

**NO. BD-2010-085****S.J.C. Order of Indefinite Suspension entered by Justice Gants on May 19, 2011.<sup>1</sup>****SUMMARY<sup>2</sup>**

From 1999 through 2009, the respondent was employed as an attorney by a union. At various times from 2004 through 2006, he had communications with a member of the union, although he never personally represented her. In February of 2006, the respondent wrote a letter at the union member's request. The letter was addressed "to whom it may concern" and stated in part that the respondent "is representing [the union member] on her ongoing Workers' Compensation Claim." The respondent signed the letter and gave it to the union member.

In fact, the respondent did not represent the union member on any matter, knew when he wrote the letter that he did not represent her on a workers' compensation claim and did not know whether she had an ongoing workers' compensation claim. The union member, who incorrectly believed the respondent was representing her, told the respondent that she needed it to give to the people who operated her Section 8 subsidized housing so that her rent would not be increased.

In writing the above letter that the respondent knew was false and in giving it to the union member, the respondent engaged in conduct that violated Mass. R. Prof. C. 8.4(c) and (h).

In three other matters, as counsel for the union, the respondent neglected client matters and made intentionally false statements to the client, as follows:

- 1) In October of 2007, the respondent was assigned by the union to negotiate a new collective bargaining agreement with a company that employed certain union members. The respondent conferred with the company's director of labor relations. At a meeting in October of 2007, the respondent was given a package of documents in furtherance of reaching a collective bargaining agreement. After that meeting, the respondent had no further communications with the company or its

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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.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

director of labor relations and took no further steps to negotiate a collective bargaining agreement. The respondent failed to respond to a number of e-mails from the company, attempting to arrange another meeting. The respondent also did not inform the union of the company's attempts to reach a new agreement or of his failure to pursue negotiations. Ultimately, eleven months later, the company e-mailed the union directly because it had not heard from the respondent since the October 2007 meeting.

The respondent's conduct in failing to continue discussions with the company and attempt to negotiate a collective bargaining agreement for union members, and in failing to so advise the union, was in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4(a) and (b).

2) In a second union matter, a company filed suit in federal court in July of 2008 against the union, seeking to vacate an arbitration award. The respondent was assigned to defend the union and accepted service of process on behalf of the union in August of 2008. Thereafter, the respondent did not file an answer or otherwise respond to the suit on behalf of the union and failed to advise the union that he had not responded on its behalf. In January of 2009, the union terminated the respondent's employment and retained new counsel to defend the lawsuit.

The respondent's conduct in failing to file a response to the lawsuit, and in failing to so advise the union, was in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4(a) and (b).

3) In a third union matter, the respondent was assigned by the union to arbitrate the firing of a union member. While the respondent initially requested arbitration and hearing dates in September of 2008, he did not oppose the employer's response that argued that the arbitrator did not have jurisdiction over the firing of the employee. In December of 2008, the arbitrator issued a ruling stating that he did not have jurisdiction to arbitrate the employer's termination of the union member. The respondent took no steps to compel arbitration or appeal the arbitrator's decision. The respondent received the ruling in due course but did not advise the employee or the union of the arbitrator's ruling, or that he had taken no action. On numerous occasions, including after the arbitrator's December 2008 ruling, the union asked the respondent about the status of the arbitration, to which the respondent always replied he would look into the status of the arbitration and find out when the hearing dates would be,

thereby knowingly misrepresenting that the matter was still pending. By an e-mail dated January 12, 2009, the respondent advised the union that he would check on the status of the case. On February 12, 2009, the union learned from the employer's counsel of the arbitrator's decision in December of 2008. By this time, it was too late to appeal it or file suit in federal court to compel arbitration.

The respondent's conduct in failing to respond to the employer's argument that the arbitrator lacked jurisdiction over the employee's termination, and in failing to take steps to compel arbitration or appeal the arbitrator's decision, was in violation of Mass. R. Prof. C. 1.1, 1.2(a) and 1.3. The respondent's conduct in failing to tell the union or the employee that the arbitrator declined jurisdiction and by knowingly misrepresenting to the union that the matter was still pending, was in violation of Mass. R. Prof. C. 1.2(a), 1.3, 1.4(a) 1.4 (b), 8.4(c) and 8.4(h).

