

IN RE: DONALD H. BARNES, JR.

S.J.C. Order of Indefinite Suspension entered by Justice Cordy on January 15, 2010, with an effective date of February 4, 2010.¹

SUMMARY²

On January 5, 2010, the Supreme Judicial Court for Suffolk County ordered that the respondent, Donald H. Barnes, Jr., be indefinitely suspended from the practice of law. The sanction arose from the respondent's intentional misuse of client funds.

The respondent, who was admitted to the Bar of the Commonwealth on May 14, 1968, routinely deposited and maintained personal funds in his IOLTA accounts. Between at least December 2003 and August 2008, the respondent intentionally used funds he had received from or on behalf of clients for his own business or personal purposes unrelated to the clients. When it became necessary for the respondent to make distributions to clients whose funds the respondent had previously used, the respondent routinely converted funds from other clients whose funds he was holding or borrowed funds from his friends or relatives, which he deposited into his IOLTA accounts, in order to make the distributions. This conduct violated Mass. R. Prof. C. 1.15(b) and 8.4(c) and (h).

From 2003 until January 2007, the respondent represented the administrators of an estate. In December 2003, the respondent received on behalf of the administrators \$234,991.44, the net proceeds from the sale of the decedent's house. The respondent deposited these funds into his IOLTA account.

Between December 22, 2003, and August 31, 2004, after disbursing \$105,000 to the heirs, the respondent converted at least \$115,228 of the estate funds. In April and May 2005, the respondent borrowed \$110,000 from two relatives and a friend and deposited those funds into his IOLTA account as partial restitution of the converted funds. In July 2005, the respondent distributed \$30,000 to the beneficiaries.

In December 2006, the co-administrators instructed the respondent to finalize the estate and distribute the remainder of estate assets to the beneficiaries. The respondent borrowed \$70,000 from his father and deposited the funds into his IOLTA account. In January 2007, drawing on his father's funds, the respondent distributed an additional \$53,744 from his IOLTA account to the beneficiaries as the final disbursement of estate assets.

The respondent's conduct in this matter violated Mass. R. Prof. C. 1.15(b) and 8.4(c) and (h).

In a separate matter, in 2004, the respondent represented a woman in the sale of real estate in Mattapoisett. After a closing on August 3, 2004, the respondent received the net sale proceeds, which he paid to his client. The respondent also received an additional \$20,000 from the buyer's attorney to be held in escrow pending determination by the Town of Mattapoisett of a disputed sewer betterment assessment. Any funds remaining after the assessment was determined and paid were to be turned over to the respondent's client. The respondent deposited the \$20,000 into his IOLTA account on August 4, 2004.

Between August 4 and December 31, 2004, the respondent converted the entire escrow

amount to pay his own business and personal expenses unrelated to the Mattapoisett property. The dispute over the assessment charge was resolved by early September 2007. The respondent's client was responsible for paying a total of \$12,701.25. Using funds he had borrowed from his father, the respondent paid this charge on September 20, 2007.

On November 7, 2007, the respondent borrowed additional funds from his father and deposited them into his IOLTA account. On November 9, the respondent drew on the borrowed funds and made final distribution of the funds owed to his client. The respondent's conduct in this matter violated Mass. R. Prof. C. 1.15(b) and 8.4(c) and (h).

This matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation for an indefinite suspension from the practice of law. On December 14, 2009, the Board voted to accept the stipulation and recommend the agreed-upon disposition to the Supreme Judicial Court. The court so ordered on January 5, 2010.

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 filed with the Supreme Judicial Court.

Please direct all questions to webmaster@massbbo.org.