

IN RE: ANTHONY J. PIGNONE

BD-2012-057

S.J.C. Order of Term Suspension entered by Justice Botsford on July 30, 2012, with an effective date of August 29, 2012.¹

SUMMARY²

The respondent was suspended from the practice of law for two years for misconduct in three client matters, as well as for failing to cooperate with bar counsel's investigation, answer the petition for discipline, and participate in the disciplinary proceedings.

In the first matter, the respondent charged a flat fee of \$2,000 to represent a client in a divorce proceeding. The respondent met with his client and her husband, who was *pro se*, but thereafter took no further action of substance and did not respond to his client's inquiries. In addition, the respondent failed to respond to successor counsel's letters and failed to return the unearned portion of his fee.

After a complaint was filed with bar counsel, the respondent refunded the fee. In lieu of formal prosecution, the matter was referred to bar counsel's diversion program for remedial action. The respondent breached the terms of his diversion agreement, and the matter was returned to bar counsel to file disciplinary proceedings.

The respondent's conduct in failing to act with diligence and to respond to his client's inquiries violated Mass. R. Prof. C. 1.3 and 1.4. His conduct in failing to timely return the unearned portion of his fee violated Mass. R. Prof. C. 1.16(d). The respondent's breach of the diversion agreement violated Supreme Judicial Court Rule 4:01, § 3.

In the second matter, the respondent was paid a retainer of \$2,400 to represent a client in a divorce action. The respondent agreed to bill the client at the rate of \$195 an hour. The respondent deposited the retainer to his office operating account, which was not an IOLTA account or a client funds account. The respondent withdrew from his operating account slightly less than \$1,500 of the retainer. By his own accounting he had earned no more than \$975 at that point. The respondent failed to send the client a bill showing his work and the balance remaining from the retainer.

The respondent and counsel for the client's husband reached a settlement of the divorce. The settlement provided that a QDRO would be prepared by a third party that would give the respondent's client a monthly share of her husband's pension. The client and her husband signed the settlement agreement, and it was filed with the court.

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.

Prior to the QDRO's being prepared, the client agreed to pay the respondent \$4,000 to satisfy her outstanding bill. The respondent did not tell his client that the fee she had paid him did not include his assuring that the QDRO would be prepared and filed or that he considered his work for her to be concluded.

Counsel for the husband sent the respondent the QDRO signed by the husband. Counsel wrote that the respondent should have his client sign the QDRO and then file it with the court. The respondent did not inform opposing counsel that he no longer considered himself to be representing the client and that counsel should contact the client directly. In addition, the respondent never sent the QDRO to his client so that she could sign it and file it with the court.

When the client did not receive the QDRO or hear from the respondent, she began calling him and leaving messages asking about the status of the QDRO. The respondent never returned the client's calls or took any other action to inform the client of the status of the matter and that he was no longer representing her.

The client then contacted opposing counsel to find out the status of the QDRO. Counsel told the client that the QDRO had been sent to the respondent for the client's signature and filing with the court. The client agreed to and did pay opposing counsel an additional \$700 in fees to have a new QDRO executed and filed with the court.

The respondent's conduct in depositing the retainer in his office operating account violated Mass. R. Prof. C. 1.15(b). His conduct in intentionally misusing the retainer by paying himself fees before they were earned violated Mass. R. Prof. C. 8.4(c) and (h). The respondent's failure to send his client a bill on or before the date he deposited the retainer to his office operating account and paid his fees from the retainer, along with a statement of the funds remaining in trust, violated Mass. R. Prof. C. 1.15(d)(2).

By limiting the scope of his representation of the client without obtaining her consent after consultation, the respondent violated Mass. R. Prof. C. 1.2(c). By withdrawing from representing the client without explaining to her that he would take no action to secure or file the QDRO, the respondent violated Mass. R. Prof. C. 1.4(b) and 1.16(d). His failure to have the QDRO signed and filed with the court violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3. His failure to respond to the client's requests for information and to apprise her of the status of the matter violated Mass. R. Prof. C. 1.4(a) and (b). His failure to send the QDRO to his client violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3, and 1.15(c).

In the third matter, a client paid the respondent a \$2,000 retainer and a \$300 filing fee to represent her in obtaining a divorce. The respondent told the client that he would charge her at the rate of \$195 an hour. The respondent deposited all of the client's funds into his office operating account. The respondent did not provide any services of substance to the client and intentionally misused \$2,122.35 of the client's funds to pay personal and/or

business expenses unrelated to the client's matter. The respondent did not provide the client with a bill showing the work performed or the balance of the funds he continued to hold.

Over the next several months, in response to inquiries from the client, the respondent told the client on at least two occasions that he had filed the divorce complaint and that he was waiting for the summons from the court. These statements were false and misleading because the respondent knew that he had not filed the complaint for divorce. When the respondent finally filed the divorce complaint, he took no action of substance in the matter.

The client became dissatisfied with the respondent and discharged him as her counsel. When she did, the client demanded her file and an itemized bill. The respondent did not provide the client with her file or an itemized bill until the client filed a complaint with bar counsel.

The respondent's deposit of the retainer into his operating account instead of a trust account violated Mass. R. Prof. C. 1.15(b)(1). His intentional misuse of a portion of the retainer by paying himself fees before they were earned violated Mass. R. Prof. C. 1.15(b) and 8.4(c) and (h). His failure to send the client a bill on or before the dates he paid himself the retainer and his fees from the retainer, along with a statement of the funds remaining in trust, violated Mass. R. Prof. C. 1.5(d)(2).

The respondent's failure to file the divorce complaint, his lack of diligence in pursuing the divorce, and his failure to respond to his client's requests for information about her matter, violated Mass. R. Prof. C. 1.2, 1.3, and 1.4(a) and (b). His intentional misrepresentations to the client that he had filed the divorce complaint and that he was waiting for the summons when he knew that he had not prepared or filed the complaint violated Mass. R. Prof. C. 8.4(c) and (h). The respondent's failure promptly to return the file to his client violated Mass. R. Prof. C. 1.16(d) and (e). The respondent's failure to provide the client with an accounting of his fees when she discharged him as her counsel violated Mass. R. Prof. C. 1.15(d)(1).

Finally, the respondent repeatedly failed to respond to bar counsel's requests for information in the second count, resulting in an order of administrative suspension. He complied with the order and was reinstated. He then failed to answer the petition for discipline and to participate in the disciplinary proceedings.

On June 11, 2012, upon the default of the respondent, the Board of Bar Overseers voted to file an Information with the Supreme Judicial Court for Suffolk County recommending that the respondent be suspended from the practice of law for two years.

On July 30, 2012, the Supreme Judicial Court for Suffolk County (Botsford, J.) entered an order suspending the respondent from the practice of law for two years, effective thirty days from the date of the entry of the order.