IN RE: ALBERT E. TODINO

NO. BD-2012-010

S.J.C. Order of Term Suspension entered by Justice Duffly on April 24, 2012, with an effective date of May 24, 2012.[1]

SUMMARY[2]

The respondent was suspended for three years for misconduct that occurred in the context of his own divorce proceeding. In October of 2008, the respondent, through counsel, filed for divorce from his wife in the Probate and Family Court. Temporary Orders were issued by the court on November 14, 2008, in which the parties agreed to delay the issue of whether to file joint tax returns for 2008 until the time of the pre-trial conference which was scheduled for February 11, 2009. During the pre-trial conference, the issue of the 2008 tax returns was discussed, and following the conference an agreement was reached regarding the preparation and filing of the joint tax returns. Pursuant to the agreement, the respondent was to have a third party prepare the federal and state joint tax returns and provide them to the wife; if satisfactory, the wife would execute a power of attorney authorizing the respondent to sign and file the tax returns on her behalf. The issue of the division of any tax refunds between the respondent and his wife was not addressed at that time.

In violation of the agreement, the respondent prepared and electronically filed joint federal and state tax returns in February of 2009, without his wife's knowledge or consent. Based upon the joint tax returns, both state and federal tax refunds were owed to the respondent and his wife, and the respondent directed that the refunds be deposited directly into his IOLTA account. On February 23, 2009 and February 27, 2009, these tax refunds totaling $18,813 were deposited directly into the respondent's IOLTA account, commingling personal funds with his trust property. The respondent then intentionally spent most of those funds without the knowledge and authority of his wife, misappropriating the wife's share of the funds with deprivation resulting.

On April 10, 2009, after receiving a request from wife's counsel for the draft tax returns, the respondent faxed to wife's counsel "Draft 2008 Federal and State Tax Returns" for her review and misrepresented that if they were satisfactory to her they would be filed on April 15, 2009. The "draft" tax returns that the respondent provided differed from the tax returns he filed in February of 2009. At the conclusion of the divorce case, the misused portion of the wife's tax refund was taken into account in the property distribution.

By depositing personal funds to his IOLTA account, commingling them with trust property, the respondent violated Mass. R. Prof. C. 1.15(a) and 8.4(h). By intentionally

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[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.

misusing the wife's share of the joint tax refunds, the respondent violated Mass. R. Prof. C. 8.4(c) and (h).

By filing the joint tax returns without his wife's knowledge or consent and in violation of his agreement regarding the filing of the returns, the respondent violated Mass. R. Prof. C. 8.4(c), (d) and (h). By intentionally misrepresenting to the IRS and DOR that the joint tax returns had been reviewed, approved and electronically signed by his wife, the respondent violated Mass. R. Prof. C. 8.4(c) and (h). By intentionally misrepresenting to his wife's lawyer that he had not filed the joint tax returns when they had already been filed, the respondent violated Mass. R. Prof. C. 3.4(b) and 8.4(c).

The respondent was admitted to the bar in Massachusetts on January 19, 2001. He has no disciplinary history.

On September 9, 2011, bar counsel commenced disciplinary proceedings before the Board of Bar Overseers by filing a petition for discipline. On February 2, 2012, bar counsel and respondent filed Respondent's Amended Answer to Petition for Discipline and Stipulation of the Parties. On February 13, 2012, the Board of Bar Overseers voted to accept the stipulation of the parties and their joint recommendation to file an Information with the Supreme Judicial Court recommending that the respondent be suspended form the practice of law for three years. On April 24, 2012, the Court entered an order suspending the respondent from the practice of law for a period of three years.