

IN RE: DANIEL R. KIRKPATRICK

S.J.C. Judgment of Disbarment entered by Justice Cordy on January 26, 2006.¹

SUMMARY²

The respondent, Daniel R. Kirkpatrick, Esq., is an attorney duly admitted to the Bar of the Commonwealth on December 15, 1977.

In 1984, a husband and wife were in a motor vehicle accident. The husband was killed and the wife was hospitalized for approximately three months with serious injuries. After the accident, the wife's sister was named executor of the husband's estate and guardian of their minor child.

The decedent's will created a testamentary trust. The wife's sister retained the respondent to represent her as executor and, in that capacity, the respondent opened a bank account for the testamentary trust on which he was the signatory. The respondent also was retained to pursue, on behalf of both the wife and the estate, the personal injury and wrongful death claims that arose from this accident.

Between 1988 and 1995, the respondent received in excess of \$120,000 in settlement proceeds for these claims net of his attorney's fees and expenses. The wife and her sister instructed the respondent to deposit all of the settlement funds in the trust's bank account. Without the knowledge or consent of the beneficiaries, the respondent intentionally misappropriated funds from the trust's bank account by making transfers of funds and cash withdrawals for his own business or personal purposes or those of other clients. As of August 28, 1996, the balance in the trust's bank account was only \$45.59.

Despite repeated requests from the wife and the sister between 1995 and February of 2005, the respondent never accounted in full for the receipt and disbursement of the settlement proceeds. In February 2005, the wife filed a complaint with bar counsel. In response to bar counsel's inquiries, the respondent was unable to document the majority of the disbursements. Only a small portion of the disbursements was adequately documented as having been expended to or for the benefit of the trust or its beneficiaries. The respondent to date has not accounted for or remitted the balance of the settlement funds owed to the trust or the beneficiaries.

The respondent's intentional misappropriation of trust funds for personal and business purposes unrelated to the testamentary trust resulted in actual and continuing deprivation and constituted conduct in violation of Mass. R. Prof. C. 8.4(c) and (h) and 1.15(a) and (b), as appearing in 426 Mass. 1301, 1363 (1997), effective 1/1/98 through 6/30/04. The respondent's failure to account fully for the testamentary trust's funds violated Mass. R. Prof. C. 1.15(a), as appearing in 426 Mass. 1301, 1363 (1997), effective 1/1/98 through 6/30/04.

On December 28, 2005, the respondent filed an affidavit of resignation pursuant to Supreme Judicial Court Rule 4:01, § 15. On January 9, 2006, the Board of Bar Overseers voted to recommend to the Supreme Judicial Court that the respondent's affidavit of resignation be accepted, and that an order of disbarment be entered forthwith. On January 26, 2006, the Supreme Judicial Court for Suffolk County so ordered.

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 on the record submitted to the Supreme Judicial Court.

Please direct all questions to webmaster@massbbo.org.

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