IN RE: JAMES R. ROSENCRANZ

NO. BD-2011-0117

S.J.C. Order of Term Suspension entered by Justice Gants on December 23, 2011, with an effective date of February 1, 2012.[1]

SUMMARY[2]

The respondent willfully failed to file his personal United States and Massachusetts income tax returns for the years 2002 through 2007, in violation of 26 U.S.C. § 7203 and G.L.c. 62C, § 73(c), respectively. He also failed to pay approximately $38,000 in United States income taxes and $6,000 in Massachusetts income taxes. On April 1, 2008, the Commissioner of the Department of Revenue for the Commonwealth of Massachusetts filed a petition for a writ of mandamus in Suffolk Superior Court seeking an order requiring the respondent to file his delinquent personal Massachusetts income tax returns for the years 2002 through 2006.

A short order of notice was issued, and a hearing was scheduled for April 11, 2008. The petition and the order of notice were served on the respondent at his residence, but he failed to respond to the petition or appear in court. The court entered a default judgment and issued an order of mandamus requiring the respondent to file his delinquent personal Massachusetts income tax returns for the years 2002 through 2006 by May 30, 2008.

On July 9, 2008, the Commissioner filed a complaint for contempt charging that the respondent had failed to comply with the order of mandamus. A short order of notice was issued, and a hearing was scheduled for July 18, 2008. The complaint for contempt and order of notice were served on the respondent at his residence, but he failed to respond to the complaint for contempt or appear in court.

On August 11, 2008, the court granted the Commissioner's motion for alternate service. The complaint for contempt and a letter notifying the respondent that a contempt hearing was scheduled for September 15, 2008, were served on the respondent via certified and first class mail at his home and office. The certified letter sent to the respondent's office was signed by a receptionist in the office on August 15, 2008, but the respondent failed to respond to the complaint for contempt or appear in court. On September 15, 2008, the court issued a *capias* for the respondent's arrest.

On March 26, 2009, the respondent filed his delinquent personal United States and Massachusetts income tax returns for the years 2002 through 2006, and on April 1, 2009, by agreement of the parties, the court entered an order dismissing the case.

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[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's conduct in knowingly failing to timely comply with the court's orders, necessitating the issuance of a *capias*, was in violation of Mass. R. Prof. C. 3.4(c) and 8.4(d) and (h). The respondent's conduct in willfully failing to timely file his United States and Massachusetts personal income tax returns and pay the taxes due was in violation of Mass. R. Prof. C. 8.4(b) and (h).

In two separate litigation matters involving the same divorce client, the respondent also engaged in misconduct. A divorce client retained the respondent in April 2004 to represent him in a divorce on an hourly basis and paid him an initial retainer of $5,000. Over the course of the ensuing divorce litigation, the court issued several orders regarding discovery and production of documents, and on multiple occasions, the respondent failed to comply with the court's discovery orders. In one instance, the client provided documents to the respondent in a timely manner, but the respondent produced the documents five days after the court-ordered deadline and only a few days before the trial was to commence in January 2006. In the court's judgment of divorce nisi issued in September 2006, the court ordered the client to pay his wife the sum of $14,350 in attorney's fees, explaining in its attached "Analysis" that the long-standing failure to produce documents that were the subject of court orders to produce was a major factor in assessing attorney's fees against him.

During the course of the representation, the respondent had sent the client three itemized billing invoices totaling $12,589.02 for work done in the divorce case. The client, including the initial retainer check for $5,000, had given the respondent a total of $10,222.18 and owed the respondent a balance of $2,366.84. In December 2005, the respondent sent the client correspondence stating that he would be sending the client an itemized invoice the following week for approximately $17,000, representing "a prior balance of $2,366.84, another approximately $11,500 in new fees, interest of approximately $300 on the overdue balance and $2,500 to replenish the retainer." However, the respondent did not send the itemized invoice for the $11,500 in new legal fees to the client. In January 2006, the client, despite not receiving the invoice, sent the respondent a check for $16,666.84, representing payment of the prior balance, the interest, the retainer replenishment, and the $11,500 in new legal fees. The client also asked the respondent to send him the itemized bill.

