

IN RE: ELIZABETH KNOWLES

S.J.C. Order of Term Suspension entered by Justice Ireland on September 1, 2004.¹

SUMMARY²

On March 12, 2002, the respondent was retained to represent a client and her minor son in a paternity case pending in court. The client's son was the father of the child who was the subject of the paternity action. Among other issues in the paternity matter, the son was seeking, and the respondent undertook to file motions requesting, unsupervised visitation and joint legal custody of the child. In addition, the respondent was to file and pursue a complaint for grandparent visitation.

The client gave the respondent a check in the amount of \$2,000.00. It was agreed that the respondent's hourly rate would be \$125.00 per hour to be billed against the \$2,000.00 retainer. On March 25, 2002, the respondent deposited the \$2,000.00 retainer check into her personal checking account. As of that date, the respondent had not earned the entire retainer. .

At the time of the consultation, the client requested that the motions and complaint for visitation be filed and heard prior to June 4, 2002, the date scheduled by the Court for a review hearing. The respondent informed her client that she would obtain a hearing date by early April 2002. However, between March 12, 2002, and May 10, 2002, the respondent did not file any papers with the Court. The first set of motions prepared by the respondent in March 2002 were inadvertently misplaced and not mailed to the court for filing in time for an April hearing. On May 10, 2002, when the respondent discovered her failure to mail the earlier motions, she prepared an entry of appearance, the requested motions, and a complaint for visitation. The respondent believed that she mailed these papers to the court along with a request to schedule a hearing for June 4, 2002, but the court did not receive the papers.

On May 14, 2002, the client hired successor counsel and on the same day, she went to the respondent's law office, discharged the respondent and demanded a return of her \$2,000.00 retainer. On May 20, 2002, the client filed a complaint with Bar Counsel. Thereafter, despite repeated representations to Bar Counsel that the accounting and refund would be remitted, the respondent did not finally provide an accounting and refund of \$500.00 until a year later, May 12, 2003.

The respondent's conduct in depositing unearned fees for future services into her personal account and her failure to separate client retainer funds from her own funds constituted commingling of funds in violation of Mass. R. Prof. C. 1.15(a). The respondent's failure to timely render an accounting to her client upon request was in violation of Mass. R. Prof. C. 1.15(b). The respondent's failure to timely return the unused portion of her client's retainer was in violation of Mass. R. Prof. C. 1.16(d).

In an unrelated matter, in September of 2003, a couple (husband and wife) paid the respondent a retainer of \$250.00 to prepare updated wills and other estate planning documents. However, the husband died on October 24, 2003, before the work was done.

In November and December 2003, the client and successor counsel left repeated telephone

messages for the respondent, asking her to return the clients' original documents and to refund the fee. The respondent did not forward the documents or otherwise reply.

The client filed a complaint with Bar Counsel in January 2003. The respondent did not timely respond to Bar Counsel's inquiries. However, in May 2004, the respondent informed Bar Counsel that the file had been lost in the respondent's office until that time but had just been located. She then returned the \$250.00 and the file to the client.

The respondent's failure either to return the client's file upon request after being discharged or to inform the client that the file was lost, and her failure to account for or refund an advance payment of a fee, is conduct in violation of Mass. R. Prof. C. 1.16(d) and (e).

On February 4, 2003, the Supreme Judicial Court for Suffolk County entered an order of immediate administrative suspension as a result of the respondent's failure to cooperate with an investigation of Bar Counsel regarding the first matter described above. A copy of the order was served on the respondent. Despite knowledge of the administrative suspension, the respondent continued to practice law and appeared in court on February 10, 2003, March 4, 2003, and March 18, 2003.

The respondent's failure to cooperate with Bar Counsel was in violation of S.J.C. Rule 4:01, § 3(1), and Mass. R. Prof. C. 8.1(b) and 8.4(d) and (g). The respondent's continuing to practice law while administratively suspended was in violation of Mass. R. Prof. C. 5.5(a) and 8.4(d) and (h).

After the petition for discipline was filed and upon consideration of matters presented in mitigation subject to a protective order, the parties stipulated that the appropriate sanction was a six-month suspension with automatic reinstatement conditioned upon submission of satisfactory evidence of fitness to practice law and other terms. The Board of Bar Overseers voted to accept the stipulation and, on September 1, 2004, the Supreme Judicial Court for Suffolk County so ordered.

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 before the Court.

Please direct all questions to webmaster@massbbo.org.

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