

IN RE: KIM E. ZADWORNY

S.J.C. Order of Indefinite Suspension Retroactive to March 29, 2010, entered by Justice Spina on July 29, 2010.¹

SUMMARY²

On July 29, 2010, the Supreme Judicial Court for Suffolk County entered an order indefinitely suspending the respondent from the practice of law for misconduct including, among other violations, intentional misuse of funds.

From June 30, 2008 to September 20, 2008, the respondent acted as temporary guardian of the person and estate of an individual. The respondent's services were limited to making medical decisions and paying utility bills. For these services the respondent paid herself fees in the amount of \$15,139.50 from the estate funds. These fees were clearly excessive.

On September 20, 2008, the ward died with a will. On September 22, 2008, the respondent withdrew \$20,000 from his bank account with the intent to deprive the estate of the funds. An executor was appointed on December 22, 2008. The respondent did not promptly turn over the decedent's funds in her possession to the executor.

On January 23, 2009, the respondent filed a "First and Final Account" of her temporary guardianship of the estate. The respondent intentionally misrepresented on Schedule B of the account that she had taken guardianship fees of \$10,908.94, when she knew she had in fact paid herself a total of \$15,139.50 in fees and had withdrawn another \$20,000 for which she had not accounted.

The executor discovered that the respondent had withdrawn more funds from the decedent's account than the fees and expenses listed on Schedule B. The executor sent the respondent a letter demanding that the respondent promptly remit the difference. The respondent did not turn over the funds until after bar counsel began her investigation.

A beneficiary of the estate filed a request for an investigation of the respondent's conduct with bar counsel. Bar counsel forwarded the beneficiary's request to the respondent together with a letter requesting that she provide an explanation of her conduct, a copy of her file and a detailed accounting of the funds she had withdrawn. In her reply, the respondent intentionally misrepresented the amount of her fees and that the executor consented to the payments. The respondent also intentionally and without good cause failed to produce a copy of her file to bar counsel.

The respondent was administratively suspended on June 16, 2009, for her failure to comply with bar counsel's requests for information. The respondent turned over the funds belonging to the estate after her administrative suspension. The respondent was not reinstated within thirty days and became subject the provisions of Supreme Judicial Court Rule 4:01, § 17. The respondent did not comply with all the terms of her administrative suspension until March 29, 2010.

By charging a clearly excessive fee, the respondent violated Mass. R. Prof. C. 1.5(a). By misappropriating \$20,000 from the decedent's account, the respondent violated Mass. R. Prof.

C. 8.4(c) and (d). By failing to promptly turn over funds belonging to the estate, the respondent violated Mass. R. Prof. C. 1.15(c) and 8.4(d). By failing to promptly render an account of her guardianship to the probate court and the executor, the respondent violated Mass. R. Prof. C. 1.15(d), 3.4(c), and 8.4(d). By filing a false first and final account in the probate court and by making intentionally false representations in the account, the respondent violated Mass. R. Prof. C. 3.3(a)(1) and 8.4(c) and (d).

By making intentionally false statements to bar counsel and by not producing a copy of her file to bar counsel, the respondent violated S.J.C. Rule 4:01, § 3(1), and Mass. R. Prof. C. 8.1(a) and (b) and 8.4(c) and (g). By failing without good cause to comply with Supreme Judicial Court Rule 4:01, § 17, and the order of administrative suspension, the respondent violated Mass. R. Prof. C. 3.4(c) and 8.4(d).

In a separate matter, the respondent was appointed to serve as guardian of the estate of another individual. The respondent's services from late 2005 until the ward's death in mid 2007 consisted of liquidating his bank accounts, selling his residence and paying his bills. The respondent deposited the ward's funds to a noninterest-bearing account and used the funds to pay his bills. At the time of his death, the respondent was holding approximately \$83,000 on his behalf. The respondent paid herself \$19,728.61 from these funds. The respondent's fees were clearly excessive.

In June 2007, the ward's daughter was appointed as the administrator of his estate. She repeatedly asked the respondent to turn over the estate funds her possession. The respondent did not turn over the funds in her possession until October 2007. The respondent never filed an account of her guardianship.

By failing to deposit the ward's funds in an interest-bearing account when the funds were not nominal in amount, and when she intended to hold the funds for an extended period of time, the respondent violated Mass. R. Prof. C. 1.15(e)(5). By failing to file an account of her guardianship, the respondent violated Mass. R. Prof. C. 1.15(d), 3.4(c), and 8.4(d). By failing to promptly turn over the remaining assets in her possession to the administrator, the respondent violated Mass. R. Prof. C. 1.15(c). By charging and collecting a clearly excessive fee, the respondent violated Mass. R. Prof. C. 1.5(a).

In addition, the respondent's record-keeping for her trust accounts and IOLTA accounts was inadequate because she failed to keep check registers that recorded receipts and disbursements of trust fund in chronological order, failed to maintain individual ledgers for each client matter and did not reconcile her trust accounts at least every sixty days.

By failing to prepare and maintain a proper check register that recorded receipts and disbursement of client funds, the respondent violated Mass. R. Prof. C. 1.15(f)(B). By failing to maintain individual ledgers for each client matter, the respondent violated Mass. R. Prof. C. 1.15(f)(C). By failing to reconcile her trust accounts at least every sixty days, the respondent violated Mass. R. Prof. C. 1.15(f)(E).

The matter came before the Board of Bar Overseers on a stipulation of facts and rule violations and a joint recommendation that the respondent be indefinitely suspended from the practice of law retroactive to March 29, 2010. On July 22, 2010, the board filed an information and its vote to accept the joint recommendation with the Supreme Judicial Court. The court so ordered on July 29, 2010.

FOOTNOTES:

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.

Please direct all questions to webmaster@massbbo.org.