IN RE: LOUIS P. FONT

NO. BD-2014-008

S.J.C. Order of Term Suspension/Stayed entered by Justice Gants on March 7, 2014.[1]

SUMMARY[2]

The respondent, Louis P. Font, received a three-month suspension, stayed for a year on conditions, based on the following findings of a hearing committee:

The respondent was retained in November 2007 by the mother of a deceased soldier to investigate the circumstances surrounding her son's service-related death in July 2004, and to effectuate a change in the cause of death listed on the soldier's military death certificate, from suicide to some other cause. At some point, the respondent concluded that there was little likelihood of overturning the findings of the military, but he continued to pursue a "leave no stone unturned" approach, looking into possible avenues of investigation and relief without discussing with his client the cost-efficiency and likely outcome of doing so. Among the barriers the respondent faced were the near impossibility, under Feres v. United States, 340 U.S. 135 (1950), of suing the federal government for personal injury suffered by a soldier on active duty, and a likely statute of limitations bar to any third-party actions.

The mother paid the respondent $100,000 in two retainer payments he requested against a disclosed (and unchallenged) hourly rate. In fact, the respondent's total hours (also unchallenged), multiplied by that rate, would have produced a fee well in excess of the $100,000 the client paid, but the respondent did not charge his client any more than the $100,000 retainer even while continuing to work on the matter, recognizing that he had failed to achieve his client's ultimate objectives. During the representation, the client did not complain about the respondent's fees or express surprise that the retainer had been exhausted; the respondent had explained that his work would be time-consuming and costly.

The committee concluded that the respondent had violated Mass. R. Prof. R. 1.5(a) (clearly excessive fees) and 1.4(b) (explanations to client for informed decisions) as a result of spending an excessive amount of time on the hourly-fee matter without the informed consent of

[1] The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

[2] Complied by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

the client after consultation concerning the various potential avenues of relief and their likelihood of success. The committee also concluded that, where the respondent looked into the possibility of a products liability suit because of the possible link between the soldier's death and an anti-malarial drug his commander had ordered him to take, the respondent had violated rules 1.4(a) and (b) because he failed to advise the client of his limited skills at such actions and the likely need to engage competent counsel.

The respondent also violated Mass. R. Prof. C. 1.15(d)(1) (accounting for trust funds on request and final distribution of trust funds), 1.15(d)(2) (notice and accountings required on withdrawal from trust accounts), and 1.16(d) (duties on withdrawal, including return of unearned fees) by failing to notify his clients of his fee withdrawals from trust, his failure to render accountings, and his failure to return some of the excessive fee at the termination of the representation.

In aggravation, the committee found that the respondent was dealing with a vulnerable client who was distressed by her son's death and the military's classification of that death as a suicide. The committee acknowledged the respondent's evidence of his thirty-five years of discipline-free practice, his full cooperation with bar counsel's investigation, and his good reputation, but it characterized these matters as typical mitigation not warranting a significant effect on the recommended sanction.

The committee did not find the amount of overpayment to the respondent, or recommend an order of restitution, noting that the respondent had settled a civil action brought by the client and her ex-husband. The matter came before the board on the hearing committee's report and without appeal by either the respondent or bar counsel. The board adopted the committee's findings of fact, conclusions of law, and recommendation for a suspension of three months, suspended for a year, on the conditions (1) that he request an audit of his office practices by the Law Office Management Assistance Program and comply with any recommendations for changes to the management of his practice, including billing, accounting, and keeping his clients informed; (2) that the respondent allow bar counsel to monitor his compliance with LOMAP's recommendations; and (3) that the respondent take and pass the Multistate Professional Responsibility Examination. The Court so ordered on March 7, 2014, but added a condition that the respondent notify bar counsel of any recommendations from LOMAP.