

IN RE: JOSEPH A. BARRESE

S.J.C. Order of Indefinite Suspension entered by Justice Sosman on March 8, 2005, with an effective date of April 7, 2005.¹
(S.J.C. Order of Reinstatement entered by Justice Botsford on July 8, 2010.)

SUMMARY²

The respondent is a sole practitioner admitted to practice in 1997. At the time of the misconduct, 2002-2004, the respondent was "of counsel" to a law firm. He stipulated to the material facts charged in a four-count petition for discipline.

Count One of the petition for discipline arose from the respondent's representation of an elderly client and her daughter in a claim for serious injuries sustained by the elderly client in a nursing home. This case was referred to the respondent after suit had been filed on behalf of the mother and daughter and the case had been successfully presented to the medical malpractice tribunal.

Following the elderly client's death in 2002, the respondent filed a petition for voluntary administration of the estate on behalf of the daughter. The daughter was appointed administrator of her mother's estate in April 2003. In or about May 2003, the respondent informed the client that the defendants had not responded to his offer to settle the case and that they would have to go to trial. The client told the respondent that she did not have the resources to go to trial. The respondent advised her that the case would be dismissed.

Thereafter, the respondent settled the case for \$72,500 without the knowledge or authorization of the client. In June 2003, the respondent signed the client's name to the release and settlement agreement without the knowledge or authorization of the client. The respondent also signed his own name as a purported witness to the client's signature. At the same time, the respondent stipulated to the dismissal of the client's action.

The respondent also endorsed the client's name to the settlement check without her knowledge or consent, and he deposited the check to his IOLTA account. Between June and July 2003, the respondent intentionally converted the client's funds for his own business and personal purposes, with intent to deprive the client at least temporarily and with actual deprivation resulting.

In February 2004, the partners in the law firm where the respondent was "of counsel" discovered that the respondent had settled this matter without the knowledge of the client. They terminated the respondent's employment and filed a request for investigation with the Office of the Bar Counsel. The respondent then paid the client her share of the settlement from personal funds.

The respondent's conduct in settling the client's claim and in signing the client's name to the release without authority or consent, in falsely notarizing the release, in endorsing the client's name on the settlement check without authority, in failing to promptly inform the client of the receipt of the settlement check, in failing to promptly pay the client, in failing to maintain and safeguard client funds in a designated trust account, in intentionally converting the settlement funds due the client at least temporarily and with actual deprivation resulting,

violated Mass. R. Prof. C. 1.2(a); 1.4(a) and (b); 1.15(a) of the rule in effect prior to 2004 (now 1.15(b)), (b) and (d); and 8.4(a), (c) and (d).

Count Two arose from the respondent's representation of a client in his claim for damages arising from personal injuries he sustained in the motor vehicle accident in September, 2002. The client retained the law firm to represent him, and the respondent was assigned by one of the partners in the firm to work on the case.

In January 2004, and without the knowledge or authorization of the client, the respondent settled the personal injury claim with the insurer for \$2,500. The respondent signed the client's name to the release without the client's authorization. The respondent also signed the name of a partner in the firm as a purported witness to the release, and, as a notary public, the respondent falsely attested that the client had appeared before him and executed the release.

In January 2004, the respondent received the settlement check from the insurance company, and he endorsed the client's name without the client's knowledge or authority. The respondent did not notify the client or the firm that he had settled the case.

By February 2004, the respondent had intentionally converted the client's funds for his own business or personal purposes, with intent to deprive the client of the funds at least temporarily, and with actual deprivation resulting. In February 2004, the firm discovered that the respondent had settled this matter. Thereafter, the respondent paid the client the funds due him from his personal funds.

The respondent's conduct in settling the client's claim without authority or consent, in signing the client's name to the release without authority or consent, in signing another lawyer's name to the release, in falsely notarizing the release and in endorsing the client's name on the settlement check without authority, violated Mass. R. Prof. C. 1.2(a), 1.4, 8.4(c) and (h).

The respondent's conduct in intentionally converting the settlement funds due the client with intent to deprive the client of these funds at least temporarily and with actual deprivation resulting, in concealing the settlement from the law firm, in failing to promptly inform the client of the receipt of the settlement check, in failing to promptly pay the client and in failing to maintain and safeguard client funds in a designated trust account violated Mass. R. Prof. C. 1.2(a); 1.4(a) and (b); 1.15(a) of the rule in effect prior to 2004 (now 1.15(b)), (b) and (d); and 8.4 (a), (c) and (h).

