

**NO. BD-2011-016****S.J.C. Judgment Accepting Affidavit of Resignation As A Disciplinary Sanction entered by Justice Botsford on June 7, 2011, with an effective date of July 7, 2011.<sup>1</sup>****SUMMARY<sup>2</sup>**

Bar counsel filed a petition for discipline against the respondent on August 31, 2010. On January 14, 2011, the respondent submitted to the Board of Bar Overseers an affidavit of resignation from the practice of law pursuant to S.J.C. Rule 4:01, §15. In his affidavit, the respondent admitted that the following material facts and disciplinary rule violations set forth in the petition could be established by a preponderance of the evidence.

In October of 2004, the respondent filed a Chapter 11 petition for bankruptcy with the Massachusetts District of the United States Bankruptcy Court on behalf of a client. After the court granted the trustee's motion to dismiss in February of 2005, the court ordered the respondent to appear personally and show cause as to why sanctions should not be imposed upon him for filing the case in a court where venue appeared to be facially improper. The respondent failed, without good cause, to appear for the show cause hearing on the originally scheduled date and a subsequent date. The court issued a warrant for the respondent's arrest. After the respondent was arrested and taken before the court, he was sanctioned \$500 for failure to appear at the show cause hearings and \$250 for the frivolous filing of a case with no arguable venue.

The respondent's frivolous filing of a case with no arguable venue was in violation of Mass. R. Prof. C. 3.1 and 8.4(d) and (h). His failure to obey an order of the court, causing the court to have him arrested, was in violation of Mass. R. Prof. C. 3.4(c) and 8.4(d) and (h).

In four bankruptcy matters filed by the respondent in 2007 and 2008, the respondent repeatedly failed to file required documents by court-ordered deadlines and failed to appear at a number of scheduled hearings. As a result, each of the four matters were dismissed by the court. Three of the matters were subsequently re-opened with the assistance of successor counsel.

In April of 2008, the court scheduled a hearing in one of the above matters for May 6. Noting that the respondent, a sole practitioner, had requested continuances in a number of cases because of health issues, the court's order stated that the matter was continued "to give Counsel the opportunity to make arrangements for substitute counsel to properly represent his clients on these matters as well as on other matters arising in Counsel's other cases."

On May 6, 2008, the respondent failed to appear and the matter was continued until May 27, 2008. The court ordered the respondent to appear personally on that date and show cause why he should not be required to disgorge his fees or be subject to other sanctions for failing to appear at the hearing.

On May 27, 2008, the respondent appeared before the court and represented that he did not attend the May 6th hearing because he was in Florida on that date and was unaware that a hearing had been scheduled. The court ordered the respondent to file a written coverage plan for his practice within fourteen days. No action was taken on the order to show cause.

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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.

The respondent failed, without good cause, to file a plan as ordered by the court. On June 24, 2008, the court ordered the respondent to appear on July 22, 2008, to show cause why he should not be sanctioned for failure to file a written coverage plan as ordered by the court. On July 22, 2008, the respondent failed, without good cause, to appear at the show cause hearing.

The respondent's failure to diligently represent his clients in the above four matters, causing their cases to be dismissed, was in violation of Mass. R. Prof. C. 1.3 and 8.4(d) and (h). The respondent's failure to obey court orders was in violation of Mass. R. Prof. C. 3.4(c) and 8.4(d) and (h).

In a sixth bankruptcy matter, the respondent filed a Chapter 7 petition on behalf of a client in December of 2008. The court issued an order for the respondent to update the petition by filing the debtor's certificate of credit counseling by January 20, 2009. On February 5, 2009, the court dismissed the case due to the failure of the respondent to file the debtor's certificate of credit counseling. On February 19, 2009, a certificate of credit counseling was filed for Baker with the court. On April 24, 2009, the court vacated the order dismissing the case and reinstated the case.

The respondent's failure to diligently represent his client, causing his case to be dismissed, was in violation of Mass. R. Prof. C. 1.3 and 8.4(d) and (h). His failure to obey a court order was in violation of Mass. R. Prof. C. 3.4(c) and 8.4(d) and (h).

On February 14, 2011, the board voted to recommend that the Supreme Judicial Court accept the respondent's affidavit of resignation as a disciplinary sanction. On June 7, 2011, the Supreme Judicial Court for Suffolk County entered a judgment accepting the respondent's resignation as a disciplinary sanction and striking the respondent's name from the roll of attorneys.