

**MATTER OF JOHN DOE¹****BBO FILE NO. C4-12-0012****Order Entered by the Board on November 10, 2014 Dismissing Petition for Discipline**

Bar counsel filed a petition for discipline against the respondent, John Doe, Esquire, alleging that he charged and collected an excessive fee, in violation of Mass. R. Prof. C. 1.5(a), and that he intentionally misrepresented to an insurance company that he had an attorney's lien for his fee, in violation of Mass. R. Prof. C. 4.1(a) (knowingly false statement of material fact or law to third person), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and 8.4(h) (conduct that adversely reflects on fitness to practice law).²

The respondent was retained to represent a woman who had been injured in an accident while a passenger on a motorcycle which crashed into a tree. The operator, with whom the client had been drinking before the accident, was killed. The respondent was retained after another attorney had to withdraw. Before hiring the respondent and unbeknownst to him, the client had given a recorded statement to the operator's insurer and had been offered the operator's full \$20,000 policy limit. The respondent and client signed a contingent fee agreement providing for a one-third payment to the respondent. The agreement provided further that in addition to any statutory lien, the respondent was given "an assignment and general lien" for legal fees, a lien which would continue in the event his services were terminated. The respondent researched various causes of action including personal injury/motorcycle accident; road design issues; a products liability action; and the Connecticut Dram Shop Act. He concluded, in part based on the client's statement to the insurer, that speed, not intoxication, was the cause of the accident.

¹ A pseudonym. See S.J.C. Rule 4:01, §20(3)(d).

² Bar counsel also charged, but did not pursue, claims that in the course of representing a client injured in a motorcycle crash in Connecticut, the respondent failed to inform her that he was not admitted in Connecticut and was unfamiliar with the applicable law and failed to respond to her reasonable requests for information about the status of the case.

He also reviewed medical records and material from the Connecticut state police, ordered an asset search of the deceased, and reviewed probate court records in a search for further assets and insurance coverage. Some months into the representation, the respondent learned about the \$20,000 offer. He urged the client to wait to accept it, since he was still investigating. The client, however, was desperate for money and ultimately signed a document releasing both the operator and his insurer from any further claims.

Just over a week after the client signed the release, the respondent received a fax from an attorney claiming to represent the client and attaching a discharge letter signed by her. After receipt of this letter, the respondent sent the insurer the signed release with a note that the \$20,000 should be payable to him as attorney for the client. In another letter faxed several minutes later, he notified the insurer that he no longer represented the client but asked it to protect his lien for legal services and costs, citing M.G.L. c. 221, § 50. The insurer sent the new attorney a \$20,000 check payable to the client, the new attorney, the respondent and MassHealth. The client was promptly paid. The respondent and the new attorney reached an agreement providing that the respondent was to be paid \$6,666.67.³

The hearing committee rejected bar counsel's charge that, either by way of contract or quantum meruit, the one-third fee was excessive. It noted that the respondent did not know when he took the case that the client had already been offered the policy limit, and it cited the considerable work the respondent had done to try to get the client recovery from another source. It also noted that both the respondent's predecessor and successor attorneys had fee agreements providing for a one-third recovery. It concluded that while the respondent misrepresented to the insurer that he had a lien under G.L. c. 221, § 50, unlike the multiple and knowing misrepresentations in Matter of the Discipline of an Attorney, 451 Mass. 131, 24 Mass. Att'y Disc. R. 824 (2008), a case which postdated the respondent's conduct, the respondent's single misrepresentation was not made with the intent to deceive and, furthermore, was immaterial since he in fact had a contractual lien. The hearing committee discussed briefly the fact that the respondent sent the release to the insurer after learning he had been discharged, but concluded

³ The respondent had lost other clients to the new attorney after two of his former employees left his office to begin to work for her. The settlement described above was reached in conjunction with a second settlement about another disputed fee.

that since there was no material misstatement and no intent to deceive, and because no rule violations had been proven, what might have been an aggravating factor instead was merely “troubling.”

On November 10, 2014, the matter came before the Board of Bar Overseers without objection or appeal by either party. The board voted to adopt the report of the hearing committee, and it dismissed the matter.