IN RE: DOUGLAS A. PARIGIAN

NO. BD-2015-102

S.J.C. Order of Term Suspension entered by Justice Cypher on May 1, 2017, retroactive to August 17, 2015.[1]

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

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

BAR COUNSEL,
Petitioner

vs.

DOUGLAS A. PARIGIAN
Respondent

HEARING REPORT

On March 11, 2016, bar counsel filed a petition for discipline against the respondent, Douglas A. Parigian.

The petition charges that the respondent pleaded guilty in the United States District Court for the District of Massachusetts to one count of conspiracy and one count of securities fraud, both felonies, and that this criminal conduct violates various disciplinary rules.

Represented by counsel, the respondent filed his answer on August 16, 2016.[1]

The hearing was held on November 14, 2016. Twenty-one exhibits were admitted. Two witnesses testified: the respondent and his former criminal attorney, Stanley Norkunas. On December 22 and December 23, 2016, the parties filed their proposed findings and conclusions. On January 20, 2017, the Chair allowed the respondent's Motion for Leave to File First Supplement to Request for Proposed Findings of Fact and Rulings of Law.

[1] The matter was stayed while the respondent pursued an unsuccessful appeal, alleging irregularities in the indictment.

Findings and Conclusions[2]

Findings of Fact

1. The respondent, Douglas A. Parigian, was admitted to the Massachusetts bar on December 14, 1988. Ans. ¶ 2.

2. By superseding information dated May 11, 2015, the respondent was charged in the United States District Court for the District of Massachusetts with securities fraud and conspiracy to commit securities fraud.[3] Ex. 1 (0001).[4]

3. The information charged that from July 2009 through April 2011, on various occasions, the respondent used material, nonpublic information received from an individual named Eric McPhail to make money by buying and selling shares in American Superconductor Corporation (AMSC), a publicly traded corporation. Ex. 1 (0001-0002).

4. McPhail was a golfing buddy of the respondent's. Tr. 41-42 (Respondent). He was not the corporate insider; the information alleged that McPhail received his information from someone identified as Person A, a senior executive at AMSC; that McPhail owed Person A "a duty of trust and confidence"; that Person A gave McPhail "material, nonpublic information about AMSC's quarterly earnings and other business activities"; that McPhail disseminated this inside information to the respondent and others; that the respondent and others, who knew or

[2] The transcript shall be referred to as "Tr. __: __"; the matters admitted in the answer shall be referred to as "Ans. ¶_"; and the hearing exhibits shall be referred to as "Ex. _." We have considered all of the evidence, but we have not attempted to identify all evidence supporting our findings where the evidence is cumulative. We credit the testimony cited in support of our findings to the extent of the findings, and we do not credit contradictory testimony. In some instances, we have specifically indicated testimony that we do not credit.

[3] These crimes allegedly violated 15 U.S.C. §§ 78j(b) and 78ff; 17 C.F.R. § 240.10b-5; and 18 U.S.C. § 371.

[4] The information included a criminal forfeiture allegation (18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)), seeking the forfeiture of any property derived from proceeds traceable to the offense. (0015).

should have known that the information was material and nonpublic and disseminated in violation of a fiduciary duty, used the information to buy and sell company shares and options and to earn a profit; and that as the respondent knew, McPhail expected to receive and did receive a benefit from disclosing this information. Ex. 1 (0002-0003).

5. The information went on to describe how McPhail sent, via email, material and nonpublic information he had received from Person A to the respondent and other individuals. Ex. 1, ¶ 13. It detailed particular tips the respondent received, and actions he took in reliance on these tips, including various instances of buying and selling quantities of AMSC stock, and earning a profit. E.g., Ex. 1, ¶¶ 19, 21, 23-25, 30-33 (0005-0007).

