NO. BD-2004-067

IN RE: PAUL M. DOHERTY

S.J.C. Order of Term Suspension entered by Justice Greaney on September 9, 2004, with an effective date of October 9, 2004.[1]

SUMMARY[2]

The respondent was admitted to the Bar of the Commonwealth on December 28, 1978. From about October 1997 to July 2004, he had a solo practice in Peabody, Massachusetts, which primarily involved personal injury cases. On September 9, 2004, the Supreme Judicial Court for Suffolk County entered an order suspending the respondent for two years effective thirty days after the entry date of the order. The order of suspension arose from the respondent's mismanagement of his IOLTA account and his misconduct in three separate matters.

The respondent maintained an IOLTA account used for the deposit of client and other trust funds. The respondent commingled client and personal funds by depositing personal funds to the IOLTA account and retaining earned fees in the account. This conduct violated Mass. R. Prof. C. 1.15(a).

The first matter began in October 1998, when the respondent began representing a client in a claim for damages arising from an automobile accident. The respondent settled the case in January 2001 for $30,000. Medicare had a claim on the client's recovery. The respondent withheld $8,127.73 from the client's share of the recovery to pay the Medicare lien and any other outstanding medical bills. The respondent held these funds in his IOLTA account.

By March 31, 2001, the respondent had inadvertently withdrawn and spent the client's funds held to pay the Medicare lien. This conduct violated Mass. R. Prof. C. 1.3 and 1.15(a), (b), and (d). In violation of Mass. R. Prof. C. 1.2(a) and 1.3, the respondent had also failed to take any action of substance to determine the proper amount of the Medicare lien or to settle it. The respondent's failure promptly to pay Medicare and the other providers violated Mass. R. Prof. C. 1.3 and 1.15(b).

The client visited the respondent's office on several occasions over the course of the following year for information regarding the bills and was told that no bills could be paid until the amount of the Medicare lien was resolved. Despite the delay in settling the lien, the respondent did not deposit the funds he was supposed to be holding for the client in an interest-bearing account, in violation of the requirements of Mass. R. Prof. C. 1.15 (d) and (e).

In about April 2002, the client consulted a caseworker at a community action program concerning his outstanding medical bills. The caseworker contacted Medicare, learned of an outstanding lien, and then contacted the respondent. The respondent then took immediate action to pay the lien, but, in violation of Mass. R. Prof. C. 1.2(a) and 1.3, he negligently failed to ascertain the proper amount and calculate the amount of credit the client was entitled to by law for Medicare's proportional share of attorney's fees and costs. As a result, at the end of April 2002, the respondent overpaid Medicare, using personal funds to provide a check in the amount of $3,695.31. In addition, the respondent paid one of the client's medical bills.

In May 2002, the respondent paid to the client $4,312.42, representing the remaining funds withheld from the recovery plus $100 to cover interest lost on the funds. In violation of Mass. R. Prof. C. 1.4 and 8.4(c), the respondent provided to the client a written notice that falsely described the respondent's "diligent attempt" to obtain information concerning the Medicare lien over the course of a year.

In July 2002, Medicare notified the respondent that the client owed $2,275.42. Although this amount was less than Medicare had been paid, the respondent took no action of substance to rectify the overpayment. In August 2002, Medicare notified the respondent that there might have been an overpayment and that Medicare reduces claims based on the settlement amount and the attorney's fees and costs. The respondent provided the information requested by Medicare, which then refunded $1,419.89. The respondent turned this check over to the client without determining whether the amount included the credit for attorney's fees and costs. The respondent's conduct violated Mass. R. Prof. C. 1.2(a) and 1.3.

In the second matter, a client retained the respondent in October 1997 to sue an insurance company in a reach and apply action to collect on a judgment. The client had retained another lawyer in 1992 to represent him in a claim for damages arising from an automobile accident that the insurer considered to have been staged and declined to defend. In 1996, the first lawyer secured a judgment of $28,892 against the other driver.

