

**IN RE: RICHARD W. KENDALL**

**NO. BD-2017-095**

**S.J.C. Order of Term Suspension entered by Justice Cypher on October 2, 2020.<sup>1</sup>**

*The respondent was suspended for a year and a day due to varied misconduct which occurred during a time when he was already subject to a stayed three-month suspension.*

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

The respondent failed to respond to the petition for discipline, so its allegations are deemed admitted. They reflect that the respondent, while subject to a stayed three-month suspension from the practice of law, failed properly to represent a client in two matters: an OUI charge, and an internal investigation by the client's place of employment, the Town of Stoneham Fire Department, based on the OUI arrest. The respondent's misconduct included a failure to provide the client with a writing communicating the scope of the representation; a lack of competence and diligence and a failure to adequately communicate with the client; a knowing misrepresentation to the client about the respondent's purported communications with Town officials; a failure to return an unearned fee; and a failure to return the client's file, in violation of Mass. R. Prof. C. 1.5(b), 1.1, 1.2(a), 1.3, 1.4, 8.4(h), 8.4(c), 1.16(d) and 1.15A(b) and (c). After the client contacted Bar Counsel, the respondent failed without good cause to respond to Bar Counsel's correspondence, and failed to appear at the Office of Bar Counsel pursuant to a subpoena. He was administratively suspended on May 13, 2019, and failed to comply with the order of administrative suspension. This conduct violated rules 8.4(d), (g) and (h), 3.4(c), and S.J.C. Rule 4:01, § 3.

The respondent has a disciplinary history: he received a public reprimand in 2014, as well as the above-mentioned three-month suspension. Although the three-month suspension was originally stayed on conditions, the respondent did not comply with the conditions and, accordingly, on June 18, 2019, the three-month suspension was imposed. The respondent did not participate in the telephone hearing concerning his conduct and sanction in this matter.

By Order dated October 2, 2020, Justice Cypher suspended the respondent from practice for three months pursuant to the Court's June 18, 2019 Order, the terms of which remain effective until he complies with its conditions and, after completion of the three-month suspension, imposed a further suspension for a year and a day. Reinstatement shall be contingent upon the respondent's filing a petition for reinstatement, as well as his compliance with the outstanding May 13, 2019 Order of Administrative Suspension entered in BD-2019-053.

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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.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NO:BD-2017-095

IN RE: Richard W. Kendall

ORDER OF TERM SUSPENSION

This matter came before the Court, Cypher, J., on an Information and Record of Proceedings pursuant to S.J.C. Rule 4:01, § 8(6), along with the Recommendation and Vote of the Board of Bar Overseers (Board) filed by the Board on March 6, 2020.

On March 11, 2020, an Order of Notice issued and was served on the lawyer in the manner specified in S.J.C. Rule 4:01, § 21, directing him to appear before this Court on April 15, 2020. The hearing was canceled due to the COVID-19 pandemic and was rescheduled. The lawyer was served with another Order of Notice scheduling a telephone hearing for September 30, 2020, in which assistant bar counsel participated, but not the lawyer.

Upon consideration thereof, it is ORDERED that:

1. Richard W. Kendall is hereby suspended from the practice of law in the Commonwealth of Massachusetts for a

period of three (3) months pursuant to this Court's June 18, 2019 Order Imposing Term Suspension, the terms of which remain effective until the lawyer complies with the conditions of the June 18 Order. Upon completion of the three (3) months suspension, the lawyer shall be further suspended for one (1) year and one (1) day.

The lawyer's reinstatement to the practice of law in the Commonwealth of Massachusetts from his suspension of one (1) year and one (1) day shall be contingent upon his filing of a petition for reinstatement pursuant to S.J.C. Rule 4:01, § 18 (2) (4) (5) and his compliance with the May 13, 2019 Order of Administrative Suspension entered in Bar Docket No. BD-2019-053.

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 (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 he 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 his 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, (Cypher, J.)

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

Entered: October 2, 2020