

IN RE: ALAN FRANCIS DODD

S.J.C. Order of Term Suspension entered by Justice Cordy on April 14, 2005, with an effective date of May 14, 2005;  
Amended Order (to include conditions on reinstatement and accounting probation) entered by Justice Cordy on May 11, 2005.<sup>1</sup>

MEMORANDUM OF DECISION

Alan F. Dodd, the respondent attorney, is before this court on an Information filed by the Board of Bar Overseers (board), which seeks his suspension from the practice of law for three years. The board recommends this sanction for Dodd's neglect and mismanagement of his IOLTA client funds account between 1996 and 1999, including his failure to keep adequate records and his intentional misuse of client funds to cover obligations to other clients. The matter came before me for a hearing on February 17, 2005.

I have carefully reviewed the respondent's and the board's memoranda, the record of proceedings before the hearing committee and the board, the documentation of a partial audit of the respondent's IOLTA account, and the respondent's medical records. I agree with the board that Dodd's admissions establish his intentional misuse of client funds and that such misuse resulted in actual deprivation, thereby warranting a period of suspension. I also agree with the board that Dodd's medical condition was a significant and contributing factor to Dodd's misconduct and was appropriately considered to be a mitigating circumstance. I conclude, however, that the board did not, and I must, credit the "temporary sanction" which has been in effect during the six-year pendency of this proceeding. Consequently, I order the respondent suspended from all forms of the practice of law, including his current practice as Town Counsel in Westborough, for one year.

1. Background. The following facts are not in dispute. Alan F. Dodd was admitted to the Massachusetts bar on December 11, 1974. Since 1980, Dodd has practiced both as a sole practitioner and as town counsel to the town of Westborough. In his private practice, Dodd often acted as the settlement agent for residential real estate sales and refinance transactions, representing sellers, buyers, and lenders. Beginning at some point during 1996, Dodd's conveyancing practice descended into financial disarray. Dodd failed to keep adequate records of his clients' funds and to reconcile the IOLTA account, which he used for receiving and disbursing client funds as a part of his conveyancing practice. From 1996 to 1999, the account developed a substantial deficit, and the checks Dodd wrote from the account frequently bounced. On seven occasions in 1997, Dodd delayed issuing mortgage and lien pay-off checks despite having deposited the necessary funds in the account.<sup>2</sup>

The deficit became impossible to sustain, as a sequence of conveyances beginning in 1998 reveals. On November 30, 1998, Dodd acted as a settlement agent for the lender at a closing for the purchase of a property on Thomas Newton Drive in Westborough. Although the funds necessary to complete the transaction had been deposited into his IOLTA account, Dodd's check to PNC Mortgage Corporation (PNC) to pay off the seller's mortgage, in the amount of \$262,648.06, bounced twice.

Subsequently, during March and April 1999, Dodd acted as a settlement agent for another lender in the refinancing of a Westborough residence owned by Preetinder Virk. The proceeds

of the refinancing were wired to Dodd's IOLTA account, and Virk gave Dodd a personal check to pay off the remainder of the prior mortgage.<sup>3</sup> On March 31, Dodd again sent a check on the IOLTA account to PNC in the amount of \$262,648.02 to pay off the seller's mortgage on the Thomas Newton Drive property. This check, like the previous one, was returned twice by Fleet Bank for insufficient funds. Thereafter, on April 16, Dodd sent two checks to PNC totaling \$262,648.06: a bank check purchased by Dodd from the funds in the IOLTA account (which would have included the proceeds of the Virk refinancing) and another check made on the IOLTA account. The latter check, in the amount of \$78,000, bounced.

Shortly thereafter, on April 21, 1999, Dodd represented Thomas and Kathleen Georgens at the sale of their property on Chapin Road in Upton. The Georgenses were absent at the closing, as they had moved to Kansas. They instructed Dodd to deposit the proceeds of the sale into their BankBoston account. At Dodd's request, the settlement agent provided him with the proceeds in two separate checks, made out to him: one check for \$80,000 and another for the balance in the amount of \$318,801.22. That day, Dodd proceeded to deposit the smaller check in his IOLTA account and the larger check in the Georgenses' account. The following day, Dodd made out a check to cash on the IOLTA account, in the amount of \$78,000, which he forwarded to PNC to pay the outstanding balance of the mortgage on the Thomas Newton Drive property.

