

**IN RE: DOUGLAS MARTIN**

**NO. BD-2020-061**

**S.J.C. Order of Term Suspension entered by Justice Cypher on September 22, 2020, with an effective date of October 22, 2020.<sup>1</sup>**

*The respondent stipulated to a suspension of one year, with six months stayed on conditions, for neglect, lack of competence, failure to keep the client informed, violating rules concerning ghostwriting for an apparently pro-se party and other procedural rules, and misrepresentations to the court concerning his role in the case.*

**SUMMARY<sup>2</sup>**

The respondent was retained around June 2014 to represent a client in two matters, including a civil rights action against a municipality. The civil rights action was to be filed in United States District Court for Massachusetts (“federal court”). Unbeknownst to the client, the respondent was not admitted to practice there.

The respondent did not apply for admission in the federal court until sometime after February 19, 2015, and he was not admitted until May 19, 2015. He did not familiarize himself with either the law concerning civil rights claims against municipal entities or the procedural rules of the federal court. The respondent was unaware that ghostwriting is generally prohibited in the First Circuit. Nevertheless, he drafted the client’s civil rights complaint, which the client filed *pro se* in November 2014, on the day before the limitations period would otherwise have lapsed. From then until May 2015, the respondent drafted other documents for the client to file *pro se* and in some instances attempted unsuccessfully to file them for the client.

The respondent failed to check the case docket and did not keep himself apprised of essential deadlines in the federal case. The client was not prepared for or advised to make the mandatory initial disclosures, due in February 2015, resulting in the defendants filing a motion to compel.

The respondent failed to advise the client to appear at an initial scheduling conference, resulting in an order for a second scheduling conference. The order warned that “[f]ailure...to appear in person or through counsel...may result in dismissal....” The respondent failed to advise the client to appear at that conference, as well, and the court contacted the client directly to warn of the risk of dismissal. In addition, the respondent failed to advise the client whether and how to respond to the draft joint supplemental scheduling statement, requested by the court, the defendants had prepared.

In April 2015, the defendants moved to dismiss the case. The respondent did not file an opposition brief or advise the client to do so. The court ordered the client to respond to the motion by May 15, 2015 or else the case would be “subject to dismissal for lack of prosecution.” The

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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.

<sup>2</sup> Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.

respondent learned of the court's order and prepared a brief in opposition to the motion to dismiss, but the court rejected it because the respondent was not yet admitted to practice in federal court. The respondent then filed the brief with the client listed as acting "*pro se*." In the opposition, the respondent wrote that the client "most recently retained Attorney Douglas Martin to prosecute this matter accordingly." The respondent's representation was intentionally false, as he had been retained almost one year earlier.

The court scheduled the motions for hearing on June 2, 2015. The respondent, finally admitted to practice before the court during May, filed his appearance on June 1, and appeared at the hearing the next day. There, the respondent assured the court he would produce initial disclosures and discovery responses in two weeks. The court denied the defendant's motions and ordered the plaintiff's compliance by June 16, 2015. In a joint supplemental scheduling statement filed on June 10, 2015, the respondent reiterated his promise to provide initial disclosures and discovery responses. He failed to do so, resulting in the defendants' second motion to dismiss on July 16, 2015. On August 6, 2015, the court ordered compliance and the filing of a compliance statement by August 13, 2015, or the case would be dismissed.

On August 13, 2015, the respondent served the initial disclosures but not the discovery responses. That same day, however, the respondent filed a statement that intentionally misrepresented the client's complete compliance. Called by defense counsel, the respondent represented he would provide the discovery responses by August 21, 2015. He did not do so. The defendants then filed a notice of non-compliance, and the court scheduled a hearing for October 14, 2015 on the defendant's motion to dismiss. At the hearing, the court ordered the client to serve signed interrogatory answers and signed medical releases by November 4, 2015. The respondent failed to ensure his client's compliance.

The court dismissed the case on November 10, 2015. The respondent did not inform his client. Almost a year later, the client learned of the dismissal during a telephone call to the court clerk. In December 2016, the client filed a *pro se* opposition to the motion to dismiss. The court treated the "opposition" as a motion to vacate the dismissal and denied it.

The respondent's misconduct violated Mass. R. Prof. C. 1.1 (competence); 1.2(a) (seek client's lawful objectives); 1.3 (diligence); 1.4(a),(b) (communication with clients, keep client advised); 3.3(a)(1) (knowing misrepresentation to a tribunal); 8.4(c) (dishonesty, deceit, misrepresentation, or fraud); 3.4(c) (knowing disobedience of obligations under rules of tribunal); 3.4(d) (fail to make reasonably diligent effort to comply with a proper discovery request).

