



**IN RE: KRISTIN A. BRASSARD**

**NO. BD-2015-088**

**S.J.C. Order of Term Suspension entered by Justice Botsford on January 5, 2016,  
with an effective date of February 4, 2016.<sup>1</sup>**

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<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
No. BD-2015-088

IN RE: KRISTIN BRASSARD

MEMORANDUM OF DECISION

The Board of Bar Overseers (board) has filed an information recommending that the respondent, Kristin A. Brassard, be suspended for a period of three years. For the reasons that follow, I agree that a period of suspension is appropriate discipline for the respondent, and adopt the recommendation of the board.

Background. The respondent was admitted to practice in the Commonwealth in June, 2010. She has a solo practice in Fitchburg that includes primarily the representation of individuals who seek assistance with bankruptcy, family law, and criminal matters. In 2013, the respondent was the subject of a disciplinary matter that came before me as single justice, and an order entered on August 26, 2013, imposing an agreed-upon suspension of three months stayed for a period of two years, during which the respondent was obligated to consult with the Law Office Management Program (LOMAP), to follow LOMAP's suggestions made after consultation, and to maintain legal malpractice insurance. *Matter of Brassard*, 29 Mass. Att'y Discipline Rep. 55 (2013). At issue in this 2013 matter were four instances of client neglect, most of which also involved a failure to return an unearned fee. Mitigating factors were identified as the

respondent's inexperience and being overwhelmed by her caseload due to inadequate law office management procedures.

In June, 2015, bar counsel filed a new petition for discipline. It alleges similar misconduct by the respondent in relation to her representation of four clients during the period of the respondent's stayed suspension. The respondent failed to respond to the petition for discipline within the time period prescribed by the board's rules and was defaulted; the respondent also failed to seek to remove the default within the prescribed time period. Accordingly, and pursuant to its rules, see Rules of the Board of Bar Overseers, rule 3.15 (e), (f), and (g), the board deemed admitted the factual allegations of the petition for discipline. The board thereafter voted, in accordance with bar counsel's recommendation, to file an information recommending that the respondent be suspended for a period of three years. In connection with the hearing before me on this matter in late October, 2015, the respondent, represented by counsel, agreed to file certain documents concerning medical treatment with the court, but did not do so. On November 6, 2015, the respondent faxed to the court an answer to bar counsel's June, 2015, petition for discipline,<sup>1</sup> but the addendums that are referenced in this answer were not filed. The respondent's answer admits a fair number of the factual allegations in the petition, denies a number, but generally does not articulate the factual basis of the denials. In these circumstances, I conclude that it would be inappropriate not to leave in place the board's deeming admitted the factual allegations in the petition for discipline.

In summary, these facts indicate the following.

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<sup>1</sup> Under the rules of the Board of Bar Overseers (board), the answer was due to be filed with the board within twenty days of service, which would have been on or before approximately July 11, 2015.

1. In February, 2014, Lori Wong retained the respondent to prepare and file a Chapter 7 bankruptcy petition for her. Wong paid the respondent \$1,200, but was not provided with a written fee agreement that fully described the scope of legal services to be performed. After much delay, the respondent ultimately forged or caused to have forged Wong's signature on the bankruptcy petition the respondent had prepared and filed it without the client's authorization. The petition had errors in it. Wong terminated the respondent's services as her attorney, but the respondent did not return the fee until after two orders of the Bankruptcy Court judge to disgorge the fee.

By engaging in the foregoing conduct, the respondent violated Mass. R. Prof. C. 1.1, 1.16 (d), 1.2 (a), 1.3, 1.4 (a), 1.5 (b), 3.3 (a), 3.4 (c), and 8.4 (c), (d), and (h).

2. Brian Knower retained the respondent in 2014 to assist him with his divorce and his efforts to be able to reunite with his children. He paid the respondent \$4,500 for the work. The respondent did not provide Knower with a fee agreement fully describing the services to be performed. She assisted with finalizing a divorce agreement for Knower but then neglected her client with respect to his complaint for modification, which the respondent falsely represented to him that she had filed and served when she had not. After Knower terminated the respondent's services, she did not return his files, and did not cooperate with bar counsel when bar counsel became involved in the matter. Ultimately, the respondent did return the client's files.

By engaging in the foregoing misconduct, the respondent violated Mass. R. Prof. C. 1.1, 1.16 (d), 1.2 (a), 1.3, 1.4 (a), 1.5 (b), and 8.4 (c) and (h).

3. In the third matter, the respondent was retained by Stacy Ellman to assist with her divorce. Ellman paid the respondent \$500 at the outset of the representation. The

respondent did not prepare an appropriate fee agreement, and did not file a motion for contempt on behalf of Ellman, who became dissatisfied, terminated the respondent's services, and retained a new attorney. The respondent failed to return Ellman's files and falsely represented to both Ellman and bar counsel that she had.

