

IN RE: WALTER E. STEELE, JR.

S.J.C. Judgment of Disbarment entered by Justice Greaney on June 10, 2008, with an effective date of July 10, 2008.¹

SUMMARY²

The respondent was admitted to the Bar of the Commonwealth on June 27, 1996. In April 2006, the respondent received a public reprimand for misconduct in two matters. See Matter of Steele, 22 Mass. Att'y Disc. R. 742 (2006).

In May 2006, the respondent represented a client in a personal injury case on the basis of a one-third contingent fee agreement. On about May 24, 2006, the respondent received a check from Safety Insurance in the amount of \$22,500 in settlement of the client's claims. At the time of the settlement, the Executive Office of Health and Human Services, Office of Medicaid (MassHealth), had a lien in the amount of \$9,392.94 against the client's recovery to secure payment for medical services provided to the client.

The settlement check from Safety Insurance was made payable to the client, the respondent, and the Commonwealth of Massachusetts. The respondent and the client endorsed the settlement check, and the respondent deposited the check into his IOLTA account on May 24, 2006.

The respondent did not notify MassHealth of the receipt of the funds in which MassHealth had an interest, and he did not promptly turn over funds to MassHealth. The respondent took no action of substance to negotiate reduction of the lien with MassHealth after May 24, 2006.

On May 25, 2006, the respondent issued a check in the amount of \$7,500 to himself from his IOLTA account in payment of his one-third contingent fee in the client's personal injury case. On May 26, 2006, the respondent converted \$6,200 of the client's funds to his own use. The respondent intentionally misused these funds with the intent to deprive the client and MassHealth of the funds at least temporarily, and they were actually deprived of the funds.

On June 1, 2006, the respondent issued two checks from the IOLTA totaling \$7500 account to the client and the client's mother. The sum of \$7,500 exceeded the amount to which the client was entitled unless MassHealth reduced its lien. The respondent did not advise the client when he delivered the checks that MassHealth still had a lien of \$9,392.94 on his recovery and that the client would or might be liable to pay over some of the funds he received unless MassHealth reduced the lien. The respondent instead informed the client that he could not turn over the balance of the settlement proceeds until after he negotiated a release of the MassHealth lien. By this statement, the respondent intentionally implied to the client that he in fact was holding sufficient funds in escrow to pay the MassHealth lien and that he had or would attempt to negotiate the release of the lien when he had no more than \$1,300 of the client's funds in escrow at that time, which was insufficient to pay the entire MassHealth lien. In addition, the respondent had not taken and did not take any action of substance to negotiate a reduction or release of the lien. Between June 9, 2006, and December 19, 2006, the respondent converted the remaining \$1,300 of funds he held for the client and/or MassHealth.

On July 11 and July 28, 2006, MassHealth sent notices to the respondent reminding him of its outstanding lien on the client's recovery and instructing the respondent not to disburse any settlement proceeds until the MassHealth lien was paid in full. The respondent did not respond to either notice.

On February 7, 2007, the respondent issued two checks from the IOLTA account to the client and the client's mother in the amounts of \$1,200 and \$3,862 respectively. The respondent knew that there were insufficient funds in the account to cover the checks, and both checks were dishonored.

The respondent's failure to notify MassHealth that he had received funds in which MassHealth had an interest and his failure promptly to turn over to MassHealth the funds it was due violated Mass. R. Prof. C. 1.15(c) (prompt notice and delivery of trust property to third person). The respondent's failure to negotiate or attempt to negotiate a reduction or a release of the lien with MassHealth violated Mass. R. Prof. C. 1.1(duty to provide competent representation), 1.2(a) (duty to seek lawful objectives of client), and 1.3 (duty to act with reasonable diligence).

The respondent's conversion of the client's settlement proceeds violated Mass. R. Prof. C. 8.4(c) (dishonesty, fraud, deceit, or misrepresentation). The respondent's failure to inform the client of his full obligation to MassHealth, that the respondent no longer held an amount sufficient to satisfy the lien in full, and that he had not taken and would not take any action to reduce the lien violated Mass. R. Prof. C. 1.4(a) and (b) (lawyer to keep client reasonably informed about status of matter and explain matter to extent necessary to enable client to make informed decisions about representation). By falsely implying to the client that he continued to hold funds in escrow to pay the lien and that he had or would negotiate a reduction or release of the lien, the respondent violated 8.4(c). By issuing checks to the client from his IOLTA account that he knew would be dishonored, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(C) (lawyer shall not disburse funds from trust account that would create negative balance with respect to any individual client) and 8.4(c).

In April and May 2007, the respondent failed to provide information requested by bar counsel in connection with two other matters under investigation. On July 5, 2007, bar counsel filed a petition for administrative suspension based on the respondent's failure to provide requested information to bar counsel in connection with the two new complaints concerning the respondent's professional conduct.

On July 10, 2007, the Supreme Judicial Court for Suffolk County (Marshall, C.J.) entered an order administratively suspending the respondent from the practice of law pursuant to S.J.C. Rule 4:01, § 3(2). See Matter of Steele, S.J.C. No. BD 2007-060. The respondent knowingly failed to comply with the requirements of S.J.C. Rule 4:01, § 17.

The respondent's intentional failure without good cause to cooperate with bar counsel's requests for information made in the course of investigating complaints violated S.J.C. Rule 4:01, § 3(1)(b) (failure to respond to requests for information from bar counsel made in the course of processing a complaint constitutes misconduct), and Mass. R. Prof. C. 3.4(c) (lawyer shall not knowingly disobey obligation under the rules of a tribunal), 8.1(b) (lawyer shall not fail to respond to lawful demand for information from disciplinary authority), and 8.4(d) (lawyer shall not engage in conduct prejudicial to the administration of justice) and (g) (lawyer shall not fail without good cause to cooperate with bar counsel). The respondent's intentional failure without good cause to comply with the terms of the order of administrative suspension violated Mass. R. Prof. C. 3.4(c) and 8.4(d).

On February 22, 2008, bar counsel filed and served a petition for discipline against the respondent alleging two counts of misconduct. The respondent failed to file an answer to the petition and was defaulted on March 17, 2008.

On April 8, 2008, the board informed the parties that it would determine appropriate discipline in this matter based on the documents in the file and that the parties had two weeks to file briefs on disposition. The respondent failed to file a brief on disposition.

On May 12, 2008, the board voted to file an Information with the Supreme Judicial Court recommending that the respondent be disbarred. On May 19, 2008, the Board of Bar Overseers filed an Information recommending that the respondent be disbarred effective on the entry date of judgment.

The parties were notified that the matter would be heard in the Supreme Judicial Court for Suffolk County on June 9, 2008. The respondent did not appear for the hearing. On June 10, 2008, the county court, Greaney, J., entered a judgment of disbarment.

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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