IN RE: WILLIAM A. MURRAY, III

NO. BD-2008-077

S.J.C. Order of Disbarment entered by Justice Duffly on November 25, 2013.[1]

Page Down to View Memorandum of Decision

[1] The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2008-077

IN RE: William A. Murray, III

JUDGMENT OF DISBARMENT

This matter came before the Court, Duffly, J., on an Information and Record of Proceedings pursuant to S.J.C. Rule 4:01, § 8(4) and the Recommendation and Vote of the Board of Bar Overseers (Board) filed by the Board on December 19, 2012. After a hearing was held on February 28, 2013, attended by assistant bar counsel and the lawyer and in accordance with the Memorandum of Decision of this date;

It is ORDERED and ADJUDGED that:

William A. Murray, III is hereby disbarred from the practice of law in the Commonwealth effective immediately upon the entry of this Judgment, and the lawyer's name is forthwith stricken from the Roll of Attorneys.

By the Court, (Duffly, J.)

Maura S. Doyle, Clerk

A true Copy

Attest

11-26-13
Date

Entered: November 25, 2013

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2008-077

IN RE: WILLIAM A. MURRAY

MEMORANDUM OF DECISION

This matter came before me on an information and record of proceedings, together with a unanimous vote of the board of bar overseers (board) recommending that the respondent be disbarred from the practice of law. On January 25, 2011, bar counsel filed a two-count petition for discipline against the respondent, asserting that he had mishandled two estate matters in which he had been appointed the executor. The respondent filed an answer on May 23, 2011. Thereafter, his counsel withdrew and the respondent preceded pro se. A public hearing was conducted over three days in October, 2011. Six witnesses testified and sixty-nine exhibits were introduced in evidence. The respondent testified on his own behalf. On April 10, 2012, the hearing committee's report recommending disbarment was filed with the board. The respondent appealed, and bar counsel opposed the respondent's appeal. A hearing was conducted by the board in

September, 2012, and, in December, 2012. The board rejected the respondent's claims and voted to adopt the findings of fact, conclusions of law, and sanction recommended by the hearing committee. After the board's recommendation was filed in the county court, a hearing was held before me on February 28, 2013; the respondent appeared pro se.

Bar counsel asserted that, for two estates in which he had been appointed executor, the respondent failed to open a separate interest bearing account in the estates' names, failed to deposit estate funds into such separate accounts, failed timely to disburse estate proceeds to intended legatees, charged fees for services that were ten times higher than what the hearing committee determined was a reasonable fee, and, from one estate, intentionally converted estate funds to his own use. Bar counsel contends that this misconduct violated, inter alia, Mass. R. Prof. C. 8.4(c) (dishonesty, deceit, fraud, or misrepresentation); Mass. R. Prof. C. 1.15 ([a] safekeeping of property, [b] segregation of trust property, [c] prompt notice and delivery, [d] accounting, and [f] recordkeeping); and Mass. R. Prof. C. 1.5(a) (clearly excessive or illegal fees).

The respondent challenged the sufficiency of the evidence before the board and a variety of the board's evidentiary determinations and factual findings, as well as the severity of the sanction. He maintains that he did not convert any of the

funds, but that he charged a "fair fee" rather than submitting hourly bills based on time records. The respondent asserts that hourly billing was not used when he was starting out in the profession and that, given the size of the first estate, he was entitled to the amounts he took as fees. He calculated the fee amounts based in part on the value and difficulty of the work done, and in part on the monetary value of the estate.

As discussed, infra, I conclude that the board's findings are supported by the record, the sanction is appropriate, and the respondent shall be disbarred from the practice of law in the Commonwealth.

1. Background. I summarize the hearing committee's findings and conclusions as adopted by the board. The respondent was admitted to the practice of law in the Commonwealth on June 11, 1975. At all times relevant to the petition for discipline, the respondent was a solo practitioner in Westfield. During that period, the respondent employed no clerical staff.

