

IN RE: CARL N. DONALDSON

NO. BD-2010-110

S.J.C. Order of Term Suspension entered by Justice Cowin on April 5, 2011, with an effective date of May 5, 2011.[†]

(S.J.C. Judgment of Reinstatement entered by Justice Lenk on November 23, 2011.)

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[†] 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-2010-110

IN RE: CARL N. DONALDSON

MEMORANDUM OF DECISION AND ORDER

This matter came before me on an information and record of proceedings, together with a vote of the Board of Bar Overseers (board). A petition for discipline was filed by bar counsel against the respondent on August 19, 2008, and then assigned to a hearing committee of the board pursuant to S.J.C. Rule 4:01, § 8(3)(b). The respondent appealed the hearing committee's decision to the board.

In the petition, bar counsel made serious allegations regarding misuse of client funds, retention of unearned fees, false statements, and fraud.¹ The hearing committee, rejecting nearly all of these allegations concluded that in only one instance the respondent had negligently misused client funds

¹ Specifically, the petition alleged that the respondent failed to deposit client retainers in his IOLTA account in violation of Mass. R. Prof. C. 1.15(a) and Mass. R. Prof. C. 1.15(d), as in effect through June 30, 2004; failed to refund unearned fees upon suspension from the bar in violation of Mass. R. Prof. C. 1.16(d) and S.J.C. Rule 4:01, § 17(1)(f); made false or misleading statements while soliciting a client in violation of Mass. R. Prof. C. 7.3(a) and Mass. R. Prof. C. 8.4(c); and assisted in an effort to defraud an insurer in violation of Mass. R. Prof. C. 1.2(a), Mass. R. Prof. C. 1.2(d), and Mass. R. Prof. C. 8.4(c).

without intent to deprive and with no deprivation resulting. Bar counsel alleged also that the respondent failed to comply with the terms of a prior two-month suspension from the practice of law, ignored a payment order issued by the small claims court, and committed numerous violations of the ethical rules governing record-keeping and accounting, diligence, client communication, solicitation of professional employment, and cooperation with bar counsel investigations.² The hearing committee concluded, for the most part, that these violations had occurred.³

² In these respects, the petition alleged that the respondent violated Mass. R. Prof. C. 1.3 (failing to act with reasonable diligence); Mass. R. Prof. C. 1.4 (failing to keep client reasonably informed and explain matters as reasonably necessary); Mass. R. Prof. C. 1.15(a), as in effect through June 30, 2004, and Mass. R. Prof. C. 1.15(f), as in effect on and after July 1, 2004 (failing to maintain complete records of receipt, maintenance, and disposition of client funds held in trust); Mass. R. Prof. C. 1.15(d), as in effect on and after July 1, 2004 (failing to provide accounting of trust property upon client's request); Mass. R. Prof. C. 1.16(d) & (e) (failing to make files available to client or new counsel); Mass. R. Prof. C. 3.4(c) (knowingly disobeying obligation under rules of tribunal); Mass. R. Prof. C. 7.3(b)(1) (soliciting paid employment where lawyer knows, or reasonably should know, that prospective client's emotional state renders it likely that client "cannot exercise reasonable judgment"); Mass. R. Prof. C. 7.3(d) (soliciting paid employment in person); Mass. R. Prof. C. 8.4(d) & (g) and S.J.C. Rule 4:01, § 3 (failing to cooperate with bar counsel investigation; engaging in conduct "prejudicial to the administration of justice"); and S.J.C. Rule 4:01, § 17(1)(e) (failing to make files available, after suspension, to clients with pending matters).

³ The hearing committee found no violation of Mass. R. Prof. C. 7.3(b)(1), and rejected one alleged violation of Mass. R. Prof. C. 1.15(d)(1), as in effect on and after July 1, 2004, and one alleged violation of Mass. R. Prof. C. 3.4(c).

The hearing committee recommended a suspension of six months and one day,⁴ with conditions that the respondent attend a trust account record-keeping course prior to reinstatement and, within four months of reinstatement, obtain an audit from the Law Office Management Assistance Program (LOMAP) and implement LOMAP's recommendations.⁵ The board adopted the hearing committee's findings of fact and conclusions of law but recommended the lesser sanction of a six-month suspension with a LOMAP audit required within three months of reinstatement.⁶

On appeal, the respondent makes several challenges to the proceedings below on the merits; in addition, he objects to the recommended sanction. As discussed infra, I agree with the board's conclusions in both respects. The respondent shall be suspended for six months, must obtain a LOMAP audit within three months of his reinstatement, and must comply with LOMAP's recommendations.

