

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

DAVID KYLE COOPER,

Attorney-Respondent,

No. 6277289.

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Commission No. 2021PR00082

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Rory P. Quinn, pursuant to Supreme Court Rule 753(b), complains of Respondent David Kyle Cooper, who was licensed to practice law in Illinois on November 7, 2002, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

(Conversion of \$36,641.39 in Client Funds – Christopher McNally)

1. On December 13, 2012, Christopher McNally (“Mr. McNally”) was involved in a motor vehicle collision with Michael Laconte (“Laconte”) in Chicago, Illinois.

2. Prior to December 12, 2014, Respondent and Mr. McNally agreed that Respondent would represent Mr. McNally in a personal injury case against Laconte. Respondent and Mr. McNally also agreed that Respondent would represent Mr. McNally in an underinsured motorist claim against Mr. McNally’s insurance carrier. Respondent and Mr. McNally agreed Respondent would not accept a fee for representing Mr. McNally in either matter. At no time did Respondent reduce the agreements relating to his representation of Mr. McNally to writing.

FILED
9/21/2021 2:57 PM
ARDC Clerk

3. On December 12, 2014, Respondent filed a complaint on behalf of Mr. McNally, in the Circuit Court of Cook County, Illinois. The matter was docketed as case number 2014L012887, and titled *Christopher McNally v. Michael Laconte*.

4. In July 2015, Respondent and Laconte's insurer, Government Employees Insurance Company ("GEICO"), agreed to settle the matter for \$50,000. Mr. McNally did not know that Respondent had settled his case, nor did he authorize Respondent to settle the case for \$50,000, or for any amount. On July 23, 2015, GEICO issued Bank of America check #175122432 for \$50,000 made out to "Christopher and Amy McNally and Law Office of David J Cooper, their attorney."

5. After July 23, 2015, GEICO sent Respondent a settlement release. The release stated that Mr. McNally had received the \$50,000 payment and subsequently released Laconte and GEICO from any liability related to the December 13, 2012 collision.

6. On September 15, 2015, Respondent, or someone at Respondent's direction, placed Mr. McNally's purported signature to the GEICO settlement release. Respondent signed the GEICO settlement release as a witness to Mr. McNally's signature.

7. Mr. McNally's signature that Respondent, or someone at Respondent's direction, added to the GEICO settlement release was false because Mr. McNally had not signed the GEICO settlement release, nor had Mr. McNally given Respondent authority to add his signature. Respondent's signature that he added to the GEICO settlement release was also false because Respondent had not witnessed Mr. McNally sign the settlement release.

8. Respondent knew Mr. McNally's signature was false because Mr. McNally had not signed the GEICO settlement release, nor had Mr. McNally given Respondent authority to add his signature. Respondent knew his signature as a witness was also false because Respondent had not witnessed Mr. McNally sign the settlement release.

9. Sometime between July 23, 2015, and December 11, 2015, Respondent, or someone at Respondent's direction, placed Mr. McNally and Amiee McNally's ("Ms. McNally") purported signatures to the GEICO settlement check. Ms. McNally's first name was misspelled on both the face of the check and the signature on the back of the check.

10. The signatures Respondent or someone at Respondent's direction added to the GEICO settlement check were false.

11. Respondent knew the signatures he or someone at his direction placed on the GEICO settlement check were false because Mr. McNally and Ms. McNally had not signed the GEICO settlement check, nor had they given Respondent authority to add their signatures.

12. On December 11, 2015, Respondent deposited check #175122432 into his Chase Bank IOLTA account ending in 3866 entitled "Law Office of David J. Cooper."

13. On April 3, 2016, Respondent issued Chase Bank check #1004 for \$13,350 made out to Christopher McNally. Respondent informed Mr. McNally these funds were partial settlement for the underinsured motorist claim.

14. On December 11, 2015, the balance of Respondent's IOLTA account was \$70,243.40. Between December 11, 2015 and July 26, 2018, in 19 separate transactions, Respondent withdrew a total of \$38,178.01 from his IOLTA account by way of cash transfers to a personal checking account under Respondent's control.

Date of Transfer to Respondent's Checking Account	Amount
12/31/15	\$5,000
2/16/16	\$1,500
3/23/16	\$975.01
4/4/16	\$10,150
10/16/16	\$202
12/18/16	\$3,600
1/16/18	\$1,600
2/5/18	\$1,600
2/26/18	\$1,600
3/12/18	\$1600
4/4/18	\$1600
4/19/18	\$1600
5/7/18	\$1600
5/14/18	\$1600
6/25/18	\$1600
7/11/18	\$1600
7/19/18	\$700
7/26/18	\$46
7/26/18	\$5
Total	\$38,178.01

15. As of July 31, 2018, Respondent was required to maintain the remaining \$36,650 in settlement funds from the McNally matter in his IOLTA account.

16. On July 31, 2018, prior to any authorized disbursement of the \$36,650 in settlement funds held on behalf of Mr. McNally, the balance of Respondent's IOLTA account fell to \$8.61.

17. At no time did Mr. McNally authorize Respondent to use any portion of the \$36,650 in settlement funds for Respondent's own business or personal purposes. As of July 31, 2018, Respondent had used \$36,641.39 of Mr. McNally's settlement funds for his own business or personal purposes.

18. By using the \$36,641.39 of Mr. McNally's escrow funds without authority, Respondent engaged in conversion of those funds.

19. On December 4, 2018 and December 5, 2018, Mr. McNally emailed Respondent requesting his settlement funds. On January 18, 2019, Respondent and Mr. McNally met in person. Mr. McNally again requested his settlement funds. Respondent agreed to pay to Mr. McNally the settlement funds due to him.

20. Between January 18, 2019 and February 22, 2019, Respondent paid Mr. McNally \$750 of the \$36,641.39 owed. On February 22, 2019, Mr. McNally again requested the balance of the settlement funds from Respondent.

21. As of August 19, 2021, the date a complaint was voted in this matter, Respondent has not paid McNally any additional portion of the settlement funds due to him.

22. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failure to hold property of clients or third person that is in a lawyer's possession in connection with a representation separate from the lawyer's own property, by conduct including using funds belonging to Mr. McNally for his own business or personal purposes and causing the balance of his IOLTA account to fall below the amount then belonging to Mr. McNally, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010);
- b. failure to promptly deliver to a client or a third person funds that the client or a third person is entitled to receive, by conduct including failing to deliver the proceeds of Mr. McNally's settlement to him, in violation of Rule 1.15(d) of the Illinois Rules of Professional Conduct (2010); and
- c. engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including knowingly converting \$36,641.39 in settlement funds to his own use, without authority, placing or causing to be placed Mr. McNally's false signature on the GEICO settlement agreement, placing his false signature as a witness on the GEICO settlement agreement, placing or causing to be placed false signatures on the GEICO settlement check, and by concealing his use of the funds from Mr. McNally in

violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully Submitted

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Rory P. Quinn
Rory P. Quinn

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