

IN RE: GAYTRI D. KACHROO

BD-2018-087

S.J.C. Judgment Accepting Affidavit of Resignation as A Disciplinary Sanction entered by Justice Cypher on October 26, 2018.¹

The respondent resigned as a disciplinary sanction for a variety of conduct in several different matters, including charging an excessive fee for legal and non-legal services and for charging an excessive contingent fee on a first party administrative claim. She also negligently misused client retainers held in her IOLTA account, failed to maintain proper records of her IOLTA account and entered into a business transaction with a client without the required written informed consent. In addition, the respondent settled a fee claim with a client pursuant to which the client was required to refrain from filing a complaint with the Office of Bar Counsel.

SUMMARY²

The respondent submitted an Affidavit of Resignation in which she admitted the following misconduct:

The respondent performed legal and non-legal (investigative) services on behalf of a client. Between October 2012 and February 2015, the respondent billed the client monthly for her services. During that time period, the client paid to the respondent a total of \$1,443,420.88, primarily for the investigative services. The respondent stipulated that in the circumstances, her billing and collection of over 1.4 million dollars in fees was clearly excessive in violation of Mass. R. Prof. C. 1.5(a), in effect prior to July 2015.

Between December 1, 2012 and July 31, 2013, the respondent received periodic retainers from the client for her services and periodically billed the client's agents for services rendered. In July 2013, the respondent withdrew from her IOLTA account \$170,236.57 more toward the client's legal fees than had been deposited to the IOLTA account as of the date of withdrawal. In doing so, the respondent negligently applied the funds of other clients held in the IOLTA account to the payment of the client's invoices. In addition, the respondent failed to keep compliant records of her IOLTA account resulting in her inability to keep proper track of the client's funds. The respondent's conduct of negligently misusing the funds of other clients to prematurely pay the client's legal fees, violated Mass. R. Prof. C. 1.15(b) and (c), in effect prior to July 2015.

On September 2, 2013, the client executed an "Investment Agreement" prepared by the respondent dated August 15, 2013. The agreement provided for investments by the client in a pharmaceutical company. At the time the agreement was signed, the respondent occupied various executive roles at the company. In those roles, she was contractually entitled to compensation for fundraising and other tasks. On June 18, 2013, the respondent had provided to the client, and the client signed, a conflict of interest letter which disclosed that the respondent could not represent her in any investment, that she should consult with

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.

professional advisors and may wish to seek the advice of independent counsel. The Investment Agreement further disclosed that the respondent had an indirect ownership interest in the company. The client made three investments and received company stock in return.

The conflict of interest letter and the Agreement did not explicitly disclose, nor were they ever amended to explicitly disclose, that the respondent in her executive roles was contractually entitled to compensation or that a portion of the client's investment funds might be used for that purpose and that the respondent's representation of the client could be materially limited by her personal interests. The client accordingly did not give her informed consent to the conflict of interest after consultation. The respondent's facilitation of a financial investment by the client in the company, as described above, constituted a business transaction with a client, the terms of which were not fully disclosed in writing. The respondent's failure to specifically and explicitly disclose in writing to the client that a portion of her investment funds might be used for the respondent's compensation in the transaction violated Mass. R. Prof. C. 1.7(b) and 1.8(a)(1), in effect prior to July 2015.

In an unrelated matter, beginning on or about 2011, the respondent commenced to represent multiple clients (the Stanford Investors) in various claims and procedures in connection with an alleged investment scheme. Two years after the start of representing the Stanford Investors, an avenue for relief was to file administrative claim applications with the receiver appointed by a Federal Court. The required claim application was a simple two-page form that required the claimant to provide standard personal information, the identity of accounts where the investments were made (name of institution and account number), the dates and amounts of deposit and other supporting documentation if available. The receiver then processed the claims, applying simple math to the financial information provided to determine the amount to be awarded to the claimant.

With respect to the administrative claims described above, the respondent executed written fee agreements with approximately 140 Stanford investors. The fee agreements provided for a contingent fee of a percentage of any awards by the receiver to the clients. The respondent assisted her Stanford investor clients in submitting the required claim application to the receiver, she received the resulting funds on their behalf and retained as her fee a percentage of the funds received in accordance with the fee agreements. The contingent fees collected in each case were in excess of a reasonable administrative fee for filing the claims. Some clients did not deem the fee collected as excessive because the respondent performed other services not referenced in the fee agreement. Irrespective, in charging and collecting contingent fees on first-party claims where there was no contingency, the respondent charged and collected excessive fees in violation of 1.5(a), in effect prior to July 2015.

The respondent undertook multiple additional actions to assist the Standard investors and accepted retainers deposited to her IOLTA account. The respondent failed to maintain adequate individual client ledgers with respect to the clients, including failure to credit all retainers paid. In calendar year 2013, with respect to twelve clients, the respondent negligently debited from her IOLTA account amounts in excess of the amounts then on deposit, after the retainers on deposit had been exhausted, thereby misusing the funds of

other clients, in violation of Mass. R. Prof. C. 1.15(b) and (c), in effect prior to July 2015. No deprivation resulted.

In 2015, the respondent executed a settlement agreement of a fee dispute with a former client. The client also signed the agreement, which contained an explicit provision that as a condition of settlement, the former client was prohibited from filing a complaint with bar counsel. Both parties were represented by counsel. In executing a clause in a settlement agreement requiring a party to refrain from filing a complaint with bar counsel, the respondent violated Mass. R. Prof. C. 8.4(g) and (h) and S.J.C. Rule 4:01, sec. 10.

From December 1, 2012 until September 30, 2017, the respondent maintained an IOLTA account at Bank of America. She failed to keep IOLTA account records in compliance with Mass. R. Prof. C. 1.15 in the following particulars:

- a) The respondent failed to timely or contemporaneously keep compliant individual client ledgers reporting each receipt of funds, the dates of receipt on the amounts;
- b) The respondent failed to keep a ledger of bank fees and charges; and
- c) The respondent failed to promptly or contemporaneously record in her check register or client ledgers, receipts on behalf of clients or disbursements made on behalf of clients, resulting in inaccurate and unbalanced three-way reconciliations.

By failing to keep individual client ledgers for her IOLTA account with a list of every transaction and a running balance of each, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(C). By failing to maintain a contemporaneous check register in her IOLTA account listing all transactions in chronological order and a running balance, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(B). By failing to perform adequate and timely three-way reconciliations at least every sixty days, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(E).

On September 17, 2018, the Board of Bar Overseers voted to recommend that the affidavit of resignation be accepted as a disciplinary sanction. On October 26, 2018, the Supreme Judicial Court for Suffolk County accepted the affidavit of resignation as a disciplinary sanction, effective immediately.