6. The respondent participated in at least five trades, the most profitable of which occurred in early April 2011. See Ex. 14 (0168).[5] After receiving from McPhail material, non-public information about problems at AMSC, on or about April 4, 2011, the respondent liquidated his holdings and bought a quantity of "put options."[6] Ex. 1, ¶¶ 44,45 (0010). He invested $6,000 and the stock dropped forty-one percent on April 6, 2011. Tr. 45-46 (Respondent); Ex. 1, ¶ 48 (forty-two percent drop) (0011). We credit that this dramatic drop was the result of at least two factors: the insider information to which the respondent was privy that the company was "in bad trouble" (Tr. 46 (Respondent)), and a class-action lawsuit, of which he had no knowledge, filed against AMSC on April 6, 2011. Tr. 46 (Respondent); Ex. 4

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[5] It is not entirely clear how many trades the respondent made. At the change of plea hearing, in the description of what would be proved if the case went to trial, the government attorney mentioned six trades. Ex. 3 (51). At the sentencing hearing, the number was given as six or "at least five." Ex. 4 (76). The affidavit relied on by the Court in sentencing, prepared by an SEC analyst in the civil matter against McPhail, shows the respondent engaged in five trades. Ex. 14 (168). While we note this inconsistency in the interest of accuracy, for our purposes nothing turns on resolving whether there were five or six trades.

[6] A "put" is "a contract that allows investors to bet that a stock will drop in price within a specified period." Ex. 1 (0010).

(0092-0093). The respondent earned at least $270,000 on those trades. Tr. 47 (Respondent); see Ex. 14 (0168) (showing profit of $277,878).

7. On July 11, 2014, the Securities and Exchange Commission filed a civil action against the respondent and six other co-defendants, based on the above-described conduct. Ex. 8.[7]

8. By way of relief, the SEC sought a permanent injunction against this conduct, as well as disgorgement of all "ill-gotten gains or unjust enrichment" plus civil monetary penalties. Ex. 8 (0143-0144). The respondent's "ill-gotten gains" were ultimately determined to be $295,235. See Ex. 14 (0168); Ex. 10 (0152); Tr. 52-54 (Respondent).

9. In an agreement reached with the U.S. Attorney in the criminal matter, the respondent stated that he "expressly and unequivocally admits that he committed the crimes charged in the Superseding Information, did so knowingly and willfully, and is in fact guilty of those offenses." Tr. 51-52; Ex. 2 (0017).

10. On May 12, 2015, after waiving his right to indictment by a grand jury and after agreeing with the government's summary of what it could prove if he went to trial, the respondent pleaded guilty to one count of conspiracy and one count of securities fraud. Ex. 3 (0037-0038, 0050-0060).

11. At the plea hearing, the respondent agreed with the government's summary of what it was prepared to prove had the case gone to trial, including that he willfully traded shares

[7] In its prayer for relief, the SEC wrote: "By engaging in the conduct described above, the Defendants directly or indirectly, in connection with the purchase or sale of securities, by the use of means and instrumentalities of interstate commerce, or of the mails, or of a national securities exchange: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon certain persons." Ex. 8 (0142).

based on material, nonpublic information given to him and others in breach of a duty. Ex. 3 (0050-0052); see Tr. 55-57. His admission to these crimes is conclusive evidence of their commission and the respondent is not permitted to relitigate the issue. Matter of Concemi, 422 Mass. 326, 329, 12 Mass. Att'y Disc. R. 63, 67 (1996).

12. The Court sentenced the respondent on August 17, 2015. Ex. 4. The government recommended twenty-four months of incarceration, three years of supervised release, no fine, and a $200 special assessment. Ex. 4 (0070). The respondent's attorney recommended three years of supervised release, with the first year or six months in home detention, and time served (i.e., one day, the day he was arrested). Ex. 4 (0101).

13. At his sentencing hearing, the respondent addressed the Court and spoke of the impact his actions had had on his life and loved ones, and how difficult it was to face his wife and young children, whom he had badly hurt. Ex. 4 (0102-0104). He said that he had been "on the front of the newspaper so much . . . that I no longer have newspapers anywhere near my house so my children can't see them," and that he drives "ten miles to go to stores, hoping I won't be recognized so people won't talk around my children." Ex. 4 (0103). He asked for a sentence of probation or home detention. Ex. 4 (0104).

14. The judge sentenced the respondent to time served, three years of supervised release, eight months of home detention and some additional conditions.[8] Ex. 4 (0111); Ans. ¶ 3.

[8] The maximum statutory penalties for the crimes charged were, for Count One, five years of incarceration, up to three years of supervised release, a fine of up to $250,000, and a $100 special assessment. As to Count Two, the maximum penalties were up to twenty years in prison, up to three years of supervised release, a fine of up to $5,000,000, and a $100 special assessment. Ex. 2 (0018); Ex. 3 (0042). The plea agreement signed by the parties provided that if the respondent settled his civil suit with the SEC by paying an amount of disgorgement and a penalty, the government would not seek forfeiture on the criminal side. Ex. 3 (0042-0043).

