

**IN RE: BARRY E. O'NEILL****NO. BD-2014-059****SUMMARY**¹

The respondent received a suspension for three months subject to a CLE requirement, for the conduct described below.

The respondent was at all times a business person with no experience in the practice of law. In the spring of 2010, the respondent was approached by a former acquaintance of his wife (Ms. E.). Ms. E. told the respondent that she had taken the Massachusetts bar examination in February 2010 and wanted to open an office in anticipation of practicing law when admitted. Ms. E. further explained that she had substantial experience working as a paralegal for another lawyer doing loan modification work, business liquidations and bankruptcy petition preparation. She explained that she would like to continue this type of work in a new office. Ms. E. has never been admitted to practice law. She failed the July 2009 bar examination, the February 2010 bar examination and the July 2011 bar examination. The respondent at all relevant times was aware that she was not admitted to practice.

In April of 2010, the respondent went to a bank with his wife and the two signed a business signature card establishing a Massachusetts IOLTA trust account in the name of "Business and Financial Law Group, LTD, TRTEE" (the business). The card identified the respondent as President and Ms. E. as Vice President. Ms. E. went to the bank and signed the same card. The two also opened an operating account in the name of Business and Financial Law Group, LTD at the same bank with the same signatory authority. Prior to April of 2010, the respondent took no steps to familiarize himself with the record-keeping requirements for maintaining an IOLTA account.

In May 2010, Ms. E. entered into a lease for office space at 85 Main Street, Hopkinton. The tenant was identified as Business and Financial Law Group.

In July and August 2010, another lawyer for whom Ms. E. had been previously employed as a paralegal transferred to an IOLTA account in the name of Business and Financial Law Group funds held on behalf of five clients totaling \$31,893.53. In July of 2010, the respondent signed and filed appearances of counsel in two pending bankruptcy matters that were transferred from that lawyer. At about the same time, the lawyer filed her notices of withdrawal.

In November and December of 2010, the respondent filed four bankruptcy petitions as counsel for the debtors. Ms. E. had met with those clients and used a computer software program to complete the petitions.

¹ Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

At the time the respondent signed the appearances and petitions, as described above, the respondent had no training or experience in bankruptcy law (or recent substantive and procedural amendments to that law). The respondent conducted no independent investigation as to the propriety of the filings, and did not consult with any lawyer competent in the subject area.

From May 2010 through February 2011, the respondent did not supervise, or did not adequately supervise, Ms. E's work. Ms. E. conducted a business at the premises under the name of Business and Financial Law Group consisting of loan modification services and the preparation, filing and processing of bankruptcy petitions. She engaged in the unauthorized practice of law and held herself out as a member of a law firm in her fee agreements, in her advertising and in her communications to her clients. Further, Ms. E. used the accounts described above in her business. With respect, to the IOLTA account, Ms. E. did not comply with the operational requirements or the record-keeping requirements of the Rules of Professional Conduct, including without limitation, failing to conduct three-way reconciliations, depositing earned business fees and paying personal expenses and payroll. At no time did the respondent review the IOLTA account for compliance with Mass R. Prof. C. 1.15, or for any reason.

The respondent's conduct in assisting a non-lawyer in establishing a law practice and engaging in the unauthorized practice of law and in failing to supervise or adequately supervise the non-lawyer's work as a paralegal was in violation of Mass. R. Prof. C. 5.3(b) and 5.5(a). The respondent's conduct of signing bankruptcy petitions for filing without the knowledge or experience required, and without adequate investigation of the factual predicates, was the failure to provide competent and diligent representation, in violation of Mass. R. Prof. C. 1.1 and 1.3. Finally, the respondent's failure to comply with the operational requirements for a trust account on which he was signatory, and his failure to keep the required accounts and records, violated Mass. R. Prof. C. 1.15(e) and (f).

There were no factors in aggravation of the misconduct. In mitigation, the respondent had no selfish motive and gained no personal advantage. The respondent took steps to assure all debtors had been reimbursed their fees and discharged in bankruptcy.

On December 5, 2013, the parties submitted a stipulation of the parties to the Board of Bar Overseers recommending a six-month term suspension with three months stayed. On January 6, 2014, the board issued a preliminary vote rejecting the stipulation, specifically questioning the purpose of the stay. On April 28, 2014, the board voted to accept the stipulation of the parties but to alter the disposition and to recommend to the Court a suspension of three-months with reinstatement conditioned on six-hours of CLE approved by bar counsel. On June 19, 2014, the Court so ordered.