



**IN RE: ALEXANDER R. CAIN**

**NO. BD-2015-018**

**S.J.C. Order of Term Suspension entered by Justice Duffly on March 12, 2015, with an effective date of April 11, 2015.<sup>1</sup>**

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

The respondent received a term suspension of three years for the conduct described in the four counts below.

In June or July 2009, a client retained the respondent to represent him in claims against a municipality based on his allegations of retaliation and harassment resulting from his cooperation with the FBI and a threat to file a civil claim. On April 10, 2010, the respondent provided the client with a draft complaint and told the client that the complaint would be filed in court later that month. On April 20, 2010, the respondent falsely represented to the client that he had filed the complaint in mid-April. Between April 20, 2010 and January 31, 2011, the respondent continued to communicate with the client, both verbally and electronically, that a case had been filed when he knew that the statements were false.

On January 31, 2011, the respondent filed a fourteen-page civil complaint in federal court against the municipality and other parties. The complaint contained six counts alleging federal claims and eight counts alleging state-law claims.

From on or before January 2011 to July 2011, the respondent emailed to the client attachments that purported to be official court documents from the federal court. The documents included a January 27, 2011 order postponing a contempt/show cause hearing, a February 1, 2011 order that Google was to provide sealed documents to the respondent by February 4, 2011, a May 15, 2011 denial of defendants' motion to dismiss, a May 15, 2011 order of contempt and a July 11, 2011 order for parties to participate in settlement discussions. None of these documents were authentic. They were fabricated by the respondent.

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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.

Between March 7, 2011, and March 16, 2011, the defendants in the civil matter all filed motions to dismiss with the court. The respondent timely filed oppositions to the motions to dismiss, and on September 31, 2011, a hearing on the motions to dismiss was held. The respondent did not inform his client of the hearing. On October 11, 2011, all motions to dismiss were allowed as to the federal claims on all six counts. Some of the claims were dismissed on the basis that the claims had not been filed prior to August 25, 2010, when, the court ruled, the applicable three-year statute of limitations expired as to those claims. The state-law claims were dismissed without prejudice to pursuing them in a state court.

Shortly after the federal claims had been dismissed, the client learned of the dismissals and contacted the respondent, who told him that he would pursue an appeal in the First Circuit Court of Appeals. The respondent took no action to perfect an appeal. On or shortly after October 28, 2011, the client met with the respondent to discuss the status of the case and the appeal. At the meeting, the respondent falsely told his client that the First Circuit had reversed the district court's dismissal and that the case was transferred to the federal court in Concord, New Hampshire. The respondent further presented to his client a fabricated document that purported to be an order by the Court of Appeals that indicated that the case was pending there. At no time was any appeal pending with the First Circuit, nor was the dismissal by the United States District Court vacated, nor was the case transferred to New Hampshire.

Between October 28, 2011, and December 2011, the respondent continued to communicate false statements to his client regarding the status of the case. On December 9, 2011, the respondent falsely told his client that certain defendants had offered a specific amount to settle. The respondent presented his client with three emails purportedly exchanged between the respondent and a lawyer for the defendants setting forth settlement terms, conditions and a specific dollar amount to be paid by January 15, 2012. The respondent also presented to his client a false draft notice of settlement. In December 2011, the respondent continued to pretend there was a settlement offer. On December 20, 2011, the respondent admitted to his client that he had lied about the status of the case and admitted that he had fabricated email attachments and other documents that he provided to him.

The respondent's failure to diligently pursue his client's case and to appeal the case in a timely manner is conduct in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4. The respondent's repeated and deliberate intentional misrepresentations to his client as to the status of the case and his fabrication of court documents and emails to support his misrepresentations, is conduct in violation of Mass. R. Prof. C. 8.4(c) (d) and 8.4(h).

The second count is similar. On November 5, 2010, a client met with the respondent and hired him to file a claim against her former employer. Between November of 2010 and September of 2012, the client had multiple meetings and telephone conversations with the respondent regarding her case. In or about September of 2012, the respondent falsely advised the client that the employer had offered a settlement of \$97,000. He then asked for her permission to renegotiate a higher settlement, and the client agreed. Later the same day,

the respondent called the client and falsely advised her that the employer had agreed to settle the matter for \$100,000.

Between September of 2012 and October of 2012, the respondent made and cancelled multiple appointments with his client to come to his office to sign release forms that the respondent falsely said would be submitted to the employer.

In the first week of October 2012, the respondent called the client and falsely told her that they were scheduled to appear at Lowell Superior Court on October 12, 2012, at which time, he said, the employer would present a check to her in the amount of \$100,000. After arriving at court that day, the client received a telephone call from the respondent falsely stating that the case had been postponed until December 7, 2012, because the employer couldn't attend. On the morning of December 7, 2012, the respondent again called his client from his cell phone and falsely advised her that the hearing scheduled that day had been cancelled due to a scheduling conflict with the presiding judge.

