

## IN RE: HARRISON A. FITCH

S.J.C. Order of Indefinite Suspension entered by Justice Greaney on October 25, 2007.<sup>1</sup>

SUMMARY<sup>2</sup>

The respondent, Harrison A. Fitch, is an attorney duly admitted to the Bar of the Commonwealth on November 19, 1968. During the relevant time period, the respondent rented an office in Boston at the law firm of Grayer & Dilday, but was never a partner or associate of Grayer & Dilday. The respondent engaged in misconduct concerning three separate matters.

In the first matter, the client, a citizen and resident of Trinidad, retained Attorney C. David Grayer to represent her in a claim against the estate of a Massachusetts resident, who died on October 21, 1999. The client sought to establish that the Massachusetts resident was the father of her two children in order to establish their entitlement to support from the estate. Grayer and the client entered into a fee agreement under which the client agreed to pay for legal services on an hourly basis.

During 2002 and 2003, an associate of Grayer & Dilday represented the client in proving paternity. On November 25, 2003, the Massachusetts resident was adjudicated to be the father of the client's two children. In December 2003, the associate left the employ of Grayer and Dilday and withdrew her appearance for the client. During January or February 2004, Grayer asked the respondent to take over the representation. The client assumed that the respondent was employed by the firm.

During February and March 2004, the respondent completed settlement negotiations with the estate. The parties executed a Final Settlement Agreement on March 31, 2004, and filed it in court that day. Pursuant to the settlement agreement and stipulation, the client, individually and on behalf of her children, was to receive from the estate \$60,000 in cash and title to certain real estate in Trinidad. The client was to receive an additional \$20,012 from a special administration in Massachusetts. Pursuant to the terms of the settlement agreement, the client was to grant to the executors, and cause to be recorded in Trinidad, rights of first refusal to the Trinidad real estate.

In late April 2004, the respondent wrote to the client, enclosing a bill covering the period of February 16 through April 5 of 2004. The total amount of the bill was \$26,495. The respondent informed the client that \$20,000 of his fee would come from the special administrator's fund, and that the client owed him an additional \$6495. In May 2004, the respondent received \$20,012 from the special administrator, and deposited the funds into his client funds account. The respondent and Grayer agreed to divide the fees in half after adjusting for costs expended. Pursuant to that agreement, on May 24, 2004, the respondent gave Grayer a check for \$9750. Neither the respondent nor Grayer informed the client that they had agreed to divide her legal fees.

In May 2004, the respondent and the estate's attorney negotiated a "stipulation" to the Final Settlement Agreement, which was executed and filed on May 25, 2004. Under the stipulation, the estate would immediately pay \$20,000 to the client, and would pay the remaining \$40,000 when the deeds incorporating the rights of first refusal were recorded by the parties'

respective attorneys in Trinidad.

On July 29, 2004, the estate's attorney sent the respondent a bank check for \$20,000, made out to the respondent. The respondent deposited the check into his client funds account. The respondent did not promptly inform the client that he had received the \$20,000, and made no payments to or on behalf of the client until December 2004. Between July 30, 2004 and November 24, 2004, the respondent, without the client's authority, drew on the client's funds by writing checks, withdrawing cash, and making on-line transfers to another checking account in his name. The respondent used the funds with the intent to deprive the client of the funds, and actual deprivation occurred. By November 24, 2004, the respondent's client funds account balance was \$176.84.

On December 21, 2004, the respondent deposited the proceeds of a personal loan to him of \$20,000 into his client funds account. By letter of December 24, 2004, the respondent sent the client a check for \$20,000 and informed her that the \$20,000 was the first portion of the \$60,000 cash settlement that she was to receive from the estate.

In January 2005, the client wrote a letter to Grayer expressing dissatisfaction with the respondent's representation and requesting an accounting of the funds that had been distributed by the estate. Grayer forwarded the letter to the respondent. On February 4, 2005, the respondent, with Grayer's knowledge, informed the client that he was resigning as her attorney in the estate matter and that he would deliver her files to Grayer on that day. However, during the spring of 2005, the respondent continued to hold himself out as the client's attorney in communications with the estate's attorney.

In March 2005, the respondent and the estate's attorney agreed that the estate would promptly distribute an additional \$10,000 to the client, but would not make the final \$30,000 payment until the rights of first refusal were recorded. The respondent did not inform the client that he had entered into the agreement. The client continued to believe that the respondent had returned all of her files to Grayer, and that Grayer was now representing her. In April 2005, she inquired of Grayer about the status of the payments due under the settlement agreement. He did not respond.