She departed downwards considerably from the government's recommendation, citing several factors. These included the fact that at least one other defendant who may have been more culpable received a probationary sentence. Ex. 4 (0109-0110). She reasoned that a large part of the "deterrent message" to the public was in the prosecution of the case, as opposed to the actual sentence imposed, and explicitly noted the likely collateral consequences for the respondent, including his "license suspension and possibility of disbarment, as well as the civil penalties that are still pending . . . ." Ex. 4 (0110-0111).[9]

15. On February 4, 2016, the respondent was temporarily suspended from law practice by order of the Supreme Judicial Court (Botsford, J.), effective retroactive to August 17, 2015, the date of his sentencing. Ex. 6 (0139); Ans. ¶ 4.

16. On September 29, 2016 the respondent consented to judgment against him in the civil matter. Ex. 9 (0145).

17. On November 7, 2016, the judge in the civil matter entered a final judgment, finding the respondent liable for disgorgement of $295,235, prejudgment interest of $50,754, and a civil penalty of $147,618, totaling $493,607 and payable within fourteen days of entry of the judgment. Ex. 10 (0152).

Conclusions of Law

18. Bar counsel charges that the respondent's criminal conduct violated Mass. R. Prof. C. 8.4(b) (criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness); 8.4(c) (dishonesty, fraud deceit and misrepresentation); and 8.4 (h) (any other conduct that adversely reflects on fitness to practice). The respondent's crimes are felonies: "serious"

[9] On January 17, 2017, the judge reduced the sentence from three years to eighteen months of supervised release, a term scheduled to end on February 17, 2017. Respondent's First Supplement to Request for Proposed Findings of Fact and Rulings of Law, p. 1.

crimes" as defined by S.J.C. Rule 4:01, § 12(3). Ex. 3 (0041); Ans. ¶ 5. Bar counsel has proven the rule violations charged.

Matters in Mitigation and Aggravation

Mitigation

19. By way of mitigation, the respondent cites his unblemished disciplinary record and his cooperation with bar counsel. Ans., pp. 3-4, ¶¶ 2,3. At best, these are typical mitigating factors. Matter of Alter, 389 Mass. 153, 157, 3 Mass. Att'y Disc. R. 3, 7 (1983) (lack of prior discipline and cooperation deemed "typical"); Matter of Anderson, 416 Mass. 521, 527, 9 Mass. Att'y Disc. R. 6, 12 (1993) ("'[W]e are not so pessimistic about the ethics of lawyers as to conclude that a lawyer who conforms to the expected standard of conduct in some respects thereby has established mitigating circumstances'") (citation omitted). He also claims that he voluntarily ceased practicing law as of May 2015. Id., ¶ 3. This date corresponds with his guilty plea to two federal felonies, and is after the date he signed a document with the U.S. Attorney admitting guilt. See Ex. 2 (0026). We fail to see how this is mitigating.

20. Next, the respondent describes as mitigating the fact that he offered to settle with the SEC in the civil matter in September 2014 for $440,000 plus a significant penalty and interest, but was rebuffed; two years later, during which time he incurred attorney's fees, the SEC accepted $442,000 plus interest. Tr. 48-49 (Respondent); see Ans. p. 4, ¶ 4.

21. While we certainly encourage restitution, the time and circumstances under which it is made determine whether it is mitigating. Our jurisprudence counsels against counting as mitigating payments made after suit has been brought or made pursuant to a settlement agreement. See Matter of Greene, 476 Mass. 1006, 1010 (2016) (payments pursuant to settlement agreement deserve little, if any, consideration); Matter of Libassi, 449 Mass. 1014,

1017, 23 Mass. Att'y Disc. R. 397, 401 (2007) ("[r]ecovery obtained through court action 'is not restitution for purposes of choosing an appropriate sanction'") (citation omitted); Matter of Concemi, supra, 422 Mass. at 330, 12 Mass. Att'y Disc. R. at 69 (court-ordered restitution not a special mitigating circumstance).