Count Three arose from the respondent's representation of a client in her claim for damages arising from personal injuries she sustained in the motor vehicle accident in January, 2002. The client retained the firm, and the respondent was assigned to work on the case. In January 2003, the respondent filed suit on behalf of the client. In January 2004, the client instructed the respondent to dismiss the lawsuit. The respondent advised the client that she would be precluded from pursuing any recovery for her damages.

In January 2004, and without the knowledge or authorization of the client, the respondent settled the client's case with the insurer for the other driver for \$5,000. The respondent signed the client's name to the release without the client's authorization. The respondent also signed the name of a partner in the firm as a purported witness to the release, and, as a notary public, the respondent falsely attested that the client had appeared before him and executed the release.

In January 2004, the respondent received a final settlement check, endorsed the client's name without her knowledge or authority and deposited the check to his IOLTA account. The respondent did not notify the client or the firm that he had settled the case.

By February 2003, the respondent had intentionally converted the client's settlement funds

for his own business and personal purposes, with the intent to deprive the client of the funds at least temporarily, and with actual deprivation resulting. After the respondent was notified of the law firm's complaint to the Office of Bar Counsel, he paid the client from his personal funds.

The respondent's conduct in settling the client's claim without authority or consent, in signing the client's name to the release without authority or consent, in signing another lawyer's name to the release, in falsely notarizing the release and in endorsing the client's name on the settlement check without authority, violated Mass. R. Prof. C. 1.2(a), 1.4, 8.4(c) and (h).

The respondent's conduct in intentionally converting the settlement funds due the client with intent to deprive the client of these funds at least temporarily and with actual deprivation resulting, in concealing the settlement from the law firm, in failing to promptly inform the client of the receipt of the settlement check, in failing to promptly pay the client and in failing to maintain and safeguard client funds in a designated trust account violated Mass. R. Prof. C. 1.2(a); 1.4(a) and (b); 1.15(a) of the rule in effect prior to 2004 (now 1.15(b)), (b) and (d); and 8.4 (a), (c) and (h).

Count Four of the petition arose from a medical malpractice case referred to the respondent by his former employer in 2001. In June 2002, and without the knowledge or authorization of the executor, the respondent negotiated a settlement against one of the defendants for \$10,000. The respondent signed the client's name without authority to the release. As notary public, the respondent falsely attested that the client had appeared before him and executed the release.

In August 2002, the respondent received the settlement check and endorsed the client's name without his authority. The respondent deposited the client's funds to his IOLTA account and failed to notify the client or the firm of the receipt of the settlement funds. In September 2003, the respondent met with the client and falsely represented that there was no way to settle the case or to win in court. He never informed the client about the \$10,000 settlement.

The respondent intentionally converted the funds for his own business and personal purposes, with intent to deprive the client of the funds at least temporarily and with actual deprivation resulting. After receiving a request for information from bar counsel regarding the settlement check deposited to his IOLTA account, the respondent falsely represented to the client that he was still holding the funds to pay the expenses of trial. The respondent then forwarded \$11,000 to the client from his personal funds.

The respondent's conduct in settling the client's claim without authority or consent, in signing the client's name to the release without authority or consent, in falsely notarizing the release, in endorsing the client's name on the settlement check without authority, and in misrepresenting to the client that he was unable to settle his case violated Mass. R. Prof. C. 1.2(a), 8.4(c) and (h).

The respondent's conduct in intentionally converting the settlement funds due the client with intent to deprive the client of these funds and with actual deprivation resulting, in concealing the settlement from the law firm, in failing to promptly inform the client of the receipt of the settlement check, in failing to promptly pay the client, in misrepresenting to the client that he still had funds in his account to pay the costs of litigation and in failing to maintain and safeguard client funds in a designated trust account violated Mass. R. Prof. C. 1.2(a); 1.4(a) and (b); 1.15(a) of the rule in effect prior to 2004 (now 1.15(b)), (b) and (d); and 8.4 (a), (c) and (h).

The matter came before the Board of Bar Overseers on a stipulation of facts, disciplinary violations and a joint recommendation for an indefinite suspension from the practice of law. On February 14, 2005, the Board voted to accept the stipulation and to recommend the agreed-upon disposition to the Supreme Judicial Court. The Court so ordered on March 8,

2005.

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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