

**IN RE: DONALD LLOYD PITMAN**

**NO. BD-2020-008**

**S.J.C. Order of Term Suspension/Stayed by Justice Budd on February 5, 2020.** <sup>1</sup>

*The respondent stipulated to a suspension of one year and a day, stayed for two years on conditions, for lack of diligence, misrepresentation to his client, negligent misuse of unearned retainer funds, and several IOLTA record-keeping violations.*

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

The respondent, Donald Lloyd Pitman, was admitted to the practice of law in Massachusetts on December 29, 1995. On February 5, 2020, the Court entered an order suspending the respondent for one year and one day, with the execution of the suspension stayed for a probationary period of two years, for misconduct including lack of diligence, misrepresentations to his client, negligent misuse of unearned retainer funds and several IOLTA record-keeping violations.

In 2017, a client engaged the respondent to represent her in a post-divorce modification and/or contempt. Pursuant to a written fee agreement the respondent agreed to bill at an hourly rate of \$300, and the client advanced a \$3,000 retainer. The respondent deposited the retainer to his IOLTA account, but then negligently withdrew some of the retainer funds before he had earned them or billed the client for the payments.

In August 2017, the respondent misrepresented to the client that he had filed an action for contempt when, in fact, the respondent did not file the contempt action until October 20, 2017. In November 2017, the respondent received checks for overdue child support and alimony from the client's ex-husband. The respondent failed to inform the client he had received those checks and did not forward the funds to the client for several months.

The respondent also failed to inform his client of scheduled hearing dates on the contempt action. As of March 23, 2018, the client had not heard from the respondent about the status of the contempt complaint and so filed a request for investigation with the Office of Bar Counsel. After the client filed the complaint, the respondent was able to resolve the contempt action and he refunded the full \$3,000 retainer.

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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.

The respondent's misrepresentation to the client that the contempt action had been filed violated Mass. R. Prof. C. 8.4(c) and 8.4(h). The respondent's failure to inform the client about the scheduled hearing dates, his receipt of checks from her ex-husband and the status of her contempt petition, violated Mass. R. Prof. C. 1.3 and 1.4(a)(2) and (3), and (b). The respondent's withdrawal of retainer funds without delivering to the client in writing an itemized bill, notice of the amount and date of withdrawal and a statement of the balance of the client's trust funds in the account after the withdrawal violation Mass. R. Prof. C. 1.15(d)(2). By negligently misusing a portion of the client's unearned retainer, the respondent violated Mass. R. Prof. C. 1.15(b).

In addition, for a period of at least nine months, the respondent failed to perform three-way reconciliations of his IOLTA account, failed to create or maintain a check register for his IOLTA account, and failed to create or maintain individual client ledgers and a separate ledger of his personal funds in IOLTA account.

The respondent's failure to prepare and retain a three-way reconciliation of the IOLTA account violated Mass. R. Prof. C. 1.15(f)(1)(E). The respondent's failure to create and maintain an IOLTA check register violated Mass. R. Prof. C. 1.15(f)(1)(B). The respondent's failure to create and maintain an individual client ledger violated Mass. R. Prof. C. 1.15(f)(1)(C). The respondent's failure to create and maintain a ledger for bank fees and expenses in the IOLTA account violated Mass. R. Prof. C. 1.15(f)(1)(D). The respondent's failure to maintain complete records of the receipt, maintenance, and disposition of trust property violated Mass. R. Prof. C. 1.15(f).

On occasions between January 1, 2017 and March 31, 2019, the respondent negligently withdrew retainer funds from his prior to his entitlement of the funds as earned legal fees; and created negative balances for clients by refunding retainers in amounts in excess of what he was holding for the client.

By withdrawing client retainer funds from his IOLTA account prior to earning those funds, the respondent failed to hold trust funds in a trust account in violation of Mass. R. Prof. C. 1.15(b)(1). By disbursing funds on behalf of clients that created negative balances in those clients' accounts, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(C).

This matter came before the Board of Bar Overseers on a stipulation of facts and disciplinary violations and a joint recommendation that the respondent be suspended for one year and one day, with the execution of the suspension stayed for two years (probationary period) with specified conditions. On January 13, 2020, the board voted to

accept the stipulation of the parties and file an information with the Supreme Judicial Court recommending discipline as set out in the stipulation.

