

IN RE: RICHARD S. WEISS

NO. BD-2011-004

**S.J.C. Order of Term Suspension entered by Justice Cordy on April 20, 2011, with
an effective date of May 20, 2011.¹**

(S.J.C. Judgment of Reinstatement Denied entered by Justice Cordy on March 14, 2013.)

Page Down to View Memorandum of Decision

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
BD-2011-004

IN RE: RICHARD WEISS

MEMORANDUM OF DECISION

An Information and a Stipulation of the parties regarding the conduct of attorney Richard S. Weiss, which included the joint recommendation (unanimously accepted by the Board of Bar Overseers [board]), that attorney Weiss be suspended from the practice of law for one year and one day, has been filed with this Court.¹ Attorney Weiss has also filed a Motion to Dismiss the Petition for Discipline, on grounds that he captions as res judicata, in which he essentially argues that the conduct that led to the filing of this Information, mirrors conduct examined in a guardianship proceeding in the Probate and Family Court that was resolved by a judge after an investigation by a court-appointed guardian ad litem.²

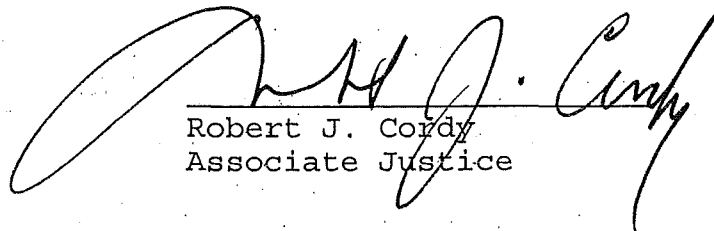
¹ Richard S. Weiss was represented in the disciplinary proceedings and in connection with the execution of the Stipulation and agreed on recommendation. He is appearing pro se in this Court.

² As a result of the proceeding in the Probate and Family Court, Weiss resigned as guardian and was ordered to pay certain restitution to a court-appointed successor guardian of the estate.

While it is apparent that Weiss's conduct as a guardian comprises a significant portion of the conduct subsequently alleged in the Petition for Discipline (and agreed to in the Stipulation) to have been violative of the Rules of Professional Conduct, nothing bars bar counsel from bringing a disciplinary proceeding on the basis of that conduct, and nothing bars this court from imposing the discipline recommended by the board as a result of that disciplinary proceeding.

It is not at all unusual that a proceeding in the trial court reveals or uncovers potential misconduct by an attorney which, on conclusion of the trial proceeding, is examined, and where appropriate, pursued in the attorney disciplinary process. See, e.g., Matter of Brauer, 452 Mass. 56 (2008) (lawyer precluded from challenging findings made in civil litigation in subsequent bar disciplinary proceedings, where those findings supported conclusions of rule violation). Res judicata does not apply. Neither bar counsel nor the board was party to the Probate Court proceeding (nor could they have been). Nor was the matter itself decided adversely to either.

For these reasons, the motion to dismiss is denied, the stipulation is accepted, and the sanction recommended by the board of suspension for one year and one day will be ordered by the Court.



Robert J. Cordy
Associate Justice

Entered: April 20, 2011