22. We do, however, agree that the payment of a monetary fine can be mitigating. Matter of Griffith, 440 Mass. 500, 510, 20 Mass. Att'y Disc. R. 177, 189 (2003).

23. The respondent claims additionally that bar counsel has not requested discipline for Douglas Clapp, another Massachusetts attorney who engaged in the same conduct in the same matter. Ans. p. 5, ¶ 5; Tr. 44 (Respondent); Tr. 63-64 (Respondent's counsel).

24. We reject the argument that the respondent and Clapp are similarly situated. While there is little record evidence of Clapp's activities, it is clear that he participated in fewer trades (two) and earned fewer profits ($11,848) than did the respondent. See Ex. 14 (0168). More compelling, "[w]hether bar counsel pursues discipline of others is irrelevant . . . to the respondent's current disciplinary action." Matter of Tobin, 417 Mass. 92, 103, 10 Mass. Att'y Disc. R. 256, 267 (1994); Matter of Johnson, 450 Mass. 165, 169, 23 Mass. Att'y Disc. R. 315, 320 (2007).

25. We agree with the respondent that the fact that the misconduct did not occur while he was engaged in the practice of law mitigates the sanction.

26. We also agree that the adverse publicity the respondent described to the sentencing judge is mitigating in these circumstances. Matter of Griffith, supra, 440 Mass. at 510, 20 Mass. Att'y Disc. R. at 189.

27. At the disciplinary hearing before us, the respondent testified that he worked as an engineer until 1990, and attended law school at night, graduating in 1988. Tr. 34 (Respondent).

He indicated that as a result of his convictions, he has been "punished" by the engineering panel. Tr. 50 (Respondent).[10]

28. The respondent testified, and we credit, that he did not accept any new cases after July 2014, and that his wife lost her job. Tr. 50 (Respondent).

29. We find that the respondent accepts responsibility for his actions and feels remorse for what he has done and for the hurt and embarrassment he has caused his wife and young children. Tr. 49-50 (Respondent); Ex. 4 (0102-0104).

30. We recognize that we are not called to decide whether the respondent has been punished enough, and that "'[t]o make that the test would be to give undue weight to his private interests, whereas the true test must always be the public welfare.'" Matter of Nickerson, 422 Mass. 333, 337, 12 Mass. Att'y. Disc. R. 367, 375 (1996) (citation omitted). However, our mitigation rules are not hard and fast. E.g., Matter of Desjourdy, 30 Mass. Att'y Disc. R. 110 (2014) (single justice finds mitigating, among other things, that the respondent cooperated fully with the federal prosecutors and with bar counsel). We have discretion to consider and find mitigating even typical factors such as remorse and acceptance of responsibility. See Matter of Doyle, 429 Mass. 1013, 1014 and n.5, 15 Mass. Att'y Disc. R. 170, 171-172 and n.5 (1999) (indefinite suspension for lawyer who pleaded guilty to conspiracy to make false statements on mortgage loan documents; Court cites in mitigation that the lawyer admitted guilt early, cooperated with the federal prosecutors and bar counsel, and had an "extraordinarily high level" of community service, contrition, acceptance of responsibility and remorse).

Aggravation

31. We find nothing in aggravation.

[10] There is no record evidence of the nature of the panel or its particular punishment.

Recommended Disposition

Bar counsel recommends indefinite suspension. The respondent recommends a term suspension and asks that he be allowed to apply for reinstatement six months prior to the eligible date. We recommend a three-year suspension.

We recognize that disbarment or indefinite suspension "is the usual and presumptive sanction for a lawyer who has committed a felony while in the course of practicing law." Matter of Driscoll, 447 Mass. 678, 688, 22 Mass. Att'y Disc. R. 282, 297-298 (2006). However, the presumptive sanctions do not bind us here, where the felonies were not in the course of law practice. Our case law notes "the importance of the 'factual nuances' in each case . . . and we do not impose a particular level of discipline without considering each bar disciplinary matter on its own merits." Matter of Finneran. 455 Mass. 722, 733, 26 Mass. Att'y Disc. R. 178, 190 (2010) (citations omitted).

