

IN RE: BRIAN PAUL CASSIDY

NO. BD-2020-033

S.J.C. Order of Term Suspension entered by Justice Budd on August 26, 2020, with an Effective date of September 25, 2020.¹

The respondent was suspended for a year and a day for neglecting a client's case, failing to refund unearned fees, failing to keep required trust account records, and failing to cooperate with Bar Counsel's investigation.

SUMMARY²

In October, 2018, a client retained the respondent, Brian Paul Cassidy, to collect a debt, including securing an attachment of the debtor's real property. The client reported that the matter was urgent because of an imminent foreclosure against the debtor's property.

The respondent and the client entered into an hourly fee agreement calling for a \$1,500 retainer, which the client promptly paid in full. The respondent deposited the retainer into his IOLTA account.

By December 2018, the respondent had all papers necessary to seek attachment, including an affidavit the client had signed. Nevertheless, the respondent failed to file a civil action and did not notify the client of his failure. The respondent did not reply to the client's attempts to communicate with him between December 2018 and February 15, 2019. Around February 15, 2019, the respondent told the client he would file the action on February 20, 2019 and provide a status report thereafter. The respondent did neither.

Around February 26, 2019, the client notified the respondent by e-mail that foreclosure of the debtor's real property was imminent. The respondent did not reply, and he took no action.

On April 17, 2019, the respondent contacted the client about executing a revised affidavit to file with the planned action, and on April 25, 2019, he sent the client a revised affidavit. He informed the client he would not charge any additional fees going forward.

Although the client promptly returned the executed affidavit, the respondent never filed the action and never obtained an attachment on the debtor's real property. He did not communicate with the client again after April 25, 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.

In August 2019, a judgment of foreclosure entered against the debtor's property. In October 2019, the debtor filed a Chapter 13 petition for bankruptcy and listed the client's debt as a nonpriority unsecured debt.

The foregoing conduct violated Mass. R. Prof. C. 1.1 (competence); 1.2(a) (failing to seek the client's lawful objectives); 1.3 (diligence), 1.4(a)(3), 1.4(a)(4), and 1.4(b) (failing to keep client informed, to explain matters, and to respond to reasonable requests for information).

The respondent claims he earned and withdrew \$600 in legal fees between October and December 2018. However, he never sent an invoice to, or otherwise notified the client of, these withdrawals from his IOLTA account. The respondent has not repaid the \$900 balance of the retainer, and he has not made any restitution to the client for the resulting harm. On September 16, 2019, the client filed a small claims action against the respondent.

The respondent did not maintain a check register recording the date and amount of all deposits or an individual ledger for the client documenting the receipt, disbursement, and running balance of client trust funds. He did not prepare and retain three-way reconciliation reports for the IOLTA account.

This conduct violated Mass. R. Prof. C. 1.15 (d)(2) (failure to provide client a notice in writing on or before the date of withdrawal of fees from IOLTA account); 1.16 (d) (failure to refund unearned fees at the termination of the representation); and 1.15 (f)(1)(B), (C), and (E) (required trust account records).

The respondent did not cooperate with Bar Counsel's investigation of the matter. He failed to reply to Bar Counsel's numerous efforts to reach him using contact information of record with the Board, and he failed to comply with the resulting subpoena. He was administratively suspended on September 13, 2019. He then contacted Bar Counsel, cooperated, and obtained reinstatement in October 2019.

The respondent's failure to respond to bar counsel's investigation violated Mass. R. Prof. C. 3.4(c) (knowing disobedience to obligations under rules of tribunal), 8.1(b) (failure to respond to lawful demand for information by disciplinary authority), 8.4(d) (conduct prejudicial to the administration of justice), 8.4(g) (failure to cooperate with disciplinary investigation), and S.J.C. Rule 4:01, § 3 (compliance duties).

The respondent did not answer the disciplinary petition and that default established the facts and violations set forth above.

On April 13, 2020, the Board of Bar Overseers voted to recommend that the respondent be suspended for a year and a day. The Court (Budd, J.) so ordered on August 26, 2020.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2020-033

IN RE: Brian P. Cassidy

ORDER OF TERM SUSPENSION

This matter came before the Court, Budd, J., on an Information and Record of Proceedings pursuant to S.J.C. Rule 4:01, § 8 filed by the Board of Bar Overseers (Board) on April 23, 2020.

On July 6, 2020 and July 9, 2020, an Order of Notice issued and was served on the lawyer as specified in S.J.C. Rule 4:01, § 21, directing him to appear before the Court on August 20, 2020. On August 18, 2020, all parties were notified by email, that the hearing would be held via Zoom video conference because of the COVID-19 public health crisis. After a video hearing was held, attended by assistant bar counsel and the lawyer;

It is ORDERED that:

1. Brian P. Cassidy is hereby suspended from the practice of law in the Commonwealth of Massachusetts for a period of one (1) year and one (1) day. In accordance with S.J.C. Rule 4:01, §17(3), the suspension shall be effective thirty (30) days after

the date of the entry of this Order. The lawyer, after the entry of this Order, shall not accept any new retainer or engage as a lawyer for another in any new case or legal matter of any nature. During the period between the entry date of this Order and its effective date, however, the lawyer may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

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 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.

5. The lawyer's reinstatement to the practice of law in Commonwealth of Massachusetts will be subject to his full compliance with S.J.C. Rule 4:01, § 17 and S.J.C. Rule 4:01, § 18 (2) (4) and (5).

By the Court, (Budd, J.)

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

Entered: August 26, 2020