

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

FILED
8/14/2023 7:54 AM
ARDC Clerk

In the Matter of:

JASON RUSSEL CARAWAY,

Attorney-Respondent,

No. 6291446.

Commission No. 2023PR00051

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Tammy L. Evans, pursuant to Supreme Court Rule 753(b), complains of Respondent, Jason Russel Caraway, who was licensed to practice law in Illinois on May 10, 2007, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 770:

ALLEGATIONS COMMON TO ALL COUNTS

1. At all times related to this complaint, Respondent was a partner at Caraway, Fisher & Broombaugh, P.C., a personal injury law firm in Belleville, Illinois.
2. At all times related to this complaint, Respondent maintained and was a signatory on an IOLTA client trust account ending in 6029 and held at Associated Bank (“trust account 6029”). The account was titled “Caraway, Fisher and Broombaugh, P.C. Client Trust Fund.”

COUNT I

(Dishonesty and Failure to Return Unearned Fee – Tyler Kostecki)

3. On or about March 26, 2020, Respondent and Tyler Kostecki (“Tyler”) agreed that Respondent would represent Tyler’s company, TYKO Construction (“TYKO”), in a breach of contract action against Wildhorse Management, Baxter Gardens, and James Weishar

(“defendants”). Respondent and Tyler agreed that Tyler would pay Respondent a \$3,500 retainer, which he did.

4. On June 21, 2021, Respondent told Tyler that he had filed a lawsuit on behalf of TYKO against the defendants.

5. Respondent’s statement to Tyler that he had filed the lawsuit was false because Respondent had not filed a lawsuit on behalf of TYKO against the defendants.

6. At the time Respondent made the statement to Tyler that he had filed the lawsuit, he knew the statement was false.

7. On October 19, 2022, Tyler conducted a search on the St. Clair County Circuit Clerk’s website for information about the lawsuit, but was unable to locate any record of the case.

8. On October 19, 2022, at 10:59 a.m., Tyler sent Respondent a text message that stated, “[W]as [i]t filed in [S]t. [C]lair? I can’t find it[.]” At 11:06 a.m., Respondent sent a text message to Tyler that contained a screen shot of a summons that was purportedly issued on June 21, 2021, by Kahalah Clay, who was the St. Clair County Circuit Clerk (“clerk”) at that time. The summons identified the parties as TYKO Construction as the plaintiff, Baxter Gardens as defendant, and listed 2021-L-0569 as the case number for the lawsuit.

9. On or before October 19, 2022, Respondent altered a summons that had previously been issued by the clerk’s office, by adding a case number (2021-L-0569) that had been assigned to another matter, and changing the names of the parties, the name and address of the plaintiff’s attorney, and the name and address of the defendant who was to be served, and provided the altered summons to Tyler.

10. At the time Respondent sent the altered summons to Tyler, he knew that he had not filed a lawsuit on behalf of TYKO against the defendants, and he knew the summons falsely represented that he had attempted to effectuate service on Baxter Gardens, one of the defendants.

11. On October 19, 2022, at 11:01 a.m., Respondent sent a text message to Tyler that stated, “Hey buddy I’m in [Z]oom court. The case is on the arbitration docket now. Can you chat this afternoon?”

12. Respondent’s statement that, “the case is on the arbitration docket now” was false because Respondent had not filed a lawsuit on behalf of TYKO against any of the defendants in St. Clair County Circuit Court.

13. At the time that Respondent made the statement to Tyler that, “the case is on the arbitration docket now,” he knew the statement was false.

14. After Tyler received the text message from Respondent described in paragraph 11, above, he sent a text message to Respondent that stated, “St. [C]lair [C]ounty? Yes. Please call me.” Respondent replied, “Yes sir! Of course!”

15. Later that day, Respondent sent the following text messages to Tyler:

“We should have a new status on the arb docket set by the court really soon then we get an arbitration date. I’ll get the very first available date.”