The parties have not directed us to any Massachusetts case on all fours with this one. Having reviewed the case law, it is the sense of the panel that a three-year suspension is sufficient to safeguard the public's trust and confidence in the disciplinary system and is not markedly disparate from sanctions imposed for equally grave misconduct. The respondent's behavior does not appear to us to be substantially worse than that of other lawyers who have received three-year suspensions. E.g., Matter of Snapper, 28 Mass. Att'y Disc. R. 802 (2012) (Court approves stipulation to three-year suspension after federal conviction of making false statements concerning campaign contributions); Matter of Brown, 27 Mass. Att'y Disc. R. 87 (2011) (Court approves stipulation to three-year suspension after lawyer's admission to crimes of forgery; uttering a false writing; credit card fraud; larceny; negligent operation of a motor vehicle; and failure to comply with order of temporary suspension); Matter of Labrecque, 22

Mass. Att'y Disc. R. 439 (2006) (Court approves stipulation to three-year suspension for felony offense of theft of public money for wrongful receipt of disability benefits over eighteen-month period); Matter of Daniels, 14 Mass. Att'y Disc. R. 195, 197 (1998) (Court approves stipulation to three-year suspension after federal guilty plea to conversion of ERISA funds and federal tax evasion, noting "substantial mitigating factors" and that neither count arouse out of the practice of law); Matter of O'Sullivan, 13 Mass. Att'y Disc. R. 601 (1997) (Court approves stipulation to three-year suspension after conviction in federal court for conspiracy to make false statements to bank in connection with lawyer's purchase of realty); Matter of Schoening, 2 Mass. Att'y Disc. R. 182 (1981) (three-year suspension after conviction of conspiracy to bribe a public official and conspiracy to steal from the Commonwealth; conduct mitigated by lawyer's naiveté and financial desperation).

Bar counsel argues in favor of an indefinite suspension, citing cases featuring disbarred or indefinitely suspended lawyers who, like the respondent, were "convicted of felonies for obtaining unfair financial advantages." Bar Counsel's Proposed Findings of Fact, Conclusions of Law and Recommendation for Discipline, p. 7. While we agree that the respondent obtained unfair financial advantage, this is a very broad category of misconduct, with many nuances and variations. The heart of the respondent's misconduct was in abusing a confidential relationship and in securing for himself an advantage at the expense of the fair-playing public. There was no master plan; his trades were sporadic and, with one exception, resulted in small profits. It was not a forgone conclusion that he would ever earn money from the confidential information.

In the main, we do not find bar counsel's cited cases compelling because the conduct described in them is more egregious than or otherwise distinguishable from what we have before us. E.g., Matter of Desjourdy, supra (indefinite suspension for lawyer who pleaded guilty to two

counts of conspiracy to commit securities fraud and one count of mail fraud; in an attempt to raise funds for the publicly-traded company of which he was president, he agreed with an undercover agent, posing as an investor, to kickback to the investor fifty percent of any investment, and set up concealment measures including a sham consulting company); Matter of O'Neil, 15 Mass. Att'y Disc. R. 462 (1999) (lawyer who was member of the board of a credit union disbarred for conduct committed in the course of law practice; lawyer conspired over six-year period to defraud, for his own advantage, credit union and others; guilty plea admitted conspiracy, bank fraud and twenty-one counts of violation of federal law prohibiting unlawful participation); Matter of Stoller, 14 Mass. Att'y Disc. R. 736 (1998) (single justice accepts affidavit of resignation and disbars attorney who, as president, CEO, member of board of directors and loan officer of bank, caused it to make loans to entities in which he was personally interested, and caused bank to file false forms with the state bank examiner; lawyer convicted of nine counts of federal crime of misapplication by a bank officer); Matter of Murphy, 11 Mass. Att'y Disc. R. 182 (1995) (single justice accepts affidavit of resignation and disbars attorney who, as closing attorney for federal credit union and in order to obtain and maintain its business, paid its president kickbacks; lawyer convicted of federal conspiracy and forty counts of bank bribery).[11,12]

[11] See also Matter of Curtis, 17 Mass. Att'y Disc. R. 157 (2001) (indefinite suspension for lawyer whose substantial misconduct, including thirty counts of commercial bribery, thirty counts of false entry in corporate record book and larceny, predated bar admission, compounded by his intentional failure to disclose felony indictments on bar application and to disclose later indictments for felonious tax evasion).

