



2004

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Recommended Citation

Jaron, Patricia K. (2004) "Recent Developments: Attorney Grievance Comm'n of Md. v. Braskey: Disbarment Is Appropriate When an Attorney Collects an Unreasonable Fee Combined with a Course of Unintentional Misrepresentation," *University of Baltimore Law Forum*: Vol. 34 : No. 2 , Article 3.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol34/iss2/3>

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Attorney Grievance Comm'n of Md. v. Braskey:

Disbarment is Appropriate When an Attorney Collects an Unreasonable Fee Combined with a Course of Unintentional Misrepresentation

By: Patricia K. Jaron

The Court of Appeals of Maryland held disbarment is appropriate when an attorney collects an unreasonable fee combined with a course of unintentional misrepresentation. *Atty. Grievance Comm'n of Md. v. Braskey*, 378 Md. 425, 836 A.2d 605 (2003).

In November 1989, James F. Braskey (Braskey) was retained by John Dormio (Dormio) to represent him in a personal injury claim. Dormio incurred \$30,000 in medical bills covered through Medicare and administered by Blue Cross/Blue Shield (BC/BS). BC/BS gave timely notification to Braskey of its subrogation lien on any proceeds recovered. Representation was on a contingency fee basis, with Dormio responsible for all incurred costs. Braskey negotiated an automobile policy settlement in the amount of \$25,000 and deposited the check in his own attorney trust account.

Braskey withdrew \$6,250, his one-fourth contingency fee, as well as \$750 for costs incurred. The \$18,000 balance remained in the trust account. Braskey, not knowledgeable in negotiating with BC/BS, made only cursory attempts to contact BC/BS to resolve the lien on Dormio's proceeds. In February 1996, Braskey and Dormio agreed to divide the remaining \$18,000.

In early 1996, after learning

Dormio had suffered a stroke, Braskey withdrew an additional \$9,000 in legal fees. After Dormio's death, Braskey contacted Dormio's estate representatives and offered to split the \$18,000. The estate representatives refused, demanding the money be placed in an interest-bearing account. On July 10, 1997, Braskey falsely represented to Dormio's estate representatives that the entire amount was in his trust account, but failed to return the \$9,000 from his personal assets until July 14, 1997. In July 1999, Braskey again withdrew \$9,000 from the account and made a series of misleading statements regarding the location of the \$18,000. The estate representatives filed a formal complaint with the Attorney Grievance Commission (AGC) in July 1999.

Braskey cooperated fully with the AGC and, after almost three years, the AGC filed charges through Bar Counsel. In March 2002, Braskey filed a motion to dismiss on due process grounds. Attorney Grievance Commission Administrative and Procedural Guidelines § 5-104 specifies the Inquiry Panel must complete disciplinary hearings within forty-five days from receipt of the file. The Inquiry Panel and Review Board denied Braskey's motion to reconsider his dismissal motion and the Review Board recommended

disciplinary charges be filed. Braskey then filed a motion to dismiss with the Circuit Court for Washington County, which lacked authority to rule on the motion to dismiss and denied his motion.

The Court of Appeals of Maryland conducted an independent review of the record and accepted the hearing judge's findings of fact. *Id.* at 444-45, 836 A.2d at 617. The court found no violation of due process, noting that even though the proceedings were delayed, Braskey was afforded notice and opportunity to defend in a full and fair hearing. *Id.* at 442, 836 A.2d at 616.

In deciding to disbar Braskey, the Court of Appeals of Maryland looked at the combination of Braskey's statements and conduct. *Id.* The court found Braskey's statements in letters to the estate representatives concerning the location of the \$18,000 false and misleading, whether or not he intended to deceive them. *Id.* at 449, 836 A.2d at 620. The court further stated the test to determine if there is a dispute is whether there was in fact a fee disagreement between the parties concerning the respondent's entitlement to the amount withdrawn at the time of the withdrawal. *Id.* at 450, 836 A.2d at 620. Finding the rule unambiguous, the court held an attorney may not withdraw a portion

of deposited funds when the attorney's right to receive that portion is disputed by the client. *Id.*

The court next looked at Braskey's conduct concerning the excessive fees charged. The court agreed with the hearing judge's conclusion that Braskey attempted to collect an unreasonable fee and held the collection of an unreasonable fee is "conduct prejudicial to the administration of justice." *Id.* at 452, 836 A.2d at 622.

In making its decision, the court looked at four factors set out in the ABA Standards for Imposing Lawyer Sanctions: 1) the nature of the ethical duty or duties violated; 2) the attorney's mental state; 3) the extent of the actual or potential injury caused by the attorney's misconduct; and 4) the existence of aggravating or mitigating factors. *Id.* at 454, 836 A.2d at 622. Regarding the duties violated by Braskey, the court found all four factors were met. *Id.* The court agreed with the hearing judge's conclusion that, even though Braskey was inexperienced in negotiating a subrogation agreement with BC/BS, he failed to maintain funds in the proper account. *Id.* As to the actual injury caused by Braskey's misconduct, the court again agreed with the hearing judge's conclusion that the money Braskey withdrew represented an unreasonable fee. *Id.*

Finally, the court took note of several mitigating factors: Braskey had practiced law since 1977 without prior disciplinary problems, he was truly remorseful, acted promptly, and cooperated fully with the AGC, and most importantly, the court agreed

with the hearing judge's conclusion that Braskey was "not a thief." *Id.* at 456, 836 A.2d at 624. The court concluded it was irrelevant whether Braskey's misrepresentations and conduct were intentional or fraudulent in determining if the Rules of Professional Conduct were violated. *Id.* at 452, 836 A.2d at 622. Disbarment is the appropriate sanction when attorneys engage in misrepresentation combined with collecting an unreasonable fee. *Id.* at 461, 836 A.2d at 627.

With this decision, the Court of Appeals of Maryland sends a message loud and clear to practicing attorneys in Maryland. The court is committed to protecting the public from conduct that betrays the trust placed in attorneys. Innocent intentions and lack of knowledge will not protect an attorney from severe sanctions when his or her conduct brings the legal profession into disrepute.

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