NO. BD-2010-006

IN RE: EDWARD W. PEPYNE, JR.

S.J.C. Judgment of Disbarment entered by Justice Spina on February 8, 2010.[1]

SUMMARY[2]

This matter came before the Court on the respondent's affidavit of resignation pursuant to S.J.C. Rule 4:01, §5. The respondent admitted in his affidavit of resignation that the material facts upon which a statement of disciplinary charges was predicated could be proven by a preponderance of the evidence and that a hearing committee, the Board of Bar Overseers, and the Court could conclude that he had committed the acts set forth in the statement and that the Court could enter an order of disbarment.

In the first matter, on October 13, 2006, the respondent's client was struck by a motor vehicle and sustained severe head injuries. On November 6, 2006, the respondent was hired to pursue a personal injury claim. On February 12, 2007, the client died. No proceedings were then begun to probate the client's estate.

On March 21, 2007, an insurance company sent a check to the respondent made payable to the client in the amount of $8,000, representing personal injury protection benefits. After receipt of the check, the respondent met with the client's sister and, knowing that his client had died, asked the sister to sign her brother's name on the back of the check, explaining to her that the funds would be held in a client trust account until a full settlement was received. The sister signed the brother's name on back of the check, which was deposited into the respondent's IOLTA account.

In April of 2007, the respondent and an insurer settled the client's bodily injury claim for $25,000. The respondent then sent to the company a release on which the respondent either signed or had another person sign the client's name as signatory to the release. The respondent then notarized the signature, knowingly and falsely certifying that the client had signed the release in his presence. The respondent did not inform the insurer that the client had died.

On April 27, 2007, the insurance company mailed to the respondent a settlement check in the amount of $25,000 made payable to the respondent. The respondent deposited into his IOLTA account.

After receipt of the settlement funds, the respondent falsely told the deceased client's sister that he was working on a settlement, that he anticipated that the settlement offer would be $25,000 or more, and that it would be disbursed in increments. The respondent further falsely told the sister that the funds would be held in a client trust account until the settlement was paid in full, at which time he would disburse the funds to cover any remaining medical bills.

Between May 4, 2007, and October 9, 2007, the respondent intentionally misused a portion of the settlement funds by making a number of payments to or on behalf of other clients or for his own business and personal purposes unrelated to the client matter.

The respondent's intentional misuse of client funds, with intent to deprive and actual deprivation resulting, was in violation of Mass. R. Prof. C. 1.15(b) and (c) and Mass. R. Prof.

C. 8.4(c) and (h). The respondent's conduct of participating in the forgery of an endorsement and release, falsely notarizing a release, a transmitting a known forged signature to an insurance company for payment of a claim, misrepresenting to the insurance company the status of his client and failing to explicitly inform the company that his client had died and lying to the family of his deceased client to cover up his defalcation, was in violation of Mass. R. Prof. C. 4.1(a) and (b) and 8.4(c) and (h).

In the second matter, the respondent represented a client who was seriously injured when struck by an automobile while a pedestrian. On May 18, 2007, the client signed a contingent fee agreement providing for a one-third legal fee. The fee agreement did not contain a clause authorizing the respondent to charge any additional fee for paying, settling or negotiating a lien or medical bill.

In November of 2007, prior to filing any litigation, the respondent settled the claim with the insurance company insuring the driver of the at-fault vehicle for $50,000 and deposited the settlement proceeds into his IOLTA account. In February of 2008, the respondent settled a claim for $50,000 for uninsured motorist coverage on the client's son's policy and deposited the settlement proceeds into his IOLTA account. Net of his fee, the respondent at that time should have been holding approximately $66,667 of the client's funds in his IOLTA account.

On October 1, 2008, the respondent paid himself a fee of $5,000 for paying a lien.

Between December of 2007 and February of 2009, the respondent intentionally misused a portion of the client's settlement funds for personal or business purposes unrelated to the client, with intent to deprive and with temporary deprivation resulting.

As of April 15, 2009, the respondent had paid to or for the benefit of the client the total sum of $61,554.52 and charged an additional $5,000 to pay liens, for a total of $66,554.52 of the $100,000 received. On April 16, 2009, the client died.

