

IN RE: LINDA A. WAGNER

NO. BD-2019-037

S.J.C. Order of Term Suspension entered by Justice Gaziano December 7, 2020.¹

The respondent was suspended for a year and a day, on default, for intentional misuse of a retainer, failures to provide notice of withdrawal from trust to pay legal fees and to render accountings, and failures to cooperate with Bar Counsel's investigation and to comply with an order of administrative suspension resulting from that non-cooperation.

SUMMARY²

The respondent's misconduct was established by her default under a two-count petition which charged as follows:

Count One

Around November 24, 2015, Jane Doe (a pseudonym), retained the respondent to represent her on criminal charges that she had committed assault and battery on her husband. The respondent's fee agreement provided for a payment of a \$3,500 retainer against which the respondent was to bill at the rate of \$300.00 per hour. The retainer was paid that day and the respondent deposited it into her IOLTA account.

On January 6, 2016, the respondent transferred \$2,500 of Jane's retainer into her operating account without also providing the client an itemized bill or other accounting showing the services rendered, written notice of the amount and date of the withdrawal, and a statement of the balance of the client's funds in the IOLTA account after the withdrawal.

At a hearing on January 11, 2016, the respondent appeared with Jane and Jane's spouse, and filed a one-line, hand-written motion requesting the court remand the matter to a clerk's hearing. The respondent did not include grounds for such relief or attach an affidavit to her motion. The motion was denied the same day. However, Jane's spouse invoked his marital privilege and refused to testify against Jane. The charges against Jane were dismissed.

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.

The respondent performed no further work on the matter.

On January 27, 2016, the respondent transferred the remaining \$1,000 of Jane's retainer into her operating account. The respondent, who had not earned all of the \$3,500 retainer, thereby intentionally misused the unearned portion. The respondent also failed to inform her client in writing that she had withdrawn the entire amount of the retainer and failed to send an itemized bill.

Jane Doe eventually requested the return of the unearned retainer. The respondent failed to return any portion of the retainer.

By charging and collecting a clearly excessive fee, the respondent violated Mass. R. Prof. C. 1.5(a). The respondent's failure, when she withdrew the first \$2,500 of Jane's retainer funds from her IOLTA account, to deliver to Jane a written itemized bill or accounting showing the services rendered, written notice of amount and date of the withdrawal, and a statement of the balance she held in trust, violated Rule 1.15(d)(2). The respondent's failure to deliver to Jane a full written accounting of the distribution of the entire retainer violated Rule 1.15(d)(1). The respondent's intentional misuse of the unearned portion of the retainer violated Mass. R. Prof. C. 1.15(b)(1) and 8.4(c) and (h). The respondent's failure to return the unearned portion of the fee violated Mass. R. Prof. C. 1.16(d).

Count Two

By letter dated November 7, 2018, Bar Counsel sent the respondent a copy of the request for investigation in the foregoing matter, and directed the respondent to submit a response, together with any supporting documentation to bar counsel on or before November 30, 2018.

Despite bar counsel's agreement to provide extensions for her to provide information, the respondent failed to do so. Accordingly, on April 3, 2019, the respondent was administratively suspended by Order of the Supreme Judicial Court for non-cooperation with bar counsel's investigation, and she received due notice. The respondent failed without good cause to comply with the Order and with S.J.C. Rule 4:01, §17, in any respect.

On August 12, 2019, Bar Counsel served a subpoena on the respondent in hand at her residential address, requiring her to testify and produce records at the Office of Bar Counsel concerning the Jane Doe matter. The respondent knowingly failed without good cause to comply with the subpoena.

The respondent's failure without good cause to respond to bar counsel's several requests for information, and her failure to appear at the Office of Bar Counsel pursuant to a subpoena, violated Mass. R. Prof. C. 8.1(b), 8.4(d), 8.4(g) and 8.4(h). The respondent's failure without good cause to comply with the Court's Orders of administrative suspension violated Mass. R. Prof. C. 3.4(c), 8.4(d) and 8.4(h), and S.J.C. Rule 4:01, §17.

