

**IN RE: BEN WARREN PAYTON****NO. BD-2013-022****S.J.C. Order of Term Suspension entered by Justice Duffly on July 8, 2013.¹****SUMMARY²**

On October 16, 2012, the respondent, Ben Warren Payton, was suspended from the practice of law for three months by the Supreme Court of New Jersey, effective immediately and until the further order of the court. The suspension was based upon the respondent's misconduct in representing clients in two matters.

In the first matter, the respondent represented a church in an attempt to avoid a levy by a construction contractor on church funds. Prior to the respondent's involvement, the church had an addition built but the general contractor failed to pay the subcontractor. The subcontractor obtained a judgment for \$21,892 and sought to levy on the church's bank account. The respondent was retained to oppose a motion for the turnover of the funds but failed to file a written opposition to the motion, which was granted. The respondent then filed a civil action against the general contractor and others but took no action to prosecute the matter. Throughout his representation, the respondent failed to adequately communicate the status of the matter to his clients. The respondent was found guilty of gross neglect, lack of diligence and failing to adequately communicate with his client.

Similar charges were sustained against the respondent in the second matter. The respondent agreed to represent a taxpayer in contesting an assessment of \$16,576.15 for taxes due on cigarettes purchased online. Two years later, when the client received a demand for an additional \$11,711.93 in interest and penalties, he learned that the respondent had done nothing to contest the assessment. When the client contacted the respondent, a meeting was scheduled but the respondent cancelled the meeting and failed to respond to further calls from the client.

The respondent claimed in mitigation that both he and his wife were suffering from significant health problems. This claim was rejected because the health problems arose well after the respondent's misconduct. In aggravation, the respondent had a significant disciplinary history, having been sanctioned in New Jersey five previous times from 1997 through 2011. In 2002, the respondent was reciprocally suspended for three months in Massachusetts based upon a New Jersey suspension and has not been reinstated in Massachusetts.

On March 15, 2013, bar counsel filed a petition for reciprocal discipline with the Supreme Judicial Court for Suffolk County. The Court issued an order of notice giving the respondent thirty days to show cause why reciprocal discipline should not be ordered in Massachusetts. The respondent did not reply to the order of notice and did not appear at a hearing on June 24, 2013. On July 8, 2013, the Court (Duffly, J.) entered an order suspending the respondent for three months, effective immediately, with the respondent's reinstatement in Massachusetts conditioned upon his reinstatement in New Jersey.

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.