

IN RE: STEVEN L. OSTROVITZ

S.J.C. Order of Term Suspension entered by Justice Cordy on July 29, 2008, with an effective date of August 28, 2008.¹

SUMMARY²

The respondent, Steven L. Ostrovitz, Esq., has been a member of the Bar of the Commonwealth since December 20, 1994.

On April 25, 2002, a client engaged the respondent to represent him in a personal injury claim against the driver of a vehicle that had struck him and caused him injuries. In the fall of 2004, the respondent negotiated a \$50,000 settlement with the driver's insurer. In October 2004, the insurer issued a check for \$50,000 made out jointly to the respondent and the client. After the client endorsed the check, the respondent deposited the funds into his IOLTA account and paid himself his one-third contingent fee of \$16,666.66.

On November 23, 2004, the respondent sent a settlement statement to the client. The statement indicated that the client's share of the settlement was \$20,465.61, that the respondent's fee was \$16,666.66, and that the client's outstanding medical bills totaled \$12,867.73. The respondent informed the client that he had retained \$12,867.73 of the settlement funds in his IOLTA account from which he would pay the medical bills. He further represented that if any of the providers agreed to accept less than the full amount of the bill, he would forward the balance to the client. The respondent enclosed with the statement a check made out to the client in the amount of \$20,465.61 and copies of the medical bills.

In late 2004 or early January 2005, the respondent negotiated a settlement of the \$10,967.73 hospital bill by which the hospital's collection agent agreed to reduce the bill to \$8774. The respondent then sent the collection agent a check in the amount of \$8744, noting that the check was in "full payment" of the hospital bill. The respondent did not inform the client that he had negotiated a substantial reduction of the bill, and did not transmit the amount saved, \$2193.73, to the client.

The respondent did not pay any portion of the client's other four medical bills, which totaled \$1900. The respondent unintentionally misused that amount, in addition to the \$2193.73 reduction of the hospital bill, for a total of \$4093.73 of the client's funds, for purposes unrelated to the client. He thereby deprived the client of those funds.

In November 2006, the client was contacted by a collection agency representing one of the unpaid medical providers, who was still seeking payment of the client's bill. The client contacted the respondent and informed him that it appeared that some of his medical bills had not been paid. The respondent advised the client that he would pay the outstanding medical bills. The respondent, however, did not at any time pay those medical bills or remit to the client the funds due to him. Between December 2, 2006, and March 23, 2007, the client made at least fifteen calls to the respondent and sent several letters to him by mail and by facsimile transmission. The respondent did not reply to these calls or letters.

In April 2006, the respondent deposited personal funds into his IOLTA account.

By failing to promptly deliver to his client funds that the client was entitled to receive, and unintentionally misusing those funds for unrelated purposes, the respondent violated Mass. R. Prof. C. 1.15(c).

By failing to perform the services for which he was paid, by failing to pay over monies due to the client, and by failing to pay the outstanding medical bills and timely conclude the matter, the respondent violated Mass. R. Prof. C. 1.1, Mass. R. Prof. C. 1.2(a), and Mass. R. Prof. C. 1.3.

By failing to respond to his client's reasonable requests for information about the payment of his medical bills or to advise the client that he had not paid the medical bills and had used \$4093.73 of the client's funds for other purposes, the respondent violated Mass. R. Prof. C. 1.4(a) and 1.4(b).

By depositing personal funds in his IOLTA, the respondent violated Mass. R. Prof. C. 1.15(b).

On April 26, 2007, the respondent was administratively suspended for failure to register and pay registration fees. On the same date, the S.J.C. issued an order and sent notice of the order to the respondent. The order required the respondent to take various steps to suspend his practice, including closing any IOLTA account, and to file an affidavit of compliance with the Court on or before May 17, 2007.

The respondent received notice of the order of administrative suspension in due course, but failed to comply with all of the terms of the order. On August 1, 2007, the Office of Bar Counsel again notified the respondent of his administrative suspension and sent him another copy of the order and proposed compliance and affidavit forms. The respondent received the correspondence from bar counsel in due course, but did not reply.

The respondent failed to reply to letters sent to him by bar counsel on May 1 and May 25, 2007, in which bar counsel sought a response to the complainant's grievance and notified him that the rules of the Board of Bar Overseers required him to respond within twenty days from the date of bar counsel's letter.

On June 7, 2007, the Board of Bar Overseers authorized the issuance of a subpoena for the appearance of the respondent at the offices of bar counsel on June 26, 2007. Bar counsel caused the subpoena to be served on the respondent by first-class and by certified mail on June 8, 2007. The respondent failed to appear.

By failing to comply with the order of administrative suspension, the respondent violated Supreme Judicial Court Rule 4:01, §17 (actions required of lawyer upon loss of license to practice), Mass. R. Prof. C. 3.4(c), and Mass. R. Prof. C. 8.4(d).

By failing without good cause to cooperate with bar counsel's investigation, including failing to respond to requests for information and failing to comply with the subpoena issued by the Board of Bar Overseers, the respondent violated Mass. R. Prof. C. 8.1(b), 8.4(d), and 8.4(g).

In mitigation, the respondent has now made full restitution to the client. In addition, during the time period in which the violations were committed, the respondent was suffering serious personal difficulties, including that his wife was diagnosed with terminal cancer, that he was suffering from anxiety and depression, and that his family was under severe financial strain.

In aggravation, the respondent had previously been administratively suspended on August 24, 2006, for failure to cooperate with bar counsel's investigation of an unrelated complaint. He was administratively suspended again in April 2007, and remained administratively suspended through the date of the Court's order. The respondent failed to file an answer to the petition for discipline in this matter and was defaulted. He did not contact bar counsel until after a hearing was scheduled on the issue of disposition. The respondent also continued to use as his

registered office address an office with which he no longer had a connection and at which he could not be reached. Finally, several thousand dollars of the medical bills that the respondent undertook to pay remained unpaid for several years despite the respondent's subsequent promise to pay those bills. The complainant eventually paid those bills from his own funds, and his credit rating was severely damaged in the interim period.

This matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and an agreed recommendation for discipline by suspension for two and one-half years. On July 14, 2008, the Board voted to accept the parties' stipulation and impose the agreed suspension. On July 29, 2008, the Supreme Judicial Court for Suffolk County entered an order suspending the respondent for two and one-half years, effective thirty days from the date of the order.

FOOTNOTES:

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 filed with the Supreme Judicial Court.

Please direct all questions to webmaster@massbbo.org.

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