

**IN RE: GEORGE PHILIP****NO. BD-2015-101****S.J.C. Judgment of Disbarment entered by Justice Spina on January 12, 2016, with an effective date of February 11, 2016.¹****SUMMARY²**

This matter came before the Court after contested proceedings and a recommendation by a hearing committee and the Board of Bar Overseers for the respondent's disbarment. The hearing committee found in substance as follows.

In late 2008, the respondent was a participant in a group drive of BMW enthusiasts during which the driver immediately ahead of him struck and killed a pedestrian. Within minutes of the accident, the respondent undertook to represent the driver on any ensuing criminal charges. The respondent had limited criminal experience and had never tried a motor vehicle homicide case. Moreover, he was a crucial witness for the driver — his client — and had exposure of his own due to his participation in the drive. The respondent never told the client that his own potential liability might affect his representation, never asked the client to choose between his roles as witness and counsel, and never obtained the client's informed consent to the conflicts.

After the accident, the respondent left the area while the client was still at the scene and failed to advise the client to remain silent, instead encouraging the client to talk to the police. Unaccompanied by counsel, the client gave the police a videotaped statement under oath during which he made damaging admissions. The respondent subsequently gave his own statement in which he represented, among other things, that the client had been traveling at or near the posted speed limit of 40 miles per hour at the time of the accident.

The respondent told the client that he was providing his services for free, as a favor to a friend, and would need funds for expenses only. The client initially gave the respondent \$5,000 toward expenses. Around the same time, the respondent hired an accident reconstruction expert and paid the expert a \$1,500 retainer, but he intentionally misrepresented to the client that the expert needed an immediate retainer of \$10,000. The respondent thereby procured another payment of \$9,000 from the client's family. The respondent deposited those funds to an IOLTA account and told the client that he would use them to pay the expert. Instead, the respondent intentionally misused \$7,500 of those funds with the intent to deprive the client of the funds.

In early 2009, the client was arraigned on charges including motor vehicle homicide. The arraignment judge rejected the respondent's appearance for the client on grounds that he was a potential witness for the Commonwealth or the defense. The respondent then arranged for another lawyer to act as the client's counsel of record while the respondent continued to direct

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 Supreme Judicial Court.

the defense in the background. The other lawyer also had no experience with motor vehicle homicide cases. The respondent intentionally misrepresented to the client that the other lawyer's fee would be \$25,000 for the representation. The client liquidated a retirement account and used the proceeds to pay another \$16,700 to the respondent intended for the other lawyer's supposed fee. The respondent paid a total of \$6,750 to the other lawyer and intentionally misused the balance of the client's funds with the intent to deprive the client of those funds.

During 2009, the other lawyer appeared for the client at pretrial hearings, but the respondent retained primary control over the defense. During this period, the respondent received notice of civil claims against him based on allegations of joint liability with the other drivers. In the client's criminal case, the prosecution furnished a police reconstruction concluding, among other things, that the client was speeding at time of the impact. Deadlines were imposed and extended for expert disclosure by the defense, but the respondent failed to inform the expert of those deadlines or assure the timely completion of the expert's work. No expert disclosure was ever provided.

The client's trial took place in February 2010. The defense expert was not informed of the trial date and was still working on his analysis. The respondent knew that the client needed a continuance for that reason but had failed to assure the timely filing of a continuance motion. At the start of the trial, the other defense lawyer moved orally for a continuance. The prosecutor was ready with witnesses and objected, and the motion was denied. Without consulting the client, the other lawyer then entered into damaging stipulations, including stipulations that the client had been speeding and that that his actions were the proximate cause of the pedestrian's death. The other lawyer also asked for and received a sequestration order.

The respondent had decided step in as trial counsel if, as happened, the prosecutor declined to call him as a witness. He was not, however, wearing a jacket and tie. The court allowed a request for his appearance as co-counsel, but only if he were appropriately attired. The client's father left to get a suit for the respondent. In the meantime the prosecutor put on witnesses including a bystander, who estimated the drivers' speed at 70 m.p.h., and the police reconstructionist, who testified to a speed of about 62 m.p.h. at impact. After obtaining and donning the suit, the respondent took over the defense during the Commonwealth's case.

In the lunch break, the respondent called the defense expert on the phone. Although the expert had initially calculated a higher speed, he told the respondent that further analysis had yielded a significantly lower speed of around 40-45 m.p.h. Backed by the respondent's own speed observations, the expert's testimony about these calculations would have strongly contradicted the prosecution's narrative of speeding and reckless racing. Further, the expert would later provide a report opining that the client had been prevented by sun blindness from avoiding the pedestrian. At that point, however, the expert had not finished the analysis and was not available to testify.

During the trial, the respondent phoned two of the other drivers and arranged for them to come to court, but he had failed to assure their compliance with the sequestration order, and they were barred from testifying. At that point the respondent called the client as the only defense witness. The client had not been prepared, and his trial testimony differed significantly from his police statement. After a further request by the respondent for a continuance to bring in the expert, the defense rested. After resting the respondent tried unsuccessfully to admit an autopsy report that might have been useful to the defense. The court found the client guilty. The next day the client was sentenced to a jail term and taken into custody, where he remained for the next thirteen months.

