

IN RE: DAVID M. LEMLER

S.J.C. Judgment of Disbarment entered by Justice Greaney on March 21, 2002, with an effective date of April 20, 2002.¹

SUMMARY²

The respondent represented a client in a personal injury claim resulting from a motor vehicle accident that occurred on May 10, 1999. On June 22, 2000, the PIP carrier issued three PIP checks totaling \$3,268.18 payable directly to the medical service providers. The insurer forwarded the checks to the respondent. By letter dated August 28, 2000, the respondent returned the three PIP checks to the insurer and requested that the insurer reissue the checks payable only to the respondent and that future PIP checks also be issued payable to the respondent.

On September 6, 2000, the insurer issued a PIP check in the amount of \$7,635.00 payable to the respondent and his client. With his client's knowledge and permission, the respondent signed the client's name on the back of the check. However, the respondent made no distribution of these funds to or for the benefit of his client or to her medical service providers. The respondent instead intentionally used the proceeds of the PIP check for personal and business uses unrelated to his client or her medical service providers.

On June 7, 2001, the respondent's IOLTA account was closed with a zero balance. The respondent never paid to his client or her medical service providers the PIP funds that they were entitled to receive.

The respondent's intentional use of trust funds for personal or business purposes, with intent to deprive, at least temporarily, and with actual deprivation resulting was in violation of Mass. R. Prof. C. 1.15(a)-(d) and 8.4(c) and (h).

On May 15, 2001, Bar Counsel requested that the Board issue a subpoena for the respondent as a result of his failure to cooperate with Bar Counsel's investigation. On May 24, 2001, the Board issued a subpoena requiring the respondent to appear before Bar Counsel on June 19, 2001, and to bring with his all records related to his IOLTA account. The subpoena was served on the respondent but the respondent failed to appear for the subpoena meeting or to otherwise respond to the subpoena.

On June 19, 2001, Bar Counsel filed a petition for administrative suspension based on the respondent's failure to cooperate with Bar Counsel's investigation. The Order of Administrative Suspension was entered on June 25, 2001. The respondent thereafter failed to comply with the terms of his administrative suspension by, among other requirements, sending notice of his suspension to courts, clients and opposing counsel.

The respondent's failure to cooperate with Bar Counsel's investigation and failure to comply with the terms of his administrative suspension was in violation of Mass. R. Prof. C. 8.4(g) and S.J.C. Rule 4:01 § 3.

On October 25, 2001, Bar Counsel filed a petition for discipline against the respondent. The respondent failed to file an answer to the petition in conformance with the requirements of the Board of Bar Overseers Rule 3.15(d). Pursuant to S.J.C. Rule 4:01, § 8(3), the allegations were therefore deemed admitted. On February 11, 2002, the Board of Bar Overseers voted to

recommend to the court that the respondent be disbarred and on March 22, 2001, the Supreme Judicial Court for Suffolk County so ordered.

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 before the Court.

Please direct all questions to webmaster@massbbo.org.

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