In February of 2009, the respondent was retained to represent a man in connection with some district court criminal charges. The respondent never advised the man or his brother, who was paying for the defense, of the basis or rate of his fee. The respondent was paid a fee of \$2,500 on or about February 17, 2009, and an additional \$1,000 on or about April 10, 2009. The respondent was discharged in June of 2009 and replaced by successor counsel. Thereafter, the brother demanded the return of the unearned portion of the fee. In August of 2009, the respondent said that \$1,000 would be refunded. However, no refund was ever made.

The respondent's conduct in failing to communicate the basis or rate of his fee to the client before or within a reasonable time after commencing the representation, was in violation of Mass. R. Prof. C. 1.5(b). The respondent's conduct, in failing to return the unearned fee, was in violation of Mass. R. Prof. C. 1.16(d).

In June or July of 1999, a client hired the respondent to bring claims against a company that the client claimed had misappropriated his inventions. The respondent prepared a draft complaint but never filed an action in court and never took any other action on the client's behalf. From 1999 through 2007, the respondent periodically knowingly misrepresented to the client that he was diligently prosecuting his claim and had filed a complaint. The respondent also knowingly misrepresented to the client that he had filed a motion for summary judgment and was engaged in arbitration proceedings concerning the client's claim. Beginning in approximately December of

2007, the respondent failed to respond to the client's telephone calls and letters of inquiry.

The respondent's conduct in failing to file suit on the client's behalf, was in violation of Mass. R. Prof. C. 1.1, 1.2(a) and 1.3. The respondent's conduct in falsely telling the client that suit and a summary judgment motion had been filed and that he was engaged in arbitration proceedings, and thereafter failing to respond to the client's calls and letters, was in violation of Mass. R. Prof. C. 1.4, 1.2(a), 8.4(c), and 8.4(h).

Between April and August of 2010 the respondent repeatedly failed to cooperate with bar counsel's investigation of three separate matters, failed to respond to requests for information and failed to comply with a subpoena duces tecum directing him to appear before bar counsel, to testify and to bring certain records and documents regarding bar counsel's investigations.

As a result of the respondent's failure to cooperate with bar counsel's investigations in these three matters, bar counsel filed a petition for administrative suspension of the respondent with the Supreme Judicial Court. On August 31, 2010, the Court issued an order of administrative suspension. After the respondent's administrative suspension, he failed to cooperate with bar counsel's investigations in two additional matters.

The respondent's failure to cooperate with bar counsel's investigations, resulting in his subsequent administrative suspension, was in violation of Mass. R. Prof. C. 8.4(d), (g) and (h).

The respondent never complied with the August 31, 2010, order of administrative suspension, in that he never filed an affidavit certifying that he had complied with the provisions of the order, nor did he submit the materials required to be appended to the affidavit of compliance.

After the issuance of the order of administrative suspension of August 31, 2010, the respondent engaged in the unauthorized practice of law by appearing in two different district courts on behalf of clients. On one occasion, the respondent appeared in Dedham District Court on behalf of the client on October 5, 2010, and represented her at trial. The client was found guilty on count 2 of the charges against her. The respondent tried the client's case without having advised her, the assistant district attorney or the court that he was suspended from the practice of law. On October 7,

2010, the respondent appeared in Taunton District Court on behalf of the same client in another matter and negotiated a plea on her behalf in that matter. The respondent did not advise the client, the assistant district attorney or court that he was suspended from the practice of law.

On February 1, 2011, the respondent was held in contempt by the single justice for engaging in the unauthorized practice of law in violation of the August 31, 2010, order of administrative suspension.

The respondent's conduct in continuing to practice law in the Commonwealth of Massachusetts by representing a client in two different matters after the order of administrative suspension was in violation of Mass. R. Prof. C. 3.4(c), 5.5(a), 8.4(d) and 8.4(h), and S.J.C. Rule 4:01, §§ 3 and 17. The respondent's conduct in failing to inform the client that he was suspended, and in failing to withdraw from the representation, was in violation of Mass. R. Prof. C. 1.16(a)(1), 3.4(c), 8.4(d) and 8.4(h), and S.J.C. Rule 4:01, §§ 3 and 17.

On January 25, 2011, bar counsel filed a petition for discipline alleging this misconduct. The respondent failed to participate further in the disciplinary process and a notice of default was issued on February 17, 2011.

On April 11, 2011, the Board of Bar Overseers voted to recommend that the respondent be indefinitely suspended. On April 22, 2011, an information was filed in the county court. On May 19, 2011, after a hearing at which the respondent failed to appear, the county court (Gants, J.) entered an order of indefinite suspension.