

IN RE: MATTHEW W. BARRETT

Last known address:  
337 Beauty Hill Road  
Center Barnstead, NH 03225

ORDER OF INDEFINITE SUSPENSION

This matter came before the Court, Ireland, J., on an Affidavit of Resignation submitted by Matthew W. Barrett pursuant to Supreme Judicial Court Rule 4:01, Sect. 15 and Recommendation and Vote of the Board on August 23, 1999. Upon consideration thereof, it is ORDERED that:

1. MATTHEW W. BARRETT is hereby suspended from the practice of law in the Commonwealth of Massachusetts for an indefinite period effective immediately upon the entry of this Order;

It is FURTHER ORDERED that:

2. Within fourteen (14) days of the date of entry of this Order, the lawyer shall:

a) file a notice of withdrawal as of the effective date of the suspension with every court, agency, or tribunal before which a matter is pending, together with a copy of the notices sent pursuant to paragraphs 2(c) and 2(d) of this Order, the client's or clients' place of residence, and the case caption and docket number of the client's or clients' proceedings;

b) resign as of the effective date of the suspension all appointments as guardian, executor, administrator, trustee, attorney-in-fact, or other fiduciary, attaching to the resignation a copy of the notices sent to the wards, heirs, or beneficiaries pursuant to paragraphs 2(c) and 2(d) of this Order, the place of residence of the wards, heirs, or beneficiaries, and the case caption and docket number of the proceedings, if any;

c) provide notice to all clients and to all wards, heirs, and beneficiaries that the lawyer has been suspended; that he is disqualified from acting as a lawyer after the effective date of the suspension; and that, if not represented by co-counsel, the client, ward, heir, or beneficiary should act promptly to substitute another lawyer or fiduciary or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;

d) provide notice to counsel for all parties (or, in the absence of counsel, the parties) in pending matters that the lawyer has been suspended and, as a consequence, is disqualified from acting as a lawyer after the effective date of the suspension;

e) make available to all clients being represented in pending matters any papers or other property to which they are entitled, calling attention to any urgency for obtaining the papers or other property;

f) refund any part of any fees paid in advance that have not been earned; and

g) close every IOLTA, client, trust or other fiduciary account and properly disburse or otherwise transfer all client and fiduciary funds in his possession, custody or control.

All notices required by this paragraph shall be served by certified mail, return receipt requested, in a form approved by the Board.

3. Within twenty-one (21) days after the date of entry of this Order, the lawyer shall file with the Office

of the Bar Counsel an affidavit certifying that the lawyer has fully complied with the provisions of this Order and with bar disciplinary rules. Appended to the affidavit of compliance shall be:

- a) a copy of each form of notice, the names and addresses of the clients, wards, heirs, beneficiaries, attorneys, courts and agencies to which notices were sent and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise requested in writing by the lawyer or ordered by the court;
- b) a schedule showing the location, title and account number of every bank account designated as an IOLTA, client, trust or other fiduciary account and of every account in which the lawyer holds or held as of the entry date of this Order any client, trust or fiduciary funds;
- c) a schedule describing the lawyer's disposition of all client and fiduciary funds in the lawyer's possession, custody or control as of the entry date of this Order or thereafter;
- d) such proof of the proper distribution of such funds and the closing of such accounts as has been requested by the bar counsel, including copies of checks and other instruments;
- e) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and
- f) the residence or other street address where communications to the lawyer may thereafter be directed. The lawyer shall retain copies of all notices sent and shall maintain complete records of the steps taken to comply with the notice requirements of S.J.C. Rule 4:01, Sect. 17.

4. Within twenty-one (21) days after the entry date of this Order, the lawyer shall file with the Clerk of the Supreme Judicial Court for Suffolk County:

- a) a copy of the affidavit of compliance required by paragraph 3 of this Order;
- b) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and
- c) the residence or other street address where communications to the lawyer may thereafter be directed.

By the Court, (Ireland, J.)

Entered: September 7, 1999

#### SUMMARY<sup>1</sup>

This matter came before the Court on the respondent's affidavit of resignation pursuant to Supreme Judicial Court Rule 4:01, Sect. 15.

The respondent was admitted to the Bar of the Commonwealth of Massachusetts on June 19, 1991.

On November 11, 1996, a client retained the respondent to represent her in a personal injury matter. The client had been struck by an automobile on November 26, 1993 as a pedestrian while crossing a street in Woburn. The client, who was sixty-four at the time of the accident, sustained multiple fractures requiring that she be hospitalized for two months, prior to moving to a nursing home.

The respondent and the client executed a contingency fee agreement on November 11, 1996, providing

that the respondent would receive a fee in the amount of one-third of the gross recovery.

On February 6, 1997, the insurer notified the respondent that it would settle the suit for the full amount of the bodily injury policy of \$20,000.00 and the P.I.P. policy of \$8,000.00. On February 7, 1997, the client signed a release, and on February 21, 1997, the insurer issued a check in the amount of \$8,000.00 payable jointly to the client and the respondent for the client's personal injury protection (PIP) benefits. On February 27, 1997, the respondent deposited \$7,000.00 from the PIP proceeds in his office account, and \$1,000.00 from the PIP proceeds in his personal account. The day prior to these deposits, the IRS had levied on the two accounts, leaving negative balances. The respondent used the PIP proceeds to establish positive balances in the accounts, and thereafter commingled the PIP proceeds with his own personal funds, before spending the funds on expenses unrelated to the client or her legal matter.

