

**ALBERT IRA GOULD**

No. BD-98-0059

Amended Order (indefinite suspension) entered December 31, 1998.

**SUMMARY<sup>1</sup>**

This matter came before the Court on the respondent's affidavit of resignation pursuant to Supreme Judicial Court Rule 4:01, § 15.

The respondent served as the closing agent on a residential mortgage loan to the respondent's client, Judith Vaillette. On October 23, 1996, the bank wired \$124,038.25 to the respondent's IOLTA Account to fund the Vaillette closing. On October 23, 1996, immediately prior to receiving the Vaillette funds, the balance in the IOLTA Account was \$714.70.

The respondent as closing agent for the bank was to distribute \$47,500.00 to Fleet Bank and \$40,000.00 to Safety Fund National Bank from the closing proceeds to pay off two loans.

Although the respondent recorded the mortgage from Vaillette to the bank on October 23, 1996, the respondent did not immediately pay off the two loans. Instead, after paying himself a \$6,513.00 fee on October 23, 1996, on November 7, 1996 the respondent transferred \$88,507.39 from his IOLTA Account to his Law Office Account, leaving a balance in his IOLTA Account of \$1,658.47 on November 7, 1996. After the deposit of the Vaillette funds, the balance in the Law Office Account on November 7, 1996 was \$113,204.38.

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<sup>1</sup>Compiled by the Board of Bar Overseers based on the record submitted to the Supreme Judicial Court.

Between November 7, 1996 and December 2, 1996, the respondent expended funds from his Law Office Account for unrelated client and personal purposes, including the purchase of two cashiers checks in the amounts of \$50,000.00 and \$58,694.88 related to a different client, Client A. The purchase of the two cashiers checks concerning the Client A matter on November 12, 1996 and November 18, 1996 was made possible by the deposit of the Vaillette funds to the Law Office Account on November 7, 1996. By December 2, 1996, the respondent had reduced the balance in the Law Office Account to \$60.60 without paying off the two loans noted on the Vaillette settlement statement. Final pay-off of the two loans did not occur until December 23, 1996 and January 9, 1997, and was only made possible by the deposit into the Law Office Account of unrelated client and personal funds.

When requested to account for the delay in paying off the two loans, the respondent represented to Vaillette, Vaillette's accountant, and the bank that the delay was due to a problem in clearing the titles on multiple parcels.

The respondent's commingling of the Vaillette funds with personal funds, his failure promptly to pay-off the two loans noted on the settlement statement, his use of the Vaillette funds to pay personal and business obligations and to pay the obligations of other clients, his failure to account to Vaillette and to others regarding the Vaillette funds, and his misrepresentations, violated Canon One, Disciplinary Rules 1-102(A)(4) and (6), Canon Seven, Disciplinary Rule 7-102(A)(5), and Canon Nine, Disciplinary Rules 9-102(A), (B) and (C).

Bar Counsel's review of bank records in the Vaillette matter disclosed that between September 1996 and the present, the respondent routinely used client funds to pay personal or unrelated client or business expenses.

For example, the respondent represented Client A in her divorce proceedings. On October 1, 1996 and October 4, 1996, the respondent deposited \$167,167.88 and

\$14,500.00, respectively, in proceeds from the sale of real property owned by Client A and her husband into his Law Office Account. Immediately prior to the October 1, 1996 deposit, the balance in the Law Office Account was \$16,478.78.

On October 2, 1996, the respondent withdrew \$110,542.05 from his Law Office Account to purchase cashier checks payable to the beneficiaries of the Client B estate, another legal matter being handled by the respondent. The purchase of these cashier checks was made possible by the deposit in the respondent's Law Office Account of the Client A real estate proceeds.

After the deposits of Client A funds noted above, and in addition to the purchase of cashier's checks for the Client B estate beneficiaries, the respondent wrote a series of checks to pay other unrelated clients and personal expenses. By October 23, 1996, the balance in the Law Office Account had been reduced to \$23,920.78 without payments related to the Client A matter.

