

IN RE: MICHAEL M. YALOVENKO

BBO # 666558

NO. BD-2022-063

Order (Term Suspension/Partially Stayed) entered by Justice Wendlandt on October 13, 2022, with an effective date of November 12, 2022.¹

The respondent was suspended for varied misconduct in three matters, including intentional misuse of a client retainer, with deprivation; failure to maintain any IOLTA records; and neglect and lack of communication.

SUMMARY²

With one minor exception, the respondent admitted to the misconduct charged in bar counsel's three count petition for discipline. Count 1 charged him with recordkeeping violations, in violation of Mass. R. Prof. C. 1.15(f)(1)(B)-(E). Count 2 charged him with intentional misuse of a retainer in an immigration matter, and a failure to remit to his client an itemized bill before taking fees from a retainer, with a late but eventual refund of unearned fees, in violation of Mass. R. Prof. C. 1.15(b)(1) and (3), 8.4(c) and 8.4(h), 1.15(d)(2) and 1.16(d). Count 3, also an immigration matter, charged incompetence, lack of diligence, and a failure to comply with the client's reasonable requests for information, in violation of Mass. R. Prof. C. 1.1, 1.3, and 1.4(a) and (b).

By vote dated September 12, 2022, the Board of Bar Overseers recommended to the S.J.C. that the respondent be suspended from practice for three years, with the last six months stayed.

On October 13, 2022, Justice Wendlandt ordered as follows: the respondent is suspended for three years, with the last six months stayed. He shall actually serve two years and six months of the suspension, with the remaining six months stayed on conditions. He may apply for reinstatement after two years and three months from the entry date of the Order and, upon reinstatement, will serve the stayed six-month portion of his suspension.

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.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2022-063

IN RE: Michael M. Yalovenko

ORDER OF TERM SUSPENSION/PARTIALLY STAYED

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 on October 4, 2022. Upon consideration thereof, it is ORDERED that:

1. a. Michael M. Yalovenko is hereby suspended from the practice of law in the Commonwealth of Massachusetts for a period of three (3) years, with the last six (6) months stayed.
- b. Michael M. Yalovenko shall actually serve two (2) years and six (6) months of the three (3) year suspension.
- c. The remaining six (6) months of the suspension shall be stayed with the following conditions:
 - i. The lawyer shall attend a trust accounting class provided by the Office of Bar Counsel.

ii. The lawyer shall attend a Massachusetts Continuing Legal Education (MCLE) program concerning ethical responsibilities of Massachusetts lawyers designated by the Office of Bar Counsel.

In accordance with S.J.C. Rule 4:01, § 17(3), the suspension shall be effective thirty (30) days after the date of the entry of this Order. The lawyer, after the entry of this Order, shall not accept any new retainer or engage as a lawyer for another in any new case or legal matter of any nature. During the period between the entry date of this Order and its effective date, however, the lawyer may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

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.

5. The lawyer may apply for reinstatement to the practice of law in the Commonwealth of Massachusetts pursuant to S.J.C. Rule 4:01, § 18(2) (4) and (5) after two (2) years and three (3) months from the entry date of this Order and upon reinstatement will serve the stayed six (6) month portion of his suspension.

By the Court, (Wendlandt, J.)

/s/ Maura S. Doyle, Clerk

Entered: October 13, 2022