

**IN RE: MICHAEL P. MURPHY**

**NO. BD-2017-100**

**S.J.C. Order of Indefinite Suspension entered by Justice Cypher on May 9, 2018.<sup>1</sup>**

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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.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
DOCKET NO. BD-2017-100

IN RE: MICHAEL P. MURPHY

MEMORANDUM OF DECISION

This matter came before me on an Information and record of proceedings pursuant to S.J.C. Rule 4:01, § 8 (6), with the recommendation and vote of the Board of Bar Overseers (board) filed by the board on January 19, 2018. After a hearing and a review of the parties' submissions, I concluded that an indefinite suspension was appropriate in this case.

Background. Bar counsel commenced disciplinary proceedings against the respondent, Michael P. Murphy, by filing and serving a petition for discipline on August 31, 2017. The petition brought three counts against the respondent. He did not file an answer to the petition for discipline. On October 26, 2017, the board sent a letter to the respondent informing him that because he had failed to file a response to the petition, the allegations were deemed admitted and he had waived his right to present evidence in mitigation, pursuant to § 3.15 (e), (f), and (g) of the Rules of the Board of Bar Overseers. On November 2, 2017, the respondent was administratively suspended for noncooperation on an unrelated matter. On November 16 the board sent the respondent a letter notifying him that the determination of appropriate discipline would be decided at the board's next meeting, and inviting him to file briefs confined to the issue of disposition within fourteen days. On December 11 the board unanimously voted to recommend that the respondent be indefinitely suspended from the practice of law.

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

Count 1. The board alleges that the respondent: (1) failed to hold trust funds in a trust account in violation of Mass. R. Prof. C. 1.15 (b) (1); (2) intentionally misused a client's funds for his own purpose with the intent to deprive a third person of those funds at least temporarily and with actual deprivation resulting in violation of Mass. R. Prof. C. 1.15 (b) and (c), and 8.4 (a), (c), and (h); (3) failed to convey his client's acceptance of a third-party's terms, failed to answer a complaint, and permitted a third party to obtain a default judgment against his client, in violation of Mass. R. Prof. C. 1.1, 1.2 (a), and 1.3; (4) misrepresented the status of the case to his client, failed to keep his client reasonably informed about the status of its matter, and did not promptly comply with his client's reasonable requests for information, in violation of Mass. R. Prof. C. 1.4 (a) and (b) and 8.4 (c); and (5) knowingly submitted false itemized invoices to bar counsel during the course of an investigation in violation of Mass. R. Prof. C. 8.1 (a), 8.4 (c), (d), and (h).

The respondent represented a corporate client which was involved in a contractual dispute with a vendor. During negotiations, the vendor offered to continue to do business with the client on the condition that the client make weekly payments to the vendor in the amount of \$500. The client informed the respondent that it would agree to those terms. The respondent failed to convey the client's acceptance of the terms to the vendor. The vendor filed suit against the client in the Superior Court on June 19, 2015. The respondent did not inform the client of the suit and did not file an answer or any other pleadings.

The client issued its first payment of \$500 to the vendor by way of check on or around June 25, 2015. The respondent did not forward this payment to the vendor but instead altered the

check by inserting his own name into the payee line and deposited it into his personal account. On several occasions between May and August, the respondent accepted checks from the client to be paid to the vendor which he deposited into his personal account or business account, and at times IOLTA account. The respondent used the funds for unrelated business or personal expenses.

On August 20, 2015, the client was defaulted in the Superior Court case. On December 2, 2015, the vendor obtained an execution, including postjudgment interest, in the total amount of \$53,758.32. The respondent did not inform his client and took no action to prevent entry of default. Between August 31 and December 31, 2015, the client continued to give checks to the respondent, who deposited each check into his IOLTA account, and did not use those funds to pay the vendor. On January 4, 2016, the respondent made his first and only payment to the vendor in the amount of \$3,500.

In or about January of 2016, the client learned from its vendor that it had obtained a default judgment and an execution of judgment. The client contacted the respondent, who falsely told the client that the judgment was in error or that it would be dismissed. He instructed the client to continue making \$500 weekly payments to him. The respondent used these funds for personal and unrelated business expenses. By the end of February, 2016, the respondent had collected a total of \$12,500 from Excel. He deposited \$10,000 into his IOLTA account, \$500 into his personal account, and \$2,000 into his business account. He made only one payment to the vendor in the amount of \$3,500. Bar counsel alleges that the respondent misused \$9,000 of the client's funds. The client filed a complaint with the office of Bar Counsel on April 21, 2016. On April 29, 2016, the respondent repaid the client \$9,500 using funds borrowed from family. On May 31, 2016, he submitted to bar counsel documents styled as invoices. One invoice dated

April 29, 2016, falsely states that the client's July 31, 2015, payment of \$1,000 to the respondent was intended and credited as a legal fee he was owed. The client never received this invoice and never intended the \$1,000 to be used for legal fees. The respondent knew this invoice was false when he delivered it to bar counsel. In the respondent's May 31, 2016, submission to bar counsel he intentionally altered invoices he had submitted to the client in prior years, while at another firm, to make it appear that the invoices were still outstanding. He knew that the client did not owe these funds to him and his submission to bar counsel was false.

