**IN RE: FREDERICK B. HAYES, III**

**NO. BD-2014-101**

**S.J.C. Judgment of Disbarment entered by Justice Hines on April 14, 2016.[1]**

**SUMMARY[2]**

On November 28, 2014, the Supreme Judicial Court issued an order temporarily suspending the respondent from the practice of law in Massachusetts, pending further proceedings before the Board of Bar Overseers and further order of the Court. On April 7, 2016, the respondent submitted to the Court, pursuant to S.J.C. Rule 4:01, § 8(7), a consent to disbarment. In his consent to disbarment, the respondent admitted that bar counsel could prove, by a preponderance of the evidence, the material facts upon which a petition for discipline filed with the board on February 1, 2016, was based.

The facts alleged in the petition for discipline involved the respondent's representation of clients in three separate matters. In May 2012, the respondent represented the first client in the sale of her home. Following the sale, the respondent deposited the proceeds, in a total amount of $256,167, in his IOLTA account. The client directed the respondent to pay out some of the proceeds to her children and maintain some in his IOLTA account to pay her monthly nursing home fees. The respondent misused for his own purposes a significant portion of the client's funds, and by March 2013 had no funds left with which to pay the nursing home. He failed to make payments to the nursing home for three months.

In April 2013, a second client retained the respondent to represent him in probating the estate of his late mother, including the sale of the mother's residence. The house was sold on July 1, 2013, and the client caused the proceeds, $403,251, to be deposited in the respondent's IOLTA account, pending finalization of the estate. After receiving those funds, the respondent misused a substantial portion of the total to pay the first client's nursing home expenses. He also used some of the estate funds to pay his own expenses. When the second client asked the respondent to finalize the estate and pay the beneficiaries, the respondent was not holding sufficient funds to do so. For several months, the respondent made various excuses to the second client for failing to file final accounts, close the estate and distribute the proceeds.

In February 2014, a third client engaged the respondent to sell a home in Brookline. The closing took place on April 23, 2014, and a total of $911,902 was wired into the respondent's IOLTA account. The respondent wired $500,000 to the third client and, per the client's instruction, held the remainder in his IOLTA account pending the client's purchase of a condominium.

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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.

In the meantime, the second client engaged another attorney to demand the distribution of the estate funds. In response to the demand, the respondent used approximately $300,000 of the third client's funds to make distributions of the estate.

During the summer of 2014, the respondent caused the closing on the purchase of the third client's condominium to be postponed several times because he did not have the funds he was supposed to be holding towards the purchase. The closing was finally scheduled for August 19, 2014, On that day, the respondent, through counsel, admitted to the third client that he had misused approximately $300,000 of the third client's funds. The respondent has not made full restitution to the third client.

By intentionally misusing client funds, the respondent engaged in conduct involving dishonesty, fraud, deceit and misrepresentation, and conduct adversely reflecting on his fitness to practice law, in violation of Mass. R. Prof. C. 8.4(c) and 8.4(h), as in effect prior to July 1, 2015.

By failing to deliver to clients and third persons funds that the clients and third persons were entitled to receive, the respondent violated Mass. R. Prof. C. 1.15(c), as in effect prior to July 1, 2015.

By failing to represent his clients competently and diligently, and failing to keep them reasonably informed about the status of their funds, the respondent violated Mass. R. Prof. C. 1.1, 1.3, and 1.4(a) and (b), as in effect prior to July 1, 2015.

In addition, the respondent failed to maintain records of his IOLTA account as required by Mass. R. Prof. C. 1.15(f).

On April 19, 2016, the Court entered a judgment of disbarment, effective immediately.