

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2013-004

IN RE: Sean Michael McCarthy

ORDER OF TERM SUSPENSION

This matter came before the Court, Gants, J., on a Petition for Reciprocal Discipline pursuant to S.J.C. Rule 4:01, § 16, and an Order of the Supreme Court of Colorado filed by the Office of Bar Counsel on January 7, 2013.

On January 8, 2013, an Order of Notice issued directing the lawyer to inform the Court within thirty (30) days why the identical discipline would be unwarranted in Massachusetts. The parties having filed a waiver of hearing and assent to the entry of an Order;

It is ORDERED that:

1. Sean Michael McCarthy is hereby suspended from the practice of law in the Commonwealth of Massachusetts for a period of three years retroactive to October 3, 2012, the effective date of the lawyer's suspension in Colorado.

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 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 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; 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;

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.

5. The lawyer's reinstatement to the practice of law in the Commonwealth of Massachusetts pursuant to S.J.C. Rule 4:01, § 18, shall be conditioned upon the termination of his suspension in Colorado.

By the Court, (Gants, J.)

Maura S. Doyle, Clerk

Entered: March 27, 2013

IN RE: SEAN MICHAEL McCARTHY

NO. BD-2013-004

SUMMARY¹

On August 29, 2012, the respondent, Sean Michael McCarthy, was suspended from the practice of law for three years by the Supreme Court of the State of Colorado, Office of the Presiding Disciplinary Judge. The suspension was based upon the respondent's misconduct in three matters.

In the first matter, the respondent had represented a client in 2008 on some criminal charges and obtained an acquittal. In 2010, the client hired the respondent to seal the criminal records for a flat fee of \$600. The respondent deposited the client's fee check to his IOLTA account and shortly used the funds for personal purposes. After filing a petition to seal the client's criminal records, the respondent failed to file a certified copy of the judgment of acquittal, as a result of which the petition was denied. The respondent failed to inform the client that the petition had been denied and failed to respond to a number of emails from the client.

In the second matter, the respondent agreed to represent a client in seeking a downward adjustment of his child support obligations in 2010. The client paid a flat fee of \$500, which was to be considered earned when the court ruled on the modification request. The respondent deposited the client's fee check to his IOLTA account and used the funds for personal purposes within a day. After the respondent filed a motion to modify, the court ordered the parties to exchange financial information and stated that if no agreement was reached the respondent could ask for a hearing. After providing opposing counsel with some financial information, the respondent failed to request a hearing. Months later, the client was charged with contempt for failure to pay support and learned for the first time that the respondent had failed to pursue the modification.

In the third matter, throughout 2010 the respondent used his IOLTA account as his only bank account and commingled personal and clients' funds in the account. He repeatedly overdrew the account and used checks that did not identify him as the account owner.

In mitigation, the respondent made full restitution to the above two clients.

On January 7, 2013, bar counsel filed a petition for reciprocal discipline with the Supreme Judicial Court for Suffolk County. The parties filed a waiver of hearing and assent to an order of reciprocal discipline. On March 27, 2013, the Court (Gants, J.) entered an order suspending the respondent for three years, retroactive to October 3, 2012, the effective date of the Colorado suspension, with the respondent's reinstatement in Massachusetts conditioned upon the termination of his suspension in Colorado.

¹ Compiled by the Board of Bar Overseers based on the record filed with the Supreme Judicial Court.