

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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In the Matter of H. Paul Carroll LD-2012-0002

PUBLIC CENSURE

On November 20, 2012, the Professional Conduct Committee deliberated the above captioned matter. Members present included Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Susan R. Chollet, David N. Cole, Thomas P. Connair, Alan J. Cronheim, Richard H. Darling, James R. Martin, Richard D. Sager and Lisa Wellman-Ally.

On January 13, 2012, the Massachusetts Board of Bar Overseers sent the Attorney Discipline Office (“ADO”) a Certified Copy of an Order imposing a Public Reprimand upon H. Paul Carroll. On January 18, 2012, pursuant to Supreme Court Rule 37(12), the ADO forwarded the Certified Copy to the New Hampshire Supreme Court. On August 20, 2012, the Supreme Court issued an Order remanding the matter to the Committee “for issuance of a public censure.”

I. MASSACHUSETTS BOARD OF BAR OVERSEERS PUBLIC REPRIMAND STATES THE FOLLOWING FACTS

1. H. Paul Carroll was admitted to the Bar of the Commonwealth on December 13, 1999. He received a public reprimand, conditioned on his obtaining malpractice insurance, for the following misconduct.
2. In July of 2004, the respondent agreed to represent a client in a medical malpractice action on a contingent fee basis. At no time did the respondent prepare, sign and have the client sign a written contingent fee agreement.
3. On July 16, 2004, the respondent filed a civil complaint in Suffolk Superior Court on the client’s behalf against Beth Israel Deaconess Medical Center, Inc., and two physicians. The complaint alleged that the client had sought medical treatment from the defendants from January of 1988 through December 3, 2001, and that

“the Defendants failed to diagnose Plaintiff’s Cystic Fibrosis and pulmonary infection which resulted in permanent damage to Plaintiff’s lungs such that the plaintiff has sustained permanent damage and is now susceptible to further infections and further injury and deterioration.” When the respondent filed the civil complaint, he was aware that the client had finally been diagnosed as suffering from Cystic Fibrosis by others at Beth Israel Hospital by October of 2001.

4. The respondent did not serve the complaint on the defendants within 90 days of filing, or by October 14, 2004, as required by Mass. R. Civ. P. Rule 4(j). On October 19, 2004, the respondent filed an Emergency Ex Parte Motion to Enlarge Time For Service until November 19, 2004, which was granted that day. In support of this motion, the respondent asserted that he had filed a “skeleton” complaint “[i]n order to preserve plaintiff’s claims” and had retained one expert and identified another to “explain the complicated medical issues” so he could “draft a more complete Amended Complaint.”
5. The respondent did not serve the complaint on the defendants by November 19, 2004. Rather, on that date he filed a second emergency motion to enlarge, this time until December 19, 2004. In support of the second motion, the respondent repeated his assertion that he was obtaining expert assistance in drafting a more complete amended complaint and also asserted that he had been violently assaulted on November 3, 2004, and unable to work for two weeks. The second motion was allowed on December 7, 2004.
6. The respondent did not serve the complaint on the defendants by December 19, 2004. Rather, on December 22, 2004, the respondent filed a third emergency motion to enlarge, this time until January 14, 2005. In support of the third motion, the respondent asserted that he had recently contacted Beth Israel’s legal liaison, who represented that he would likely be able to accept service for all the defendants, but that service was unable to be perfected by December 19, 2004, as the offices of Risk Management were closed. The respondent also repeated his assertion that he was obtaining expert assistance in drafting a more complete amended complaint. The third motion was allowed on December 22, 2004.
7. The respondent did not serve the complaint on the defendants by January 14, 2005. Rather on this date, he filed a fourth emergency motion to enlarge, this time until January 31, 2005. In support of the fourth motion, the respondent asserted that he had on that day contacted the Civil Process Division of the Suffolk County Sheriff’s Office and was informed that service could not be guaranteed by the current deadline. The fourth motion was allowed on January 14, 2005.

