

IN RE: FRANCIS KELLEY LANDOLPHI

S.J.C. Order of Term Suspension entered by Justice Ireland on June 22, 2004, with an effective date of July 22, 2004.¹

SUMMARY²

The respondent was admitted to practice in Massachusetts on December 20, 1990. He was suspended for three years for his misconduct in three matters.

In the first matter, the respondent was retained to represent a client in a personal injury matter arising out of an automobile accident that occurred on May 25, 1998. On or about December 16, 1998, the respondent received a check payable to the client in the amount of \$4,028.60 for PIP benefits from the client's automobile insurer. The respondent deposited the check into his IOLTA account on February 19, 1999, but thereafter failed to pay any of the PIP benefits to the client or to the client's medical providers.

In April and May 1999, and as a result of inadequate record keeping and poor office management, the respondent negligently wrote three checks payable to himself from his IOLTA account unrelated to any designated client matter. After payment of these checks, the balance in the respondent's IOLTA account was reduced to \$2,351.02, without disbursement of any part of the \$4,028.60 PIP benefits to or for the benefit of the client.

The respondent settled the client's claim against the driver of the second vehicle on or about July 6, 1999 for \$3,500.00. He deposited the settlement funds into his IOLTA account on or about July 27, 1999. Shortly thereafter, the respondent issued a check to himself in the amount of \$1,000.00 for his legal fee and then issued a check to the client in the amount of \$2,500.00, representing the client's portion of the settlement proceeds. He provided the client with a settlement statement that listed the PIP benefits as having been received, but did not account for the disbursement of those funds.

Between December 1998 and November 1999, one of the client's medical providers, a chiropractor, made numerous telephone calls and sent several letters to the respondent's office requesting payment of the client's medical bills. The respondent failed to reply to most of the messages, and did not pay any of the \$4,028.60 in PIP benefits to the client, the chiropractor or the client's other medical providers.

On or about June 14, 2000, after the chiropractor had filed a grievance against the respondent at the Office of Bar Counsel, the respondent negotiated a settlement of the client's medical bill with the chiropractor for \$3,500.00 and paid this sum from personal funds. The respondent did not pay the client's other outstanding medical bills until June 24, 2002, after further inquiries from Bar Counsel, and did not remit to the client the remaining \$97.60 balance of the PIP money until March 12, 2004.

The respondent's failure to account to the client for the PIP funds received on the client's behalf, failure to promptly remit funds due the client and the client's medical providers, and his negligent misuse of client funds with actual deprivation resulting to the client and the client's medical providers, violated Mass. R. Prof. C. 1.3, 1.15 (a)-(d), and 8.4 (c), (h).

In the second matter, the respondent was retained on or about January 12, 1999, to represent a client in a personal injury matter arising out of an automobile accident that occurred on December 12, 1998. The client had PIP and medical payments coverage through his automobile insurance policy, as well as separate health insurance coverage. Pursuant to the terms of the client's health insurance policy, the health insurer had a lien for repayment of \$1,337.81 in benefits paid relating to the accident.

The respondent settled the client's claim against the driver of the other vehicle on or about July 14, 2000, for \$18,000.00. He deposited the settlement funds into his IOLTA account on or about July 26, 2000, and issued a check to himself from his IOLTA account in the amount of \$6,017.39 for his legal fee and litigation costs. The respondent then issued the client a check in the amount of \$10,644.84, representing the client's portion of the settlement proceeds. He provided the client with a settlement statement that indicated that \$1,337.81 from the settlement proceeds would be retained in the respondent's IOLTA account pending settlement of the lien held by the client's health insurer.

On October 26, 2000, the insurer sent a letter to the respondent reminding him of the lien. The respondent failed to reply to the letter and took no action regarding the lien. As a result of inadequate record keeping and poor office management, the respondent thereafter negligently used at least a portion of the funds that he had withheld from the client's settlement to pay his own personal and business expenses or funds due other clients. By April 1, 2001, the balance in the respondent's IOLTA account was reduced to \$698.00 without payment having been made to the client or his insurer.

Between the spring of 2001 and the spring of 2003, the client and the medical insurer made several attempts by telephone and letter to contact the respondent to inquire about payment of the lien. The respondent did not reply to these inquiries and took no action to pay or otherwise settle the lien. He failed to pay the lien until March 12, 2004, after Bar Counsel filed a petition for discipline regarding the matter.

