

IN RE: JOHN G. HARWOOD

S.J.C. Order of Term Suspension entered by Justice Botsford on September 29, 2009, with an effective date of October 29, 2009.¹

SUMMARY²

In the fall of 2006, the respondent was hired by a client from Louisiana to represent her in a potential custody dispute with her ex-husband, who lived in Massachusetts. In November 2006, the client paid the respondent a retainer of \$1500 to hold in escrow until his services were required. He was to charge \$185 per hour against the retainer as he earned it.

The respondent deposited the retainer to his IOLTA account, but he intentionally misused the retainer without notice to the client or performing any services for her. The respondent had no intent to deprive the client, and she was not deprived of her funds. On January 24, 2008, the respondent refunded to the client the entire retainer.

In 2007, bar counsel was investigating the respondent's maintenance of trust funds due to a dishonored electronic funds withdrawal from his IOLTA account. On two occasions, bar counsel requested that the respondent produce a copy of his November 2006 IOLTA account bank statement, but the respondent failed to provide the bank statement to bar counsel. On September 10, 2007, the respondent appeared at the Office of Bar Counsel to testify under oath. During the course of the interview, the respondent initially denied having met or represented the client and then misrepresented the nature of her case and the reason for the retainer.

The respondent failed to maintain proper records for his IOLTA account. Specifically, the respondent's check register, individual client ledgers, and reconciliation reports were not in compliance with Mass. R. Prof. C. 1.15(f)(1)(B), (C), and (E).

The respondent's conduct in intentionally misusing the client's funds violated Mass. R. Prof. C. 8.4(c) and (h). The respondent's conduct in failing to keep the client's funds in a trust account violated Mass. R. Prof. C. 1.15(b)(1). The respondent's conduct in authorizing distributions from his IOLTA account that created a negative balance on behalf of a client violated Mass. R. Prof. C. 1.15(f)(1)(C). The respondent's conduct in intentionally failing to provide copies of the November 2006 bank statement after being requested to do so by bar counsel in the course of an investigation violated Mass. R. Prof. C. 8.1(b) and 8.4(g). The respondent's conduct in making false statements to bar counsel under oath violated Mass. R. Prof. C. 8.1(a) and (b) and 8.4(c), (d), and (h). The respondent's conduct in failing to maintain compliant IOLTA account records violated Mass. R. Prof. C. 1.15(f)(1).

On February 24, 2009, bar counsel filed a petition for discipline. The respondent submitted an answer admitting to all of the allegations in the petition for discipline. The parties submitted a joint memo recommending a suspension of one year and one day with reinstatement subject to conditions. On August 10, 2009 the board voted to accept the recommendation. The board filed an information with the Supreme Judicial Court for Suffolk County on August 24, 2009. On September 29, 2009, the Court entered a judgment suspending the respondent from the practice of law for one year and one day effective immediately, with reinstatement, if granted, subject to a three-year probation with conditions including hiring an experienced

accountant to examine the respondent's trust account records every six months and certify to bar counsel the records are in compliance with Mass. R. Prof. C. 1.15 or report any deficiencies and variances in the respondent's records.

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 filed with the Supreme Judicial Court.

Please direct all questions to webmaster@massbbo.org.