

**IN RE: THOMAS F. HENNEBERRY****NO. BD-2015-046****S.J.C. Order of Term Suspension/Stayed entered by Justice Botsford on June 4, 2015.¹****SUMMARY²**

In or before August 2011, the respondent was retained by a client to represent him as successor counsel in a personal injury claim arising out of a one-car motor vehicle accident on December 6, 2008, in which the client was a passenger and sustained a fracture of a lumbar vertebra. The client's prior attorney had obtained payment of some of the client's medical bills through the driver's PIP coverage but then withdrew as counsel in June 2011. The matter was not in suit at the time of the withdrawal.

The respondent and the client orally agreed that the respondent would receive a contingent fee of one-third of the recovery net of additional medical bills. The respondent did not cause the client to execute a written contingent fee agreement or otherwise make any effort to reduce the fee agreement to writing as required.

On November 28, 2011, the respondent filed suit in Suffolk Superior Court against both the driver of the vehicle and the owner of the vehicle. Although the respondent had provided both the defendant owner and her insurer with copies of the civil complaint in or before January 2012, he thereafter failed to effect service upon the two defendants within ninety days of filing the complaint as required. The case was dismissed by the court, of its own motion, on March 20, 2012.

Between April 2012 and August 2013, the respondent took no action of substance to remove the default or otherwise to proceed with the case and did not communicate the status of the matter, including the fact that the case had been dismissed, to the client. During this same time frame, in the expectation that he would ultimately cause the case to be reinstated, the respondent made periodic payments to the client totaling \$2,800, which he characterized as advances against settlement or judgment.

After the client filed a complaint with bar counsel in August 2013, the respondent filed a motion in superior court to vacate the dismissal. On September 12, 2013, the motion was denied, without hearing, as untimely.

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.

The respondent's neglect of the client's claim, his failure to pursue the client's case competently and diligently, and his failure to communicate adequately with the client violated Mass. R. Prof. C. 1.1, 1.3, and 1.4. His failure to reduce to writing his oral contingent fee agreement with the client violated Mass. R. Prof. C. 1.5(c). His conduct in advancing funds to the client in connection with contemplated litigation violated Mass. R. Prof. C. 1.8(e).

In mitigation, the respondent subsequently settled the matter with the client to the client's satisfaction. In aggravation, the respondent has been disciplined for similar misconduct on two prior occasions. In 1996, he received an admonition for neglect of a 1993 personal injury claim. *Admonition No. 96-47*, 12 Mass. Att'y Disc. R. 678 (1996). In 2005, the respondent received a public reprimand for neglect (failure to serve the defendant and failure to attempt to reinstate the case after dismissal) of a personal injury claim in 1998, as well as failure in an unrelated matter in 2003 to follow the post-conviction procedures of the Committee for Public Counsel Services for withdrawal of trial counsel and appointment of appellate counsel. In the 2005 matter, after the dismissal of the personal injury case came to light, the respondent paid compensation to the client for the loss of her claim. *Matter of Henneberry*, 21 Mass. Att'y Disc. R. 329 (2005).

This matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation for a three-month suspension, stayed for one year on condition that the respondent attend a CLE program designated by bar counsel and obtain an evaluation from the Law Office Management Assistance Program (LOMAP) and follow its recommendations. On May 11, 2015, the board voted to accept the stipulation and to recommend the agreed-upon disposition to the Supreme Judicial Court. The Court so ordered on June 4, 2015.