The respondent's failure either to negotiate the lien held by the health insurer or to promptly remit the funds to the insurer, and his failure to respond to the client's inquiries regarding the lien, violated Mass. R. Prof. C. 1.2(a), 1.3 and 1.4. The respondent's negligent misuse of the client's funds with actual deprivation resulting to the insurer or the client, failure to account to the client for all funds received and disbursed on the client's behalf and failure to maintain the funds in a trust account violated Mass. R. Prof. 1.15 (a), (b) (c), and 8.4 (c), (h).

In the third matter, the respondent was retained in September 1997 to assist an Albanian citizen in obtaining permanent residency status. The client was married to an Albanian citizen with permanent residency status in the United States. The respondent agreed to file a petition for alien relative (form I-130) on their behalf. He requested a flat fee in the amount of \$2000.00, plus \$90.00 for filing fees. After the respondent received the requested fee and costs, he learned that the client had entered the United States illegally. He advised the client that, because of his immigration status, it would be necessary for the respondent to file an application for permanent residence (form I-485). The respondent requested payment of an additional \$130.00 for filing fees, plus \$1,000.00 for anticipated penalties. The client and his wife gave the respondent two money orders totaling \$1,130.00 on or about September 29, 1997.

The respondent deposited the two money orders into his business account. After the deposit of these items, the balance in the account was \$1,252.86. On or about October 9, 1997, and as a result of inadequate record keeping and poor office management, the respondent wrote a check from his business account payable to the U.S. Bankruptcy Court in the amount of \$1,050.00 for an unrelated case. After payment of this check, the balance in the business account was \$173.61, without any payment having been made to or on behalf of the client.

Between September 1997 and September 1998, the client and his wife made several

telephone calls to the respondent's office to inquire about the status of the immigration petitions. The respondent spoke with them on a few occasions, but did not accept or return many of their calls. He did not finally file the petition and accompanying materials, including an \$80.00 filing fee, until June 1999.

On or about June 16, 1999, the Boston INS office sent the entire packet back to the respondent, with a notice informing him that the filing of the documents was defective and that the respondent had not enclosed the proper \$110.00 filing fee. After receiving notice that his filing was defective, the respondent failed to notify the client that the documents had been returned, and he failed to correct and refile the petition.

In or around June 1999, the client went to the Boston office of the INS to obtain confirmation that the petition had been filed. He was advised that the INS had no record of any petition being filed on his behalf. The client then telephoned the respondent and told him what he had learned. The respondent advised the client that the petition had been filed. On June 18, 1999, he sent the client a copy of the documents that the INS had returned.

Between June 1999 and February 2000, the client and his wife made numerous telephone calls to the respondent's office and also wrote a letter requesting information about the status of the immigration petition. The respondent failed to reply. The client contacted another attorney for assistance in obtaining their file from the respondent. After the attorney wrote to the respondent and requested the file, the respondent sent his file to the client on March 28, 2000.

At the time he returned the file, the respondent failed to refund his unearned \$2,000.00 legal fee and the \$1,220.00 in filing fees and alleged anticipated penalties that the client had paid him. The client filed a grievance against the respondent at the Office of Bar Counsel on or about January 3, 2001. On or about June 24, 2002, after inquiry by Bar Counsel, the respondent sent the client a \$1,500.00 refund. He returned the balance of the funds in April 2004.

The respondent's filing of a defective immigration petition almost two years after he was hired to prepare it, his failure to file a corrected petition, and his failure to keep his clients informed about the status of the matter, was in violation of Canon Six, DR 6-101(A)(3), Canon Seven, DR 7-101 (A) (1) (2) (3) and Mass. R. Prof. C. 1.1, 1.2 (a), 1.3, and 1.4.

The respondent's negligent misuse of the funds that he received from the client for filing fees and anticipated penalties with actual deprivation resulting, his failure to account to the client for the legal fee and the filing fees, and his failure to refund the unearned legal fee and the unexpended filing fees after being discharged by the client was in violation of Canon One, DR 1-102(A)(4), (6), Canon Nine, DR 9-102 (A)-(C), Mass. R. Prof. C. 1.15 (a), (b), (c), 1.16 (d) and 8.4 (c), (h).

Bar Counsel filed a petition for discipline with the Board of Bar Overseers on April 17, 2003. On November 17, 2003, the respondent filed an answer to the petition for discipline. On January 15, 2004, Bar Counsel moved to amend the petition for discipline and the motion was allowed. The respondent filed a stipulation to the amended petition for discipline on April 5, 2004, admitting to the above-recited facts and disciplinary violations, and agreeing to a three-year suspension effective on the date of the order of suspension.

On May 10, 2004, the Board of Bar Overseers voted to accept the parties' stipulation and recommendation for discipline. On June 22, 2004, the Supreme Judicial Court for Suffolk County entered an order suspending the respondent from the practice of law for three years.

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.

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