

Summary of SC94418, *In re: Eric Alexander Farris*

Original disciplinary proceeding

Argued and submitted December 9, 2014; opinion issued September 8, 2015

Attorneys: The chief disciplinary counsel was represented by Chief Disciplinary Counsel Alan D. Pratzel and Sam S. Phillips of the chief disciplinary counsel's office in Jefferson City, (573) 635-7400, and special representative Randee S. Stemmons, an attorney in Mt. Vernon, (417) 466-3121. Farris, of Branson, (417) 334-7278, represented himself.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: This case involves questions of whether an attorney committed misconduct by misappropriating client funds, among other allegations, and, if so, what discipline is appropriate. In a decision written by Judge Paul C. Wilson, the Supreme Court of Missouri disbars the attorney. All seven judges agree the attorney committed misconduct. The evidence shows the attorney misappropriated \$93,000 belonging to his clients and their medical creditors, and even if he relied on his then-wife to manage his accounts, it was his duty alone to ensure compliance with the rules of professional conduct. He failed to maintain his client records and accounts as required by the rules, and this failure creates an inference that he knew what the records would have shown. Four judges agree the attorney should be disbarred. The baseline discipline for misappropriation is disbarment. There are no compelling mitigating circumstances here, and there are extensive aggravating circumstances.

Judge George W. Draper III dissents. He agrees with the findings of misconduct but disagrees with the discipline imposed by the Court. By disbarring the attorney, the Court loses authority to require the attorney to seek restitution for the clients affected by the misconduct. Instead, he would suspend the attorney indefinitely with no leave to apply for reinstatement for two years. He also would require the attorney to make complete restitution to the clients before so applying.

Facts: This case involves Eric Farris' representation of clients in two personal injury cases. In the first case, client A hired Farris to represent her in June 2005. The case was settled for \$197,500, and Farris deposited the settlement proceeds into his client trust account. From the proceeds, Farris paid client A \$65,000 and deducted a reduced attorney fee of \$64,000 and expenses of about \$2,140. This should have left about \$66,340 in the trust account for the benefit of client A and her medical creditors. After a check Farris paid to client A bounced, he met with the client in November 2011 and reassured her the hospital had been paid in full and that she had no need to worry. In the second case, for client B, the personal injury claims settled in September 2010 for \$90,500, and Farris deposited the settlement proceeds into his client trust account. From the proceeds, Farris paid client B nearly \$32,600 and deducted \$30,000 in attorney fees and nearly \$775 in expenses. This should have left about \$27,130 in the trust account for the benefit of client B and client B's medical providers. Neither client nor any of the clients' medical providers received any of the funds Farris held in his trust account for their benefit. Instead, nearly all the remaining funds were transferred to Farris' office account, from which it was used

to pay his personal and business expenses. To date, he has not paid the clients or their medical creditors what they are owed.

Following an investigation completed in November 2012, the chief disciplinary counsel instituted disciplinary proceedings against Farris. At a hearing before a regional disciplinary hearing panel, Farris testified his then-wife managed his office's administrative, financial and accounting matters and accused her of stealing his clients' funds from his trust account without his knowledge. He testified that he ultimately reported her conduct to the authorities and that she is being prosecuted. Ultimately, the disciplinary hearing panel found that Farris committed numerous instances of misconduct in violation of the rules of professional responsibility – including misappropriation of client funds – and recommended that Farris be suspended indefinitely with no leave to apply for reinstatement for six months. The chief disciplinary counsel agrees with the panel's findings of misconduct but asks this Court to disbar Farris.

DISBARRED.

Court en banc holds: (1) Farris committed misconduct.

(a) Farris knowingly violated Rule 4-1.15. He failed to: maintain the \$93,000 in his trust account he promised for the benefit of client A, client B and their medical creditors; provide a prompt and accurate accounting when client A asked about her settlement; and produce his trust account records to the chief disciplinary counsel. He knowingly failed to distribute the \$93,000 in his trust account promptly to its rightful owners. He also claimed he was unable to locate his clients' files despite his obligation to retain them for at least 10 years following the conclusion of his representation of them.

(b) Farris also violated Rule 4-8.4. His conduct in knowingly commingling the \$93,000 from his trust account with funds in his operating account and knowingly converting those funds when the balance of his operating account fell below the amount he was to have held in trust violated Rule 4-8.4 because it involved dishonesty, fraud, deceit and misrepresentation. Even if he ignored the fact that, in November 2011 when he met with client A, nearly all the \$93,000 had been transferred to and spent from his operating account, such knowledge became inescapable in November 2012, when the chief disciplinary counsel's office completed its investigation and confronted Farris with the facts. Accordingly, he knowingly misappropriated funds then and thereafter and, for more than 30 months, knowingly has failed to make good on his obligations to client A, client B and their medical creditors. Further, he told client A he had paid her hospital bill in full when he had not, and he never made any attempt to follow through on his promises to client B. He then provided tardy, incomplete and false responses to the chief disciplinary counsel's office.