The petition for discipline contains two counts, asserting similar violations of the rules of professional conduct as a result of the respondent's mishandling, as executor, of two separate estates. According to the petition, the respondent's improper handling of both estates included failing to open interest bearing IOLTA accounts in the name of the estate, thus depriving the estate of the interest that would have been earned;

failing to deposit proceedings into those IOLTA accounts; failing timely to disburse monies due to beneficiaries under the wills; and failing to make a timely and valid first and final accounting. In addition, for one of the estates, the misconduct includes failing to disburse all monies due to the beneficiaries; misrepresenting the amount of estate expenses paid; misrepresenting the amounts of proceeds received from the sale of estate property and the amounts due to beneficiaries; falsifying a first and final accounting, and intentional misuse of estate funds for the benefit of the respondent.

Maris estate. In a will executed in 1997, Marion Maris named the respondent as her executor. In October, 2005, Maris died; the respondent was duly appointed executor on September 14, 2006. Maris's estate contained cash and securities worth approximately $1.2 million; those funds were held in a conservatorship over which the respondent was not the conservator. Maris left her property in equal shares to the Boston Symphony Orchestra and the Museum of Fine Arts; at some point after her death, the conservator disbursed the funds held by the conservatorship directly to these two beneficiaries. In August, 2006, the conservator paid the respondent $25,000 as a legal fee for his work on the estate prior to his appointment as an executor.

The estate also held real estate valued at approximately

$360,000, and a municipal bond fund valued at approximately $144,000. Between December 21, 2006 and January 22, 2010, the real estate was sold and the bonds were liquidated by the respondent. The respondent did not open an interest bearing IOLTA account in the name of the estate. Instead, he deposited the proceeds of both the sale of the real property and the liquidation of the bonds (together, approximately $468,000) into his own, non-interest bearing, IOLTA account. During the same period, the respondent also paid estate debts in the amount of $61,316. In March of 2010, the respondent sent a first and final accounting to the two beneficiaries, advising them that he would not make any distribution from the estate funds in the IOLTA account, and claiming $85,748.04 in attorney's and executor's fees. Although Schedule A of the first and final accounting reported a loss on the sale of real estate, Schedule B did not list either the property or the value of the real estate at the time of sale.

The two nonprofit organizations had each expected to receive approximately $750,000 from Maris's estate, but had, at the point when the respondent notified them that there would be no further distributions, each received $574,073. Since the value of the real estate did not appear in the first and final accounting, the two beneficiaries retained counsel, Attorney Jeffrey Cook, to review the accounting. After Cook contacted the respondent in

April, 2010, the respondent disbursed $23.767.99 to each charitable beneficiary (totaling $47,356), and sent Cook a revised first and final accounting. While this accounting showed the real property, it stated also that the respondent had earned $278,838 in legal fees, an increase of approximately $190,000 from the March accounting; it also showed $83,000 in estate expenses. The differences in the legal fees and the estate expenses essentially offset the increase in value of the estate assets due to the addition of the real property. Cook requested documentation from the respondent concerning the legal fees and the estate expenses, and also met with the respondent on April 22, 2010, to discuss the accounting. The respondent was unable to provide any contemporaneous records showing the hours worked on the estate or any billings he had submitted to the estate.

On April 10, 2010, the respondent was found in violation of various rules of professional conduct for his actions in an unrelated matter concerning management of funds and maintenance of real property belonging to an elderly client, and suspended from the practice of law in the Commonwealth for six months.[1] See Matter of Murray, 455 Mass. 872, 880 (2010).

Shortly after the meeting with Cook, the respondent provided him with an account ledger for the estate. The ledger showed

---

[1] The respondent has not applied for reinstatement since the end of that period of suspension.

that forty-seven of the sixty-nine checks for expenses drawn from the estate's funds were written to the respondent; the respondent had paid himself a total of $278,839.92; by the end of March, 2007, before the proceeds from the sale of the real estate had been deposited, the respondent had paid himself approximately $100,000 (approximately two-thirds of the $144,000 in bond funds), of which $39,000 was withdrawn in the first ten days after the bond funds were deposited into the respondent's IOLTA account; one of the checks, in the amount of $19,801.91 was written payable to the respondent's children's private school, for their tuition; on April 15, 2010, the respondent paid himself a "final fee" in the amount of $77,899.80, without any supporting invoice, although he had already paid himself over $200,000 at that point; at the time the respondent stated that the estate was "closed," there was an unaccounted for balance of approximately $78,000 in the estate account.

