

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

ORDER

LD-2008-0009, In the Matter of Dennis M. O'Driscoll

On December 3, 2008, the Attorney Discipline Office filed a certified copy of the November 8, 2006 order of the Supreme Judicial Court for Suffolk County (Massachusetts) suspending Attorney Dennis M. O'Driscoll from the practice of law in Massachusetts for an "indefinite period." In accordance with Supreme Court Rule 37(12)(b), the court ordered that a copy of the November 8, 2006 order be served on Attorney O'Driscoll. It further ordered that Attorney O'Driscoll and the Professional Conduct Committee (PCC) inform the court if either contended that the imposition of identical or substantially similar discipline would be unwarranted. Attorney O'Driscoll filed no response to the order.

Rule 37(12)(d) provides for the imposition of reciprocal discipline by the court unless the respondent attorney or the PCC demonstrates, or the court finds, based on the face of the record from which the discipline is predicated, that: (1) the procedure followed by the jurisdiction imposing discipline was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (2) the imposition of the same or substantially similar discipline by the court would result in grave injustice; or (3) the misconduct established warrants substantially different discipline in New Hampshire.

In this case, there is no indication on the face of the Supreme Judicial Court's record that the procedure it followed deprived Attorney O'Driscoll of due process. The court notes that O'Driscoll was found to have misused client funds and to have failed to return funds belonging to his client. In light of the seriousness of Attorney O'Driscoll's misconduct, the court cannot find that the imposition of identical or substantially similar discipline would result in injustice or that the misconduct would warrant substantially different discipline in New Hampshire. Accordingly, the court concludes that reciprocal discipline should be imposed.

The Supreme Judicial Court suspended Attorney O'Driscoll for an "indefinite period." New Hampshire Supreme Court Rule 37 defines a "suspension" as "the suspension of an attorney's right to practice in this State, for a period of time specified by the court" On February 3, 2009, the court issued an order giving the parties the opportunity to file memoranda on the question whether Supreme Court Rule 37 allows the imposition of a

suspension for an "indefinite period," and if not, what discipline should be imposed in this case.

The Attorney Discipline Office filed a memorandum in which it argued that under Massachusetts Supreme Judicial Court Rule 4:01, § 18(2)(b), an indefinite suspension is essentially a suspension for a minimum of five years. It contends that a suspension for a minimum of five years would constitute "substantially similar" discipline under Rule 37(12)(b). Attorney O'Driscoll filed no response to the order.

The court concludes that a suspension for five years is "substantially similar" to the "indefinite suspension" imposed by the Massachusetts Supreme Judicial Court. Therefore, the court orders that Attorney Dennis M. O'Driscoll is suspended from the practice of law in New Hampshire for a period of five years. The suspension shall take effect immediately.

Any motion for reinstatement will be governed by Rule 37(14)(a) - (e). Attorney O'Driscoll is hereby assessed all expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter. See Rule 37(19).

Broderick, C.J., and Dalianis, Duggan and Hicks, JJ., concurred.

DATE: March 3, 2009

ATTEST:


Eileen Fox, Clerk

Distribution:
James L. Kruse, Esquire
Dennis M. O'Driscoll
Professional Conduct Committee
NH Bar Association x6
Sherri Kluesener, Supreme Court
File