

IN RE: MELVIN ALANSON HEARD
NO. BD-2018-112

S.J.C. Order of Term Suspension entered by Justice Cypher on October 15, 2020.¹

The respondent was suspended for three years for misconduct including a conviction on domestic violence charges, misuse of a client's retainer, charging an illegal fee, neglect of several client matters, and a failure to comply with an order of temporary suspension.

SUMMARY²

The respondent was defaulted after he failed to file an answer to bar counsel's petition for discipline. The default established the following facts.

Count One: the respondent pleaded guilty in the Suffolk Superior Court to assault and battery on a family/household member in violation of Mass. General L c. 265, §13M(a) and threatening to commit a crime in violation of M.G.L. c. 275, § 2. He was sentenced to two years of probation with certain conditions. The respondent's criminal convictions constituted a violation of Mass. R. Prof. C. 8.4(b) and (h).

On April 29, 2019, a petition for temporary suspension was filed with the Court pursuant to S.J.C. Rule 4:01, § 12A. An Order of Temporary Suspension issued on May 3, 2019, noncompliance with which led to Count Seven, discussed below.

Count Two: the respondent accepted a flat fee of \$800 to represent a motorist in contesting a traffic citation. The fee covered both an initial hearing before a clerk-magistrate and an appeal to a judge of the district court. The respondent appeared at the initial hearing before the clerk-magistrate on October 2, 2017. However, as a result of himself being arrested and jailed on criminal charges on November 11, 2017, the respondent failed to appear for the client's subsequent appeal hearing. The respondent failed to take effective measures to notify the client of his inability to appear at the appeal hearing or ensure that the client would have other legal representation. Consequently, the client was forced to handle the matter *pro se*. Thereafter the respondent delayed in refunding the unearned portion of the \$800 flat fee for approximately four months. In March 2018, he refunded the entire fee, plus an additional \$100.

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.

By failing to provide the client prompt notice of his inability to appear for the appeal hearing and by failing to take other steps to ensure that the client was properly represented at the hearing, the respondent violated Mass. R. Prof. C. 1.3 and 1.4(a)(3). By failing to refund the unearned portion of his fee in a timely manner upon termination of the representation, the respondent violated Mass. R. Prof. C. 1.16(d).

Count Three: the respondent agreed, on or about August 18, 2017, to represent another client in contesting a traffic violation for a flat fee of \$450. After retaining the respondent, the client received notice from the Registry of Motor Vehicles that his license had been suspended due to the client's failure either to pay the fine or contest the citation. Informed of this development, the respondent agreed to undertake reinstatement of the client's license as part of his representation.

On October 8, 2017, the client retained the respondent to represent him in a separate civil matter arising out of a construction dispute. This representation was pursuant to an hourly fee arrangement by which the respondent collected an initial retainer of \$3,000 by credit card. At the time of the respondent's receipt of such payment, he had not earned any fees in the matter.

The respondent did not deposit the client's \$3,000 retainer into his IOLTA account. Instead, he commingled the retainer with personal and/or business funds in his operating account. Thereafter, the respondent intentionally misused the retainer to pay business or personal expenses unrelated to the client's representation.

The respondent devoted minimal time and effort to either the motor vehicle or the construction case and conferred no substantive benefit to the client in either matter. He did not earn any portion of the \$3,450 in fees that he had collected. As a result of the respondent's lack of communication or action in regard to the matters, the client retained new counsel to handle the cases. Following the conclusion of the representation, the respondent failed to refund the unearned fees in a prompt manner. In June 2018, several months after being replaced by successor counsel, the respondent issued a full refund to the client.

By failing to deposit the \$3,000 into an IOLTA or other client trust account and by intentionally using such funds for other business and/or personal expenses, the respondent violated Mass. R. Prof. C. 1.15(b)(1), 1.15(b)(3), 8.4(c), and 8.4(h). By failing to refund the unearned fees in a timely manner upon termination of the representation, the respondent violated Mass. R. Prof. C. 1.16(d).

Count Four: the respondent, in May 2017, undertook to represent a client for a flat fee of \$600 in contesting an automobile insurance surcharge notice. The client had previously represented himself at a Division of Insurance hearing in the case, without success. Pursuant to M.G.L. c. 30A, § 14 and c. 175, § 113P, the client had thirty days to appeal the Department's adverse ruling to the superior court.

After retaining the respondent, the client sent him a text message reminding him that the appeal deadline would expire thirty days from April 18, 2017, the date he received the adverse decision from the Department of Insurance. The respondent acknowledged this deadline with a reply message stating, "I am aware."

The respondent failed to file the appeal within thirty days or at any time thereafter. After the deadline passed on May 18, 2017, the respondent did not promptly inform the client that he had missed the deadline. During the period of June to October 2017, the respondent misled the client regarding the actual status of the matter by giving vague and evasive responses to his inquiries about the appeal. After the client learned in October 2017 that the appeal had not been filed, the respondent assured him that he would address the surcharge issue through other legal means. However, the respondent performed no further work of substance on the case.

