

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

### ORDER

#### **LD-2019-0006, In the Matter of John E. Mahoney, Esquire**

On May 16, 2019, the Attorney Discipline Office (ADO) filed a certified copy of an order of the Massachusetts Supreme Judicial Court, suspending Attorney John E. Mahoney from the practice of law for a period of three months but staying execution of the suspension for a period of one year subject to probationary conditions.

The Massachusetts disciplinary matter arose out of three matters. After reviewing the record of the Board of Bar Overseers, the Supreme Judicial Court found that Attorney Mahoney violated the following Rules of Professional Conduct:

1. Rule of Professional Conduct 1.8(c) prohibits a lawyer from preparing an instrument for a client that gives the lawyer a substantial gift, unless the lawyer is related to the client. The court found that Attorney Mahoney violated this rule by preparing two trust instruments under which he received substantial bequests from a person to whom he was not related.
2. Rule of Professional Conduct 1.4(a) requires a lawyer to keep a client reasonably informed of the status of a matter and to promptly comply with reasonable requests for information. Rule 1.15(d)(1) requires a lawyer to provide a full written account upon final distribution of trust property or upon request by a client or third person on whose behalf the lawyer holds trust property. The court found that Attorney Mahoney violated these rules by failing to deliver accounts for three trusts for which he served as trustee and by failing to render an annual accounting to beneficiaries. It also found that Attorney Mahoney violated this rule by failing to maintain reasonable communications with a client concerning the client's trust funds.
3. Rule of Professional Conduct 1.15(f)(1) establishes record-keeping requirements for lawyers who hold trust property in connection with a representation. The court found that Attorney Mahoney violated subparagraph B of the rule by failing to maintain check registers for each trust account; that he violated subparagraph C of the rule by failing to maintain individual client ledgers and by disbursing funds from his trust account on a client's behalf without funds to cover the disbursements.

thereby creating a negative balance in that client's funds; that he violated subparagraph D of the rule by failing to maintain a ledger of bank fees and expenses; and that he violated subparagraph E of the rule by failing to perform three-way reconciliations.

4. With limited exceptions, Rule 1.15(b)(2) prohibits a lawyer from depositing or retaining personal funds in a trust account. The court found that Attorney Mahoney violated this rule by retaining earned fees in his trust account.
5. Rule of Professional Conduct 1.15(e)(4), prohibits certain types of transactions involving a trust account. The court found that Attorney Mahoney violated this rule by making cash withdrawals from his trust account.

The Supreme Judicial Court imposed a three-month suspension, but stayed execution of the suspension for one year, subject to Attorney Mahoney's compliance with probationary conditions.

After receiving notice of the action of the Supreme Judicial Court, this court ordered that a copy of the Supreme Judicial Court order be served on Attorney Mahoney in accordance with Supreme Court Rule 37(12)(b). It ordered Attorney Mahoney and the ADO to inform the court if they contended that the imposition of identical or substantially similar discipline was unwarranted. Attorney Mahoney did not respond to the order. The ADO notified the court that, in its view, a three-month suspension, stayed for a period of one year subject to compliance with probationary conditions, would constitute substantially similar discipline.

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 Mahoney participated fully in the Supreme Judicial Court proceeding. Considering the nature and extent of Attorney Mahoney'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 three months, stayed for a period of one year, on the condition

that he comply with the probationary conditions imposed by the Supreme Judicial Court, should be imposed.

Therefore, the court suspends Attorney Mahoney for a period of three month, with execution of the suspension stayed for a period of one year on the condition that Attorney Mahoney comply with the conditions imposed by the Supreme Judicial Court.

Attorney Mahoney 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: August 19, 2019

ATTEST:

  
**Eileen Fox, Clerk**

Distribution:

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File