When Cook confronted the respondent concerning the above entries, informing the respondent that the beneficiaries were not happy and were contemplating legal action to recover overcharges, the respondent told Cook that he had overdrawn the account and wanted to enter into arrangements ("work out something") to avoid a lawsuit. The respondent was concerned that the matter not be reported to the board, so that it would not interfere with his application for reinstatement to the bar. In May, 2010, the

respondent met with the two beneficiaries of the Maris estate and agreed that he owed the estate approximately $400,000; the respondent then entered into an agreement for payment, signing a promissory note in the amount of $400,000. To satisfy this agreement, the respondent transferred the title of a house he owned in Rhode Island, which his wife had inherited from her family and which was asserted to have a fair market value of $160,00, to the beneficiaries. He also gave them a mortgage on his family home in Westfield.

Cook subsequently hired an accountant, Gary Moynihan, to examine the respondent's second accounting, in particular to determine why it did not balance to zero but, rather, reflected a $78,000 balance; Cook also hired another attorney, John Dicenza, to review the respondent's claim for legal fees. Moynihan reported that the respondent could not support $285,844.25 in expenses, largely, but not exclusively, in checks payable to himself, and could not account for the balance of $78,000 shown on the estate ledger, but which was no longer in the IOLTA account. The ledger showed no expenses for the period from Mari's death until the respondent was appointed executor on September 14, 2006, but the conservator had paid him $25,000 for legal fees during this period.

Dicenza, an experienced attorney knowledgeable in estate administration and settlement, examined the work the respondent

performed for the estate, including the large number of services involving problems with the house and the septic system on the real property. Dicenza noted that there were no contemporaneous billing or time records, but estimated that the tasks the respondent reported, including broken water pipes, a tree falling through the roof in an ice storm, vermin infestation, and a title problem, reasonably would have required approximately 88 hours. Using an hourly rate estimate of $200-$240, Dicenza estimated that a reasonable fee would have been $14,200 to $21,120.

Before the hearing committee, the respondent asserted that his usual billing rate was $250, and that a reasonable fee would have been $250,000 to $278,000 (the amount he charged), based on the difficulty in handling the estate and the amount of work involved in rehabilitating the house. The respondent stated also that he had performed at least 350.5 hours of work on the estate, largely involving the real property. The committee credited Dicenza's testimony concerning a reasonable fee. While noting the "extraordinary" circumstances involving problems related to the house and the real property, such as the ice storm, the recurring vermin infestations, the burst pipes, the new roof and septic systems, and a defective title, the committee did not credit either the amount of time the respondent asserted he spent on the estate, or a fee of $250,000 as representing the prevailing fees charged by attorneys in the area. In addition,

the committee noted that much of the work did not involve legal expertise and could have been done at lower cost by someone other than an attorney. The committee stated further that, even accepting the respondent's regular billing rate of $250 for all of the work performed, and accepting the 350.5 hours of work the respondent claimed to have performed, he would have been due a fee of $87,625, far lower than the $278,000 indicated on the final accounting.

Following the reports by Moynihan and Dicenza, the respondent met with Cook and representatives of the charitable organizations. Although the respondent maintained that Dicenza's fee estimate was too low, he agreed he repay the beneficiaries $385,000. The promissory note was amended to reflect that amount. After the Rhode Island house was sold, each of the beneficiaries received approximately $47,000 (the proceeds from the sale were approximately $90,000 after payment of past-due taxes and other expenses). The beneficiaries have concluded after investigation that the respondent has no other assets which could be used toward payment of the promissory note, and there is little likelihood that they will receive any additional monies.

