

IN RE: FRANK T. BARBER, III

S.J.C. Order of Term Suspension entered by Justice Cowin on September 20, 2000,
with an effective date of October 20, 2000.¹

SUMMARY²

In early 1992, the respondent obtained an arbitration award for a client on a fire damage claim and received a check for the proceeds of \$21,000. He deposited the proceeds check to a non-fiduciary operating account used to hold business and personal funds, thereby commingling the proceeds with his own funds in the account. The respondent gave the client a check from the operating account for \$12,817 as her net share of the proceeds, but the client held the respondent's check without cashing it for the next five months. During that period, the respondent, who did not keep adequate account records, deposited other funds to the account and made disbursements without establishing the ownership of the funds he was withdrawing. As a result, the respondent negligently misused the client's funds by applying them to pay his own obligations.

When the client finally cashed her proceeds check, it was dishonored for insufficient funds. She notified the respondent that the check had been returned. The respondent paid the client \$3,000 in late 1992 and another \$1,000 in the fall of 1994, at which time he promised to make monthly payments of \$1,000 until the balance due her was restored in full. Despite the client's periodic inquiries, however, the respondent made no further payments to the client until she filed a bar discipline grievance in the summer of 1997. At that point, the respondent, believing that \$8,000 was due, paid that amount to the client. After Bar Counsel notified the respondent that he still owed \$817 from the principal balance plus interest to date, the respondent remitted another \$2,600 to the client for the remaining proceeds with interest. Despite demands by Bar Counsel, the respondent never accounted adequately for his use and disposition of the proceeds.

By commingling and negligently misusing the client's share of the proceeds, with ensuing deprivation of the client, and by failing to keep appropriate records of or account for those funds, the respondent violated Canon One, DR 1-102(A)(6), Canon Seven, DR 7-101(A)(3), and Canon Nine, DR 9-102(A), (B)(3) and (4), and (C).

In addition, between early 1996 and late 1999, the respondent maintained a designated IOLTA account that he used as a combined repository for trust, business and personal funds. The respondent did not promptly withdraw funds due him as fees, and he deposited earned fees and personal funds in the account. He failed to make or maintain adequate records and failed to account adequately for his disposition of all the funds in the account. The respondent's commingling of funds in the IOLTA account and his failure to keep required records or account adequately for all IOLTA funds violated Canon Nine, DR 9-102(A) and (B)(3) and 9-102(C), and, after January 1, 1998, Mass. R. Prof. C. 1.15(a), (b), (d) and (e).

In aggravation, the respondent failed to repay most of the fire damage proceeds for about five years and did not effect full restitution for more than six years, he engaged in misconduct after the commencement of Bar Counsel's investigation, and his misconduct was the product of multiple disciplinary violations.

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and an agreed recommendation for a suspension of two and one-half years. The

Board voted to accept the stipulation and recommendation, and the Supreme Judicial Court entered an order of suspension for two and one-half years on September 20, 2000.

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 before the Court.

Please direct all questions to webmaster@massbbo.org.

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