

**IN RE: JOHN ANTHONY NEALON**

**NO. BD-2019-018**

**S.J.C. Order of Term Suspension entered by Justice Cypher on February 27, 2019, with an effective date of March 29, 2019.<sup>1</sup>**

*The respondent was suspended for one year and one day for neglect of two separate matters: administration of an estate and a personal injury litigation. Both matters resulted in harm to the clients. In mitigation, the respondent suffered the deaths of three close family members at the time, he refunded the fees had had received for handling the estate, and estate tax penalties were waived by taxing authorities.*

**SUMMARY<sup>2</sup>**

The respondent was admitted to practice in Massachusetts on December 16, 1983. The respondent was suspended from practice for one year and one day for his failure to handle two client matters with reasonable diligence and other misconduct.

In the first matter, in August 2012, a client who lived in California engaged the respondent to represent her in administering and settling the Massachusetts estates of her parents, and with issues concerning the care of her autistic adult brother who was living in Massachusetts. The respondent and client agreed to a \$100,000 flat fee. The client paid the respondent \$25,000 prior to terminating his representation.

The client's mother passed away in September 2010, and the father passed away on July 22, 2012. Prior to their deaths, the mother and father had established and funded a special needs trust for their son. The father left a will nominating the client as personal representative of his estate. The father's will provided that his probate assets would pass to a family trust, where they were to be divided in equal shares for the client and her brother. The client's share was to pass to her outright, and the brother's share was to pass to his special needs trust. The client became trustee of both the special needs trust and the family trust after her father's death.

In August 2012, the respondent filed a voluntary administration statement for the mother's estate. The respondent also secured the appointment of the client as personal representative of her father's estate in October 2012.

Between November 2012 and October 2016, the respondent failed to render diligent and competent services with respect to settling the father's estate and funding and administering the family trust and the special needs trust. Among other things, the respondent did not (1) promptly identify and collect all estate assets, resulting in investment assets and bank accounts not being titled in the estate's name for several years, and two insurance policies escheating to the state; (2) assist his client to establish an estate account for over two years; (3) file the required probate inventory; (4) assist with the timely funding and administration of the family trust and the special needs trust and distribution of assets to the beneficiaries; (5) timely arrange for the completion of a Title V inspection and approval of a subdivision plan for the estate's real property; (6) prepare and file an estate tax return and pay the estate taxes due for the father's estate, resulting in the

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<sup>1</sup> The complete order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

imposition of interest and penalties; (7) prepare and file a 2012 personal income tax return for the father; and (8) prepare and file fiduciary income tax returns for the estate and trusts.

The respondent did not communicate with his client between November 2012 and mid-December 2013, during which time the father's estate tax return was due. Between December 2013 and March 2014, the respondent did not communicate with his client concerning inquiries from the client's aunt, who was seeking information about delays in the administration of the estate and an accounting and distributions from the trusts for the client's brother. On May 7, 2014, the aunt filed a petition seeking appointment of a professional fiduciary as conservator for the client's brother. After the respondent failed to provide an accounting for the family trust to the conservator, in December 2014, the conservator filed a petition for removal of the client as trustee and sought an accounting and other relief against the client. The respondent did not begin facilitating the transfer of estate funds to the conservator until March 2015. After he was discharged in October 2016, the respondent did not promptly return the earned portion of the retainer he had been paid.

By failing to handle his client's legal matter with the thoroughness or preparation necessary for the representation, to seek the lawful objectives of his client through reasonably available means, and to handle her legal matter promptly and diligently, 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, to promptly respond to his client's reasonable requests for information about the representation, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, the respondent violated Mass. R. Prof. C. 1.4(a) and 1.4(b). By failing to promptly return the unearned portion of his legal fee to his client upon the termination of his representation, the respondent violated Mass. R. Prof. C. 1.16(d).

In the second matter, the respondent agreed to represent a client who was injured in a May 23, 2013 automobile accident. The client's car had been struck from behind while the client was stopped at a red light. The respondent and the client signed a contingent fee agreement.

Between about December 2014 and March 2015, the respondent failed to respond to repeated emails and telephone calls from his client requesting information about the status of the case. On July 22, 2015, the respondent filed a civil complaint on behalf of the client in Middlesex Superior Court. The respondent did not propound any discovery requests and did not take any depositions. The respondent failed to timely respond to discovery requests that were filed by the defendant. The respondent did not take any action to request or obtain the client's medical records and bills from her health care providers.

In October 2015, the defense counsel conveyed a settlement offer to the respondent for \$20,000, the amount of the applicable policy limits. The respondent intentionally misrepresented to defense counsel that he had forwarded the settlement offer to his client when, in fact, the respondent had not informed his client of the settlement offer. The respondent did not respond to the settlement offer and did not oppose motions to compel the overdue discovery. On January 19, 2016, the court ordered the client to respond to discovery within twenty days. The respondent took no action and did not inform the client of the order. In February 2016, the respondent intentionally misrepresented to his client that the case was moving forward and that he was waiting for the defendant's answers to interrogatories. On about February 24, 2016, the respondent received a motion for sanctions against his client for failure to answer discovery. The respondent did not inform his client or oppose the motion. After the court entered an order on April 4, 2016, precluding the client from introducing at trial any medical bills or records in support of her claim, the respondent did not notify the client. In early May 2016, the client

discharged the respondent. The respondent did not promptly notify the insurer and file a notice of withdrawal.

By failing to handle his client's legal matter with the thoroughness or preparation necessary for the representation, to seek the lawful objectives of his client through reasonably available means, and to handle her legal matter promptly and diligently, 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, to promptly respond to his client's reasonable requests for information about the representation, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, the respondent violated Mass. R. Prof. C. 1.4(a) and 1.4(b); by making intentional misrepresentations to his client, the respondent violated Mass. R. Prof. C. 8.4(c); by making intentional misrepresentations to opposing counsel, the respondent violated Mass. R. Prof. C. 4.1(a) and 8.4(c); and by failing to promptly notify the insurer that he had been discharged and to seek to withdraw his court appearance on behalf of his client after discharge, the respondent violated Mass. R. Prof. C. 1.16(a)(3), (c), and (d).

In mitigation, between February 2014 and January 2016, three close family members of the respondent passed away. Their close deaths significantly affected the respondent's ability to handle his pending client matters. The estate tax penalties incurred in the first matter were waived by the taxing authorities, and the respondent returned the \$25,000 he had been paid and waived his remaining fee even though he performed some work on the estate. The client in the second case resolved her claim through successor counsel, and the respondent did not take any fee in that matter.

In aggravation, both clients experienced delays in the resolution of their matters, and the estate incurred estate tax penalties and interest even though the penalties were ultimately waived. The respondent had substantial experience in the practice of law and engaged in multiple acts that resulted in rule violations over the course of several years. The respondent had received prior discipline for similar misconduct. The respondent received an admonition in 2000 for neglecting an estate. Admonition No. 00-50, 16 Mass. Att'y Disc. R. 526 (2000). On June 28, 2010, the respondent was suspended for six months, with the final four months stayed for one year, on conditions, based on his conduct in three separate matters. Matter of John A. Nealon, 26 Mass. Att'y Disc. R. 427 (2010).

The matter came before the Board of Bar Overseers on a stipulation of facts and joint recommendation for a year and one day suspension. On February 11, 2019, the Board of Bar Overseers voted unanimously to accept the stipulation and to recommend the agreed-upon disposition to the Supreme Judicial Court. The Court so ordered on February 27, 2019, with the suspension to take effect thirty days thereafter.