1. Background and procedural history. I summarize the

⁴ A suspension of six months and one day necessitates that one pass the Multistate Professional Responsibility Examination (MPRE) prior to reinstatement. See S.J.C. Rule 4:01, § 18(1)(b).

⁵ Before the hearing committee, bar counsel argued for a suspension of one year and one day, and the respondent argued for dismissal.

⁶ Although the board states that it adopted the findings and conclusions of the hearing committee, it in fact found that the respondent had not, as the hearing committee concluded, engaged in improper in-person solicitation of a prospective client in violation of Mass. R. Prof. C. 7.3(d). See part 2.d, infra.

hearing committee's findings and conclusions as adopted by the board. The findings are supported by the evidence. The respondent was admitted to the practice of law in 1999 and is a solo practitioner in Boston. In November, 2006, he was found to have committed various violations of the ethical rules similar to the violations at issue here. See Matter of Donaldson, 22 Mass. Att'y Disc. R. 278, 278-281 (2006).⁷ A joint recommendation of the parties was adopted, and the respondent was suspended from the bar for two months, effective December 13, 2006. See id. at 278, 281. He was reinstated on February 20, 2007.

The amended petition in the present case alleged six counts of violations by the respondent, dating from 2003 to 2009.⁸ The first count arose from the respondent's representation of a minor in a contested estate matter. In 2003, the mother of the minor executed a written hourly fee agreement with the respondent and paid a \$2,500 retainer. The respondent did not deposit the retainer in his IOLTA account and did not maintain records of the

⁷ The respondent was found to have retained unearned portions of fees, failed to render accountings on request, and failed to return client files (Mass. R. Prof. C. 1.15, effective through June 30, 2004, and Mass. R. Prof. C. 1.16(d)), made false representations to clients (Mass. R. Prof. C. 8.4(c)), and violated his duties with respect to competent representation, reasonable diligence, and client communication (Mass. R. Prof. C. 1.1, 1.3, and 1.4). See Matter of Donaldson, 22 Mass. Att'y Disc. R. 278, 278-281 (2006).

⁸ The original petition alleged four counts and was amended in June, 2009, to add two additional counts.

receipt, maintenance, or disposition of the funds. He filed a notice of appeal but took no further action, depriving the client of her opportunity for appeal, and did not communicate with the mother regarding the status of the case.⁹ The respondent did not provide her file or an accounting on her request, nor did he turn over the client's file when he was suspended in 2006.

The second, third and fourth counts involved representation of three clients in criminal matters. Although bar counsel did not demonstrate that the respondent failed to earn the fees paid by the clients in those three cases, in one instance the respondent failed to maintain records of a properly deposited retainer. In two cases, the respondent did not maintain communication with his clients or keep them reasonably informed, and he did not provide them with their files when requested or when his representation of the clients terminated.

The fifth count concerned a payment dispute with a doctor hired by the respondent to perform forensic services. A judgment entered against the respondent in small claims court. After the payment order issued, the respondent failed to appear at a payment review hearing and a default and capias issued. The respondent filed a motion to remove the default but did not

⁹ Although the respondent claims he did not pursue an appeal because he concluded that it would be frivolous, he neither informed the client of his conclusion nor alerted the client that the appeal had been dismissed for failure to prosecute.

appear at a hearing on the motion. The respondent did not pay what was owed until a sheriff, paid by the doctor, served the capias on him.

With respect to the sixth count, the respondent, at the request of a third party, met with the mother of a child killed by an automobile on the evening of the child's death. Before the mother hired a new lawyer, the respondent spoke with the funeral home -- which ultimately prepared a falsely inflated bill -- and the driver's insurance company. The board did not find support for bar counsel's allegations that the respondent solicited the mother improperly,¹⁰ made false statements to her, and was involved in the funeral home's fraudulent actions. However, the board did find that the respondent did not provide the mother's file to successor counsel.

Bar counsel investigated the incidents underlying the fifth and sixth counts. The respondent did not cooperate with the investigations, resulting in a two-week administrative suspension.¹¹

Citing Matter of Goldfarb, 18 Mass. Att'y Disc. R. 260

¹⁰ The board found that the respondent did not know about the child's death before he met with the mother, and found that he was invited by a third party with the mother's permission. See part 2.d, infra.

