

IN RE: DANUTA D. JURCZYK1

S.J.C. Order of Term Suspension entered by Justice Sosman on July 31, 2001. ¹

SUMMARY ²

This matter came before the Court on a recommendation for suspension based on multiple counts of misconduct between 1995 and 2000.

In 1996, a client engaged the respondent to probate her parents' estates and paid the respondent a flat fee of \$4,000. The respondent instituted the probate proceedings and did some preliminary work on the estates. Those services had a value of no more than \$800, and, under the circumstances, the respondent's fee was excessive. While the estate proceedings were pending, the respondent solicited and obtained an unsecured \$5,000 personal loan from the client. The respondent was then aware that the client was about to receive a partial estate distribution, and she exploited this confidential information for her own purposes. The respondent did not make adequate disclosure to the client of their differing interests or the risks inherent in the transaction, did not advise the client to seek other counsel for the loan or give such advice as would have been rendered by an independent attorney, and did not obtain the client's fully informed consent to the transaction or the use of the confidential information.

After receiving the loan proceeds, the respondent failed to take any further action of substance in connection with the estates. The respondent intentionally misrepresented to the client that the estates had been concluded. She did not repay the client's loan when it came due in 1997. During 1998, after repeated requests by the client and her new lawyer, the respondent made partial loan payments of \$2,000. Thereafter, despite further requests and demands, the respondent failed to repay the balance of the loan. The respondent discharged the loan in her own personal bankruptcy in 2000. Moreover, the respondent never concluded the estates or refunded any portion of her fees, although she owed the client a fee refund of at least \$3,200 plus interest.

The respondent's misrepresentations about the status of the estates, inducement and procurement of the client's loan, and exploitation of confidential or secret information in the probate matter, without the client's informed consent after full disclosure, violated Canon One, DR 1-102(A)(4) and (6), Canon Four, DR 4-101(B)(3); and Canon Five, DR 5-104(A). Through December 31, 1997, the respondent's neglect of the estates and failure to represent the client zealously, to the client's detriment, violated Canon Six, DR-6-101(A)(3), and Canon Seven, DR 7-101(A)(1)-(3). From and after January 1, 1998, the respondent's failure to pursue the client's lawful objectives, represent the client diligently, or maintain reasonable communications with the client violated Mass. R. Prof. C. 1.2(a), 1.3, and 1.4. The respondent's conduct in charging and collecting a clearly excessive fee for the probate work violated Canon Two, DR 2-106(A) and (B). Her failure to remit the unearned portion of her fee payments violated Mass. R. Prof. C. 1.15(b) and 1.16(d).

Three other matters involved bankruptcy cases arising between 1995 and 1998. In each case, the respondent was engaged to institute bankruptcy proceedings, received a flat fee payment from the client, failed thereafter to pursue the proceedings, misrepresented the status of the matter to the client, and did not refund the fee payment after she was discharged from representation. In one instance, the respondent also failed to return all the client's papers. The respondent's misrepresentations to the clients in those matters, neglect of the cases,

failure of zealous or diligent representation, and failure to communicate adequately with the clients violated Canon One, DR 1-102(A)(4) and (6), Canon Six, DR 6-101(A)(2) and (3), Canon Seven, DR 7-101(A)(1)-(3), and, from and after January 1, 1998, Mass. R. Prof. C. 1.2(a), 1.3 and 1.4. and Mass. R. Prof. C. 8.4(c) and (h). Her failure to remit the unearned fees or return the client's complete file upon her discharge violated Mass. R. Prof. C. 1.15(b) and 1.16(d) and (e).

In addition, in early 1998, the respondent was retained by a dentist on a contingent fee basis to represent him in collection matters. The respondent agreed to remit and account for the net proceeds collected on a monthly basis. In the spring of 1998, the respondent received documentation for some 50 overdue accounts, collected a total of about \$800 from about 12 patients, and made an initial payment of \$100 to the client. Thereafter, she ceased further work on the cases. The respondent retained the remaining proceeds due the client in her IOLTA account and failed to render accountings for the funds to the client. The respondent misrepresented to the client that she had filed small claims actions on the client's behalf. After repeated inquiries by the client over the next several months, the respondent remitted the remaining proceeds and provided an accounting in late 1998. The respondent's misrepresentations to the client, failure to pursue the collection matters, retention of proceeds due the client, and failure to remit or account for the funds on a timely basis violated Mass. R. Prof. C. 1.2(a), 1.3 and 1.4, Mass. R. Prof. C. 1.15(b) and (e), and Mass. R. Prof. C. 8.4(c) and (h).

In 1998 and 1999, the respondent held trust and non-trust funds together in her IOLTA account, made disbursements from the account to pay client or fiduciary obligations as well as her own business or personal expenses, and failed to make or maintain adequate records of her receipt, handling, maintenance and disbursement of all funds processed through the account. On occasion during that period, checks issued by the respondent from her IOLTA account for business or personal expenses were dishonored for insufficient funds. The respondent's commingling of funds in the IOLTA account and failure to keep required records of all funds in the account violated Mass. R. Prof. C. 1.15(a), (b), and (d).

During the investigation of her misconduct, the respondent repeatedly failed to reply to bar counsel's inquiries and failed to appear or produce records under subpoena. On February 19, 1999, the respondent was administratively suspended from practice pursuant to S.J.C. Rule 4:01, § 3(2), for failure to cooperate with bar counsel. The respondent failed to seek reinstatement. In March 1999, she became subject to provisions of S.J.C. Rule 4:01, § 17, requiring her, among other things, to close her IOLTA account, make files available to clients, refund unearned fees, and file an affidavit of compliance with specified documentation. The respondent failed to comply with those requirements.

In September 1999, bar counsel instituted contempt and enforcement proceedings against the respondent. In October 1999, she effected compliance with the notice and trust account requirements of Rule 4:01, § 17, and filed an affidavit of compliance. With the respondent's assent, on November 9, 1999, she was adjudicated in contempt for her violations of the administrative suspension order and ordered to reply to bar counsel's inquiries in the ongoing investigation. The respondent failed to comply with the contempt order until after a second adjudication of contempt on March 31, 2000. The respondent's failure timely to comply with the suspension and contempt orders and failure to cooperate in bar counsel's investigation violated Mass. R. Prof. C. 8.4(d), (g) and (h) and S.J.C. Rule 4:01, §§ 3(1) and 17(1)(e)-(g).

In aggravation, the respondent had received an admonition in April 1998 for neglecting a bankruptcy case during 1996 and 1997 in violation of Canon Six, DR 6-101(A)(3). Admonition No. 98-17, 14 Mass. Att'y Disc. R. 835 (1998). In further aggravation, the respondent engaged in a pattern of misconduct involving multiple disciplinary violations, engaged in some of the misconduct leading to her suspension during the investigation resulting in her prior admonition, and continued to engage in misconduct after the commencement of the current investigation.

The respondent experienced ongoing personal and family problems that had been taken into account in the imposition of her admonition. She also experienced ongoing financial problems. In mitigation, in about late 1998, the respondent terminated her law practice in recognition of the impact of her personal problems on her professional conduct.

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and an agreed recommendation for a three-year suspension. The Board voted to accept the stipulation and recommendation. On July 31, 2001, the Supreme Judicial Court entered an order of suspension for three years effective immediately.

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 before the Court.

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