

IN RE: MICHAEL P. HERSEY

NO. BD-2012-124

S.J.C. Order of Indefinite Suspension entered by Justice Duffly on January 8, 2013, with an effective date of February 8, 2013.¹

SUMMARY²

This matter came before the Supreme Judicial Court for Suffolk County on a stipulation of the parties and a recommendation of the Board of Bar Overseers that the stipulation be accepted. In the stipulation, the respondent admitted that he converted client funds causing temporary deprivation to the clients, failed to cooperate with bar counsel's investigation, and failed to maintain IOLTA account records in compliance with Mass. R. Prof. C. 1.15. The respondent made restitution in full.

The respondent received \$42,244.88 to hold in trust as part of his representation of a client in a divorce proceeding. The respondent converted at least \$25,295 of the funds to his own use. The court subsequently approved a separation agreement dividing the funds \$17,500 to the ex-spouse and \$24,744.88 to the respondent's client. The respondent did not promptly disburse the funds and did not return phone calls from his client. Three weeks later, the respondent made three partial payments to his client. The respondent still owed \$3,091.22 to his client, which he later repaid. Seven weeks after the agreement was finalized, the respondent mailed a check to the ex-spouse for \$17,500, which he knew would be dishonored due to insufficient funds. The respondent later mailed a replacement bank check to the ex-spouse. The respondent then failed to send his client a final accounting.

The respondent failed to keep records of funds for his IOLTA account as required by Mass. R. Prof. C. 1.15. Among other things, the respondent did not keep a chronological check register showing each deposit and disbursement with client identifiers and with a calculation of the balance after each transaction; he did not maintain records of deposits with client identifiers; he did not maintain a ledger for each individual client matter; he did not keep a ledger of his personal funds in the account; and he did not reconcile the account at least every sixty days.

After receiving an initial explanation and account records, bar counsel contacted the respondent in May 2009 and requested additional account records. The respondent did not reply and was sent two additional requests but still did not reply. As a consequence, he was administratively suspended by the Supreme Judicial Court on October 7, 2010, for failure to cooperate with bar counsel. The respondent then sent the requested information and was

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.

reinstated on December 10, 2010.

The respondent's conduct in converting trust funds violated Mass. R. Prof. C. 1.15(b)(1) and 8.4(c) and (h). The respondent's conduct in making distributions from his IOLTA account that created negative balances on behalf of clients violated Mass. R. Prof. C. 1.15(f)(1)(C). The respondent's conduct in failing to promptly distribute funds to his client and the ex-spouse violated Mass. R. Prof. C. 1.15(c). The respondent's conduct in writing a check when he knew he did not have sufficient funds in his IOLTA account to cover the check violated Mass. R. Prof. C. 8.4(b), (c), and (h). The respondent's conduct in failing to return his client's calls and keep his client updated on the status of his case violated Mass. R. Prof. C. 1.4(a) and (b). The respondent's conduct in failing to provide a full accounting to his client upon final distribution of property violated Mass. R. Prof. C. 1.15(d)(1). The respondent's conduct in failing to keep a chronological check register showing all transactions in the IOLTA account with client identifiers, failing to keep an individual ledger for each client matter, failing to keep a ledger of his personal funds, failing to prepare reconciliation reports, and failing to keep deposit records with client identifiers violated Mass. R. Prof. C. 1.15(f)(1)(B), (C), (D), and (E). The respondent's conduct in failing without good cause to respond to bar counsel's request for information during the course of an investigation violated Mass. R. Prof. C. 8.1(b) and 8.4(d) and (g).

The matter came before Court, Duffly, J., on a stipulation of facts and a joint recommendation that the respondent be indefinitely suspended and a vote and recommendation of the Board of Bar Overseers dated December 10, 2012. On January 8, 2013, the Court so ordered.