¹¹ The administrative suspension was ordered on January 22, 2009, effective immediately. The respondent was reinstated on February 4, 2009.

(2002), and Matter of Krabbenhoft, 23 Mass. Att'y Disc. R. 362 (2007), bar counsel sought adoption of the hearing committee's recommended suspension of six months and one day, with the aforementioned conditions. Bar counsel cited as aggravating factors the respondent's prior discipline and pattern of misconduct, and noted that some of his violations occurred during the pendency of the prior disciplinary proceedings.

In his appeal to the board, the respondent argued that the hearing committee's report lacked adequate support for its credibility determinations, relied on improper evidence, and did not consider or properly resolve certain factual matters. He requested a new hearing and, if the board were to uphold some of the violations, a sanction comparable to that imposed for similar violations in other cases. See Matter of Alter, 389 Mass. 153, 156 (1983). The board, with one exception,¹² rejected the respondent's arguments on the merits. It recommended a six-month suspension in light of respondent's persistent pattern of misconduct, his prior suspension, and his failure to cooperate with bar counsel's investigations.

The parties argued before me at a hearing on January 28, 2011. The respondent reiterated his arguments on the merits. Citing financial hardship, he requested that, if his claims of error were rejected, his suspension should be limited to three

¹² See note 6, supra, and part 2.d, infra.

months. Bar counsel again sought a suspension of six months and one day with the aforementioned conditions.

2. Objections to proceedings. I first consider the respondent's claims of error with regard to the hearing committee's proceedings and the board's response to those claims.

a. First count. In addressing the first count of the complaint, with respect to several factual matters, the hearing committee credited the testimony of the client's mother and did not credit the respondent's testimony.¹³ On appeal, the respondent notes that the hearing committee accepted his testimony on other issues. He argues that the hearing committee failed to provide a "thorough and reasoned explanation" for this "selective crediting" of the respondent's testimony. He cites Herridge v. Board of Registration in Med., 420 Mass. 154 (1995), S.C., 424 Mass. 201 (1997) (Herridge), for the principle that such an explanation is required. Although that case dealt with discipline in the medical field, he argues that the standard for credibility assessments should be the same with respect to legal discipline.

¹³ Specifically, the hearing committee did not credit the respondent's testimony that the \$2,500 retainer was later converted, through an oral agreement, to a flat fee, and that he informed the client and her mother that the appeal should not be pursued. The hearing committee credited the client's mother's testimony that the fee agreement was not altered, that the respondent promised to pursue an appeal, that she did not hear from him for over one year, and that he did not provide her with her file and an accounting when she requested them.

The board rejected the respondent's argument. It noted that, in reviewing the hearing committee's findings, the board must pay "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(5)(a). See Matter of Hachey, 11 Mass. Att'y Disc. R. 102, 103 (1995) (board may not reject hearing committee's credibility finding unless "wholly inconsistent with another . . . finding"). Moreover, the board noted that the hearing committee had provided support in its findings of fact for its credibility conclusions.¹⁴

I agree with the board that the respondent's claim lacks merit. His contention that Herridge applies to bar discipline cases was dealt with in Matter of McCabe, 13 Mass. Att'y Disc. R. 501, 506-507 (1997). In that case, the board noted that the board's "review of credibility determinations is more narrow than that granted administrative agencies reviewing similar determinations by hearing officers." Id. at 506. S.J.C. Rule 4:01, § 8(5)(a), requires more than "substantial deference" to

¹⁴ Specifically, the hearing committee observed that the respondent's claim regarding fee modification was belied by the fact that the parties had signed an hourly fee agreement after the date on which the respondent claimed the \$2500 retainer orally had been converted to a flat fee, and that written agreement stated explicitly that no modifications could be made except in writing. The hearing committee noted also that the client's mother, after the appeal was dismissed, went to the probate court, and that she would not have done so had the respondent informed her, as he claimed he had, that he would not be pursuing an appeal.

the hearing committee's credibility determinations. It is the sole judge of credibility. Like any fact finder, the hearing committee was entitled to believe part of the respondent's testimony and disbelieve other parts. In this case, because the hearing committee's credibility conclusions are adequately supported and are not wholly inconsistent with other findings, they must stand.

