

A Tale
As Old
As Time



Biblical Brothers

Cain and Able

“Now Cain said to his brother Abel, ‘Let’s go out to the field.’ And while they were in the field, Cain attacked his brother Abel and killed him.”

-- Genesis 4:8



Mythological Brothers

Romulus and Remus

Romulus, the first king of Rome, killed his twin brother Remus.



Fictional Brothers



The Godfather

"Fredo, you're
my older
brother and I
love you, but
don't you ever
go against the
family again.
Ever."

Michael
Corleone later
shot his
brother Fredo.

Modern Day Brothers

- John Doe committed a heinous crime for which he was convicted and sentenced to prison.
- John was in prison from October 2016 to October 2020.
- In 2015 and 2016, John entrusted his Massachusetts lawyer-brother James Doe with \$500,000 to hold for him while he was incarcerated with the understanding that James would return the money upon his release.
- No one in this room is surprised



Bar Disciplinary Investigation

- By at least May 2018, John was concerned that his money was missing.
- When James failed to fully account to John or return the funds, John filed a request for investigation with bar counsel in October 2019.
- After investigation, in May 2022 bar counsel filed a petition for discipline against James.
- The hearing committee, Board of Bar Overseers, and Supreme Judicial Court, all found that while acting as a fiduciary for



Clients' Security Board Claim

- Immediately after James' disbarment, John filed a claim with the CSB.
- Massachusetts has not adopted ABA Model Rule 10, which bars claims from siblings and other close family members of respondents.
- Instead, the CSB has a policy to guide Board members in exercising their discretion when claims are made by family members of respondents:

Claimants seeking reimbursement where the claimant and respondent are related by birth or marriage are not necessarily precluded from reimbursement. The Board shall review claims for evidence of collusion or conspiracy when there is a familial, business, employment, or personal relationship between a claimant and a claimant's former attorney.

What the Board of Bar Overseers found

- John entrusted his lawyer-brother with his life savings both because he was his brother and because he was an attorney who had acted as a fiduciary for others in the past.
- James agreed to hold the funds as John's fiduciary.
- John wanted James to keep the money out of the state in which the crime was committed and where he was incarcerated.
- James stole John's money while acting as his fiduciary.



What James, the lawyer- brother, said

- John gave James the money as a gift between brothers. (The hearing committee, Board of Bar Overseers, and Court all rejected this claim.)
- Every check that John sent to James arrived in a plain envelope without any instructions, directions, conditions, limitations, or requirements.
- John committed multiple crimes in multiple jurisdictions similar to the one of which he was convicted, and his past bad deeds and “unclean” hands should preclude any award.



What we wondered

What was John's intent when he told his lawyer-brother to hold his money out-of-state?

Did John fraudulently transfer the funds to his lawyer-brother with the intent to deny his victim(s) possible compensation?

Should we give any award to a person like John who had committed such heinous crimes?

If the statutes of limitations for any civil claims against John for the crime(s) he committed had not yet run, did we have any obligation to notify the victim(s) that John had received an award?

What was their family's Thanksgiving dinner like?

How we reached a decision

- We agreed that John's crime(s) were heinous.
- We relied on the conclusions of the hearing committee, the Board of Bar Overseers, and the Supreme Judicial Court that James had stolen the money that John had entrusted to him.
- We relied on the conclusions of the hearing committee, the Board of Bar Overseers, and the Supreme Judicial Court that James was acting as John's fiduciary when he stole the money.
- We decided that the brothers did not collude to steal the money.
- We did not find any pending civil claims, civil judgments, liens, or restitution orders against John.
- We decided that we did not have sufficient evidence to

What We Decided

- We decided to make an award to John because we found that all of the jurisdictional prerequisites had been met.
- However, we exercised our discretion and awarded John one-half of the of money



Did we notify the victim of the crime for which John was convicted?

- No.
- Massachusetts' rules require the Board and staff to "maintain the confidentiality of the claimants, investigations, and proceedings." SJC Rule 4:05, § 6; CSB Rule 8.
- The purpose of these rules is to avoid causing additional harm to victims of attorney thefts and to avoid a chilling effect so that future claimants do not fear that filing claims might result in