



IN RE: LAUREN GUSTAFSON

NO. BD-2012-044

S.J.C. Order of Term Suspension entered by Justice Lenk on September 17, 2012.¹

Page Down to View Memorandum of Decision

¹ 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
NO: BD-2012-044

IN RE: Lauren Gustafson

MEMORANDUM OF DECISION

This matter came before me on an information and record of proceedings, together with a vote of the Board of Bar Overseers (board) recommending that the respondent be suspended from the practice of law for six months, with conditions for reinstatement, and bar counsel's memorandum to the board recommending a suspension of one year and a day. See S.J.C. Rule 4:01, § 8(6). Because the respondent failed to file an answer to bar counsel's petition for discipline, the allegations against her are deemed admitted. S.J.C. Rule 4:01, § 7(3). Accordingly, the sole issue before me is the sanction to be imposed.

1. Background. The respondent, an attorney duly admitted to practice law in Massachusetts, was administratively suspended from the practice of law on July 26, 2010. The administrative suspension followed the respondent's failure to pay her attorney registration fees for the better part of a year.

Prior to seeking administrative suspension, the board made multiple attempts to reach the respondent by first class mail, certified mail, electronic mail, and through the respondent's

listed workplace. These efforts elicited no response.

In November, 2010, the respondent was hired as in-house counsel at a corporation in Boston. She then submitted to the board a registration statement, an affidavit in support of reinstatement, and a check in the amount of \$370.00. The board returned her check because, on its face, it did not cover the full amount due for registration, late fees, and reinstatement fees, and sent her a letter stating that she owed a total fee of \$740.00. This letter never reached the respondent; the envelope was returned to the board with a notation indicating that the respondent had moved and had not left a forwarding address. Contrast S.J.C. Rule 4:01, § 17(5), (6) (attorney subject to administrative suspension must maintain current contact information with bar counsel and the county court).

In July, 2011, bar counsel received a complaint that the respondent was practicing law while administratively suspended. Bar counsel forwarded the complaint to the respondent at her listed office and home addresses. No response was received.

On September 12, 2011, the board issued a subpoena directing the respondent to appear at the office of bar counsel on September 27. The respondent did not appear, but bar counsel was able to reach her by telephone later that day. Pursuant to their telephone conversation, the respondent met with bar counsel on October 3. At that meeting, she stated that she was employed as

an attorney at the Mayo Group. Bar counsel provided the respondent with a complete set of registration materials and informed the respondent that she should complete the registration forms and submit the outstanding fees as soon as possible. However, the respondent took no further action, and made no further attempt to communicate with bar counsel.

Accordingly, on February 9, 2012, bar counsel filed a petition for discipline against the respondent. The petition alleged violations of Mass. R. Prof. C. 3.4(c) (knowing disobedience of the rules of a tribunal); 5.5(a) (practice in violation of an order of suspension); 8.1(b) (failure to respond to a lawful demand of information from a disciplinary authority); 8.4(d) (conduct prejudicial to the administration of justice); 8.4(g) (failure to cooperate with bar counsel). The petition stated also that the respondent violated S.J.C. Rule 4:02, § 1, governing the periodic registration of attorneys, and S.J.C. Rule 4:01, § 17, requiring attorneys subject to administrative suspension to file affidavits of compliance and other documentation with bar counsel and with this court. The respondent did not answer the petition, and, as a result, the allegations are deemed admitted. S.J.C. Rule 4:01, § 7(3). At a meeting on May 12, 2012, the board voted to recommend that the respondent be suspended from the practice of law for six months, and subsequently filed an information with the single justice.

A hearing was held before me on June 29, 2012. The respondent did not appear at the hearing, but I was subsequently informed by a court officer that the respondent had come to the courthouse that day, but had reported to the wrong courtroom.¹ After being informed that she was in the wrong location, the respondent spoke with an assistant clerk of this court, who advised the respondent to contact bar counsel. After appropriate notice to the respondent and bar counsel, a second hearing was held on July 19, 2012. The respondent again failed to appear, and this time she could not be located on the premises.

