

IN RE: WILLIAM PAUL YONCE

S.J.C. Judgment of Disbarment entered by Justice Greaney on January 20, 2004.¹

SUMMARY²

In or about October 19, 2001, and pursuant to Mass. R. Prof. C. 1.15(f), Bar Counsel received a notice of a dishonored check, drawn on the respondent's IOLTA account, from the bank at which the account was maintained. The respondent's IOLTA account was a commingled account, used for the deposit and disbursement of trust funds, as well as for ATM withdrawals for personal use. The returned check was payable to a client and represented a share of the proceeds of a \$10,000 civil settlement.

The \$10,000 settlement check was payable to the respondent, the client, and her health maintenance organization (HMO). The HMO had previously perfected a statutory medical lien on the settlement in the amount of \$12,423.49. The respondent deposited or caused the settlement check to be deposited to his IOLTA account on September 5, 2001, without the knowledge or authorization of the HMO and without the endorsement of either co-payee. After the deposit of the settlement check, the balance in the IOLTA account was \$10,055.77.

The respondent paid himself his fees and expenses from the IOLTA account on September 10, 2001. Thereafter, in the several weeks following the deposit of the settlement check, and without making any further deposits, the respondent intentionally, and without authorization from the client or the HMO, paid or caused to be paid to himself additional sums. By October 3, 2001, the balance in the IOLTA account was \$1,516.94, without any payments having been made to or for the benefit of the client or the HMO.

On or about October 15, 2001, the respondent issued or caused to be issued a check in the amount of \$3,091.09 to the client. The check was returned by the bank because there were insufficient funds on deposit. A replacement check to the client was issued by the respondent or on his behalf and paid on November 2, 2001, at least in part using funds from an unrelated settlement for another client deposited on October 17, 2001. To date, the respondent has failed to pay the remaining balance of the settlement to either the client or the HMO.

The respondent's commingling of trust funds with personal or business funds, and his intentional misappropriation of the settlement funds with intent to deprive the client or her medical provider of the funds at least temporarily and with actual deprivation resulting, violated Mass. R. Prof. C. 8.4(c),(h) and Mass. R. Prof. C. 1.15(a),(b). The respondent's deposit to his IOLTA account of the settlement check without the knowledge, authorization, or endorsement of the co-payee is in violation of Mass. R. Prof. C. 8.4(c),(h). The respondent's disbursement to the client of funds owed to the HMO pursuant to its statutory medical lien is in violation of Mass. R. Prof. C. 1.15(a),(b).

On or about January 8, 2002, Bar Counsel sent the respondent notice of the dishonored check drawn on his IOLTA account. In reply, Bar Counsel was advised by the respondent's wife that the respondent was serving a tour of duty in the military. The respondent in fact was on active military duty overseas from October 23, 2001, the date on which he was ordered to report to Providence, Rhode Island, until his discharge on July 1, 2002.

On or about July 18, 2002, and after the respondent's discharge from the military, Bar Counsel sent another copy of the notice of dishonored check to the respondent at the office address at which he had last registered with the Board of Bar Overseers. The correspondence was returned by the post office as undeliverable, as was subsequent correspondence sent by Bar Counsel to the respondent's last known home address.

On or about August 14, 2003, Bar Counsel located a post office box address for the respondent and wrote to him once again, advising him of the allegations concerning the client's settlement and requesting a reply. On or about August 29, 2003, the respondent telephoned the Office of Bar Counsel and left a message indicating that he had received the August 14 letter and could be reached at a certain telephone number on September 2, 2003. Bar Counsel telephoned the respondent on September 2, 2003, but he was not there. He did not return the call and did not reply to further correspondence sent on September 2, 2003.

The respondent's failure to reply to Bar Counsel's inquiries and to cooperate in Bar Counsel's investigation is conduct in violation of Mass. R. Prof. C. 8.4(g) and Supreme Judicial Court Rule 4:01, § 3.

Bar Counsel filed a petition for discipline against the respondent on September 19, 2003. The respondent failed to file an answer to the petition. By letter dated October 15, 2003, the Board of Bar Overseers notified the respondent that the allegations in the petition were deemed admitted and that he had waived his right to be heard in mitigation. The respondent's failure to cooperate in the disciplinary process was considered as a matter in aggravation.

On December 8, 2003, the Board voted to recommend to the Supreme Judicial Court that the respondent be disbarred. The Court so ordered on January 20, 2004.

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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