The client terminated the representation in May 2018, having obtained no benefit whatsoever from the respondent's services. At the time of the termination, the respondent promised to refund the \$600 flat fee but thereafter delayed in issuing the refund until August 2018.

By neglecting to file the promised appeal, the respondent violated Mass. R. Prof. C. 1.2 and 1.3. By failing to communicate truthfully with the client as to the status of the representation, the respondent violated Mass. R. Prof. C. 1.4(a)(3) and 8.4(c). By failing to refund the unearned flat fee in a timely manner after termination of the representation, the respondent violated Mass. R. Prof. C. 1.16(d).

Count Five: the respondent was retained to represent a client in contesting a traffic citation for a flat fee of \$1,250. The respondent engaged in various activities in connection with the matter from March to November 2017. However the respondent was arrested in November 2017 and was therefore out of communication with the client. As a result, the client thus terminated the representation. At the time of the termination, the respondent had not completed the matter and had not earned the entire \$1,250 flat fee. The respondent failed to refund any portion of the fee until after the client filed a complaint with the Office of the Bar Counsel. The respondent issued a full refund to the client in November 2018.

By failing to refund the unearned portion of the flat fee in a timely manner upon termination of the representation, the respondent violated Mass. R. Prof. C. 1.16(d).

Count Six: the respondent was appointed by CPCS in 2012 to represent a defendant in two related district court criminal cases in which she was charged with violations of a harassment prevention order. The respondent also represented the client at a civil hearing on an extension of the HPO. He collected a \$500 fee from the client for the HPO extension hearing.

As appointed counsel, the respondent was required to comply with the CPCS Assigned Counsel Manual. Chapter V, ¶ 3(B)(5), of the manual permits appointed counsel to represent the client in a collateral matter that could have a bearing on the assigned case only with authorization from CPCS and only as part of the assignment. Otherwise, "counsel's representation on collateral matters must be *pro bono*."

The respondent's representation of the client at the civil hearing was not within the scope of his assignment and was not authorized by CPCS. By charging a fee expressly prohibited by Chapter V, ¶ 3(B)(5) of the CPCS Assigned Counsel Manual, the respondent violated Mass. R. Prof. C. 1.5(a).

Count Seven arose out of the S.J.C.'s Amended Order of Temporary Suspension dated May 3, 2019, in which the respondent was suspended from the practice of law in Massachusetts effective June 17, 2019. Among other things, the Order of Temporary Suspension required the respondent to file with bar counsel and the Court an affidavit certifying his compliance with the terms of the Order and to append to the affidavit various documents demonstrating that he had provided notice of his temporary suspension to courts, clients, and other affected parties, and that he had closed and disbursed the contents of his IOLTA and other client trust accounts, among other things.

In knowing disregard of the terms of the Order, the respondent failed to file the affidavit of compliance by the stated deadline (July 8, 2019) or on any date thereafter. In addition, after the effective date of the Order, the respondent continued to represent a client who had retained him in 2018 to obtain the return of a firearm that had been seized from her in connection with a criminal charge that was later dismissed.

By failing to file the required affidavit of compliance and by continuing to practice law after the effective date of his temporary suspension, the respondent violated Mass. R. Prof. C. 3.4(c), 5.5(a), and 8.4(d) and (h) and SJC Rule 4:01, §§ 17(5) and (7).

Following a vote by the Board of Bar Overseers, an Information was filed with the Court on February 20, 2020. A hearing was held before the Court (Cypher, J.), on September 30, 2020, at which bar counsel and counsel for the respondent appeared. After the hearing, the Court ordered that the respondent be suspended for three years.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2018-112

IN RE: Melvin Alanson Heard

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), with the Recommendation and Vote of the Board of Bar Overseers (Board) filed by the Board on February 20, 2020.

On February 27, 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 the Court on March 12, 2020. On March 2, 2020, the lawyer filed a motion to continue the hearing, which was allowed by the Court. Several hearing dates were scheduled, but were ultimately canceled due to the COVID-19 pandemic.

Counsel for the lawyer filed with the Court on September 29, 2020, a motion to submit mitigation materials and a motion to supplement mitigation materials.

A hearing was then held on September 30, 2020, attended by

assistant bar counsel and counsel for the lawyer, Mr. Heard.

Whereupon, upon consideration thereof, it is ORDERED that the motions be and the same hereby are denied; and Melvin Alanson Heard is hereby suspended from the practice of law in the Commonwealth of Massachusetts for a period of three (3) years effective immediately upon the entry of this Order;

It is FURTHER ORDERED that:

1. 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 1(c) and 1(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.

2. 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.

3. 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 15, 2020