

IN RE: DAVID RANDALL HARSCH

NO. BD-2015-056

**S.J.C. Order of Term Suspension entered by Justice Botsford on January 5, 2016,
with an effective date of February 4, 2016.¹**

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-2015-056

IN RE: DAVID RANDALL HARSCH

MEMORANDUM OF DECISION

The Board of Bar Overseers (board) has filed an information recommending the suspension of the respondent, David Randall Harsch, for a period of six months. Based on the record before me, and after hearing, I adopt the board's recommendation.

Background. The respondent has been a member of the Massachusetts bar since December 17, 1985. He maintains a practice in Mashpee, Massachusetts, and has no other legal office. He has substantial experience in immigration law. On August 12, 2014, Bar Counsel filed a petition for discipline with three counts.¹ The first count concerned the respondent's arrangements with Marilia Luz, a woman whom he knew and who lived in Texas. In December, 2010, Luz wrote to the respondent asking that he write letters of recommendation for her to work as a paralegal so that she might have "legal visitation" with detainees in two detention centers in Texas. The respondent did so, and the letters that he wrote implied, falsely, that Luz was a paralegal who worked for him – in fact, Luz did not work for the respondent, and he did not know whether she was

¹ In January, 2015, the parties filed a stipulation of facts, in which the respondent agreed with the essential facts alleged in the petition for discipline. The summary in the text, although divided by count in the petition for discipline, represent facts that have been agreed upon.

trained as a paralegal. In return for writing the letters of recommendation, Luz referred to the respondent at least twenty-five clients who were detained with immigration issues. The respondent did not communicate directly with these clients, and did not explain to them the scope of services he would be performing for the fee that each paid – the respondent intended to limit the scope of service solely to telephonic representation at detention bond hearings, with further services requiring an additional fee, but he did not explain this to the clients. Counts Two and Three of the petition for discipline concerned two separate clients who were among the twenty-five referred by Luz. In each of these cases, the respondent was retained by the client through Luz, did not communicate directly with either client and did not explain the scope of his services, represented each client telephonically at a bond hearing, and thereafter in each case did little additional work of substance. The result in each case was that following the bond hearing, deportation hearings were scheduled but the respondent did not appear and the client did not appear either – the respondent did not communicate to the client the hearing dates – and both were ordered deported. In each of these cases, the respondent attempted to withdraw from representation following the bond hearing, but did not seek permission of the tribunal in violation of the tribunal's rules, and did not communicate the withdrawal to the client.

The board found that the respondent's writing letters of recommendation in exchange for referrals violated Mass. R. Prof. R. 7.2 (c) and 7.3 (f); his failure to supervise Luz adequately violated rule 5.3; his failing to communicate with his clients directly rules 1.1, 1.3, 1.4 (b); and his failing to confirm the information and documents he received from Luz also violated rules 1.1 and 1.3. The board further found, in relation

to the two individual clients described in Counts Two and Three of the petition for discipline, that the respondent failed to communicate with his clients in violation of Mass. R. Prof. C. 1.1, 1.3, 1.4 (b); failed to confirm information in the client documents sent by Luz in violation of rules 1.1 and 1.3; failed to seek leave of the tribunal to withdraw in violation of rules 3.4 (c), 1.16 (c), 8.4 (d); and also violated rules 1.4 (a) and 1.16 (d) by withdrawing from representation without notice.

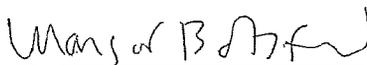
Based on the joint stipulation of facts, the respondent and bar counsel proposed to the board that the respondent receive a suspension of six months, with the suspension stayed for a period of two years during which the respondent agreed he would attend, in each of the years, six hours of continuing education approved by bar counsel on either legal ethics or law office management. The board accepted the parties' stipulation of facts, but rejected the proposed discipline as too lenient, and voted instead to recommend that the respondent be suspended for a period of six months with no stay. The board prepared, and it is included in the record, a memorandum explaining the reasons for its recommendation.

I find the board's memorandum wholly persuasive. I agree with the board that the respondent's conduct is more egregious than that described in *Matter of Lagana*, 26 Mass. Att'y Discipline Rep. 295 (2010): the respondent's case involved more clients, and the number of rules he violated, including the rules relating to his relationship with Luz, is more extensive. The respondent has substantial experience in immigration law, and has been disciplined before in relation to immigration matters, see *Matter of Harsch*, 20 Mass. Att'y Discipline Rep. 227 (2004) (public reprimand). Both his experience in the field and the prior discipline are aggravating factors. See *Matter of Kerlinsky*, 428 Mass.

656, 665 (1999); *Matter of Dawkins*, 412 Mass. 90, 96 (1992). Moreover, the respondent was dealing with highly vulnerable clients. A stayed suspension is not appropriate in this case. As stated at the outset, I agree with the board's recommendation of a six-month suspension, for all the reasons stated by the board.

ORDER

For the foregoing reasons, it is ORDERED that judgment enter suspending the respondent from the practice of law for a period of six months.



Margot Botsford
Associate Justice

Dated: January 4, 2016