

IN RE: DAVID A. JONES

Last known address:
P.O. Box 617
Tilton, NJ 03276

MEMORANDUM OF DECISION

Bar Counsel filed a petition for reciprocal discipline based on a report of the disciplinary board of the Supreme Court of Pennsylvania. The respondent, David A. Jones, was suspended from the practice of law for a period of one year. See *Matter of Jones*, 425 Mass. 1005 (1997). Thereafter, in 1993, the disciplinary board of Pennsylvania disbarred the respondent. Bar Counsel has requested reciprocal discipline.

A hearing on the reciprocal discipline, which was continued at the request of the respondent, was held on January 27, 1999. At that hearing, the respondent contended that he had no notice that his counsel in Pennsylvania could not practice law in Pennsylvania and thus could not represent him at the proceeding. The respondent argued that the disciplinary hearing board should not have proceeded in his absence after having disqualified his counsel. Therefore, the respondent claims he was not accorded due process at the hearing.

He argues that he was denied "reasonable notice or opportunity to be heard." S.J.C. 4:01, Sect. 16.1 Although the record before the court at the hearing tended to support the respondent, at the request of the court the disciplinary board of the Supreme Court of Pennsylvania sent further papers. Those papers indicate that on September 15, 1993, the respondent was notified that his lawyer "assumed voluntary inactive status at the end of August, 1993. Therefore, [the attorney] will not be able to represent you in [the] upcoming matters. This matter is scheduled for Wednesday and Thursday, September 22 and 23, 1993."

¹ At the time of the disciplinary action, failure to receive adequate notice or opportunity to be heard was a defense to reciprocal discipline. The current version of the rule has no such provision. The respondent also cites S.J.C. Rule 4:01, Sect. 16 (c), which prevents reciprocal discipline where grave injustice would result. That provision still exists. The respondent does not set forth any argument specific to that subsection, but his argument with respect to subsection (a) applies.

The respondent had a mail drop at "The Mail Annex" at that time and a partner, owner and operator of The Mail Annex signed for the notice on September 18, 1993. Thus, contrary to the respondent's claim, he had notice by mail prior to the hearing that his counsel would be unable to represent him. Because the respondent had notice of his attorney's inactive status, he had the opportunity to obtain counsel and to be heard. The original record filed by bar counsel did not contain the notice subsequently received by the court from Pennsylvania. However, having received it and reviewed the respondent's request, I conclude there is no basis for not imposing reciprocal discipline.

By the Court, (Abrams, J.)

DATED: July 22, 1999

JUDGMENT OF DISBARMENT

This matter came before the Court, Abrams, J., on a Petition for Reciprocal Discipline filed by the Board on October 19, 1995. After hearing and for reasons stated in the Memorandum of Decision of this date, it is ORDERED and ADJUDGED that:

1. DAVID A. JONES is hereby disbarred from the practice of law in the Commonwealth effective August 5,

1999, and the lawyer's name is forthwith stricken from the Roll of Attorneys.

It is FURTHER ORDERED that:

2. Within fourteen (14) days of the date of entry of this Judgment, the lawyer shall:

a) file a notice of withdrawal as of the effective date of the disbarment with every court, agency, or tribunal before which a matter is pending, together with a copy of the notices sent pursuant to paragraphs 2(c) and 2(d) of this Judgment, the client's or clients' place of residence, and the case caption and docket number of the client's or clients' proceedings; trustee, attorney-in-fact, or other fiduciary, attaching to the resignation a copy of the notices sent to the wards, heirs, or beneficiaries pursuant to paragraphs 2(c) and 2(d) of this Judgment, the place of residence of the wards, heirs, or beneficiaries, and the case caption and docket number of the proceedings, if any;

c) provide notice to all clients and to all wards, heirs, and beneficiaries that the lawyer has been disbarred; that he is disqualified from acting as a lawyer after the effective date of the disbarment; and that, if not represented by co-counsel, the client, ward, heir, or beneficiary should act promptly to substitute another lawyer or fiduciary or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;

d) provide notice to counsel for all parties (or, in the absence of counsel, the parties) in pending matters that the lawyer has been disbarred and, as a consequence, is disqualified from acting as a lawyer after the effective date of the disbarment;

e) make available to all clients being represented in pending matters any papers or other property to which they are entitled, calling attention to any urgency for obtaining the papers or other property;

f) refund any part of any fees paid in advance that have not been earned; and

g) close every IOLTA, client, trust or other fiduciary account and properly disburse or otherwise transfer all client and fiduciary funds in his possession, custody or control.

All notices required by this paragraph shall be served by certified mail, return receipt requested, in a form approved by the Board.

3. Within twenty-one (21) days after the date of entry of this Judgment, the lawyer shall file with the Office of the Bar Counsel an affidavit certifying that the lawyer has fully complied with the provisions of this Judgment and with bar disciplinary rules. Appended to the affidavit of compliance shall be:

a) a copy of each form of notice, the names and addresses of the clients, wards, heirs, beneficiaries, attorneys, courts and agencies to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise requested in writing by the lawyer or ordered by the court;

b) a schedule showing the location, title and account number of every bank account designated as an IOLTA, client, trust or other fiduciary account and of every account in which the lawyer holds or held as of the entry date of this Judgment any client, trust or fiduciary funds;

c) a schedule describing the lawyer's disposition of all client and fiduciary funds in the lawyer's possession, custody or control as of the entry date of this Judgment or thereafter;

d) such proof of the proper distribution of such funds and the closing of such accounts as has been requested by the bar counsel, including copies of checks and other instruments;

e) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and

f) the residence or other street address where communications to the lawyer may thereafter be directed.

The lawyer shall retain copies of all notices sent and shall maintain complete records of the steps taken to comply with the notice requirements of S.J.C. Rule 4:01, Sect. 17.

4. Within twenty-one (21) days after the entry date of this Judgment, the lawyer shall file with the Clerk of the Supreme Judicial Court for Suffolk County:

a) a copy of the affidavit of compliance required by paragraph 3 of this Judgment;

b) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and

c) the residence or other street address where communications to the lawyer may thereafter be directed.

By the Court, (Abrams, J.)

Entered: July 22, 1999

Please direct all questions to webmaster@massbbo.org.
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