

**BBO File No. C1-08-0158****MATTER OF JAMES SMITH<sup>1</sup>****Order Entered by the Board on September 13, 2010 Dismissing Petition for Discipline**

Bar counsel filed a petition for discipline against the respondent, James Smith, Esquire, charging that the respondent had been found in contempt of court for failing to comply with the terms of the final judgment in his divorce, and that the conduct underlying this contempt finding violated Mass. R. Prof. C. 3.4(c) (knowing disobedience of an obligation under the rules of a tribunal) and 8.4(d) (conduct prejudicial to the administration of justice) and (h), (conduct reflecting adversely on fitness to practice).

Bar counsel moved for an order precluding the respondent from contesting the facts underlying the contempt judgment. The board's chair denied the motion, and the matter went to hearing.

The committee found that the respondent had, as he conceded, failed to make support payments when due in accordance with his divorce judgment, and that he had failed to maintain life insurance and pay uninsured medical expenses. Smith filed a complaint to modify the judgment to reduce his support obligations, asserting that his recent suspension from the practice of law and the general state of the economy left him unable to make the payments when due. Smith also filed a motion for temporary orders reducing those obligations. The court denied his motion. Shortly afterwards, Smith unilaterally reduced his payments. His former spouse responded with a contempt complaint.

Smith was found in contempt and ordered to pay the arrearage, the uninsured medicals, and his former spouse's attorneys' fees. He was jailed for thirty days to coerce payment, but he did not purge the contempt and obtain his release by payment. Ultimately, the parties settled the arrearage under an agreement for judgment on the complaint for modification. Smith did not pay

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<sup>1</sup> A pseudonym. See S.J.C. Rule 4:01, §20(3)(d).

his former spouse's attorneys' fee or the uninsured medicals in accordance with the contempt judgment.

The committee credited the respondent's testimony and evidence that when he was found in contempt he was financially unable to meet his support obligations and was not voluntarily under-employed. It also found that his failure to maintain life insurance was the direct result of his suspension from practice. Finally, it found that the respondent's non-payment of attorneys' fees and uninsured medicals as ordered under the contempt judgment resulted from a reasonable belief that the matter had been concluded in the settlement under the modification complaint.

The committee concluded that the respondent's inability to pay, along with the other circumstances presented, precluded finding the charged violations, and it recommended dismissal.

On September 13, 2010, the matter came before the Board of Bar Overseers without objection or appeal by either party. The board voted to adopt the report of the hearing committee, and it dismissed the matter.