In August, 2010, bar counsel wrote to the respondent seeking information concerning the Maris estate. The respondent repeatedly refused to provide any information, asserting that he was refusing to do so on the advice of counsel on the ground of

attorney-client privilege. The respondent did not appear before bar counsel in response to a subpoena in October, 2010, even after bar counsel changed the hearing date on the respondent's request.

Dorsey estate. Gertrude Dorsey died in August, 2006, and, according to the terms of her will, the respondent was appointed her executor. Because the will was contested in the Probate and Family Court, the respondent was not appointed as executor until December, 2007. As part of the settlement following the will contest, the proceeds from the sale of Dorsey's house were to be divided equally between Lorraine King and Condon Dorsey. The will provided also for cash bequests to at least seven other named beneficiaries. The respondent again did not open an interest-bearing IOLTA account in the name of the estate. After he sold the Dorsey house in February, 2008, the respondent deposited $234,629 into his IOLTA account. The respondent did not distribute the funds to the beneficiaries until July, 2008.

On June 23, 2008, the respondent filed an inventory of the estate that showed bank accounts valued at $87,525. The respondent did not obtain title to those accounts in the name of the estate until December, 2008. On June 30, 2008, the respondent filed a first and final account. Since there was not enough money in the estate to pay all of the bequests, he reduced proportionally the amount due to each legatee. The

respondent sent releases to each of the legatees, and filed the signed documents in the Probate and Family Court in September, 2008.

On August 26, 2008, the respondent deposited the proceeds of one of Dorsey's bank accounts, in the amount of $8,312, into his own IOLTA account. In February, 2009, the respondent deposited the proceed's of Dorsey's remaining bank accounts, totaling $73,689, into his IOLTA account. A month later, in March, 2009, the respondent paid the seven named legatees an additional amount of $27,798. Sometime in early 2010, the respondent made payments to the remaining four legatees named in the will. The hearing committee found that, while there was nothing to prevent the respondent from making disbursements to the legatees during 2009, and he made the disbursements only after repeated inquiries from the legatees, ultimately all of the legatees received the full amounts they were due under the terms of the will.

Findings of hearing committee and board. The board adopted the findings of fact, conclusions of law, and recommendations of the hearing committee. The board therefore found that the respondent violated Mass. R. Prof C. § 1.15(e)(5) (deposits in separate interest-bearing account) by depositing estate funds into his own IOLTA account rather than into an interest bearing account for the benefit of the estate. The board found also that, by failing promptly to deliver to the beneficiaries of

Maris's will the funds to which they were entitled, the respondent violated Mass. R. Prof C. §§ 1.1 (competence), 1.3 (diligence), and 1.15(c) (prompt notice and delivery of trust property). By intentionally misusing at least $340,000 in estate funds (keeping the funds for his own use), the respondent violated Mass. R. Prof C. §§ 1.15(b) (segregating trust property) and 8.4(c) (dishonesty, deceit, misrepresentation, or fraud) and (h) (conduct otherwise reflecting adversely on fitness to practice). By falsifying his first and final account and transmitting that account to the beneficiaries of Maris's estate, the respondent violated Mass. R. Prof. C. § 4.1(a) (false statement of material law or fact to third party), and engaged in conduct involving dishonesty, deceit, fraud, or misrepresentation, in violation of Mass. R. Prof. C. § 8.4(c) and (h).

Bar counsel also asserted that the respondent violated Mass. R. Prof. C. § 8.1(b) by failing to cooperate with bar counsel's investigation. The board declined to rule on this asserted violation, citing the respondent's claim (about which the hearing committee expressed scepticism) that he acted upon the advice of counsel and the fact that, based on its other findings and rulings, it did not need to reach the issue.

The board did not credit the factors in mitigation offered by the respondent, including his need to care for his wife, who

fractured her leg once in 2006 and once in 2008, his own health issues, the lack of a secretary, and his efforts to close his law practice relative to the 2010 order of suspension. The board noted that the respondent's statements about lack of time due to his and his wife's health issues were inconsistent with the amount of time he asserted he spent caring for and supervising repairs of the Maris house; the respondent had demonstrated an ability to locate information on his computer when needed and did not lose track of the necessity of paying beneficiaries or the amount of funds withdrawn from the Maris estate as a result of a lack of staff; and the order of term suspension became effective in April, 2010, well after the respondent's handling of the Dorsey estate, which took place from 2007 through the beginning of 2010.

