COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. BD-2023-0038

IN RE: EDWARD A. SARGENT

MEMORANDUM OF DECISION

This matter came before me on an Information filed by the Bar Counsel concerning the character and conduct of attorney Edward A. Sargent. The Bar Counsel filed a three-count petition for discipline, alleging that Sargent had violated the Rules of Professional Conduct by failing to maintain compliant IOLTA records and withdrawing cash from his IOLTA account (count 1); by failing to inform two clients that he would be splitting fees with another lawyer (count 2); and by intentionally misusing client or third-party funds (count 3). Sargent, who was at all times represented by counsel, filed an answer. In April 2022, a remote hearing took place before a committee of the Board of Bar Overseers (board), at which witnesses testified and several exhibits were entered into evidence. On September 23, 2022, the hearing committee issued a report making numerous findings of fact and recommending that Sargent be indefinitely suspended from the practice of law.

Sargent appealed to the full board. After a hearing, the board issued a memorandum of decision adopting the hearing

committee's findings of fact and conclusions of law and recommending that he be disbarred.[1] See Matter of Schoepfer, 426 Mass. 183, 187 (1997).

Before me now is the Information and record of proceedings filed by the Bar Counsel. I have thoroughly reviewed the record and heard oral argument. For the reasons explained below, I am compelled to agree that Sargent must be disbarred.

Remote proceedings. Before turning to the facts of this case, I briefly consider a procedural objection raised by Sargent. Prior to the hearing before the committee, Sargent moved that the hearing take place in person rather than remotely. That motion was denied, and the hearing was held remotely pursuant to the board's policies during the COVID-19 pandemic.[2] On appeal to the board, Sargent argued that he should have been granted an in-person hearing, and he requested a new hearing before a different committee. The board properly rejected this request. Even in criminal cases, virtual proceedings are not inherently unfair or unconstitutional, see Vazquez Diaz v. Commonwealth, 487 Mass. 336, 344 (2021), and bar discipline proceedings do not require the full panoply of rights

[1] Two members dissented, recommending instead that Sargent be indefinitely suspended, as the hearing committee recommended.

[2] According to the board, pursuant to an order issued on July 14, 2020, all board hearings proceeded remotely from that date until January 1, 2023.

provided to criminal defendants. Moreover, Sargent has not shown that he was unfairly prejudiced by the remote hearing. It appears that the hearing committee was fully able to evaluate the credibility of the witnesses at the hearing, and I am not persuaded that any "technical glitches" that occurred during the hearing materially interfered with the proceedings. In sum, Sargent received a fair hearing and ample opportunity to present his case, notwithstanding the fact that the hearing was held remotely.

Facts. "Although not binding on this court, the findings and recommendations of the board are entitled to great weight." Matter of Brauer, 452 Mass. 56, 65-66 (2008), quoting Matter of Fordham, 423 Mass. 481, 487 (1996), cert. denied, 519 U.S. 1149 (1997). "[S]ubsidiary facts found by the Board and contained in its report filed with the information shall be upheld if supported by substantial evidence, upon consideration of the record." S.J.C. Rule 4.01, § 8 (4). "While [I] review the entire record and consider whatever detracts from the weight of the board's conclusion, as long as there is substantial evidence, [I] do not disturb the board's finding, even if [I] would have come to a different conclusion if considering the matter de novo." Matter of Brauer, 452 Mass. at 66, quoting Matter of Segal, 430 Mass. 359, 364 (1999). Moreover, the hearing committee is the "sole judge of the credibility of the testimony

presented at the hearing." Matter of Saab, 406 Mass. 315, 328 (1989). The hearing committee's "credibility determinations will not be rejected unless it can be said with certainty that [a] finding was wholly inconsistent with another implicit finding." Matter of Murray, 455 Mass. 872, 880 (2010). The board adopted the hearing committee's findings of fact, and I find that the findings are amply supported by substantial evidence. As summarized in the board's memorandum, the facts are as follows.

Misappropriation of PIP funds. The most serious violations arose from Sargent's representation of a child who was struck by a motor vehicle. On December 10, 2018, the child, who was six years old at the time, was crossing the street to her grandmother's house when the vehicle struck her. The child was flown by a helicopter operated by New England Life Flight (NELF) from North Shore Medical Center to Massachusetts General Hospital (MGH) in Boston. The child's injuries were substantial, and she incurred medical bills in the total amount of approximately $91,000.

The child's parents sought legal representation for her. After being turned away by at least two attorneys, the child's mother retained Sargent. They entered into an engagement agreement on or about December 18, 2018, for Sargent to represent the child.

