

## IN RE: ALLAN GARFINKLE

S.J.C. Judgment of Disbarment entered by Justice Sosman on July 19, 2002, with an effective date of August 18, 2002.<sup>1</sup>

SUMMARY<sup>2</sup>

The respondent was admitted to the Bar of the Commonwealth on December 19, 1996. He was administratively suspended from the practice of law on September 6, 2000, for failure to cooperate in Bar Counsel's investigation into five complaints. The respondent was then temporarily suspended from the practice of law on January 15, 2002, after abandoning his law practice. Also on January 15, 2002, an order appointing a commissioner was entered authorizing the commissioner to attend to the respondent's unresolved client matters, including retrieving and returning client files and distributing a portion of the funds remaining in the respondent's IOLTA account.

On February 12, 2002, Bar Counsel filed a nine-count petition for discipline against the respondent, as follows:

In the first matter, the respondent in 1999 settled a client's personal injury action and the client signed the release. On October 19, 1999, the defendant's insurance company issued a check in the amount of \$5,800.00 payable to the respondent and his client. Without the knowledge of his client, the respondent endorsed or caused to be endorsed the back of the settlement check and on October 20, 1999, deposited the check into his IOLTA account. Thereafter, the respondent intentionally used his client's funds for his own personal or business purposes unrelated to the client, with intent to deprive his client of her funds at least temporarily and with actual deprivation resulting.

The respondent's endorsement of a client's settlement check without the knowledge of his client was in violation of Mass. R. Prof. C. 8.4(c) and (h). The respondent's intentional misuse of client funds with continuing deprivation was in violation of Mass. R. Prof. C. 1.15(a)-(d) and 8.4(c) and (h).

In the second matter, the respondent represented a client with respect to an automobile accident which occurred on October 27, 1999. The respondent subsequently deposited two PIP checks from the client's insurer into his IOLTA account. Without his client's knowledge, the respondent intentionally used these funds for his own personal or business purposes unrelated to the client, with intent to deprive his client of his funds at least temporarily and with actual deprivation resulting.

The respondent's intentional misuse of client funds with continuing deprivation was in violation of Mass. R. Prof. C. 1.15(a)-(d) and 8.4(c) and (h).

In the third matter, the respondent represented two individuals with regard to personal injury claims resulting from a motor vehicle accident that occurred on November 3, 1999. In August of 2000, the clients agreed to settle their claims for \$5,000.00 each. On September 14, 2000, without the knowledge of the clients, the respondent signed their names on releases. In or about September 27, 2000, and again without the knowledge of the clients, the respondent endorsed the back of the settlement checks with their names and deposited the checks into his IOLTA account. Between August of 2000 and November 28, 2000, the clients left numerous telephone messages for the respondent in an attempt to determine the status of the funds but

received no return telephone calls.

The IOLTA account into which the respondent deposited the settlement checks still held those funds as of the date of the appointment of the Commissioner. The Commissioner took possession of the account and remitted the funds to the clients.

The respondent's signing of releases and endorsement of settlement checks without the knowledge or consent of his clients was in violation of Mass. R. Prof. C. 8.4(c) and (h). The respondent's failure to notify clients as to the receipt of funds and failure to promptly deliver to clients funds which they are entitled to receive, with temporary deprivation resulting, was in violation of Mass. R. Prof. C. 1.15(b) and 8.4(h).

In the fourth matter, the respondent neglected a bodily injury claim filed against the MBTA. The respondent failed to appear at a pre-trial conference scheduled for February 9, 2000. He then again failed to appear at a second pre-trial conference scheduled for March 22, 2000. The respondent also failed to answer interrogatories in a timely fashion. On March 24, 2000, counsel for the MBTA served a copy of the MBTA's reapplication for judgment for relief or dismissal under Rule 33(a) on the respondent. The reapplication was filed with the Court on March 27, 2000, and on that day the case was dismissed. The respondent failed to inform his client that her case had been dismissed. Between January 1998 and April 14, 2000, the client placed numerous calls to the respondent's office to request information as to the status of her case, but the respondent did not return her calls.

