

IN RE: DANIEL JOSEPH SZOSTKIEWICZ

NO. BD-2015-006

S.J.C. Order of Term Suspension entered by Justice Cordy on February 5, 2015.¹

SUMMARY²

The respondent was suspended for eighteen months for misconduct charged in a two-count petition for discipline filed by bar counsel.

In the first matter, the respondent was deposed in November 2008 as a witness in a domestic relations matter between the respondent's then wife and the father of her older child. The primary issue was child support. At this deposition, the respondent testified that he and his wife had a young daughter who was cared for by his wife's longtime friend (the caregiver) and that the caregiver was not paid for her services. The respondent and his wife then separated in December 2008 and were divorced in 2009.

In 2010, the caregiver's husband filed for divorce from the caregiver. In May 2011, the respondent was deposed in the caregiver's divorce matter. He testified that, during the time he was in the home, the caregiver was compensated for providing child care services. He elaborated on this response in reply to other questions, including that, on occasion, his wife had given him the weekly payments in the form of cash to deliver to the caregiver. He further indicated that "I actually lied" in the November 2008 deposition.

In October 2012, as a witness for the husband in the caregiver's divorce case, the respondent testified in probate court that the caregiver was paid by the respondent's then wife, that he (the respondent) sometimes delivered the funds from the wife in the form of cash, and again, that he "lied under oath" in his testimony in the November 2008 deposition. The caregiver, however, testified that she was not paid by the wife. The wife was not called as a witness, but the attorneys for the caregiver and her husband stipulated that, if called, her testimony would be that there were no payments made to the caregiver.

After the petition for discipline was filed, bar counsel and the respondent stipulated that the respondent gave testimony under oath that was knowingly false on the issue of whether the caregiver was paid by the respondent's then wife for child care services. The respondent's position in the stipulation was that it was the 2008 deposition testimony that was false. Bar counsel took no position in the stipulation as to whether it was the 2008 deposition testimony or the deposition and court testimony in 2011 and 2012 that was false, just that one or the other was so. The respondent's conduct in giving knowingly false testimony under oath in a deposition and/or in court was in violation of Mass. R. Prof. C. 3.3(a)(1) and 8.4(c), (d), and (h).

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.

In the second count, the respondent was retained by a client in early 2010 to represent him in a divorce matter. The respondent was paid a fee of \$2500. The respondent was then suspended from the practice of law by the Supreme Judicial Court on an unrelated disciplinary matter between July 5 and August 17, 2010. In violation of the order of suspension and of Supreme Judicial Court Rule 4:01, § 17(1), he failed to notify the client of his suspension, although he did notify other clients.

After delays attributable in part to efforts to obtain an address for the wife, the respondent filed the complaint for divorce in March 2012 and obtained service on the wife, and filed the return of service, in April 2012. Thereafter, between April 2012 and July 2013, the respondent took no action of substance to pursue the divorce matter.

In July 2013, the client, through another lawyer, requested a copy of the file and an accounting of fees paid and filed a complaint with bar counsel requesting the file, an accounting, and a refund of unearned fees. In October 2013, the respondent sent a copy of the file to the lawyer and replied to bar counsel, including a purported accounting of his and his office's time spent on the divorce case, but did not refund any portion of the fee paid.

In August 2013, the respondent received notice from the probate court that the divorce matter was scheduled for pretrial conference in November. The respondent did not either file a motion requesting permission to withdraw his appearance or appear for the hearing. The complaint for divorce was dismissed on November 14, 2013.

In his accounting of time spent on the divorce case, the respondent included time allegedly spent on pleadings never filed. In light of the respondent's delays and inaction in pursuing the divorce case, and his failure to take any action in response to the notice of pretrial conference or to appear for the conference, the fee was clearly excessive for the services actually rendered.

The respondent's failure to act with reasonable diligence and promptness in his representation of the client, including his failure either to appear for the pretrial conference or to seek permission to withdraw, and his failure to keep the client informed of the status of the divorce matter is conduct in violation of Mass. R. Prof. C. 1.3, 1.4(a) and 1.16(c). His conduct in charging a clearly excessive fee and his failure to refund unearned fees as requested by the client is conduct in violation of Mass. R. Prof. C. 1.5(a) (as in effect prior to 2011), 1.15(d) (2) and 1.16(d). The respondent's failure to notify the client of his 2010 suspension from practice, in violation of the order of suspension and Supreme Judicial Court Rule 4:01, § 17(1), is conduct in violation of Mass. R. Prof. C. 3.4(a) and Supreme Judicial Court Rule 4:01, § 3(1).

In aggravation, the respondent on June 28, 2010, was suspended for three months, with two months stayed on certain conditions, for failing to report to taxing authorities income paid to an employee, conduct for which he paid a civil penalty. *Matter of Szostkiewicz*, 26 Mass. Att'y Disc. R. 664 (2010). He was reinstated on August 17, 2010. In mitigation, for many years and at all times relevant to these proceedings, the respondent has suffered from medical and emotional problems that impaired his judgment. He is now receiving treatment.

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation for a suspension of eighteen months. On January 12, 2015, the board voted to accept the stipulation and to recommend the agreed-upon disposition to the Supreme Judicial Court. The Court so ordered on February 5, 2015.