

IN RE: SUSAN J. TURNER

NO. BD-2012-060

S.J.C. Order of Indefinite Suspension entered by Justice Spina on December 31, 2012.¹

SUMMARY²

The respondent was admitted to practice law in Rhode Island in 1996 and in the Commonwealth in 1997. Her office was located in Rhode Island, and the respondent maintained an IOLTA account in Rhode Island but not in Massachusetts.

In 2006, the respondent represented a Rhode Island resident who was injured in a motor vehicle accident in Rhode Island. He hired the respondent on a contingent fee basis to represent him against the driver of the other car and to collect payment from his own insurer.

In 2008, the respondent settled the personal injury claim against the other driver for the policy limit of \$100,000. The respondent received the funds and deposited them into her IOLTA account. The respondent failed to promptly turn over \$53,178.01 due the client and falsely told him that he could not receive the funds until the resolution of the underinsurance claim against his insurer.

Between 2008 and 2009, the respondent made disbursements totaling \$16,000 to the client from the personal injury funds. The respondent converted approximately \$25,000 of the client's funds to her own use.

In 2010, underinsurance claim concluded with an award of \$54,447.31. The respondent was required to turn over \$37,178.01 to the client, but she was unable to do so due to her conversion of his funds. The respondent intentionally misrepresented to the client that she had to withhold \$10,000 in case the client was required to reimburse his employer for the disability insurance payments he had received. The respondent knew that the client was not required to reimburse those disability payments.

The client repeatedly attempted to contact the respondent to demand his funds and explain that he was not required to reimburse those funds. The respondent failed to respond to the client's inquiries or demands.

In April 2010 the client was in a second automobile accident. He told the respondent that he would retain her to represent him on the condition that she pay him the \$10,000 he was owed. The respondent paid the client that day by check drawn on personal funds in her business account.

The Rhode Island Disciplinary Rules applied to this matter. By failing to promptly turn over to the client the funds due him, the respondent violated R.I. Disc. R. Prof. C. 1.15(d). By

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.

failing to keep the client funds in a segregated interest-bearing trust account, the respondent violated R. I. Disc. R. Prof. C. 1.15(f). By intentionally misusing the client's funds, the respondent violated R. I. Disc. R. Prof. C. 8.4(c). By intentionally misrepresenting to the client her reasons for withholding his funds, the respondent violated R. I. Disc. R. Prof. C. 1.4(a) and (b) and 8.4(c). By failing to respond to the client's requests for funds, the respondent violated R.I. Disc. R. Prof. C. 1.4(a)(4).

In another unrelated matter, the respondent represented the wife in a divorce from her husband. Both parties were Rhode Island residents. The respondent filed the complaint for divorce on behalf of her client in probate and family court in Rhode Island.

In 2009, the parties agreed to refinance their marital home and turn over the proceeds to the respondent to be held in escrow pending an agreement as to the division of the funds. The proceeds from the refinance totaled \$38,330.22. The respondent deposited the funds into her IOLTA account.

In September 2009, the parties reached a settlement as to the division of the proceeds except for their disagreement over the husband's allegedly unauthorized \$10,000 charge to the client's credit card. The respondent disbursed the funds except for \$10,000, which she was to hold pending resolution of the dispute. The respondent converted the \$10,000 to her own use.

On May 5, 2010 the probate and family court entered an order requiring the respondent's client to turn over the funds to the husband. The respondent issued the husband a check drawn on personal funds in her business account.

By failing to keep trust funds in an interest-bearing trust account, the respondent violated R. I. Disc. R. Prof. C. 1.15(f). By intentionally misusing trust funds, the respondent violated R. I. Disc. R. Prof. C. 8.4(c).

In 2009, in a third matter, the respondent was retained by a Massachusetts resident to file a divorce from the client's husband, also a Massachusetts resident. The respondent was paid a retainer of \$2,000 to be charged against by the hour, but the respondent failed to inform the client of her hourly rate.

