

IN RE: FIORE PORRECA

BBO # 651019

NO. BD-2022-024

Order (Term Suspension) entered by Justice Wendlandt on March 17, 2022.¹

For assisting a suspended lawyer to practice and related misconduct, the respondent received a six-month suspension, effective immediately.

SUMMARY²

The respondent admitted the factual allegations and disciplinary rule violations charged in the Petition for Discipline. The respondent practices criminal defense and immigration law. As of 2015, his law office was in the same building as another lawyer named Gail Balser. Unbeknownst to him, Balser had been the subject of disciplinary proceedings beginning in 2013. A hearing committee had recommended indefinite suspension for her, and the Board had recommended a four-year suspension. Her matter progressed to the Single Justice, who held a hearing October 15, 2015. As early as 2015, while her suspension was on appeal to the Board, Balser began soliciting clients to join in a multi-plaintiff toxic tort lawsuit against Texas Instruments (TI). She discussed with the respondent and his wife, also a practicing attorney renting space in the building, representation of the multiple plaintiffs she had recruited for the lawsuit. She claimed she had a conflict of interest and so could not file the complaint herself. Unaware of Balser's pending disciplinary proceedings, the respondent agreed, in December 2015, to represent forty-eight plaintiffs, with the understanding that Balser would assist him and would bring in more experienced counsel.

Balser filed the complaint on February 16, 2016 and amended it on February 19, 2016. The respondent and his wife were identified as counsel of record. The wife had no further involvement. On April 15, 2016, the Single Justice entered an order suspending Balser for four years. Balser did not inform the respondent, and he did not learn, until almost two years later, of her suspension. The respondent relied on Balser for advice and direction in the TI litigation. In February 2018, he learned that Balser had been suspended from practice in April 2016. He permitted her to continue to provide him with assistance for several months thereafter, and to engage in the unauthorized practice of law. He did not withdraw from the litigation until September 2018.

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 Massachusetts Board of Bar Overseers' Office of General Counsel based on the record filed with the Supreme Judicial Court.

Meanwhile, for her unauthorized practice of law, bar counsel successfully prosecuted a petition for contempt against Balser. Her four-year suspension was extended for another four years.

The respondent's conduct violated Mass. R. Prof. C. 5.5(a) (do not practice if unauthorized or assist another in doing so), 8.4(d) (conduct prejudicial to the administration of justice) and 8.4 (h) (conduct that adversely reflects on fitness to practice), and S.J.C. Rule 4:01. Sec. 17(7) (do not knowingly employ or engage suspended lawyer).

The parties filed a stipulation as to the misconduct and rule violations and jointly recommended to the Board a six-month suspension. By vote dated February 14, 2022, the Board of Bar Overseers recommended to the S.J.C. that it accept the parties' stipulation to a six-month suspension.

On March 17, 2022, Justice Wendlandt imposed a six-month suspension, effective immediately.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2022-024

IN RE: FIORE PORRECA

ORDER OF TERM SUSPENSION

This matter came before the Court, Wendlandt, J., on an Information and Record of Proceedings pursuant to S.J.C. Rule 4:01, § 8(6), with the Recommendation and Vote of the Board of Bar Overseers (Board) and the stipulation of the parties filed by the Board on March 10, 2022. Upon consideration thereof, it is ORDERED that:

1. Fiore Porreca is hereby suspended from the practice of law in the Commonwealth of Massachusetts for a period of six (6) months effective immediately upon the entry of this Order;

It is FURTHER ORDERED that:

2. Within fourteen (14) days of the date of entry of this Order, the lawyer shall:

a) file a notice of withdrawal as of the effective date of the suspension with every court, agency, or tribunal before which a matter is pending, together with a

copy of the notices sent pursuant to paragraphs 2(c) and 2(d) of this Order, the client's or clients' place of residence, and the case caption and docket number of the client's or clients' proceedings;

b) resign as of the effective date of the suspension all appointments as guardian, executor, administrator, trustee, attorney-in-fact, or other fiduciary, attaching to the resignation a copy of the notices sent to the wards, heirs, or beneficiaries pursuant to paragraphs 2(c) and 2(d) of this Order, the place of residence of the wards, heirs, or beneficiaries, and the case caption and docket number of the proceedings, if any;

c) provide notice to all clients and to all wards, heirs, and beneficiaries that the lawyer has been suspended; that he is disqualified from acting as a lawyer after the effective date of the suspension; and that, if not represented by co-counsel, the client, ward, heir, or beneficiary should act promptly to substitute another lawyer or fiduciary or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;

d) provide notice to counsel for all parties (or, in the absence of counsel, the parties) in pending matters that the lawyer has been suspended and, as a consequence,

is disqualified from acting as a lawyer after the effective date of the suspension;

e) make available to all clients being represented in pending matters any papers or other property to which they are entitled, calling attention to any urgency for obtaining the papers or other property;

f) refund any part of any fees paid in advance that have not been earned; and

g) close every IOLTA, client, trust or other fiduciary account and properly disburse or otherwise transfer all client and fiduciary funds in his possession, custody or control.

All notices required by this paragraph shall be served by certified mail, return receipt requested, in a form approved by the Board.

3. Within twenty-one (21) days after the date of entry of this Order, the lawyer shall file with the Office of the Bar Counsel an affidavit certifying that the lawyer has fully complied with the provisions of this Order and with bar disciplinary rules. Appended to the affidavit of compliance shall be:

a) a copy of each form of notice, the names and addresses of the clients, wards, heirs, beneficiaries, attorneys, courts and agencies to which notices were sent,

and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise requested in writing by the lawyer or ordered by the court;

b) a schedule showing the location, title and account number of every bank account designated as an IOLTA, client, trust or other fiduciary account and of every account in which the lawyer holds or held as of the entry date of this Order any client, trust or fiduciary funds;

c) a schedule describing the lawyer's disposition of all client and fiduciary funds in the lawyer's possession, custody or control as of the entry date of this Order or thereafter;

d) such proof of the proper distribution of such funds and the closing of such accounts as has been requested by the bar counsel, including copies of checks and other instruments;

e) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice;

f) the residence or other street address where communications to the lawyer may thereafter be directed;

and

g) any and all bar registration cards issued to the lawyer by the Board of Bar Overseers.

The lawyer shall retain copies of all notices sent and shall maintain complete records of the steps taken to comply with the notice requirements of S.J.C. Rule 4:01, § 17.

4. Within twenty-one (21) days after the entry date of this Order, the lawyer shall file with the Clerk of the Supreme Judicial Court for Suffolk County:

a) a copy of the affidavit of compliance required by paragraph 3 of this Order;

b) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and

c) the residence or other street address where communications to the lawyer may thereafter be directed.

By the Court, (Wendlandt, J.)

/s/ Maura S. Doyle, Clerk

Entered: March 17, 2022