The child was insured under MassHealth, the Commonwealth's public health insurer. By letter dated December 31, 2018, MassHealth notified Sargent of its statutory lien on any third-party settlement obtained on behalf of the child, its insured.

By correspondent on January 2, 2019, and January 7, 2019, Sargent notified the driver's automobile insurer, USAA, that he represented the child. He made application for payment of personal injury protection (PIP) benefits,[3] describing the accident as "pedestrian struck by motor vehicle." He represented that the amount of medical bills incurred to date, less than one month after the accident, already exceeded $30,000. On January 9, 2019, NELF sent the respondent certified medical bills in the amount of $15,425. On January 18, 2019, MGH notified the respondent that its bills to date were $55,711.44. By check dated January 16, 2019, and made payable to Sargent, USAA mailed Sargent a PIP payment in the amount of $8,000. Sargent deposited the check into his IOLTA account on January 24, 2019. The hearing committee specifically found that Sargent notified neither NELF nor MGH that he had received the $8,000 PIP

[3] Under Massachusetts law, an auto insurer for a vehicle involved in an accident must make PIP payments up to a maximum of $8,000 without regard to fault. These payments are to cover "all reasonable expenses incurred within two years from the date of the accident for necessary medical, surgical, x-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services." G. L. c. 90, § 34A.

payment. However, he told the child's mother about it and represented to her that he would "hold onto" the funds until all medical expenses were paid.

MassHealth negotiated the child's medical bill with MGH, paying MGH $15,202.33, with MGH writing off the balance of $40,509.11. Similarly, NELF received a payment of $3,775 from MassHealth and wrote off the remaining $11,650 of its bill. USAA[4] notified NELF that it had paid the child or her representative the $8,000 in PIP benefits. In 2020, a tort case filed by Sargent on the child's behalf settled for $18,500. MassHealth claimed a lien of over $22,000 on the settlement. After negotiations with Sargent, MassHealth accepted a final payment of $9,900 from the settlement. Sargent received a legal fee of $6,166.66 based on his one-third contingent agreement with the child.

Contrary to his statement to the child's mother, Sargent did not "hold onto" the PIP funds. Instead, in seventeen separate cash transactions beginning the day after the deposit, Sargent withdrew the entire $8,000 from his IOLTA account, using the money for his personal benefit. The hearing committee found that the respondent knew that the funds were to be paid to the

[4] The hearing committee so found, although the board's decision states that it was MassHealth that notified NELF of the payment of PIP benefits. I regard this as a scrivener's error on the board's part.

providers. Thus, he intentionally misused funds entrusted to him.

On December 4, 2019, the day before he was required to produce bank records to the Office of Bar Counsel pursuant to a subpoena, Sargent replaced the $8,000 he had taken out of his IOLTA account. On December 9, 2019, he issued a check to the child's mother for $8,000.

The hearing committee concluded that by intentionally misusing the PIP funds, Sargent violated Mass. R. Prof. C. 1.15 (b) and (c) ("A lawyer shall hold trust property separate from the lawyer's own property"; "Upon receiving trust funds or other trust property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person") and Mass. R. Prof. C. 8.4 (c) and (h) ("It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation . . . [or] engage in any other conduct that adversely reflects on his or her fitness to practice law"). I agree with these conclusions.

Recordkeeping violations. Separate from the misuse of PIP funds discussed above, Sargent committed various recordkeeping violations, to which he admitted. Citizens Bank reported at least seven transactions returned for insufficient funds in Sargent's IOLTA account, prompting an investigation by Bar

Counsel. Sargent admitted to not maintaining a compliant check register, individual client ledgers, and a ledger for bank fees and charges. The failures continued from approximately June 1, 2018, through December 15, 2019. He also failed to perform any three-way reconciliations for the IOLTA account during the same time. He admitted to paying personal and business expenses directly from the account, including at least twenty-six cash withdrawals. He entered into an agreement with a lender in which the lender loaned him $5,500 against $8,140 in future receipts. The transactions were made into and out of his IOLTA account and concerned Sargent's personal funds, not client or trust funds, meaning that he commingled.

At least as to one client, the IOLTA balance was negative for a period, meaning that there were insufficient funds to pay that client what she was owed. While the respondent denied that he knew at the time that any individual client matter was carrying a negative balance, the hearing committee found his testimony not credible.

In addition to those recordkeeping violations, Sargent twice paid another lawyer a referral fee without informing the clients or obtaining the clients' written consent. The referral fees were paid out of Sargent's share of personal injury settlements. The clients were not harmed by the payments because they were made from Sargent's legal fee, not the total amount.