On February 5, 2020, the Court entered an order suspending the respondent for one year and one day, with the execution of the suspension stayed for a probationary period of two years from the date of entry of the order, conditioned on compliance with the probationary conditions contained in the stipulation.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NO: BD-2020-008

IN RE: DONALD LLOYD PITMAN

ORDER OF TERM SUSPENSION/STAYED

This matter came before the Court, Budd, 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) and the stipulation of the parties filed by the Board on January 29, 2020. Upon consideration thereof, it is ORDERED that:

1. Donald Lloyd Pitman is hereby suspended from the practice of law in the Commonwealth of Massachusetts for a period of one (1) year and one (1) day, with the execution of the suspension stayed for a period of two (2) years from the date of entry of this Order subject to the following conditions;
  - a. The lawyer shall comply with the terms of the accounting probation agreement executed on January 6, 2020, attached hereto and incorporated herein as Exhibit B.
  - b. The lawyer shall undergo a confidential evaluation at

Lawyers Concerned for Lawyers (LCL) within sixty (60) days of the entry date of this order, and shall sign a release allowing LCL to transmit its recommendations to the Office of Bar Counsel, which recommendations shall remain confidential and not made public.

- c. The lawyer shall thereafter comply with the recommendations of LCL; and at one hundred and twenty (120) day intervals beginning ninety (90) days following the entry date of this order, shall provide the Office of Bar Counsel evidence of his compliance with LCL's recommendations.

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 only that the lawyer has been placed on an accounting probation condition for a period of two (2) years with every court, agency, or tribunal before which a matter is pending, together with a copy of the notices sent pursuant to paragraphs 2(b) and 2(c) 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) provide notice to all clients and to all wards, heirs, and beneficiaries only that the lawyer has been

placed on an accounting probation condition for a period of two (2) years;

c) provide notice to counsel for all parties (or, in the absence of counsel, the parties) in pending matters that the lawyer has been placed on an accounting probation for a period of two (2) years;

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

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

5. After two (2) years from the date of entry of this Order, the lawyer may file an affidavit of compliance with the Office of Bar Counsel and the Clerk's Office of the Supreme Judicial Court for the County of Suffolk, together with proof of his successful completion of the conditions. Upon receipt, and with the assent of the Office of Bar Counsel, the lawyer may then request that this Court issue an order that he is no longer subject to the one (1) year and one (1) day suspension for the misconduct that gave rise to the instant petition for discipline. If the lawyer fails to comply with any of the terms

and conditions of this Order, the Office of Bar Counsel may petition this Court for the immediate imposition of the one (1) year and one (1) day suspension.

By the Court, (Budd, J.)

  
Maura S. Doyle, Clerk

Entered: February 5, 2020



## **EXHIBIT B**

### **ACCOUNTING PROBATION AGREEMENT**

Bar counsel and DONALD LLOYD PITMAN, ESQ ("the respondent"), hereby agree to the following conditions of the respondent's stayed suspension:

#### **I. SUPERVISION AND REPORTING**

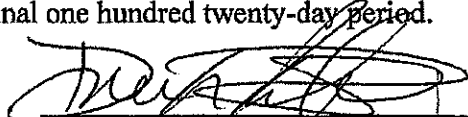
Upon the entry of the Board's order approving the respondent's stayed suspension, the respondent will retain at his own expense an accountant who is familiar with the requirements of Mass. R. Prof. C. 1.15(f) and has reviewed this agreement. No later than one hundred twenty days after the entry of the Board's order approving the respondent's stayed suspension, and every four months thereafter, for the probationary period of two years, the accountant shall prepare and send to bar counsel a letter certifying:

- a. that the accountant has conducted an examination of the respondent's trust accounts, including IOLTA accounts and any client trust account, for the preceding one hundred twenty days;
- b. that the accountant has reviewed for each trust account:
  - i. all bank statements
  - ii. the respondent's chronological check register
  - iii. all of the respondent's individual client ledgers
  - iv. the respondent's bank fees and charges ledger
  - v. the respondent's reconciliation reports;
- c. that the respondent's adjusted bank statement balance, chronological check register balance and the total of the individual ledger balances and bank fee ledger balance on the last day of the one hundred twenty-day period reviewed are identical;
- d. and that the respondent is maintaining his IOLTA and trust account records in conformity with Mass. R. Prof. C. 1.15.

**II. TERMINATION OF PROBATION**

Assuming that the accountant has for each four-month period certified all of the information set forth in paragraphs a, b, c and d, above, this agreement shall terminate at the upon submission of a certification pursuant to Section I of the final one hundred twenty-day period.

Date: 4/6/20

  
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Donald Lloyd Pitman, Esq.  
Respondent

Date: \_\_\_\_\_

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Dorothy Anderson  
First Assistant Bar Counsel