

IN RE: EZENWA L. NWOGU

NO. BD-2016-060

S.J.C. Judgment of Disbarment entered by Justice Lenk on November 16, 2016, with an effective date of December 16, 2016.¹

SUMMARY²

The respondent was disbarred for the conduct described below.

The respondent intentionally misused the funds of four clients, with deprivation resulting. He admitted intent to misuse but denied intent to deprive. The hearing committee found that there was sufficient evidence of intent to misuse, including the respondent's pattern of writing checks to himself in round numbers, with no client identifiers, and his use of new funds to satisfy outstanding obligations. It also found that the respondent's records showed that he knew how to pay clients their settlement shares and to identify client matters; his failure to so do in the four matters at issue supported a finding of intentional conduct. The committee found "ample evidence" of the misuse of IOLTA funds and the respondent's failure, once apprised of the shortcomings of his recordkeeping, to investigate and make restitution. As of the November 13, 2015 hearing date, the known losses to the four clients totaled \$28,234.43. Although many years had elapsed since the misuse, the respondent had made no restitution.

In addition, the committee found that the respondent knowingly made misrepresentations to all four clients and to a court concerning the amount of money he was withholding to pay medical liens; that he advanced personal funds to a client; and that he committed recordkeeping violations, including commingling client and personal funds, failing to maintain individual client ledgers, withdrawing cash from the IOLTA account and failing to periodically reconcile it. His conduct was found to be in violation of disciplinary rules 1.15(b) and (c), 1.15(e)(3), 1.15(f)(1)(C) and (E), 1.8(e), 3.3(a)(1), and 8.4(c), (d) and (h).

The presumptive sanction for the intentional misuse of client funds, with the intent to deprive or with actual deprivation resulting, is indefinite suspension or disbarment. Whether a respondent has made restitution is a factor in choosing between disbarment and indefinite suspension.

An offending attorney offering mitigating circumstances faces a "heavy burden" in avoiding the presumptive sanction. The respondent did not meet this burden. The hearing committee rejected claims that the respondent's attendance at a remedial recordkeeping course, his position as the main support for two minor children, his status as a solo practitioner or his

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.

professed acceptance of responsibility were mitigating. It found in aggravation that the respondent had committed many and diverse disciplinary violations and that he was experienced in the practice of law.

The matter came before the board on the hearing committee's report, filed February 24, 2016, recommending disbarment. At its April 11, 2016 meeting, the board voted to accept the report and recommend disbarment to the Supreme Judicial Court. By order entered November 16, 2016, the Court disbarred the respondent, effective thirty days from the entry date of the order.