

IN RE: ZOE FALKEN

NO. BD-2017-024

S.J.C. Judgment of Disbarment entered by Justice Cypher on February 25, 2019.¹

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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.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
DOCKET No. BD-2017-024

IN RE: ZOE FALKEN

MEMORANDUM OF DECISION

The Board of Bar Overseers (board), filed an information pursuant to S.J.C. Rule 4:01, § 8 (6), recommending the disbarment of the respondent, Zoe Falken. I conclude that disbarment is appropriate.

Background. Bar counsel commenced disciplinary proceedings against the respondent by filing and serving a petition for discipline on September 1, 2017. On September 25, 2017, the board advised respondent, via certified and first class mail, that she had not responded to the petition and the allegations in the petition were deemed admitted. The board also advised the respondent that she had twenty days to seek relief from default. On September 25, 2017, the respondent filed an answer to bar counsel's petition. On October 2, 2017, bar counsel filed a motion to strike the answer and requested that the respondent file a motion for relief from default. The respondent did not oppose the motion and on October 11, 2017, the motion was allowed. On October 27, 2017, bar counsel filed a memorandum on disposition. On November 7, 2017, the respondent filed a reponse and on November 13, 2017, the respondent filed a supplemental response. On December 11, 2017, the board voted "upon default, to file an information with the Supreme Judicial Court recommending that Ms. Falken be disbarred."

Summary of Misconduct. In its petition for discipline, the board brought three counts against the respondent:

Count One. The board alleges that the respondent violated Mass. R. Prof. C. 1.15 (f) (1) (C) when she "fail[ed] to keep an account register with client identifier after every transaction and list of every transaction and running balance" in her IOLTA account. The board also alleges that the respondent violated Mass. R. Prof. C. 1.15 (e) (4) when she withdrew funds from her IOLTA account in cash.

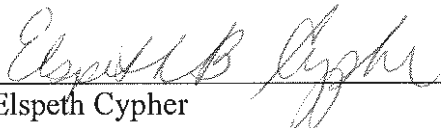
Count Two. The board further alleges that the respondent violated Mass. R. Prof. C. 1.15 (e) (4) when she withdrew funds from her IOLTA account in cash. The board also alleges that the respondent violated Mass. R. Prof. C. 1.15 (b) (2) by leaving earned fees in her IOLTA account while holding client funds, Mass. R. Prof. C. 1.15 (c) by failing to promptly pay clients funds due to them, and Mass. R. Prof. C. 8.4 (c) and (h) by intentionally misusing client funds.

Count Three. The board alleges that the respondent violated Mass. R. Prof. C. 8.1 (a)- (b) and 8.4 (c), (d), and (h) by intentionally making false statements to bar counsel in letters and affidavits as a part of an investigation and by failing to correct information in the an affidavit that she knew to be false.

Count Four. The board alleges that the respondent violated Mass. R. Prof. C. 8.1 (b) and 8.4 (d) and (g) by failing to respond to bar counsel's requests for information during the course of an investigation and not complying with a subpoena.

Findings and Sanctions. Where a respondent fails to file a timely answer, "the allegations in the petition for discipline shall be deemed admitted." § 3.15 (e) of the Rules of the Board of Bar Overseers.

The presumptive sanction for an attorney who has misappropriated client funds is disbarment or indefinite suspension. Matter of Corbett, 478 Mass. 1004, 1005 (2017). Where that attorney also engaged in related misconduct "that adversely reflects on [her] fitness to practice law," disbarment is appropriate. In re Haese, 468 Mass. 1002, 1008 (2014). Given the respondent's misappropriation of client funds, false statements to bar counsel related to that misconduct, and failure to comply with a subpoena, I conclude that the bar counsel's recommendation of disbarment is appropriate.


Elspeth Cypher
Associate Justice

DATED: February 21, 2019