

IN RE: NEIL J. DEPAUL

NO. BD-2020-017

S.J.C. Judgment of Disbarment entered by Justice Gaziano on December 16, 2020.¹

The respondent was disbarred on default for misconduct in two separate cases in which he deposited retainers into a non-trust account, intentionally misused the retainers before they were earned, and failed to refund unearned portions; in one of those cases, he failed to pursue the client's lawful goals, displayed lack of diligence, and failed to communicate with the client; and he failed to cooperate with Bar Counsel's investigation.

SUMMARY²

A three-count petition for discipline charged the respondent with the following misconduct:

Count One

The respondent agreed to represent a client in divorce proceedings pursuant to an hourly fee agreement requiring a retainer of \$7,500, which was paid on March 24, 2019. The respondent had not earned any fees in the matter when he received the retainer. The respondent failed to deposit the retainer into a trust account. Instead, he either deposited the funds to a personal or business account or spent them, thus intentionally misusing the unearned retainer.

The respondent performed some work for the client, including filing a complaint for divorce and related documents. However, on July 26, 2019, pursuant to the client's instructions, the respondent filed a motion for voluntary dismissal, and he did no further work of substance or value in the case.

The retainer was not exhausted and the client was entitled to a refund. In emails on September 25 and October 4, 2019 to the client, the respondent acknowledged that he owed the client an accounting and a refund. In an email to the client on Monday, October 28, 2019, the respondent acknowledged he owed a refund of \$6,649. In the same communication, he suggested that he would be able to refund the client by check that weekend (i.e., November 2-3, 2019).

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.

As of November 18, 2019, however, the respondent had not refunded the unearned portion of the retainer. That day, he reiterated to the client in writing his promise to make the refund and suggested he would do so the following weekend (November 23-24). He did not do so.

On December 8, 2019, the client contacted the respondent by email to make a further demand for the promised \$6,649. The respondent did not respond. As of the date of the petition for discipline, the respondent had not communicated further with the client and had not refunded any portion of the retainer.

By failing to hold the client's retainer funds in his IOLTA or other client trust account until they were earned, the respondent violated Mass. R. Prof. C. 1.15(b). By failing to return the unearned portion of such funds at the conclusion of the representation, the respondent violated Mass. R. Prof. C. 1.16(d). By intentionally misusing the client's retainer and depriving the client of its use, the respondent violated Mass. R. Prof. C. 1.15(b), 8.4(c) and 8.4(h).

Count Two

On August 19, 2019, a client retained the respondent pursuant to a written fee agreement under which the client paid the respondent \$9,750 as a retainer against future hourly billings in the client's soon-to-be filed divorce. When the respondent received the retainer on August 22, 2019, he had not earned any portion of the retainer. The respondent failed to deposit the retainer into his IOLTA or other client trust account. Instead, he either deposited the funds to a personal or business account or spent them, thus intentionally misusing the unearned retainer.

The client's spouse was present in the United States only intermittently and was scheduled to next return on October 1, 2019. The client asked the respondent to file the complaint for divorce by September 15, 2019, so that it could be served during the spouse's next visit. The respondent agreed.

On August 27, 2019, the respondent obtained a copy of the client's marriage certificate from the City of Cambridge. However, over the following several weeks, the respondent failed to communicate with the client. During this time, the respondent also failed to reply to multiple phone calls, emails, and text messages from the client inquiring about the case. Unable to reach the respondent, on or about September 13, 2019 the client prepared and filed a *pro se* complaint for divorce.

On September 26, 2019, the client informed the respondent that the representation was terminated. The respondent, who had not performed any work of value on the case, promised a full refund of the retainer. However, as of the date of the petition for discipline, the respondent had not refunded any portion of the unearned retainer.

By neglecting to file the divorce complaint, the respondent violated Mass. R. Prof. C. 1.2(a) and 1.3. By failing to communicate with, or respond to, the client's inquiries concerning the case between August 27 and September 24, 2019, the respondent violated Mass. R. Prof. C. 1.4(a)(3) and (4). By failing to hold the client's retainer in an IOLTA or other trust account until earned, the respondent violated Mass. R. Prof. C. 1.15(b). By failing to return such funds at the conclusion of the representation, the respondent violated Mass. R. Prof. C. 1.16(d). Finally, by intentionally misusing the unearned retainer and depriving the client of its use, the respondent violated Mass. R. Prof. C. 1.15(b), 1.16(d), 8.4(c), and 8.4(h).

Count Three

The respondent failed to reply to Bar Counsel's repeated efforts to contact him during the investigation of the foregoing matters, resulting in his administrative suspension. As of the date of the petition for discipline, the respondent still had not complied with Bar Counsel's requests for information, he had not been reinstated after thirty days, and he had not complied with the resulting obligations under S.J.C. Rule 4:01, §§ 3(3) and 17(5).

By failing to cooperate with bar counsel's investigation, the respondent violated Mass. R. Prof. C. 8.1(b), 8.4(d), and 8.4(g), and SJC Rule 4:01, §3(1).

The respondent, admitted to the Massachusetts bar on June 13, 2011, did not answer the disciplinary petition and that default established the facts and violations set forth above.

On June 8, 2020, the Board of Bar Overseers voted to recommend that the respondent be disbarred. On December 16, 2020, after notice and a hearing attended by Bar Counsel but not the respondent, the Court (Gaziano, J.) so ordered, effective immediately.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2020-017

IN RE: Neil J. DePaul

JUDGMENT OF DISBARMENT

This matter came before the Court, Gaziano, J., on Information and Record of Proceedings and the Recommendation and Vote of the Board of Bar Overseers (Board) filed by the Board on July 6, 2020.

On November 24, 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 participate in a telephone hearing on December 16, 2020. After a hearing was held with participation from assistant bar counsel, but not the lawyer;

It is ORDERED and ADJUDGED that:

1. Neil J. DePaul is hereby disbarred from the practice of law in the Commonwealth effective immediately upon the entry of this Judgment, and the lawyer's name is forthwith stricken from the Roll of Attorneys.

It is FURTHER ORDERED that:

2. Within fourteen (14) days of the date of entry of this

Judgment, the lawyer shall:

a) file a notice of withdrawal as of the effective date of the disbarment 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 Judgment, 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 disbarment 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 Judgment, 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 disbarred; that he is disqualified from acting as a lawyer after the effective date of the disbarment; 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 disbarred and, as a consequence, is disqualified from acting as a lawyer after the effective date of the disbarment;

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 Judgment, 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 Judgment 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 Judgment 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 Judgment 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 Judgment, 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 Judgment;

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 16, 2020