

ROLAND D. HUGHES

Order (public reprimand) entered by the Board August 14, 2009.

SUMMARY¹

The client was in an automobile accident and hired the respondent to represent her in a claim for personal injuries. The cost of the client's medical treatment exceeded her personal injury protection benefits by \$2,611.96. Her health insurance carrier paid the additional cost and notified the respondent of its lien in that amount.

The automobile insurer for the other driver in the accident accepted liability and offered to settle the matter for \$7,700. The respondent promptly notified his client of the settlement offer and the health insurer's lien. The respondent advised the client that she would net \$4,400 from the settlement despite the lien and agreed to reduce his fee so that she would clear that amount regardless of the amount of settlement with the insurer.

The respondent promptly notified the health insurer of the \$7,700 settlement offer and attempted to settle the insurer's lien for \$1,100. The insurer responded that it would accept \$2,200.

The respondent effected the settlement and received the settlement check made out to the respondent, the client, and the insurer, in the ordinary course. The respondent did not promptly notify his client or the health insurer that he had received the funds and placed their endorsements on the check without authority. The respondent deposited the check into his IOLTA account, wrote his client a check in the amount of \$4,400, reduced his fee to \$1,100 and issued himself a check in that amount. The respondent retained \$2200 in the IOLTA account to pay the insurer if he could not further reduce the lien.

The respondent failed to contact the insurer to resume negotiations concerning the lien, and he failed promptly to turn over to the insurer the funds due it. The respondent failed to keep records for his IOLTA account as required by Mass. R. Prof. C. 1.15, and he did not reconcile his accounts every sixty days. Several months after the respondent received and negotiated the check, the health insurance company contacted the automobile insurer to determine the status of the settlement and learned that the settlement check had been sent to the respondent.

Upon learning that the settlement check had been negotiated, the health insurer sent to the Office of Bar Counsel a request for investigation. Bar counsel forwarded the request for investigation to the respondent and asked for an explanation of his conduct. After receiving bar counsel's correspondence, the respondent promptly issued a check to the health insurer for \$2,200 from the IOLTA account.

By failing promptly to notify the client or the health insurer that he had received the settlement check and by failing promptly to pay the health insurer the funds due, the respondent violated Mass. R. Prof. C. 1.15(c). By placing or causing to be placed the

endorsements of the client and the health insurer on the settlement check without their knowledge or consent, the respondent violated Mass. R. Prof. C. 8.4(c). By failing to keep required records for the IOLTA account and to reconcile his IOLTA account at least every sixty days, the respondent violated Mass. R. Prof. C. 1.15(f).

This matter came before the Board of Bar Overseers on the parties' stipulation of facts and rule violations and an agreed recommendation for discipline by public reprimand. On July 13, 2009, the board voted to accept the parties' stipulation and impose a public reprimand.

¹ Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

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