

**IN RE: ROBERT B. POMEROY****NO. BD-2008-023****S.J.C. Order of Indefinite Suspension entered by Justice Gants on March 25, 2011.<sup>1</sup>****SUMMARY<sup>2</sup>**

The respondent was admitted on June 20, 1991, with estate planning as his primary area of practice. He maintained an IOLTA account to handle the receipt and distribution of client funds.

In 2006 and 2007, the respondent maintained personal funds in his IOLTA account and issued checks from his IOLTA account directly to creditors. This conduct included a deposit of \$50,000 to the IOLTA account in October 2006. The respondent used his IOLTA account to conduct his personal business to protect his funds against a possible levy by the Massachusetts Department of Revenue on his personal accounts. On March 17, 2007, the respondent received a notice from the bank informing him the Department of Revenue had served a levy against his personal accounts.

During this period, the respondent's IOLTA account was not properly reconciled every sixty days. He did not include client identifiers in his check register, nor did he calculate a running balance after each transaction. The respondent did not maintain individual ledgers for each client matter, he did not keep a ledger for his personal funds in the account, and he wrote several checks directly to creditors for personal expenses.

Bar counsel began her investigation into the respondent's conduct on June 19, 2007, after receiving notice of a dishonored check drawn on the respondent's IOLTA account. The respondent failed without good cause to provide information requested by bar counsel in the course of the ensuing investigation. The respondent also failed without good cause to comply with a subpoena duces tecum issued by the Board of Bar Overseers requiring him to appear at the Office of Bar Counsel with his account records and give sworn testimony.

Bar counsel petitioned for the respondent's administrative suspension from the practice of law due to the respondent's failure to cooperate with her investigation. On February 27, 2008, the Supreme Judicial Court for Suffolk County entered an order immediately administratively

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<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

suspending the respondent from the practice of law. The respondent violated the terms of the order of administrative suspension by, among other things, continuing to practice law, accepting fees, failing to refund unearned fees, and failing to close his IOLTA account.

After his administrative suspension, the respondent was retained to probate an estate. The respondent did not inform the clients of his suspension, and he requested and accepted a \$2,000 fee. The respondent then filed incomplete and unsigned papers in the probate court.

At the time of his suspension, the respondent was representing three different clients who had paid him retainers. The respondent did not inform these clients that he was suspended, refund the unearned portion of the fees they had paid, return their property, and withdraw from representation. The respondent continued to draft their estate planning documents and meet with the clients, and he asked for and received additional fees from two of the three clients. One of these clients called and left several messages for the respondent, but he received no response until a completed draft of his estate documents arrived via e-mail.

On August 1, 2008, bar counsel filed a petition for contempt alleging that the respondent had violated the order of administrative suspension. On August 8, 2008, the respondent sent his clients a letter stating that he was no longer accepting new cases but still wished to continue to represent them and instructing those clients who had already sent him a letter requesting a return of their files that he would not return their files unless they sent him a second request. On September 15, 2008, the Supreme Judicial Court for Suffolk County entered an order finding the respondent in contempt of the order of administrative suspension. The order of contempt required the respondent to refund the unearned portion of the fees collected, disgorge the fees collected after the respondent was administratively suspended, close his IOLTA account, and provide an affidavit attesting to his compliance. The respondent violated the contempt order by failing to perform any of these obligations.

The respondent's conduct in failing to perform a three-way reconciliation of the account violated Mass. R. Prof. C. 1.15(f)(1)(E). His conduct in failing to keep an check register with a client identifier after every transaction and list of every transaction and running balance violated Mass. R. Prof. C. 1.15(f)(1)(B). The respondent's conduct in failing to keep individual client ledgers with a list of every transaction and running balance and failing to keep a ledger or other records of his personal funds for bank fees and expenses violated Mass. R. Prof. C. 1.15(f)(1)(C),

and (D). The respondent's conduct in writing checks from his IOLTA account directly to his creditors or vendors for personal expenses violated Mass. R. Prof. C. 1.15(e)(4). The respondent's conduct in depositing personal funds in his IOLTA account violated Mass. R. Prof. C. 1.15(b)(2)(i). The respondent's conduct in intentionally holding and disbursing personal funds in and from his IOLTA account to avoid a Massachusetts Department of Revenue levy violated Mass. R. Prof. C. 8.4(c) and (h).

The respondent's intentional failure without good cause to respond to requests for information by bar counsel in the course of the investigation, including the failure to produce client files and to appear in response to a subpoena duces tecum issued by the Board of Bar Overseers, violated Mass. R. Prof. C. 8.1(b) and 8.4(d) and (g).

The respondent's conduct in failing to comply with the order of administrative suspension and the contempt order violated S.J.C. Rule 4:01, §§ 3 and 17, and Mass. R. Prof. C. 3.4(c) and 8.4(d). The respondent's conduct in failing to notify clients of his suspension and of his inability to provide legal services to them and to respond to their inquiries violated Mass. R. Prof. C. 1.4.

By engaging in the practice of law when he was administratively suspended, the respondent violated Mass. R. Prof. C. 5.5(a). By intentionally misrepresenting to clients that he was still licensed to practice law and by holding himself out as authorized to practice law, the respondent violated Mass. R. Prof. C. 5.5(b)(2) and 8.4(c). By collecting fees for legal services while suspended from the practice of law, the respondent collected an illegal fee in violation of Mass. R. Prof. C. 1.5(a). By failing to withdraw from representation when his continued representation violated the Rules of Professional Conduct or other law, the respondent violated Mass. R. Prof. C. 1.16(a)(1). By failing to return fees he collected but did not earn before he was suspended from the practice of law, the respondent violated Mass. R. Prof. C. 1.16(d).

On February 24, 2010, bar counsel filed a petition for discipline. The respondent answered on March 16, 2010, but then failed to participate any further in the disciplinary proceedings. On June 25, 2010, a hearing was conducted. The respondent did not appear. A transcript and exhibits were forwarded to the respondent along with a notice of the hearing committee's request for proposed findings and disposition. The respondent did not submit proposed findings and recommendation for disposition. On November 15, 2010, the hearing

committee recommended that the respondent be indefinitely suspended. The board adopted the recommendation on January 10, 2011.

On January 26, 2011, the Board of Bar Overseers filed an information with the Supreme Judicial Court recommending that the respondent be indefinitely suspended. On February 22, 2011, an order of notice issued directing bar counsel and the respondent to appear in the county court on March 18, 2011. The respondent failed to appear. On March 25, 2011, the Court entered a judgment of indefinite suspension effective on the date of entry.