Bar counsel filed the petition for discipline on February 7, 2020. The respondent failed to answer and was defaulted on March 4, 2020. On May 11, 2020, the Board of Bar Overseers voted to recommend that the respondent be suspended for a year and a day. On December 7, 2020, the Court (Gaziano, J.) so ordered, effective immediately.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2019-037

IN RE: Linda A. Wagner

ORDER OF TERM SUSPENSION

This matter came before the Court, Gaziano, J., 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 May 21, 2020.

On July 10, 2020, an Order of Notice issued and was served on the lawyer in the manner specified by S.J.C. Rule 4:01, §21, directing her to participate in a telephone hearing on July 22, 2020. All parties participated in the hearing and this Court informed the lawyer that she had thirty (30) days to submit an argument on an alternative disposition, otherwise the Court would impose the suspension recommended by the Board. To date, the lawyer has not filed a response as to the alternative disposition.

Upon consideration thereof, it is ORDERED that:

1. Linda A. Wagner is hereby suspended from the practice of law in the Commonwealth of Massachusetts for a period of one (1) year and one (1) day effective immediately upon the entry of

this Order;

It is FURTHER ORDERED that:

2. Within fourteen (14) days of the date of entry of this Order, the lawyer shall:

a) file a notice of withdrawal as of the effective date of the suspension with every court, agency, or tribunal before which a matter is pending, together with a copy of the notices sent pursuant to paragraphs 2(c) and 2(d) of this Order, the client's or clients' place of residence, and the case caption and docket number of the client's or clients' proceedings;

b) resign as of the effective date of the suspension all appointments as guardian, executor, administrator, trustee, attorney-in-fact, or other fiduciary, attaching to the resignation a copy of the notices sent to the wards, heirs, or beneficiaries pursuant to paragraphs 2(c) and 2(d) of this Order, the place of residence of the wards, heirs, or beneficiaries, and the case caption and docket number of the proceedings, if any;

c) provide notice to all clients and to all wards, heirs, and beneficiaries that the lawyer has been suspended; that she is disqualified from acting as a lawyer after the effective date of the suspension; and that, if not represented by co-counsel, the client, ward, heir, or

beneficiary should act promptly to substitute another lawyer or fiduciary or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;

d) provide notice to counsel for all parties (or, in the absence of counsel, the parties) in pending matters that the lawyer has been suspended and, as a consequence, is disqualified from acting as a lawyer after the effective date of the suspension;

e) make available to all clients being represented in pending matters any papers or other property to which they are entitled, calling attention to any urgency for obtaining the papers or other property;

f) refund any part of any fees paid in advance that have not been earned; and

g) close every IOLTA, client, trust or other fiduciary account and properly disburse or otherwise transfer all client and fiduciary funds in her possession, custody or control.

All notices required by this paragraph shall be served by certified mail, return receipt requested, in a form approved by the Board.

3. Within twenty-one (21) days after the date of entry of this Order, the lawyer shall file with the Office of the Bar

Counsel an affidavit certifying that the lawyer has fully complied with the provisions of this Order and with bar disciplinary rules. Appended to the affidavit of compliance shall be:

a) a copy of each form of notice, the names and addresses of the clients, wards, heirs, beneficiaries, attorneys, courts and agencies to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise requested in writing by the lawyer or ordered by the court;

b) a schedule showing the location, title and account number of every bank account designated as an IOLTA, client, trust or other fiduciary account and of every account in which the lawyer holds or held as of the entry date of this Order any client, trust or fiduciary funds;

c) a schedule describing the lawyer's disposition of all client and fiduciary funds in the lawyer's possession, custody or control as of the entry date of this Order or thereafter;

d) such proof of the proper distribution of such funds and the closing of such accounts as has been

requested by the bar counsel, including copies of checks and other instruments;

e) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and

f) the residence or other street address where communications to the lawyer may thereafter be directed.

The lawyer shall retain copies of all notices sent and shall maintain complete records of the steps taken to comply with the notice requirements of S.J.C. Rule 4:01, §17.

4. Within twenty-one (21) days after the entry date of this Order, the lawyer shall file with the Clerk of the Supreme Judicial Court for Suffolk County:

a) a copy of the affidavit of compliance required by paragraph 3 of this Order;

b) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and

c) the residence or other street address where communications to the lawyer may thereafter be directed.

By the Court, (Gaziano, J.)

/s/ Maura S. Doyle
Maura S. Doyle, Clerk

Entered: December 7, 2020