

Commonwealth of Massachusetts

Suffolk, ss.

Supreme Judicial Court  
For Suffolk County  
Docket No. BD-2024-133

IN RE: FRANCIS M. DORAN

Memorandum of Decision

This matter is before me on the information and record of proceedings filed by the Board of Bar Overseers. For the reasons set forth below, I conclude that the respondent, Francis M. Doran, shall be suspended from the practice of law for three months, with the suspension stayed for one year on the condition that he submit compliant IOLTA records to bar counsel on a quarterly basis.

1. Procedural background. On June 29, 2022, bar counsel filed a two-count petition for discipline against the respondent arising from his representation of a client in a civil matter. On September 28, 2015, the respondent accepted a \$10,000 retainer by credit card but failed to deposit it into a trust account as required. Count One alleged that the respondent failed to: (1) deposit unearned funds into a trust account; (2) provide the client an itemized bill and notice before withdrawing funds; and (3) avoid commingling and misuse of

client funds. Count Two alleged multiple record-keeping violations, including maintaining \$6,000 of unidentified funds in his IOLTA account, ostensibly as a buffer against overdrafts.

Following a hearing in April 2023, the hearing committee concluded that the respondent had violated Mass. R. Prof. C. 1.15(b)(1) and (3) by depositing unearned funds into his operating account and 1.15(d)(1) by failing to provide requisite notice and billing documentation. However, the committee did not find a violation of Mass. R. Prof. C. 8.4(c) or (h), crediting the respondent's testimony that his conduct was an unintentional mistake and not motivated by personal financial distress.

The committee further concluded that although the client was not deprived of funds, the respondent misused the retainer until it was fully earned. On Count Two, the committee found that the respondent had violated record-keeping requirements but that the \$6,000 in his IOLTA account had not been shown to be personal funds.

A majority of the hearing committee recommended a public reprimand; a dissenting member recommended a three-month suspension stayed for one year, conditioned on quarterly IOLTA reporting. Both parties appealed.

On November 12, 2024, the Board adopted all but one of the committee's findings and conclusions. It rejected the

committee's determination that the misuse of funds was negligent, citing contradictory record evidence, and concluded that the respondent violated Mass. R. Prof. C. 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. The Board recommended a three-month suspension, stayed on the condition of quarterly reporting. Two members dissented in favor of a public reprimand; one dissented in favor of a six-month suspension with the same conditions.

2. Factual background. The following facts were found by the hearing committee and adopted by the board. The respondent, admitted to practice in Massachusetts in 1985, primarily handles criminal defense and personal injury matters. In September 2015, he was retained to defend a client in a civil case, accepting a \$10,000 retainer to be billed at \$350 per hour. Contrary to Rule 1.15, the respondent deposited the funds into his operating account. He explained that he had never previously handled an unearned retainer and was concerned about credit card chargebacks affecting his IOLTA account.

As of January 4, 2016, the respondent had earned only \$3,587.50 of the retainer but had spent all or most of it. He ultimately earned the full retainer by March 2017. The client later retained him in connection with a related federal criminal investigation, during which she filed a complaint alleging ineffective assistance regarding her Fifth Amendment rights.

In the ensuing bar counsel investigation, the respondent initially failed to provide complete financial documentation. It was only after a subpoena to the respondent's bank that bar counsel discovered the retainer had never been deposited into a trust account. The respondent later acknowledged this in a letter dated September 27, 2021.

The respondent also admitted to violating several IOLTA-related rules, including a failure to maintain individual client ledgers and separate ledgers for bank fees, from 2015 through 2020. As of the hearing, he remained unclear about these requirements.

3. Discussion. a. Board's reversal of the hearing committee's finding. While the Board must respect the hearing committee's role as the sole arbiter of credibility, it may modify findings that are inconsistent with the record or unsupported by the evidence. In re Murray, 455 Mass. 872, 880 (2010); Matter of Carrigan, 414 Mass. 368, 371-72 (1993).

Here, although the committee credited the respondent's testimony that he was unaware of the specific trust account requirements, the evidence showed that he knowingly withdrew unearned funds for personal or business use. The defense of ignorance does not excuse intentional misuse. Matter of Discipline of an Att'y, 392 Mass. 827, 835 (1984).

Substantial evidence -- including the timing and extent of the withdrawals relative to earned fees -- supports the Board's conclusion that the misuse was intentional. This finding is not inconsistent with the committee's credibility assessments. Thus, the Board did not err in concluding that the respondent violated Rule 8.4(c).

b. Appropriate sanction. The intentional misuse of client funds generally warrants a term suspension. Matter of Schoepfer, 426 Mass. 183, 187 (1997) quoting Matter of Discipline of an Att'y, 392 Mass. 827, 836 (1984). Although misuse of retainer funds may warrant a less severe sanction -- given that such funds are generally expected to become earned -- intentional misuse, particularly when coupled with record-keeping violations, calls for a sanction more serious than the private admonition proposed by the respondent. Matter of Mahlowitz, 37 Mass. Att'y Disc. R. 402, 410 (2021).

Although review of the recommended sanction is de novo, substantial deference is due. In re Murray, 455 Mass. 872, 882 (2010). Here, the sanction imposed -- a stayed suspension -- appropriately reflects the nature of the misconduct, which includes negligent deposit, intentional misuse without deprivation, and extensive record-keeping lapses. Comparable cases support this outcome. Matter of Mauser, 31 Mass. Att'y Disc. R. 423 (2015) (three-month stayed suspension for negligent

misuse, commingling, and other violations)<sup>1</sup>; contrast Matter of Carmel Montes, 35 Mass. Att'y Disc. R. 35 (2019) (six-month suspension for intentional misuse with prior discipline).

The hearing committee's finding that this was the respondent's first experience handling a retainer and that no aggravating factors applied, supports a lesser sanction than in Mahlowitz.

4. Conclusion. Considering the totality of the circumstances, including the intentional misuse of client funds and multiple rule violations, I conclude that a three-month suspension, stayed for one year on the condition of quarterly IOLTA reporting, is appropriate.<sup>2</sup>

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<sup>1</sup> Although not directly on point, Matter of Mauser, 31 Mass. Att'y Discipline Rep. 423 (2015) provides instructive guidance. In Mauser, the respondent was suspended for three months, with the suspension stayed for one year, based on negligent misuse of client funds. The case also involved additional misconduct -- commingling funds and failing to provide a written fee agreement -- which was aggravated by prior discipline but mitigated by the respondent's full refund to the client. By contrast, the misconduct here is intentional, which warrants a more severe sanction. However, the funds at issue were held as a retainer, which may mitigate the severity of the sanction. While disciplinary outcomes turn on the specific facts of each case and the arithmetic of misconduct does yield a strict offsetting formula, I find that the sanction imposed here should be roughly comparable to that in Mauser.

<sup>2</sup> The Respondent's reliance on In the Matter of Discipline of Two Attorneys, SJC-13648 (May 7, 2025) as instructive on the appropriate sanction is unpersuasive. That case essentially involved deficient recordkeeping that resulted in the failure to disburse certain funds accumulated in the attorneys' IOLTA accounts. Contrary to the Respondent mischaracterization, the

So ordered.

By the Court,

/Serge Georges, Jr./

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Associate Justice

Dated: May 12, 2025

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case had no allegation of "unauthorized use of client funds,"  
let alone proof of the intentional misuse of client funds as  
determined here.