

**IN RE: JOHN EDWARD MCCABE**

**NO. BD-2014-053**

**SUMMARY<sup>1</sup>**

On April 16, 2014, John Edward McCabe, the respondent, submitted to the Board of Bar Overseers an affidavit of resignation from the practice of law pursuant to Supreme Judicial Court Rule 4:01, § 15. In his affidavit, the respondent admitted that bar counsel could prove by a preponderance of the evidence the following material facts and disciplinary rule violations.

On or about December 14, 2011, the client retained the respondent to represent her in a claim to recover for personal injuries. The parties signed a contingent-fee agreement under which the respondent would be entitled to a one-third contingent fee on any recovery. On November 12, 2012, the client agreed to settle her claim for \$125,000 and signed a release of all claims against all of the potential defendants and their insurers.

On or about November 21, 2012, the respondent received a check in the amount of \$125,000 from one of the insurers, which was made out to him and to the client. The respondent deposited the funds to his IOLTA account. The respondent's share of the funds was \$41,666 and the client's share was \$83,333, but the respondent agreed to reduce his fee so that the client would receive \$85,000.

The respondent did not promptly notify the client he had received the settlement check, and he did not remit any funds to the client. Between November 21 and December 5, 2012, the respondent intentionally used approximately \$72,000 of funds belonging to the client to pay his own personal expenses and monies due to or on behalf of other clients.

Beginning on December 12, 2012, the respondent made several deposits of personal funds into his IOLTA account. Beginning on December 12, 2012, the respondent made periodic payments to the client of the funds due to her. The respondent met with the client in January 2013 and promised that she would receive the full \$85,000, and an additional \$8,334.00, representing costs and interest that she had incurred as a result of respondent's delay in making the payment.

The respondent restored to the client all of the \$85,000 in funds due to her by February 26, 2013, prior to receiving notification of the complaint from bar counsel.

By failing to notify his client of his receipt of funds in which the client had an interest, and failing to promptly deliver to his client funds that she was entitled to receive, the respondent violated Mass. R. Prof. C. 1.15(c).

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<sup>1</sup> Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

By commingling personal and client funds in his IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(b)(2).

By intentionally using his client's funds for his own personal and business use, the respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Mass. R. Prof. C. 8.4(a), and conduct adversely reflecting on his fitness to practice law, in violation of Mass. R. Prof. C. 8.4(h).

On April 28, 2014, the board voted to accept the respondent's affidavit of resignation as a disciplinary sanction. The matter came before the Supreme Judicial Court for Suffolk County, Gants, J. On June 12, 2014, the Court entered a Judgment Accepting Affidavit of Resignation as a Disciplinary Sanction, effective thirty days from the date of entry of the Judgment.