

**THE STATE OF NEW HAMPSHIRE**

**SUPREME COURT**

**ORDER**

**LD-2019-0003, In the Matter of Desmond P. FitzGerald, Esquire**

On February 25, 2019, the Attorney Discipline Office (ADO) filed a certified copy of an order of the Massachusetts Supreme Judicial Court, suspending Attorney Desmond P. FitzGerald from the practice of law for a period of four months and staying two months of the suspension for a period of one year subject to Attorney FitzGerald's compliance with certain conditions set forth in the court's order.

The Massachusetts disciplinary matter arose out of Attorney FitzGerald's representation of a client in post-conviction proceedings and in an appeal of his criminal convictions. After reviewing the record of the Board of Bar Overseers, the Supreme Judicial Court found that Attorney FitzGerald repeatedly violated multiple Rules of Professional Conduct. It found that his conduct in filing two motions for a new trial reflected a lack of diligence and competence, some of which adversely affected the administration of justice and failed to meet the clients' lawful objectives. The court found that Attorney FitzGerald's representation of his client on appeal similarly demonstrated a lack of competence and diligence, violated the rules of the tribunal, and adversely affected the administration of justice. The court found that content of the appellate brief Attorney FitzGerald filed reflected a lack of competence and diligence and that his false statement in his appeal brief supporting the primary argument on appeal prejudiced the administration of justice. The court found that, in light of the value of the services received by the client, Attorney FitzGerald's fees were clearly excessive.

The Supreme Judicial Court ruled that Attorney FitzGerald violated the following Rules of Professional Conduct and Massachusetts Rules of Court:

1. Rule of Professional Conduct 1.1, which requires a lawyer to provide competent representation to a client;
2. Rule of Professional Conduct 1.2(a), which requires a lawyer to seek the lawful objectives of his client;
3. Rule of Professional Conduct 1.3, which requires a lawyer to act with reasonable diligence and promptness in representing a client;
4. Rule of Professional Conduct 1.5(a), which prohibits a lawyer from charging a clearly excessive fee; and

5. Rule of Professional Conduct 3.4(c), which prohibits a lawyer from knowingly disobeying an obligation under the Rules of a tribunal, except in limited circumstances inapplicable in this case;
6. Rule of Professional Conduct 8.4(d), which makes it professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justices.

The Supreme Judicial Court imposed a four-month suspension, but stayed two months of the suspension for one year, subject to Attorney FitzGerald's compliance with the following conditions:

1. Attorney FitzGerald must obtain an evaluation from the Law Office Management Program (LOMAP) with respect to his law office practices;
2. Attorney FitzGerald must enter into a two-year mentoring agreement, satisfactory to Massachusetts bar counsel, calling for general supervision of his practice and the performance of his office systems including implementation of recommendations made by LOMAP; and
3. If Attorney FitzGerald continues to practice in the appellate courts, he must take a continuing legal education class, acceptable to bar counsel, on the topic of appellate practice.

In accordance with Supreme Court Rule 37(12)(b), the court ordered that a copy of the order of the Supreme Judicial Court be served on Attorney FitzGerald. It ordered Attorney FitzGerald and the ADO to inform the court if they contended that the imposition of identical or substantially similar discipline was unwarranted. Attorney FitzGerald filed a response in which he asked the court to stay the entire four-month suspension during the one-year period of the Massachusetts stay. The ADO notified the court that, in its view, the sanction of a four-month suspension, with two months stayed for a period of one year, subject to the same conditions imposed by the Supreme Judicial Court, was warranted.

Rule 37(12)(d) provides for the imposition of reciprocal discipline by this court unless the respondent attorney or the ADO demonstrates, or the court finds, based upon the face of the record from which the discipline is predicated, that: (1) the procedure followed by the jurisdiction imposing discipline was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (2) the imposition of the same or substantially similar discipline by the court would result in grave injustice; or (3) the misconduct established warrants substantially different discipline in New Hampshire.

Having reviewed the order of the Supreme Judicial Court, the court concludes that none of these factors are present. It appears from the order that Attorney FitzGerald participated fully in the Supreme Judicial Court proceeding. Considering the nature and extent of Attorney FitzGerald's misconduct, the court does not find that the imposition of the same discipline would result in

grave injustice or that his misconduct would warrant substantially different discipline in New Hampshire. Accordingly, the court concludes that a reciprocal suspension of four months, with two months stayed for one year on compliance with the conditions imposed by the Supreme Judicial Court, should be imposed.

Therefore, the court suspends Attorney FitzGerald for a period of four month, with two months of the suspension conditionally stayed for a period of one year on the condition that Attorney FitzGerald comply with the conditions imposed by the Supreme Judicial Court. Two months of the suspension shall take effect on June 1, 2019, unless a motion for reconsideration is filed.

Attorney FitzGerald shall provide the ADO with the results of the evaluation of his law practice by LOMAP, and with a copy of the mentoring agreement required by the Supreme Judicial Court's order. Attorney FitzGerald shall also advise the ADO whether he has taken a continuing legal education class related to appellate practice.

Attorney FitzGerald is hereby assessed all expenses incurred by the Attorney Discipline Office and Professional Conduct Committee in the investigation and prosecution of this matter. See Rule 37(19).

Lynn, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

DATE: May 20, 2019

ATTEST:

  
**Eileen Fox, Clerk**

Distribution:  
Mark P. Cornell, Esquire  
Desmond P. FitzGerald, Esquire  
File

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SUPREME COURT

ORDER

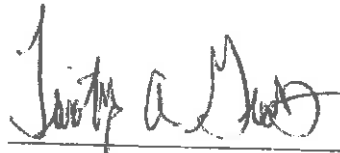
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On January 23, 2020, the Professional Conduct Committee (PCC) filed correspondence stating that it does not object to Attorney Desmond P. FitzGerald's motion for reinstatement. The PCC subsequently provided this court with a copy of the motion for reinstatement that Attorney FitzGerald had filed with the PCC. See Rule 37(14). Upon review, the motion for reinstatement is granted. Accordingly, Attorney FitzGerald is reinstated to the practice of law in New Hampshire, effective immediately.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

DATE: February 12, 2020

ATTEST:



**Timothy A. Gudas, Clerk**

Distribution:  
Professional Conduct Committee  
Mark P. Cornell, Esquire  
Desmond P. FitzGerald, Esquire  
File