The respondent raises an additional objection to the findings relating to the first count of the complaint. He argues that he was justified in failing to pursue an appeal because such an appeal would be completely frivolous, and therefore unethical, in light of Stackhouse v. Todisco, 370 Mass. 860 (1976). The board observed that, whatever the merits of the appeal, the respondent was obligated to inform his clients of his conclusion in order that they might seek a second opinion from another attorney. The hearing committee found that the respondent did not keep his client so informed and, as noted, that finding was supported by the evidence.

I agree with the board that it is irrelevant whether an appeal would have been frivolous. The respondent violated his professional obligations not by failing to pursue an appeal but by failing to inform the client that he would not do so. Although other attorneys might have had a different assessment of the case, the respondent's actions deprived the client of the

opportunity to seek out such an attorney before the time to appeal expired. On that basis, he violated the rules of professional conduct.

b. Third and fourth counts.¹⁵ The third and fourth counts of the complaint arose from letters of complaint and requests for investigation sent to bar counsel by the respondent's clients. The respondent argues that the letters constitute hearsay and that hearsay evidence may be considered in bar disciplinary proceedings "only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs." G. L. c. 30A, § 11 (2).¹⁶ See Matter of Crossen, 450 Mass. 533, 573 (2008). The respondent asserts that complaints from "convicted felons seeking refunds of fees, who were not under oath" do not meet that standard; accordingly, the letters of complaint could not be considered by the hearing committee as substantive evidence.

The board essentially agreed with the respondent that statements from disgruntled clients were not reliable evidence and cautioned that "for the future such documents, in the absence of testimony from complainants, should not be relied upon 'for

¹⁵ The respondent did not raise any objections relating to the second count of the petition.

¹⁶ Pursuant to the rules of the board, G. L. c. 30A governs admissibility of evidence in bar disciplinary proceedings. See Rule 3.39 of the Rules of the Board of Bar Overseers (2009).

the truth of the matters asserted."¹⁷ However, the board observed that there was little reliance on the substance of letters of complaint in the present case. For the most part, the hearing committee's findings of fact regarding the third and fourth counts referenced the respondent's answer, his statement to bar counsel, the testimony of the respondent and other witnesses, and documents admitted at the hearing. In addressing the third count, the hearing committee did not refer to the client's letter of complaint at all. With respect to the fourth count, the hearing committee mentioned the client's letter of complaint, in conjunction with testimony of the respondent and the client's family, as a source for the content and timing of the client's inquiries. In addition, the hearing committee supported its finding that the respondent did not turn over the client's file with both the client's letter of complaint and the respondent's own testimony. Accordingly, the board concluded correctly that "sufficient independent testimonial evidence" supported the findings.

The respondent argues before me that the board applied the wrong standard. Regardless of whether the hearing committee referenced the letters of complaint, he claims, it "believed it could consider these writings for the truth and did so" and this

¹⁷ The board correctly noted that such documents may, however, be admissible "for a limited purpose such as notice to the respondent."

constitutes prejudicial error. The respondent, however, provides no support for this claim. The only evidence in the record that the hearing committee relied on the letters are the few references noted above. One letter was mentioned as a source for facts that largely were irrelevant to determining whether the respondent had violated the disciplinary rules and, moreover, those facts were supported by the respondent's own testimony. Such use of the letter could not have prejudiced the respondent. Lacking any other evidence of reliance on the complaint letters for their truth, I find no basis to conclude that the respondent was unfairly prejudiced by any asserted misuse of the letters of complaint.

c. Fifth count. On appeal to the board, the respondent argued that, because the order of the small claims court concerned a money judgment against him personally, his failure to comply with that order was not a violation of Mass. R. Prof. C. 3.4(c). The board concluded, correctly, that failure to comply with a court order -- personal or not -- resulting in issuance of a capias constitutes a violation of the professional rules. See Matter of Zyzfers, 22 Mass. Att'y Disc. R. 814, 814-815 (2006) (failure to comply with order to pay stenographer).

Before me, the respondent has abandoned that argument but pursues a separate claim, also raised before the board, that the payment order put the respondent "in a difficult situation." He

notes that when the order issued he had "a motion pending with the criminal court for some of the outstanding bill" and felt it "could be seen as inappropriate" to ask the court for money having paid the bill. The board did not address this argument. I find the respondent's claimed concerns unpersuasive as a basis for disregarding a court order and unsupported by any evidence that he took steps to resolve any perceived conflict between the order and his pending motion. Moreover, whatever dilemma the respondent faced regarding payment does not explain or excuse his failure to appear for two subsequent hearings.

d. Sixth count. In the sixth count, bar counsel argued that the respondent had improperly solicited the mother of the deceased child, and the hearing committee agreed that an improper in-person solicitation had occurred. On appeal to the board, the respondent objected to this conclusion. He noted that, while the mother did not personally invite the respondent to her home, she had consented (via a conversation with a third party) to meet with the respondent. The board agreed that the "important distinction is that the prospective client wanted to meet with the attorney" and concluded that the respondent's conduct was not a violation of Mass. R. Prof. C. 7.3(d).

