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### In The News

#### **Lawyers may still be subject to discipline when lacking any knowledge of employee misdeeds**

*In re Kahn*, Cause No. 49S00–1311–DI–731, 2014 Ind. LEXIS 62 (Ind. Jan. 17, 2014)

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A recent Indiana Supreme Court decision highlights the complete duty of lawyers to monitor and supervise their employees. In *Matter of Stanley Kahn*, Cause No. 49S00–1311–DI–731, the lawyer employed an office manager to handle the financial aspects of his law practice. He had three bank accounts: one for client trust funds, one for his operating account, and one for his taxes.

Unbeknownst to the lawyer, the office manager took funds out of the client trust account and applied them to the operating account in order to make the practice appear to be performing better than it was actually performing.

This transfer of funds from the client trust account caused several overdrafts, which in turn triggered several inquiries from the Disciplinary Commission, which demanded that the lawyer respond. The office manager intercepted the demand letters from the Disciplinary Commission, so the lawyer was unaware of the Commission's demands. The lawyer's failure to respond caused the Disciplinary Commission to petition for the lawyer's suspension due to non-cooperation. The petition was granted, and the lawyer was suspended, all without his knowledge. The lawyer did not know of any of these problems until a colleague informed him about the petition to suspend him. The attorney immediately retained a certified public accountant to audit the trust account, and repaid all missing funds. The attorney's suspension was eventually rescinded.

The lawyer and the Disciplinary Commission entered into an agreement for discipline in which the lawyer admitted the following violations:

1.15(a): Failure to maintain and preserve complete records of client trust account funds and by comingling law firm funds with client funds.

1.15(c): Withdrawing funds from client trust account before earning fees or incurring expenses.

5.3(b) and Guideline 9.1: Failure to discharge responsibilities regarding supervision of non-lawyer employees.

Admission and Discipline Rule 23(29)(a)(4): Comingling law firm funds with client funds.

The lawyer received a six-month suspension, all stayed pending successful completion of 18 months of probation. The terms of that probation included customary measures to ensure against future problems with the trust account, but also contained a provision that the lawyer's probation would be revoked upon any judicial finding that he violated any of the Indiana Rules of Professional Conduct or criminal law. This last term remains in effect until the lawyer petitions the Court to terminate his probation pursuant to Admission and Discipline Rule 23, Section 17.1.

**Practice Note:** The interesting point of this case is that the lawyer's complete lack of knowledge of his office manager's misdeed's was apparently not argued as a defense. As the opinion notes, the lawyer had a duty to monitor and supervise his employees. However, the sanction seems especially harsh given that there was no dispute that the lawyer was completely unaware of the office manager's misconduct. This opinion drives home the point that attorneys will ultimately be answerable for any problem with client trust accounts, notwithstanding having delegated management of the accounts to employees, and that the sanctions for failing to do so can be severe.

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