On or about June 27, 2005, the estate's attorney sent the respondent a check for \$10,000, made out to the respondent. The respondent did not advise the client that he had received a check for \$10,000 and did not at any time forward any funds to the client. The client had no knowledge of the receipt of the funds.

On July 5, 2005, the respondent deposited the \$10,000 check into his IOLTA account. He then proceeded to withdraw, through check and transfers to a personal account, the entire \$10,000. The respondent thus converted these funds to his own use with intent to deprive the client of the funds and with deprivation resulting.

In 2007, the respondent made restitution to the client in the amount of \$10,000. By intentionally converting \$30,000 of the client's funds to his own use, the respondent violated Mass. R. Prof. C. 8.4(c) and 8.4(h). By failing promptly to notify the client that he had received from the estate \$20,000 of her settlement funds in July 2004, and an additional \$10,000 in July 2005, and by failing to provide her with an accounting of those funds, and by failing to promptly deliver those funds to the client, the respondent violated Mass. R. Prof. C. 1.15(b), 1.15(c) and 1.15(d).

By continuing to hold himself out to opposing counsel as the client's attorney and accepting settlement funds on the client's behalf, after the client had discharged him and he had informed the client that he would no longer represent her, the respondent violated Mass R. Prof. C. 1.16(d) and 8.4(c) and 8.4(h).

In the second matter, a couple engaged Grayer to represent them in an ongoing land court

action. The case involved a pipe that had been installed on the clients' property, without permission, by a developer building a subdivision. The defendants in the case were the developer and the residents of the subdivision. The clients entered into a fee agreement with Grayer under which partner time would be billed at \$275 per hour, associate time at \$200 per hour and junior associate time at \$200 per hour. Fees were to be deducted from the clients' retainer as they were earned.

On May 30, 2003, the clients gave Grayer a certified check for \$10,000. Grayer and the respondent agreed that the respondent would do the legal work for the clients and that Grayer and the respondent would split equally the legal fees paid by the clients. On May 30, 2003, Grayer wrote a check to the respondent for \$6250, of which \$5000 was the respondent's share of the clients' \$10,000 retainer.

Shortly after their initial meeting, Grayer introduced the clients to the respondent. On June 11, 2003, the respondent entered an appearance for the clients in the land court action and proceeded to work on the case. On or about August 25, 2003, the respondent sent the clients a bill for \$10,482.50. The respondent billed his time at \$350 per hour. Neither Grayer nor the respondent provided any other invoices to the clients.

On December 4, 2003, the clients paid another \$10,000, by certified check made out to Grayer. On December 5, 2003, Grayer wrote a check to the respondent for \$5480, representing the respondent's fifty percent share of the clients' payment, plus some expenses paid by the respondent.

On June 15, 2004, the clients gave the respondent a certified check for \$10,000, made out jointly to the respondent and Grayer. Grayer endorsed the check. On June 18, 2004, the respondent deposited the check into his client funds account, and wrote a check to Grayer on his client funds account for \$5000, representing Grayer's fifty percent share of the payment.

The land court case was settled in October 2004 by an agreement under which the developer was to pay \$5000 to the clients, the homeowners' group was to pay \$15,000, and the clients were to grant the developers an easement for the pipe, and obtain a subordination agreement from any senior lien-holder. The parties reported the case settled, and the court issued an order of dismissal dated November 17, 2004.

On October 27, 2004, the attorney representing the developer sent a check to the respondent in the amount of \$5000. The respondent deposited those funds into his client funds account. Between October 29, 2004 and November 10, 2004, the respondent withdrew from his client funds account and intentionally used for his own purposes, \$4850.00 of the clients' settlement funds. The respondent later deposited \$5000 of personal funds into his client funds account to cover the funds he had taken and gave the clients a check written on his client funds account for \$5000.

The attorney representing the homeowners obtained the settlement funds in the amount of \$15,000 from his clients and deposited them into his own IOLTA account, pending final signing of all settlement documents. Under the agreement, the clients were not entitled to the settlement funds until they had conveyed an easement to the defendants and obtained a subordination of the easement from their mortgage lender. The clients attempted to contact the respondent repeatedly between December 2004 and April 2005 to ascertain the status of the subordination agreement. The respondent did not respond to the clients' telephone calls. Sometime in the spring of 2005, the respondent's office telephone was disconnected.

