

IN RE: GARY THEOBALD BEERY

NO. BD-2011-0114

S.J.C. Order of Term Suspension entered by Justice Cordy on August 24, 2012.¹

SUMMARY²

The respondent received a three-month suspension, with a formal reinstatement condition, for his misconduct described in two counts.

In the first count, on September 28, 2009, the respondent agreed to pursue an appeal of a conviction for serious crimes on behalf of a client pursuant to a written fee agreement. In December 2010, the parties modified their written agreement and it was then agreed that the respondent would instead file a motion for new trial. On May 17, 2011, the client complained to bar counsel that the motion was taking too long.

In June 2011, the respondent informed the client and bar counsel that he would have a motion for new trial filed in the near future, by mid July 2011. On August 25, 2011, the respondent informed bar counsel that he had not been able to complete the motion. He stated that he would be able to complete and file the motion by September 14, 2011. On September 14, 2011, the respondent informed bar counsel that he would be filing his motion by September 16, 2011. On September 16, 2011, the respondent informed bar counsel that he would not be filing that day because he needed to research new law. On October 11, 2011, the respondent informed bar counsel that he was still working on the motion for new trial. He then informed bar counsel that he expected the motion to be filed “next week”. On October 12, 2011 and thereafter, bar counsel, without success, attempted to contact the respondent to discuss the matter. The respondent did not respond to bar counsel’s inquiries nor timely file a motion for new trial on behalf of his client.

The respondent’s abandonment of his client and his failure to act with reasonable competence and diligence, is conduct in violation of Mass R. Prof. C. 1.1, 1.2(a), 1.3, and 1.4(a).

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 filed with the Supreme Judicial Court.

In the second count, the respondent did not cooperate with the investigation of bar counsel regarding the events described in Count One. He did not respond to correspondence, did not appear for a meeting with bar counsel scheduled for October 18, 2011 and did not appear at a subpoena meeting scheduled for November 8, 2011. On November 18, 2011, the Supreme Judicial Court entered an order of administrative suspension against the respondent for failing to cooperate with an investigation of bar counsel. The respondent did not seek reinstatement within thirty days and thereafter did not comply with the terms of the order.

The respondent's failure to cooperate with an investigation of bar counsel, his failure to appear at a duly noticed subpoena meeting and his failure to comply with the terms and conditions of an order of administrative suspension violated Mass. R. Prof C. 8.4(g) and (h) and S.J.C. Rule 4:01, §3.

The respondent, who was admitted on January 22, 2002, had no prior discipline.

On February 28, 2012, bar counsel filed a petition for discipline against the respondent. The respondent failed to file an answer to the petition or otherwise to cooperate in the disciplinary process and, pursuant to S.J.C. Rule 4:01, § 8(3), the allegations were therefore deemed admitted. On June 5, 2012, the Board of Bar Overseers voted to recommend to the Court that the respondent be suspended for a period of three months effective immediately and that he be required to petition for reinstatement pursuant to S.J.C. Rule 4:10, §18(4), excluding the requirement that he take and pass the Multi State Professional Responsibility Exam. On August 22, 2012, the respondent appeared at the Single Justice hearing. At that time, the court was informed that the client had retained successor counsel who elected not to proceed with a motion for new trial that the respondent had drafted, but to instead file a direct appeal. The appeal was filed, perfected, briefed and awaiting decision in the Massachusetts Appeals Court.

On August 24, 2012, the Supreme Judicial Court for Suffolk County ordered that the respondent be suspended for a period of three months effective immediately and that he be required to petition for reinstatement pursuant to S.J.C. Rule 4:10, §18(4), excluding the requirement that he take and pass the Multi State Professional Responsibility Exam.