By engaging in the foregoing misconduct, the respondent violated Mass. R. Prof. C. 1.1, 1.16 (d), 1.2 (a), 1.3, 1.4 (a), 1.5 (b), 8.1 (a), and 8.4 (c) and (h).

4. The respondent was retained by Tony Mollina to assist in procuring a modification of his divorce and custody agreement. Mollina paid the respondent \$5,000. The respondent failed to serve the complaint for modification, resulting in its dismissal; failed to respond to a counterclaim filed by Mollina's former wife; failed to attend or to notify Mollina of scheduled court hearings, resulting in the issuance of an order modifying and increasing Mollina's child support obligations as the non-custodial parent and requiring Mollina to pay approximately \$15,000 in sanctions. After Mollina learned of these events from his former wife, he terminated the respondent's services, requested the return of his files and the unearned portion of the fee. Neither the files nor the unearned fee have been returned.

By engaging in the foregoing misconduct, the respondent violated Mass. R. Prof. C. 1.1, 1.16 (d), 1.2 (a), 1.3, 1.4 (a), and 8.4 (h).

5. The fifth count of the petition for discipline concerns the respondent's failure to cooperate with bar counsel in connection with bar counsel's investigation of the four client complaints just summarized. In addition, the respondent has not presented any information to bar counsel to demonstrate compliance with the two conditions of her stayed suspension in the previous disciplinary case, namely, proof that she has

implemented the recommendations of LOMAP, and proof that she has malpractice insurance.

Discussion. Bar counsel, on behalf of the board, asserts that the respondent's conduct summarized above violates the following rules of professional conduct: Mass. R. Prof. C. 1.1 (competence in representation); 1.2 (a) (scope of representation: seeking lawful objectives of client); 1.3 (diligence); 1.4 (a) (communication with client); 1.5 (fees and fee agreements); 1.16 (d) (termination of representation: return of files); 3.3(a) (candor toward tribunal); 3.4 (fail to obey obligation under rules of tribunal); 8.1 (a) (false statement of fact in connection with disciplinary matter); 8.4 (c) (engage in conduct involving deceit or misrepresentation), (d) (engage in conduct prejudicial to administration of justice; (g) (fail to cooperate with bar counsel or board); (h) (engage in conduct adversely reflecting on fitness to practice law). I agree. I turn, therefore, to the question of sanction.

The board voted to recommend that the respondent be suspended from the practice of law for three years. I agree with bar counsel that this recommendation is in line with other cases involving multiple examples of neglect that have added components of failure to communicate with, or misrepresentations to clients and related, additional disciplinary violations. See, e.g., *Matter of Partlow*, 18 Mass. Att'y Discipline Rep. 431 (2002) (neglect in seven different client matters, all personal injury cases, failure to communicate and misrepresentations to clients and referring counsel; agreed-upon suspension of thirty months, but no indication of prior discipline and lawyer cooperated by notifying legal malpractice insurer and ultimately clients; also lawyer suffered from severe long-term depression). See also *Matter of Cain*, SJC BD No. 2015-018 (neglect of

four clients, repeated false representations to clients and deceitful as well as fraudulent actions taken in support of false representations; term suspension of three years; no indication of prior discipline). The respondent's misconduct was not at the level of the respondent in *Cain*, but as indicated, there does not appear to have been prior discipline in *Cain*. The fact of prior discipline – or more accurately, ongoing discipline in the sense that the misconduct at issue here occurred during the period her previous suspension was stayed – is significant. See, e.g., *Matter of Kerlinsky*, 428 Mass. 656, 665 (1999), and cases cited. Moreover, the respondent's misconduct with respect to the four clients at issue here is of the same type as at issue in the prior disciplinary case. See *id.* The facts of the misconduct at issue in *Partlow*, *supra*, in my view, are more similar to the respondent's case than is *Cain*, *supra*.<sup>2</sup> In the circumstances, I give weight to the board's recommendation of a three year suspension, see *Matter of Finneran*, 455 Mass. 722, 730 (2010), and conclude that a three-year suspension is appropriate.

ORDER

For the foregoing reasons, it is ORDERED that judgment enter suspending the respondent, Kristin A. Brassard, for a period of three years.

  
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Margot Botsford  
Associate Justice

Dated: January 4, 2016

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<sup>2</sup> Some information in the record also indicates that as in *Matter of Partlow*, 18 Mass. Att'y Discipline Rep. 431 (2002), the respondent here may well suffer from depression, but the information is not presented adequately.