8. The respondent did not serve the complaint on the defendants by January 31, 2005. Rather, on that date, he filed a fifth emergency motion to enlarge, this time until February 15, 2005. In support of the fifth motion, the respondent asserted that service had not been completed because of recent inclement weather. The fifth motion was allowed on January 31, 2005.
9. The respondent did not serve the complaint on the defendants by February 15, 2005. Rather, on February 22, 2005, he filed a sixth emergency motion to enlarge, this time asserting that he “has not yet been able to complete service within the time frame allowed by the Court.” This motion was allowed on February 28, 2005, extending the time for service until March 5, 2005.
10. On March 4, 2005, a Suffolk County deputy sheriff attempted, at the respondent’s request, to serve process on the defendants, but agents of the defendants refused service. The respondent made no other attempts to serve the complaint on the defendants by March 5, 2005, and sought no further enlargements of time for service of process. On May 23, 2005, the court dismissed the case for lack of prosecution. On May 31, 2005, a judgment of dismissal was entered in favor of all defendants.
11. The respondent took no action to seek relief from the dismissal of the case until June of 2006. From at least May of 2005 through at least July of 2006, the respondent failed to keep the client reasonably informed about the status of the case and failed to explain the options to the extent reasonably necessary to permit the client to make informed decisions.
12. On June 28, 2006, the respondent filed ex parte a motion to vacate the dismissal, together with an affidavit in support. The respondent asserted in his affidavit that he had previously contacted Beth Israel’s legal liaison, who had agreed to accept service on behalf of the defendants; that a Suffolk County deputy sheriff made several attempts on March 4, 2005 to effectuate service; and that service was refused by the hospital and the deputy sheriff was escorted off the premises by hospital security. This motion was granted and the respondent was given 20 days to make service on the defendants.
13. On August 18, 2006, the defendants filed a motion for reconsideration of the court’s allowance of the motion to vacate. The respondent filed an opposition and the court denied the motion. The defendants appealed to the Appeals Court from the court’s denial of their motion for reconsideration. On January 7, 2009, the Appeals Court issued a decision reversing the order vacating the judgment of dismissal and ordering the dismissal of the complaint. The court ruled that the respondent had not filed his motion to vacate in a timely manner under Mass. R. Civ. P. Rule 60(b). It also ruled that the respondent had not provided good cause for his failure to make timely service of process under Mass. R. Civ. P. Rule 4(j).

On February 18, 2009, judgment entered in the superior court dismissing the complaint.

14. On January 27, 2009, the respondent filed a second civil complaint in Suffolk Superior Court on the client's behalf against the same defendants. The complaint contained similar claims to those made in the first action in 2004. The respondent obtained service of process on the three defendants in the normal course. On June 1, 2009, the defendants filed a joint motion to dismiss based upon the applicable statutes of repose and of limitations, and an opposition to the motion by the respondent. The court allowed the motion to dismiss for the reasons advanced by the defendants. Judgment was entered dismissing the client's claims on September 15, 2009.

II. MASSACHUSETTS BOARD OF BAR OVERSEERS PUBLIC REPRIMAND STATES THE FOLLOWING RULES VIOLATIONS


1. In entering into a contingent fee agreement that was not in writing and signed by the respondent and the client, the respondent violated Mass. R. Prof. C. 1.5(c).
2. In failing to make service of process on the defendants in a timely manner in the 2004 civil action, and in failing to seek to vacate the dismissal of the 2004 civil action in a timely manner, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 8.4(d) and (h).
3. In failing to maintain reasonable communications with the client about the status of his case and to explain the matter to the extent necessary to permit the client to make informed decisions, the respondent violated Mass. R. Prof. C. 1.4(a) and (b).
4. In aggravation, as a result of the respondent's lack of diligence, the client's claims became time-barred by the statute of limitations. The respondent had no malpractice insurance.
5. This matter came before the Board of Bar Overseers on a stipulation of facts and rules violations and a joint recommendation that a sanction of public reprimand be imposed conditioned on the respondent obtaining malpractice insurance. On December 12, 2011, the board voted to accept the stipulation of the parties and to administer a public reprimand to the respondent.

III. SANCTION

For all the reasons stated above, the Committee hereby imposes a Public Censure.

The Respondent shall pay all costs of the investigation and prosecution of this matter.

December 17, 2012


Margaret H. Nelson
Chair

Distribution:

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File