For the next three years, the respondent took no action of substance to investigate his client's claims and whether or not the insurer had legitimately deemed them to be fraudulent. The respondent also was unaware of the three-year statute of limitations established by G. L. c. 260, § 4. Nevertheless, the respondent misrepresented to the client during this period that he was working on the case. He never informed the client during this period that the insurance company had refused to defend the case because the company considered the claim to be fraudulent.

On December 20, 2000, the respondent filed a complaint against the insurance company alleging that the company was required to pay the judgment secured against the insured driver in June 1996. The company filed an answer in January 2001 raising the statute of limitations as one of its defenses. In May 2001, the insurance company filed a motion for summary judgment, which was granted in August 2001 based on the failure to file the action within three years of the judgment.

The respondent did not apprise the client of any of these developments until December 2001, when the client contacted the respondent about the case. The respondent told the client that the case had been dismissed due to his failure to file a timely action but that the case was weak due to the insurer's strong evidence of fraud. He offered to pay $5,000 to the client to resolve any malpractice claims. He did not inform the client in writing that he should seek independent counsel in settling the claim, and the client did not consult independent counsel before accepting the respondent's offer.

The respondent's failure to keep the client reasonably informed of the status of the case, his failure to explain the case sufficiently so that client could make informed decisions, and his misrepresentations to the client that he was working on the case violated Mass. R. Prof. C. 1.4 and 8.4(c). His failure to investigate the case and research the applicable law violated Mass. R. Prof. C. 1.1 and 1.3. The respondent's conduct in settling the case with the client without advising the client in writing that independent counsel was appropriate violated Mass. R. Prof. C. 1.8(h).

In the third matter, the respondent undertook to represent the driver and the estate of the passenger in the driver's car. In September 2001, the driver was involved in a head-on collision with another car. The driver was seriously injured and the passenger died. The driver of the other car was also killed, and his passenger was also seriously injured. Both drivers were insured for $20,000 per person and $40,000 per occurrence.

Shortly after the accident, the brother of the deceased passenger retained the respondent to represent the decedent's estate. The insurer for the other driver advised the respondent that it would pay $20,000 to the estate and $10,000 to each survivor.

Within a few days of the offer, the respondent was retained by the driver of the car in which the decedent had been a passenger. The respondent could not reasonably represent the interests of both the estate and the driver in these circumstances, and, even if he could, he did not obtain the informed consent to the conflicts of interest from the decedent's brother, who was named the administrator of the estate, or of the driver. The respondent also did not explain to the administrator that he had an obligation to maximize the recovery to the estate.

After being retained by the driver, the respondent agreed to the offer. The passenger in the other car refused, however, to accept the settlement offer.

In August 2002, the respondent represented both the estate and the driver at an arbitration hearing held to determine the proper allocation of the insurance proceeds. The driver attended the hearing with the respondent, but the estate administrator was not present. The respondent argued that the estate should get $20,000 and that the driver and the passenger in the other car should each get $10,000. The arbitrator, however, divided the proceeds equally among the three claimants. The respondent eventually paid himself a third of the estate's and the driver's recovery.

In September 2002, the respondent represented the estate in a claim against the driver's insurance company. That case settled for $13,333, from which the respondent also took one third as a fee.

The respondent's conduct in representing the estate and the driver when their interests were adverse, when his ability to represent each of them was materially limited by his obligations to the other, and when the representation of each was adversely affected violated Mass. R. Prof. C. 1.7. The respondent's failure to explain to the administrator his obligations violated Mass. R. Prof. C. 1.4(b).

On July 23, 2004, the respondent signed an answer and stipulation in which he admitted to the foregoing and stipulated to a two-year suspension. The respondent acknowledged that he had received an admonition on March 3, 2003, for commingling client and personal funds in his trust account and for record-keeping violations. (Admonition No. 03-12) The respondent also acknowledged as further matters in aggravation that the client in the first matter and his providers had been deprived of their funds and that he was experienced in the practice of law. On August 9, 2004, the Board of Bar Overseers voted to accept the stipulation of the parties and to recommend a two-year suspension.

[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.