

IN RE: MICHAEL J. CRUZ

S.J.C. Judgment of Disbarment entered by Justice Cowin on December 28, 2004.¹

SUMMARY²

The respondent submitted an affidavit of resignation and was disbarred as a result of his misappropriation of trust funds in four matters.

In the first matter, the respondent was retained in January 2001 to represent a client in a personal injury claim arising out of a motor vehicle accident. The respondent settled the client's claim for \$13,000.00. He requested that the insurer pay \$2,157.97 directly to the client's health insurer and that a check in the amount of \$10,842.13 be issued payable to the respondent and the client. The respondent received the check and without the client's knowledge or permission, endorsed the client's name on the check. He then deposited the check into his IOLTA account. After the deposit, the balance in the account was \$15,176.06.

The client's settlement was subject to a lien by the Department of Revenue for unpaid child support in the amount of \$13,293.56. The respondent had also improperly advanced \$1,250.00 to the client prior to the settlement. The respondent met with the client in May 2002 to explain that, after payment of this \$1,250 plus the respondent's legal fee in the amount of \$4,333.33 and expenses in the amount of \$249.69, there remained a balance of \$5,009.01 to satisfy the DOR lien. The respondent undertook to assist the client in attempting to compromise the lien, but thereafter failed to make any effort to do so.

Between May 13, 2002, and June 11, 2002, the respondent intentionally expended the remaining settlement funds for his own business or personal purposes or those of other clients. As of June 11, 2002, the IOLTA account balance had been reduced to \$27.42, without any further payments to or on behalf of the client.

After the client filed a complaint with Bar Counsel, the respondent deposited \$5,300.00 of his personal funds into his IOLTA account on or about May 27, 2003, and paid the Department of Revenue's lien on the client's settlement.

By providing financial assistance to the client in connection with pending or contemplated litigation, the respondent violated Mass. R. Prof. C. 1.8(e). By signing or causing the client's name to be signed to a settlement check without authorization and then depositing the check into his IOLTA account, the respondent violated Mass. R. Prof. C. 8.4 (c). By commingling personal funds in his IOLTA account, and by intentionally converting trust funds with intent to deprive the client or the Department of Revenue of the use of the funds at least temporarily and with actual deprivation resulting, the respondent violated Mass. R. Prof. C. 8.4(c) and (h) and Mass. R. Prof. C. 1.15(a)-(d), as appearing in 426 Mass. 1303, 1363 (1997), effective January 1998 through June 30, 2004.

Commencing no later than August 2002 and continuing through at least February 2003, the respondent in other matters intentionally expended funds owed to clients or to clients' medical providers for the respondent's own personal or business purposes or that of unrelated clients without the knowledge or consent of the clients or the providers, including funds wrongly expended in the following three cases.

The respondent settled a personal injury claim for a client for \$3,500.00 plus \$5,000.00 in medical payments coverage and deposited the \$8,500.00 total to his business operating account on August 22, 2001. After the deposit, the balance in the operating account was \$10,183.74. On August 23, 2001, at the client's request, the respondent issued a check in the amount of \$2,345.00 to the client's designee, representing the client's share of the \$3,500.00 settlement. The respondent withheld \$5,000.00 to pay the client's medical providers. However, without the client's knowledge or consent, the respondent intentionally expended these funds for his own business or personal purposes or those of other clients. As of October 1, 2001, the account balance had been reduced to \$54.72, without any further payments to or on behalf of the client. The respondent subsequently paid \$2,995.00 to the client's medical providers on November 15 and 19, 2001 by issuing checks from his IOLTA account funded in part by a deposit of cash into the account. The respondent has never made restitution of the remaining \$2,005.00 balance of the settlement funds.

In another matter, the respondent settled a personal injury claim for a client for \$8,500.00 on or before April 25, 2002. From this sum, the insurer paid a lien held by the client's health insurer and sent the respondent a check for the balance of \$7,748.16. The respondent deposited the check into his IOLTA account. After the deposit, the balance in the account was \$7,767.36. On or about May 13, 2002, the respondent issued a check to the client in the amount of \$4,290.90, representing the client's portion of the settlement proceeds. The respondent withheld an additional \$1,105.64 to pay the client's medical providers. Without the client's knowledge or consent, the respondent expended these funds for his own business or personal purposes or those of other clients. As of July 3, 2002, the account balance had been reduced to \$7.42 without any additional payments to or on behalf of the client. The respondent has never made restitution.

Finally, the respondent settled a personal injury claim for another client for \$8,500.00 and deposited settlement funds in that amount into his IOLTA account on June 18, 2002. After the deposit, the balance in the IOLTA account was \$14,005.76. The respondent issued checks to the client totaling \$3,113.30, representing the client's portion of the settlement proceeds. The respondent withheld an additional \$2,494.55 of the settlement to pay the client's medical providers. Between June 18, 2002, and August 31, 2002, without the client's knowledge or consent, the respondent expended these funds for his own business or personal purposes or those of other clients. As of August 31, 2002, the account was overdrawn by \$167.39 without any additional payments to or on behalf of the client. The respondent has never made restitution.

By commingling and intentionally converting trust funds in these three matters with intent to deprive the clients or their creditors of the use of the funds at least temporarily and with actual deprivation resulting, the respondent violated Mass. R. Prof. C. 8.4(c) and (h) and Mass. R. Prof. C. 1.15(a)-(d), as appearing in 426 Mass. 1303, 1363 (1997), effective January 1998 through June 30, 2004.

On November 8, 2004, the respondent submitted his affidavit of resignation from the practice of law. The respondent admitted in the affidavit that the material facts set forth in bar counsel's statement of disciplinary charges would be established by sufficient evidence at a hearing. On December 21, 2004, the Board of Bar Overseers voted to recommend that the affidavit of resignation be accepted and that an order of disbarment be entered. The court so ordered on December 28, 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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