

IN RE: THOMAS F. BRODERICK

S.J.C. Order of Term Suspension entered by Justice Cordy on November 29, 2004.¹

SUMMARY²

On February 21, 1996, the respondent was retained to represent co-executors of an estate valued at slightly less than \$2,000,000.00. In a written fee agreement, the respondent agreed to bill for his work at the rate of \$175.00 per hour.

By January 1997, the co-executors had paid the respondent \$3,000.00. In February 1997, at the respondent's request, the co-executors agreed to pay the respondent a flat fee of \$40,000.00 for legal fees to date and all future legal fees for work required to complete the probate of the estate. By February 26, 1997, the co-executors had paid the respondent his entire fee.

In early 1999, the co-executors discharged the respondent and retained new counsel to complete the probate of the estate. Throughout 1999 and 2000, the co-executors made repeated demands upon the respondent for an accounting of his time and work on the estate. The respondent did not respond to the co-executor's demands.

On August 6, 2001, one of the co-executors filed a complaint with the Office of the Bar Counsel. Between September 26, 2001 and January 25, 2004, the respondent provided bar counsel with an accounting for time allegedly spent and work purportedly done on the estate. The respondent kept contemporaneous time and billing records for the first year of the representation. The balance of the respondent's records were intentionally false, deceptive, and misleading in that they were constructed after the fact, contained double and triple-billing for the same work, and were an attempt by the respondent to justify his total fee. In addition, the respondent's fee was clearly excessive in that the work was neither novel nor difficult, he did not bring any particular expertise to the matter, and he did not achieve the results desired by his clients, i.e. the completion of the estate. Despite their demands, the respondent did not return any portion of the fee to the co-executors.

On May 26, 2004, the respondent was administratively suspended from the practice of law for failing to register with the Board of Bar Overseers and failing to pay his annual fee in accordance with the provisions of S.J.C. Rule 4:02 and S.J.C. Rule 4:03, § (2). The respondent failed to apply for reinstatement within thirty days of the entry of the suspension order. Pursuant to S.J.C. Rule 4:03(3), the respondent's failure to apply for reinstatement made him subject to the provisions of S.J.C. Rule 4:01, § 17. To date the respondent has not been reinstated and has failed to file with bar counsel an affidavit certifying his compliance with the provisions of S.J.C. 4:01, § 17.

The respondent's conduct in charging and collecting an excessive fee violated Mass. R. Prof. C. 1.5(a) (a lawyer shall not collect a clearly excessive fee). The respondent's failure to return the unearned portion of his fee upon his discharge violated Mass. R. Prof. C. 1.16 (d) (upon termination of representation, a lawyer shall refund any advance payment of his fee that has not been earned).

The respondent's submission to bar counsel of time slips and billing records that contained

false, misleading, and/or deceptive entries violated Mass. R. Prof. C. 8.1(a) (a lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter) and Mass. R. Prof. C. 8.4(c), (d), and (h) (lawyer shall not engage in conduct involving fraud, deceit, or misrepresentation; conduct prejudicial to the administration of justice; or any other conduct that adversely reflects on his fitness to practice law).

The respondent's failure to respond to the complainant's requests for information about the basis for his fee, to maintain adequate records, and to provide the complainant with an accounting of his fee violated Mass. R. Prof. C. 1.4(a) (a lawyer shall keep a client reasonably informed of the status of a matter and promptly comply with reasonable requests for information) and Mass. R. Prof. C. 1.15 (a) and (b) (lawyer shall maintain proper records regarding client's funds and shall promptly render a full accounting upon request).

The respondent's failure to comply with S.J.C. Rule 4:01, § 17, after his suspension from the practice of law violated Mass. R. Prof. C. 8.4(d) and (h).

On September 2, 2004, bar counsel filed a petition for discipline against the respondent. In accordance with S.J.C. Rule 4:01, § 21, service was made on the respondent by first-class mail, postage prepaid, and by certified mail. The respondent did not file an answer to the petition for discipline.

On September 23, 2004, the Board of Bar Overseers sent to the respondent by first-class mail, postage prepaid, and by certified mail, a letter advising the respondent that the allegations in the petition were deemed admitted, he had waived his right to present evidence in mitigation, and he had twenty days in which to move for relief from default. The respondent took no action.

On October 15, 2003, the Board sent the respondent by first-class mail, postage prepaid, and by certified mail, a letter advising the respondent that the matter would be considered by the Board at its next meeting, and the parties had fourteen days in which to file briefs on the issue of disposition. The respondent did not respond to this letter.

On October 22, 2004, bar counsel filed with the Board a brief on disposition recommending that the respondent be suspended from the practice law for two years. Bar counsel requested that the Board consider as a matter in aggravation the respondent's failure to comply with his obligations to the bar discipline process as evidenced by his failure to participate in the disciplinary proceedings. The respondent did not file a brief.

On November 8, 2004, the Board of Bar Overseers voted to recommend to the Supreme Judicial Court that the respondent be suspended from the practice of law for two years.

On November 29, 2004, the Supreme Judicial Court for Suffolk County entered an order suspending the respondent from the practice of law for two years effective immediately.

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 Board of Bar Overseers based on the record before the Court.