

IN RE: ROBERT J. MICHALIK

NO. BD-2013-077

S.J.C. Order of Term Suspension entered by Justice Botsford on July 16, 2015.¹

SUMMARY²

The respondent was admitted to the Massachusetts bar on December 20, 1994. On July 23, 2013, he was administratively suspended for failing to cooperate with a bar counsel investigation. On July 16, 2015, he was suspended for a year and a day following his stipulation to misconduct alleged in three counts of a petition for discipline.

Count I involved the respondent's IOLTA account. Between January 1, 2012, and December 31, 2013, the respondent did not properly reconcile his IOLTA account every sixty days, did not maintain a chronological check register with client identifiers for every transaction and a running balance, and did not maintain individual ledgers for each client matter or for his bank charges. On several occasions between January 1, 2012 and December 31, 2012, the respondent deposited personal funds in his IOLTA account, maintained personal funds in his IOLTA account in excess of the amount necessary to pay bank fees and charges, and commingled personal and client funds in the IOLTA account. During this period, the respondent also paid personal expenses several times directly from the IOLTA account and made at least nine cash withdrawals from the IOLTA account.

The respondent's conduct in failing to perform a three-way reconciliation of the IOLTA account violated Mass. R. Prof. C. 1.15(f)(1)(E). His conduct in failing to keep a chronological check register with a client identifier for every transaction and running balance violated Mass. R. Prof. C. 1.15(f)(1)(B). His failure to maintain individual client ledgers with a list of every transaction and running balance violated Mass. R. Prof. C. 1.15(f)(1)(C). His failure to keep a ledger for bank charges violated Mass. R. Prof. C. 1.15(f)(1)(D). The respondent's cash withdrawals from the IOLTA account violated Mass. R. Prof. C. 1.15(e)(3). The respondent's conduct in keeping personal funds in his IOLTA account and commingling those funds with client funds violated Mass. R. Prof. C. 1.15(b)(2). The respondent's conduct in disbursing personal funds from his IOLTA account violated Mass. R. Prof. C. 1.15.

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.

Count II involved the respondent's failure to cooperate with bar counsel when she received a dishonored check notice for the respondent's IOLTA account. Bar counsel made a written request to the respondent in March 2013 for his account records and an explanation for the dishonored check. The respondent did not reply to this letter, or to bar counsel's further attempts to contact him in May and June of 2013. The respondent's conduct in intentionally failing without good cause to respond to bar counsel's requests for information violated Mass. R. Prof. C. 8.1(b), 8.4(d), and 8.4(g).

For failing to cooperate with bar counsel, the respondent was administratively suspended by the Supreme Judicial Court on July 23, 2013. He violated the order of administrative suspension by failing to withdraw from all pending cases; failing to provide notice to all clients that he would be disqualified from acting as a lawyer after the effective date of the administrative suspension; and failing to file an affidavit with the court and bar counsel within 30 days of the issuance of the order, attesting that he had completed the required steps and otherwise complied with the order. The respondent's conduct in intentionally failing without good cause to comply with the SJC's order of administrative suspension, violated Mass. R. Prof. C. 3.4(c), and 8.4(d).

Count III involved the respondent's representation of clients in a custody matter. In February 2013, a woman gave birth to a child who was born addicted to opiates and other narcotics. After the Department of Children and Families became involved, the child's paternal grandmother sought to be appointed temporary guardian, and the court so appointed her on May 3, 2013. The paternal grandmother then filed a petition to obtain permanent custody.

On or about June 3, 2013, the mother and the child's father engaged the respondent to represent them in seeking custody of their child. The respondent told the clients that his legal fee would be in the range of \$2,000 - \$3,500, but failed to execute and provide the clients with a written fee agreement and failed to explain the basis or rate of his fee. The clients gave the respondent an initial retainer of \$500 and during the following months gave him an additional \$2,000 to \$2,700. The respondent did not maintain records of the fees he collected from the clients.

On June 24, 2013, the respondent and clients attended a hearing in court to review the temporary guardianship. The respondent did not file a formal appearance in the guardianship matter at that time or thereafter. When the respondent was administratively suspended on July 23, 2013, and although he received notice of the administrative suspension, he failed to notify the clients that he could not continue to represent them. The court scheduled a hearing for permanent guardianship for September 19, 2013 and the clients notified the respondent about the hearing. Despite being administratively suspended, the respondent assured the clients he would attend the hearing. On September 19, 2013, the court held the hearing on the petition for permanent guardianship. The respondent failed to appear for the hearing. On September 19,

2013, the court issued a decree granting the grandmother permanent guardianship. The order noted that the parents had not objected to the grandmother's petition for permanent guardianship.

On October 21, 2013, the father filed a notice of appeal of the permanent guardianship decree, alleging that the respondent had failed to appear at the hearing and had informed "us" to appear "after it was too late." After failing to appear at the hearing, the respondent took no significant action to further the clients' goal of obtaining custody of their child. In or around April 2014, the clients met with the respondent at his office. The respondent did not inform the clients that he was administratively suspended from the practice of law. Instead, the respondent informed the clients that he was no longer actively engaged in the practice of law. Although he had not earned the amount of fees he received from the clients, he failed to refund the unearned fees to the clients.

The respondent's conduct in failing to communicate to the clients in writing the basis or rate of his fee violated Mass. R. Prof. C. 1.5(b)(1). The respondent's conduct in failing to inform the clients after July 23, 2013, that he had been administratively suspended, could not represent them in the guardianship matter or otherwise, and that they needed to engage alternate counsel, violated Mass. R. Prof. C. 1.2(a), 1.3, 1.4(a) and (b) and 8.4(c) and (h). By collecting legal fees from the clients for services that he could not provide because of his administrative suspension, the respondent charged a clearly excessive fee in violation Mass. R. Prof. C. 1.5(a). The respondent's conduct in terminating the representation without taking steps to protect the clients' interests, including failing to refund to them all unearned fees violated Mass. R. Prof. C. 1.16(d).

The matter came before the Board of Bar Overseers on a stipulation of facts and joint recommendation for a term suspension of a year and a day. On May 20, 2015, the Board voted to accept the stipulation and recommend the agreed upon sanction to the Supreme Judicial Court. On July 16, 2015, the Court so ordered, with the suspension effective on the date of entry.