

IN RE: MICHAEL L. O'BRIEN

NO. BD-2010-001

S.J.C. Order of Term Suspension entered by Justice Spina on July 5, 2011.¹

SUMMARY²

The respondent had his own firm in Mattapoisett. He maintained an IOLTA account to handle the receipt and distribution of client funds.

In August 2009, the respondent wrote a check from his IOLTA account to pay a personal obligation. The respondent knew when he wrote the check that he did not have sufficient funds in the IOLTA account to fund the check and that the bank likely would not honor the check. The check was dishonored due to insufficient funds.

Bar counsel contacted the respondent in August 2009 and requested account records and an explanation for the dishonored check. The respondent received two extensions to reply, then failed to send in the requested information. As a consequence, he was administratively suspended by the Supreme Judicial Court on January 13, 2010 for failure to cooperate with bar counsel. He has not been reinstated and has failed to close his IOLTA account or otherwise comply with the order of administrative suspension.

The respondent's conduct in writing a check from his IOLTA account to pay a personal obligation violated Mass. R. Prof. C. 1.15(e)(4). The respondent's conduct in writing a check that he knew would be dishonored due to insufficient funds violated Mass. R. Prof. C. 8.4(c) and (h). The respondent's conduct in intentionally failing without good cause to cooperate with bar counsel's investigation violated Mass. R. Prof. C. 8.1(b) and 8.4(g). The respondent's knowing failure to comply with the order of administrative suspension and the provisions of S.J.C. Rule 4:01, § 17, violated Mass. R. Prof. C. 8.4(d).

On March 25, 2011, bar counsel filed a petition for discipline. The respondent did not file an answer and on April 19, 2011 the respondent was held to be in default. On June 27, 2011, the Board of Bar Overseers filed an Information with the Supreme Judicial Court recommending that the respondent be suspended. On July 5, 2011, the Court entered a judgment suspending the respondent from the practice of law for eighteen months effective on the date of entry.

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 of proceedings before the Board.