Both the Georgenses and Virk later discovered that Dodd had not fully satisfied his obligations to them. When Virk confronted Dodd about his still-unpaid prior mortgage, Dodd represented to Virk that he had sent (or was sending) a pay-off check and provided Virk with copies of letters and checks, which Dodd had not sent.<sup>4</sup> Dodd subsequently made full restitution, paying off the outstanding Virk mortgage and repaying the Georgenses \$80,000. To raise these funds, Dodd refinanced his home, borrowed from a family member, and sold his interest in the office building where he maintained his private practice.

Following the sequence of transactions from November 1998 to April 1999, bar counsel filed a petition for temporary suspension with a single justice of this court on May 5, 1999. After a hearing, the single justice (Abrams, J.) issued an order, dated July 7, 1999, which required Dodd (1) to limit his practice to the representation of the Town of Westborough, (2) to cooperate with an accountant in an audit of his handling of client funds, (3) to comply with bar counsel's requests for information, (4) and to meet with his attorney on a regular basis to confirm his compliance with the order. In April 2000, Dodd underwent open-heart surgery to repair his heart and made a full recovery.

On October 7, 2002 (three and one-half years after its petition for temporary suspension), bar counsel filed with the board a petition for discipline against Dodd. The petition charged Dodd with misconduct arising from the mismanagement of his IOLTA account, his misuse of client funds, and his failure to cooperate with bar counsel's investigation. On November 7, 2002, Dodd filed his answer and, in response to bar counsel's motion for a more definite answer, an amended answer. In his filings, Dodd admitted the facts as described above but denied any intentional misconduct. Dodd claimed in mitigation that he had suffered from a life-threatening cardiac condition and congestive heart failure between 1996 and 1999 which made him incapable of managing his IOLTA account and his private practice properly.

The petition was referred to a hearing committee (committee), which held hearings on March 19 and June 11, 2003. Bar counsel called Dodd as the principal witness, and Dodd called witnesses to his medical and psychological condition between 1996 and 1999, including his co-workers from the Westborough town hall and his medical doctors. On June 11, 2004, the committee issued its report, which adopted and incorporated by reference Dodd's post-hearing proposed findings.

The report was signed by two members of the committee; the third member of the committee filed a dissent with his own findings of fact and conclusions of law. Based largely on Dodd's admissions, the majority report included findings that he had mismanaged his IOLTA account

and "failed to keep adequate records of the maintenance and disbursement of client funds, failed to reconcile the IOLTA account on a regular basis, issued checks on insufficient funds, issued checks late, and the like." It also, however, credited the testimony of Dodd's physicians and included a finding that Dodd experienced "diminished capacity, impaired judgment and impaired cognitive ability" as a result of his cardiac condition and related stress and depression. The majority report attributed Dodd's mismanagement of his IOLTA account to this illness and concluded that "[t]he evidence credited by this Panel supports the fact that Mr. Dodd's illness was of such severity and effect that he did not act with free and unimpaired will with respect to any of the acts complained of by the Board and never intentionally engaged in any wrong doing." While the majority report failed to make specific citation to the disciplinary rules that it found Dodd had violated, it nevertheless recommended a sanction consisting of the continued limitation on Dodd's practice for seven years, retroactive to the date of the single justice's order, and that thereafter Dodd be required to petition for reinstatement to resume private practice.

By contrast, the dissent found that Dodd violated specific Massachusetts disciplinary rules and that his violations were "egregious" and "intentional." In light of mitigating factors, however, including Dodd's medical condition at the time of the misconduct, Dodd's later recovery, the improbability of the conduct's recurrence, and his co-workers' recommendation and endorsement of his continued appointment as Westborough's town counsel, the dissent recommended a sanction of three months suspension from the practice of law, not retroactive to the date of the order of the single justice, to be followed by two additional years of restricted practice solely for the town of Westborough. The dissent recommended that Dodd should be eligible to petition for reinstatement to resume the general practice of law following the two years of restricted practice.

Bar counsel appealed the report of the hearing committee to the full board. The parties waived oral argument, and the board considered the case on the papers on November 8 and December 13, 2004. At the December 13 meeting, the board voted to file an information with this court pursuant to S.J.C. Rule 4:01, § 8 (4), as appearing in 425 Mass. 1309 (1997), recommending that Dodd be suspended from the practice of law for three years. In its memorandum, the board excoriated the hearing committee report as "fall[ing] short of even the barest compliance with the rules specifying the contents of a hearing committee report," noting that the report, even considering its incorporation of Dodd's filing, "contains no concise statement of the case, no evidentiary or procedural rulings, no citation to rules whatsoever, and no conclusions of law." Relying solely on Dodd's admissions in his pre-hearing answers, the "undisputed evidence in the record," and "inferences that properly flow from them," the board made its own findings of fact and conclusions of law as follows.

