NO. BD-2011-020

S.J.C. Order of Term Suspension entered by Justice Duffly on April 21, 2011, with an effective date of May 21, 2011.[1]

SUMMARY [2]

The respondent, Matthew McDonough, was admitted to the practice of law in Massachusetts on December 16, 1998. From 2003 through August 2010, the respondent worked as an associate in a firm in Pittsfield.

In connection with two client matters he handled on behalf of the firm, the respondent converted to his own use fee payments belonging to the firm, as follows.

In 2009, a client engaged the firm to represent her in a claim to enforce a provision of her divorce decree requiring her ex-husband to file a Qualified Domestic Relations Order concerning his pension benefits. The respondent was assigned to handle the matter. The parties eventually agreed to a settlement by which the defendant would pay $9,000 to the client in exchange for her dismissal of the action. The client agreed that the $9,000 was to be used to pay the legal fees that she owed to the firm.

The respondent, however, instructed the ex-husband's attorney to make the $9,000 check payable to him. The respondent picked up the check at the attorney's office and immediately deposited the funds into his personal account. During the following days, the respondent used the funds for personal purposes.

In the second matter, in June of 2010, a client engaged the firm to assist her in obtaining an extension of her student visa. The respondent was assigned to handle the matter. On June 22, 2010, the client came to the firm's office to deliver a check in the amount of $1000 towards her legal fees. The respondent instructed the client to make the check out to him. The respondent deposited the check into a personal account, but the check did not clear. A few days later, the client returned to the office with $1000 in cash. The respondent took the cash and converted it to his personal use.

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[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 intentionally converting legal fees belonging to the firm to his own use, the respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation Mass. R. Prof. C. 8.4(c), and in conduct adversely reflecting on his fitness to practice law, in violation of Mass. R. Prof. C. (h).

In two other matters, the respondent neglected clients' cases and concealed his neglect from the clients and the firm, as follows.

In the spring of 2004, a husband and wife engaged the firm to represent them a claim for personal injuries resulting from a motor vehicle accident. On the basis of diversity jurisdiction, the respondent filed a complaint on their behalf in the United States District Court for Connecticut. The respondent failed to research Connecticut law, which provided that the statute of limitations was not tolled until service was made, and failed to arrange for timely service on the defendant. The defendant filed a motion for summary judgment on the grounds that the action was barred by the Connecticut statute of limitations. In April of 2007, the court granted the defendant's motion.

The respondent received the court's decision in due course, but did not inform the client or anyone at the firm that summary judgment had been entered for the defendant, and did not file an appeal of the court's decision. Between April 2007 and August 2010, the respondent intentionally and continuously misrepresented to his firm and to the clients that the case was pending. He also misrepresented that he was engaging in settlement negotiations with the defendant's insurer, and later misrepresented that he had reached a settlement with the insurer. To perpetuate the fiction, the respondent created letters, notices, motions and memoranda, which he showed to his firm and to the clients. The clients and the firm did not learn until August 2010 that judgment for the defendant had entered in 2007.

By failing to research Connecticut law and failing to effect timely service, the respondent failed to represent a client competently, in violation of Mass. R. Prof. C. 1.1; failed to seek the objective of his clients through reasonably available means, in violation of Mass. R. Prof. C. 1.2(a); and failed to represent a client diligently, in violation of Mass. R. Prof. C. 1.3.

By failing to advise his clients that judgment in their case had been entered for the defendant, the respondent failed to keep the client reasonably informed about the status of a matter, in violation of Mass. R. Prof. C. 1.4(a); and failed to explain a matter to his clients to

the extent necessary to permit them to make informed decisions regarding the representation, in violation of Mass. R. Prof. C. 1.4(b).

By intentionally misrepresenting to the clients and to members of the firm that the clients' claim was still pending long after it had been dismissed, and fabricating documents to perpetuate his misrepresentation, the respondent violated of Mass. R. Prof. C. 8.4(c) and (h).

In another matter, in 2008, a client engaged the firm to represent her in a claim against a company for wrongfully accusing her of shoplifting. The respondent filed a complaint against the company but failed to arrange for service on the company within ninety days of filing the complaint.

The respondent moved to extend the time in which to make service, and the court allowed that motion. However, following allowance of the motion, the respondent failed to effect service. On August 21, 2009, the court dismissed the case with prejudice for failure to make service, and notified the respondent of the dismissal in due course.

After receiving notice of the dismissal, the respondent intentionally misrepresented to the client and to the firm that the case was pending. To perpetuate the misrepresentations, the respondent created false discovery documents and sent them to the client. He never disclosed to the client or to the firm that the case had been dismissed.

By failing to cause service to be made timely on the defendant, the respondent violated Mass. R. Prof. C. 1.1; 1.2(a); and 1.3.

By failing to advise his client that her case had been dismissed, the respondent violated Mass. R. Prof. C. 1.4(a) and (b).

By intentionally misrepresenting to the client and to members of the firm that the client's claim was still pending long after it had been dismissed, and fabricating documents to perpetuate his misrepresentation, the respondent violated Mass. R. Prof. C. 8.4(c) and (h).

In mitigation, the respondent has made full restitution to the law firm, in the amount of $15,000. Further in mitigation, in 2006, the respondent was diagnosed and treated for severe depression. His depression contributed to his failure to appropriately handle some of the legal matters for which he was responsible.

In aggravation, the respondent has prior discipline in the form of a 2006 admonition for signing a witness's name to an affidavit without explicit authority to do so. *AD 06-41*, 22 Mass. Att'y. Disc. R. 940.

This matter came before the Board of Bar Overseers on a stipulation of the above facts and disciplinary rule violations and a joint recommendation that the respondent be suspended from the practice of law for three years. The board adopted the recommendation. On April 21, 2011, the Court (Duffly, J.) issued an order that the respondent be suspended from the practice of law for three years, commencing thirty days from the date of the order.