Count 2. The board alleges that the respondent failed to keep his client reasonably informed as to the status of his case and did not respond to reasonable requests for information, in violation of Mass. R. Prof. C. 1.4 (a) (3) and (4). The board further alleges that the respondent failed to make a client's file available to him following the client's request in violation of Mass. R. Prof. C. 1.16 (e), and failed to deliver to his client in writing itemized bills or other accounts showing services rendered, the amount and date of each withdrawal and a statement of the balance of the client's funds in his trust account on or before the date of each withdrawal of funds in the account to pay for his fees, in violation of Mass. R. Prof. C. 1.4 (a) and 1.15 (d) (2).

On or about April 1, 2014, Spirodon Loukos retained the respondent to represent him in a divorce and gave the respondent a \$6,000 retainer. The respondent was nonresponsive to Loukos's telephone calls and text messages on multiple occasions. In November, 2014, Loukos terminated the representation. Between April and November, 2014, the respondent made five withdrawals from the client's trust funds to pay his fees for work performed. He failed to provide the client with a writing to show services rendered, a notice detailing the withdrawals, or a statement of the balance of funds. In November, 2014, Loukos and his new counsel contacted

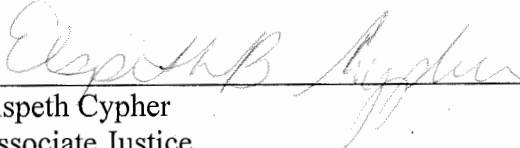
the respondent on numerous occasions to request Loukos's file. The respondent did not respond to the requests and did not make Loukos's file available to him within a reasonable time.

Count 3. Bar counsel contends that the respondent failed to keep a check register identifying clients' transactions in violation of Mass. R. Prof. 1.15 (f) (1) (B). Bar counsel also contends that the respondent failed to keep consistently an individual client ledger in violation of Mass. R. Prof. C. 1.15 (f) (1) (C), failed to perform a three-way reconciliation of his IOLTA account in violation of Mass. R. Prof. C. 1.15 (f) (1) (E), and failed to deliver to the client in writing itemized bills or accountings to show the services rendered, details of withdrawals, and a statement of balance of funds in his trust account on or before the date of each withdrawal to pay his fees in violation of Mass. R. Prof. C. 1.4 (a) for conduct prior to July 1, 2015, and 1.4 (a) (3) and (4) for conduct on and after July 1, 2015, and rule 1.15 (d) (2).

From June, 2015, through April, 2016, the respondent maintained an IOLTA account at Citizens Bank. During that time, he did not maintain an accurate check register for his IOLTA account with a client identifier after every transaction, a list of every transaction, or a running balance of every transaction. The respondent did not maintain accurate client ledgers and did not perform a three-way reconciliation of his IOLTA account at least every sixty days.

Findings and Sanctions. As noted above, the respondent failed to file an answer to the board's petition for discipline. 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. While the respondent had the opportunity to "include in [an] answer any facts in mitigation," his failure to do so "constitutes a waiver of the right to present evidence of those facts." § 3.15 (f). I therefore enter findings against the respondent for the aforementioned allegations.

Bar counsel recommends the respondent be suspended from the practice of law for an indefinite period, and argues that "disbarment or indefinite suspension is the presumption discipline for a respondent who has intentionally used client funds with the intent to deprive or with actual deprivation resulting." Bar Counsel's Memorandum on Disposition, at 5, quoting *Matter of Schoepfer*, 426 Mass. 183 (1997). In this case, because the respondent "reimbursed his client the funds he had misused, his misconduct would generally warrant an indefinite suspension." Bar Counsel's Memorandum on Disposition, at 6, citing *Matter of Bryan*, 411 Mass. 288 (1991). Bar counsel further argues that the respondent's neglect of the client's matter, along with his false representations to his client, also warrant a term suspension. Bar Counsel's Memorandum on Disposition, at 6, citing *Matter of Abbott*, 437 Mass. 384 (2002), and *Matter of Trefethon*, 24 Mass. Att'y Discipline Rep. 697 (2008). I conclude that the bar counsel's recommendations are appropriate. Accordingly, an order shall enter suspending the respondent from the practice of law indefinitely.

  
Elspeth Cypher  
Associate Justice

DATED: May 3, 2018