

IN RE: KIMBERLEY A. McCONNELL

BBO # 644114

NO. BD-2023-058

1224 W. Water Street

Elmira, New York 14905-1947

Order (year-and-a-day suspension, with reinstatement only after hearing and compliance with March 22, 2022 Order of Administrative Suspension) entered by the Supreme Judicial Court on October 6, 2023¹

The respondent was suspended for a year-and-a-day after abandoning a client and her law office, and subsequently failing to respond to bar counsel's Petition for Discipline or brief on disposition.

SUMMARY²

The petition for discipline to which the respondent never replied, and bar counsel's brief on disposition, reflect that the respondent undertook to represent a divorce client in March 2020, received a \$2,500 cash retainer, filed a notice of appearance, and disappeared. She did not respond to the client's messages, and abandoned her law office in July 2021. She has not responded to the client's request for a refund. She was administratively suspended on March 22, 2022 for failure to register with the Board. The respondent's misconduct violated Rules 1.2(a) (seek lawful objectives of client), 1.3 (act with reasonable diligence and promptness), 1.4(a) (consult with client about means of achieving objectives), 1.16(d) (upon termination of representation, refund any advance fee not earned), 8.1(b) (do not fail to respond to a lawful demand for information from disciplinary authority), 8.4(g) (do not fail without good cause to cooperate with bar counsel), and S.J.C. Rule 4:01, § 3 (enumerating grounds for lawyer discipline). Upon petition of bar counsel, a Commissioner was appointed on January 13, 2023; the respondent's IOLTA account contained client funds exceeding \$5,000.

The respondent did not respond to bar counsel's various attempts to reach her, at both her business address and her family's address in New York State. The respondent appears to have received the petition for discipline, and to have signed for two letters sent to her by

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 Massachusetts Board of Bar Overseers' Office of General Counsel based on the record filed with the Supreme Judicial Court.

certified mail: a March 23, 2023 default letter, and an April 27, 2023 letter alerting her that the matter of the appropriate discipline for her alleged misconduct would be put on the Board's June 12, 2023 Agenda. She did not submit any responses.

On June 12, 2023, the Board of Bar Overseers voted to recommend to the SJC a year-and-a-day suspension from practice. On October 6, 2023, Justice Kafker ordered the respondent suspended for a year-and-a-day, with reinstatement only after a hearing and after compliance with the March 22, 2022 Order of Administrative Suspension.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2023-058

IN RE: Kimberley A. McConnell

ORDER OF TERM SUSPENSION

This matter came before the Court, Kafker, J., on an Information and Record of Proceedings pursuant to S.J.C. Rule 4:01, § 8(6), along with the Recommendation and Vote of the Board of Bar Overseers (Board) filed by the Board on June 26, 2023.

On September 20, 2023, an Order of Notice issued, and was served on the lawyer pursuant to S.J.C. Rule 4:01, § 21, directing her to appear before the Court on October 5, 2023. After a hearing was held via zoom, attended by assistant bar counsel, but not the lawyer;

It is ORDERED that:

1. Kimberley A. McConnell is hereby suspended from the practice of law in the Commonwealth of Massachusetts for a period of one (1) year and one (1) day effective immediately upon the entry of this Order;

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 she 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 her 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;

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

g) any and all bar registration cards issued to the lawyer by the Board of Bar Overseers.

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 shall be pursuant to S.J.C. Rule 4:01, § 18 (2) (4) (5). The lawyer shall also comply with the March 22, 2022 Order of Administrative Suspension (Gaziano, J.) for non-compliance with S.J.C. Rule 4:02 and 4:03 enter in Bar Docket No. BD-2022-004.

By the Court, (Kafker, J.)

/s/ Maura S. Doyle

Maura S. Doyle, Clerk

Entered: **October 6, 2023**