On February 25, 1997, the insurer issued a check in the amount of \$20,000.00 payable jointly to the client, the respondent, and the Department of Public Welfare, for the client's bodily injury payment. On March 7, 1997, the respondent deposited this check in his IOLTA account.

On or about March 14, 1997, the respondent issued a check from his IOLTA account payable in the amount of \$6,719.82 in full payment of the welfare lien. On or about March 17, 1997, the respondent prepared a settlement sheet for the client's case, in which he stated that from the total settlement funds of \$28,000.00, \$14,254.21 was to be disbursed to the client, \$6,719.82 was withheld for the welfare lien, and \$6,666.66 was to be paid to himself for his attorney's fee plus \$359.31 in expenses. However, the respondent did not in fact make the disbursement to the client.

Immediately prior to the deposit of the \$20,000.00 bodily injury proceeds check in the respondent's IOLTA account on March 7, 1997, the balance in the IOLTA account was \$8,649.20. After the respondent deposited the \$20,000.00 proceeds check, the balance in the IOLTA account was \$28,649.20. By June 11, 1997, the balance in the IOLTA account had been reduced to \$770.63, without making any payments to or on behalf of the client, other than the \$6,719.82 payment to satisfy the state's welfare lien arising out of the accident. The respondent used the remaining funds from the bodily injury proceeds to pay personal expenses and expenses of clients unrelated to the client.

On June 12, 1998, the client filed a grievance with Bar Counsel alleging that she had not heard from the respondent, and that she did not know the status of her case. On July 16, 1998, the respondent made full restitution to the client using funds obtained from a personal bank loan.

By a letter dated July 29, 1998 and in a subsequent telephone conversation, the respondent misrepresented to Bar Counsel that he had deposited the PIP proceeds in his IOLTA account, rather than in his personal and office accounts. The respondent provided Bar Counsel with a deposit slip showing a \$14,500.00 deposit made to his IOLTA account on March 20, 1997, which the respondent falsely claimed represented the deposit of the \$8,000.00 in PIP proceeds together with a \$6,500.00 deposit for another client. In fact, the \$14,500.00 deposit was a bodily injury settlement check for another client.

The respondent's commingling of the client's funds with his personal funds, his failure promptly to pay the client the funds due her, resulting in temporary deprivation to the client, and his intentional use of the client's funds to pay personal and business obligations and to pay the obligations of other clients, violated Canon One, DR 1-102(A)(4) and (6), Canon Nine, DR 9-102(A), (B) and (C), and Rules 1.15(a), (b), (d), and (e), and Rules 8.4(c) and (h) of the Massachusetts Rules of Professional Conduct. The respondent's misrepresentations to Bar Counsel violated Rule 8.4(c) of the Massachusetts Rules of Professional Conduct.

Bar Counsel's investigation revealed that between 1996 and 1998, the respondent routinely used client funds to pay personal or unrelated client or business expenses. In one instance, the respondent received a \$50,000.00 bodily injury settlement for a client on or about August 16, 1996, but did not disburse any funds to the client until July 14, 1997, when he paid the client \$28,096.45. The respondent did not pay the client the remaining \$5,500.00 owed to him until December 17, 1998. Between August 16, 1996 and December 17, 1998, the respondent commingled the client's settlement proceeds with his own funds, and used the proceeds to make payments to himself and to unrelated clients.

On May 26, 1999, Bar Counsel met with the respondent and his counsel. At that meeting the respondent misrepresented that the client for whom he had received the \$50,000.00 settlement had agreed in August of 1996 to loan the respondent \$33,596.45, representing the full amount of the client's bodily injury proceeds. The respondent also provided Bar Counsel with an unsigned promissory note by which the respondent as borrower allegedly agreed to pay the client the principal sum of \$33,596.45 with interest at the rate of 8.0 percent per annum on or before September 15, 1997. In fact, the respondent did not present this promissory note to the client until December 17, 1998, when the respondent paid the client the \$5,500.00 which was still due to him. At that meeting, the respondent asked the client, who is partially blind, to sign the promissory note indicating that he was "Paid on July 14 97." The respondent also asked the client to initial a settlement breakdown sheet which indicated that the client had been paid the full \$33,596.45 on July 14, 1997. The client at no time had agreed to loan the respondent any funds.

The respondent's serial misuse of clients funds and his commingling of personal and client funds in the IOLTA account, his failure promptly to pay his clients the funds due to them, resulting in temporary deprivation to his clients, and his intentional use of his clients' funds to pay personal and business obligations and to pay the obligations of other clients violated Canon One, DR 1-102(A)(4) and (6) and Canon Nine, DR 9- 102(A), (B), and (C), and Rules 1.15(a), (b), (d) and (e), and Rules 8.4(c) and (h) of the Massachusetts Rules of Professional Conduct. The respondent's misrepresentations to Bar Counsel violated Rule 8.4(c) of the Massachusetts Rules of Professional Conduct.

On July 23, 1999, the respondent submitted his affidavit of resignation from the practice of law. In the affidavit, the respondent acknowledged that sufficient evidence existed to warrant findings that the facts summarized above could be proved by a preponderance of the evidence. On August 9, 1999, the Board of Bar Overseers voted to recommend that the affidavit be accepted and that an order of indefinite suspension be entered forthwith. On September 7, 1999, the Supreme Judicial Court ordered that the respondent be indefinitely suspended from the practice of law in the Commonwealth of Massachusetts effective immediately.

1 Compiled by the Board of Bar Overseers based on the record submitted to the Supreme Judicial Court.

Please direct all questions to [webmaster@massbbo.org](mailto:webmaster@massbbo.org).  
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