

**IN RE: BRIAN G. DOHERTY**

**NO. BD-98-002**

**SUMMARY**

On December 4, 1997, the respondent was suspended for two years by the New Hampshire Supreme Court. *In re Doherty's Case*, 703 A.2d 261 (N.H. 1997). The respondent's conduct in handling a Chapter 11 personal bankruptcy action was the basis for the suspension.

In February 1991, the respondent accepted a \$10,000 retainer to handle a Chapter 11 personal bankruptcy action. The respondent improperly considered these funds to be a non-refundable retainer, and he commingled these funds with his own by depositing the check in his general office account. The respondent spent these funds for his own purposes.

The respondent failed to file an application with the bankruptcy court to be employed as counsel, he failed to request permission to accept the fee, and he failed to disclose to the bankruptcy court that he had accepted additional post-petition fees. The respondent never filed a reorganization plan. In July 1991, the respondent moved to Florida. He petitioned for leave to withdraw from the bankruptcy case.

In October 1991, the respondent filed a "Motion for Allowance of Attorney's Fees Nunc Pro Tunc," claiming entitlement to fees of \$14,290. The bankruptcy court allowed the motion to withdraw but ordered the respondent to disgorge the \$10,000 fee. The respondent appealed the decision to the United States District Court for the District of New Hampshire, but he failed to pursue the appeal in the belief that his own pending personal bankruptcy, filed in April 1992, would discharge the debt. The bankruptcy court refused to allow the debt to be discharged, holding that there was "no such thing as a non-refundable, earned-upon-receipt retainer for an attorney undertaking representation of a debtor" in a bankruptcy proceeding. See *In re Doherty's Case*, *supra* at 263, quoting *In re Ducey*, 160 B.R. 465, 473 (Bankr.D.N.H. 1993). The United States District Court affirmed the decision of the bankruptcy court in 1994, a disciplinary committee considered the respondent's actions in the case in January 1996, and the respondent finally disgorged the funds in February 1996.

The respondent's conduct was found to have violated N.H.R. Prof. Conduct 1.3, 1.15(a)-(c), and 8.4(a) as well as N.H. Supreme Court Rule 50(2)B. Rule 50(2)B requires attorneys "to deposit all cash property of clients in clearly designated separate trust accounts." *In re Doherty's Case*, *supra* at 264.

On January 2, 1998, Bar Counsel filed a petition for reciprocal discipline with the Supreme Judicial Court for Suffolk County. On March 13, 1998, the parties waived hearing and assented to an order suspending the respondent for two years. On April 6, 1998, the Court (Lynch,J.) entered an order suspending the respondent for two years, effective immediately upon entry.

