

IN RE: CHARLES R. ARTHUR, JR.

NO. BD-2017-066

S.J.C. Order of Term Suspension entered by Justice Gaziano on June 9, 2017, with an effective date of July 9, 2017.¹

SUMMARY²

The respondent received a six-month suspension for his misconduct in two separate matters. In both cases, the respondent commingled client funds with personal funds, negligently misused client funds, failed to promptly turn over funds when due, and failed to communicate in writing before or within a reasonable time after the commencement of the representation the scope of the representation and the basis or rate of his fee. In one of the cases, the respondent also withdrew legal fees from client funds before they were earned and charged the client at his legal rate for non-legal services.

In the first matter, the respondent was retained by the client to review and revise her estate plan and to assist her with her financial matters. The respondent did not communicate to the client in writing the scope of his representations or the basis or rate of his fee. The respondent proceeded to prepare a durable power of attorney for the client, naming himself as the client's attorney-in-fact; a will naming himself as the client's personal representative; and a health care proxy.

The client gave the respondent \$70,000 to be used by him to pay the client's bills. The respondent did not maintain these funds in a client trust account. Instead, he deposited the money in his business account.

The respondent disbursed a total of \$30,073.50 for purposes of paying the client's expenses, including her funeral expenses after she died. The respondent also withdrew a total of \$39,180.94 to pay his legal fees. Because he did not keep accurate records of his client's funds, the respondent failed to promptly pay over the balance, \$745.56, to the estate's beneficiaries or the special representative, who was appointed after the commencement of a will contest action in the probate court.

Throughout the representation, the respondent charged his client at his legal rate of \$325 per hour for all services rendered, including non-legal services such as caring for the client's pets, accompanying the client to doctor's appointments, and attending the client's funeral. On six occasions, the respondent withdrew fees from his client's funds for the purpose of paying legal fees he had not yet earned. The respondent did not each time he withdrew fees, deliver to the client in writing an itemized bill or other accounting showing the services rendered, the amount and date of the withdrawals and a statement of the balance of the client's funds remaining.

By the end of the representation, the respondent had earned all of his fees that he had collected. The respondent has also returned all funds due to the estate and its beneficiaries.

By failing to maintain the estate's funds in a trust account and by intentionally commingling client funds with personal funds, the respondent violated Mass. R. Prof. C. Rule 1.15(b)(1). By failing to promptly turn over to the beneficiaries or to the special representative

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.

of his client's estate the funds that were due them, the respondent violated Mass. R. Prof. C. Rule 1.15(c).

By withdrawing fees before they were earned, the respondent violated Mass. R. Prof. C. Rules 1.15(b)(1) and (3). By charging the client and her estate his legal rate for non-legal services, the respondent violated Mass. R. Prof. C. Rule 1.5(a).

By failing to communicate in writing to the client before or within a reasonable time after the commencement of the representation the scope of the representation and the basis or rate of his fee, the respondent violated Mass. R. Prof. C. Rule 1.5(b)(1). By failing to deliver to the client in writing itemized bills or other accountings showing the services rendered, the amount and date of each withdrawal and a statement of the balance of the client's funds in her account on or before the date of each withdrawal of funds in the account to pay for his fees, the respondent violated Mass. R. Prof. C. Rules 1.4(a) and 1.15(d)(2).

In the second matter, the respondent agreed to represent a client in a personal injury matter in return for a fee of one-third of all amounts collected. The respondent either failed to obtain his client's written agreement to a contingent fee arrangement or he failed to keep a copy of the agreement for a period of seven years after the conclusion of the representation.

The client agreed to a settlement in the amount of \$27,000. The respondent received a check from the insurer in the amount of \$24,990.07, which represented the settlement amount less \$2,009.93 that was deducted to pay Medicare and MassHealth liens. These funds were deposited into the respondent's business account and not maintained in a client trust account.

Because the client was homeless, the respondent did not pay the client the monies due her in one lump sum. Instead, the client would contact the respondent to request a disbursement when she needed money and the respondent would then pay her. The respondent also withdrew his legal fee in installments over time. The respondent did not deliver to the client an itemized bill or other accounting showing the services rendered, the amount and date of the withdrawals and a statement of the balance remaining in the client's account.

The respondent failed to keep accurate records of the client's funds, the disbursements he made to her and the withdrawals he took to pay his fees. Accordingly, he could not account for \$1,500 due the client. The respondent, however, has since returned all monies due the client.

By failing to maintain his client's settlement funds in a trust account and intentionally commingling client funds with personal funds, the respondent violated Mass. R. Prof. C. Rule 1.15(b)(1). By failing to promptly turn over to the client the funds that were due her, the respondent violated Mass. R. Prof. C. Rule 1.15(c).

By failing to deliver to the client a written itemized bill or other accounting showing the services rendered, the amount and date of each withdrawal and a statement of the balance of funds remaining on or before the date of each withdrawal of funds in the account to pay for his fees, the respondent violated Mass. R. Prof. C. Rules 1.4(a) and 1.15(d)(2). By failing to deliver to the client at the conclusion of the matter a writing showing the remittance due her and the method of its determination, the respondent violated Mass. R. Prof. Co. Rules 1.4(a), 1.5(c) and 1.15(d)(1).

By failing to enter into a written contingent fee agreement with the client and/or by failing to keep a copy of his written contingent fee agreement for a period of seven years after the conclusion of the representation, the respondent violated Mass. R. Prof. C. Rule 1.5(c).

The respondent was admitted to the bar of the Commonwealth in 1980. He has no history of prior discipline.

Bar counsel filed a petition for discipline on September 22, 2016. An amended petition was filed on January 23, 2017. The respondent filed an answer on February 2, 2017. An amended answer and stipulation was filed on April 27, 2017. The parties jointly recommended to the board that the respondent receive a six-month suspension. On May 8, 2017, the board voted unanimously to accept the parties' stipulation and their joint recommendation that the respondent be suspended for a period of six months. On June 9, 2017, the Supreme Judicial Court (Gaziano, J.) entered an Order suspending the respondent for six months, effective thirty days after the date of the entry of the Order.