

IN RE: MICHAEL P. ASCHER

S.J.C. Order of Indefinite Suspension entered by Justice Spina on April 20, 2006, with an effective date of May 20, 2006.¹

SUMMARY²

The respondent routinely commingled personal funds with client funds in his IOLTA account between July 2002 and May 2004. Between at least August 2002 and May 2004, the respondent repeatedly used funds he had received from or on behalf of clients for his own business or personal purposes unrelated to the clients, with the intent to deprive the clients of their funds at least temporarily and with actual deprivation resulting. The respondent repaid the funds he used by intentionally drawing on the funds of other clients or by using funds he borrowed from a third party. Instances in which this misconduct occurred include the following.

In April 1999, a client retained the respondent to represent him in a claim for personal injuries sustained in an automobile accident. On August 13, 2002, the respondent received a settlement check for \$30,000 on behalf of the client and deposited it into his IOLTA account. The respondent did not promptly notify the client of his receipt of these funds. Of the \$30,000 settlement proceeds, the respondent was entitled to a fee of \$10,000, plus \$49.33 in reimbursement of costs. In addition, the client had outstanding medical bills totaling \$3,374.39, and there were three liens against the settlement totaling \$10,193.33. The client was entitled to the balance of \$6,382.95.

The respondent failed promptly to turn over to the client his share of the settlement proceeds and to pay the client's medical bills and the liens on the client's recovery. Instead, between August 13 and August 30, 2002, without the client's knowledge or authorization, the respondent intentionally used \$12,950 of the client's funds to pay his own business and personal expenses, thereby causing the client and his creditors to be temporarily deprived of funds to which they were rightfully entitled.

On September 18, 2002, drawing on the funds of other clients he had deposited into his IOLTA account, the respondent paid \$7,985.43 to discharge a lien on the client's recovery. After this payment, the balance in the respondent's IOLTA account was only \$2,527.70. Between October 7, 2002, and March 14, 2003, the respondent paid a total of \$5,582.29 to the client's medical providers and the remaining lien holders by intentionally using the funds of other clients on deposit in his IOLTA account.

In or about August 2002, another client retained the respondent to represent him in a real estate transaction. On August 30, 2002, in connection with his representation of this client, the respondent received a wire transfer into his IOLTA account in the amount of \$81,226. Between August 30, 2002, and September 19, 2002, the respondent properly applied \$74,282 of the client's funds to pay various expenses in connection with the real estate transaction.

As of September 19, 2002, the client's only remaining obligations for the property were tax and utility bills from the City of Chicopee totaling \$6,413. With the knowledge and consent of the client, the respondent retained \$6,944 while the client attempted to negotiate with the City of Chicopee to reduce the outstanding amounts owed on the property.

Between September 19, 2002, and October 15, 2002, without the client's knowledge or authorization, the respondent intentionally used at least \$6,533 of the client's funds to pay his own business and personal expenses unrelated to the client or the client's obligation to the City of Chicopee. By January 3, 2003, the respondent intentionally depleted all of the client's remaining funds for purposes unrelated to the client.

The client's efforts to negotiate a reduction of his obligations to the City of Chicopee were not successful. In about mid-April 2003, the client informed the respondent that he needed \$6,413 to pay his tax and utility obligations to the City of Chicopee. On about April 28, 2003, the respondent deposited \$10,000 in personal funds into his IOLTA account. On about April 29, 2003, drawing on the personal funds he had deposited in the IOLTA account, the respondent issued an IOLTA check to the City of Chicopee for \$6,413 in full settlement of the client's tax and utility liabilities. With the client's consent, the respondent credited the \$531 balance of the funds he had retained to legal fees the client owed him for unrelated matters.

In 2003, a third client retained the respondent on the basis of a written one-third contingent fee agreement to represent him in connection with injuries he had sustained in a motor vehicle accident. On March 27, 2003, the respondent received a check for \$7,500 on behalf of this client and deposited it into his IOLTA account. Of this amount, the respondent was entitled to a fee of \$2,500. After deduction of \$155 for payment of an outstanding medical bill, the client was entitled to the balance of \$4,845. The respondent did not promptly pay the client the funds to which he was entitled.

On March 27, 2003, the respondent drew on the client's funds on deposit in his IOLTA account and issued a check to himself for \$2,000 in partial payment of his legal fee for the client's case. On March 31, 2003, without the client's knowledge or consent, the respondent intentionally drew on the client's funds and issued a second IOLTA check to himself for \$2,500, thereby depriving the client of \$2,000 of the client's funds.

On about April 2, 2003, the respondent borrowed \$25,000 and deposited the funds into his IOLTA account. On April 7, 2003, the respondent drew on the borrowed funds and issued one IOLTA check for \$155 to pay the client's medical bill, and another for \$3,330 to pay the client.

At the conclusion of the client's case, the respondent failed to render a written accounting of the client's funds to the client. The respondent did not pay the client the remaining \$1,515 balance of his funds until sometime after May 2004.

In early 2003, a fourth client retained the respondent on the basis of a written one-third contingent fee agreement to represent her in a claim arising from injuries she sustained in an automobile accident. On about September 22, 2003, the respondent received a settlement check for \$6,000 on behalf of this client and deposited the funds into his IOLTA account. Of this amount, the respondent was entitled to a fee of \$2,000, plus \$46 as reimbursement of costs. The client was entitled to the balance of \$3,954.

The respondent failed to turn over promptly to the client her share of the settlement proceeds. Between September 22, 2003, and September 30, 2003, without the client's knowledge or authorization, the respondent intentionally used at least \$3,664 of the client's funds to pay his own business and personal expenses. The respondent caused the client to be temporarily deprived of her funds.