The respondent deposited the retainer to her business account. The respondent had not earned most of the retainer when she made that deposit. The respondent converted the unearned portion of the retainer to her own use. When she took the retainer, the respondent also failed to provide the client in writing an itemized bill showing the amount and date of the withdrawal of the funds to pay herself and the balance remaining in trust.

The respondent failed to advise the client that she would have to file a certified copy of the marriage certificate with the divorce complaint because the respondent was not aware of that requirement. She also filed a complaint for divorce alleging both at-fault and no-fault grounds. The court rejected the complaint.

The client terminated the respondent's services and by letter demanded an itemized bill, the return of her file, and the return of the unearned portion of her retainer. The respondent had not earned at least \$959 of the client's retainer. The respondent failed to promptly return the

unearned portion of the retainer, provide an itemized bill, and return the client's file or reply to the letter.

The client filed a request for investigation with the Office of Bar Counsel, which bar counsel forwarded to the respondent with a request for a reply. The respondent failed to reply to bar counsel's request for information. The respondent was administratively suspended on January 18, 2011. The respondent refunded the client's retainer, provided an itemized bill and the client's file on January 24, 2011.

By failing to inform the client that the divorce complaint could not be filed without a certified copy of the certificate of marriage and by filing a defective complaint for divorce, the respondent violated Mass. R. Prof. C. 1.1, 1.3, and 1.4(a) and (b). By failing to explain the basis of her fee to the client, the respondent violated Mass. R. Prof. C. 1.5(b). By failing to maintain an IOLTA account in Massachusetts, the respondent violated Mass. R. Prof. C. 1.15(e)(1). By failing to deposit and maintain the retainer in a Massachusetts IOLTA account and retain it in the account until it was earned, the respondent violated Mass. R. Prof. C. 1.15(b). By converting the unearned portion of the retainer, the respondent violated Mass. R. Prof. C. 8.4(c). By failing to deliver to her client on or before the date she withdrew the funds as a fee a written notice of the date and amount of the withdrawal, an itemized bill or accounting and the balance left in trust, the respondent violated Mass. R. Prof. C. 1.15(d)(2). By failing after she was discharged to promptly to return to the client the client's file and the unearned portion of the fee, the respondent violated Mass. R. Prof. C. 1.16(d) and (e). By failing to account for the retainer upon demand by the client, the respondent violated Mass. R. Prof. C. 1.4(a) and 1.15(d)(1). By failing without good cause to reply to bar counsel's requests for information, the respondent violated S.J.C. Rule 4:01 § 3, and Mass. R. Prof. C. 3.4(c), 8.1(b) and 8.4(g).

The respondent was reinstated from her administrative suspension on March 1, 2011. Bar counsel requested information from the respondent concerning her handling of funds related to the two Rhode Island clients on May 9, 2012. The respondent failed to reply and was administratively suspended again on July 9, 2012.

The administrative suspension order provided that if the respondent was not reinstated within thirty days, the respondent was required, among other things, to comply with the provisions of S.J.C. Rule 4:01, § 17. The respondent was not reinstated within thirty days. The respondent failed to comply with the court order until November 23, 2012.

By intentionally failing without good cause to reply to bar counsel's request for information, the respondent violated S.J. C. Rule 4:01, § 3, and Mass. R. Prof. C. 3.4(c), 8.1(b) and 8.4(g). By failing to comply with the order of administrative suspension and S.J.C. Rule 4:01, § 17, the respondent violated Mass. R. Prof. C. 3.4(c), and 8.4(d) and (h).

On September 24, 2012, the bar counsel filed a petition for discipline, and the respondent and bar counsel filed a stipulation in which the respondent admitted the allegations of the petition and recommended that the respondent be indefinitely suspended from the practice of law effective on the date of entry of the order. On December 14, 2012, the Board of Bar Overseers voted to accept the parties' stipulation and recommendation.

On December 20, 2012, an information was filed in the Supreme Judicial Court for Suffolk County. On December 31, 2012, the county court (Spina, J.) entered an order of indefinite suspension effective immediately upon entry.