In July 2020, the respondent filed his amended answer to the petition for discipline, admitting the allegations of the petition, along with the parties' stipulation for discipline. The stipulation noted the respondent's assertion that certain psychological conditions might have contributed to his misconduct. On August 10, 2020, the Board of Bar Overseers voted to recommend that the respondent be suspended for a year with six months stayed on conditions related to continued treatment and participation with support groups provided by Lawyers Concerned for Lawyers. The Court (Cypher, J.) so ordered on September 22, 2020.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NO: BD-2020-061

IN RE: Douglas Martin

ORDER OF TERM SUSPENSION

This matter came before the Court, Cypher, J., on an Information and Record of Proceedings pursuant to S.J.C. Rule 4:01, § 8(6), with the Recommendation and Vote of the Board of Bar Overseers (Board) and the stipulation of the parties filed by the Board on September 11, 2020. Upon consideration thereof, it is ORDERED that:

1. Douglas Martin is hereby suspended from the practice of law in the Commonwealth of Massachusetts for a period of one (1) year with six (6) months suspended. In accordance with S.J.C. Rule 4:01, § 17(3), the suspension shall be effective thirty days after the date of the entry of this Order subject to the following conditions;

a. During the term of the order of suspension, the respondent will continue to participate consistently in support programs provided by the Lawyers Concerned for Lawyers ("LCL")

(presently Support Group for Solo Practitioners and Practicing Law with ADHD); the respondent shall provide to LCL copies of the order, petition for discipline, and this stipulation; and the respondent consents to disclosure to bar counsel of any information requested by bar counsel of LCL concerning the respondent's compliance with their recommendations and participation in their support programs; and

b. During the term of the order of suspension, the respondent will timely comply with any treatment recommendations of his mental health medical provider, Commonwealth Psychology Associates ("CPA"), and the respondent consents to disclosure to bar counsel of any information requested by bar counsel of CPA concerning the respondent's compliance with their recommendations.

The lawyer, after the entry of this Order, shall not accept any new retainer or engage as a lawyer for another in any new case or legal matter of any nature. During the period between the entry date of this Order and its effective date, however, the lawyer may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

It is FURTHER ORDERED that:

2. Within fourteen (14) days of the date of entry of this Order, the lawyer shall:

a) file a notice of withdrawal as of the effective date of the suspension with every court, agency, or tribunal before which a matter is pending, together with a copy of the notices sent pursuant to paragraphs 2(c) and 2(d) of this Order, the client's or clients' place of residence, and the case caption and docket number of the client's or clients' proceedings;

b) resign as of the effective date of the suspension all appointments as guardian, executor, administrator, trustee, attorney-in-fact, or other fiduciary, attaching to the resignation a copy of the notices sent to the wards, heirs, or beneficiaries pursuant to paragraphs 2(c) and 2(d) of this Order, the place of residence of the wards, heirs, or beneficiaries, and the case caption and docket number of the proceedings, if any;

c) provide notice to all clients and to all wards, heirs, and beneficiaries that the lawyer has been suspended; that he is disqualified from acting as a lawyer after the effective date of the suspension; and that, if not represented by co-counsel, the client, ward, heir, or beneficiary should act promptly to substitute another lawyer or fiduciary or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;

d) provide notice to counsel for all parties (or, in the absence of counsel, the parties) in pending matters that the lawyer has been suspended and, as a consequence, is disqualified from acting as a lawyer after the effective date of the suspension;

e) make available to all clients being represented in pending matters any papers or other property to which they are entitled, calling attention to any urgency for obtaining the papers or other property;

f) refund any part of any fees paid in advance that have not been earned; and

g) close every IOLTA, client, trust or other fiduciary account and properly disburse or otherwise transfer all client and fiduciary funds in his possession, custody or control.

All notices required by this paragraph shall be served by certified mail, return receipt requested, in a form approved by the Board.

3. Within twenty-one (21) days after the date of entry of this Order, the lawyer shall file with the Office of the Bar Counsel an affidavit certifying that the lawyer has fully complied with the provisions of this Order and with bar disciplinary rules. Appended to the affidavit of compliance shall be:

a) a copy of each form of notice, the names and addresses of the clients, wards, heirs, beneficiaries, attorneys, courts and agencies to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise requested in writing by the lawyer or ordered by the court;

b) a schedule showing the location, title and account number of every bank account designated as an IOLTA, client, trust or other fiduciary account and of every account in which the lawyer holds or held as of the entry date of this Order any client, trust or fiduciary funds;

c) a schedule describing the lawyer's disposition of all client and fiduciary funds in the lawyer's possession, custody or control as of the entry date of this Order or thereafter;

d) such proof of the proper distribution of such funds and the closing of such accounts as has been requested by the bar counsel, including copies of checks and other instruments;

e) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and

f) the residence or other street address where communications to the lawyer may thereafter be directed.

The lawyer shall retain copies of all notices sent and shall maintain complete records of the steps taken to comply with the notice requirements of S.J.C. Rule 4:01, § 17.

4. Within twenty-one (21) days after the entry date of this Order, the lawyer shall file with the Clerk of the Supreme Judicial Court for Suffolk County:

a) a copy of the affidavit of compliance required by paragraph 3 of this Order;

b) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and

c) the residence or other street address where communications to the lawyer may thereafter be directed.

By the Court, (Cypher, J.)

/s/ Stephen Cronin  
Assistant Clerk

Entered: September 22, 2020