The respondent raises on appeal to me an additional argument raised before the board that the board did not address. He asserts that he acted properly in refusing to provide the

mother's successor counsel with her file until he heard from the mother personally. To the extent that the respondent suggests that he was not certain whether he had actually been replaced as counsel, the evidence seems ambiguous at best.¹⁸ Moreover, the respondent complicates the issue by arguing that the file "had no substance in any event." There is no merit to his suggestion that the dearth of content in the file excuses his failure to turn it over. Finally, even were I to find that the respondent did not violate his obligation to return client files in these particular circumstances, it remains undisputed that the respondent violated that duty in counts one, three and four, as well as in his prior disciplinary matter. Given the respondent's history of failing to turn over client files, this single incident has no effect on the sanction I impose.

3. Sanction. I turn to the question of the appropriate sanction for the respondent's misconduct. The board's determination of the proper sanction for attorneys who violate professional ethics is entitled to substantial deference. Matter of Jackman, 444 Mass. 1013, 1013 (2005). Nevertheless, the offending attorney "must receive the disposition most appropriate

¹⁸ When successor counsel informed the respondent by letter that he had taken over representation, he included a copy of the mother's letter discharging the respondent. Moreover, although the respondent sought unsuccessfully to contact the mother multiple times after successor counsel was hired, the record does not indicate that he ever made an effort to provide her file directly to her rather than to successor counsel.

in the circumstances." Matter of the Discipline of an Attorney, 392 Mass. 827, 837 (1984). Sanctions should not produce outcomes "markedly disparate" from the results in similar cases. Matter of Murray, 455 Mass. 872, 882-883 (2010), citing Matter of Griffith, 440 Mass. 500, 507 (2003).

In this case, the respondent has engaged in a pattern of ethical violations with respect to documenting financial transactions, providing adequate information and explanations to clients, returning files to clients, and complying with tribunal obligations. In addition, in the probate matter discussed in count one, the respondent neglected the client's case and negligently misused client funds without intent to deprive and with no deprivation resulting.

In aggravation, the respondent has a prior history of discipline, stemming from strikingly similar misconduct dating back to 2002. See Matter of Donaldson, 22 Mass. Att'y Disc. R. 278-279 (2006). Some of the incidents addressed in the current petition occurred during the period of the respondent's prior disciplinary process, while other incidents took place after the respondent was reinstated following a two-month suspension from the practice of law. That sequence of events indicates that the respondent learned little from the prior sanctions imposed, and has shown little awareness of, or regard for, the problems with how he runs his practice and how he interacts with clients.

The board noted that there were no mitigating factors. However, in his prior disciplinary proceeding the respondent was found to have been experiencing physical and emotional problems at the time of his violations. See Matter of Donaldson, supra at 281. Moreover, his offenses largely did not result in harm to his clients, with the exception of a lost opportunity to appeal in the probate matter, and do not appear motivated by greed or self-interest. Cf. Matter of Wise, 433 Mass. 80, 92 (2000) (representation despite conflicts of interest and disclosure of client confidences for retaliatory purposes; no harm to clients, but actions motivated by selfishness and vengefulness; six-month suspension imposed, with reinstatement conditioned on passing Multistate Professional Responsibility Examination (MPRE)).

In these circumstances, the six-month suspension recommended by the board is appropriate. Combinations of similar violations have yielded comparable sanctions. Matter of Goldfarb, 18 Mass. Att'y Disc. R. 260 (2002) (Goldfarb), cited by bar counsel, is illustrative. In Goldfarb, the respondent attorney neglected four client matters and failed to communicate adequately with his clients in each instance. As a result of his neglect, three of the cases were dismissed. Id. at 260-264. In two of the cases, the attorney also did not return client files or cooperate with bar counsel investigations; in one case, he did not provide an accounting to the client. Id. at 261-263. In mitigation, the

attorney had no record of prior discipline and both he and his children had medical issues during the period of his misconduct. Id. at 264. A six-month suspension was imposed with conditions. Id. In this case, the respondent's violations are comparable in nature to those found in Goldfarb. His record of prior discipline -- a factor lacking in Goldfarb -- is counterbalanced by the fact that his actions caused less harm to his clients than the repeated instances of neglect in Goldfarb.