The respondent met with the clients and Grayer on May 17, 2005. During the meeting, the respondent and Grayer jointly promised the clients they would get the subordination agreement executed so that the clients could collect the settlement funds from escrow. The clients requested an accounting of the \$30,000 they had paid in legal fees. The respondent and Grayer promised to review the clients' bill, provide an accounting and refund any

unearned portion of the \$30,000.

The respondent did not at any time take the steps necessary for the clients to collect the settlement funds held in escrow. The respondent did not at any time provide the clients with an accounting of the \$30,000 they had paid as fees or make any refund of the unearned portion of the clients' retainer.

By failing to complete the legal work necessary for the clients to obtain their settlement funds, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3. By failing to respond to telephone calls and letters from the clients, and failing to keep them reasonably informed about the status of their settlement, the respondent violated Mass. R. Prof. C. 1.4(a). By dividing the fees paid by the clients with Grayer, without informing them of the arrangement and without obtaining their consent thereto, the respondent violated Mass. R. Prof. C. 1.5(e).

By failing to keep complete records of the receipt, maintenance, and disposition of the money paid by the clients, and by failing to comply with the clients' request for an accounting of the funds they had paid to him and to Grayer, the respondent violated Mass. R. Prof. C. 1.15(b). By effectively terminating his representation of the clients without notifying them, taking action necessary to protect their interests, returning their file to them, or refunding their unearned fees, the respondent violated Mass. R. Prof. C. 1.16(d) and 1.16(e). By withdrawing from his IOLTA account \$4850 in settlement funds that he was holding as an escrow agent for the clients and using those funds for purposes unrelated to the clients, the respondent violated Mass. R. Prof. C. 1.15(b), and converted those funds to his own use, in violation of Mass. R. Prof. C. 8.4(c) and 8.4(h).

In the third matter, the client retained Grayer in April of 2004 to handle a civil rights suit that the clients had previously filed pro se against a local police department. On May 17, 2004, the client's sister, on behalf of the client, and Grayer signed a fee agreement. Under that agreement, Grayer was to bill the client on an hourly basis, and deduct the fees earned from the retainer paid by the client. The client paid a retainer of \$10,000.

In May 2004, Grayer and the respondent agreed that the respondent would do the legal work on the client's case, and that Grayer and the respondent would split equally the fees paid by the client. In May 2004, Grayer paid the respondent at least \$3500 of the funds he received from the client. In June 2004, Grayer informed the client that the respondent would be handling his case. The client assumed that the respondent was affiliated with Grayer & Dilday. Neither Grayer nor the respondent informed the client that the respondent was not affiliated with Grayer & Dilday, or that Grayer and the respondent had agreed to split the attorney's fees he paid to them.

During the fall of 2004, the defendants in the lawsuit sent interrogatories to the respondent for response by the client. The respondent did not serve timely responses on the defendants.

In November 2004, the defendants filed an application for a default judgment against the client, based on his failure to serve interrogatory responses. The respondent received notice of the application in due course. The respondent took no action of substance to prevent the entry of a default judgment against the client. The court entered a default judgment, dismissing the case, on November 29, 2004. In January 2005, the client terminated the respondent and Grayer as his counsel.

In January 2005, Grayer billed the client for \$1,287.00. The client received no other bill from Grayer or from the respondent. On May 23, 2005, the client requested from Grayer and the respondent an accounting of the \$10,000 he had paid and a refund of the unearned amount of the retainer. Neither Grayer nor the respondent ever provided an accounting of the \$10,000 paid by the client, nor any refund of his fees.

By failing to take reasonable steps to prevent the entry of a final judgment of dismissal against

the client, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3. By dividing the fees paid to him by the client with Grayer, without informing the client of the arrangement and obtaining his consent thereto, the respondent violated Mass. R. Prof. C. 1.5(e). By failing to comply with the client's request for an accounting of the fees that the client had paid to the respondent through Grayer, the respondent violated Mass. R. Prof. C. 1.15(b). By failing, after the termination of the representation, to refund the unearned portion of the client's retainer, take steps reasonably practical to protect the client's interests, and seek permission to withdraw from the court, the respondent violated Mass. R. Prof. C. 1.16(c) and 1.16(d).

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation for an indefinite suspension from the practice of law. On September 10, 2007, the Board voted unanimously to accept the stipulation and to recommend the agreed-upon disposition to the Supreme Judicial Court. The court so ordered on October 25, 2007.

#### FOOTNOTES:

<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record before the Supreme Judicial Court.

Please direct all questions to [webmaster@massbbo.org](mailto:webmaster@massbbo.org).

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