As to the first count of the petition for discipline against Dodd, which alleged the mismanagement of the IOLTA account and the delay of mortgage and lien pay-off checks, the board concluded:

"(1) That his failure to maintain adequate records of activity in the account violated Canon Nine, DR 9-102(B)(3), and, for conduct occurring after January 1, 1998, Mass. R. Prof. C. 1.15(a). [complete records of client funds accounts to be kept by lawyer and preserved for six years]

(2) That his conduct in delaying issuance of disbursement checks violated Canon Seven, DR 7-101(A)(1), (2), and (3), Canon Nine, DR 9-102(B)(4), and, for conduct occurring after January 1, 1998, Mass. R. Prof. C. 1.2(a) [lawyer's duty to seek lawful objectives of client], 1.3 [lawyer's duty to act diligently], and 1.15(b) [notice, delivery, and accounting to client of client funds].

(3) That his conduct in continuing to use the account for closings when it had a deficit, thereby knowingly misusing client funds to cover payments to or for the benefit of other clients, with temporary deprivation resulting, and in knowingly

issuing disbursement checks that were not covered by good funds, violated Canon One, DR 1-102(A)(4) and (6), Canon Seven, DR 7-101(A)(1), (2), and (3), Canon Nine, DR 9-102(A) and (B), and, for conduct occurring after January 1, 1998, Mass. R. Prof. C. 1.2(a), 1.3, 1.15(a) & (b), 8.4(c) [professional misconduct for lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation], and 8.4(h) [professional misconduct for lawyer to engage in conduct that adversely reflects on his fitness to practice law]." (Citations to Petition for Discipline and Respondent's Answers omitted.)

As to the second count of the petition for discipline against Dodd, which alleged violations specific to the sequence of transactions involving Dodd's attempts to pay off the PNC mortgage, the board concluded:

(1) That [Dodd's] conduct in continuing to use the account for closings when it had a deficit, thereby knowingly misusing client funds to cover payments to or for the benefit of other clients, with temporary deprivation resulting, and in knowingly issuing disbursement checks that were not covered by good funds, violated Canon One, DR 1-102(A)(4) and (6), Canon Seven, DR 7-101(A)(1), (2), and (3), Canon Nine, DR 9-102(A) and (B), and, for conduct occurring after January 1, 1998, Mass. R. Prof. C. 1.2(a), 1.3, 1.15(a) & (b), 8.4(c), and 8.4(h).

(2) That the respondent's conduct in delaying the issuance of disbursement checks violated Canon Seven, DR 7-101(A)(1), (2), and (3), Canon Nine, DR 9-102(B)(4), and, for conduct occurring after January 1, 1998, Mass. R. Prof. C. 1.2(a), 1.3, and 1.15(b).

(3) That the respondent's conduct in commingling the Virk funds with his own and in using Virk's funds to pay off an unrelated obligation, with deprivation resulting, violated Mass. R. Prof. C. 1.15(a), 1.15(b), 8.4(c), and 8.4(h).

(4) That the respondent's conduct in using the Virk closing proceeds to pay off the PNC mortgage, with intent to deprive and with deprivation resulting, violated Mass. R. Prof. C. 1.15(a), 1.15(b), 8.4(c), and 8.4(h)." (Citations to Petition for Discipline and Respondent's Answers omitted.)

The board dismissed the third count of the petition for discipline against Dodd, alleging his failure to cooperate with the inquiries of bar counsel, due to inadequacies in the record before it.

The board also noted factors in mitigation, finding that Dodd had "made a substantial showing that his cardiac illness and its emotional sequelae impaired his judgment and cognitive ability during the period in question." In recommending a sanction of Dodd's suspension from all practice of law for three years, the board indicated that this mitigation justified no more than a two-year departure from the presumptive sanction of indefinite suspension in cases of intentional misuse of client funds with actual deprivation resulting.