“I’ll need to prep you for the arbitration as well. Can you come in next week? What days look good for you? I’m done trying to do this the easy way with these clowns.”

“They have never agreed to a mediator so we will go in front of the arbitration panel. It will be easy but I still need to prep ya.”

16. Respondent’s statements described in paragraph 15, above, were false because he had not filed a lawsuit on behalf of TYKO against the defendants in St. Clair County Circuit Court,

and, therefore, the matter could not have been set on the court's arbitration docket or referred for mediation.

17. On or before October 20, 2022, Respondent created a three-count breach of contract complaint, affixed an electronic file stamp on the complaint that falsely represented that the complaint had been filed with the clerk's office, and provided the complaint to Tyler.

18. At the time Respondent provided the complaint to Tyler, he knew that he had not filed a lawsuit on behalf of TYKO against the defendants.

19. On or before October 20, 2022, Respondent altered two additional summonses that had previously been issued by the clerk's office, by adding a case number (2021-L-0569) that had been assigned to another matter, and changing the names of the parties, the name and address of the plaintiff's attorney, and the name and address of the defendant who was to be served to each of the summonses, and provided the altered summonses to Tyler.

20. At the time Respondent sent the altered summonses to Tyler, he knew that he had not filed a lawsuit on behalf of TYKO against the defendants, and he knew that the two summonses falsely represented that he had attempted to effectuate service on Wildhorse Management and James Weishar, two of the defendants.

21. On or before October 20, 2022, Respondent created three separate answers to the false complaint, affixed the electronic signature and ARDC number for Patrick Burgess ("Burgess"), a Chicago attorney, affixed an electronic file stamp on each answer that falsely represented that each answer had been electronically filed with the clerk's office by Burgess, and provided the answers to Tyler.

22. At the time Respondent provided the answers to Tyler, he knew that he had not filed a lawsuit on behalf of TYKO against the defendants, and knew that Burgess neither represented the defendants nor signed and filed the answers.

23. On or about October 20, 2022, Respondent created an order that falsely represented that Respondent had filed a lawsuit on behalf of TYKO against the defendants, and that, on September 23, 2022, he and Burgess appeared before Judge Heinz Rudolf and represented to the court that the parties were going to attempt to mediate the matter. The order also falsely represented that Respondent had agreed to voluntarily dismiss the complaint. Respondent affixed Judge Rudolf's signature and the September 23, 2022 date to the order. Respondent sent the order to Tyler on or about October 20, 2022.

24. At the time Respondent provided the order to Tyler, he knew that he had not filed a lawsuit on behalf of TYKO against the defendants, and knew that he had falsely created the order and affixed Judge Rudolf's signature to the order without authorization.

25. At no time did Respondent refund any portion of the \$3,500 that Tyler paid to him.

26. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

- a. failing to refund an unearned fee, by conduct including failing to return the \$3,500 that Respondent received from Tyler in connection with his representation of Tyler in a breach of contract action against the defendants, in violation of Rule 1.16(d) of the Illinois Rules of Professional Conduct (2010); and
- b. conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including making false statements to Tyler that are described in paragraphs 4, 8, 11, and 15, above; creating a complaint and affixing an electronic file stamp on the complaint that falsely represented that the complaint had been filed with the clerk's office; altering three summonses to falsely represent that

Respondent had attempted to effectuate service on the defendants; creating three answers and affixing the ARDC number and electronic signature of Burgess to each answer that falsely represented Burgess represented the defendants, and had authored and electronically filed each answer with the clerk's office; and creating an order that falsely represented that Respondent and Burgess had appeared before Judge Heinz Rudolf on September 23, 2022, and affixing Judge Rudolf's signature and an electronic stamp to the order that falsely represented that Judge Rudolf had signed the order and that the order was electronically filed by the clerk's office, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT II

(Dishonesty and Conversion of \$15,000 That was to be Used for the Benefit of Ashley Ybarra, a Disabled Adult)

27. On January 29, 2016, Leslie Rader ("Leslie") filed a petition for appointment of guardian for disabled person in St. Clair County Circuit Court for her daughter, Ashley Ybarra.

