

**IN RE: MARSHALL F. NEWMAN****NO. BD-2015-016****S.J.C. Order of Term Suspension entered by Justice Hines on March 19, 2015, with an effective date of April 18, 2015.¹**

S.J.C. Judgment of Reinstatement entered by Justice Hines on August 24, 2015

SUMMARY²

The respondent, Marshall F. Newman, was suspended for four months for misconduct in connection with an appeal of a civil matter to the Appeals Court, as described below.

Beginning in 2004, other lawyers in the respondent's firm represented a client injured in an automobile accident. After suit was filed in April of 2007, the defendant driver obtained summary judgment on the ground that he was a public employee acting within the scope of his employment at the time of the accident and that the plaintiff had failed to give timely presentment of the claim as required by G.L. c. 258, § 4. In opposition to the motion for summary judgment, an associate of the respondent had asserted in various ways that the plaintiff had not been on notice that the defendant was a public employee. In preparing for an appeal of the summary judgment, however, the associate learned for the first time of a fax received by the firm shortly after the accident that contained information concerning the defendant's status as a public employee.

The associate then informed the respondent that he could not work on the appeal because it would be based upon facts that the associate had come to know were not true. The respondent told the associate that he, the respondent, would handle the appeal and that the associate did not have to take any further action.

The respondent then prepared and filed a brief and appendix with the Appeals Court. He included in the appendix a number of documents filed with the trial court that contained assertions concerning the plaintiff's lack of knowledge that the defendant was a public employee. In his brief, the respondent made a number of assertions and arguments that were based explicitly or implicitly upon a lack of notice of the defendant's status as a public employee. By including such documents in the appendix and making such arguments in his brief, the respondent made statements of material fact to the Appeals Court that he knew to be false or deceptive.

The respondent's failure to assure that his associate took reasonable remedial measures to correct or withdraw assertions he came to know were false was in violation of Mass. R. Prof. C. 5.1(b) and (c)(2) and 8.4(c), (d) and (h). The respondent's conduct in knowingly making false or deceptive statements of material fact to the Appeals Court was in violation of Mass. R. Prof. C. 3.3(a)(1) and 8.4(c), (d) and (h).

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 on file with the Supreme Judicial Court.

In mitigation, when the respondent came to realize that various representations by his associate to the trial court about lack of notice of the driver's status as a public employee were likely false, the associate confirmed to the respondent that he had believed the representations to be true when he made them. The respondent then consulted with an experienced appellate lawyer, who incorrectly advised the respondent that it was appropriate to pursue the appeal because the factual assertions of lack of notice were reasonably believed to have been true when made. Neither the respondent nor the appellate lawyer, however, reviewed the Massachusetts Rules of Professional Conduct or otherwise sought assistance from counsel experienced in ethics issues. After he was informed by bar counsel of its investigation, the respondent consulted with other counsel and withdrew the appeal prior to a decision by the Appeals Court. The respondent also advised the client to retain other counsel to consider malpractice claims against the respondent, and the respondent settled the client's claim against him for \$22,500.

This matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation for a suspension of four months. On February 23, 2015, the board unanimously voted to accept the stipulation and the joint recommendation. On March 19, 2015, the Supreme Judicial Court for Suffolk County (Hines, J.) entered an order suspending the respondent for four months, effective thirty days after entry.