2. Discussion. Dodd does not dispute that his mismanagement of his IOLTA account and his related dealings with clients and third parties violated bar disciplinary rules. Nor does he dispute that his conduct resulted in actual, if temporary, deprivation for clients and third parties. In his memorandum before this court, Dodd lodges only one substantive objection to the board's findings of fact and conclusions of law, arguing that his misconduct was not intentional but was rather the result of his debilitating medical impairment. Although Dodd's intent or lack thereof with respect to the mismanagement of his IOLTA account affects neither the Board's conclusions nor his own admissions that his conduct violated disciplinary rules, the appropriate sanction depends on whether his misuse of client funds was intentional. *Matter of Schoepfer*, 426 Mass. 183, 188 (1997), quoting *Matter of the Discipline of an Attorney*, 392 Mass. 827, 836 (1984) ("The intentional use of clients' funds normally calls for 'a

term of suspension of appropriate length.' If, additionally, an attorney intended to deprive the client of funds, permanently or temporarily, or if the client was deprived of funds (no matter what the attorney intended), the standard discipline is disbarment or indefinite suspension.")

By rule, "[t]he Board shall review, and may revise, the findings of fact, conclusions of law and recommendation of the hearing committee . . . paying due respect to the role of the hearing committee . . . as the sole judge of the credibility of the testimony presented at the hearing." S.J.C. Rule 4:01, § 8(4). Dodd argues that the board's findings and recommendation improperly ignores the credibility determinations of the hearing committee and exalts form over substance in rejecting the committee's conclusions for its failure to follow the board's guidelines in preparing its report.

I agree that: notwithstanding the myriad shortcomings of the majority report of the hearing committee, there can be no doubt that the majority concluded that Dodd never engaged in any intentional wrongdoing; and the board took the extraordinary step of reversing this critical finding in its de novo review of the record on the papers. While this disagreement between the board and committee presents a challenge to the court's resolution of the case, especially given the direction in *Matter of Schoepfer*, supra at 837, that "a hearing committee's findings concerning the lawyer's intention in commingling clients' funds and whether the client was deprived of funds will be important," that challenge is not insurmountable. The court faced a similar disagreement in *Matter of Carrigan*, 414 Mass. 368 (1993). In that case, a hearing committee of the board had found that the respondent attorney, who had deposited funds collected on behalf of a client in his personal bank account, intended to repay the client all the funds to which it was entitled. *Id.* at 369-371. Given this finding, the hearing committee concluded that, although the client was actually deprived of funds temporarily, the attorney had not intentionally deprived the clients of funds. *Id.* at 371. Bar counsel appealed to a panel of the board, which accepted the hearing committee's finding that the attorney always intended to repay the client but concluded that, notwithstanding that intention, the record demonstrated that the attorney intended temporarily to deprive the client of its funds. *Id.* at 372. The board adopted this conclusion. *Id.*

The court found no errors in the findings adopted by the board:

"[T]he appeal panels' finding regarding the respondent's intent is not at all contrary to the respondent's testimony and stipulation and therefore does not conflict with any of the hearing committee's findings based on credibility. When an attorney knowingly misappropriates client funds and knowingly continues to use these funds after they are due and payable, it is reasonable to conclude that the attorney has intentionally deprived the client of these funds, at least temporarily. It was clearly within the authority of the appeal panel to draw reasonable inferences from the facts and to recommend that the board clarify the findings of the hearing committee to make them consistent with the evidence presented."

*Id.* at 373. In this case, as in *Matter of Carrigan*, the board had the authority to review the record and 'to draw reasonable inferences' from the facts about Dodd's intent. Moreover, the board may depart from the committee's findings, so long as those findings do not depend directly on the credibility determinations. See *Matter of Provanzano*, 5 Mass. Att'y Disc. R. 300, 304 (1987) ("The findings [of the hearing committee] resulted essentially from determinations of credibility. . . . Its findings will not be disturbed absent some clear error").

After reviewing the transcript of proceedings before the hearing committee, the hearing committee report, and the memorandum accompanying the board's vote and recommendation of discipline, I agree with the board that the committee's finding that Dodd never engaged in intentional wrongdoing has no apparent basis in its credibility determinations. Although the committee credited the testimony of Dodd's doctors and co-workers, their testimony regarding Dodd's condition during the relevant period does not negate Dodd's admissions that he

mismanaged his IOLTA account. Although, as the board acknowledges, "the bulk of [Dodd's] misconduct reduces to his failure to maintain adequate records of his IOLTA account, which resulted in the negligent misappropriation of client funds with actual deprivation resulting," I do not agree with Dodd that the hearing committee was correct to find that all of his conduct during the relevant period was unintentional.

