

IN RE: EDWARD J. SYLVIA, JR.

S.J.C. Order of Suspended Discipline/Probation entered by Justice Spina on April 22, 2008.¹

SUMMARY²

On September 12, 2006, pursuant to Mass. R. Prof. C. 1.15(h), bar counsel received a notification from Bank of America regarding an overdraft and dishonored check drawn on the respondent's IOLTA account. The dishonored check presented for payment, if paid, would have caused the account to be overdrawn in the amount of \$196.82.

Commencing at least as of August 10, 2006, and through at least September 29, 2006, the respondent allowed earned fees to accumulate in his IOLTA account, used funds from his IOLTA account to make at least one payment toward the operating expenses of his law office, failed to maintain individual client ledgers, withdrew legal fees without allocation to specific clients and maintained a check register that did not have client identifiers to all deposits or all checks. As a result of these problems, the respondent made an incorrect assumption as to whose funds comprised the balance in the account and how much was due the respondent for legal fees. This assumption ultimately led to the respondent's writing a check for \$275 payable to himself on September 4, 2006, when there was already an outstanding check in the amount of \$239.46 and a balance in the account of only \$317.64. The account balance was thus insufficient to pay both checks.

The respondent's conduct in allowing legal fees to accumulate in his IOLTA account and not promptly withdrawing fees at the earliest reasonable time was in violation of Mass. R. Prof. C. 1.15(b)(2)(ii). The respondent's failure to maintain complete records of the receipt, maintenance, and disposition of his trust account funds constituted a violation of Mass. R. Prof. C. 1.15(f) and in particular constituted violations as follows:

- a. The respondent's failure to prepare and maintain check registers that specified for each deposit and withdrawal the identity of the client matter for which funds were deposited or disbursed violated Mass. R. Prof. C. 1.15(f)(1)(B);
- b. The respondent's failure to prepare and maintain a chronological ledger for each client or third person for whom the law firm received trust funds documenting each receipt and disbursement of the funds of the client or third person, the identity of the client matter for which funds were deposited or disbursed, and the balance held for the client or third person violated Mass. R. Prof. C. 1.15(f)(1)(C);
- c. The respondent's disbursement of funds in an amount that created a negative balance violated Mass. R. Prof. C. 1.15(f)(1)(C); and
- d. The respondent's failure to prepare and maintain reconciliation reports at least every sixty days showing a proper three-way reconciliation of the IOLTA accounts violated Mass. R. Prof. C. 1.15(f)(1)(E).

The matter was heard by a hearing committee on the issues of aggravation, mitigation and disposition. On December 4, 2007, the committee issued its report, finding the above facts and rules violations.

The committee found in aggravation that the respondent had received a public reprimand in

2001 for inadequate record keeping and mismanagement of his IOLTA account, including much of the same misconduct alleged in this case (e.g., failing to maintain individual ledgers, allowing earned fees to accumulate and paying personal expenses). 17 Mass. Att'y Disc. R. 558 (2001).

The committee found as mitigating, but not as an excuse for noncompliance with the rules of professional conduct, that during the applicable period, the respondent's long-time office manager and bookkeeper was seriously ill for four months and the respondent relocated his law office. The committee further found that after receiving the petition for discipline, the respondent retained a CPA who set up a system in compliance with Mass. R. Prof. C. 1.15.

The committee recommended that the respondent receive a suspended three-month suspension, subject to a two-year accounting probation and a CLE requirement in financial recordkeeping. Neither the respondent nor bar counsel appealed the recommendation of the hearing committee and on March 10, 2008, having received no opposition, the Board voted to adopt the recommendation. On April 22, 2008, the Court issued an order suspending the respondent for three months, the effective date suspended, subject to certain probationary terms and conditions for two years. The Court added that upon the expiration of the two-year accounting probation period, the respondent may then petition the court for the termination of his probation.

FOOTNOTES:

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 Supreme Judicial Court.

Please direct all questions to webmaster@massbbo.org.

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