IN RE: MICHAEL L. PIERCE

NO. BD-2010-037

S.J.C. Judgment of Disbarment entered by Justice Gants on June 10, 2011.[1]

SUMMARY[2]

The respondent was disbarred for misconduct set forth in a four-count petition for discipline.

In the first matter, the respondent misused escrowed funds. In December 2004, the respondent represented a seller at a closing. The client and the buyer entered into an escrow agreement, and the respondent agreed to serve as the escrow agent. Accordingly, $10,000 in sale proceeds due the client was wired into the respondent's IOLTA account, to be held pending certain construction on the property. Between December 2004 and October 2005, the respondent intentionally misused the $10,000 in escrowed funds for his own personal or business purposes. From late 2005 through early 2010, the client repeatedly telephoned and wrote the respondent demanding that the respondent take steps to have the escrowed funds released, but to no avail.

The respondent's intentional misappropriation of the escrowed trust funds resulting in actual deprivation for either a client or a third party and his failure to take steps to confirm that the escrowed funds could be released were in violation of Mass. R. Prof. C. 1.2(a), 1.3, 1.15(b) and (c), and 8.4(c) and (h).

In the second matter, in March 2008, the respondent filed a motor vehicle personal injury suit and made service on the defendants. The suit was then ultimately dismissed in July 2008, because the respondent never filed a return of service. The respondent also took no action to vacate the dismissal or otherwise advance the suit, and he did not advise the client that the case had been dismissed.

The respondent's failure to ensure that the return of service was filed and docketed, his failure to seek to vacate the dismissal, and his failure to otherwise pursue the case were in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3, and 8.4(h). The respondent's failure to communicate with the client during the representation and his failure to notify her of the dismissal were in violation of Mass. R. Prof. C. 1.4(a) and (b).

In late 2009, the respondent was retained in five unrelated bankruptcy matters. In all five matters, the respondent was paid a flat fee representing legal fees and costs, and in all five matters, the respondent failed to file the bankruptcy or respond to the clients' requests for information, and he did not refund the unearned legal fees or unexpended costs.

The respondent's failure to pursue these bankruptcy matters for his clients and his failure to respond to his clients' requests for information or adequately communicate with his clients were in violation of Mass. R. Prof. C. 1.3, 1.4(a) and (b), and 8.4(h). 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.

respondent's failure to refund the unearned legal fees and unexpended costs was in violation of Mass. R. Prof. C. 1.15(c) and 1.16(d).

The respondent also failed to cooperate with bar counsel's investigation. Although the respondent initially cooperated with bar counsel's investigation into the first complaint, he stopped cooperating when bar counsel obtained a subpoena directing him to provide his bank records pertaining to the escrowed funds. As a result of his failure to comply with the subpoena, the Supreme Judicial Court for Suffolk County entered an order of immediate administrative suspension of the respondent on April 30, 2010, suspending him from the practice of law effective immediately upon entry of the order.

Following the issuance of the Court's order of immediate administrative suspension of the respondent, the respondent did not notify the client whose civil matter the respondent neglected of his administrative suspension, and he did not file with the Office of Bar Counsel an affidavit of compliance or otherwise comply with the order.

On July 29, 2010, the United States District Court for the District of Massachusetts entered an order of immediate administrative suspension of the respondent suspending him from the practice of law in United States District Court effective immediately. As a result of this administrative suspension, the respondent was prohibited from practice in United States Bankruptcy Court. In September 2010, knowing that he was prohibited from practicing law in United States Bankruptcy Court, the respondent met with one of his bankruptcy clients and advised him that he would file the bankruptcy within the next ten days.

In addition to the first complaint pertaining to the escrowed funds, bar counsel received complaints from seven additional complainants. The respondent knowingly failed to cooperate with bar counsel's investigation into all seven of these matters.

The respondent's conduct in knowingly failing without good cause to cooperate with bar counsel's investigations in eight matters was in violation of Mass. R. Prof. C. 8.1(b), 8.4(g) and (h), and S.J.C. Rule 4:01, § 3. The respondent's failure to comply with the S.J.C.'s order of suspension and his continuing to practice law while under administrative suspension in United States District Court were in violation of Mass. R. Prof. C. 3.4(c), 5.5(a), and 8.4(d), and S.J.C. Rule 4:01, § 3.

Bar counsel filed a petition for discipline against the respondent on February 3, 2011. In aggravation, the respondent failed to file an answer to the petition. By letter dated March 1, 2011, the Board of Bar Overseers notified the respondent that the allegations in the petition were deemed admitted and that he had waived his right to be heard in mitigation.

On May 9, 2011, the board voted to recommend to the Court that the respondent be disbarred. The Court so ordered on June 10, 2011.