IN RE: PAUL D. DECENZO

NO. BD-2012-047

S.J.C. Order of Term Suspension entered by Justice Lenk on June 12, 2012, with an effective date of July 12, 2012.[1]

(S.J.C. Judgment of Reinstatement entered by Justice Lenk on March 13, 2013.)

SUMMARY[2]

In December 2008, the respondent was retained to represent a client charged with trafficking in cocaine in excess of 200 grams. The DEA had also seized $20,000 in cash as purported illegal proceeds. The clients' parents claimed that the funds were theirs. The respondent orally agreed to a flat fee of $20,000 to represent the client in district and superior court and to recover the $20,000 for the parents. The client and the parents also agreed that the funds recovered from the DEA could be applied toward the fee.

In January 2009, the client was arraigned in the superior court. Bail was set at $25,000 cash or $250,000 bond. The client was unable to make the bail and was incarcerated.

By May 2009, the respondent had negotiated a settlement with the DEA for the return of $15,000. On May 22, 2009, with the parents' authorization, the respondent signed their names to a settlement agreement. The respondent disguised that he had signed both names, and signed as witness to the purported signatures. The following day, the respondent faxed the signed settlement agreement to the DEA.

In July 2009, the DEA sent the respondent a check for $15,000 made out to the parents. The respondent, with the parents' knowledge and approval, endorsed the parents' names to the check and deposited it into his personal money market account. On August 5, 2009, the respondent wrote to the parents, with a copy to the client's wife, that he was applying the $15,000 to his fee. Two days later, the wife informed the respondent that they disputed his entitlement to the $15,000 for his fee. The respondent did not deposit the disputed portion of his fee to a trust account.

In early September 2009, the wife asked the respondent to give her the $15,000 he had recovered from the DEA because she needed the funds to post bail. The respondent agreed to give her the $15,000 in exchange for assigning the bail to the respondent to secure payment of his fee.

On September 17, 2009, the wife signed an assignment of bail prepared by the respondent that gave him the right to collect the full $25,000 in bail money. The assignment of bail required a notary to attest to the wife's signature, but the respondent did not have the wife's signature notarized. Instead, the respondent signed a fictitious name to the assignment

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[1] The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

[2] Complied by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

as the purported notary. On September 24, 2009, the respondent filed the assignment of bail with the false notarization with the clerk's office.

On March 11, 2010, the respondent was discharged as counsel. At the time, the matter had not yet gone to trial. On June 4, 2010, represented by new counsel, the client was convicted after trial by jury of trafficking in cocaine in excess of 200 grams. New counsel charged the client $5,600 to complete the matter.

On June 4, 2010, the client's new counsel wrote to the superior court clerk's office on the wife's behalf that the respondent was not entitled to all of the bail and that the wife would be speaking with the respondent about the matter. A copy of the letter was sent to the respondent.

On June 9, 2010, the respondent and the wife agreed that the respondent would return $8,400 to the client's family, plus $5,600 that had been paid to new counsel to complete the matter. On June 9, 2010, the respondent went to the clerk's office and obtained the $25,000 that had been posted for bail. The respondent deposited the funds to his personal money market account.

That same day, the respondent sent the wife a check for $8,400, but he did not pay the $5,600. Instead, along with the check for $8,400, the respondent sent the wife two releases that contained language releasing the respondent from all "actions, causes of actions, claims or demands" as to the respondent's representation of the client in the criminal matter and his handling of the bail proceeds. The wife informed the respondent that neither she nor the client would sign the releases. The respondent continued to hold the $5,600 in his personal money market account. After the matter came to bar counsel's attention, the respondent paid the client's wife $5,600.

The respondent's conduct in signing the parents' names to the DEA settlement and witnessing the purported signatures violated Mass. R. Prof. C. 4.1(a), 8.4(c) and (h). By notarizing the assignment of bail with a fictitious name and filing the assignment of bail with the court knowing that it contained a false notarization, the respondent violated Mass. R. Prof. C. 3.3(a)(1) and 8.4(c), (d), and (h). The respondent's conduct advancing money to post for bail violated Mass. R. Prof. C. 1.8(e). The respondent's failure to deposit the disputed portion of his fee to a trust account after being advised that his right to the fee was disputed violated Mass. R. Prof. C. 1.15(b)(2)(ii). His failure to promptly pay the wife the funds that she was owed violated Mass. R. Prof. C. 1.15(c). The respondent's conduct in unilaterally demanding releases in order to turn over funds to the wife and the client violated Mass. R. Prof. C. 8.4(c) and (h).

On April 11, 2012, the parties entered into a stipulation jointly recommending that the respondent be suspended from the practice of law for six months. On May 14, 2012, the matter came before the Board of Bar Overseers on the parties' stipulation and joint recommendation. The Board accepted the parties' stipulation and recommendation and

voted to file an Information with the Supreme Judicial Court recommending that the respondent be suspended from the practice of law for six months.

On June 12, 2012 an order was entered in the Supreme Judicial Court for Suffolk County (Lenk, J.), ordering that the respondent be suspended from the practice of law for six month effective thirty days from the entry of the order.