28. On or about March 15, 2016, the court appointed Leslie plenary guardian of Ms. Ybarra's estate and person.

29. Ms. Ybarra was assaulted while she was a patient at a metro-east hospital. Respondent and Leslie agreed that Respondent would represent Leslie, as guardian of Ms. Ybarra's estate, and would file a complaint against the hospital for the assault, which he did.

30. On or about February 11, 2020, Respondent, on behalf of Leslie, agreed to a settlement of \$250,000 with the hospital. Pursuant to court order, approximately \$161,000 was placed in an irrevocable trust for the benefit of Ms. Ybarra, and any disbursements from the trust were to be approved by the court.

31. On or about February 11, 2020, Respondent chose Akorne Private Management, LLC ("Akorne"), formerly doing business as Sapphire Phoenix Financial Group, as trustee of Ms.

Ybarra's trust. Aislinn Kornegay, an employee of Akorne, handled the daily administration of Ms. Ybarra's trust, including, but not limited to, making all disbursements from the trust.

32. On September 19, 2022, Respondent created a court order that falsely represented that Respondent had advised the court that Ms. Ybarra's residence needed \$15,000 in repairs, and that the court had authorized the release of \$15,000 from her trust to the firm of Caraway & Broombaugh, P.C. The order further stated that Caraway & Broombaugh, P.C. was required to "directly pay the funds after being deposited into their IOLTA escrow account directly to the providers of repair services and thereafter file the appropriate receipts to the court." Respondent affixed Judge Thomas Cannady's signature and a date of September 19, 2022 to the order. Respondent then presented the order to Akorne, and Ms. Kornegay drew a check in the amount of \$15,000 from Ms. Ybarra's trust that was payable to Caraway & Broombaugh, P.C.

33. At the time Respondent provided the order to Akorne, he knew that Ms. Ybarra's residence did not need \$15,000 in repairs, and that he had falsely created the order and affixed Judge Cannady's signature to the order without authorization.

34. Respondent used the \$15,000 that he received from Ms. Ybarra's trust for his own personal or business purposes without authorization.

35. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

- a. conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including creating a court order that falsely represented that \$15,000 in repairs were needed to Ms. Ybarra's residence and that the court had authorized the release of \$15,000 from her trust to Caraway & Broombaugh, P.C.; affixing Judge Cannady's signature and a date of September 19, 2022 to the order, that falsely represented Judge Cannady had reviewed and signed the order; and using the \$15,000 that Respondent received from Ms. Ybarra's trust for his own business and personal

purposes without authorization, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT III

(Dishonesty and Conversion of \$26,060.14 That was to be Used for the Benefit of Velma Oliver's Disabled Minor Son)

36. In or before May 2014, D.O., a minor, was injured by a teacher at his school.

37. In May 2014, Respondent and Velma Oliver ("Ms. Oliver") agreed that Respondent would represent her on behalf of D.O., her minor son, in a personal injury action against his school, the Belleville Area Special Services Cooperative.

38. On May 12, 2016, Respondent filed a personal injury action against D.O.'s school. The matter was docketed as case number 23L259, *Oliver v. Belleville Area Special Services Cooperative*.

39. On or about July 2, 2018, the parties agreed to settle the matter for \$40,000. Shortly thereafter, Respondent deposited \$40,000 in trust account 6029. After the payment of attorney's fees and costs, the court ordered that, "the sum of \$26,060.14 is to be deposited in a special needs trust with no funds to be withdrawn without a court order until the minor turns 18."

