

**IN RE: WILLIAM FRANCIS SMITH****NO. BD-2009-121****S.J.C. Order of Disbarment entered by Justice Lenk on January 5, 2012.¹****SUMMARY²**

On February 10, 2010, the Supreme Judicial Court ordered the respondent, William Francis Smith, temporarily suspended from the practice of law pursuant to S.J.C. Rule 4:01, § 12A. On January 5, 2012, following disciplinary hearings under a five-count petition, uncontested proceedings before the full board, and proceedings before the single justice at which the respondent waived hearing, he was disbarred for the following misconduct.

Count One

In December 2007 the respondent settled a personal injury case for \$3,500. At around the same time, the respondent resolved a claim of a medical lien on the settlement proceeds. The respondent and the provider agreed that payment of \$796 would constitute full satisfaction.

On January 10, 2008, the respondent deposited the settlement check into his IOLTA account. That day, the respondent paid himself an attorney's fee of \$900 from the funds. He then knowingly misused the remainder of the settlement proceeds for his own personal and business purposes unrelated to the client. On March 16, 2009, the client, having received none of the settlement, filed a request for investigation with the Office of Bar Counsel.

On September 23, 2009, and in response to bar counsel's investigation, the respondent sent to bar counsel copies of portions of his records along with the respondent's version of events. The respondent tacitly admitted having owed money, but also asserted falsely that he had paid both the client and the provider. The respondent finally paid the client on March 17, 2010, but he failed to pay the provider the agreed amount, which was erroneously included in the amount paid to the client.

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.

Under this count, the committee found that the respondent had violated the following rules in the following ways: the respondent's failure to disburse the client's settlement funds promptly and his intentional misuse of client funds, with deprivation, violated Mass. R. Prof. C. 1.15(b) (hold trust property separate), 1.15(c) (prompt notice and delivery of trust property), 8.4(c) (dishonesty, deceit, fraud, misrepresentation), and 8.4(h) (conduct otherwise reflecting adversely on fitness to practice); the respondent's failure to pay the provider violated 1.15(c); and the respondent's intentional misrepresentation to bar counsel that he had paid the client and the provider violated Mass. R. Prof. C. 8.1(a) (knowingly false statement of material fact in connection with a disciplinary matter), 8.4(c), and 8.4(d) (conduct prejudicial to the administration of justice).

Count Two

In 2008, the respondent received three settlement checks on behalf of a client. The respondent informed the client of his receipt of the first two checks, and he properly disbursed the funds, but he did not inform the client of the third check, in the amount of \$10,000. Around December 13, 2008, and without the client's knowledge or consent, the respondent endorsed the check with the client's name and deposited it into his IOLTA account. He then misused the settlement funds. As of the hearings, the respondent had not made restitution of the client's \$6,666.67 share of the settlement money.

Under this count, the committee found that the respondent's failure to inform the client of his receipt of the third settlement check violated Mass. R. Prof. C. 1.15(c); the respondent's failure to disburse the client's settlement funds promptly and his intentional misuse of client funds, with deprivation, violated Mass. R. Prof. C. 1.15(b), 1.15(c), 8.4(c), and 8.4(h); and the respondent's endorsement of the settlement check in the name of the client, without the client's knowledge, permission, or consent, violated Mass. R. Prof. C. 8.4(c).

Count Three

Around May 4, 2006, the respondent deposited into his IOLTA account a settlement check in the amount of \$15,000 received on behalf of two clients. The respondent did not pay

the clients their share until November 11, 2008. Meanwhile, the respondent had knowingly misused the client's funds for his own personal and business purposes. The committee did not find deprivation under this count in light of uncontradicted testimony that the clients had instructed the respondent to hold the funds.

Under this count, the committee found that the respondent's failure to disburse the client's settlement funds promptly and his intentional misuse of client funds violated Mass. R. Prof. C. 1.15(b), 1.15(c), 8.4(c), and 8.4(h).

Count Four

The respondent received a check in the amount of \$50,000 in settlement of a client's personal injury claim. A health care provider claimed a lien on the settlement. In August 2009 the provider's claims representative authorized the respondent to negotiate the settlement check on its behalf on the condition that he hold \$16,666.67 in escrow pending negotiations. That month, the respondent deposited the settlement check into his IOLTA account. He paid himself an attorney's fee and disbursed settlement proceeds to the client.

Until March 3, 2010, the respondent did not pay the lien. That day, the respondent closed his IOLTA account in connection with his temporary suspension, and he purchased a bank check in the amount of \$16,666.67, payable to the provider's claims representative. The committee found that the evidence did not support a finding that the respondent had misused any of the client's portion of the funds, and instead it supported a finding that the respondent had overpaid the client. As a result, the IOLTA account should have held only about \$11,000 for the client at the time it was closed.

Around March 16, 2010, the provider's claims representative agreed to accept \$15,023 in satisfaction of the lien. As of the disciplinary hearing, the respondent still held the \$16,666.67 treasurer's check. The committee found that the respondent had been authorized to disburse the funds, but it did not find that the respondent had intended to convert the funds for his own use.

Under this count, the committee found that the respondent had violated Mass. R. Prof. C. 1.15(b), 1.15(c), and 8.4(h), but it rejected the charges of intentional misuse under Rule 8.4(c).

Count Five

The February 2010 order temporarily suspending the respondent required that he close every IOLTA account and properly disburse all client and fiduciary funds within fourteen days. In violation of that order, the respondent did not close his IOLTA account until March 3, 2010.

That day, the respondent submitted to bar counsel an affidavit of compliance that represented he had complied with the order of temporary suspension by, among other things, disposing of the \$16,666.67 owed to the lien holder under count four. The respondent never corrected this misstatement. The respondent's affidavit of compliance was filed with the Court on March 4, 2010.

The committee found that the respondent's failure to comply with the order of suspension concerning closure of his IOLTA account was unintentional and resulted from incompetence and neglect.

Under this count, the committee found that the respondent's failure to close his IOLTA account in a timely fashion had violated Rules 8.4(d), 8.4(h), and S.J.C. Rule 4:01, §17(1)(g) (duty to close trust accounts on suspension); and that his knowing misrepresentation concerning disbursement to the lien holder violated Rules 8.1(a), 8.4(c), 8.4(d), and 8.4(h).

The committee made no findings of fact in mitigation or aggravation, and it recommended disbarment. Neither party appealed.

On September 12, 2001, the full board voted to approve the hearing committee's report and to adopt the committee's recommendation of disbarment. On January 5, 2012, the single justice issued an order of disbarment, effective immediately.