

IN RE: STAFFORD SHEEHAN

S.J.C. Judgment of Disbarment entered by Justice Spina on April 16, 2008, with an effective date of May 16, 2008.¹

MEMORANDUM OF DECISION

The Board of Bar Overseers (board) filed an Information with the court recommending that Attorney Stafford Sheehan (respondent) be disbarred for intentionally commingling client funds with his own, intentionally misappropriating estate funds, and intentionally misusing another client's funds in order to replenish the funds taken from the estate.

The respondent first raises a jurisdictional issue, claiming the board was divested of jurisdiction to discipline him as of November 10, 2006, the date he declared retirement status. This issue is disposed of by S.J.C. Rule 4:01, § 1, which states that the court has jurisdiction over all attorneys "admitted to, or engaging in, the practice of law in this Commonwealth" (emphasis added). Although retired and not engaging in the practice of law, the respondent remains "admitted to" the practice of law in this Commonwealth. Retirement is merely a status. He may resume active status at any time by notifying the board and paying the requisite fee. S.J.C. Rule 4:02 (5) (a) and (b).

Moreover, S.J.C. Rule 4:02(5)(a) requires an attorney to register with the board for three years after declaring retirement status to facilitate the processing of complaints about the attorney's conduct while engaged in the practice of law. The rule functions to retain jurisdiction over attorneys after they retire, and the court has exercised such jurisdiction in the past. See Matter of Mason, 22 Mass. Att'y Discipline Rep. 558, 560-561 (2006); Matter of Lappin, 17 Mass. Att'y Discipline Rep. 352, 353 (2001). Indeed, much of the misconduct supporting the first and second counts of the complaint occurred while the respondent held active status as an attorney. The board correctly denied the respondent's motion to dismiss. If the board were not correct, an attorney could avoid discipline by declaring retirement status. Such a state of affairs would be thoroughly untenable.

The board's findings are supported by substantial evidence in the record, and summarized as follows.

Count 1. The respondent maintained an IOLTA account into which he deposited his personal funds from December, 2002, to June 13, 2005. This is a violation of Mass. R. Prof. C. 1.15 (d), effective to July 1, 2004, and Mass. R. Prof. C. 1.5 (b), effective July 1, 2004.

Count 2. The respondent was engaged to represent the executor of the estate of a deceased client. He intentionally misappropriated to his own use about \$54,000 of estate moneys. The executor engaged new counsel to recover the money, but the respondent resisted turning it over. The hearing committee discredited his explanations, and found they were advanced in bad faith. He eventually repaid the estate. This conduct constitutes a violation of Mass. R. Prof. C. 1.15 (a) and (b), effective to July 1, 2004, and Mass. R. Prof. C. 1.5 (c), (d), and (e), effective July 1, 2004. It also constitutes a violation of Mass. R. Prof. C. 8.4 (c) and (h). Because the respondent failed to advise the client he had retired from the practice of law, and by failing to return the client's files and funds, he violated Mass. R. Prof. C. 1.16 (d) and (e).

Count 3. The respondent repaid the estate, as described above, with funds misappropriated from a different client, who was disabled and undergoing surgery at the time. That client had engaged the respondent to collect moneys due on a note. After declaring retired status on November 10, 2006, the respondent referred the matter to another attorney, who eventually settled the case. The client asked the other attorney to hold about \$34,000. Without the client's permission, the respondent obtained a bank check drawn on these funds and made payable to the client. He signed the client's name on the check, without authority, and deposited it to his IOLTA account. He then used these funds to repay the estate, as described in Count 2. The respondent has not fully repaid the amount taken, and still owes about \$11,000. This conduct violates Mass. R. Prof. C. 1.15 (c), and Mass. R. Prof. C. 8.4 (c) and (h).

In aggravation, the respondent engaged in misconduct motivated by self interest. See *Matter of Lupo*, 447 Mass. 345, 359-360 (2006). He also took advantage of a vulnerable client. *Id.* at 354. He had been disciplined previously. *Matter of Garabedian*, 416 Mass. 20, 25 (1993). He had substantial experience as an attorney. *Matter of Luongo*, 416 Mass. 308, 312 (1993). He demonstrated before the hearing committee a lack of candor, manifested by his false testimony and proffer of fabricated documents. *Matter of Eisenhower*, 426 Mass. 448, 457, cert. denied, 524 U.S. 919 (1998).

The presumptive sanction for conversion or misappropriation of client funds, with intent to deprive or, actual deprivation, is disbarment or indefinite suspension. *Matter of Schoepfer*, 426 Mass. 183, 186 (1997). The aggravating factors weigh in favor of disbarment.

For the foregoing reasons, an order of disbarment is to issue.

FOOTNOTES:

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

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