

**IN RE: DAVID K. FERGUSON****NO. BD-2004-055**

**S.J.C. Order of Term Suspension entered by Justice Greaney on September 26, 2005,
with an effective date of October 26, 2005.¹**

S.J.C. Judgment of Reinstatement entered by Justice Greaney on March 10, 2006.

SUMMARY²

The respondent received a four-month suspension for conduct arising from a conviction in 2004 for assault and battery on his wife, in violation of Mass. R. Prof. C. 8.4(b) and (h).

The facts underlying the conviction were as follows. In February 2003, the respondent was charged in Worcester District Court with one count of assault and battery on his then wife. During the resulting jury trial, the respondent denied assaulting his wife as charged. After the trial ended in a mistrial, the respondent admitted to sufficient facts as to one misdemeanor count of assault.

The respondent's admission to sufficient facts, under Mass. G.L. c. 276, §87, for assaulting his wife, in violation of Mass. G.L. c. 265, §13A, constitutes a "conviction" for purposes of Rule 4:01, Section 12(1) of the Rules of the Supreme Judicial Court. Bar counsel accordingly filed a petition for discipline.

In the disciplinary proceedings, and contrary to his court testimony, the respondent admitted striking his wife in February 2003 but sought to establish that the event was an "isolated incident of very minor force." The hearing panel found that the respondent failed to carry his burden of proof on this issue. The panel also found that bar counsel failed to prove that the incident was one in a series of violent acts against the wife, but that bar counsel did prove that the respondent engaged in a pattern of threatening conduct, "some of which was of such an intimidating nature that [the wife] felt the need to call the police and obtain restraining orders on at least 4 separate occasions."

The panel made additional findings on aggravation and mitigation. In particular, the panel determined that the respondent's admitted perjury in denying the assault during the

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.

Worcester District Court trial is a “serious aggravating factor.” The panel credited that family issues and personal problems confronting the respondent during his marriage were traumatic, but not factors in mitigation because “nothing excuses domestic violence.” They accordingly recommended that the respondent be suspended from the practice of law for four months.

On August 11, 2005, the Board of Bar Overseers voted to recommend to the Supreme Judicial Court that the respondent be suspended for four months. The Court so ordered on September 26, 2005.