

IN RE: HOWARD M. LEWIS

NO. BD-2018-107

S.J.C. Order of Term Suspension entered by Justice Budd on December 4, 2018, with an effective date of January 3, 2019.¹

The respondent stipulated to a three-year suspension for his misconduct in seven separate matters and for an assault and battery upon a former colleague. Most of the misconduct concerned charging excessive fees, failing to return unearned fees to clients, failing to communicate with clients, as well as failing to act with reasonably diligence and competence. The respondent also promised to reduce the amount of a client's bill in return for a favorable posting on an on-line lawyer review site.

SUMMARY²

The respondent engaged in multiple acts of misconduct.

In the first matter, the respondent was retained to represent the wife in a divorce action. The respondent induced the client to retain him by falsely representing that he would handle the case personally. After filing a complaint for divorce, the respondent entered into a partial stipulation that awarded the client sole physical custody of the couple's three children. The client was entitled to child support from her husband pursuant to the Child Support Guidelines and G.L. c. 208, §53(c). However, the stipulation made no provision for such support. Moreover, the stipulation required the client to pay the first \$250 of her minor children's routine uninsured medical and dental expenses, which she was not otherwise required to do in the absence of child support. Thereafter, respondent failed to respond to the client's repeated demands to rectify the omission of child support from the stipulation as well as other reasonable requests from the client. The client therefore terminated the representation and demanded that he return her original documents and refund the unearned portion of her retainer. The respondent delayed in turning over the documents and refused to refund the unearned fees, forcing the client to file a small claims action to recover such funds.

During the course of the representation, a member of the respondent's office staff negligently faxed the client a form of financial statement containing a different client's personal information. The respondent did not inform the affected client of this breach of confidentiality.

In the second client matter, the respondent was retained to represent the wife in a divorce matter in late 2014 on the promise that he would personally handle the case. The respondent filed a complaint for divorce in December 2014. In April 2015, the court entered a temporary order which, among other things, gave the client sole occupancy of the marital home and the client's estranged husband sole occupancy of the couple's vacation home. Problems arose with this arrangement and the client asked the respondent to address those issues with the court. In June 2015, the respondent filed a motion for further temporary orders with respect to the use of the marital and vacation homes but failed to obtain a hearing on the motion.

In September 2015, the respondent failed to appear at a four-way conference in the case and instead sent an associate to represent the client. The associate was unprepared for the session and failed to address the issues concerning use of the marital and vacation homes. In September 2015, the respondent filed a new motion for further temporary orders but again failed to obtain a hearing on the motion.

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.

The respondent was generally uncommunicative with his client throughout the representation, repeatedly failing to respond to emails, telephone calls and voicemail messages. The client terminated the representation in October 2015 and retained new counsel.

The respondent billed the client no less than \$16,885.50 in fees and costs and collected no less than \$10,500. The respondent's legal fees were clearly excessive for the amount and type of work performed. The respondent billed the client for work not performed.

During the representation, a member of the respondent's office staff inadvertently forwarded to the client a three-page email chain containing a different client's confidential information. After being informed of this breach of confidentiality, the respondent did not timely notify the affected client.

In the third client matter, the respondent was retained to represent the husband in a divorce matter in the spring of 2015 on the promise that he would personally handle the case. After undertaking the representation, the respondent performed no work of substance on client's behalf. On at least one occasion, the respondent sent an unprepared associate to appear in court on the client's behalf. The client terminated the representation and obtained successor counsel in December 2015.

In the fourth client matter, the respondent was retained to represent the husband in a divorce matter in May 2016. Hearings were scheduled on several pending motions in the client's case for a date in mid-June 2016. The respondent's firm was aware that the client was unable to attend the hearings due to a work obligation. An associate at the respondent's firm filed a motion to continue the hearings to another date but did not obtain an advance hearing date on that motion. When the original hearing date arrived, the court denied the motion to continue and ordered the client to appear immediately. When the client arrived later in the day, the court ordered him to pay the additional attorney's fees incurred by his wife as a result of his late arrival.

Shortly after the foregoing events took place, the client terminated the representation and obtained new counsel. Thereafter, the respondent delayed several weeks in complying with successor counsel's request for the client's file.

In the fifth client matter, in July 2014, the respondent was retained by the wife in a divorce matter on the promise that he would handle the case personally. Thereafter, the respondent failed to appear at a court hearing as promised, and instead sent an associate to the hearing who was not properly prepared to argue on the client's behalf.

During the representation, the respondent promised to file a motion for reconsideration of a temporary order that the client's husband had obtained. The respondent failed to file the reconsideration motion. He advised the client to ignore a temporary order compelling her to leave the marital home. The client was subsequently forcibly removed from the home by a sheriff.

On multiple occasions throughout the representation, the client attempted without success to contact the respondent by telephone and email to obtain information and advice concerning the matter.

