

IN RE: ELANA MIKELUS GORDON

NO. BD-2018-083

S.J.C. Order of Term Suspension entered by Justice Gaziano on October 23, 2018.¹

The respondent stipulated to a suspension of one year and one day for misconduct in three matters, including neglecting a case, failing to communicate with the client and return the file when requested, and misrepresenting facts to bar counsel during her investigation. She also failed to keep adequate records of her IOLTA account and failed to cooperate with bar counsel's investigation, causing her to be administratively suspended. In addition, the respondent failed to comply with the requirements of her suspension because she continued to hold herself out as a licensed attorney during the administrative suspension.

SUMMARY²

The respondent stipulated that the material facts in a petition for discipline filed by bar counsel could be proved by a preponderance of the evidence, including that she failed to cooperate with bar counsel during an investigation, failed to notify clients that she was suspended and unable to represent them, failed to do work she was hired to do, failed to return client files, intentionally made false statements to bar counsel during an investigation, and engaged in multiple IOLTA record keeping violations.

In the first matter, bar counsel opened an investigation based on a dishonored IOLTA account check notice received from the respondent's bank. On October 16, 2015, the respondent was administratively suspended from the practice of law for failure to cooperate with bar counsel's investigation. The order of administrative suspension required that the respondent cease the practice of law immediately and, among other things, comply with all provisions of S.J.C. Rule 4:01, § 17, if she were not reinstated within thirty days. The respondent was not reinstated until April 20, 2016, which was more than thirty days. In the interim, she did not timely notify all clients of her suspension, failed to timely return her clients' papers, failed to timely submit an affidavit stating that she had fully complied with the order of administrative suspension, and sent approximately eight emails holding herself out as an attorney with a link to her law office email address.

In addition, between January 2015 and August 17, 2015, the respondent's IOLTA account was not properly reconciled every sixty days and the check register was not in chronological order with client identifiers for every transaction and a running balance. She also withdrew funds via cash withdrawals, paid personal expenses directly from her IOLTA account, failed to maintain individual ledgers for each client matter that listed every transaction in chronological order with a running balance after every transaction, and failed to maintain a ledger for her funds held in the IOLTA account for anticipated bank fees.

The respondent's intentional failure without good cause to cooperate with bar counsel's requests for information as to the dishonored check issue violated Mass. R. Prof. C. 8.1(a) and (b) and 8.4(c), (d), (g) and (h). The respondent's intentional failure without good cause to comply in a timely manner with the order of administrative suspension violated S.J.C. Rule 4:01, § 3 and § 17, and Mass. R. Prof. C. 3.4(c) and Mass. R. Prof. C. 8.4(d). Her conduct in failing to

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.

maintain a check register for the IOLTA account listing all transactions in chronological order with client identifiers and a running balance after every transaction violated Mass. R. Prof. C. 1.15(f)(1)(B). Her conduct in failing to keep individual client ledgers and a ledger for bank fees for the IOLTA account with a list of every transaction and running balance violated Mass. R. Prof. C. 1.15(f)(1)(C) and (D). Her conduct in failing to perform a three-way reconciliation of the IOLTA account at least every sixty days violated Mass. R. Prof. C. 1.15(f)(1)(E). The respondent's conduct of withdrawing funds from an IOLTA account via cash withdrawals and paying personal expenses directly from the IOLTA account violated Mass. R. Prof. C. 1.15(e)(4) and (5).

In a second matter, the respondent was hired to do work for a client in August 2015, but failed to do the work she was hired to do, failed to notify the client that she was suspended and unable to represent him, failed to withdraw from representing him, failed to return his file in a timely manner, and failed to return fees she collected from him but did not earn. When bar counsel wrote to the respondent asking questions about her handling of this case, the respondent intentionally made false statements to bar counsel in her written reply.

The respondent's conduct in failing to do work she was hired to do violated Mass. R. Prof. C. 1.3. Her conduct in failing in the second matter to return the client's file, to notify him of her suspension and of her inability to provide legal services to him in a timely manner and to withdraw from representation when her continued representation violated the Rules of Professional Conduct or other law violated Mass. R. Prof. C. 1.4 and 1.16(a)(1). The respondent's intentional false statement in correspondence to bar counsel as part of an investigation, violated Mass. R. Prof. C. 8.1(a) and (b) and 8.4(c), (d) and (h).

In a third matter, the respondent was hired on July 8, 2015 to represent another client in a summary process case. In violation of the order of administrative suspension, the respondent assisted the client by drafting his answer to the complaint, which was filed pro se. The respondent then drafted interrogatories and requests for the production of documents to the plaintiff, signed them above the client's name, and sent them to the plaintiff's attorney. The respondent drafted an emergency motion to vacate the default and a Motion to Amend the Complaint, which she signed with her own name "u/p/a 12/2/15" and filed it with a power of attorney.

The respondent's conduct in preparing and filing an answer to the complaint and preparing and filing other papers or pleadings while her license was suspended violated Mass. R. Prof. C. 5.5(a) and 8.4(a), (c) and (d). The respondent's conduct in attempting to circumvent a court order of administrative suspension by filing a motion with her signature as power of attorney violated Mass. R. Prof. C. 8.4(a), (c) and (h). By filing a motion with her signature as power of attorney for the client in the third matter, the respondent engaged in the unauthorized practice of law in violation of Mass. R. Prof. C. 5.5(a) and 8.4(a), (c), and (h), as well as Supreme Judicial Court Rule 4:01, §§3(3) and 17.

The respondent's conduct in both the second and third matters holding herself out as an attorney during her administrative suspension and failing to notify clients of her suspension, and of her consequent inability to provide legal services to them in a timely manner and to respond to their inquiries, violated Mass. R. Prof. C. 1.4, 5.5(a) and (b)(2) and 8.4(c). The respondent's conduct of failing to withdraw from representation when her continued representation violated the Rules of Professional Conduct or other law violated Mass. R. Prof. C. 1.16(a)(1), as well as Supreme Judicial Court Rule 4:01, §§3(3) and 17. Her conduct in failing to timely notify the

client in the third matter in writing that she was suspended and unable to represent him violated Mass. R. Prof. C. 1.4, as well as Supreme Judicial Court Rule 4:01, §3(3) and 17.

This matter came before the Supreme Judicial Court for Suffolk County on a stipulation of the parties and a vote of the Board of Bar Overseers recommending that the stipulation be accepted and that the respondent be suspended for a year and a day. The Court so ordered on October 23, 2018.