

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 15, 2010

D-33-10

In the Matter of ELBERT H.
WATROUS JR., an Attorney.

COMMITTEE ON PROFESSIONAL
STANDARDS,

Petitioner;

MEMORANDUM AND ORDER

ELBERT H. WATROUS JR.,
Respondent.

(Attorney Registration No. 1555374)

Calendar Date: May 21, 2010

Before: Spain, J.P., Rose, Malone Jr., Stein and Garry, JJ.

Mark S. Ochs, Committee on Professional Standards, Albany
(Michael G. Gaynor of counsel), for petitioner.

Kouray & Kouray, Schenectady (Steven X. Kouray of counsel),
for respondent.

Per Curiam.

Respondent was admitted to practice by this Court in 1967.
He maintained an office for the practice of law in the City of
Schenectady, Schenectady County, where he currently resides.

In his amended answer, respondent has admitted to the acts
of professional misconduct contained in the petition of charges
stemming from his role as power of attorney and attorney for his

deceased aunt.¹ As set forth in the petition, we find that respondent failed to maintain complete records and account for a portion of his aunt's funds from 1992 until her death in 1995 (see former Code of Professional Responsibility DR 1-102 [a] [5]; DR 9-102 [c], [d] [22 NYCRR 1200.3 (a) (5); 1200.46 (c), (d)]); he engaged in deceptive conduct by invading his aunt's assets, which conduct was prejudicial to the administration of justice and adversely reflected on his fitness as a lawyer (see former Code of Professional Responsibility DR 1-102 [a] [4], [5], [7] [22 NYCRR 1200.3 (a) (4), (5), (7)]); he engaged in a conflict of interest (see former Code of Professional Responsibility DR 5-101 [22 NYCRR 1200.20]); and he converted estate funds (see former Code of Professional Responsibility DR 1-102 [a], [4], [5], [7]; DR 9-102 [a] [22 NYCRR 1200.3 (a) (4), (5), (7); 1200.46 (a)]).

Respondent's handling of his aunt's affairs, as her power of attorney and attorney, was the subject of a protracted and contentious Surrogate's Court proceeding that continued for over seven years. That proceeding resulted in a stipulation and final decree settling the aunt's estate wherein respondent reimbursed the estate, of which he was a lawful distributee, for money and property for which he could not account. Respondent paid restitution to the estate in the amount of \$2,383.11.

In mitigation, respondent expresses remorse for his admitted misconduct, cites serious personal problems at the time, notes his career in public service, including having served as Schenectady County District Attorney from 1971 until 1977, and thereafter as Schenectady County Public Defender from 1996 until 2004, and further notes his otherwise unblemished disciplinary record. Respondent states that he stopped practicing law in January 2010.

Despite the mitigating factors cited by respondent, he has admitted to very serious professional misconduct. In determining an appropriate disciplinary sanction, and noting that the primary concern of attorney discipline is the protection of the public

¹ All conduct occurred between 1992 and 1995, prior to the April 1, 2009 enactment of the Rules of Professional Conduct.

(see Matter of Levy, 37 NY2d 279, 282 [1975]; Matter of Koplovitz, 62 AD3d 1205 [2009]), we conclude that respondent should be suspended from the practice of law for a period of five years, effective immediately, and until further order of this Court.

Spain, J.P., Rose, Malone Jr., Stein and Garry, JJ.,
concur.

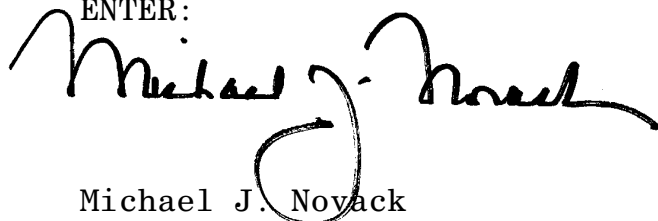
ORDERED that respondent is found guilty of the charges set forth in the petition; and it is further

ORDERED that respondent is suspended from the practice of law for a period of five years, effective immediately, and until further order of this Court; and it is further

ORDERED that, for the period of suspension, respondent is commanded to desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another; and respondent is hereby forbidden to appear as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority, or to give to another an opinion as to the law or its application, or any advice in relation thereto; and it is further

ORDERED that respondent shall comply with the provisions of this Court's rules regulating the conduct of suspended attorneys (see 22 NYCRR 806.9).

ENTER:

A handwritten signature in black ink, appearing to read "Michael J. Novack". The signature is written in a cursive, flowing style with a large loop at the end.

Michael J. Novack
Clerk of the Court