To the contrary, there is substantial evidence in the record, particularly with respect to Dodd's admissions as to the sequence of transactions involving the payoff of the PNC mortgage during 1998 and 1999, to support the board's finding that Dodd acted intentionally in commingling client funds and in temporarily depriving some clients of funds to which they were entitled. As admitted in his own testimony and demonstrated by the bar counsel's correspondence with Dodd, Dodd had actual knowledge of the problems with the IOLTA account throughout the relevant time period. Whatever Dodd's intentions to remedy the deficit in his IOLTA account and notwithstanding the eventual restitution to those clients deprived of funds, Dodd continued his conveyancing practice for several years despite the deficit, through what could only have been a deliberate course of conduct, fulfilling payment obligations to some clients with the proceeds of unrelated transactions. Moreover, Dodd's conduct resulted in the actual temporary deprivation of his clients and third parties. Such conduct was intentional and violated the Rules of Professional Conduct and, with respect to conduct prior to January 1, 1998, the Canons of Ethics and Disciplinary Rules, as set out by the board in its memorandum.

I turn next to the appropriate level of discipline. Dodd argues the board's recommendation of a three-year suspension gives too little credence to mitigating factors, including Dodd's payment of full restitution to all of his clients, his severe medical condition during the misconduct, and the interest of the town of Westborough in continuing to retain him as town counsel. In addition, Dodd suggests that no further discipline is required, in light of his nearly six-year suspension from the private practice of law under the single justice's order and the public embarrassment related to the extensive publicity surrounding that suspension.

The discipline recommendation of the board is entitled to "substantial deference." See, e.g., *Matter of Kersey*, 432 Mass. 1020, 1020 (2000); *Matter of Doyle*, 429 Mass. 1013, 1013 (1999); *Matter of Tobin*, 417 Mass. 81, 88 (1994). "Although the effect upon the respondent lawyer in any discipline case is an important consideration, the primary factor is the effect upon, and perception of, the public and the bar." *Matter of Alter*, 389 Mass. 153, 157 (1983), citing *Matter of Keenan*, 314 Mass. 544, 547 (1943). I am also mindful of the principle that "[i]n every bar discipline case, one of the principal aims of the court is to ensure that the disposition should not be markedly disparate from the dispositions imposed on attorneys in similar cases." *Matter of the Discipline of an Attorney*, supra at 834. See *Matter of Alter*, supra at 156. This court considers the intentional misuse of client funds an extremely serious violation of the disciplinary rules, as articulated in *Matter of Schoepfer*, supra at 188, which reaffirmed that the presumptive sanction for the intentional misuse of client funds involving actual deprivation is indefinite suspension or disbarment:

"The imposition of an indefinite suspension or disbarment is hardly unfair if a lawyer has intentionally mingled clients' funds with his own, has intentionally used them for his own purposes, and has either intended to deprive the client of the funds, at least temporarily, or caused a deprivation. Sanctions in these cases must provide a strong deterrent to lawyers engaging in such practices, and a clear showing to the public that their interests as clients are matters of major concern and will be protected."

In this regard, both in his individual decisions to misuse client funds to satisfy obligations to other clients and in his overall decision to continue an active conveyancing practice without help, despite his declining medical condition, Dodd's conduct was egregious. Where, as here, the attorney has made complete restitution, indefinite suspension is usually the preferred sanction. *Matter of Bryan*, 411 Mass. 288, 292 (1992).

I agree with the board and Dodd that this case involves special mitigating circumstances that warrant a departure from the usual sanction. Dodd's debilitating and worsening medical condition during the relevant period was a significant contributing cause of his misconduct. See *Matter of Schoepfer*, supra at 188 ("If a disability caused a lawyer's conduct, the discipline should be moderated"). I find that Dodd has presented "clear and convincing reasons" for departing from the standard punishment. *Id.* at 188.

