IN RE: JOHN R. RODEN

NO. BD-2013-073

S.J.C. Order of Term Suspension/Stayed with Conditions entered by Justice Duffly on July 22, 2013.[1]

SUMMARY[2]

In late 2009, a client hired the respondent to represent him on account of injuries he had recently sustained in a three-car accident. After the accident, the client received medical care for which payment was made under the Medicare program. The federal government had a statutory right to reimbursement of accident-related Medicare payments from the proceeds of the client's claims. The recovery of these reimbursements was administered by the Centers for Medicare and Medicaid Services (CMS).

The respondent initiated and pursued personal injury claims for the client against the other drivers. In April 2011, the respondent settled the claims for $2,000 and received the settlement proceeds in the form of two checks, each for $1,000, from the other drivers' insurers. Each check was payable jointly to the client, the respondent and Medicare. The respondent failed to pay attention to the fact that Medicare was a named payee on the settlement checks. The respondent failed promptly to inform CMS that he had received the proceeds. The respondent failed to obtain authorization from CMS to endorse or negotiate the checks.

In late April and early May 2011, the respondent deposited the settlement checks to his IOLTA without any Medicare endorsement. The respondent disbursed $701.44 from those funds for his fee and expenses, leaving net proceeds of $1,298.56. Those funds were due the client, subject to the government's right to recover any required Medicare reimbursement.

Over the next year, the respondent failed to take any action of substance to ascertain and satisfy the required Medicare reimbursement. During that period, the client repeatedly called the respondent's office and left messages for the respondent to inquire about the status of his funds. The respondent failed to respond to those inquiries. As a result, the client contacted CMS directly and determined that he owed a reimbursement of $245.55. In April 2012, the respondent disbursed the client's net proceeds by remitting $245.55 to CMS and $1,053.01 to the client.

The respondent's negotiation of the settlement checks without ascertaining the payees and understanding that CMS had to endorse the check violated Mass. R. Prof. C. 1.1 and 1.3. His failure promptly to notify CMS of his receipt of the settlement funds violated Mass. R. Prof. C. 1.15(c).

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[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 filed with the Supreme Judicial Court.

In addition, from about July 2004 to the spring of 2013, the respondent failed to make and maintain all records required for his IOLTA account necessary to a proper reconciliation, including the following:

- a chronological check register with the date and amount of each deposit; the date, amount and payee of each disbursement; the identity of the client matter to which each deposit and disbursement pertained; and the balance after each deposit and disbursement;
- a chronological ledger for each client matter or third person for whom trust funds were held showing each related receipt and disbursement; the identity of the client matter for which each sum was deposited or disbursed; and the balance held in each client matter;
- a chronological ledger for non-trust funds deposited to the account to accommodate reasonably expected bank charges showing each deposit and expenditure and the balance remaining; and
- reconciliation reports prepared at least every sixty days and showing the required reconciliation of check register, individual ledgers, and bank statements.

During that period the respondent failed to reconcile his IOLTA account by comparing and reconciling the account's register balance, the adjusted bank statement balance, and the total of all client matter balances. The respondent's failure to reconcile his IOLTA account and maintain required records for that account violated Mass. R. Prof. C. 1.15(f)(1)(B)-(E).

From time to time during 2010 and 2011, the respondent issued overpayments from his IOLTA account of funds due him or his clients. In making these overpayments, the respondent on occasion inadvertently drew on funds held for other clients and negligently misused those funds. The respondent thereby created negative IOLTA balances with respect to individual clients. The respondent's negligent misuse of trust funds, without resulting deprivation, violated Mass. R. Prof. C. 1.3, 1.15(b) and (f)(1)(C), and 8.4(h). The respondent also failed promptly to withdraw all his earned fees and expense reimbursements from the IOLTA account in violation of Mass. R. Prof. C. 1.15(b)(2).

Starting in about August 2012, bar counsel communicated with the respondent on several occasions about bringing his IOLTA records into compliance with Rule 1.15. The respondent stopped using his existing IOLTA account in the fall of 2012, opened a new IOLTA account, and maintained proper records for that account. His trust account records are currently in compliance with Rule 1.15.

The matter came before the Board of Bar Overseers on the parties' stipulation of facts and rule violations and an agreed recommendation for discipline by a suspension of six months, suspended for two years on condition that the respondent maintain malpractice insurance and have his trust account records reviewed by a certified public accountant. The board voted to accept the stipulation and recommendation. On July 22, 2013, the Supreme Judicial Court for Suffolk County entered an order for a six-month suspension suspended on the stated conditions.