

IN RE: SERGIO P. VESPA

S.J.C. Order of Indefinite Suspension entered by Justice Ireland on January 30, 2008, with an effective date of February 29, 2008.¹

SUMMARY²

This matter came before the Court on an information filed by the Board of Bar Overseers recommending an indefinite suspension based on the stipulation of the parties to the facts and rule violations summarized as follows.

In or before September 2006, the respondent commenced representing a client in his claims arising out of the automobile accident. The client and the respondent did not sign a contingent fee agreement, although the respondent planned to charge a one-third contingent fee.

Sometime prior to September 13, 2006, the respondent wrote a letter to the client informing him that Safety Insurance, the insurer for one of the drivers, had offered to settle the claim in the amount of \$1,200. The respondent told the client that he would send him a release to sign if he agreed to the settlement. By letter dated September 13, 2006, the respondent sent the client a release upon payment of \$1200. Shortly after September 13, 2006, the client signed the release and mailed it to the respondent.

Safety required a witness to sign the release. Although the respondent was not present when the client signed the release, on or about October 25, 2006, the respondent signed the release as a witness and sent the signed release to Safety. The respondent also sent a cover letter to Safety in which he intentionally misrepresented that he had witnessed the client sign the release.

In November 2006, Safety checked the Massachusetts Department of Revenue child support enforcement secure website and saw a lien against the client for unpaid child support for approximately \$2,350. In early November 2006, Safety mailed the settlement check, along with a Child Support Enforcement distribution sheet, to the respondent. The check was made payable to: Sergio P. Vespa, DOR/CSE, and the client.

On November 3, 2006, the respondent signed his name and his client's name to the check and deposited the funds into his IOLTA account. The respondent did not have permission to sign the client's name to the check, nor did he have authorization from DOR to negotiate or deposit the check without its endorsement. The respondent did not notify the client or DOR that he had received funds on their behalf. The respondent did not report the receipt of the \$1,200 to the Department of Revenue, in violation of the requirements of 830 CMR 15.24D.1.1.

The respondent listed the November 3, 2006 deposit of the check for \$1,200 in his IOLTA account register as "working capital," and he did not identify a client matter. The respondent did not promptly turn over to the client or DOR the funds due them. Shortly after depositing the check to his IOLTA account, the respondent converted the funds to his own use. The respondent misused the funds intentionally, with the intent to deprive the client of his funds at least temporarily, and with actual deprivation resulting. About five months later, the respondent settled the client's claim with the other insurer for \$1200, signed the client's

name to the settlement check, and converted those funds as well. Throughout the entire period that he represented the client, the respondent also deposited personal funds in his IOLTA account, thereby violating Mass. R. Prof. C. 1.15(b)(2).

In 2006 and 2007, the client attempted to contact the respondent approximately fifteen to twenty times for information about the settlement and the progress of his case. Each time, the client left a message on the respondent's answering machine requesting information about the settlement and his case. The respondent never responded to the client's telephone calls and messages.

The respondent failed to keep complete records of his receipt, maintenance and disposition of the settlement funds in his IOLTA account. Upon the conclusion of the matter, the respondent failed to provide to the client a written statement showing the outcome, the recovery to the client, and the method of its determination. Despite demands by bar counsel and the client, the respondent never accounted for his receipt, use and disposition of those funds.

On or about May 24, 2007, the Office of Bar Counsel received notice that a check drawn on the respondent's IOLTA account had been dishonored. Bar counsel requested that the respondent provide information concerning the reasons for the bank's dishonoring the check, including records the respondent maintained for the IOLTA account. On or about July 5, 2007, the respondent furnished to bar counsel, among other things, the register showing the deposit of the \$1200 with the entry "working capital." The respondent knew that this entry was false, deceptive, dishonest, and misleading. On August 31, 2007, the respondent appeared at the office of bar counsel to testify under oath. During the course of the interview, the respondent intentionally misrepresented to bar counsel that: (1) the November 3, 2006 deposit of \$1200 was the respondent's own personal funds and represented "working capital" for a family business; (2) he was instructed by the client to pay him in cash; (3) he received a message from the client's mother instructing him that the client wanted to be paid in cash; (4) he paid the client the funds he owed him with a money order; and (5) he never received the second check. The respondent knew when he made these representations that each was false, dishonest, deceptive, and misleading.

On June 8, 2007, the respondent closed his IOLTA account. At the time, the respondent had a negative balance of \$984.81 created by a check honored by the bank when there were insufficient funds in the respondent's account. The respondent did not make restitution to the bank for these funds. On November 19, 2007, the respondent repaid the client the \$2,400 he had converted to his own use, plus interest.

The respondent's failure to enter into a written contingent fee agreement when he planned to charge a contingent fee violated Mass. R. Prof. C. 1.5(c).

The respondent's conduct in signing the release as a witness to the client's signature and in falsely representing to the insurer that he had witnessed the signing of the release violated Mass. R. Prof. C. 4.1(a) and (b) and 8.4(c).

The respondent's conduct in negotiating the settlement of the client's case without consulting with the client violated Mass. R. Prof. C. 1.4(a) and (b).

The respondent's conduct in depositing and maintaining personal funds in the IOLTA account violated Mass. R. Prof. C. 1.15(b)(2).

The respondent's failure promptly to notify the client and DOR that funds had been received for their benefit and his failure promptly to distribute the funds due to them violated Mass. R. Prof. C. 1.15(c).

The respondent's conduct in signing the client's name to the checks without notice to the client or his authorization or approval violated Mass. R. Prof. C. 1.2(a), 1.4(b), and 8.4(c).

The respondent's conversion of the settlement funds violated Mass. R. Prof. C. 8.4(c).

The respondent's failure to keep the client reasonably informed about the case and failure to disclose his dissipation of the settlement funds violated Mass. R. Prof. C. 1.4(a) and (b).

The respondent's failure to account to the client for the settlement funds violated Mass. R. Prof. C. 1.5(c), last paragraph, and 1.15(d)(1).

The respondent's failure to keep complete and accurate records of his maintenance and distribution of the settlement funds, his false entry in his records concerning the identity of funds in his IOLTA account, and his conduct in providing the register with the false entry to bar counsel violated Mass. R. Prof. C. 1.15(f)(1)(B)-(F) and (f)(3), 8.1(a), and 8.4(c).

The respondent's false statements to bar counsel under oath violated Mass. R. Prof. C. 8.1(a) and (b) and 8.4(c) and (d).

On January 2, 2008, bar counsel filed a petition for discipline and the parties filed the respondent's answer and a stipulation in which the parties agreed that the appropriate sanction was indefinite suspension. On January 14, 2008, the Board of Bar Overseers voted to adopt the parties' recommendation and file an information recommending an indefinite suspension. On January 30, 2008, the Supreme Judicial Court for Suffolk County entered an order indefinitely suspending the respondent from the practice of law effective February 29, 2008.

FOOTNOTES:

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 Supreme Judicial Court.

Please direct all questions to webmaster@massbbo.org.

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