

**NO. BD-2011-058**

**S.J.C. Order of Temporary Suspension entered by Justice Botsford on August 17, 2011,  
with an effective date of September 9, 2011.<sup>1</sup>**

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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 SUFFOLK COUNTY  
DOCKET NO. BD-2011-058

IN RE: SALVATORE F. DIMASI

MEMORANDUM OF DECISION  
ON BAR COUNSEL'S PETITION FOR TEMPORARY SUSPENSION

The respondent, Salvatore F. DiMasi, was admitted to the practice of law in the Commonwealth in 1971, and has been a member of the Massachusetts bar since that time. He also served for many years as a State Representative and most recently, until his resignation in 2009, as Speaker of the House of Representatives. Bar Counsel has filed with this court a petition pursuant to S.J.C. Rule 4:01, § 12 (9), seeking the immediate temporary suspension of the respondent from the practice of law following the guilty verdicts rendered on June 15, 2011, by a jury in the United States District Court for the District of Massachusetts on the following charges: a count of conspiracy to commit honest services wire and mail fraud and to violate the Hobbs Act, 18 U.S.C. § 371; two counts of honest services mail fraud, 18 U.S.C. §§ 1341, 1346, and aiding and abetting, 18 U.S.C. § 2; three counts of honest services wire fraud, 18 U.S.C. §§ 1341, 1346, and aiding and abetting, 18 U.S.C. § 2; and a count of extortion under color of official right, 18 U.S.C. § 1951. The respondent opposes the petition, arguing that the court should not consider the imposition of any temporary suspension before he is sentenced, which is

scheduled to take place in the Federal District Court on September 8, 2011.

There is no dispute between the parties that under S.J.C. Rule 4:01, § 12 (1), the jury's guilty verdicts on the offenses just listed qualify as "conviction[s]," even though the respondent has not yet been sentenced. Nor do the parties dispute that the listed offenses qualify as "serious crime[s]" as the term is defined in rule 4:01, § 12 (3). The rule further provides that when bar counsel files, as she has done here, a certificate establishing a lawyer's conviction of one or more serious crimes, the respondent must "show cause why [he] should not be immediately suspended from the practice of law, regardless of the pendency of an appeal, pending final disposition of any disciplinary proceeding commenced upon such conviction." Rule 4:01, § 12 (4).

The key consideration in determining whether or not to impose an immediate temporary suspension in the case of an attorney convicted of a serious crime is the public interest. See, e.g., Matter of Burke, 3 Mass. Att'y Discipline Rep. 25 (1982). Within that broad category, relevant factors include: "(1) whether the sentence was stayed pending appeal; (2) whether the appeal is meritorious; (3) whether the attorney is pursuing the appeal diligently; (4) the seriousness of the crime and whether it is related to the attorney's practice of law; (5) the threat to the public interest should the attorney continue to practice; and (6) whether the temporary suspension would be longer than the sanction imposed after discipline." Matter of Bryant, 18 Mass. Att'y Discipline Rep. 91, 95 (2002), and cases cited.

I address a few of the key factors just set out. (1)-(3) Because the respondent has not yet been sentenced, the question whether the sentence will be stayed pending appeal cannot be answered at this time, but there is no question that the respondent is pursuing both postconviction

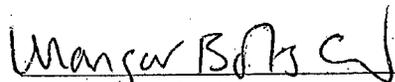
relief (in the form of a postjudgment motion for acquittal and a motion for a new trial) and will pursue an appeal, and that he believes he has meritorious grounds to do so. (4) The crimes of which he was found guilty are indeed very serious crimes. They relate to the respondent's conduct as a public official holding a high office, and indicate serious breaches of the public trust. It appears that the respondent's role as a practicing attorney was relevant to the commission of these crimes as well. (5) With respect to the threat to the public interest should the respondent continue to practice law, two considerations seem important. The first is that even though the issue here is immediate temporary suspension and not final disposition of this disciplinary proceeding, nonetheless, the public interest requires that the perception of the public and the bar be taken into account. Cf. Matter of Finneran, 455 Mass. 722, 737-739 (2010). The second is that the respondent, through his counsel, has stated unequivocally that with respect to any clients who might retain him, he would make full disclosure of the pending disciplinary proceeding, and the possible consequences to the client of his suspension from practice, should that occur. See Matter of Burke, 3 Mass. Att'y Discipline Rep. at 26.<sup>1</sup>

The nature and seriousness of the respondent's convictions are such that, if this were the only consideration, in my view the public interest would be best served by imposing an immediate temporary suspension of the respondent from the practice of law. However, as stated at the outset, the respondent is scheduled to be sentenced on September 8, less than a month from now. In view of the fact that at this juncture, the fate of the respondent's motions for

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<sup>1</sup> I do not address the question whether the discipline to be imposed at the conclusion of these disciplinary proceedings is likely to exceed any temporary suspension because the answer is so tied to the success, or lack of same, of the respondent's requests for postconviction relief and appeal in the Federal court.

postconviction relief is unknown, as is (assuming the denial of his motion for a judgment of acquittal) the nature or length of sentence to be imposed, and - of substantial importance to the temporary suspension calculus - whether or not that sentence will be stayed pending appeal, I will stay the order of immediate temporary suspension until September 9, 2011, the day following the respondent's scheduled sentencing, conditioned on the respondent's filing an affidavit in which he indicates his agreement to disclose fully to any client, new or old, that effective September 9, 2011, he is to be temporarily suspended from the practice of law pending the outcome of these disciplinary proceedings, and the consequences to the client of that action.



Margot Botsford  
Associate Justice

DATED: August 17, 2011