The respondent's failure to diligently pursue litigation and his failure to adequately communicate with his client as to the status of her case was in violation of Mass. R. Prof. C. 1.3 and 1.4.

In the fifth matter, on March 30, 1999, a client gave the respondent a \$600.00 check for representation in connection with a potential divorce and for preparation of a simple will. On August 24, 2000, the respondent wrote to the client and informed her that he would be unable to pursue the matter of the pending divorce. He also informed her that a copy of her file would be available upon her request. As of August 24, 2000, the respondent had done no substantive work on the divorce matter and had not prepared or sent a draft will. By letter dated August 30, 2000, the client requested a refund of the \$100.00 for the drafting of the will, an accounting of the \$500.00 divorce retainer, and a return of any unused portion of the retainer. Despite numerous telephone calls from the clients and two letters from successor counsel over the next eight months, the respondent never returned the file, provided any accounting of the retainer, or returned any unused portion of the retainer. The Commissioner located and returned the file.

The respondent's conduct of failing to return a client's file and failing to account for a retainer was in violation of Mass. R. Prof. C. 1.15(b) and 1.16(d) and (e).

In the sixth matter, in March of 2000, a client retained the respondent to represent her with regard to a personal injury claim resulting from a motor vehicle accident. In November of 2000, the client discharged the respondent and retained another attorney. The respondent thereafter did not respond to the two letters from successor counsel or return his client's file as requested. The Commissioner located and returned the file.

The respondent's conduct of failing to return a client's file was in violation of Mass. R. Prof. C. 1.16(e).

In the seventh matter, prior to August 16 1999, the respondent represented a client in connection with a motor vehicle accident claim. On August 16, 1999, the client discharged the respondent and retained another attorney to pursue her claim. On September 14, 1999, the attorney sent the respondent the client's authorization and request for release of her file. In May of 2000, the respondent called the client, asked her to move her case back to his office,

and stated that he had received a settlement offer. The client declined the offer. The respondent's assertion that there was an outstanding settlement offer was false. The respondent never returned the client's file. The Commissioner located and returned the file.

The respondent's conduct of failing to return a client's file was in violation of Mass. R. Prof. C. 1.16(e). The respondent's misrepresentations to his client as to the status of her case was in violation of Mass. R. Prof. C. 8.4(c) and (h).

In the eighth matter, on October 28, 1999, a defendant's brother paid the respondent \$1,000.00 as a flat fee to file a motion to revise and revoke in a criminal case. In January and February 2000, the respondent repeatedly and falsely informed the defendant's brother that he had filed the motion and had marked the same for hearing. At no time did the respondent file any motion to revise and revoke.

On June 1, 2000, the defendant's brother obtained a small claims judgment against the respondent for a refund of the fee paid. The judgment also ordered the respondent to pay the total amount due by July 1, 2000. The respondent failed to do so and on July 7, 2000, the Court issued an execution which to this date, remains unsatisfied.

The respondent's neglect of a legal matter entrusted to him was in violation of Mass. R. Prof. C. 1.3 and 1.4. The respondent's misrepresentations of fact regarding the status of his efforts was in violation of Mass. R. Prof. C. 8.4(c). The respondent's failure to account for or refund an unearned fee was in violation of Mass. R. Prof. C. 1.15(b) and 1.16(d). The respondent's continuing failure to comply with the Court's order of payment was in violation of Mass. R. Prof. C. 8.4(d) and (h).

In addition to all of the above, the respondent failed to cooperate with Bar Counsel and failed to participate in the disciplinary process. The failure to cooperate in the disciplinary process is itself misconduct in violation of S.J.C. Rule 4:01, § 3(c), and in aggravation of other misconduct.

The respondent failed to file an answer to the petition. Pursuant to S.J.C. Rule 4:01, § 8(3), the allegations were therefore deemed admitted. On May 13, 2002, the Board of Bar Overseers voted to recommend to the court that the respondent be disbarred and on July 9, 2002, the Supreme Judicial Court for Suffolk County so ordered.

<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record before the Court.

Please direct all questions to [webmaster@massbbo.org](mailto:webmaster@massbbo.org).

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