[12] Our review of how other jurisdictions sanction similar conduct is not conclusive. E.g., In the Matter of Cutillo, 86 A.D.3d 1, 923 N.Y.S.2d 73 (N.Y.A.D. 2011) (after guilty plea to conspiracy to commit federal securities fraud and securities fraud by accessing client information and giving it to a third party for a fee—crimes "essentially similar" to the New York felony—lawyer automatically disbarred as of date of guilty plea); In the Matter of Pochopien, IL Disp. Op. 08 CH 75 (Ill. Atty. Reg. Disp. Com.), 2010 WL 8510611 (2010) (report of review board describes lawyer's use of confidential information about firm client to purchase shares in target company and to earn a profit; no criminal action brought against the lawyer; board notes, but does not discuss, that the lawyer paid restitution required in civil matter; it finds in mitigation that the lawyer has done volunteer work, that he was treated for depression and that he was distracted by father's death and daughter's emotional problems, and recommends one-

We have reviewed cases imposing short term suspensions and find them inapposite. E.g., Matter of Driscoll, supra (one-year suspension for lawyer convicted of making false statement to a federally-insured bank in the course of practice, compounded by conflict of interest violation); Matter of Alter, supra, 389 Mass. at 158, 3 Mass. Att'y Disc. R.at 8 (two-year suspension after guilty pleas to concealing information and making a false statement to obtain social security payments). We do not agree that the cases cited by the respondent at pp. 3-4 of his Request for Proposed Findings of Fact and Rulings of Law mandate a different result. For the most part, they reflect one-time criminal conduct, or conduct limited in time, and they do not feature rule 8.4(c) violations.[13]

We conclude that a three-year suspension will send the proper message to the bar and the public that the respondent's misconduct is grave and demands a heavy sanction. In making our recommendation we have taken into account, as we are permitted to do, the respondent's remorse and acceptance of responsibility; the adverse publicity he had endured; his payment of a considerable monetary penalty; and the profound impact his behavior has had on his career and family. See Matter of Grew, 23 Mass. Att'y Disc. R. 232, 241 (2007) (reciprocal discipline case;

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year suspension); Matter of Chadwick, 49 Cal. 3d 103, 776 P.2d 240 (CA 1989) (misdemeanor conviction of violation of securities laws through use of inside information about tender offer concerning non-client companies involves moral turpitude, as does agreeing to lie to SEC and lying to it; conduct mitigated by remorse, passage of time, clean disciplinary record and testimony of character witnesses; sanction is five-year suspension, with all by one year suspended, with conditions). Cf. Matter of Woodward, 232 A.D.2d 22, 661 N.Y.S 2d 614 (N.Y.A.D. 1997) (lawyer convicted of conspiracy to commit securities fraud; while he breached client confidences by divulging information on which others profited, he did not profit personally; evidence of mitigation reduces suspension to three years).

[13] The exception is Matter of Parker, 27 Mass. Att'y Disc. R. 695 (2011), which includes far-ranging criminal conduct over a period of many years, and violations of rules 8.4(b), (c), (d) and (h). The parties stipulated to a fifteen-month suspension in that case. While there are some commonalities between that case and this—namely, conduct that occurred over years and includes dishonesty—we have detailed above ample precedent for a three-year suspension for conduct similar to the respondent's, and we are comfortable that such a sanction is not markedly disparate. Cf. Matter of Powell, 30 Mass. Att'y Disc. R. 319, 324 (2014) (observing that while sanction must not be "'markedly disparate' from sanctions imposed in comparable cases . . . [t]his standard does not require mathematical precision").

single justice notes discretion to consider even typical mitigating factors "when determining the appropriate sanction within a permissible range of sanctions for a particular case"). Bearing in mind our mandate to protect the public, we conclude that a three-year suspension, retroactive to August 17, 2015 (see ¶ 15, supra), is not markedly disparate from that imposed for similar misconduct, and is the appropriate recommendation here. We further recommend that the respondent not be reinstated until he has successfully completed his term of probation.

Respectfully submitted,

By the Hearing Panel,

Thomas A. Kenefick, III /mh
Thomas A. Kenefick, III, Esq., Chair

Andrew J. Ferrara /mh
Andrew J. Ferrara, Member

Regina E. Roman /mh
Regina E. Roman, Esq., Member

Dated: January 20, 2017