at the time of his misconduct; (ii) he had received an admonition for similar misconduct; and (iii) the respondent demonstrated a lack of candor through reckless self-serving testimony that demonstrated a failure to appreciate the nature and consequences of his misconduct.

Based on the respondent's violations, the aggravating circumstances, and its concerns about the lack of adequate systems and controls in the respondents practice, the committee recommended that the respondent receive a three-month suspension stayed for a year. The stay was to be conditioned on the respondent's agreement to an audit by the Law Office Management Assistance Program, his adoption of LOMAP's recommendations, and his agreement to LOMAP's quarterly reporting to bar counsel to ensure compliance.

On July 12, 2010, the Board of Bar Overseers voted to adopt the committee's findings of fact and conclusions of law, and to recommend the committee's proposed disposition. The Court so ordered on August 8, 2010.

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.