

IN RE: KEVIN F. CARNEY

S.J.C. Judgment of Indefinite Suspension entered by Justice Greaney on August 4, 2004, with an effective date of September 3, 2004.¹

SUMMARY²

The respondent was indefinitely suspended for misappropriation of client funds in three cases.

The respondent maintained a commingled IOLTA account, used for the deposit and withdrawal of both client funds and personal or business funds. By August 28, 2003, as a result of withdrawals for his own business or personal purposes or those of his clients, the IOLTA account was in overdraft with a negative balance of (\$5839.90). The account remained at that same negative balance until September 11, 2003. The respondent knew that the account was overdrawn.

On September 11, 2003, the respondent deposited to his IOLTA account a settlement in the amount of \$15,000 for the first of the three clients whose matters formed the basis of the suspension. From this settlement, the client was due a net of \$9849. The respondent was aware that, because the IOLTA account remained in the negative, \$5839.90 from the settlement would be, and was, applied by the bank to pay the overdraft. The balance in the account on September 11, 2003 after crediting the \$15,000 settlement was \$9160.10, which sum was less than the client was due.

Between September 11, 2003 and September 15, 2003, the respondent continued to make deposits to and withdrawals from the IOLTA account, both for clients and for his own personal or business purposes. On September 16, 2003, with sufficient funds in the account, the respondent withdrew funds from the IOLTA account to purchase a bank check in the amount of \$9849 to pay the client her share of the settlement.

The respondent thereafter continued to make deposits to and withdrawals from the IOLTA account both for clients and for his own personal or business purposes. On or about October 27, 2003, the respondent received and deposited to his IOLTA account a settlement in the amount of \$6000 on behalf of the second client. On that same date, October 27, 2003, the respondent also deposited to the IOLTA account another settlement in the amount of \$6000 for the third client.

Between October 27, 2003, and November 3, 2003, the respondent intentionally expended the two \$6000 settlements to make payments owed other clients. By November 3, 2003, the balance in the IOLTA account was \$10.67 without any disbursements having been made to or for the benefit of either the second or third client. The respondent expended the clients' funds with the intention of depriving his clients of their funds at least temporarily and he caused them actually to be deprived of their funds.

On November 13 and 14, 2003, using funds from an earned legal fee, the respondent paid the third client her share of her settlement by wire transfer. The second client in the meantime had made numerous telephone calls to the respondent asking that his funds be sent. On or about November 17, 2003, the respondent sent the second client a check, drawn on a personal or business account, for the client's net proceeds. This check could not be

negotiated because there were insufficient funds on deposit in the account on which the check was written. The IOLTA account by this same date was in overdraft with a balance of negative (\$3,764.33).

On November 24, 2003, the second client filed a complaint with bar counsel. Bar counsel sent the complaint to the respondent for a reply on November 26. On November 29, the respondent sent money orders to the client representing the client's share of the settlement. The money orders had been purchased that day with personal funds obtained from a family member.

The respondent's conduct in commingling trust funds with personal or business funds and in intentionally misappropriating funds due his clients was conduct in violation of Mass. R. Prof. C. 1.15(a), (b) and 8.4(c), (h).

The matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation for an indefinite suspension. On July 12, 2004, the Board voted to accept the stipulation and to recommend the agreed-upon disposition to the Supreme Judicial Court. The Court so ordered on August 4, 2004.

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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