

IN RE: EDSON H. RAFFERTY

S.J.C. Order of Term Suspension entered by Justice Ireland on November 14, 2005, with an effective date of December 14, 2005.¹

SUMMARY²

The respondent, Edson H. Rafferty, was admitted to the Bar of the Commonwealth in 1982. In 1989, he was engaged by the mother of a minor child to represent the child in a personal injury case. The minor at the age of three had fallen at premises owned by the Cambridge Housing Authority and came into contact with a steam-pipe, owned by the Cambridge Steam Corporation, causing her to sustain a burn. The mother and the respondent signed a contingent fee agreement under which the respondent's firm was entitled to 40% of any gross recovery. In March 1993, the respondent's then partner, Philip Shaw, filed suit on behalf of the mother, as next friend of the minor client, in the Middlesex Superior Court. The suit sought damages from the Cambridge Housing Authority and the Cambridge Steam Corporation.

In June 1995, the parties settled the case for \$12,500. On September 29, 1995, Shaw filed with the court, a "statement of proposed disposition", under which: the net proceeds of the settlement of this matter [were to] be held by Edson Howard Rafferty, Esq., one of the attorneys for the plaintiff, in an interest-bearing account for the benefit of the minor for college or other expenses to be held until the minor reaches majority. The parents of the minor shall have the right to petition the Court for earlier release of the fund in case of emergency.

On September 29, 1995, the court issued an order approving the settlement and the statement, with a modification allowing for a one-time distribution to the mother of \$1000 of the settlement funds to be used for various necessities for her children.

In October 1995, the respondent received checks from the defendants in the amounts of \$7500 and \$5000. The respondent endorsed the checks and deposited the funds into his firm's IOLTA account at Baybank, Boston. From the proceeds of the two checks, the respondent paid his firm \$5000 in attorney's fees and \$1053 in expenses, and paid \$1000 to the mother, as ordered by the court. In violation of the court order, the respondent did not deposit the remaining settlement funds of \$5447 into an interest-bearing account. He left the funds in his IOLTA account.

In August 1996, the mother contacted the respondent to request additional funds from the settlement. On August 5, 1996, someone in the respondent's firm met with the mother, and assisted her in writing a petition for release of the settlement funds. On August 14, 1996, the mother filed the petition in the Middlesex Superior Court and appeared alone before the court. The court denied the petition, finding that, "the fund[s] held by counsel are for the sole benefit of minor child and not for daily necessities of life. These necessities are the obligations of the parents." On August 14, 1996, the court caused copies of the order denying the petition to be sent to the attorneys of record, including Shaw.

On August 16, 1996, the respondent sent checks in a total amount of \$1931.07 to the mother's landlord and to her gas, electric and telephone companies, and gave \$900 directly to the mother, leaving a balance of \$2615. The respondent's action was in violation of the court's

order of September 1995, which absent further order of the court, required him to preserve the funds intact until the minor client reached majority.

Sometime after 1996, the respondent caused all of the files relating to the settlement funds to be sent to a storage facility. The respondent did not maintain adequate records of his maintenance of the funds and, by 1998, forgot that he was holding funds for the benefit of the minor client. The respondent did not communicate with the mother or with any other person acting on behalf of the minor client between the end of August 1996 and 2003, when the respondent was contacted by Bar Counsel.

In February 2003, Bar Counsel, on behalf of the mother, contacted the respondent and requested that he identify the bank account in which the funds were being held. The respondent was unable at that time to identify an account in which the settlement funds were being held, or to determine the amount of funds he was holding for the minor client. In June 2003, the respondent notified Bar Counsel that he was holding the minor client's settlement funds, in the amount of \$2615, in his IOLTA account. In September 2004, when the minor client reached her 18th birthday, the respondent turned over to her \$3209. This amount represented \$2615 plus interest that the respondent calculated would have been earned had he kept the funds in an interest-bearing account.

By failing in 1995 to place the balance of the minor client's settlement funds into an interest-bearing escrow account, and by distributing funds to the mother and her creditors in August 1996, the respondent violated a court order, in violation of Canon Seven, DR 7-106 (A), and Canon One, DR 1-102(A)(4), (5), and (6), as set forth below. The respondent also violated Canon Seven, DR 7-101 (A) (1), (2), and (3), as set forth below. By distributing to the mother and her creditors, at the direction of the mother, settlement funds belonging to the minor client, the respondent violated Canon Five, DR 5-107(B). By failing to maintain the funds in a separate interest-bearing account, the respondent also violated Canon Nine, DR 9-102(C) (for conduct before January 1, 1998), and Mass. R. Prof. C. 1.15 (e)(5) (for conduct on and after January 1, 1998). By failing to maintain adequate records of the handling, maintenance and disposition of the minor client's settlement funds, and failing to render appropriate accountings of those funds to the mother of the minor client, the respondent violated Canon 9, DR 9-102(B)(3) (for conduct before January 1, 1998), and Mass. R. Prof. C. 1.15 (a) (for conduct on and after January 1, 1998), and Canon Six, DR 6-101(A)(3) (for conduct before January 1, 1998), and Mass R. Prof. C. 1.3 (for conduct on or after January 1, 1998). By effectively losing track of the settlement funds for several years, the respondent violated Canon Six, DR 6-101(A)(3) (for conduct before January 1, 1998), and Mass. R. Prof. C. 1.3 (for conduct on and after January 1, 1998).

The matter came before the Board of Bar Overseers on a stipulation and joint recommendation by the parties for a three-month suspension, and the respondent's agreement to make full restitution to the minor client. On October 17, 2005, the Board of Bar Overseers voted to recommend to the Supreme Judicial Court that the respondent be suspended for three months. The Court so ordered on November 14, 2005.

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.