

IN RE: NANCY C. FLAHIVE

NO. BD-2017-072

S.J.C. Judgment of Accepting Affidavit of Resignation as A Disciplinary Sanction entered by Justice Gaziano on June 27, 2017.¹

SUMMARY²

The respondent was admitted to the Massachusetts bar on June 3, 2003. She resigned as a disciplinary sanction in May 2017, as a resolution of the charges of misconduct described below, which included misuse of client funds, settling claims without authority, neglect, misrepresentations to clients, commingling and record-keeping violations.

In 2013, the respondent was retained to represent five family members, one adult and four minor children, who were all injured in a car accident. During the course of the representation, the respondent provided financial assistance to the adult with the expectation of being repaid from amounts recovered from the contemplated litigation, in violation of Mass. R. Prof. C. Rule 1.8(a).

Without obtaining authorization from the adult, who was the guardian of the minor children, the respondent settled two of the minor children's claims. After settling a claim for a third minor, the respondent deposited \$52,215.83 in settlement funds into her IOLTA account. After taking her fee, the respondent proceeded to disburse \$24,500 to the guardian of the minor at the request of the guardian, notwithstanding that the money was to be held in trust for the benefit of the minor pursuant to an order of the court. The guardian herself did not hold the money that the respondent gave to her in trust for the minor.

The respondent then proceeded to intentionally misuse the remaining \$6,049.16. The respondent later remitted to the guardian all amounts owed to her and the minors, partially from funds that belonged to another unrelated client of the respondent's, who the respondent later made whole. By not holding the minor child's funds in trust as ordered by the court and by intentionally misusing client funds, the respondent violated Mass. R. Prof. C. Rules 3.4(c), 1.15(b) and (c), and 8.4(c).

From December of 2007 through December of 2015, the respondent represented two other clients whose cases she neglected. In both instances, she failed to keep her clients reasonably informed as to the status of their cases and failed to promptly comply with their reasonable requests for information. In one instance, she misrepresented to the client that she had filed suit when she had not. In the other instance, the respondent filed a complaint, which she then allowed to be dismissed after failing to serve the defendant. The respondent did not inform her client of the dismissal. After the client discovered that the case had been dismissed, the respondent refiled the suit without the knowledge or authorization of the client. The respondent subsequently withdrew from the representation. By neglecting her clients' matters,

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.

by failing to keep them reasonably informed of the status of their cases and responding to their reasonable requests for information, by settling one matter and refiling suit in another matter without the authority of her clients, and by misrepresenting the status of their cases to her clients, the respondent violated Mass. R. Prof. C. Rules 1.1, 1.3, 1.4(a) and (b), and 8.4(c) and (d).

From at least April of 2013 until December of 2015, the respondent maintained an IOLTA account at Santander Bank. During that time, she commingled personal funds with client funds; left earned fees in the account; failed to provide accountings to her clients; withdrew cash; and failed to maintain accurate client ledgers, a check register and three-way reconciliations, in violation of Mass. R. Prof. C. Rule 1.15 (b), (d), (e) and (f).

On May 23, 2017, bar counsel filed with the board the respondent's affidavit of resignation and requested that it be accepted as a disciplinary sanction. On June 12, 2017, the board voted unanimously to recommend to the Supreme Judicial Court that the respondent's affidavit be accepted. On June 27, 2017, the county court (Gaziano, J.) ordered that the resignation be accepted effective immediately upon entry of the judgment.