IN RE: BARRY E. O'NEILL

NO. BD-2014-059

S.J.C. Order of Term Suspension entered by Justice Botsford on June 19, 2014, with an effective date of July 19, 2014.[1]

(S.J.C. Judgment of Reinstatement entered by Justice Spina on October 31, 2014.)

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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.

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

BAR COUNSEL, **Petitioner** **v.** **BARRY E. O'NEILL, ESQ.,** **Respondent**	**BBO File No. C2-11-0251 &** **C2-11-0252**

BOARD MEMORANDUM

On December 5, 2013, bar counsel and the respondent, Barry E. O'Neill, Esq., filed an amended petition for discipline and a stipulation under which the respondent admitted the allegations of the petition and the parties agreed on a joint recommendation for a six-month suspension, with three months stayed on the condition that the respondent take at least six hours of continuing legal education on law office management or other programs acceptable to bar counsel. Acknowledging that the board is not bound by their recommendation for discipline, the parties agreed that either party could appeal from a sanction that differed from the one they jointly recommended. They also agreed to be bound by the stipulation of facts and rule violations set out in the stipulation.

At its January 9, 2014 meeting, the board voted to make a preliminary determination to reject the agreed-upon disposition because it was not accompanied by a rationale for staying three months of the suspension. After receiving notice of the board's vote and conferring with the respondent and his counsel, bar counsel filed a letter dated February 3, 2014, in which she argued in favor of the proposed disposition. The respondent did not respond separately to the board's preliminary vote.

The board reconsidered the matter on the papers at its February 24, 2014 meeting. After discussion, the board voted unanimously to adopt the findings of fact and conclusions of law as stipulated by the parties, to reject their proposed disposition, and instead to file an information recommending a three-month suspension with the requirement that the respondent fulfill the CLE requirements set out in the stipulation before he can be reinstated.

The misconduct. In the spring of 2010, the respondent was approached by a law school graduate named Eddy, who had not been admitted to the practice of law but told the respondent she was an experienced paralegal who was awaiting the outcome of the bar examination. Unbeknownst to the respondent, Eddy had failed the exam three times. The respondent enabled and facilitated Eddy's unauthorized practice of law in various ways: (1) by co-signing an application for an IOLTA account on which she had signatory power in the name of an apparently nonexistent company of which the respondent was president and Eddy was vice president; (2) by entering an appearance in six bankruptcy matters that Eddy handled (the respondent had no training or experience in bankruptcy law); and (3) allowing about $32,000 in client funds to be transferred from another lawyer to the new IOLTA account. Over approximately nine months, the respondent did not supervise Eddy's work, and he allowed her to hold herself out as a member of the nonexistent company in fee agreements, advertising, and communications with clients.

By assisting Eddy in the unauthorized practice of law and failing to supervise her work as a paralegal, the respondent violated Mass. R. Prof. C. 5.3(b) and 5.5(a). By signing bankruptcy pleadings without the requisite knowledge or experience and without adequate investigation, the respondent violated Mass R. Civ. Prof. 1.1 and 1.3. By failing to comply with the operational requirements for the handling of the IOLTA account, and by failing to ensure that Eddy complied with them, the respondent violated Mass. R. Prof. 1.15(e) and (f).

In mitigation, the respondent took steps to have all of Eddy's debtors discharged in bankruptcy, and all their fees have been reimbursed. The parties

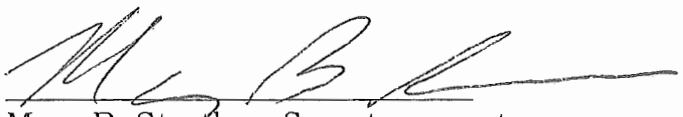
agree that the respondent had not acted out of any selfish motive and did not benefit financially.

The appropriate sanction. Our quarrel with the proposed sanction is not with its severity. We recommended, in effect, the same sanction -- a three-month suspension with a CLE requirement -- but without the needless machinery of suspending a portion of the term of the suspension. We agree with bar counsel that the respondent's misconduct is not as egregious as that at issue in Matter of Hrones, 26 Mass. R. Disc. 2576 (2010), in which a lawyer was suspended for a year and a day for knowingly facilitating the unauthorized practice of law for some three years involving at least forty clients and resulting in substantial prejudice to the claims of numerous clients. We also agree that the respondent's misconduct was less grievous than that for which a suspension for six months and a day was imposed in Matter of Dash, 22 Mass. Att'y Disc. R. 179 (2006). Unlike Dash, the respondent did not benefit financially from his arrangement with Eddy, and he made no misrepresentations to conceal the unauthorized practice. In light of the relevant case law, therefore, we agree that the respondent's misconduct suggests that he and his clients would be well served by his getting training in law office management before he is reinstated.

We quarrel only with the notion that this need be accomplished by staying a portion of the suspension. We believe staying all or part of a suspension that would otherwise be appropriate for the misconduct involved should be reserved for matters in which the stay itself functions as an incentive or a deterrent, as the case may be, to encourage or discourage certain conduct, whether for the sake of safeguarding the public or assisting the lawyer to take certain remedial steps, or both. For example, in Matter of Bizinkauskas, BD-2013-115 (March 11, 2014), the Court recently stayed a term suspension so long as a lawyer afflicted with alcoholism adheres to certain conditions. The order provides both an incentive to recovery and a simple mechanism for bar counsel to suspend the lawyer if he fails to comply with the conditions. This, we believe, is the proper role of stayed suspensions.

But we believe stayed suspensions are not appropriate where such incentives and deterrents are not needed, as is the case here. If, after three months, the respondent has not taken the required CLE in practice management, by the very terms of the order we propose he will not be reinstated. Staying the suspension adds nothing of value to the disposition, and denominating the sanction as a conditional six-month suspension with three months stayed introduces unnecessary uncertainty as to its precedential force.

Conclusion. For the foregoing reasons, we adopt the findings of fact and rule violations to which the parties have stipulated, but we reject their proposed disposition. An information shall be filed with the Supreme Judicial Court for Suffolk County recommending that the respondent, Barry E. O'Neill, be suspended from the practice of law for three months and that his reinstatement shall be conditioned on his having taken and completed six hours of CLE courses on law office management or other legal areas approved by bar counsel.



Mary B. Strother, Secretary pro tem

Voted: April 28, 2014