Matter of Curcio, 23 Mass. Att'y Disc. R. 92 (2007)

(Curcio), offers further support for a six-month suspension. In Curcio, an attorney representing a couple in a tax matter failed to communicate with the couple or respond to their inquiries; moved without giving them his new contact information; failed to provide them with a copy of their file upon request; did not perform work for which he had been paid; lost the clients' file and failed to notify them; and did not cooperate with bar counsel's investigation. Id. at 94. He was suspended for six months. Id. at 95. Unlike this case, the attorney in Curcio made misrepresentations to the clients and did not return an unearned fee. Id. at 94. The absence of similarly severe violations here could justify a lighter sanction. However, a countervailing consideration is that the misconduct in Curcio involved only one client matter, while the respondent's actions in this case demonstrate a pattern of misconduct with respect to

multiple client matters. Id. A sanction equivalent to that imposed in Goldfarb and Curcio is reasonable.

The respondent's proposal of a three-month suspension is not appropriate in light of his persistent pattern of misconduct with respect to client matters. His inadequate financial management alone would justify a suspension of three months. See, e.g., Matter of Sylvia, 24 Mass. Att'y Disc. R. 673, 674-675 (2008) (inadequate recordkeeping and mismanagement of trust account; three-month suspension with effective date suspended and two-year accounting probation period); Matter of Rafferty, 21 Mass. Att'y Disc. R. 551, 553-554 (2005) (one instance of failing to place settlement funds in escrow account, distributing funds to minor client's mother and creditors in violation of court order, and failing to maintain records or render accountings of remaining funds; three-month suspension). Here, the respondent's violations have been more diverse and include additional violations beyond poor financial management. Moreover, his cumulative violations have extended for a period of several years.

The respondent has not provided any authority for the idea that a three-month suspension is appropriate in this case. In arguing for that sanction, the respondent appears to be requesting leniency in light of the financial hardship he will experience from being unable to practice his profession for six

months or more. In light of the respondent's pattern of negligent behavior stretching back nearly a decade, and the fact that a prior suspension did not alter his conduct, lenient sanctions are not appropriate.

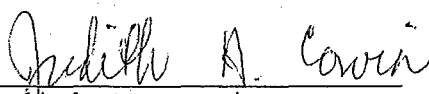
I do not see a compelling justification for deviating from the board's recommendation and adopting bar counsel's proposal of suspension for six months and one day. Suspensions longer than six months in duration typically involve substantial violations of the ethical rules, such as fraud, deliberate financial malfeasance, or intentional misrepresentation. See, e.g., Matter of Harwood, 25 Mass. Att'y Disc. R. 252, 252-253 (2009) (intentional misuse of client funds without intent to deprive and no deprivation resulting, inadequate record-keeping, noncooperation with bar counsel, and making false statements under oath to bar counsel; suspension of one year and one day imposed, with conditions and probation); Matter of Firstenberger, 450 Mass. 1018, 1019 (2007) (knowing and intentionally deceptive breach of arrangement with mortgagee; suspension for six months and one day imposed); Matter of Dash, 22 Mass. Att'y Disc. R. 179, 180 (2006) (failure to supervise non-lawyer employee, commingling of trust account, and false statements to insurance adjuster; suspension for six months and one day imposed).

Here, respondent's wrongdoing does not reflect egregiously unethical behavior but rather an accumulated record of negligence.

and sloppiness in the handling of his business. While the respondent's pattern of conduct certainly evinces a cavalier attitude regarding his client obligations, he did not engage in fraud or misrepresentation, did not intentionally deprive clients of their funds, and did not retain funds to which he was not entitled. The board's conclusion that the respondent's actions justify a six-month suspension, in the face of bar counsel's recommended suspension of six months and one day, is entitled to substantial deference. Accordingly, I adopt the recommendation of the board.

3. Disposition. A judgment shall enter suspending the respondent from the practice of law in the Commonwealth for a period of six months. The respondent is required to obtain an audit from the Law Office Management Assistance Program within three months of his reinstatement and must implement any resulting recommendations.

By the Court


Judith A. Cowin
Associate Justice

Entered: April 4, 2011