

**IN RE: THOMAS F. PATCH****NO. BD-2006-019****S.J.C. Order of Indefinite Suspension entered by Justice Spina on January 26, 2012, Retro to March 2, 2007.<sup>1</sup>****Page Down to View Memorandum of Decision**

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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.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT  
FOR THE COUNTY OF SUFFOLK  
DOCKET NO. BD-2006-019

IN RE: THOMAS F. PATCH

MEMORANDUM OF DECISION

The Board of Bar Overseers (board) filed an information recommending that the respondent be disbarred, effective March 2, 2007, the effective date of his temporary suspension.

The board's recommendation is based on three criminal convictions of the respondent, as follows:

- (1) violation of a protective order (two counts), issued under G. L. c. 209A; date of conviction – March 13, 2006;
- (2) criminal harassment – G. L. c. 265, § 43 (a); date of conviction – March 13, 2006; and
- (3) intimidation of a witness – G. L. c. 268, § 13B; date of conviction – November 28, 2007 (sentencing occurred on July 23, 2008).

In addition, on January 10, 2007, the respondent was found to have violated the terms and conditions of his probation on items (1) and (2). He was ordered to serve a two and one-half year sentence on the conviction for violation of a protective order, and his probation on the conviction for criminal harassment was extended.

Intimidation of a witness is a felony, and as such it is a "serious crime" within the meaning of S.J.C. Rule 4:01, § 12 (3). Violation of a protective order is a misdemeanor, but because it falls within the concept of "interference with the administration of justice," as used in S.J.C. Rule 4:01, § 12 (3), it, too, is a "serious crime." See *Matter of Buxton*, 24 Mass. Att'y Discipline Rep. 68, 72 (2008). The presumptive sanction for conviction of a felony is disbarment or indefinite suspension. See *Matter of Concemi*, 422 Mass. 326, 328 (1996). The respondent presented the hearing panel with no evidence of mitigation.

The respondent's conviction for intimidation of a witness violated Mass. R. Prof. C. 3.4(a) (lawyer shall not unlawfully obstruct another party's access to evidence), Mass. R. Prof. C. 8.4(b) (professional misconduct for lawyer to commit criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness as lawyer in other respects), and Mass. R. Prof. C. 8.4(d) (professional misconduct for lawyer to engage in conduct prejudicial to administration of justice).

The convictions for violation of a protective order (two counts) violated Mass. R. Prof. C. 8.4(b) (professional misconduct for lawyer to commit criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness as lawyer in other respects), (d) (professional misconduct for lawyer to engage in conduct prejudicial to administration of justice), and (h) (professional misconduct for lawyer to engage in any other conduct that adversely reflects on his or her fitness to practice law).

The respondent's conviction for criminal harassment violated Mass. R. Prof. C. 8.4(b) (professional misconduct for lawyer to commit criminal act that reflects adversely

on lawyer's honesty, trustworthiness, or fitness as lawyer in other respects).

The respondent's conduct in violating the terms of his probation violated Mass. R. Prof. C. 3.4(c) (lawyer shall not knowingly disobey obligation under rules of tribunal) and Mass. R. Prof. C. 8.4(d) (professional misconduct for lawyer to engage in conduct prejudicial to administration of justice).

There is no reason to depart from the presumptive sanction in this case. However, I had an opportunity to observe the respondent for about forty-five minutes, including about thirty minutes for his own oral argument, and I could not help but think that he has unresolved emotional issues that in all likelihood contributed to his difficulties. He was reduced to tears twice during the hearing before me. Although he did not present any evidence of mitigation to the hearing panel, I honestly believe it exists and I am not inclined to order disbarment for this reason. I also note that, although not determinative, the misconduct in this case did not occur in the course of the practice of law.<sup>1</sup>

Having reviewed the entire file, having considered the arguments of the parties, and having observed the respondent, I believe the appropriate sanction is an indefinite suspension, retroactive to March 2, 2007, the effective date of his temporary suspension. The respondent will have to satisfy the board that he has addressed his emotional issues to their satisfaction in conjunction with an application for reinstatement.

I have considered the respondent's request to defer decision until his appeals from

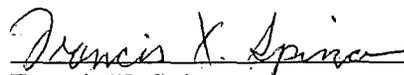
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<sup>1</sup> Intimidation of a witness and violation of a protective order, however, affect the administration of justice and thus implicate the practice of law indirectly.

his convictions can be decided. The board acceded to his requests for deferral, but then proceeded with the disciplinary proceedings because no progress had been forthcoming in the prosecution of his appeals. I agree with the reasoning of the board: although the respondent was having difficulty reconstructing the record as to sidebar conferences (the transcripts of the audio-taped sidebar conferences contained the all-too familiar "inaudible"), he has not explained adequately why his appeals could not have proceeded without resort to the sidebar conferences, which merely contained specific reasons for objections that were declared on the record. The vast majority of reasons for objections are readily apparent.

In conclusion, an order is to enter that indefinitely suspends the respondent from the practice of law, effective March 2, 2007. If the respondent applies for reinstatement, he must satisfy the board that he has addressed his emotional issues.

By the Court,



Francis X. Spina  
Associate Justice  
Supreme Judicial Court

ENTERED: January 26, 2012