IN RE: DANIEL K. WEBSTER

NO. BD-2013-016

S.J.C. Order of Term Suspension entered by Justice Duffly on March 11, 2013, with an effective date of April 10, 2013.[1]

(S.J.C. Order of Reinstatement entered by Justice Duffly on June 25, 2014.)

SUMMARY[2]

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 respondent be suspended for nine months with automatic reinstatement conditioned on terms of probation. The underlying facts were as follows.

On June 5, 2009, the respondent deposited $60,087.50 into a trust account for an estate he was hired to settle. The respondent then converted at least $20,000 of the estate funds. In September the respondent deposited personal funds into the account sufficient to issue partial distributions to the beneficiaries. The respondent and the executor agreed to wait until one year after the date of death, the statute of limitations for claims against the estate, before making the final distributions. Shortly after the one-year anniversary of the date of death, the respondent deposited personal funds into the IOLTA account and issued checks to the beneficiaries for the entire balance due. The beneficiaries therefore were not deprived of their funds.

On February 9 and 11, 2010, bar counsel received notices of dishonored checks drawn on the respondent's IOLTA account. Bar counsel sent the respondent a request for an explanation and for certain account records. The respondent did not reply and bar counsel sent a second request. Again the respondent did not respond. As a result, on June 2, 2010, the respondent was administratively suspended for failing to cooperate with bar counsel's investigation. The respondent then submitted a complete response to bar counsel's requests and was reinstated.

From at least January 2009 through May 2010, 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 maintain a check register listing all transactions in chronological order with client identifiers and a running balance after each transaction, did not maintain a ledger for each individual client matter listing all transactions and a running balance after each transaction, did not maintain a separate ledger for his bank fees and charges, and did not reconcile the account at least every sixty days. Between January 2009 and May 2010 the respondent withdrew earned fees from his IOLTA account without delivering to clients in writing an itemized bill of services

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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.

rendered, notice of the date and amount withdrawn, and a statement of the balance of client funds left in the account.

The respondent's conduct in converting trust funds to his own use violated Mass. R. Prof. C. 8.4(c) and (h). His conduct in failing to keep trust funds in a trust account violated Mass. R. Prof. C. 1.15(b)(1). His conduct in failing to maintain estate funds in a separate interest-bearing trust account violated Mass. R. Prof. C. 1.15(e)(5)(ii). His 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). His conduct in failing to cooperate with bar counsel's investigation violated Mass. R. Prof. C. 8.1(b) and 8.4(g). His conduct in failing to keep a check register listing all transactions in chronological order with client identifiers and a running balance after every transaction, an individual ledger for each client matter with a running balance after each transaction, a ledger for bank fees and expenses, and failing to prepare reconciliation reports violated Mass. R. Prof. C. 1.15(f)(1)(B), (C), (D), and (E). His conduct in failing to deliver written notice of fee withdrawals with an itemized bill of services rendered, notice of the amount withdrawn, and a balance of the client's funds left in the account violated Mass. R. Prof. C. 1.15(d).

The matter came before Court, Duffly, J., on a vote and recommendation of the Board of Bar Overseers dated February 28, 2013, accepting the parties' stipulation of facts and joint recommendation that the respondent be suspended for nine months with automatic reinstatement conditioned on terms of probation. On March 13, 2013, the Court so ordered.