



IN RE: RICHARD N. FOLEY
NO. BD-2013-102

S.J.C. Order of Term Suspension/Stayed entered by Justice Lenk on December 23, 2013.¹

SUMMARY²

On September 20, 2013, the New Hampshire Supreme Court Professional Conduct Committee (PCC) suspended the respondent, Richard N. Foley, for six months, but stayed imposition of the suspension for one year, on a number of conditions. The conditions included that the respondent use written fee agreements with all clients, adequately setting forth the scope of representation, hourly rate and billing procedures; keep contemporaneous time records on all matters; bill clients monthly, with an accounting of time spent on the matter and the balance of any retainer; take six hours of CLE in client trust accounting; retain a CPA to assist in identifying and implementing satisfactory accounting practices and procedures; and file with the Attorney Discipline Office his monthly trust account reconciliations for twelve months.

The New Hampshire discipline resulted from the respondent's representation of a client in a divorce from July of 2009 through December of 2010. The agreed fee was an hourly rate of \$200. The respondent kept no contemporaneous time records and provided the client with no periodic bills or accountings. During the representation the respondent received a total of \$25,469 as retainer payments. According to a summary of activity prepared by the respondent after the conclusion of the representation, the respondent took approximately \$6,000 of the retainer payments as fees prior to being earned. At the conclusion of the representation, \$2,750 of the retainer payments had not been earned but only \$1,514.15 remained in the respondent's IOLTA account. Recognizing that the client was due a refund and regretting his failure to keep contemporaneous time records, the respondent gave the client a refund of \$5,000.

In addition to the above misconduct, from September of 2008 through July of 2012, the respondent filed Annual Trust Accounting Compliance Certificates (as required by New Hampshire Supreme Court Rule 50-A) in which he falsely certified that he maintained and recorded his client trust accounts in accordance with New Hampshire's trust accounting rules. The parties stipulated that the respondent knew or should have known that he was breaching his duties under Rule 50.

In determining the appropriate sanction, the PCC considered in aggravation the respondent's substantial experience in the practice of law and two prior Warnings that he had received in 2002 and 2011. In mitigation, the PCC took into consideration the respondent's good faith efforts at restitution, his full disclosures and cooperation in the disciplinary proceedings, his expressions of remorse and acceptance of responsibility and the absence of a dishonest or selfish motive.

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.

On October 22, 2013, bar counsel filed a petition for reciprocal discipline with the Supreme Judicial Court for Suffolk County. The parties filed a waiver of hearing and assent to the entry of an order of reciprocal discipline on November 20, 2013. On December 23, 2013, the Court (Lenk, J.) issued an order suspending the respondent for six months, with execution of the suspension stayed for one year, conditioned on the respondent's compliance with the conditions imposed by the PCC. The order also provided that within one year from the date of entry, the respondent shall file an affidavit with bar counsel and the Court with proof of his successful completion of the above conditions, and may request an order that he is no longer subject to the six-month suspension.