

IN RE: JOHN E. MAHONEY

NO. BD-2019-029

S.J.C. Order of Term Suspension entered by Justice Gaziano on March 22, 2019.¹

The respondent stipulated to a stayed three-month suspension based on misconduct in estate matters. The misconduct involved naming himself as a trust beneficiary on trusts that he drafted, failing to file timely accounts, failing to maintain account records, and disbursing funds on behalf of his client before the funds had been received.

SUMMARY²

The respondent, John E. Mahoney, received a suspension from the practice of law for a period of three months, with the execution of the suspension stayed for one year pursuant to probationary conditions. This sanction resulted from the respondent's misconduct in three matters.

In the first matter, beginning in 2004, the respondent represented a longtime personal friend with respect to several trusts she was establishing. Between 2004 and 2008, the client had three different trusts established for her benefit, two of which were drafted by the respondent. In the trusts he created, the respondent was named trustee and a beneficiary along with other people. The terms of these trusts required the respondent to render accountings, at least annually, to his client. He failed to do so.

Another attorney drafted the client's third trust. The respondent was named the sole trustee and a beneficiary of the trust along with three other individuals. By the terms of this trust, the respondent, as trustee, was required to provide an annual account of the trust's administration to each beneficiary. He failed to do so.

By preparing two trust instruments under which he would receive a substantial bequest from a person to whom he was not related, the respondent violated Mass. R. Prof. C. 1.8(c). By failing to deliver accountings for each trust and by failing to render a full written accounting of his client's entire trust portfolio, the respondent violated Mass. R. Prof. C. 1.4(a) and 1.15(d)(1).

In the second matter, from approximately April 1, 2012, through October 31, 2017, the respondent failed to maintain required trust account records. The respondent failed to keep a check register with a client identifier for every transaction, a list of every transaction and a running balance, in violation of Mass. R. Prof. C. 1.15(f)(1)(B). The respondent failed to keep an individual client ledger for each client matter, in violation of Mass. R. Prof. C. 1.15(f)(1)(C). The respondent failed to keep a ledger for his bank fees and expenses, in violation of Mass. R. Prof. C. 1.15(f)(1)(D). The respondent failed to perform three-way reconciliations of the account, in violation of Mass. R. Prof. C. 1.15(f)(1)(E). The respondent also retained earned fees in his IOLTA in violation of Mass. R. Prof. C. 1.15(b)(2) and made withdrawals from his IOLTA via cash withdrawals in violation of Mass. R. Prof. C. 1.15(e)(4).

The third matter concerned the respondent's handling of funds on behalf of the client for whom he created the trusts. Beginning on April 29, 2009, and continuing through April 12, 2012, the respondent made approximately eleven disbursements from his IOLTA account totaling approximately

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.

\$39,044.78, on behalf of his client. The respondent made these disbursements in advance of receiving or depositing funds from his client to cover those disbursements.

On January 24, 2013, and February 23, 2013, the respondent directed funds from his client's annuity in the amount of \$273,985 to be wired into his IOLTA account to be used for his client's expenses. The respondent disbursed these funds on behalf of the client, but continued to make disbursements from his IOLTA account on her behalf after the funds had been exhausted.

Because of the respondent's inadequate records, as of October 31, 2017, the respondent was unable to identify the owner of the \$119,990 balance in one of his IOLTA accounts.

By failing to maintain reasonable communications with his client concerning the maintenance of the client's trust funds, the respondent violated Mass. R. Prof. C. 1.4 (a)(1). By disbursing funds from the IOLTA account on his client's behalf without funds to cover these disbursements, thus creating a negative balance with respect to funds being held on his client's behalf, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(c).

The respondent was admitted to the bar of the Commonwealth on December 16, 1997 and had no history of discipline. On February 13, 2019, bar counsel filed a petition for discipline and the respondent's amended answer and stipulation of the parties. The parties jointly recommended that the respondent receive a three-month suspension, stayed for a period of one year with two conditions of probation. On March 11, 2019, the Board of Bar Overseers accepted the parties' recommendation.