Although the board considered Dodd's medical problems a mitigating factor (in essence reducing an indefinite suspension to one of three years), it neglected to consider the "totality of circumstances" in making its ultimate disciplinary recommendation. *Matter of Saab*, 406 Mass. 315, 328 (1989), quoting *Matter of McInerney*, 389 Mass. 528, 531 (1983). See also *Matter of Johnson*, 20 Mass. Att'y Disc. R. \_\_ (2004). In particular, the board's memorandum does not address the sanction that has been in place, by the order of the single justice, for six years, and which has restricted Dodd's practice of law to his representation of the town of Westborough.<sup>5</sup> In the more typical case where an attorney has been temporarily suspended pending the completion of disciplinary proceedings, any suspension thereafter imposed is, as a matter of course, retroactive to the date of the temporary suspension. In this manner, the attorney is credited for that portion of the sanction already served. Here, no such mechanism is available for accomplishing a result that equitably credits the weight of the temporary sanction (albeit a lesser sanction than full suspension) that Dodd has borne for so many years, against the ultimate sanction of suspension for a term of years. While the board has not taken this circumstance into account, I conclude, in fairness, that I must. In addition, Dodd's career is otherwise unblemished by charges of professional misconduct, and it is apparent from the testimony of his co-workers before the hearing committee that Dodd has been regarded, both before the misconduct in this case and since his recovery, as a man of integrity with high standards of professionalism.<sup>6</sup>

In combination, these circumstances counsel a disciplinary sanction less severe than the presumptive sanction of indefinite suspension or the board's recommendation of a three-year suspension.

Although I find that three years is too lengthy a suspension given the many years of Dodd's restricted practice under the single justice's order, I reject Dodd's request for no additional sanction. Despite the mitigating circumstances, I agree with the board that a term of full suspension from the practice of law, including Dodd's public practice in Westborough, is warranted by Dodd's intentional misuse of client funds between 1996 and 1999. See *Matter of Johnson*, supra (30 month suspension for intentional misuse of client funds where respondent experienced "snowballing financial losses and mounting emotional distress" and respondent's misconduct was "the anomalous result of unfortunate and turbulent circumstances, outside of his control"); *Matter of Guidry*, 15 Mass. Att'y Disc. R. 255 (1999) (30 month suspension for intentional misuse of client funds where respondent experienced "extreme financial and emotional stress arising from grave and acute family problems"). Setting the gravity of Dodd's violations against the mitigating factors and the discipline previously imposed, a one-year suspension serves the public interest of providing an unambiguous sanction for Dodd's misconduct. *Matter of Dawkins*, 412 Mass. 90, 97 (1992), quoting *Matter of Driscoll*, 695, 705 (1991) (Greaney, J., dissenting) ("[I]mposing any sanction less severe . . . would 'undermine[] the clear standards of [*Matter of the Discipline of an Attorney*, supra], and, in the process . . . diminish[] the court's credibility in an area where the public interest requires steadfast protection of clients' rights" ).

3. Conclusion. In these circumstances, where Dodd has practiced law for nearly six years under the considerable restrictions the single justice's order and has demonstrated that medical impairments (now resolved) contributed substantially to his misconduct, a full suspension from the practice of law of one year is an appropriate sanction.

Robert J. Cordy

Associate Justice

Entered: April 14, 2005

FOOTNOTES:

<sup>1</sup> The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

<sup>2</sup> In late 1996, Fleet Bank notified the office of bar counsel regarding overdrafts on Dodd's IOLTA account. Over the next three years, bar counsel engaged in a mostly fruitless correspondence with Dodd, seeking information regarding the continuing irregularities in Dodd's IOLTA account.

<sup>3</sup> Dodd deposited the personal check into a business operating account in his name, and the check covered the payment of some other (unspecified) obligation unrelated to the Virk refinancing.

<sup>4</sup> Although Dodd does not dispute that he made this representation to Virk, he denies that he made any "intentional" misrepresentation to Virk.

<sup>5</sup> In a case without such a protracted "temporary" sanction, the board's recommendation would likely be appropriate, given the sanctions in other cases involving the special mitigation of medical and emotional impairment. Matter of Johnson, 20 Mass. Att'y Disc. R. \_\_ (2004) (30 month suspension for intentional misuse with actual deprivation); Matter of Guidry, 15 Mass. Att'y Disc. R. 255 (1999) (same).

<sup>6</sup> As the court has made clear, the absence of disciplinary action against an attorney does not, alone, constitute a special mitigating circumstance sufficient to warrant departure from standard discipline. Matter of Alter, 389 Mass. 153, 156 157 (1983). Nonetheless, an attorney's disciplinary history is plainly relevant background, necessary to evaluate the attorney's misconduct in the totality of the circumstances.

Please direct all questions to [webmaster@massbbo.org](mailto:webmaster@massbbo.org).

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