From March to September 2006, the client made numerous calls to the respondent requesting the itemized breakdown of the $16,666.84. The client was owed an itemized accounting on the $11,500 in new legal fees and on the $2,500 retainer replenishment to the extent that it had been used. In September 2006, the client sent the respondent correspondence requesting his complete file and copies of all itemized bills. The respondent did not provide the file or an itemized billing for any of the $16,666.84.

In November and again in December 2006, the client's successor counsel requested the complete file from the respondent and received only a small portion of it. In January 2007, successor counsel sent the respondent a G.L. c. 93A demand letter requesting the complete file and the itemized bill for $16,666.84. In March 2007, successor counsel filed suit against the respondent seeking damages for legal malpractice, negligence, breach of

contract, and a violation of G.L. c. 93A arising from the respondent's representation of the client in his divorce.

In June 2009, the court ordered the respondent to produce documents from the client's divorce file, including the itemized invoice for the $11,500 in new legal fees. The respondent did not comply with the court's June 2009 order until December 2009. In March 2010, a jury awarded the client damages in the amount of $7,175, and in April 2010, a judge found that the respondent had violated G.L. c. 93A and awarded treble damages in the amount of $49,062.40.

The respondent's conduct in knowingly failing to timely comply with the court's orders to produce documents in the divorce trial and his failure to comply with the court's order in the 93A case requiring the respondent to produce documents, including the itemized invoice for the $11,500 in new legal fees, was in violation of Mass. R. Prof. C. 1.3, 3.4(c), and 8.4(d) and (h). The respondent's conduct in knowingly failing to provide an itemized invoice for legal services either upon request by a client or on or before payment of fees due the respondent was in violation of Mass. R. Prof. C. 1.15(d)(1) and (2). The respondent's conduct in knowingly failing to provide a client's file upon request by a client was in violation of Mass. R. Prof. C. 1.16(e).

In aggravation, the respondent has a disciplinary history. He received a public reprimand in 2001 for neglecting two matters for one client, failing to pay two court-ordered judgments, and failing to cooperate with bar counsel's investigation, necessitating the issuance of a two subpoenas in *Matter of Rosencranz*, 17 Mass. Att'y Disc. R. 487 (2005). He also received an admonition in 1995 for delay in settlement of a client's medical bills, failure to communicate with a client, and failure to cooperate with bar counsel, necessitating the issuance of a subpoena. *Admonition No. 95-57*, 11 Mass. Att'y Disc. R. 423 (1995).

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation that the respondent be suspended for six months with three months stayed for two years on the following conditions: (1) prior to reinstatement the respondent shall obtain an evaluation by Lawyers Concerned for Lawyers and comply with any recommendations made; the respondent shall sign a release authorizing LCL to provide bar counsel with any written report and recommendations prepared by LCL and to report to bar counsel as to the respondent's compliance prior to reinstatement and during the two years that the balance of the suspension is stayed; the substance of conversations between the respondent and LCL shall not be disclosed to bar counsel other than as they pertain to LCL's recommendations and the respondent's compliance; (2) the respondent shall enter into a payment agreement with the DOR and the IRS as to unpaid taxes and remain in compliance with that agreement; and (3) no later than December 31, 2011, the respondent shall attend a CLE program designated by bar counsel. Upon reinstatement, the respondent shall be on probation for two years during which the final three months of the suspension will be stayed conditioned upon compliance with paragraphs (1) and (2) above. Any violations of the Rules of Professional Conduct during the term of the probation shall constitute a breach of probation.

On October 17, 2011, the board voted to recommend that the Supreme Judicial Court accept the parties' stipulation and joint recommendation for discipline. The Court so ordered on December 23, 2011.