40. At no time did Respondent deposit the \$26,060.14 in a special needs trust as ordered by the court.

41. Respondent used the \$26,060.14 for his own personal and business purposes without authorization.

42. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

- a. conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including using \$26,060.14 that should have been deposited into a special needs trust for

the benefit of D.O., a disabled minor, for Respondent's own personal and business purposes without authorization, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT IV

(Dishonesty and Conversion of \$128,144.36 – Line of Duty Payments for the Minor Children of Ricardo Davis, a Deceased Police Officer)

43. On October 27, 2018, Ricardo Davis ("Officer Davis"), a Washington Park police officer, suffered injuries when he fell from the Poplar Street Bridge while attempting to apprehend two suspects. Officer Davis later died from his injuries. He was survived by six children, including two minor children, R.D. ("Child I") and R.D. ("Child II").

44. Shortly thereafter, Respondent and Stephanie Reynolds ("Stephanie"), Child I's mother, agreed that Respondent would represent Stephanie and would file a petition for guardianship nominating her as the guardian of Child I. Respondent and Shirley Davis ("Shirley"), Officer Davis's mother, agreed that Respondent would represent Shirley and would file a petition for guardianship nominating her as the guardian of Child II.

45. On or before January 22, 2022, Respondent, on behalf of Stephanie and Shirley, as the guardians of Child I and Child II, filed claims with the Illinois Court of Claims for compensation from the Line of Duty Compensation Act, 820 ILCS 315.

46. On February 8, 2022, the State of Illinois issued check number AC2498125 in the amount of \$64,072.18 that was made payable to "Stephanie Reynolds Guardian of [Child I]," and mailed the check to Respondent's law firm. Shortly thereafter, Respondent and Stephanie endorsed the check, and Respondent deposited the proceeds into trust account 6029.

47. At no time after February 8, 2022, did Respondent disburse any of the \$64,072.18 to Stephanie for the benefit of Child I.

48. Respondent used the \$64,072.18 for his own personal and business purposes without authorization.

49. On February 8, 2022, the State of Illinois issued check number AC2488387 in the amount of \$64,072.18 that was made payable to “Shirley Davis Guardian of [Child II],” and mailed the check to Respondent’s law firm. Shortly thereafter, Respondent and Shirley endorsed the check, and Respondent deposited the proceeds into trust account 6029.

50. At no time after February 8, 2022, did Respondent disburse any of the \$64,072.18 to Shirley for the benefit of Child II.

51. Respondent used the \$64,072.18 for his own personal and business purposes without authorization.

52. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

- a. conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including knowingly converting \$128,144.36 that was to be used for the benefit of Child I and Child II, minor children of Officer Davis, for Respondent’s own personal and business purposes without authorization, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT V

(Dishonesty and Conversion of \$42,889.12 – Dr. Amy Wolf)

53. On January 15, 2021, Dr. Amy Wolf (“Dr. Wolf”), a veterinarian, was attacked by a dog while working at Lashley Animal Hospital in Swansea. Dr. Wolf suffered injuries to her left and right hands, wrists, and arms as a result of the attack.

54. On or about February 1, 2021, Respondent and Dr. Wolf agreed that Respondent would represent her and file a claim for benefits under the Illinois Workers’ Compensation Act with the Illinois Workers’ Compensation Commission, which he did.

55. On September 28, 2022, the parties agreed to settle the matter for \$53,611.40, which included \$10,722.28 to be paid to Respondent for attorney's fees, and \$42,889.12 to be paid to Dr. Wolf.

56. On or about October 5, 2022, Respondent received a settlement check in the amount of \$53,611.40 from Employers Preferred Insurance Company and deposited the check into trust account 6029.

57. At no time after October 5, 2022, did Respondent disburse \$42,889.12 to Dr. Wolf.

58. Respondent used \$42,889.12 that belonged to Dr. Wolf for his own personal and business purposes without authorization.

59. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

- a. conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including knowingly converting \$42,889.12 that belonged to his client, Dr. Wolf, for his own personal and business purposes without authorization, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT VI

(Dishonesty and Conversion of \$63,821.25 – Melissa Gordon)

60. In 2019, Melissa Gordon ("Melissa") injured her back while she was working at the Warren G. Murray Center in Centralia. Melissa had to have surgery as a result of her injuries.

61. Shortly after she was injured, Respondent and Melissa agreed that Respondent would represent her and file a claim for benefits under the Illinois Workers' Compensation Act with the Illinois Workers' Compensation Commission, which he did.

62. On August 1, 2022, the parties agreed to settle the matter for \$73,821.25 which included \$10,000 to be paid to Respondent for attorney's fees, and \$63,821.25 to be paid to Melissa.

63. On or about August 29, 2022, Respondent received two checks from Tri-Star, the State of Illinois' insurance company, including check number 1219124 in the amount of \$10,000 that was made payable to "Caraway Fisher & Broombaugh," and check number 1219065 in the amount of \$63,821.25 that was made payable to "Melissa Gordon c/o Caraway & Broombaugh, P.C."

64. On August 30, 2022, Respondent negotiated both checks and deposited check number 1219065 into trust account 6029.

65. At no time after August 30, 2022, did Respondent disburse \$63,821.25 to Melissa.

66. Respondent used \$63,821.25 that belonged to Melissa for his own personal and business purposes without authorization.

67. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

- a. conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including knowingly converting \$63,821.25 that belonged to his client, Melissa, for his own personal and business purposes without authorization, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT VII

(Dishonesty and Conversion of \$100,000 – Debra Kaczur)

68. On March 12, 2021, Debra Kaczur ("Debra") was injured in an automobile accident near Salem. John Heil ("John") lost control of his vehicle and struck Debra's vehicle, causing

Debra to suffer permanent disabilities. Progressive Insurance Company (“Progressive”) insured John, and State Farm Insurance Company (“State Farm”) insured Debra.

69. Shortly after the accident, Respondent and Debra agreed that Respondent would represent Debra in a personal injury action against John and Progressive. Respondent and Debra agreed that Respondent would receive one-quarter of any settlement received. Respondent did not file a personal injury lawsuit on behalf of Debra.

70. On or about April 15, 2021, Respondent agreed to settle the personal injury matter with Progressive for \$50,000.

71. At no time did Respondent discuss a settlement with Progressive or discuss the terms of the proposed settlement with Debra.

72. At no time did Debra authorize Respondent to settle the personal injury matter with Progressive.

73. Progressive sent Respondent check number 2036866669 in the amount of \$50,000 that was made payable to “Debra Kaczur and Caraway Fisher and Broombaugh P.C.”

74. On April 21, 2021, Respondent signed his name and Debra’s name on the back of the check and deposited the check in trust account 6029.

75. At no time after April 21, 2021, did Respondent disburse any funds to Debra.

76. Respondent used the \$50,000 that he received from Progressive for his own personal and business purposes without authorization.

77. On or about May 20, 2021, Respondent agreed to settle an underinsured motorist claim with State Farm for \$50,000.

78. At no time did Respondent discuss a settlement with State Farm or discuss the terms of the proposed settlement with Debra.

79. At no time did Debra authorize Respondent to settle the underinsured motorist claim with State Farm.

80. On or after May 20, 2021, State Farm sent a check in the amount of \$50,000 to Respondent that was made payable to “Debra Kaczur and Caraway Fisher and Broombaugh, P.C.” On May 24, 2021, Respondent signed his name and Debra’s name on the back of the check and deposited the check in trust account 6029.

81. At no time after May 24, 2021, did Respondent disburse any funds to Debra.

82. Respondent used the \$50,000 that he received from State Farm for his own personal and business purposes without authorization.

83. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

- a. conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including knowingly converting \$100,000 that belonged to his client, Debra, for his own personal and business purposes without authorization, 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 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/ Tammy L. Evans
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