

IN RE: ALDANA JOHNSON

NO. BD-2010-076

S.J.C. Order of Term Suspension Retroactive to March 23, 2011, entered by Justice Botsford on March 29, 2011.¹

SUMMARY²

The respondent was suspended for two years for lack of diligent and competent representation in two unrelated client matters, and for the unauthorized practice of law while on suspension from her prior (three-month) suspension.

Count I

On August 17, 2010, the Supreme Judicial Court issued an order of immediate temporary suspension, suspending the respondent from the practice of law effective upon entry of the order. On September 27, 2010, the Court issued an order of term suspension, suspending the respondent from the practice of law for a period of three months, retroactive to August 17, 2010 (the date of her temporary suspension). Both of the orders required the respondent to cease the practice of law and to take certain specific steps, including filing notices of withdrawal with every court, agency, and tribunal in which she had a pending matter; providing notice to all clients and counsel for all parties (among others) in pending matters that she had been suspended; and submitting to bar counsel and the Court an affidavit certifying that she had fully complied with the provisions of the orders and with bar disciplinary rules.

The respondent gave no notice of her suspension to clients and opposing counsel and did not withdraw from any matters pending before tribunals, as required by the suspension orders. After August 17, 2010 (the effective date of the respondent's temporary suspension and her term suspension), the respondent continued to practice law, in violation of the suspension orders, in at least four different client matters. She appeared in court on two of those matters (a criminal case and a personal injury case) and continued to converse with opposing counsel on the other two matters (two probate court matters).

On October 7, 2010, the respondent executed an "Affidavit of Compliance" with her term suspension, which the respondent filed with the Court on October 12, 2010, and also served on bar counsel. At paragraph 2(B) of the affidavit, the respondent knowingly falsely declared under oath "That I had no clients and held no fiduciary positions on the entry date of the Order."

On November 22, 2010, bar counsel filed with the Supreme Judicial Court a petition for contempt against the respondent. Pursuant to an Order of Notice, the parties appeared before a Single Justice on the contempt petition on December 3, 2010. In the course of the hearing, the respondent made knowingly false statements to the Court, as follows:

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.

- (a) The respondent falsely stated that she had no conversation with opposing counsel, in one probate matter, about the case itself or a continuance, but only spoke about his heart attack and his daughter.
- (b) The respondent falsely stated that, when she met with the Assistant District Attorneys in the criminal case after her suspension on September 23, 2010, she was only there as a witness and not as the defendant's attorney.
- (c) The respondent falsely stated that she gave a "notice of withdrawal" to the criminal defendant because he wanted to appear *pro se*.

By failing to comply with the immediate temporary suspension and term suspension orders and by appearing in court on behalf of and otherwise representing clients while she was suspended from the practice of law, the respondent violated Mass. R. Prof. C. 3.4(c), 5.5(a), and 8.4(d) and (h).

The respondent's conduct, in knowingly filing a false affidavit with the Court and in making knowingly false statements to the Court, was in violation of Mass. R. Prof. C. 3.3(a)(1) and 8.4(c), (d), and (h)

Count II

In the first client matter, the respondent represented a client (a police officer) in an employment discrimination case and filed suit against the municipal employer and the police chief in Superior Court on the client's behalf in October of 2008. However, the respondent never effectuated service of process on either defendant. Both defendants filed motions to dismiss, which were allowed. The respondent never advised the client that she had failed to effectuate service of process on the two defendants or that the case had been dismissed.

The respondent's conduct, in failing to effectuate service of process on the defendants in client's case, was a lack of competent representation, a failure to seek the lawful objectives of the client and a lack of diligence in violation of Mass. R. Prof. C. 1.1, 1.2(a), and 1.3. The respondent's conduct, in failing to advise the client that she had not made service of process and that his case had been dismissed, was a failure to keep the client reasonably informed, in violation of Mass. R. Prof. C. 1.4.

Count III

In the second client matter, the respondent was retained prior to February of 2007 to represent a client in a claim for personal injuries allegedly sustained in an assault at a U.S. Post Office by a postal employee on June 26, 2006. The respondent filed suit in Superior Court against the postal employee and the "Post Office Distribution Center." The case was then dismissed because the respondent the respondent had failed to submit an administrative claim under the Federal Tort Claims Act (FTCA) against the postal service. The respondent also did not file a status report, as ordered by the court, concerning the remaining (individual) defendant, which resulted in the case being dismissed against her as well.

On or about February 18, 2008, the respondent submitted an administrative claim on behalf of the client under the FTCA, which was rejected by the government because it was

incomplete and therefore invalid. The respondent was told what additional information needed to be submitted and that an administrative claim had to be presented in writing to the appropriate federal agency within two years from the date such claim accrues. A second FTCA claim on behalf of the client was signed on March 4, 2008. However, the respondent did not submit the claim within the time provided for presentment of the claim, June 26, 2008, and the claim was not received by the federal government until August 14, 2008. As a result, the U.S. Postal Service denied the client's claim because it was received more than two years after the date of the incident.

On October 16, 2008, the respondent filed a second case, in federal district court, on the client's behalf against the postal employee and against the "Post Office Distribution Center." While the federal court issued summonses to the two defendants the same day (which the respondent received in due course), the respondent thereafter failed to have the defendants served within 120 days as required by Rule 4(m) of the Federal Rules of Civil Procedure. As a result, on February 23, 2009, the federal district court issued a judgment, dismissing the second lawsuit for failure to serve the defendants within 120 days.

On March 5, 2009, after the case was dismissed and at the respondent's request, the U.S. Marshals Service made service of process on the defendants. On May 19, 2009, the respondent filed a "motion to vacate dismissal" of the second suit. On May 22, 2009, the federal district court denied the respondent's motion to vacate as untimely. The respondent never told the client that his case had been dismissed or the reasons therefore. The client learned of the dismissal on his own by contacting the federal district court.

The respondent's conduct, in failing to file a status report (resulting in dismissal of the suit against the individual defendant in the first lawsuit), in failing to complete and serve a timely administrative claim that was a prerequisite to filing suit under the FTCA, in failing to have the defendants served in a timely manner in the second lawsuit, and in failing to file a timely motion to vacate the dismissal of the second lawsuit, were all a lack of competent representation, a failure to seek the lawful objectives of the client, and a lack of diligence in violation of Mass. R. Prof. C. 1.1, 1.2(a), and 1.3. The respondent's conduct, in failing to keep the client informed about the status of his case, and in failing to tell him it had been dismissed, was in violation of Mass. R. Prof. C. 1.4.

In aggravation, the respondent previously received a three-month suspension for neglect of client matters with harm to the clients, which was the same type of misconduct as charged in Counts II and III of the present petition for discipline. *Matter of Johnson*, BD-2010-076 (September 27, 2010, retroactive to August 17, 2010). She also received a public reprimand for neglect of a client matter with harm to the client, which is the same type of misconduct as charged in two counts of the present petition for discipline. *Matter of Johnson*, 24 Mass. Att'y Disc. Rep. 376 (2008).

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation that the respondent be suspended from the practice of law for two years. On February 14, 2011, the board voted to recommend that the Supreme Judicial Court accept the parties' stipulation and joint recommendation for discipline, including the conditions on reinstatement. The Court so ordered on March 29, 2011, retroactive to March 23, 2011.