Later in mid-December 2012, the respondent falsely told his client that the employer agreed to settle the matter for \$136,000, plus \$37,000 in legal fees. The respondent further falsely told the client that a court date was scheduled for December 19, 2012, for the funds to be presented to the client. On December 19, 2012, after arriving at Lowell Superior Court, the client again received a call from the respondent falsely stating that the hearing was cancelled because the presiding judge had been transferred to Woburn District Court. The respondent asked the client to go to Woburn District Court to wait for him. The client went as directed, but the respondent never arrived. The case had not been filed and had not been transferred to Woburn.

In the following days, the respondent presented to the client and she signed a release form in consideration of \$136,000. The respondent did not provide the client with a copy of the signed document, but falsely told her that he would include her on the electronic submission to the court.

At some point prior to the end of December, 2012, the respondent called his client and falsely advised her that a new hearing was scheduled for January 4, 2013, at Lowell Superior Court. On the morning of January 4, 2013, the client arrived at Lowell Superior Court and shortly after her arrival, she received a telephone call from the respondent who falsely told her that the hearing had been cancelled, but was being rescheduled for a later date. After receiving this call, the client went to the clerk's office where she spoke to a court clerk to determine if a new hearing date had been entered. The clerk advised her that she found no file in the system in her name. She then left the clerk's office and called the respondent. The respondent falsely told her that the clerk must have been mistaken and that he would call there himself to straighten the matter out. A short time later, the respondent called the client and falsely told her that he had spoken to the clerk, who told him that the case was in the system, but had been transferred to the Woburn District Court. At the completion of that call, the client went back to speak to the clerk again to confirm that the clerk had spoken to the respondent. The clerk then advised her that the respondent had not

called that office and more specifically, that she had not spoken to him. Later, the client spoke to the respondent and the respondent falsely told his client that he straightened this matter out with the court and that a docket number had been assigned to her case.

Between January 2013 and March 2013, the client made several attempts to retrieve her file and was told by the respondent and his secretary on divers occasions that her file would be forwarded to her. After many requests, in or about the first week of March 2013, the client received her file by mail. At no time did the respondent contact, attempt to negotiate or receive any settlement with the employer, and at no time did the respondent file or attempt to file any claim on behalf of his client.

The respondent's failure to diligently pursue his client's claim is conduct in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4. The respondent's repeated misrepresentations to his client as to the status of the case is conduct in violation of Mass. R. Prof. C. 8.4(c) and (h). The respondent's failure to promptly return his client's file upon request is conduct in violation of Mass. R. Prof. C. 1.16(e).

In the third count, a client discussed with the respondent filing suit against a municipality and others for violating her civil rights by falsely accusing her of participating in official wrongdoing. In 2010, after multiple meetings and conversations, the respondent provided the client with an undated and incomplete copy of a draft civil complaint that he said he would file in federal court. Shortly thereafter, the respondent falsely advised her that he was negotiating a settlement on her behalf and he stated that there was a potential settlement value of 1.2 to 1.4 million dollars. In February of 2011, by telephone, the respondent falsely told the client that the municipal defendant had agreed to settle the matter for 2 million dollars. Between June of 2011 and May of 2012, by telephone, text and email, the respondent falsely stated to his client that the settlement had fallen through, that a civil complaint had been filed, and that multiple hearing dates had been scheduled, cancelled and rescheduled. The respondent continued with his misrepresentations. In April 2012, the respondent falsely told his client that he would be deposing certain city officials, and in May 2012, the respondent falsely told her that he was to have a telephone conference with the president of the board of aldermen regarding her claim.

In a separate matter with the same client, in April 2012, the client asked the respondent to assist her in completing a claim she had filed *pro se* against an insured driver's bodily injury carrier, as a result of a car accident she had on August 16, 2010. The client was rear-ended by another motorist. On April 3, 2012, based on the respondent's agreement to assist her, the client forwarded a letter to the carrier advising the carrier that she was now represented by the respondent, and she requested that all correspondence be forwarded directly to the respondent. On May 27, 2012, the carrier sent a letter to the respondent stating that they would need additional information in order to resolve the claim. The respondent failed to respond.

On June 24, 2012, the carrier sent a second letter to the respondent as a reminder that they were unable to resolve the claim without the information that they previously requested. The respondent again did not respond.

Sometime between March 22, 2013, and April 1, 2013, without ever communicating with the carrier, the respondent by email sent a release form purportedly received from the carrier to his client. The settlement amount in the form was \$24,000, with \$21,600 going to his client and \$2,400 to the respondent. On April 1, 2013, the client signed the fabricated form, had her signature notarized and faxed the form back to the respondent.