On November 12, 1996, November 18, 1996, and November 25, 1996, the respondent made payments in the amounts of \$50,000.00, \$58,694.88, and \$45,000.00, in connection with the Client A matter. These payments were made possible only by the deposit of unrelated client and personal funds, including the deposit of \$88,507.39 of the Vaillette proceeds on November 7, 1996, and the deposit on November 22, 1996 of \$20,400.00 in funds for another unrelated legal matter being handled by the respondent, the Client C conservatorship.

In another legal matter, the respondent represented the executor with respect to the estate of Client B, who died on October 23, 1994. Prior to September 1, 1996, the respondent received not less than \$127,211.84 in funds on behalf of the Client B estate, which funds he was to hold on behalf of the executor until distributions were to be made to the beneficiaries of the Client B estate.

As a result of payments made for unrelated matters, the balance in the respondent's IOLTA account and his Law Office Account had been reduced to only \$2,263.10 and \$6,184.16, respectively, by September 1, 1996 without payment of the amounts due the heirs of the Client B estate.

Distributions to the heirs of the Client B estate did not take place until September 17, 1996 and October 2, 1996, when the respondent withdrew funds totaling \$127,211.84 from his Law Office Account to purchase treasurer's checks, which were in turn remitted to the heirs of the Client B estate. The payments to the heirs would not have been possible but for the deposit of unrelated client and personal funds by the respondent into his Law Office Account, including \$167,167.88 in Client A funds which were deposited on October 1, 1996.

In another legal matter, the respondent was appointed by the Worcester Probate and Family Court to serve as the conservator for Client C, a disabled veteran who resides in a nursing home in Northborough.

The respondent's Ninth Account as conservator of Client C, covering the period April 30, 1995 through April 29, 1996, shows a principal balance invested per Schedule C with a market value as of April 29, 1996 of \$47,831.47. On November 22, 1996, the respondent withdrew \$20,400.00 from the Conservatorship Savings Account, and deposited the funds in his Law Office Account. The balance in the Law Office Account after the deposit of the Client C funds was \$49,504.32. The respondent used the Client C funds to fund a \$45,000.00 payment to Client A on November 25, 1996, reducing the balance in the Law Office Account to \$1,245.35.

On December 3, 1996, the respondent transferred an additional \$20,000.00 from the Conservatorship Savings Account to his Law Office Account, bringing the balance in the Law Office Account to \$20,060.60. By December 9, 1996, the respondent had reduced the balance in the Law Office Account to \$601.99 by making payments for unre-

lated business and personal purposes, without making any payments to or for the benefit of his ward, Client C.

The respondent filed his Tenth Account as conservator of Client C with the Worcester Probate and Family Court on or about June 5, 1997. The Tenth Account covers the period of April 30, 1996 to April 29, 1997. On Schedule C of the Tenth Account, the respondent stated that he was holding \$44,887.35 in the Conservatorship Savings Account and \$5,077.03 in the Conservatorship Checking Account. As of April 1, 1997, the balance in the Conservatorship Savings Account was in fact only \$3,098.11. On April 29, 1997, the respondent transferred \$41,789.24 from his Law Office Account to the Conservatorship Savings Account, restoring the funds which he had previously removed and bringing the account balance to \$44,887.35, as reported to the Court. This transfer was made possible by the use of Client E funds which had been deposited to the Law Office Account on April 4, 1997.

In another legal matter, on January 3, 1997, the respondent deposited in his Law Office Account \$25,000.00 representing a deposit on residential real estate being sold by his clients D1 and D2. The balance in the Law Office Account after the \$25,000.00 deposit was \$53,831.27. On January 9, 1997, the respondent used the Client D funds to make a \$48,040.32 payment to Fleet Bank in connection with the Vaillette matter. By January 9, 1997, the balance in the Law Office Account was reduced to \$239.30 without any payments to or on behalf of Clients D1 and D2.

