

STATEWIDE GRIEVANCE COMMITTEE

Margaret Maffeo  
Complainant

:

vs.

:

Grievance Complaint #00-0095

Alphonse Balzano  
Respondent

:

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 95 Washington Street, Hartford, Connecticut on September 13, 2001. The hearing addressed the record of the complaint filed on August 2, 2000, and the probable cause determination rendered by a reviewing committee of the Statewide Grievance Committee on May 3, 2001, finding that there existed probable cause that the Respondent violated Rule 1.15(d) of the Rules of Professional Conduct. The reviewing committee's probable cause determination was contrary to the determination of no probable cause filed by the New Haven Judicial District, Geographical Area 6 Grievance Panel on January 17, 2001.

Notice of the hearing was mailed to the Complainant and to the Respondent on July 26, 2001. The Complainant did not appear at the hearing. The Complainant, however, advised the committee by letter dated September 1, 2001 that she would be unable to attend the hearing due to an injury to her leg. The Respondent appeared at the hearing and gave testimony. The Respondent was advised that the layperson member of this reviewing committee was not present due to a vacancy in that position. The Respondent waived the participation of a layperson in this matter and agreed to have the undersigned hear the matter and render this decision.

This reviewing committee finds the following facts by clear and convincing evidence:

The Complainant retained the Respondent on June 26, 1998 to represent her in a personal injury matter. The liability carrier offered to settle the matter for sixty-thousand dollars (\$60,000) which the Complainant accepted. The Respondent received the settlement check in July of 1999 and deposited it into his IOLTA trust account. The Respondent, thereafter, contacted Medicare to determine if Medicare was going to claim a lien on the proceeds.

On July 19, 1999, the Respondent disbursed twenty-seven thousand dollars (\$27,000) to the Complainant, eighteen thousand dollars (\$18,000) to his firm for attorney's fees and placed the remaining fifteen thousand dollars (\$15,000) in the firm's IOLTA trust account pending resolution of the Medicare lien. Thereafter, the Respondent had several telephone conversations with representatives for Medicare to resolve the lien issue. On January 14, 2000, the Respondent received a letter from Medicare advising him that Medicare was reviewing its records to determine the amount of its lien. By letter dated February 25, 2000, Medicare advised the Respondent that, to date, Medicare's conditional payments totaled five hundred forty-dollars and fifty-three cents

(\$540.53). The Respondent remained hesitant to release the balance of the funds held in escrow because Medicare had indicated in its February 25, 2000 letter that it was continuing to check its records. The Respondent attempted to obtain additional updates from Medicare, but was unable to do so. Thereafter, on June 9, 2000, the Respondent released fourteen thousand four hundred ninety-six dollars (\$14,496) of the funds being held in escrow to the Complainant, and retained five hundred four dollars (\$504) to cover Medicare's lien.

The Committee also considered the following evidence:

The Complainant advised that she contested Medicare's lien since all medical bills were paid by her HMO Insurance carrier and not Medicare. The Complainant stated that she wants the Respondent to pay her interest on the fifteen thousand dollars (\$15,000) he held in escrow and wants to be reimbursed the five-hundred-four dollars (\$504) the Respondent paid to Medicare.

The Respondent advised this committee that the five hundred four dollars (\$504) he retained in escrow to cover Medicare's lien remains in his trust account because the Complainant has refused to authorize the Respondent to disburse the funds to Medicare. The Respondent acknowledged that he should have held five hundred forty dollars and three cents (\$540.03) to cover Medicare's lien. The Respondent advised that he mistakenly reversed the numbers and only retained five hundred four dollars (\$504) to cover the lien. The Respondent stated that the mistake would constitute a monetary loss to himself and not to the Complainant.

The Respondent acknowledged to this reviewing committee that his retention of fifteen thousand dollars (\$15,000) in his clients' funds account in this instance violated Rule 1.15(d) of the Rules of Professional Conduct. The Respondent advised this committee that he offered to pay the Complainant interest on the funds, but the Complainant refused. The Respondent maintained that he would contact the Complainant and again offer to pay her interest on the funds.

This reviewing committee concludes by clear and convincing evidence that the Respondent violated Rule 1.15(d) of the Rules of Professional Conduct. The record reflects that the Respondent held fifteen thousand dollars (\$15,000) in his IOLTA trust account for a period of eleven months from July of 1999 until June of 2000 when he released all but five hundred four dollars (\$504) to the Complainant. Rule 1.15(d) states that IOLTA accounts can include only clients' funds which are less than ten thousand dollars (\$10,000) in amount or are expected to be held for a period of less than sixty-days. In the instant case, the Respondent placed over ten thousand dollars (\$10,000) of the Complainant's funds in an IOLTA account and held those funds for over sixty days. This reviewing committee notes the Respondent's acknowledgement of his violation of the rule and his attempts to reimburse the Complainant the interest lost on the funds during the eleven month period the funds were held in escrow. The committee advises the Respondent, however, that the five hundred four dollars (\$504) being held in his IOLTA account pending resolution of the Medicare lien is also subject to the requirements of Rule 1.15(d).

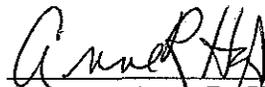
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Decision

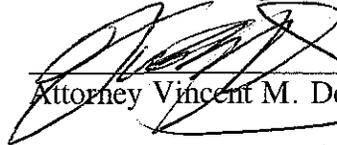
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Therefore, if these funds are expected to be held for a period in excess of sixty days, they should not be held in an IOLTA account.

This committee concludes that the Respondent's violation of Rule 1.15(d) does not warrant the imposition of a reprimand. However, since we conclude that the Respondent engaged in unethical conduct, we order the Respondent to attend three credit hours of a continuing legal education course in legal ethics, at his own expense, within six months of the issuance of this decision. The Respondent is further ordered to provide the Statewide Grievance Committee with written confirmation of his compliance with his condition within thirty days of completing the continuing legal education course.



Attorney Anne R. Hoyt



Attorney Vincent M. DeAngelo

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