The board cited a number of factors in aggravation. The respondent, who was a very experienced attorney with substantial knowledge of estate matters, see Matter of Crossen, 450 Mass. 533, 580 (2008), violated multiple rules of professional conduct, in two unrelated matters, over a period of years. See Matter of Saab, 406 Mass. 315, 326-327 (1989). The misconduct occurred during the same time period in which the respondent was involved in an unrelated disciplinary action, Matter of Murray, 455 Mass. 872 (2010), concerning negligent misuse of client funds, failure to deposit funds into a separate, interest-bearing account for a

specific client, and failure to maintain proper records and proper accounting of expenses. See Matter of Kerlinsky, 428 Mass. 656, 665 (1989). The respondent's testimony before the hearing committee demonstrated a lack of candor and a failure to appreciate the wrongfulness of his conduct, as well as an ongoing pattern of deceit and dishonesty, with both beneficiaries of the estates and with bar counsel. See Matter of Eisenhauer, 426 Mass. 448, 456, cert. denied, 524 U.S. 919 (1998).

The board adopted the recommendation of the hearing committee and recommended that the respondent be disbarred from the practice of law in the Commonwealth.

2. Discussion. Both parties made essentially the same arguments before me as they did before the board. Before me, as the board found previously, the respondent disclaimed all responsibility for the wrongfulness of his conduct. The respondent asserted that he had done a "nice job" for the estate, and maintained that his method of calculating the fee amount, based on the time and difficulty of issues related to the house, and the full value of the entire estate, including the bulk of the funds in the conservatorship with which he had no involvement, was appropriate. The respondent's argument focused largely on the work he performed on the real property and on his assertion that a sanction of disbarment would be disproportionate and unjustified.

a. Standard of review. In attorney disciplinary proceedings, bar counsel bears the burden of proving misconduct by a preponderance of the evidence. See Mass. R. Prof. C. § 3.28 ("[i]n all disciplinary proceedings Bar Counsel shall have the burden of proof by a preponderance of the evidence").[2] The applicability of this standard was first established in Matter of Mayberry, 295 Mass. 155, 167 (1936), and was codified in the board's rules in 1975. See Mass. R. Prof. C. § 3.28. See also Matter of Kerlinsky, supra at 664 n.10; Matter of Budnitz, 425 Mass. 1018, 1018 n.1 (1997).

Supreme Judicial Court Rule 4:01, § 8(5)(a), recognizes the hearing committee as the "sole judge of the credibility of the testimony presented at the hearing." See Matter of Tobin, 417 Mass. 81, 85 (1994). Like any finder of fact, the hearing committee is entitled to believe some portions of a witness's testimony and disbelieve others. "The hearing committee . . . is the sole judge of credibility, and arguments hinging on such determinations generally fall outside the proper scope of our review." Matter of McBride, 449 Mass. 154, 161-162 (2007). "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

---

[2] Respondents bear the same burden of proof with respect to affirmative defenses and matters in mitigation. See Mass. R. Prof. C. § 3.28.

of Murray, supra at 880.

The respondent objected to the findings in the hearing report that he misused estate funds in the Maris matter or converted money to his own use. The respondent maintained before me that a fee of $250,000 was "fair" for the work he did in the Maris matter, that he "saved the house" from destruction, and provided "substantial services," acting as both executor and legal counsel for the estate. He emphasized the extent of the physical rehabilitation of the property necessary before it could be sold, and legal complexities relating to the chain of title that came to light during the process of selling the property.

