

IN RE: STEPHEN CHALRES MALONEY

S.J.C. Judgment of Disbarment entered by Justice Spina on August 9, 2004.¹

SUMMARY²

The respondent was disbarred as a result of his conduct in two matters.

In the first matter, the respondent was retained in January 2002 to represent a client in a divorce action. The client and his wife decided to sell their marital home and split the proceeds from the sale. The parties agreed that the respondent would hold the proceeds from the sale of the home in escrow pending completion of the divorce proceedings. They further agreed that the money would be held in the respondent's IOLTA account because it was not anticipated that the funds would be held for an extended period. A judgment of divorce nisi was not entered until December 17, 2002. Although the respondent at some point knew or should have known that the funds would not be held short term, he did not, as required, transfer the funds to an individual trust account with interest payable to the parties.

The home was sold in late February 2002. The respondent deposited \$111,295.82, the proceeds from the sale, into his IOLTA account on March 6, 2002. The following day, the respondent withdrew \$6,700.00 from his IOLTA account, reducing the balance in the account to \$105,108.55. The respondent intentionally used these funds for his own business or personal purposes or those of other clients and did not disburse any portion of the withdrawn funds to or on behalf of the client or the client's wife.

Between March 7, 2002 and December 20, 2002, the respondent intentionally withdrew \$115,815.00 from the IOLTA account by negotiating 112 checks payable to himself. During this period, the respondent deposited only \$44,714.00 into this account. The respondent used the escrowed funds for his own business or personal purposes or those of other clients.

On or about December 27, 2002, the respondent sent the client's wife her portion of the proceeds from the sale of the marital home by mailing her two checks totaling \$68,543.23 from his IOLTA account. The respondent did not send the client any of his portion of the proceeds. Between December 20, 2002 and February 28, 2003, the respondent intentionally made additional withdrawals from the IOLTA account for his own business or personal purposes or those of other clients. By February 28, 2003, the balance in the respondent's IOLTA account was \$29.38 without any distribution having been made to or on behalf of the client.

The client contacted the respondent on or about April 4, 2003, requesting distribution of his share of the proceeds from the sale of the home. The respondent sent a check in the amount of \$43,000.00, representing his share of the proceeds from the sale of the home. The check was drawn on a closed business account. The client telephoned the respondent and advised him that the check had been returned unpaid. In May 2003, the respondent wired \$43,000.00 to the client from a personal bank account.

By intentionally misappropriating the escrow funds that he was holding for the benefit of the client and the client's wife, with intent to deprive them of the funds at least temporarily and with actual deprivation resulting, the respondent violated Mass. R. Prof. C. 1.15(a) - (d) and

8.4(c) and (h).

In the second matter, on or about December 7, 1998, the respondent received a check in the amount of \$33,625.94 on behalf of a client pursuant to a November 30, 1998 modification judgment in a domestic matter. The funds were received from the client's former husband, and were to be held in escrow by the respondent for the benefit of the client's minor children as security for child support payments. The respondent was to make quarterly distributions of the child payments in the amount of \$5,200.00 to the client from the escrow funds. Although the respondent knew that the funds would not be held short term, he failed to deposit these funds into a separate interest bearing trust account as required, and instead deposited them into his IOLTA account.

The modification judgment further provided that upon the sale, transfer or refinancing of certain real estate properties owned by the client's husband, the husband was to deposit fifty percent of the net proceeds or \$200,000.00, whichever was less, into the escrow account held by the respondent until the total of such deposits equaled \$200,000.00.

The judgment was amended again on April 22, 1999, after the husband entered into a purchase and sale agreement for the sale of his real estate. The husband was ordered to deposit \$7,800.00 from the proceeds of the sale, in addition to the amount he was required to deposit pursuant to the November 30, 1998 judgment. The amended judgment also required the respondent, as escrow agent, to deposit the escrow proceeds into a reasonable income producing account.

After the sale of the real estate, the respondent and counsel for the husband determined that \$178,753.53 would be deposited into the escrow account in order to bring the account balance to \$200,000.00. The respondent received a check in the amount of \$178,753.53 from the husband's attorneys on or about April 29, 1999. The following day, he deposited the check into his IOLTA account, rather than an individual interest-bearing trust account as required. On or about May 4, 1999, the respondent received the additional \$7,800.00 check from the husband's attorneys and also deposited that check into his IOLTA account. The respondent did not place any of the escrow funds into an income producing account until March 13, 2000, when he sent a check in the amount of \$100,000.00 drawn on his IOLTA account to the Vanguard Group and opened an account in his name as trustee for the benefit of the client's two minor children.

Between December 1998 and February 2003, the respondent intentionally made withdrawals from the IOLTA account, supported by the client's funds, for his own business or personal purposes or those of other clients. By February 2003, the respondent should still have been holding a minimum of approximately \$43,000.00 on behalf of the client, over and above the funds in the Vanguard account. However, on February 28, 2003, the balance in the respondent's IOLTA account was \$29.38. Between March 13, 2000, and June 26, 2001, the respondent withdrew \$19,600.00 from the Vanguard account and used these funds to replace IOLTA funds that had previously been used by the respondent for his own business and personal purposes or those of his clients.

The respondent distributed not less than \$90,400.00 in child support payments to the client between December 1998 and November 2002, but failed to make any quarterly child support payments to the client after November 2002. Between March and October 2003, the client repeatedly telephoned the respondent to inquire about the overdue support payment. The respondent, on multiple occasions, falsely advised her that the check would be sent. He also failed to comply with the client's numerous requests for an accounting of his services and for an accounting of the funds that he held in escrow on behalf of her minor children. He did not provide her with an accounting until October 2003.

The client filed a grievance against the respondent at the Office of Bar Counsel on November 15, 2003, and retained new counsel to represent her. The respondent sent two checks

representing the overdue quarterly support payments to successor counsel on or about April 6, 2004. Because the client's former husband died in October 2003, the respondent issued one check in the amount of \$15,600.00 that represented the three quarterly payments due the client prior to October 2003. The second check in the amount of \$10,400 represented the two quarterly payments that accrued since the husband's death. The funds from the second check will be held in escrow by the client's new attorney pending determination by the probate court as to whether the funds should be distributed to the client or the husband's estate. The respondent has yet to reimburse the remaining funds that he should have been holding on behalf of the client or the estate.

By commingling and intentionally misappropriating the escrow funds that he was holding for the benefit of his client, with intent to deprive her of the funds at least temporarily and with actual deprivation resulting, the respondent violated Mass. R. Prof. C. 1.15(a) - (d); and 8.4(c) and (h).

On June 29, 2004, the respondent submitted his affidavit of resignation from the practice of law. The respondent admitted in the affidavit that the material facts set forth in Bar Counsel's statement of discipline would be established by sufficient evidence at hearing. On July 12, 2004, the Board of Bar Overseers voted to recommend that the affidavit of resignation be accepted and that an order of disbarment be entered. The court so ordered on August 9, 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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