After the client terminated the representation and obtained new counsel, the respondent billed the client for legal services that were not performed. The respondent also ignored requests from successor counsel for turnover of the client's file.

The client demanded a refund of the retainer she had paid to the respondent. The respondent informed the client that he would return the money in installments if she released any claims she may have had against him and if she posted a negative online review of a former associate of the respondent who was suing him for sexual harassment. He also threatened the client with unfounded criminal charges.

In the sixth matter, the respondent was retained to represent the husband in a divorce matter in the summer of 2015. Thereafter, the respondent's staff began to draft, but did not finalize, a joint petition for divorce and a separation agreement. No other legal work of substance was performed. On multiple occasions during the representation, the respondent failed to respond to the client's reasonable requests for information.

In March 2016, the client informed the respondent that he had decided to terminate the representation. In response, the respondent promised the client that he would refund his entire retainer and complete the case as originally agreed. The respondent subsequently assigned the case to his partner, who did not complete the case as promised.

In December 2016, the client terminated the representation. Despite his earlier promise to do so, the respondent did not refund all of the fees that he had collected from the client. The legal fees charged by the respondent were clearly excessive.

In the seventh client matter, the respondent represented the husband in a divorce matter. As of April 6, 2016, the client owed the respondent \$5,554.28 in legal fees. On April 19, 2016, the respondent offered to deduct a total of \$3,000 from the client's bill if the client would give the respondent a favorable review on an online review site. The client agreed and thereafter posted a positive review of the respondent's services. However, the respondent failed to deduct the promised \$3,000 from the client's bill.

As of May 2, 2016, the client owed the respondent \$7,839.28 in legal fees. On May 2, 2016, the respondent offered to deduct the remaining \$3,000 from the client's bill if he paid the respondent \$4,839. The client paid the respondent \$4,839 on May 10, 2016. However, the respondent failed to credit the client the agreed-to discount of \$3,000.

The client complained to the respondent about his bill on May 19, 2016. On the same day, the respondent told the client that, if he made an immediate payment of \$4,000, he would waive all remaining charges on the account. The client gave the respondent a check in the amount of \$4,000. However, the respondent did not credit the client for this payment.

By failing to provide competent representation in the first through sixth client matters, the respondent violated Mass. R. Prof. C. 1.1. By failing to seek the client's lawful objectives in the first, fifth, and sixth matters, the respondent violated Mass. R. Prof. C. 1.2(a). By failing to act with reasonable diligence and promptness and to engage in adequate, responsive client communications in the first, second, third, fifth, and sixth matters, the respondent violated Mass. R. Prof. C. 1.3 and 1.4(a). By charging clearly excessive fees in the second and fifth client matters, the respondent violated Mass. R. Prof. C. 1.5(a). By failing to make reasonable efforts prevent his staff from revealing confidential client information in the first and second client matters, the respondent violated Mass. R. Prof. C. 1.6(a), 1.6(c), 5.3(a), and 5.3(b). By failing to refund unearned fees and/or turn over client files in a timely manner in the first, fourth, and fifth matters, the respondent violated Mass. R. Prof. C. 1.15(c) and 1.16(e). By threatening unfounded criminal charges in the fifth client matter, the respondent violated Mass. R. Prof. C. 3.4. By failing to ensure that his associates in the third, fourth, and fifth matters were adequately prepared, the respondent violated Mass. R. Prof. C. 5.1(a) and 5.1(b). By making misleading statements about his services in the first, second, third, fifth, and sixth client matters, the respondent violated Mass. R. Prof. C. 7.1. By offering the client in the seventh matter a fee discount in exchange for a favorable online review, the respondent violated Mass. R. Prof. C.

7.2(b). By engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation in the first, second, third, fifth, sixth, and seventh matters, the respondent violated Mass. R. Prof. C. 8.4(c).

In addition to the foregoing client matters, the respondent was disciplined for an incident on October 3, 2016 in which he appeared uninvited at the offices of two former colleagues and engaged in an angry confrontation with them concerning their decision to hire a former member of the respondent's office staff. During the incident, the respondent physically assaulted one of the former colleagues, causing minor injuries. Such conduct was in violation of Mass. R. Prof. C. 8.4(b) and 8.4(h). In mitigation, the incident occurred several weeks after the death of the respondent's father, which exacerbated the respondent's longstanding substance abuse and psychological problems for which he subsequently obtained aggressive treatment.

This matter came before the Board of Bar Overseers on Respondent's Amended Answer to Petition for Discipline and Stipulation of Parties. The parties jointly recommended a three-year suspension conditioned on the respondent's providing a total of \$25,000 in refunds to clients who were overcharged. On November 19, 2018, the Board voted to accept the parties' stipulation and recommendation of a sanction. On December 4, 2018, the Supreme Judicial Court for Suffolk County ordered that the respondent be suspended for a term of three years.