The respondent claimed that the hearing committee's determination that a $25,000 fee would have been reasonable, based on statements of the attorney that the charitable beneficiaries hired to investigate the fees charged to the Maris estate, was not supported by the value of the work he performed, and that a $25,000 fee was far too low. The respondent argued that the investigation failed to take into account any of the results he achieved or the amount of work necessary to place the property in a suitable condition for sale. The respondent maintained, citing In re Estate of King, 459 Mass. 796, 806-810 (2010), that he calculated the appropriate fee amount based on both the amount and complexity of the work involved and the success achieved, and as a percentage of the overall value of the

estate, which, in reliance on the funds that had been held by the conservatorship, the respondent estimated as $1.8 million. He asserted that, when he entered into practice, this method of fee calculation was commonplace, and billable hours were not used to calculate fees.

Even if I were to accept the respondent's suggestion that a $250,000 fee was reasonable here, an assertion contrary to the findings of the board, which adopted the detailed findings of the hearing committee, the board found that the respondent paid himself approximately $340,000 in fees from estate funds. Therefore, on the respondent's statements alone, there was intentional misuse of Maris estate funds in the amount of $90,000. In the matter of the Dorsey estate, the respondent offered no explanation why the legatees could not have been paid when funds became available and were deposited into his IOLTA account, rather than depriving the legatees of the disbursements due them for more than a year, requiring some of them to make numerous inquiries of the respondent and to undertake their own investigations.

Having reviewed the hearing committee's decision, adopted in full by the board, as well as the hearing transcripts, I conclude that the hearing committee's factual findings have ample bases in the record, and that its credibility determinations were not inconsistent or contradictory; indeed, they were more than amply

supported in the record.

b. Appropriate sanction. I turn to the appropriateness of the board's recommended sanction of disbarment. The appropriate disciplinary sanction to be imposed is one which is necessary to deter other attorneys from similar behavior and to protect the public. Matter of Foley, 439 Mass. 324, 333 (2003), citing Matter of Concemi, 422 Mass. 326, 329 (1996). "If comparable cases exist in Massachusetts, [I] apply the markedly disparate standard in imposing a sanction." Matter of Griffith, 450 Mass. 500 (2003), citing Matter of Finn, 433 Mass. 418, 423, 742 N.E.2d 1075 (2001). I must ensure that the board's recommended sanction is not "markedly disparate" from sanctions imposed on attorneys found to have committed comparable violations. See Matter of Goldberg, 434 Mass. 1022, 1023 (2001), and cases cited. In deciding upon the appropriation sanction, a fundamental consideration is "the effect upon and the perception of, the public and the bar." Matter of McBride, supra at 163, quoting Matter of Alter, 389 Mass. 153, 156 (1983). At the same time, the sanction imposed must be appropriate for the particular circumstances. "Ultimately, we decide each bar discipline case 'on its own merits and every offending attorney must receive the disposition most appropriate in the circumstances.'" Matter of Balliro, 453 Mass. 75, 85-85 (2009), quoting Matter of the Discipline of an Attorney, 392 Mass. 827, 837 (1984).

The presumptive sanction for intentional misuse of client funds with deprivation is indefinite suspension or disbarment. See Matter of Schoepfer, 426 Mass. 183, 187 (1997). In choosing between these two sanctions, the court "generally considers whether restitution has been made." Matter of LiBassi, 449 Mass. 1014, 1017 (2007).

The respondent made no claim that he had repaid more than the amounts cited by the board, thus permanently depriving two of the charitable beneficiaries of approximately $295,000 in anticipated benefits.[3] The limited repayment that he did make, through deeding of a property that his wife had inherited from her family to the charitable beneficiaries, was made only after those beneficiaries questioned the distributions they had received and the fraudulent accounting, hired counsel, and told the respondent that they were considering a court action; the respondent stated that he was motivated to enter into a repayment agreement so that the matter would not come to the attention of bar counsel. See Matter of LiBassi, supra, quoting Matter of Hollingsworth, 16 Mass. Att'y Discipline Rep. 227, 236 (2000) ("Recovery obtained through court action 'is not "restitution" for purposes of choosing an appropriate sanction'").

---

[3] The respondent agreed to a repayment of $385,000, as reflected in the revised promissory note, and the two charitable beneficiaries received equal shares of approximately $90,000 in proceeds from the sale of the Rhode Island house.