(2) Farris cannot avoid responsibility by blaming his ex-wife or failing to keep records. The evidence shows it was Farris – and not his then-wife – who: told client A and client B he would hold some of their settlement proceeds in trust and use it to pay their medical providers; told the clients he would try to negotiate discounts on their medical bills and distribute any resulting savings to them; failed to respond promptly and truthfully to inquiries from client A and the chief

disciplinary counsel's office; and failed to maintain his clients' files and trust account properly. The evidence shows the \$93,000 Farris was supposed to be holding in his trust account was deposited into his office account – through a series of transfers of odd amounts, including transfers of \$9,999 that would not trigger the bank's federal reporting obligations – and then spent for his benefit. Farris knew the salient facts by November 2011, and his argument that the transfers were his ex-wife's fault is immaterial. Under Rule 4-1.15, Farris is accountable for the misappropriation of client funds whether he made the transfers and expenditures himself or his then-wife made them. Rule 4-1.15 also makes Farris accountable for maintaining detailed records of deposits into and expenditures from his trust fund on behalf of his clients. His failure to do so gives rise to an inference he knew there was a problem with the account. As such, he knew or should have known his then-wife was depleting the trust account by transferring funds to the operating account. The duty to safeguard and distribute trust account funds under Rule 4-1.15 is non-delegable. Farris alone is responsible for fulfilling his obligations and responsibilities imposed by the rules of professional conduct.

(3) Disbarment is the appropriate discipline.

(a) This Court historically has refused to tolerate the misappropriation of a client's money – there is no room for attorneys who take property held in trust for others and use it as their own. Although disbarment is not automatic in misappropriation cases, it is the baseline sanction. A proper application of the American Bar Association standards for imposing lawyer discipline, which are merely guidance, confirms this Court's cases that disbarment is the presumptively appropriate discipline for misappropriating client funds. Because Farris knowingly misappropriated nearly \$93,000 belonging to his clients or their medical creditors, disbarment is the presumptive discipline for his misconduct.

(b) There are no mitigating circumstances sufficiently compelling to overcome the presumptive discipline of disbarment. The ex-wife's conduct is not a mitigating factor. A lawyer cannot escape responsibility for misappropriation by blaming someone acting within the lawyer's authority and for the lawyer's benefit. By November 2011, there were enough warning signs for Farris to know something was seriously wrong with his trust account, and the duty to comply with the rules of professional conduct rests with Farris, not his wife. That Farris was in ill health in November 2010 and in 2013 also was not a mitigating factor. These episodes came well before and well after the conduct at issue, and Farris does not explain what effect these events had on his actions or why they should be considered mitigating factors. That Farris had other satisfied clients also is not a mitigating factor; none of these clients had large sums of money held in Farris' trust account on their behalf.

(c) Aggravating circumstances reinforce the conclusion that disbarment is the proper discipline. The evidence of the aggravating circumstances present in this case include: prior discipline; dishonest or selfish motive; a pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary process; submission of false evidence or statements or other deceptive practices during the disciplinary process; refusal to acknowledge the wrongful nature of the conduct; substantial experience in the practice of law; and indifference to making restitution.

Dissenting opinion by Judge Draper: The author agrees with the findings of misconduct but disagrees with the discipline imposed by the Court.

Farris violated Rule 4-1.4 by failing to return client A's telephone calls promptly and failing to comply with her requests for information. He committed multiple violations of Rule 4-1.15 by failing to safeguard his clients' property, account for their funds, deliver funds to them or their medical creditors, and maintain complete client records. He also violated Rule 4-8.1 by failing to comply with the chief disciplinary counsel's request for certain documentation. Finally, Farris violated Rule 4-8.4 by engaging in conduct with respect to both clients that involved dishonesty, fraud, deceit or misrepresentation.

Although Farris committed multiple rule violations and assigns all blame to his former wife, his prior admonishment is not "discipline" and his conduct did not arise out of an intentional choice to violate the rules of professional conduct and to take advantage of his clients. He represented to this Court concern for his clients and a desire to return all funds to them. He reported his former wife's conduct, and she is being prosecuted. Disbarment is not appropriate because there is no preponderance of the evidence in the record demonstrating Farris knowingly converted his clients' property. By disbaring Farris, the Court loses all authority and influence over him to seek restitution for the clients affected. The author would suspend Farris indefinitely from the practice of law with no leave to apply for reinstatement for two years and would require that Farris make complete restitution to clients A and B before applying for reinstatement.