Between March 2013 and November 2013, through telephone communications and text messages, the respondent continued to falsely inform his client that both the civil matter and the bodily injury automobile matter were going forward and that settlement offers were pending. On November 4, 2013, and again on November 18, 2013, the respondent falsely told the client that a settlement check was being presented to him.

At no time did the respondent file any civil complaint for his client against the municipality, pursue any civil claim with the carrier, or attempt to negotiate any settlement with either party.

The respondent's repeated and deliberate intentional misrepresentations to his client as to the status of the two claims and his fabrication of documents to support his misrepresentations, is conduct in violation of Mass. R. Prof. C. 8.4(c) and (h). The respondent's failure to diligently pursue the two claims, as promised, is conduct in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4.

In the fourth matter, the respondent represented a student in defense of three criminal charges. On May 11, 2010, the client and his father met with the respondent at his office to discuss the charges and possible defenses and ultimately paid a flat fee. On June 23, 2010, the respondent filed his appearance with the court. Between May of 2010 and January of 2011, the respondent or his associate appeared with or on behalf of the client in the local district court. In December 2010, the respondent advised the client by telephone that he was working with an assistant district attorney (ADA) to have the matter dismissed. On January 5, 2011, the respondent falsely advised the client by telephone that the ADA agreed to dismiss the case, telling the client that he would need to send a check for \$200 in fines. The respondent explained that count one would be settled for the payment of a \$150 fine, count two would be resolved by payment of a \$50 fine, and count three would be dismissed. On that day, the client wrote a check in the amount of \$200 payable to the district court and forwarded the check to the respondent, overnight, via UPS.

After numerous continuances, a further hearing on the criminal matter was scheduled to be held on June 1, 2011. Neither the client nor his father received notification of this date. On June 1, 2011, the respondent appeared in court, but the client failed to appear and a default warrant was issued for his arrest. By text dated June 15, 2011, the respondent falsely advised the client's father that all went well with the dismissal. On April 18, 2012, the client

was arrested on the default warrant and held on \$500 cash bail, at which time the client contacted the respondent via text. On April 19, 2012, the father posted bail and his son was released.

On or about May 31, 2012, the client spoke to the respondent by telephone. The respondent falsely advised him that he would be filing with the court a motion to dismiss with prejudice and to have the matter sealed. The respondent also falsely told him that the judge would render a decision on the following morning. On June 1, 2012, the respondent contacted the client by telephone and falsely told him that the judge accepted his motion and that the case was dismissed with prejudice.

By email and text messages dated June 13, 2012, and June 14, 2012, the father repeatedly asked the respondent for clarification as to whether the matter was dismissed with or without prejudice. By email dated June 15, 2012, the respondent falsely told the father that he would clarify the issue with the court. By email dated June 13, 2012, the respondent requested that his client forward his current Maryland mailing address to him so that the bail money posted by him in April of 2012 could be returned. On June 15, 2012, the father contacted the respondent by text message and again asked about the status of the case, inquiring as to whether his son would need to advise a potential employer that he had been arrested. The respondent again falsely stated that he would be filing a motion to have the case sealed.

On June 25, 2012, the respondent requested a date for disposition from the court. The case was ultimately scheduled for disposition on July 10, 2012. The client was not notified by the respondent of the court date. The respondent appeared in court but the client failed to appear and another warrant for his arrest issued and bail was forfeited. The respondent did not notify his client or his father of the issuance of the warrant. On July 31, 2012, with the warrant outstanding, the respondent sent an email to the father attaching a petition to seal. He asked the son sign the document. The son signed the document and it was sent back to the respondent.

Between August 2012 and November of 2012, the father continued his attempts to get answers from the respondent, but he was unsuccessful. In or around November 2012, the client learned that the criminal case was still active. On April 8, 2013, the client, *pro se*, resolved the criminal matters.

In aggravation, the respondent persisted in falsely denying the misrepresentations and fabrications to clients throughout bar counsel's investigation. There were no facts in mitigation.

The respondent's false representations as to the status of the criminal charges and case is conduct in violation of Mass. R. Prof. C. 8.4(c) (d) and 8.4(h). The respondent's failure to diligently pursue his client's case, as described above, is conduct in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4.

This matter came before the board on a stipulation of facts and disciplinary violations and a joint recommendation for a three-year suspension. The board accepted the parties' recommendation and recommended a three-year suspension to the Supreme Judicial Court, but stated that "while the stipulated sanction is consistent with precedent, the board was unanimously of the opinion that the stipulated sanction is too lenient". On March 12, 2015, the Court suspended the respondent for three years, effective thirty days from the date of the order.