

Matter of Thomas J. Motter, Supreme Court No. 515, 2004 (Board Case Nos. 47, 2003; 9, 31, 32, 33, 2004) Disbarment: March 15, 2005

By Order of the Delaware Supreme Court dated March 15, 2005, Thomas J. Motter was disbarred from membership in the Delaware Supreme Court in connection with five disciplinary matters, three of which were client matters.

Motter's misconduct in the client matters involved his failure to competently (**Rule 1.1**), and diligently (**Rule 1.3**) represent three clients in their Family Court matters and failure to respond to the ODC in its investigation of these matters (**Rule 8.1(b)**). Two Family Court clients had their matters dismissed due to Motter's failure to act on their behalf. Motter failed to adequately communicate the status of their matters to these clients (**Rule 1.4(a)**) and failed to explain the matters to the extent reasonably necessary to permit the clients to make informed decisions (**Rule 1.4(b)**). The third client, from Arizona, had gained physical custody of his children. He paid Motter a \$2,000.00 retainer to file for legal custody of the children in the Delaware Family Court. Motter never did so and failed to return this client's retainer. In this matter, the Court found that Motter, in addition to failing to competently and diligently represent this client, failed to follow the client's objectives of the representation – gaining legal custody of his children (**Rule 1.2(a)**); failed to charge a reasonable fee by accepting a \$2,000.00 retainer and performing no legal work (**Rule 1.5(a)**); failed to account for the use of the \$2,000.00 retainer (**Rule 1.15(b)**); and failed to protect the client's interests when the client terminated the representation by not returning the retainer to the client (**Rule 1.16(d)**).

Motter also failed to maintain adequate books and records for his law practice (**Rule 1.15(a)** and **1.15(d)**) since 1998 and failed to file or pay federal, state, Pennsylvania township, and Wilmington Net Profits income taxes since 1998 (**Rule 8.4(b)**, criminal non-payment of taxes, and **Rule 8.4(d)**). The Court found that Motter had violated **Rule 8.4(c)** and **8.4(d)** for failing to accurately report the status of his books and records and tax filings and payments on his 1999, 2000, 2001, 2002, and 2003 Certificates of Compliance filed each year with the Court.

Motter also failed to complete four credit hours of Enhanced Ethics as part of his Continuing Legal Education requirements. Lawyers in the State of Delaware are required to complete 24 Continuing Legal Education credits in a two-year period, four of which must be in Enhanced Ethics. The Court found that Motter knowingly failed to comply with its continuing legal education Rules. (**Rule 3.4(c)**)

In determining the appropriate sanction, the Court found that Motter knowingly engaged in the above misconduct; caused actual injury to three clients; and, based on his failure to maintain his books and records, there was a serious threat of substantial injury to clients. Furthermore, the Court found that Motter had a dishonest and selfish motive in failing to timely

file and pay his income taxes and failing to notify the Court of the deficiencies in his books and records. Lastly, the Court found that Motter engaged in a bad faith obstruction of the disciplinary process by failing to comply with ODC's requests for information throughout its investigation of these matters.

Motter had no prior disciplinary record. He had closed his practice in 2004. In addition, he had filed and paid all outstanding income taxes immediately prior to the Board hearing in these matters.