

**IN RE: STEPHEN J. ELLIS****NO. BD-2016-008****S.J.C. Order of Indefinite Suspension entered by Justice Lenk on January 26, 2016,
with an effective date of February 25, 2016.¹****SUMMARY²**

In June 2010, a client hired the respondent to take over representation from another lawyer in claims arising from injuries sustained as a pedestrian in a car accident on October 22, 2009. The client had been walking toward a car stopped in a blind spot on a hill when a second car came over the hill, struck the client, and then hit the stopped car.

During the summer and fall of 2010, the respondent sent letters of representation to the insurers of both cars, requested policy information from both insurers, and sent some medical bills to the insurer of the second car. Prior to about the spring of 2012, the respondent took no other action of substance to investigate or advance the client's claims.

The client had substantial medical bills and no health insurance. His prior lawyer had submitted an application for personal injury protection (PIP) benefits to the insurer of the stopped car, and the respondent assured the client that the bills would be paid promptly. In April 2012, however, the PIP claim was denied on the basis that the client was not an occupant of the stopped car at the time of the accident, that the client had been struck as a pedestrian by the second car, and that the second car's insurer was responsible for the PIP benefits. The respondent received notice of the denial but failed to pursue a PIP claim with the other insurer. The client's medical bills remained unpaid, and some were sent for collection.

During the representation, the client periodically called and left messages for the respondent to ask about his medical bills and the progress of the case. The respondent failed to reply to most of those inquiries. The respondent failed to inform the client that the PIP claim had been denied and that he had not secured other coverage of the medical bills.

In June 2012, the respondent started suit for the client by a complaint naming the owner-operator of the stopped car and the owner of the second car as defendants. The respondent failed to include the driver of the second car as a defendant. Timely service was made on the stopped car owner, but a return of service was not filed in court, and the respondent failed to effect service on the second car owner. On October 1, 2012, the court issued a notice of dismissal for want of timely service. The limitations period on the client's liability claims expired on October 22, 2012. The respondent failed to inform the client that the limitations period had expired.

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.

By December 2012, the respondent was aware that there was no record of service on the stopped car owner in the court. He subsequently failed to file the return of service and took no other effective action to preserve the client's claims. Instead, in early 2013, the respondent filed a request to default the stopped car owner and a motion to assess damages against that owner. No action was taken on those filings, and they had no rightful purpose or useful effect in the circumstances.

In April 2014, the court entered a judgment of dismissal against the client. The respondent received notice of the dismissal in due course but took no action to vacate the judgment or revive the claims. As a result, the claims were time barred and extinguished. The respondent failed thereafter to answer the client's ongoing inquiries. He never informed the client of the dismissal, the judgment, the expiration of the statute of limitations, or the extinction of the claims.

The client subsequently consulted another attorney, who inquired at the court and informed the client of the judgment and dismissal. A motion by the new attorney to vacate the dismissal was denied in March 2015.

By failing to pursue the PIP claims and liability claims, add or sue the driver of the second car, avert the dismissal and the expiration of the statute of limitations, revive the claims after the dismissal and judgment, and take other timely and effective action to preserve the claims, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a) as then in effect, and 1.3 as then in effect. By failing to reply to the client's inquiries and failing to disclose to the client the PIP denial, the dismissal of the liability claims, the expiration of the statute of limitations, the entry of an adverse judgment, and the extinction of the claims, the respondent violated Mass. R. Prof. C. 1.4(a) and (b) as then in effect.

During the representation, the respondent employed one or more nonlawyer assistants and at times used the services of a lawyer affiliate, some of whom were responsible for handling aspects of the client's case. The respondent failed to provide adequate oversight of their work. His failure to make reasonable efforts and take reasonable measures to ensure that their conduct conformed to the Rules of Professional Conduct or were compatible with his professional obligations and his failure adequately to supervise their conduct violated Mass. R. Prof. C. 5.1(a) and (b) as then in effect and 5.3(a) and (b) as then in effect.

In aggravation, the respondent had a history of discipline consisting of a six-month stayed suspension imposed in September 2012 for failure of diligence, competence and communications in two cases and, in one of the cases, collection of a clearly excessive fee. *Matter of Ellis*, 28 Mass. Att'y Disc. R. 301 (2012). The suspension was stayed on conditions of an audit by the Law Office Management Assistance Program (LOMAP) and maintenance of malpractice coverage. The respondent failed to maintain the office management systems recommended by LOMAP, and he allowed his malpractice coverage to lapse after the expiration of his probationary conditions. He had no coverage available to satisfy any civil claims against him by this client. In addition, the respondent's misconduct in this case unfolded during bar counsel's investigation of the prior cases and continued after the imposition of the stayed suspension and attendant conditions in 2012.

Bar counsel commenced formal disciplinary proceedings against the respondent in August 2015. Thereafter the parties filed a stipulation of facts and rule violations and an agreed recommendation that the respondent be indefinitely suspended. The Board of Bar Overseers voted to accept the stipulation and the recommendation. On January 26, 2016, the Supreme Judicial Court entered an order for the respondent's indefinite suspension effective in thirty days.