On April 23, 1997, the respondent received an additional \$187,023.18 at the closing on behalf of Clients D1 and D2, and deposited the funds on April 24, 1997 in his Law Office Account. On April 24, 1997, using funds in his Law Office Account, the respondent purchased a treasurer's check for Clients D1 and D2 in the amount of \$212,023.18, representing the \$25,000.00 deposit plus the funds received at the closing. However, as noted above, the respondent had not retained the \$25,000.00 of deposit funds in the account.

The respondent's payment to Clients D1 and D2 was in part based on a deposit of \$236,111.31 made to the Law Office Account on April 4, 1997 in connection with the respondent's representation of Client E.

The respondent represented Client E in her post-divorce modification proceedings. On March 21, 1997, the Middlesex Probate and Family Court approved two attachments on trustee process in the amounts of \$1,500,000.00 each on the Merrill Lynch accounts of Client E's ex-husband and his business. The Court entered an order directing Merrill Lynch to transfer all funds in certain accounts in the name of Client E's ex-husband and his business to the respondent forthwith. The Order stated that the respondent "shall hold these funds as escrow agent subject to all existing Orders of this case and without limitation subject to Trustee Process Attachment in favor of the PLAINTIFF [Client E] . . . in the total sum of \$1,500,000.00 and not to be released without further order of this Court."

On April 2, 1997, Merrill Lynch transferred \$236,111.31 to the respondent as escrow agent for Client E's ex-husband and his business. On April 4, 1997, the respondent deposited the Escrow Funds in his Law Office Account, which the day before had a balance of \$3,336.69. The respondent did not establish separate segregated accounts for the Escrow Funds.

On April 24, 1997, the respondent used a portion of the Escrow Funds to make a payment to Clients D1 and D2 in an unrelated legal matter. On April 29, 1997, the respondent used a portion of the Escrow Funds to transfer \$41,789.24 to the Conservatorship Savings Account for Client C.

On April 14, 1997, the respondent transferred \$100,000.00 of the Escrow Funds from his Law Office Account to an interest-bearing account at another bank. On December 19, 1997, the respondent purchased two treasurer's checks using the funds in this account. The first check was payable to Client E in the amount of \$100,000.00, and the

second check, representing the interest earned, was payable to the respondent in the amount of \$2,795.69. The remaining Escrow Funds, in addition to the funds which had been used to make payments to Clients D1 and D2 and Client C, were used by the respondent for personal and business expenses unrelated to the Client E matter.

After investigation by the Office of Bar Counsel, on July 24, 1998, the respondent obtained a personal loan from a relative in the amount of \$140,058.50. By this loan, the respondent has made restitution for the amount of the escrow funds plus interest which he should have been holding.

The respondent's serial misuse of clients funds and his commingling of personal and client funds in the Law Office Account, violated Canon One, Disciplinary Rules 1-102(A)(4) and (6) and Canon Nine, Disciplinary Rules 9-102(A), (B), and (C), and Rules 8.4(b) and (c) and Rule 1.15 of the Massachusetts Rules of Professional Conduct.

The respondent's failure to comply with the Court Order in the Client E matter requiring that he hold certain escrow funds intact, violated Canon One, Disciplinary Rules 1-102(A)(4), (5), and (6), and Rules 8.4(c) and (d) of the Massachusetts Rules of Professional Conduct.

On October 29, 1998, the respondent submitted his affidavit of resignation from the practice of law. In the affidavit, the respondent acknowledged that sufficient evidence existed to warrant findings that the facts summarized above could be proved by a preponderance of the evidence. On November 9, 1998, the Board of Bar Overseers voted to recommend that the affidavit be accepted, that an order of indefinite suspension be entered forthwith, and that the affidavit not be impounded. The Supreme Judicial Court so ordered on December 17, 1998. On December 31, 1998, the Supreme Judicial Court entered an Amended Order of Indefinite Suspension providing that the order of indefinite suspension would be effective thirty days after the date of entry of the order.

**AMENDED  
ORDER OF INDEFINITE SUSPENSION**

This matter came before the Court, Ireland, J., an Affidavit of Resignation submitted by Albert Ira Gould pursuant to S.J.C. Rule 4:01, s. 15(2), the Recommendation and Vote of the Board of Bar Overseers filed by Bar Counsel on December 2, 1998, and on a Motion for Reconsideration filed by Bar Counsel on December 22, 1998.

