IN RE: RICHARD MICHAEL BROWN

NO. BD-2013-107

S.J.C. Order of Term Suspension entered by Justice Botsford on December 10, 2013, with an effective date of January 9, 2014.[1]

(S.J.C. Judgment of Reinstatement entered by Justice Botsford on May 27, 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 stipulation be accepted. The stipulation related to a five-count petition for discipline filed by bar counsel, alleging trust account violations.

In the stipulation, the respondent admitted that, in each of three matters between September 2011 and February 2012, he represented a client in a personal injury case on a contingency basis. In each case, the respondent wrote himself checks from his IOLTA account to withdraw his fee after the case was settled in principle, but before receiving any settlement funds. At the time the respondent wrote himself these fee checks, he had no funds on deposit in his IOLTA account for the corresponding client matter and knew that he was drawing on unrelated trust funds of other clients. The respondent received and deposited a settlement check for each of the three cases into his IOLTA account within weeks of his fee withdrawal, thereby reimbursing the account. The respondent remitted the clients' shares to them but failed to send them the required statements explaining the outcome of the case and showing the remittance of funds and method of its determination. No clients were deprived of funds.

In a fourth matter, the respondent was hired to represent a client in two related matters, a personal injury and a workers' compensation case. In or before December 2011, the respondent settled the cases and received a $20,000 check specifically designated as attorney's fees for the workers' compensation case. The respondent deposited these funds into his IOLTA account. He then wrote himself four checks totaling $21,781.50 from the IOLTA account between December

[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.

30, 2011, and January 6, 2012, as fee withdrawals in this matter. The remaining installments of the settlements of both cases were then received and deposited to the IOLTA account in February 2012, thereby reimbursing the IOLTA account for the overpayment to himself. No clients were deprived of funds. The respondent paid the client his share, but did not send the client a statement explaining the outcome of the case and showing the remittance of funds and method of its determination.

From and after January 1, 2011, the respondent also 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 keep a chronological check register showing each deposit and disbursement with client identifiers and with a calculation of the balance after each transaction, he did not maintain records of deposits with client identifiers, he did not maintain a ledger for each individual client matter, he did not keep a ledger of his personal funds in the account, and he did not reconcile the account at least every sixty days.

The respondent's conduct in failing to maintain client funds in a trust account violated Mass. R. Prof. C. 1.15(b)(1) and (e)(5) and 8.4(c) and (h). The respondent's intentional misuse of client funds violated 8.4(c) and (h). The respondent's conduct in failing to send statements to clients at the conclusion of the contingent-fee cases explaining the outcome of the case and showing the remittance and method of its determination violated Mass. R. Prof. C. 1.5(c). The respondent's 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). The respondent's conduct in failing to keep a chronological check register showing all transactions in the IOLTA account with client identifiers, failing to keep an individual ledger for each client matter, failing to keep a ledger of his personal funds, failing to prepare reconciliation reports, and failing to keep deposit records with client identifiers violated Mass. R. Prof. C. 1.15(f)(1)(B), (C), (D), (E), (F)(ii) and (iii).

On October 28, 2013, the Board of Bar Overseers voted to recommend that the respondent be suspended for a period of six months, with two months of the suspension stayed for a period of one year subject to probation conditions. On December 10, 2013, the Court so ordered.