IN RE: JAMES S. DILDAY

NO. BD-2012-024

S.J.C. Order of Term Suspension entered by Justice Duffly on April 13, 2012, with an effective date of May 14, 2012.[1]

(S.J.C. Judgment of Reinstatement entered by Justice Duffly on October 7, 2013.)

SUMMARY[2]

The respondent was retained to represent a client in April of 2001 in claims against a municipality for sexual harassment and discrimination that occurred in the course of the client's employment. A complaint was filed with the Massachusetts Commission Against Discrimination in 2001 and subsequently withdrawn in 2003 in order to pursue the claims in court. In October of 2003, a civil complaint was filed in the Superior Court by the respondent and Attorney Carlton J. Dasent, who at that time was associated with the respondent's practice. At that time, the client also entered into a fee agreement with both the respondent and Attorney Dasent which superseded an original agreement the client had entered into with the respondent in 2001. The civil case was subsequently removed to the United States District Court in December of 2003 by the defendants due to allegations of violations of federal law contained in the complaint.

Attorney Carlton J. Dasent was disbarred from the practice of law by order of the Supreme Judicial Court, effective June 12, 2005. *Matter of Dasent*, 21 Mass. Att'y Disc. R. 150 (2005). Between June of 2005 and January of 2007, Dasent continued to represent the client, as co-counsel with the respondent, despite his disbarment. The respondent knew that Dasent was disbarred and continued to permit, assist and/or acquiesce in his continued representation of the client after the effective date of the order of disbarment. On two occasions in 2006, when questioned by bar counsel about Dasent's involvement in this matter, the respondent misrepresented the nature of Dasent's conduct and denied that Dasent was involved in the continuing representation of the client.

The respondent continued to represent the client in the federal court matter until February of 2007. Throughout this time, the respondent failed to pursue the client's federal court case competently and diligently. The respondent repeatedly failed to comply with the Local Rules of the United States District Court. The respondent's lack of diligence included the failure to conduct discovery, failure to comply with multiple court orders, resulting in sanctions against the respondent, and failure to timely disclose expert witnesses, resulting in the preclusion of expert testimony.

In February of 2007, the respondent withdrew from the federal case at the client's request. The client retained successor counsel who ultimately negotiated a resolution of the

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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.

case with the defendants. In June of 2007, the respondent filed a Notice of Attorney's Lien against the settlement proceeds on behalf of the respondent and Dasent. The fee charged as set forth in the attorney's lien was clearly excessive, and negligently included charges for which the respondent had already been paid, as well as charges for services not performed by the respondent. The respondent also failed to provide the client upon her request with an accounting of $7,255 she had given the respondent for costs and expenses.

The respondent's conduct in continuing to permit, assist and/or acquiesce in Dasent's continued representation of the client after the effective date of Dasent's disbarment violated Mass. R. Prof. C. 5.5(b) and 8.4(d), and S.J.C. Rule 4:01, Section 17(7). The respondent's conduct in misrepresenting to bar counsel the extent of Dasent's continuing involvement after his disbarment in the representation of the client violated Mass. R. Prof. C. 8.4(c) and (h).

The respondent's conduct in failing to diligently pursue the client's case by failing to conduct discovery, failing to designate expert witnesses in a timely fashion, and failing to comply with the Local Rules violated Mass. R. Prof. C. 1.1, 1.2(a) and 1.3. The respondent's conduct in knowingly failing to comply with court orders violated Mass. R. Prof. C. 3.4(c) and 8.4(h).

The respondent's conduct in failing to provide an accounting to the client of funds advanced for costs and expenses violated Mass. R Prof. C. 1.15(d)(1).

The respondent's conduct in filing a Notice of Attorneys' lien with the court that negligently made claim for payment for services that were not performed or for which he had already been paid violated Mass. R. Prof. C. 1.1 and 1.3. The respondent's conduct in in charging clearly excessive fees and in filing a Notice of Attorneys' Lien with the court for clearly excessive fees violated Mass. R. Prof. C. 1.5(a).

On December 16, 2011, the parties submitted a stipulation to the Board of Bar Overseers. The parties recommended that the respondent be suspended from the practice of law for one year, with the respondent's reinstatement conditioned on his attending a CLE course designated by bar counsel. The stipulation also required that the respondent contact the Director of the Law Office Management Assistance Program ("LOMAP") within thirty (30) days of his reinstatement, request an assessment and cooperate fully with LOMAP, provide the information and access required for a full assessment, and follow the directives made by LOMAP for a period of two years following reinstatement. The respondent agreed to pay all costs incurred in connection with participation in this program. On January 9, 2012, the Board of Bar Overseers voted to make a preliminary determination to reject the stipulation as inadequate, but was inclined to accept the stipulation if a reinstatement hearing was required. On February 17, 2012, the respondent filed a motion and memorandum with the Board requesting reconsideration of its preliminary determination pursuant to BBO Section 3.19(d). On March 12, 2012, the Board voted to accept the stipulation of the parties and their joint recommendation for a one year suspension with conditions.

On April 13, 2012, the Supreme Judicial Court for Suffolk County (Duffly, J.) ordered that the respondent be suspended from the practice of law for one year, with reinstatement conditioned on the respondent attending a CLE course designated by bar counsel, and incorporating the additional conditions agreed to by the parties.