

**IN RE: MICHAEL BARRY COHEN****NO. BD-2010-011****S.J.C. Judgment of Disbarment entered by Justice Spina on July 13, 2011.¹****SUMMARY²**

The respondent was retained in December 2008 to file federal and state trademark applications for a client's business. The client paid the respondent \$2,000, but the respondent never explained to the client the basis or rate of his fee. For several months thereafter, the client was unable to contact the respondent.

In July 2009, the client discovered that another business was using the client's business name. The client was only successful in reaching the respondent after contacting the Attorney Client Assistance Program (ACAP). The respondent met with his client and intentionally misrepresented that he had filed a state trademark application and promised to send a cease-and-desist letter to the owner of the business using his client's name. The respondent took no action on behalf of his client after that meeting and did not respond to his client's efforts to contact him.

The respondent's failure to explain the basis or rate of his fee to the client violated Mass. R. Prof. C. 1.5(b). The respondent's failure to provide the services for which he was retained violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3. The respondent's conduct in intentionally misrepresenting to his client that he had filed a state trademark application violated Mass. R. Prof. C. 8.4(c) and 8.4(h). The respondent's conduct in failing to maintain reasonable communications with his client concerning the status of his trademark applications and failing to sufficiently explain the status of his case to allow his client to make informed decisions regarding the representation was in violation of Mass. R. Prof. C. 1.4(a) and 1.4(b). The respondent's fee of \$2,000 for virtually no services rendered violated Mass. R. Prof. C. 1.5(a). His failure to return the unearned portion of the fee violated Mass. R. Prof. C. 1.16(d).

In a second matter, the respondent was retained in June 2009 to represent a client in her divorce. The respondent asked for \$2,000 to begin work, but he did not explain how he

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.

would charge the client. The client gave the respondent two checks totaling \$2,000, which he immediately cashed. The respondent took no action on the client's behalf.

In June and August 2009, the respondent asked his client for another \$2,700, which he falsely asserted was needed for expenses in connection with her case. The respondent converted these funds to his own use.

The respondent did not respond to his client's requests for information about her case, and, in November 2009, she demanded a refund of the funds she had paid him and the return of her file. The respondent never complied with either request.

The respondent's failure to explain the basis or rate of his fee violated Mass. R. Prof. C. 1.5(b). The respondent's conduct in inducing his client to provide him with funds for expenses when he had not taken and did not intend to take action in her case and in converting those funds to his own use violated Mass. R. Prof. C. 8.4(c). The respondent's conduct in failing to file the divorce complaint or take any action of substance to advance his client's divorce violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3. The respondent's conduct in failing to maintain reasonable communications with his client concerning the status of her divorce and failing to sufficiently explain the status of his case to allow his client to make informed decisions regarding the representation was in violation of Mass. R. Prof. C. 1.4(a) and 1.4(b). The respondent's fee was clearly excessive in violation of Mass. R. Prof. C. 1.5(a). The respondent's conduct in withdrawing from his client's case without adequate notice to her and in failing to return the unearned portion of the fee was in violation of Mass. R. Prof. C. 1.16(d).

During the course of bar counsel's investigation, the respondent intentionally failed without good cause to respond to numerous letters from bar counsel. On February 22, 2010, the respondent was administratively suspended from the practice of law in accordance with S.J.C. Rule 4:01, § 3(2), for failure to respond to bar counsel's requests for information. On April 29, 2010, the respondent was also administratively suspended for failure to register. The respondent did not comply with either of these suspension orders. He did not return the unearned fees, other funds or files received from his clients, he failed to notify all clients and courts of his suspension, and he did not close his IOLTA account.

On December 15, 2010, the Supreme Judicial Court for Suffolk County issued an order of notice requiring the respondent to appear for a hearing on January 5, 2011. The respondent failed without good cause to appear on January 5, 2011. On February 3, 2011,

the respondent was adjudged in civil contempt for failure to effect full and timely compliance with provisions of the February 22, 2010 order of immediate administrative suspension.

The respondent's conduct in intentionally failing without good cause to respond to bar counsel's requests for information in the course of her investigation was in violation of S.J.C. Rule 4:01, § 3, and Mass. R. Prof. C. 3.4(c) and 8.1(b), 8.4(d), 8.4(g) and 8.4(h). The respondent's intentional failure without good cause to comply with the court's orders of administrative suspension violated Mass. R. Prof. C. 3.4(c) and 8.4(d). The respondent's intentional failure without good cause to abide by the order of notice and appear for the contempt hearing on January 5, 2011, was in violation of Mass. R. Prof. C. 3.4(c) and 8.4(d).

On March 25, 2011, bar counsel filed a petition for discipline against the respondent alleging the misconduct described above. The respondent failed to file an answer to the petition for discipline and was defaulted.

On June 13, 2011, the Board of Bar Overseers voted to recommend that the respondent be disbarred for his misconduct. On July 13, 2011, the Supreme Judicial Court for Suffolk County (Spina, J.) entered a judgment of disbarment, effective on the entry date of the order.