The respondent's intentional misuse of client funds, with intent to deprive and actual deprivation resulting, was in violation of Mass. R. Prof. C. 1.15(b) and (c) and Mass. R. Prof. C. 8.4(c) and (h). The respondent's conduct of charging or accepting a $5,000 fee to pay hospital bills or liens without a clause in the contingent fee agreement authorizing the payment, and in circumstances where no significant legal services were necessary constituted the collection of an excessive fee, in violation of Mass. R. Prof. C. 1.5(a).

In addition and in connection with his representation of the client, the respondent failed to diligently pursue an appeal of a Medicare lien, resulting in accrued interest, and failed to keep his client reasonably apprised of his efforts. The respondent's lack of diligence in pursuing his appeal with Medicare while interest accrued on the debt and his failure to keep his client fully informed of the status of his efforts, were in violation of Mass. R .Prof. C. 1.2(a), 1.3 and 1.4.

In the third matter, on December 12, 2006, a client retained the respondent to pursue a bodily injury claim pursuant to a contingent fee agreement permitting a one-third legal fee. The fee agreement did not contain a clause authorizing the respondent to collect any additional fee for paying settling or negotiating any lien or bill.

On May 29, 2007, the respondent settled the client's claims, prior to filing litigation, for $20,000. On July 18, 2009, the respondent presented his client with a check in the amount of $10,278.86 representing her portion of the settlement proceeds minus his one-third fee and minus $2000, which the respondent charged for allegedly negotiating two outstanding liens. At no time did the client agree to or authorize the respondent to take any fees in addition the one-third fee agreement and was unaware of any outstanding liens. The respondent performed no substantial or significant work in connection with the two liens.

The respondent's conduct of charging and accepting a $2,000 fee to pay liens without a clause in the contingent fee agreement authorizing the payment and in circumstances where no significant legal work was necessary, constituted the collection of an excessive fee in violation of Mass. R. Prof. C. 1.5(a). The respondent's collection of a fee from the client that the client did not authorize constituted the collection of an excessive fee, in violation of Mass. R. Prof. C. 1.5(a).

In the fourth matter, after a hearing on June 27, 2006, a judge of the Probate and Family Court issued an order of impoundment that required the respondent to return to the Register of Probate all copies of all portions of a court file previously obtained by him. On July 25, 2006, opposing counsel filed a complaint for contempt in the court alleging a violation of the order. On August 24, 2004, a hearing was held on the complaint for contempt and on August 25, 2006, the respondent was found in contempt of the order of impoundment. The court also found that the contempt had been cured prior to hearing. On February 29, 2008, the Appeals Court affirmed the judgment of contempt, finding that the order was clear, unequivocal and unambiguous and that the respondent disobeyed the order. The respondent's failure to comply with a clear order of the court resulting in a finding of contempt, was in violation of Mass. R. Prof. C. 8.4(d) and (h).

In the fifth matter, on May 9, 2007, the Superior Court entered a ruling and order finding that the respondent had filed a wholly insubstantial and frivolous Chapter 93A counterclaim against opposing counsel not advanced in good faith within the meaning of G.L. c. 231, § 6F. The respondent had alleged that opposing counsel refused to pay the respondent what the respondent was lawfully due under a contingent fee agreement after he had been discharged by the client. The court entered an order awarding opposing counsel the amount of $3,425. The respondent timely appealed. On January 23, 2009, the Appeals Court affirmed the award of attorney fees against the respondent and found a chargeable knowledge on the respondent's part of the frivolous and insubstantial character of his counterclaim. The Appeals Court further found that the respondent's appeal was frivolous and awarded appellate attorney fees. The respondent's conduct in filing an unwarranted and frivolous counterclaim and his filing of a frivolous appeal, was in violation of Mass. R. Prof. C. 3.1.

In the sixth and final matter, on March 9, 2004, the respondent admitted to sufficient facts to operating under the influence in violation of G.L. c. 90, § 24(1)(a)(1). A guilty finding entered. The respondent's license was suspended for 45 days and he was placed on probation. On March 8, 2005, the case was dismissed upon the recommendation of the probation department. The respondent's failure to notify bar counsel of his conviction within ten days of receipt, was in violation of S.J.C. Rule 4:01 § 12(8).

The respondent's affidavit of resignation was filed with the Board of Bar Overseers on December 23, 2009. On January 11, 2009, the board voted to recommend that the affidavit of resignation be accepted and that an order of disbarment be entered effective upon the date of the order. On February 8, 2010, the Supreme Judicial Court for Suffolk County accepted the affidavit of resignation and entered a judgment of disbarment effective immediately.

FOOTNOTES:

[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.