

**IN RE: MARCIA ROSE CALCAGNI**

**NO. BD-2016-072**

**S.J.C. Order of Term Suspension entered by Justice Botsford on July 11, 2016, with an effective date of August 10, 2016.<sup>1</sup>**

**SUMMARY<sup>2</sup>**

The respondent, Marcia Calcagni, is an attorney duly admitted to the bar of the Commonwealth on January 22, 2002.

On or about June 26, 2013, the client retained the respondent to represent him in a divorce. By the terms of a fee agreement executed that day, the client agreed to pay the respondent \$280 per hour, in addition to filing fees and other costs. On June 26, 2013, the client gave the respondent a check for \$8000, representing a \$7000 retainer for the divorce and a \$1000 flat fee for a real estate closing. The respondent deposited the funds to her IOLTA account.

On the following day, June 27, 2013, before earning the funds, and without billing the client, the respondent withdrew a total of \$5500 of the retainer funds from her IOLTA account and used them for purposes unrelated to the client. The respondent knew she had not earned that amount in fees and she intentionally misused the funds.

During the following weeks, the respondent continued to withdraw the retainer funds from her IOLTA account, knowing that she had not earned those funds. By July 22, 2013, the respondent's IOLTA account balance was \$1007.30.

Prior to the termination of the representation in December 2013, the respondent earned almost all of the retainer funds that she had withdrawn from the IOLTA account. In early December 2013, the client terminated the representation and requested an accounting of the fees that he had paid to her. The respondent failed to timely provide the client with a full

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<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

accounting of his funds and failed to promptly refund to him about \$522 of his retainer that she had not earned. Several months later she returned the \$522.

During 2013 and 2014, the respondent failed to maintain and/or preserve a chronological check register, as required by Mass. R. Prof. C. 1.15(f)(B). She also failed to maintain an accurate client ledger, as required by Mass. R. Prof. C. 1.15(f)(C); and failed to create and maintain three-way reconciliation reports of trust funds that she was holding, as is required by Mass. R. Prof. C. 1.15(f)(E).

By withdrawing from her IOLTA account and misusing the client's funds, knowing that she had not earned those funds, the respondent failed to hold trust funds in a trust account, in violation of Mass. R. Prof. C. 1.15(b)(1); and intentionally misused trust funds, in violation of Mass. R. Prof. C. 8.4(c) and (h).

By withdrawing client retainer funds prior to delivering to her client an itemized bill showing the services rendered, a written notice of the amount and date of the withdrawal, and a statement of the client's balance after the withdrawal, the respondent violated Mass. R. Prof. C. 1.15(d) (2).

By failing to promptly render to her client a full written accounting of his retainer funds upon his request, the respondent violated Mass. R. Prof. C. 1.15(d)(1).

By failing to refund the unearned portion of the retainer at the termination of the representation, the respondent violated Mass. R. Prof. C. 1.16(d).

By failing to maintain and preserve with respect to her IOLTA account a chronological check register, individual client records, a bank fee ledger and reconciliation reports, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(B),(C), (D) and (E).

The parties stipulated to the facts and rule violations set forth above and agreed to a suspension from the practice of law for one year, with six months of the suspension stayed for two years on condition that the respondent execute and comply with an accounting probation agreement. On June 13, 2016, the Board of Bar Overseers voted to accept the parties' stipulation and recommendation for discipline.

The matter came before the Supreme Judicial Court for Suffolk County on an information filed by the board, pursuant to S.J.C. Rule 4:01, § 8.4. On July 11, 2016, the Court entered an order suspending the respondent for a period of one year, with six months of the suspension stayed for two years on the conditions described above, effective thirty days after the entry.