

**NO. BD-2011-040****S.J.C. Order of Term Suspension/Stayed with Conditions entered by Justice Botsford on July 27, 2011.¹****SUMMARY²**

On March 25, 2011, the New Hampshire Supreme Court Professional Conduct Committee (PCC) suspended the respondent, John A. James, Jr., for six months, but stayed imposition of the suspension for two years, on the condition that the respondent retain a mentor or law practice management consultant who shall prepare a plan for establishing business practices necessary for the ethical and effective management of the respondent's legal practice and who shall report to New Hampshire Disciplinary Counsel quarterly concerning the respondent's compliance with the plan.

The New Hampshire discipline resulted from the respondent's representation of a client in a dispute over a family trust beginning in June of 2007. The trust had been created by the client's father and named as beneficiaries her brother and sister and their children but excluded the client and her children. The client claimed an interest in real estate that her father, who had recently died, had transferred to the trust and told the respondent that her brother, the trustee, was willing to negotiate a resolution of her interest. The respondent received a \$3,000 payment up front for the representation.

The respondent worked with the client to prepare a settlement proposal and communicated with the trustee's lawyer. The trustee made a settlement offer that the client rejected. By early 2008, the client decided to file a court action to resolve the dispute. The respondent did not do so until April of 2008, when he filed a petition in Rockingham County Probate Court to probate the father's estate. Over the next few months, the court notified the respondent of a number of problems with the papers he filed. In July he filed papers to correct some of the problems and a motion to address others. The respondent, however, did not appear at the scheduled hearing on his motion, which was denied in September of 2008.

After the denial of the motion, the client attempted on a number of occasions to contact the respondent about a plan of action, but the respondent did not respond. In December of 2008, the client demanded the return of the \$3,000 fee payment. In March of 2009, the client filed a complaint against the respondent with the New Hampshire Attorney Discipline Office. The respondent did not respond to the first two letters from that office and did not file a response to the complaint until December of 2009.

The PCC concluded that the respondent's repeated errors in filing a court action on the client's behalf violated Rule 1.1 (competence) of the New Hampshire Rules of Professional Conduct; that his delay in bringing the action and in responding to the problems raised by the court and his failure to appear for the motion hearing violated Rule 1.3 (diligence); that his failure to respond to the client's inquiries in late 2008 violated Rule 1.4 (communication); and that his failure to respond to the Attorney Discipline Office violated Rule 8.1 (failure to cooperate).

The PCC considered in mitigation that the respondent expressed sincere remorse for his misconduct, that there was no dishonest or selfish motive and that the respondent's mother had passed away in late August of 2008. In aggravation, the PCC noted that 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 had received a public reprimand in 2002, had substantial experience in the practice of law, engaged in multiple violations and obstructed the disciplinary process.

The respondent did not report the New Hampshire discipline to Massachusetts bar counsel, as required by S.J.C. Rule 4:01, § 16(6).

On April 22, 2011, bar counsel filed a petition for reciprocal discipline with the Supreme Judicial Court for Suffolk County. The respondent filed an answer on May 13, 2011, and on July 21, 2011, the parties waived hearing and assented to an order of reciprocal discipline. On July 27, 2011, the Court (Botsford, J.) issued an order of term suspension/stayed, suspending the respondent for six months, with the execution of the suspension stayed for two years, with the conditions that the respondent comply with the conditions imposed by the PCC and repay the client \$3,000 with six months of the date of entry of the order. The order also provided that after two years from the date of entry, the respondent may file an affidavit with bar counsel and the Court with proof of his successful completion of the above conditions and of the termination of the New Hampshire suspended suspension, and may request an order that he is no longer subject to the six-month suspension.