Following the trial, the client's father hired the respondent to pursue post-conviction relief. The respondent accepted the engagement despite his performance at the trial and even though he had never handled a criminal appeal. The respondent asked for \$15,000 for this work, of which he received an installment payment of \$10,000 from the father. He did not mention ineffective assistance of counsel as a ground for appeal or suggest consulting another lawyer.

Through his wife, the respondent had arranged a \$3,000 loan to the client before the trial. After the guilty verdict, the respondent offered to repair and lease or rent the client's car for \$300 per month with the monthly payments credited against the loan and repair costs. The respondent had the client sign an assignment of title and a bill of sale purporting to transfer the car to the respondent's wife for \$1.00. The client had not intended a permanent transfer and signed the papers at the respondent's direction. The true terms of these transactions were never reduced to writing. The transactions, which effectively granted the respondent and his wife a security interest in the car, were not fair and reasonable to the client.

In April 2010, the respondent moved for a new trial on behalf of the client with no mention of ineffective assistance. By then the respondent and the other drivers had been sued by the personal representative of the pedestrian's estate. The motion was denied after hearing, and the respondent entered the client's appeal in the Appeals Court in June 2010. Between July 2010 and January 2011, the respondent obtained four briefing extensions while the client remained incarcerated. He never filed or wrote an appellate brief. The respondent's \$10,000 appellate fees were clearly excessive. Because he should not have represented the client after the conviction, those fees were also illegal.

In the meantime, the client had learned in the fall of 2010 that the expert had been paid only \$1,500 and that the other lawyer had neither sought nor received \$25,000 as had been represented by the respondent. In addition, the respondent refused a request by the client to return the car for use by his girlfriend. The client asked the respondent for an accounting of his fees and car repair payments. In reply, the respondent intentionally misrepresented the fee arrangements and the terms of the car transactions, presented a false and inflated invoice, demanded another \$5,000 payment, and threatened legal action if the client accused him of unprofessional conduct. He subsequently furnished a breakdown with fabricated time charges.

In March 2011, the respondent was granted leave to withdraw his appellate appearance. By then the client was nearing the completion of his sentence and had no money to hire another lawyer. The client did not pursue the appeal thereafter. The respondent never made any fee refund to the client or accounted adequately for the client's funds. Further, the respondent never paid anything more to the expert and intentionally misrepresented to the expert that he had been unable to obtain payment from the client.

As the hearing committee concluded, the respondent's intentional misuse of the client's funds violated Mass. R. Prof. C. 1.15(b)(1) and (2) as then in effect, 8.4(c) and 8.4(h). His presentation of an intentionally false and inflated invoice and intentional misrepresentations to the client and the expert violated Rule 8.4(c). The respondent's failure to account to the client violated Mass. R. Prof. C. 1.4(a) and (b) as then in effect and 1.15(d)(1). His conduct in charging and collecting clearly illegal and clearly excessive post-conviction fees violated Mass. R. Prof. C. 1.5(a) as then in effect.

The respondent's conflicts of interest in the representation, failure to explain the conflicts adequately to the client, failure to obtain the client's informed consent to the extent that consent was possible, and failure to withdraw when his continued representation violated the Rules of Professional Conduct violated Mass. R. Prof. C. 1.4(a) and (b) as then in effect, 1.7(b) and 3.7(a) as then in effect, and 1.16(a)(1). His business transactions with the client violated Mass. R. Prof.

C. 1.8(a) as then in effect. The respondent's many failures of competence and diligence violated Mass. R. Prof. C. 1.1, 1.2(a) as then in effect, and 1.3.

The committee found no matters in mitigation but several factors in aggravation including the respondent's inability to comprehend and acknowledge his professional obligations, his presentation of knowingly false testimony at the hearings, his numerous rule violations, his personal and financial interests, his failure to make restitution to the client, and his taking advantage of a distressed, trusting and vulnerable client. The committee recommended disbarment with a restitution order.

The hearing committee issued its report in June 2015. Neither party appealed from the report. The board subsequently voted to adopt the committee's findings, conclusions and recommendation for discipline but to reject the restitution recommendation, leaving that matter to be addressed in any eventual reinstatement proceedings.

In November 2015, the board filed an information and its record of the proceedings in the County Court. After a postponement requested by the respondent, a hearing on the information was set for and held on January 6, 2016, but the respondent did not appear. A late motion by the respondent to continue that hearing was subsequently received for filing and denied.

On January 12, 2016, the Court entered a judgment for the respondent's disbarment effective in thirty days. The judgment includes a provision by which the respondent is prohibited from petitioning for reinstatement until he has made full restitution to the client in the amount of \$32,450 with statutory interest, or interest in an amount acceptable to the client, and has furnished proof of compliance to the Court or bar counsel.