

IN RE: PETER C. McLAUGHLIN

NO. BD-2011-022

S.J.C. Order of Term Suspension entered by Justice Gants on March 14, 2011, with an effective date of April 13, 2011.¹

SUMMARY²

The respondent, who was admitted to practice in 1998 and had no disciplinary history, received a suspension of thirty months for his conduct in five matters. The respondent agreed that bar counsel could prove the following by a preponderance of the evidence.

In October 2001, a client retained the respondent to collect a judgment of \$61,000 awarded to the client for unpaid wages. The respondent knew by March 2002 that the defendant in the collection matter had purchased property in Maine. Around that time, the respondent asked for and received from the client \$520 to file suit in Maine and attach the property. The respondent never did either, and, by October 2004, the debtors had insufficient equity to satisfy the judgment. The respondent never informed the client that he was taking no action to protect her interests. Instead, between December 2002 and April 2007, the respondent told the client that he had filed suit and had a lien on the property. In April 2007, the client discharged the respondent, hired new counsel, and requested her file. The respondent did not return the file until November 2007, after he received notice that the client had filed a complaint with bar counsel. By failing to handle the collection action with reasonable promptness and diligence, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3. By failing to keep his client reasonably informed about the matter, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By abandoning the representation without protecting the client, the respondent violated 1.16(d). By making intentional misrepresentations to the client, the respondent violated Mass. R. Prof. C. 8.4(c). By failing to promptly return his client's file, the respondent violated Mass. R. Prof. C. 1.15(c), and 1.16(c) and (d).

In October 2002, the client's husband suffered a heart attack that he attributed to his employment. In addition, the husband had been seeing a chiropractor for severe shoulder pains prior to the heart attack, and he believed that the chiropractor had committed malpractice by not referring him to a heart specialist. When the husband returned to work in March 2003, he discovered that his employer had hired another person to fill his day position, and he was offered a night position instead. The husband refused and considered himself wrongfully terminated from his job. In March 2003, the respondent agreed to represent the husband in a wrongful termination claim against his former employer, a medical malpractice claim against a chiropractor, and a workers' compensation claim. The respondent and the client agreed to contingent fee arrangements for both the wrongful termination and the medical malpractice claims, but they only executed a written contingent fee agreement for the malpractice claim. By failing to prepare a written contingent fee agreement for the second matter, the respondent violated Mass. R. Prof. C. 1.5(c).

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.

Between March 2003 and about April 2007, the respondent failed to adequately investigate the medical malpractice and wrongful termination claims. He never filed suit in the wrongful termination case. Instead of informing the client that he was not pursuing that claim, between January 2004 and April 2007, the respondent intentionally misrepresented to the client that the wrongful termination lawsuit had been filed, court dates had been scheduled, and a decision was expected shortly.

On October 25, 2005, the respondent filed a lawsuit on behalf of the client on the malpractice claim, but he did not serve the defendants. On January 31, 2006, the case was dismissed without prejudice. The respondent did not inform the client of the dismissal and that he did not plan to seek reinstatement of the complaint. Instead, on multiple occasions between January 2006 and April 2007, the respondent intentionally misrepresented to the client that the case was still pending.

The respondent did not file the workers' compensation claim until October 2003. On April 28, 2004, the Division of Industrial Accidents (DIA) denied the claim and notified the parties that they had fourteen days to file an appeal for a hearing at the DIA. The respondent agreed to file an appeal on behalf of his client, but he did not do so. The respondent nevertheless misrepresented to the client on many occasions between May 2004 and January 2007 that he had filed the appeal and the case was still pending. In about October 2006, the respondent intentionally misrepresented to the client that he had appeared at a hearing before a judge on the matter. In December 2006, the client demanded that the respondent provide him with some documentation about the status of the case. In January 2007, the respondent gave the client six letters he had fabricated with dates from September 2005 to September 2006 purporting to be communications from the respondent to the DIA concerning the claim and a purported decision by a DIA judge denying the claim after an October 2006 hearing.