2. Appropriate sanction. The board recommended that the respondent be suspended for six months, with conditions for reinstatement. As she did before the board, bar counsel seeks a suspension of one year and a day. While the board's recommended sanction merits substantial deference, see Matter of Griffith, 440 Mass. 500, 507 (2003), I "must ultimately decide every case on its own merits such that every offending attorney . . . receives the disposition most appropriate in the circumstances." Matter of Lupo, 447 Mass. 345, 356 (2006), quoting Matter of the Discipline of an Attorney, 392 Mass. 827, 837 (1984). In addition, the sanction imposed must not be "markedly disparate" from sanctions imposed on other attorneys who have committed

¹ It appears that the respondent waited in that courtroom for a period of several hours. The courtroom was being used to host an event for visiting foreign judges.

comparable violations. See Matter of Goldberg, 434 Mass. 1022, 1023 (2001), and cases cited. I reject bar counsel's recommendation of a year and a day suspension and conclude that, in these circumstances, a suspension of six months, without additional conditions for reinstatement, is appropriate.

As bar counsel acknowledges in her written submissions, "[i]n previous cases involving comparable facts, the respondents were suspended for six months." See Matter of Murray, 25 Mass. Att'y Disc. R. 404 (2009) (six months suspension); Matter of Blessington, 19 Mass. Att'y Disc. R. 54 (2003) (six months and one day). In arguing for a year and a day suspension, bar counsel notes the respondent's failure to participate in the proceedings against her. See Mass. R. Prof. C. 3.4(c), 8.1(b), 8.4 (g). Yet, in Matter of Murray, *supra*, the attorney failed to respond to subpoenas issued by the board, and, like the instant respondent, made only a single attempt to pay his arrears, which was defeated by his own carelessness in sending a check to the wrong office. In Matter of Blessington, *supra*, the respondent not only improperly held himself out as a lawyer for a period of over three years, but in fact made appearances in court while suspended. See also Matter of Blodgett, 25 Mass. Att'y Disc. R. 71 (2009) (attorney knowingly practiced while administratively suspended for over two years; two-month suspension imposed in light of mitigating factors). I am unpersuaded that the

respondent's misconduct is more severe than the misconduct at issue in those cases.

I note also that a six-month suspension is among the harshest sanctions imposed on an attorney who practices while administratively suspended for failure to register or pay fees. Attorneys who accidentally or unintentionally violate an order of administrative suspension have received private admonitions. See, e.g., Admonition 09-03; Admonition 09-10. Attorneys who have cooperated with bar counsel in resolving their administrative suspensions have received public reprimands. See, e.g., Matter of Cavanaugh, 26 Mass. Att'y Disc. Reports 68 (2010) ("intentionally failed without good cause to reply to two letters from bar counsel" but had ceased to practice and appeared for hearing pursuant to subpoena). Against this background, a six-month suspension adequately reflects the relative severity of the respondent's knowing and extended non-compliance with the order of administrative suspension, and her repeated failure to communicate timely with bar counsel.

Bar counsel argues that a suspension of one year and a day will have the salutary effect of requiring a hearing prior to the respondent's reinstatement, at which she can be asked to provide an explanation of her conduct and to demonstrate her current fitness to practice law. I am cognizant that the respondent's failure to appear for multiple hearings, and to respond to

multiple formal and informal notices and communications, is of grave concern.² It is vital that attorneys communicate in a timely fashion with their clients, other counsel, and the tribunals before which they appear.

However, S.J.C. Rule 4:01, § 18(1)(c), permits bar counsel to object to an affidavit of reinstatement and to move for a hearing. Further, S.J.C. Rule 4:01, § 13(2), permits bar counsel, in appropriate circumstances, to investigate whether a lawyer's mental condition may adversely impact his or her ability to practice law. In light of these alternatives, I fail to see the necessity of extending the respondent's suspension simply to ensure that a hearing is held prior to her reinstatement.

4. Disposition. An order shall enter suspending the respondent from the practice of law in the Commonwealth for six months.

By the Court


Barbara A. Lenk
Associate Justice

Entered: September 17, 2012

² Bar counsel noted at the June 29, 2012 hearing that the respondent may face a challenging domestic situation. The respondent, however, has not provided any specific information in this regard, which might serve to explain and mitigate her failure to comply with the order of administrative suspension, her repeated failure to communicate with bar counsel and her failure to appear for hearings.