On October 16, 2003, the respondent borrowed \$10,000 and deposited the funds into his IOLTA account. On October 22, 2003, drawing on the funds he had borrowed and deposited in his IOLTA account, the respondent issued an IOLTA check for \$3,954 to the client.

In 2003, a mother and father retained the respondent to represent them in connection with claims arising from the wrongful death of their child. The parents agreed to pay the

respondent a contingent fee of one-third of any recovery the respondent obtained on their behalf. On or about October 28, 2003, the respondent received a settlement check for \$5,000 on behalf of the parents and deposited it into his IOLTA account. Of the \$5,000, the respondent was entitled to a fee of \$1,666.67 and his clients were entitled to the \$3,333.33 balance.

The respondent intentionally failed promptly to turn over to the clients their \$3,333.33. Instead, on the day he deposited the \$5,000 settlement check, the respondent issued an IOLTA check to himself for \$2,000. On November 7, 2003, the respondent intentionally drew on the settlement proceeds to issue an IOLTA check to himself for \$1,500. Between November 8, and December 3, 2003, without the knowledge or authorization of the clients, the respondent intentionally used all of their remaining funds to pay his own personal and business expenses, thereby depriving the clients of their funds.

On about December 4, 2003, the respondent received a second settlement check for \$500,000 on behalf of these clients and deposited it to his IOLTA account. Of this amount, the respondent was entitled to a fee of \$166,667, plus \$286 for the reimbursement of costs he had expended in connection with the clients' case. In addition, the clients instructed the respondent to pay an outstanding medical bill of \$123. The clients were entitled to the remaining balance of \$332,924.

On December 26, 2003, the respondent issued an IOLTA check to the clients for \$336,257 in payment of their share of the combined \$505,000 settlements, minus his fees and expenses. On December 31, 2003, the respondent paid the outstanding \$123 medical bill.

After December 4, 2003, the respondent did not promptly withdraw from the IOLTA account his entire fee for representing the clients. Instead, between December 5, 2003, and February 27, 2004, the respondent withdrew increments of his fee from the IOLTA account, thereby commingling personal funds with client funds in the account.

In April 2004, a California resident retained the respondent to represent him in the sale of property he owned in Randolph, Massachusetts. This client agreed to pay the respondent \$2,500 as a fee for his legal services in the matter. On April 6, 2004, the buyer of the client's property signed a purchase and sale agreement and gave the respondent a check in the amount of \$13,725 to hold as a deposit on the purchase. The respondent deposited the check into his IOLTA account on April 9, 2004.

On April 12, 2004, the client paid the respondent \$1,000 in partial payment of the respondent's legal fee. The balance due the respondent for his fee after this payment was \$1,500. On April 14, 2004, the respondent sent the client a deed, the purchase and sale agreement signed by buyer, and a durable power of attorney. The respondent directed the client to sign the documents and return them to him so that he could attend the closing in the client's absence. The client signed these documents and returned them to the respondent as directed.

Between April 14 and April 20, 2004, without the client's knowledge or authorization, and in violation of the terms of the purchase and sale agreement, the respondent intentionally withdrew additional \$6,000 from the real estate deposit funds and spent it on his own personal or business needs. The respondent also used an additional \$5,850 of the real estate deposit on April 19, 2004, to pay settlement proceeds to another client in an unrelated matter. As a result of these withdrawals and payments, the balance in the respondent's IOLTA account on April 20, 2004, was \$777.15.

On April 22, 2004, the client instructed the respondent to pay \$37,500 of the expected sale proceeds to another lawyer and to pay the balance to the client. The respondent attended the closing on the sale of the client's property on April 27, 2004. On April 28, 2004, the respondent received in his IOLTA account a wire transfer in the amount of \$101,738.97, as the

proceeds of the sale. On April 29, 2004, the respondent withdrew \$1,500 from his IOLTA account as payment of the balance of his legal fee for representing the client at the closing.

The respondent did not promptly send \$37,500 to the lawyer as directed by the client or pay the remaining \$76,463.97 balance of the sale proceeds to the client. On April 30, 2004, without the client's knowledge or authorization, the respondent intentionally withdrew an additional \$2,500 from the remaining sale proceeds in his IOLTA account and used the funds to pay his own personal and business expenses.

On May 3, 2004, the respondent borrowed \$20,000 and deposited the funds into his IOLTA account. On May 7, 2004, the respondent paid \$37,500 from his IOLTA account to the lawyer as the client had instructed. On May 10, 2004, the respondent issued an IOLTA check for \$76,463.97 to the client for remaining net sale proceeds.

The respondent violated Mass. R. Prof. C. 1.15(a) as in effect prior to July 1, 2004, (lawyer shall safeguard client funds and keep them separate from lawyer's funds) by intentionally depositing his own personal funds in his IOLTA account and by failing promptly to withdraw earned fees from the IOLTA account. The respondent violated Mass. R. Prof. C. 1.5(c) (lawyer in a contingent fee case shall render accounting to client for funds received on client's behalf) by his failure to render a written accounting showing the remittance to his clients and the method of determination.

By failing promptly to deliver to his clients and third persons the funds he had received on their behalf and to which they were entitled, the respondent violated Mass. R. Prof. C. 1.15(b) as in effect prior to July 1, 2004, (lawyer shall promptly notify client of receipt of funds on client's behalf and promptly deliver to client funds to which client is entitled).

The respondent violated Mass R. Prof. C. 8.4(c) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and (h) (lawyer shall not engage in conduct that adversely reflects on his or her fitness to practice law) by intentionally using client funds to pay his own business and personal expenses.

On March 20, 2006, the Board of Bar Overseers voted to recommend that the respondent be indefinitely suspended for his misconduct in these matters. On April 20, 2006, the county court (Spina, J.) entered a judgment indefinitely suspending the respondent from the practice of law.

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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