The hearing committee concluded, and Sargent did not dispute, that he violated Mass. R. Prof. C. 1.15 (f) (1) (B), (C), (D), and (E) by reason of his failure to comply with recordkeeping requirements for his IOLTA account. He also violated Mass. R. Prof. C. 1.5 (b) (2) and 1.15 (f) (1) (C) by commingling personal and trust funds and by allowing the IOLTA account to have a negative balance. Sargent's admitted cash withdrawals violated Mass. R. Prof. C. 1.15 (e) (4). Paying the referral fees without first obtaining the clients' informed consent violated Mass. R. Prof. C. 1.5 (e). Again, I agree with all these conclusions of law.

Mitigation and aggravation. Sargent offered a number of facts in mitigation, all of which were properly rejected by the hearing committee and the board. He argued that he was undergoing emotional and financial distress due to his need to care for his elderly parents. As a result of that time commitment, he gave up appointed criminal defense work and focused on personal injury matters. The court has sometimes considered an attorney's emotional distress to be mitigating, but only in very grave circumstances. See Matter of Balliro, 453 Mass. 75, 87-89 (2009) ("unique and compelling mitigating circumstances" where attorney was in "dysfunctional psychological state, brought about by . . . domestic abuse"); Matter of Angwafo, 453 Mass. 28, 38 (2009) ("very powerful"

mitigating circumstances where attorney suffered extensive physical and emotional abuse). While Sargent does appear to have been temporarily in difficult and stressful circumstances in 2019, I agree with the board that those circumstances were not so dire as to mitigate his misconduct. I also agree that Sargent's remorse, sincere though it may be, is to be expected and is not a factor in mitigation. Finally, he did not make restitution of the PIP funds that he withdrew from his IOLTA account. After this investigation began, he replaced the $8,000 and then paid that amount to the child's mother. PIP funds, however, are to be paid to the medical providers or health insurers, not to the injured party herself (or her family). This does not mitigate his misconduct.

In contrast, there were several factors in aggravation. Sargent was previously admonished for certain trust account violations; he had been practicing law for at least fifteen years when he engaged in the misconduct at issue here; and he violated multiple rules of professional conduct. All these factors are properly considered in aggravation.

Sanction. In considering the appropriate sanction, my review is "de novo, but tempered with substantial deference to the board's recommendation." Matter of Jackman, 444 Mass. 1013, 1013 (2005). The court's "primary concern in bar discipline cases is the effect upon, and perception of, the public and the

bar, . . . and [I] must therefore consider, in reviewing the board's recommended sanction, what measure of discipline is necessary to protect the public and deter other attorneys from the same behavior." Matter of Laroche-St. Fleur, 490 Mass. 1020, 1023-1024 (2022), quoting Matter of Lupo, 447 Mass. 345, 356 (2006). I must also ensure that the sanction imposed is not "markedly disparate" from sanctions imposed in comparable cases. E.g., Matter of Gannett, 489 Mass. 1007, 1011 (2022). In consideration of Sargent's misconduct, I agree with the recommended sanction of disbarment.

Where an attorney intentionally uses client funds for his own purposes, with an intent to deprive the client of funds or with actual deprivation resulting, the presumptive sanction is disbarment or indefinite suspension. Matter of Schoepfer, 426 Mass. 183, 187 (1997), citing Matter of the Discipline of an Attorney, 392 Mass. 827, 836 (1984). The same presumption applies where an attorney misappropriates third-party funds that he or she received while practicing law. Matter of Hilson, 448 Mass. 603, 619 (2007) ("we see no reason to treat differently an attorney who misappropriates third-party funds from the attorney who misappropriates client funds when the misconduct occurs within the practice of law. It is the violation of the trust of the office, not from whom the money is taken, that is the gravamen of the ethical breach"). That is precisely what Sargent

did here: while representing the child, he received the PIP funds from USAA, and rather than holding those funds in trust or paying the child's medical providers, he withdrew them from his IOLTA account and used them for his own purposes, depriving them of funds to which they were entitled. He did so knowing that those funds did not belong to him; that is, he intentionally misappropriated the PIP funds. Moreover, after he replaced the funds in his IOLTA account, he still did not pay the medical providers, but gave the funds to the child's family, who, as Sargent has acknowledged, were not entitled to them.

I see no reason to depart from the presumptive sanction in this case. As discussed above, there are no mitigating factors in play here, and several aggravating ones. In sum, the Bar Counsel has proved that Sargent intentionally misused trust funds with actual deprivation resulting and that he otherwise violated multiple rules of professional conduct. Where, as here, there are no mitigating factors, our case law makes clear that disbarment is the appropriate sanction. A judgment of disbarment shall issue.

So ordered.

/s/ Serge Georges
Associate Justice

ENTERED: January 9, 2024