In March of 2007, the client consulted with another lawyer, who questioned the legitimacy of the purported decision. The DIA conducted a hearing on April 12, 2007, to investigate the documents. The respondent represented falsely, although not under oath, to the DIA judge that after April 2004, he had sent letters to and filed medical records with the DIA, received notice from the DIA that a meeting had been scheduled with a DIA judge on the claim, and received the decision in the mail from the DIA. At a second hearing before the DIA judge on May 3, 2007, the respondent intentionally misrepresented under oath that in 2006 he had discussions with an employee at DIA concerning the case and that he had received the decision in the mail from the DIA. The respondent intentionally concealed from the judge that he had fabricated the decision and letters.

By failing to provide competent or diligent representation to his client on his three matters, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3. By failing to keep his client reasonably informed about the status of the matters and to inform his client that he did not intend to pursue the cases on the client's behalf, the respondent violated Mass. R. Prof. C. 1.4(a) and (b), and 1.16(d). By making intentional misrepresentations to his client about the claims, the respondent violated Mass. R. Prof. C. 8.4(c). By making false statements of material fact to a tribunal, the respondent violated Mass. R. Prof. C. 3.3(a)(1) and 8.4(c) and (d).

In April 2007, the client terminated the respondent's representation and requested his files. The respondent did not return the files until November 2007, after the matter was reported to bar counsel. During bar counsel's investigation, the respondent repeated under oath the same misrepresentations that he had made to the DIA judge. By failing to promptly

return his client's files upon request, the respondent violated Mass. R. Prof. C. 1.15(c), 1.16(d), and 1.16(e). By making false statements of material fact to bar counsel in connection with a disciplinary matter, the respondent violated Mass. R. Prof. C. 8.1(a), and 8.4(c) and (d).

In the final matter, on or about September 29, 2003, a woman retained the respondent to represent her in connection with a claim against her former employer for wrongful termination and age discrimination. The client paid the respondent an initial retainer of \$550. The respondent did not advise the client that she needed to file a claim at the Massachusetts Commission Against Discrimination (MCAD) within 300 days of the alleged discriminatory act, and she did not do so. In about November 2004, the respondent showed the client a draft civil complaint that he agreed to file on her behalf. Between November 2004 and April 2007, the respondent did not file the lawsuit or take any action on the client's matter. The respondent did not inform the client that he was not taking any action on the case, and that she should retain new counsel to represent her. On multiple occasions between November 2004 and April 2007, in response to inquiries from the client, the respondent intentionally misrepresented that he had filed the lawsuit and that the matter was pending. In about April of 2007, the client consulted successor counsel, and learned that no lawsuit had been filed. The client terminated the respondent's services and requested that he return her unearned retainer, which he failed to do.

By failing to provide competent representation to his client, and to act with reasonable promptness and diligence to pursue the client's claim, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3. By failing to keep his client reasonably informed about the status of the matter and to inform his client that he did not intend to pursue the claim, the respondent violated Mass. R. Prof. C. 1.4(a) and (b), and 1.16(d). By intentionally misrepresenting to his client that he had filed the lawsuit and that the case was ongoing, the respondent violated Mass. R. Prof. C. 8.4(c). By failing to return the unearned retainer, the respondent violated Mass. R. Prof. C. 1.16(d).

Bar counsel filed a petition for discipline on August 31, 2010. On January 11, 2011, the parties filed a stipulation of facts and disciplinary violations and a joint recommendation that the respondent be suspended for thirty months. On February 14, 2011, the board voted to recommend that the Supreme Judicial Court for Suffolk County accept the parties' stipulation and joint recommendation for discipline. On March 14, 2011, the county court (Gants, J.), ordered that the respondent be suspended from the practice of law for thirty months, effective thirty days from the date of the order.