

IN RE: BRIAN B. SULLIVAN

NO. BD-2010-120

S.J.C. Judgment of Disbarment entered by Justice Lenk on December 16, 2011.¹

SUMMARY²

In April 2004, the respondent was retained to represent his client in recovering damages for injuries the client suffered in an automobile accident. They signed a fee agreement giving the respondent one-third of any recovery.

In July 2007, the case settled for \$21,500. Medicare had a lien on the recovery in the amount of \$3,361.88.

On July 19, 2007, the respondent deposited the settlement check into his IOLTA account. On July 23, 2007, the respondent sent his client her share of the settlement proceeds minus the Medicare lien and his fee. The respondent wrote to his client that she would receive additional funds once he resolved the Medicare lien. The respondent did not promptly withdraw his fee from the IOLTA account.

The respondent did not keep records of his receipt and maintenance of funds in the IOLTA account, maintain a chronological check register with client identifiers and a running balance, maintain individual client ledgers listing every deposit and expenditure and a running balance, perform a three-way reconciliation of the IOLTA account at least every 60 days, and did not keep a ledger of personal funds and for bank fees in the IOLTA account. When the respondent paid the client her share of the settlement proceeds, the account was in deficit by no less than \$51,000 due and owing to other clients. The respondent had misused these funds intentionally or without regard to whether he was entitled to the funds.

The respondent did not contact Medicare or take any action of substance to resolve the lien on behalf of the client. By December 3, 2007, the respondent had converted at least \$2,700.87 from the funds withheld to pay the Medicare lien. The respondent intended to deprive Medicare or the client of the funds at least temporarily, and he actually deprived the client and Medicare of the funds. On May 6, 2008, the client wrote to the respondent regarding the status of the Medicare lien. The respondent did not respond to the client's request for information, pay her the funds he had withheld to pay the lien, or take any action of substance to resolve the lien.

By no later than January 1, 2008, the respondent knew that he was running a substantial deficit in the IOLTA account. The respondent took no action to determine the cause and the amount of the shortfall, rectify the shortfall, or ascertain the ownership of funds on deposit in the IOLTA account. The respondent continued to use the account for the receipt, maintenance, and disbursement of trust funds.

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.

On February 10, 2009, the respondent sent his client \$3,650 by check drawn on the IOLTA account. The respondent wrote to the client that the check represented the balance of the funds due the client, but he did not tell her that he had not paid the lien. To fund this payment to his client the respondent intentionally used funds belonging to other clients.

In March 2009, the client was injured. In the course of resolving a payment issue with Medicare, the client learned that the Medicare lien from the 2004 accident had not been paid and wrote to the respondent about the failure to pay the Medicare lien and for information about the settlement of her case. The respondent did not respond to the client.

By April 1, 2010, the respondent owed at least \$195,000 to eleven clients. Those clients did not receive restitution of their funds.

The respondent's failure to withdraw his fee from the IOLTA account at the earliest reasonable time after his interest in those funds became fixed violated Mass. R. Prof. C. 1.15(b)(2)(ii). The respondent's failure to competently and timely resolve the Medicare lien violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3. His failure to respond to his client's request for information, keep his client reasonably apprised of the status of the matter, and provide sufficient information for the client to make decisions regarding the representation violated Mass. R. Prof. C. 1.4(a) and (b). His failure promptly to pay Medicare or the client the funds withheld for the lien and to safeguard those funds violated Mass. R. Prof. C. 1.15(b) and (c).

The respondent's failure to keep adequate records of the receipt, maintenance, and disbursement of funds held in the IOLTA account violated Mass. R. Prof. C. 1.15(f)(1)(B), (C), (D), and (E). His intentional misappropriation of trust funds violated Mass. R. Prof. C. 1.15(b) and 8.4(c) and (d).

On December 8, 2010, an order was entered in the Supreme Judicial Court for Suffolk County temporarily suspending the respondent from the practice of law effective immediately. On October 18, 2011, the respondent submitted an affidavit of resignation to the Board of Bar Overseers in which he admitted that bar counsel could prove the above facts and rule violations by a preponderance of the evidence. Bar counsel requested that the board recommend accepting the affidavit of resignation and entering a judgment of disbarment effective retroactive to the date of the respondent's temporary suspension from the practice of law.

On November 14, 2011, the board voted to accept the respondent's affidavit of resignation and to recommend that a judgment of disbarment be entered, retroactive to December 8, 2010. On December 16, 2011, the Supreme Judicial Court for Suffolk County entered a judgment of disbarment effective retroactive to December 8, 2010.