

**IN RE: PHILIP D. MORAN****NO. BD-2011-098****S.J.C. Order of Term Suspension entered by Justice Botsford on October 11, 2011, with an effective date of November 10, 2011.<sup>1</sup>**

(S.J.C. Judgment of Reinstatement entered by Justice Botsford on January 25, 2012.)

**SUMMARY<sup>2</sup>**

The respondent engaged in two instances of professional misconduct involving the same client, as follows.

In mid 2003, a client retained the respondent for estate planning purposes. The respondent prepared durable power of attorney and health care proxy forms for the client in late 2003. Thereafter, the respondent prepared a will for the client, which he executed in early 2004.

In 2004 and 2005, the respondent represented the client on an unrelated housing matter. In 2005, the client wished to revise his will, and he asked the respondent to make several changes to the will, including the addition of a \$15,000 bequest to the respondent. The respondent made the changes to the will, including the addition of a \$15,000 bequest to himself, and the client executed the revised will in mid 2005. The client, who had had paid the respondent for his legal representation from 2003 through 2005, added the \$15,000 bequest to the respondent in his revised will as an additional show of appreciation for the respondent's representation in all matters. The respondent and the client were not related to each other.

By preparing an instrument under which the respondent received a substantial bequest from a person to whom he was not related, the respondent violated Mass. R. Prof. C. 1.8(c).

In the spring of 2008, the same client retained the respondent to prepare an inventory of his assets and give him some financial advice. The respondent referred the client to a financial advisor and himself prepared an inventory of the client's assets, determining that as of June 2008, the client's assets, excluding his home, were worth in excess of \$380,000. The client paid the respondent for his work in preparing the inventory.

In the fall of 2008, the respondent asked the client if he could borrow \$15,000 from him. The client initially declined the respondent's request to borrow money, but a few months later, changed his mind and notified the respondent that he had decided to lend the respondent \$15,000. In February 2009, the client gave the respondent \$15,000 as a loan.

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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 and the client agreed orally that the respondent would repay this \$15,000 loan in full, but they did not discuss a method or timetable for repayment or an interest amount. No terms at all were discussed or agreed upon and nothing was reduced to writing. The \$15,000 loan transaction was not fair or reasonable to the client. The respondent did not fully disclose the terms of the \$15,000 loan transaction in writing to the client, nor did the respondent give the client a reasonable opportunity to seek the advice of independent counsel concerning the transaction. The respondent did not obtain the client's consent in writing to this \$15,000 loan transaction. The respondent repaid the \$15,000 loan, without interest, in August 2011 after the client filed a complaint with bar counsel in October 2010.

The respondent's conduct in borrowing money from a client where the terms of the loan were not fair and reasonable and were not fully disclosed and transmitted in writing to the client, and the client did not consent in writing thereto, was in violation of Mass. R. Prof. C. 1.8(a).

In aggravation, the respondent received an admonition in 2005 for entering into a contingent fee agreement with a client without executing a written agreement. *Admonition No. 05-17*, 21 Mass. Att'y Disc. R. 706 (2005).

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation that the respondent be suspended for two months conditioned on attendance at a CLE program designated by bar counsel. On September 12, 2011, the board voted to recommend that the Supreme Judicial Court accept the parties' stipulation and joint recommendation for discipline. The Court so ordered on October 11, 2011.