Upon consideration thereof, it is ORDERED that:

1. Albert Ira Gould is hereby suspended from the practice of law in the Commonwealth of Massachusetts for an indefinite period. In accordance with S.J.C. Rule 4:01, sec. 17(3), the suspension shall be effective thirty days after the date of the entry of this Order. The lawyer, after the entry of this Order, shall not accept any new retainer or engage as lawyer for another in any new case or legal matter of any nature. During the period between the entry date of this Order and its effective date, however, the lawyer may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

It is FURTHER ORDERED that:

2. Within fourteen (14) days of the date of entry of this Order, the lawyer shall:
  - a) file a notice of withdrawal as of the effective date of the suspension with every court, agency, or tribunal before which a matter is pending, together with a copy of the notices sent pursuant to paragraphs 2(c) and 2(d) of this Order, the client's or clients' place of residence, and the case caption and docket number of the client's or clients' proceedings;



- b) resign as of the effective date of the suspension all appointments as guardian, executor, administrator, trustee, attorney-in-fact, or other fiduciary, attaching to the resignation a copy of the notices sent to the wards, heirs, or beneficiaries pursuant to paragraphs 2(c) and 2(d) of this Order, the place of residence of the wards, heirs, or beneficiaries, and the case caption and docket number of the proceedings, if any;
- c) provide notice to all clients and to all wards, heirs, and beneficiaries that the lawyer has been suspended; that he is disqualified from acting as a lawyer after the effective date of the suspension; and that, if not represented by co-counsel, the client, ward, heir, or beneficiary should act promptly to substitute another lawyer or fiduciary or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;
- d) provide notice to counsel for all parties (or, in the absence of counsel, the parties) in pending matters that the lawyer has been suspended and, as a consequence, is disqualified from acting as a lawyer after the effective date of the suspension;
- e) make available to all clients being represented in pending matters any papers or other property to which they are entitled, calling attention to any urgency for obtaining the papers or other property;
- f) refund any part of any fees paid in advance that have not been earned; and
- g) close every IOLTA, client, trust or other fiduciary account and properly disburse or otherwise transfer all client and fiduciary funds in his possession, custody or control.

All notices required by this paragraph shall be served by certified mail, return receipt requested, in a form approved by the Board.

3. Within twenty-one (21) days after the date of entry of this Order, the lawyer shall file with the Office of the Bar Counsel an affidavit certifying that the lawyer has fully complied with the provisions of this Order and with bar disciplinary rules. Appended to the affidavit of compliance shall be:
  - a) a copy of each form of notice, the names and addresses of the clients, wards, heirs, beneficiaries, attorneys, courts and agencies to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise requested in writing by the lawyer or ordered by the court;
  - b) a schedule showing the location, title and account number of every bank account designated as an IOLTA, client, trust or other fiduciary account and of every account in which the lawyer holds or held as of the entry date of this Order any client, trust or fiduciary funds;
  - c) a schedule describing the lawyer's disposition of all client and fiduciary funds in the lawyer's possession, custody or control as of the entry date of this Order or thereafter;
  - d) such proof of the proper distribution of such funds and the closing of such accounts as has been requested by the bar counsel, including copies of checks and other instruments;
  - e) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and

- f) the residence or other street address where communications to the lawyer may thereafter be directed.

The lawyer shall retain copies of all notices sent and shall maintain complete records of the steps taken to comply with the notice requirements of S.J.C. Rule 4:01, Section 17.

- 4. Within twenty-one (21) days after the entry date of this Order, the lawyer shall file with the Clerk of the Supreme Judicial Court for Suffolk County:
  - a) a copy of the affidavit of compliance required by paragraph 3 of this Order;
  - b) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and
  - c) the residence or other street address where communications to the lawyer may thereafter be directed.

Entered: December 31, 1998

By the Court (Ireland, J.),  
Maura S. Doyle, Clerk