IN RE: DONALD K. FREYLEUE
NO. BD-2013-088

S.J.C. Order of Term Suspension entered by Justice Lenk on September 12, 2013, with an effective date of October 14, 2013.[1]

SUMMARY[2]

The respondent, Donald K. Freyleue, received an eighteen-month suspension based on the following findings of a hearing committee:

Count one: The respondent failed to disclose an extended episode of depression that impaired his ability to provide competent and diligent representation to three co-defendant clients, and he failed to withdraw as counsel despite his impairment. The respondent's neglect resulted in the entry of two successive defaults against the clients, and he did not keep them fully informed of these developments. When his final motion for relief from default was denied and a money judgment entered, the respondent sought to settle with the clients by offering to return their retainer, with no compensation for the liability to which his neglect had exposed them, and without advising them to obtain independent counsel. He then failed to return the retainer.

The respondent's failure to provide the clients with competent and diligent representation violated Mass. R. Prof. C. 1.1 (competence) and 1.3 (diligence). His failure to keep the clients informed of the status of their case, to apprise them of his impaired emotional condition, and to respond to their requests for information about the matter violated Mass. R. Prof. C. 1.4(a) (communicate with client) and 1.4(b) (explain matters to the client for an informed decision). The respondent's failure to withdraw violated Mass. R. Prof. C. 1.16(a)(2) (duty to withdraw where physical or mental condition materially impairs representation). By entering into a settlement agreement with the clients, where that agreement was not fair and reasonable to them and sought to limit his liability and without advising them in writing or otherwise to obtain independent counsel, the

[1] The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

[2] Complied by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

respondent violated Mass. R. Prof. C. 1.8(a) (business transactions with a client requires, *inter alia*, a fair transaction and advice to the client to obtain independent counsel) and 1.8(h) (no settlement of malpractice claim with an unrepresented client unless client is advised in writing that independent representation is appropriate).

Count two: After the events of count one, the respondent petitioned for relief in bankruptcy to obtain additional time to pay a tax liability. His bankruptcy schedules intentionally failed to list his debt to the clients described in count one and, despite that omission, he falsely declared under the penalties of perjury that his schedules were "true and accurate." In addition, despite the prohibition in his bankruptcy plan of reorganization, and without permission from or disclosure to the bankruptcy court, the bankruptcy trustee, or his own bankruptcy counsel, he transferred his interest in his principal residence to his wife for nominal consideration.

The respondent's intentional failure to list his clients as creditors on his schedules violated Mass. R. Prof. C. 3.3(a)(1) (knowingly make false statement of material fact or law to a tribunal), 8.4(c) (dishonesty, deceit, misrepresentation, or fraud), 8.4(d) (conduct prejudicial to the administration of justice), and 8.4(h) (conduct otherwise reflecting adversely on fitness to practice). By signing a declaration under the penalties of perjury that the schedules submitted to the bankruptcy court were "true and accurate" when he knew that his schedules were not he violated Mass. R. Prof. C. 3.3(a)(1) and 8.4(c), 8.4(d), and 8.4(h). By transferring to his wife his interest in his primary residence, in violation of the order confirming his chapter 13 plan of reorganization, the respondent violated Mass. R. Prof. C. 3.4(c) (knowingly violate obligations under the rules of a tribunal) and 8.4(c), 8.4(d), and 8.4(h).

Count three: While the respondent's bankruptcy reorganization plan was still in effect, he attempted to defend himself against the formal settlement demands and lawsuit of the clients described in count one without amending his bankruptcy filings or notifying the bankruptcy court, the bankruptcy trustee, or his own bankruptcy counsel of the demand and the resulting lawsuit. When the clients obtained judgment and execution against him, he did not amend his bankruptcy schedules to disclose the judgment and execution. Until he faced supplementary process collection proceedings, he failed to disclose to the court that issued the judgment against him that he was involved in bankruptcy proceedings. At the supplementary process hearing, he entered into a payment agreement to satisfy the judgment despite his pending plan of reorganization in bankruptcy. He then failed to make any payments under the agreement after his bankruptcy counsel, who finally learned of the judgment and payment agreement, advised him he could not do so.

The respondent's failure to amend his bankruptcy schedules to disclose the lawsuit, judgment, and execution his clients obtained violated Mass. R. Prof. C. 3.3(a)(1), 3.3(a)(4) (knowingly offer evidence the lawyers knows to be false), 3.4(c), 8.4(c), 8.4(d), and 8.4(h). The respondent's failure to give the court in the clients' lawsuit timely notice of the pending bankruptcy proceeding violated Mass. R. Prof. C. 8.4(c), (d), and (h). The respondent's agreement to pay the clients without securing an order from the bankruptcy court violated Mass. R. Prof. C. 3.4(c) and 8.4(c), (d), and (h).

Count four: The respondent's unauthorized transfer of real estate described in count two resulted in an involuntary conversion of his bankruptcy case from a chapter 13 reorganization proceeding into a chapter 7 liquidation proceeding. In the latter proceeding, the clients sought to have the respondent's debt to them declared non-dischargeable. The respondent and the clients settled that matter. In connection with that settlement, the respondent sought and obtained the clients' agreement to withdraw the disciplinary complaint they had filed with bar counsel.

By requiring his clients to withdraw their complaint to the office of bar counsel as a condition of settlement the respondent violated S.J.C. Rule 4:01, § 10 (lawyer may not condition a settlement on withdrawal of a disciplinary complaint), and Mass. R. Prof. C. 8.4(d) and (h).

The matter came before the board on the hearing committee report without appeals by either party. The board adopted the committee's findings of fact, conclusions of law, and recommendation for a suspension of eighteen months. The Court so ordered on September 12, 2013.