

IN RE: JONATHAN D. CROWLEY

NO. BD-2020-065

S.J.C. Order of Term Suspension entered by Justice Budd on November 5, 2020, with an effective date of December 5, 2020.¹

SUMMARY²

The respondent stipulated to an eighteen-month suspension for commingling and negligent misuse of trust funds, failing to apply funds to their intended purpose, failing to communicate with the client, failing to document the engagement, and failing to maintain required trust account records.

Starting in 2006, the respondent represented the owner of debt-burdened rental real estate (the “Property”) in bankruptcy and loan modification matters. In November 2015, the respondent assisted the client to establish a trust to take title to the property as an alternative to probate proceedings. The trust named the client as trustee and the client’s daughter as successor trustee.

When the Property was transferred into the trust, the respondent took over making the monthly mortgage payments out of rental income, which was deposited directly into the respondent’s operating account. There, as client trust property, the funds were commingled with the respondent’s personal or business funds.

As the mortgagor’s authorized representative, the respondent received all monthly statements and communications from the mortgagee.

The client died in April 2016, and the client’s daughter became trustee. The daughter, who had assisted the client with financial and legal matters during his life, was aware of more than \$11,000 in unpaid and documented legal fees the client owed to the respondent. Before the client’s death the daughter had acknowledged the unpaid fees and the client’s desire to pay them.

Before the client’s death, he and the respondent had an informal, unwritten arrangement under which the respondent was paid only when he needed the money and funds were available. After the client’s death, the respondent and the daughter agreed that he would represent her concerning the property as he had represented her father. He negligently assumed, but did not discuss with the daughter, that he would continue to pay himself from the rental income when he needed the money. The respondent also assisted the daughter in 2016 to complete the modification of the loan on the Property that the father had begun before his death. The scope and terms of the respondent’s representation of the daughter were not reduced to writing.

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.

The daughter continued to deposit rental income into the respondent's operating account through 2016 and into 2017. The rental income was used to pay the mortgage through April 2017, but it was not always sufficient to cover the mortgage. After April 2017, the daughter continued to deposit rental income, but the respondent did not consistently remit to the mortgagee. The next mortgage payments occurred in August and September 2017. After that, the respondent did not pay the mortgage until March 2018. The missed payments caused the mortgage to go into default.

Meanwhile, from June through November 2017, the respondent drew against the rental income that had been deposited into his operating account to pay for unrelated personal and business expenses. Further, from December 2017 to February 2018, the respondent received no rental income from the Property and made no mortgage payments. The respondent did not notify the daughter that he had stopped making mortgage payments and had applied rental income to reduce the amount of his outstanding fees.

In March and April 2018, the respondent used personal funds to pay the mortgage; the amount of the payments exceeded the amount by which the respondent had applied to his legal fees during the previous year. He thereby effected restitution, before the involvement of Bar Counsel.

The respondent's failure to hold the rental income in a trust account, and his commingling of it with his personal and business funds violated Mass. R. Prof. C. 1.15(b)(1). By applying rental income pursuant to the arrangement with the client father that was not expressly agreed with the daughter after the father's death, the respondent negligently misused the funds with resulting deprivation, in violation of Mass. R. Prof. C. 1.15(c). By failing to make mortgage payments with the rental income provided for that purpose, thereby aggravating the loan default he was engaged to avoid, the respondent violated Mass. R. Prof. C. 1.2(a). By failing to communicate to the daughter that he had stopped making mortgage payments, the respondent violated Mass. R. Prof. C. 1.4(a)(3) and 1.4(b). By failing to put the scope of representation and the basis or rate of his fees in writing within a reasonable time after starting to represent the daughter, the respondent violated Mass. R. Prof. C. 1.5(b)(1).

In addition, from opening an IOLTA account in July 2016 until November 30, 2018, the respondent failed to maintain a chronological check register with client identifiers for each transaction, to keep individual ledgers for each client matter, to keep an individual ledger for bank charges, and to perform three-way reconciliations at least every sixty days, in violation of Mass. R. Prof. C. 1.15(f)(1)(B), (C), (D), and (E), respectively.

On September 14, 2020, the Board voted to accept the respondent's stipulation for discipline and to recommend that the respondent be suspended for eighteen months. On November 5, 2020, the Court (Budd, J.) so ordered, effective thirty days from the date of entry of the order of suspension.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2020-065

IN RE: Jonathan D. Crowley

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(6), with the Recommendation and Vote of the Board of Bar Overseers (Board) and the stipulation of the parties filed by the Board on October 7, 2020. Upon consideration thereof, it is ORDERED that:

1. Jonathan D Crowley is hereby suspended from the practice of law in the Commonwealth of Massachusetts for a period of eighteen (18) months. In accordance with S.J.C. Rule 4:01, §17(3), the suspension shall be effective thirty 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.

By the Court, (Budd, J.)

/s/ Maura S. Doyle

Maura S. Doyle, Clerk

Entered: November 5, 2020