As a result, I will not consider this partial repayment as mitigating conduct, and thus, the deprivation of client funds alone would likely merit disbarment. See Matter of McBride, 449 Mass. 154, 163-164 (2007) (deprivation of client funds alone merits disbarment because "standard discipline" is either disbarment or indefinite suspension, and thus "sanction of disbarment is not markedly disparate"); Matter of Dasent, 446 Mass. 1010, 1012-1013 (2006) (disbarment where attorney failed to repay client full amount owed after intentionally misusing client funds, committed multiple other violations, and showed no mitigating factors); Matter of Dragon, 440 Mass. 1023, 1023-1024 (2003) (disbarring attorney for intentional deprivation of client funds).

The respondent has identified no other mitigating factors that might justify reducing the recommended sanction, and his failure to repay the amounts of which the charitable beneficiaries were deprived counsels against a lighter sanction. Making restitution "is an outward sign of the recognition of one's wrongdoing and the awareness of a moral duty to make amends to the best of one's ability. Failure to make restitution, and failure to attempt to do so, reflects poorly on the attorney's moral fitness." Matter of McCarthy, 23 Mass. Atty' Disc. Rep. 469, 470 (2007).

In aggravation, the respondent has a history of prior

discipline. The respondent's past misconduct includes repeated neglect of client matters, failure to communicate adequately with clients, making false representations to clients to cover his neglect, and failing to maintain proper billing and trust account records. In 1993, he received an admonition for neglect, failure to communicate with clients, and failure to cooperate with bar counsel's investigation. Ad 03-61, 19 Mass. Att'y Disc. R. 636 (2003). As discussed, in 2010, the respondent was suspended for six months for negligent misuse of client funds and improper record keeping. Matter of Murray, 455 Mass. 872, 880 (2010). Such similar misconduct "is an especially weighty aggravating factor." Matter of Ryan, 24 Mass. Att'y R. 632, 641 (2008).

A sanction of disbarment is particularly appropriate in light of the nature of the respondent's prior misconduct. In material respects, much of the respondent's misconduct here mirrors the misconduct underlying his 2008 disciplinary proceeding, which resulted in his six-month suspension from the practice of law in April, 2010. In addition to neglect of client matters, unintentional deprivation of client funds, and improper handling of IOLTA accounts, however, the misconduct here involves the deliberate and willful conversion of substantial amounts of funds due beneficiaries under a will, held in trust by the respondent, to the respondent's own use. This is in contrast to the 2008 proceeding, in which the board found that the respondent

acted with the intent to benefit his elderly client in expending substantial and unrecorded sums to rehabilitate her dilapidated house so as to allow her to return to her home, a result she ardently desired, and that he negligently lost track of funds expended. While the respondent argues that he believed he was entitled to the amounts he paid himself from the Maris estate as a fee for legal services, his actions in the timing and amount of such payments, the falsified and misleading accountings, and his misrepresentations to the beneficiaries, as well as his agreement to repay $385,000 and his concern that bar counsel not become aware of the matter, belie any such belief.

Furthermore, the respondent's failure to cooperate with bar counsel here, as in at least one prior investigation, "reflects adversely on the attorney's fitness to practice law." Matter of Garabedian, 416 Mass. 20, 25 (1993). The board observed that the respondent lacked candor and failed to recognize the wrongfulness of his conduct. Before me, he continued to maintain that his conduct was not wrongful, and that his service to the Maris estate was laudatory.

There is no basis for me to conclude that disbarment would be "markedly disparate" from the sanction imposed in similar cases. See Matter of Goldberg, 434 Mass. 1022, 1023 (2001). The respondent's deprivation of client funds, considered with the cumulative effect of the multiple violations present here, his

record of prior discipline, and the absence of any mitigating factors, supports a judgment of disbarment.

3. Disposition. A judgment shall enter disbarring the respondent from the practice of law in the Commonwealth.

By the Court

Fernande R.V. Duffly
Associate Justice

Entered: November 25, 2013

A True Copy
Attest:
11-26-13
Date
Assistant Clerk