

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2019-040

IN RE: Jennifer Anne Elcock

ORDER OF TERM SUSPENSION

This matter came before the Court, Budd, J., on a Petition for Reciprocal Discipline pursuant to S.J.C. Rule 4:01, § 16 and the Final Judgment and Order of Disbarment entered in the Supreme Court of Arizona filed by the Office of Bar Counsel on April 16, 2019.

After a telephone hearing was held on June 25, 2020, with participation by assistant bar counsel and the lawyer, and in accordance with the Memorandum of Decision of this date;

1. Jennifer Anne Elcock is hereby suspended from the practice of law in the Commonwealth of Massachusetts for a period of six (6) months and one day effective immediately upon the entry of this Order. The lawyer's reinstatement to the practice of law in the Commonwealth of Massachusetts shall be contingent upon the lawyer taking and passing the Multi-State Professional Responsibility Examination prior to being eligible for reinstatement. The lawyer shall also comply with her administrative suspension pursuant to S.J.C. Rule 4:02 (1) entered in Bar Docket No. BD-2020-19.

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 she 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 her 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, § 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.

By the Court, (Budd, J.)

/s/ Maura S. Doyle
Maura S. Doyle, Clerk

Dated: September 29, 2020

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2019-040

IN RE: Jennifer Anne Elcock

MEMORANDUM OF DECISION

This matter came before me on a Petition for Reciprocal Discipline pursuant to S.J.C. Rule 4:01, § 16 recommending that the respondent, Jennifer Anne Elcock, be suspended from the practice of law for a period of at least six months and one day based on her conduct in Arizona. I conclude that such reciprocal discipline is appropriate.

Background. After an evidentiary hearing before a disciplinary panel in Arizona, the respondent was disbarred from practicing law in that state based on her representation of a client without a license to practice there, failing to communicate with the client, and later failing to return the client's \$2000 retainer and documents until after she had been reported to the Arizona bar. The respondent appealed the discipline, arguing that because she was not licensed to practice in Arizona, she could not be disbarred there.

On appeal, the Supreme Court of Arizona accepted the

panel's findings that the respondent violated the following rules of professional conduct:

- failing to define the scope of the representation (Ariz. R. Sup. Ct. ER 1.2);
- failing to diligently represent the client's interests (Ariz. R. Sup. Ct. ER 1.3);
- failing to communicate adequately with the client (Ariz. R. Sup. Ct. ER 1.4);
- collecting a fee for work she could not perform (Ariz. R. Sup. Ct. ER 1.5[a]);
- failing to return the client's funds and property (Ariz. R. Sup. Ct. ER 1.15[b]);
- abandoning the client and failing to communicate to the client that she had terminated the representation (Ariz. R. Sup. Ct. ER 1.16[d]); and
- engaging in the unauthorized practice of law (Ariz. R. Sup. Ct. ER 5.5).¹

The court rejected, however, the disciplinary panel's finding that the respondent engaged in conduct involving dishonesty (Ariz. R. Sup. Ct. ER 8.4[c]). The court ultimately held that had the respondent been a member of that state's bar, it would

¹ The Arizona rules of professional conduct correspond to the Massachusetts rules.

have reduced the discipline from disbarment to a two-month suspension; however, it determined that the only discipline it could impose on a non-member of the Arizona bar was a public reprimand. The court issued the reprimand, and ordered that the decision be forwarded to the State Bar of Massachusetts.

In response, bar counsel filed a petition for reciprocal discipline seeking an order of suspension for a period of six (6) months and one (1) day.

A telephonic hearing was held on June 25, 2020 with the respondent participating from Arizona. At that time, the respondent asserted that extenuating circumstances should be considered in determining the appropriate sanction. The parties were instructed to confer in order for bar counsel to determine whether to adjust the recommendation for discipline, and report back to the Court within a week. On August 17, 2020, bar counsel informed the court that she had been unable to schedule a telephonic conference with the respondent despite making multiple attempts, and requested that the court issue an order of suspension.

Discussion. In considering the appropriate sanction to be imposed in a petition for reciprocal discipline, I "may impose the identical discipline unless (a) imposition of the same discipline would result in grave injustice; (b) the misconduct established does not justify the same discipline in this

Commonwealth; or (c) the misconduct established is not adequately sanctioned by the same discipline in this Commonwealth." S.J.C. Rule 4:01, § 16 (3). This includes ensuring that the sanction "is not markedly disparate from that ordered in comparable cases" in the Commonwealth. In re Kersey, 444 Mass. 65, 70 (2005). Bar counsel argues that in this case, the public reprimand ordered in Arizona is not an adequate sanction for the misconduct established, and that a six months and one day suspension is more appropriate. I agree.

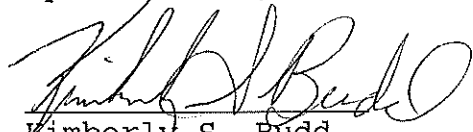
The respondent's most serious infraction was engaging in the unauthorized practice of law (Mass. R. Prof. C. 5.5), which has resulted in a six-month suspension for other Massachusetts attorneys. See Matter of Airewele, 28 Mass. Att'y Disc. R. 3 (2012) (Massachusetts attorney given six-month suspension for providing legal services in Georgia, where he was not admitted, and for failing to represent his clients diligently and competently); Matter of Ramos, 29 Mass. Att'y Disc. R. 554 (2013) (Massachusetts attorney not admitted in Ohio suspended for six months for holding himself out as an Ohio attorney and failing to report his prior misdemeanor convictions to bar counsel).

As indicated above, the respondent also violated six other rules of professional conduct, each of which individually has garnered an admonition or a public reprimand. See, e.g., Matter

of Kane, 13 Mass. Att'y Disc. R. 321 (1997) (admonition is generally appropriate when attorney fails to act with reasonable diligence in representing a client causing little to no injury to client); Admonition No. 16-10, 32 Mass. Att'y Disc. R. 695 (2016) (admonition for attorney who failed to enter into written fee agreement); Matter of Brandt, 26 Mass. Att'y Disc. R. 59 (2010) (public reprimand for attorney's failure to notify client that he did not pursue case, and of the applicable statute of limitations). Thus, taken together, the respondent's violations warrant a suspension of six months and one day.²

So ordered.

By the Court,


Kimberly S. Budd
Associate Justice

Dated: September 29, 2020

² This sanction will require the respondent to take and pass the Multi-State Professional Responsibility Examination prior to being eligible for reinstatement.