

**IN RE: MARK E. CASSIDY****NO. BD-2012-122****S.J.C. Judgment of Disbarment entered by Justice Botsford on May 28, 2013.¹****SUMMARY²**

The respondent was disbarred for misconduct in three matters, and for failure to cooperate with bar counsel's investigation. In the first matter, the respondent stopped communicating with the co-executor of an estate, refused to provide an accounting of the estate funds and converted estate funds. In the second matter, the respondent converted settlement funds. In the third matter, the respondent accepted a retainer, did no work on the case and failed to refund the retainer upon termination. In all three matters, the respondent failed to cooperate with bar counsel's investigation.

In the first matter, in April 2009, the respondent and another individual were named co-executors of an estate. The respondent opened the estate account with a deposit totaling \$767,551.14. Between May 2009 and November 2010, the respondent paid estate expenses totaling \$19,641.43 and made partial distributions to the beneficiaries totaling \$400,000. During this same time period, the respondent knowingly misappropriated \$347,909.71 of estate funds by writing forty-one checks to himself and using the funds for purposes unrelated to the estate.

The respondent stopped returning the co-executor's telephone messages. The co-executor demanded a complete accounting of the estate funds. However, the respondent failed to provide an accounting.

The co-executor filed a complaint with bar counsel, but, the respondent failed to respond to bar counsel's request for an answer.

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.

By failing to promptly remit funds due to the beneficiaries of the estate and by intentionally misusing estate funds for his own business and personal purposes with deprivation resulting, the respondent violated Mass. R. Prof. C. 1.15(b) and (c), and 8.4(c) and (h). By failing to respond to the co-executor's telephone calls, the respondent failed to act with reasonable diligence and promptness and failed to promptly reply to reasonable requests for information, in violation of Mass. R. Prof. C. 1.3 and 1.4(a) and (b). By failing to provide an accounting of the estate to the co-executor, the respondent violated Mass. R. Prof. C. 1.15(d). By failing to cooperate with bar counsel's investigation, the respondent violated S.J.C. Rule 4:01, § 3, and Mass. R. Prof. C. 8.4(d) and (g).

In the second matter, in December 2010, a mother retained the respondent to represent her daughter on a claim for personal injuries sustained in an automobile accident. In September 2011, the respondent sought authority to settle the daughter's case for \$8,000 from her father's auto insurance company and \$23,500 from the other driver's insurance company. The respondent indicated that he would take a one-third contingency fee of \$10,404.99 plus \$285.02 in expenses, and the daughter would receive \$20,809.99. The daughter agreed to the proposed settlement and signed a release.

The daughter endorsed an insurance check for \$8,000, and forwarded the check to the respondent. The respondent deposited the proceeds into his IOLTA account. The respondent received a second insurance check in the amount of \$23,500, which he also deposited into his IOLTA account. The respondent failed to promptly inform the client that he had received this insurance payment.

Between October 5, 2011, and January 14, 2012, the respondent intentionally misused the settlement funds in his IOLTA account. On multiple occasions following the respondent's receipt of the \$8,000 settlement funds, the mother and daughter requested payment. Initially, the respondent indicated that the funds were being held in escrow because a lien had been placed on them by the health insurance provider. Thereafter, the respondent stopped responding to the clients' telephone messages requesting information on the status of the case and payment of the \$8,000. In about August 2012, the mother contacted the insurance provider and learned that no such lien on the settlement funds existed. To date, the respondent has not paid the client her settlement funds.

The respondent failed to respond to bar counsel's inquiries and failed to appear before bar counsel under subpoena.

By failing to promptly notify the client of his receipt of the settlement funds and to promptly remit funds due to the client and by intentionally misusing the settlement funds with deprivation resulting, the respondent violated Mass. R. Prof. C. 1.15(b) and (c), and 8.4(c) and (h). By failing to respond to the clients' telephone calls, and misrepresenting the reason for delaying payment, the respondent failed to adequately communicate with the client and misrepresented the existence of a lien, in violation of Mass. R. Prof. C. 1.4(a) and (b) and 8.4(c). By failing to cooperate with bar counsel's investigation, the respondent violated S.J.C. Rule 4:01, § 3, and Mass. R. Prof. C. 8.4(d) and (g).

In the third matter, in June 2012, the client retained the respondent to represent him in legal proceedings against his wife. The client paid the respondent a \$5,000 retainer, which the respondent deposited to his business account. Between June and September 2012, the client made numerous attempts to contact the respondent, but the respondent failed to respond. In September 2012, the respondent admitted to the client that he had not done any work on his case, and agreed to refund the retainer, but failed to do so.

Between June 28 and July 3, 2012, the respondent intentionally misused the client's \$5,000 retainer funds without doing any work on his behalf. As of July 2012, the balance of the respondent's business account had been reduced to \$488.31.

The respondent failed to respond to bar counsel's inquiries and failed to appear before bar counsel under subpoena.

By failing to conduct any work on the client's case, the respondent violated Mass. R. Prof. C. 1.3. By depositing the retainer to his business account and intentionally misusing the retainer funds with deprivation resulting, the respondent violated Mass. R. Prof. C. 1.15(b) (2)(ii) and 8.4(c) and (h). By failing to respond to the client's reasonable requests for information on the status of his case, the respondent violated Mass. R. Prof. C. 1.4(a). By failing to return the unearned retainer and the file to the client, the respondent violated Mass. R. Prof. C. 1.16(d) and (e). By failing to cooperate with bar counsel's investigation, the respondent violated S.J.C. Rule 4:01, § 3, and Mass. R. Prof. C. 8.4(d) and (g).

On December 28, 2012, bar counsel filed a petition for discipline charging the respondent with the above misconduct. The respondent defaulted and the allegations in the petition were deemed admitted.

On April 22, 2013, the board voted unanimously to recommend that the respondent be disbarred from the practice of law. On May 28, 2013, the single justice issued an order of disbarment, effective immediately.